CRIMINAL LAW AND PROCEDURE—

All criminal law is a compromise between two fundamentally conflicting interests—that of the public which demands restraint of all who injure or menace the social well-being and that of the individual which demands maximum liberty and freedom from interference.[1] The legislative branch, as the policy-determining branch of the government, has the greatest hand in bringing about the compromise. The role of courts in achieving that compromise, however, can never be underestimated, since "judicial decisions applying or interpreting the laws * * * shall form part of the legal system of the Philippines." [2] Their share in this task, nevertheless, has not been much. There has been, in recent years, rarely an announcement of a new doctrine. Reiteration of old doctrines seems to have been the tendency. During the third quarter of 1953, there was no marked abandonment of previous doctrines. This trend toward stability of doctrines may be understandable, for, in the words of Justice Cardozo:

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son, or even the very security of the Government, directly traceable in large measure to promiscuous carrying and use of powerful weapons justify imprisonment which in normal circumstances might appear excessive."

Justice Tuason went further to explain that if the penalty may seem excessive due to the presence of attending circumstances as in the present case, "the law is not to be declared unconstitutional for this reason. The constitutionality of an act of Legislature is not to be judged in the light of exceptional cases." The remedy afforded the accused is Executive clemency. Although the original penalty was increased by the Supreme Court, nevertheless its ruling was not without fairness when it made a recommendation to the President that the imprisonment be reduced to six months, bearing in mind the degree of evil of the defendant and that full application of the law would be harsh on the accused in the instant case.

The issue involved in the second case, *Pendatun v. Aragon*, G. R. No. L-5469, was whether the words "No objection" written by counsel could also mean the consent of his client where the law provides for express consent.

Petitioner Aida F. Pendatun was charged with the offenses of physical injuries and slander. On motion of the attorney for the complaining witness, the cases were provisionally dismissed, to which motion the defendant's counsel wrote the "No objection." When another motion was made to resume the trial, the defendant objected on the ground of double jeopardy and questioned the propriety of her counsel's notation whether such constituted express consent of the defendant as provided in Section 9 of Rule 113 of the Rules of Court.

Assuming that a principal-and-agent relationship exists between counsel and his client and that the act of the client, the Supreme Court through Justice Tuason interpreted the words, thus,

> "'No objection' written on the motion to dismiss directly conveyed, as undoubtedly they were intended to convey, the idea of full accordance with the proposed dismissal. It was not the same as acquiescence manifested by signs, actions, facts, inaction or silence. It was the same as saying 'I agree' although it was not emphatic as the later expression. Having manifested 'no objection' to the motion for the express purpose of obtaining a ruling of the court upon such motion, counsel could not have meant other than that he was in agreement with the dismissal. * * *"

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[1] Sayre, P. L., Public Welfare Offenses, 33 *Col. Law Rev.* 55 (1933).

[2] Article 8, Civil Code.

"In the life of the mind, as in life elsewhere, there is a tendency toward the reproduction of kind. Every judgment has a generative power. It begets its own image. Every precedent, in the words of Redlick, has a 'directive force for the future cases of the same or similar nature.' "[3]

1. *Evident Premeditation*

The Revised Penal Code, in including evident premeditation among the aggravating circumstances,[4] or in making it a qualifying circumstance in murder,[5] does not attempt to define the character, nature and extent of evident premeditation. However, courts have supplied the deficiency. For instance, it has been held that to justify the inference of deliberate premeditation, there must be a period sufficient in a judicial sense to afford full opportunity for meditation and sufficient to allow the conscience of the actor to overcome the resolutions of his will if he desires to hearken to its warning.[6] Sufficient time must intervene between the conception of the idea and the resolution to carry out the killings, and the fulfillment of the preconceived plan, for the malefactor to dispassionately reflect upon the consequences of his act, or to desist from its execution.[7] There must, in other words, be time sufficient for desistance.[8] Three things must be established if premeditation is to be taken into account: (a) the time when the offender determined to commit the crime, (b) an act manifestly indicating that the culprit has clung to his determination, and (c) a sufficient lapse of time between the determination and the execution to allow the offender to reflect upon the consequences of his act.[9]

The recent case of *People v. Torrecampo, et al.*[10] reiterates the foregoing doctrines. The deceased and defendant Torrecampo, after having partaken of *tuba*, had a fight. Defendant was hit with a piece of wood. Overpowered, he warned his antagonist to beware, for someday he would kill him. The following day, defendant suddenly approached deceased and his wife from behind and stabbed him with a knife, inflicting on him a mortal wound. Death came a day after. Upon the foregoing facts, the trial court convicted accused of murder, qualified by treachery and aggravated by premeditation. While affirming the judgment of the lower court, the Supreme Court could not find any trace of premeditation. It held:

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[3] HALL, M. E., SELECTED WRITINGS OF BENJAMIN N. CARDOZO (1947), p. 113.

[4] Article 14, Revised Penal Code.

[5] Article 248, Revised Penal Code.

[6] *U. S. v. Gil* (1909), 13 Phil. 531; *People v. Yturriaga*, G. R. No. L-2816, prom. May 31, 1950.

[7] *People v. Mostoles*, G. R. No. L-2880, prom. March 31, 1950; *People v. Bangug* (1928), 52 Phil. 87.

[8] *U. S. v. Lozada*, 40 O. G. (9S) No. 13, p. 43.

[9] *People v. Leaño*, (CA) 36 O. G. 1120, cited in PADILLA, CRIMINAL LAW (1949); p. 165.

[10] G. R. No. L-5161, prom. September 7, 1953.

"* * * The grudge engendered by the fight * * * the night before in which Torrecampo was at the losing end, may well and logically be considered as the motive behind the killing. But although he warned Ballonico that he would someday kill him, there is no evidence that he really meant to kill the deceased and that from that moment he planned and reflected on killing his assailant, and in pursuance of said plan, he followed the deceased the following day. For all we know, it may have been a chance meeting but that when he saw the deceased that afternoon, his resentment of the previous evening flared anew and he decided right then and there to attack his victim."

2. *Bribery*

The Revised Penal Code distinguishes between two kinds of bribery: direct [11] and indirect.[12] In brief, direct bribery may be committed in any of these ways: (1) when the public officer agrees to perform an act amounting to a crime;[13] (2) when a public officer agrees to perform an act which does not amount to a crime;[14] and (3) when a public officer agrees to refrain from doing his official duty.[15] In indirect bribery, it is not necessary that the officer should do any particular act or even promise to do an act. It is enough that he accepts gifts by reason of his office.[16]

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[11] Art. 210. *Direct bribery*—Any public officer who shall agree to perform an act constituting a crime, in connection with the performance of his official duties, in consideration of any offer, promise, gift, or present received by such officer, personally or through the mediation of another, shall suffer the penalty of prision correccional in its minimum and medium periods and a fine of not less than the value of the gift and not more than three times such value, in addition to the penalty corresponding to the crime agreed upon, if the same shall have been committed.

If the gift was accepted by the officer in consideration of the execution of an act which does not constitute a crime, and the officer executed said act, he shall suffer the same penalty provided in the preceding paragraph; and if said act shall not have been accomplished, the officer shall suffer the penalties of arresto mayor in its maximum period and a fine of not less than the value of the gift and not more than twice such value.

If the object for which the gift was received or promised was to make the public officer refrain from doing something which it was his official duty to do, he shall suffer the penalties of arresto mayor in its medium and maximum periods and a fine of not less than three times such value.

In addition to the penalties provided in the preceding paragraphs, the culprit shall suffer the penalty of special temporary disqualification.

The provisions contained in the preceding paragraphs shall be made applicable to assessors, arbitrators, appraisal and claim commissioners, experts or any other persons performing public duties.

[12] Art. 211. *Indirect bribery*.—The penalties of arresto mayor, suspension in its minimum and medium periods and public censure shall be imposed upon any public officer who shall accept gifts offered to him by reason of his office.

[13] Art. 210, 1st par., *supra*.

[14] Art. 210, 2nd par., *supra*.

[15] Art. 210, 3rd par., *supra*.

[16] PADILLA, CRIMINAL LAW (1949), 627.

Bribery is consummated by consent of the official. It is not essential that the public officer should actually perform the act which he agreed to commit. If he performs the act which is unlawful, that may be an additional felony. In bribery it is essential that the act which the officer agreed to commit in consideration of the gift be an act connected with the discharge of his public duties.[17]

According to Viada,[18] there are four essential elements in the crime of direct bribery under Art. 210 of the Revised Penal Code, namely: (1) that the accused is a public officer within the scope of Article 203 of the same Code; (2) that the accused received by himself or through another some gift or present, offer or promise; (3) that such gift, present or promise has been given in consideration of his commission of some crime or any act not constituting a crime; and (4) that the crime or act relates to the exercise of the functions of his public duties.

It is necessary to prove that he received money or other article of value, and, having received it, agreed to do an unlawful act. Or else, it must be proved that a promise or offer was made him, provided he would commit an unlawful act and that, in consideration for the promise or offer, he did agree to commit the unlawful act. It is not necessary in either case that the evidence show an express promise. It is sufficient if from all circumstances such promise can be implied.[19] Thus, failure to perform duty for money consideration has been held to be bribery.[20]

In *People v. Abesamis*,[21] the information alleged that the accused, the justice of the peace of Echague and Angadanan, Isabela, wilfully, unlawfully, and feloniously demanded and received from Marciana Sauri the amount of ₱1,100.00 on condition that he would dismiss the case for robbery in band with rape against the son of said Marciana Sauri.[22] The information denominated the crime charged as direct bribery under Art. 210. The issue was whether the crime committed was direct bribery under Art. 210 or indirect bribery Art. 211. The Supreme Court held:

> "The crime charged does not come under the first paragraph (of Art. 210). To fall within that paragraph, the act which the public officer has agreed to perform must be criminal. To dismiss a criminal complaint, as the accused is alleged to have agreed to in the present case, does not necessarily constitute a criminal act, for the dismissal may be proper, there being no allegation to the contrary."

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[17] *Ibid.*, p. 623.

[18] Quoted in *U. S. v. Gimenea* (1913), 24 Phil. 464.

[19] *U. S. v. Richard* (1906), 6 Phil. 545.

[20] *U. S. v. Valdehueza* (1905), 4 Phil. 470.

[21] G. R. No. L-5284, prom. September 11, 1953.

[22] Evidently, the case was only in the preliminary investigation stage, because justice of the peace courts have no jurisdiction over the offense charged. See Sec. 87, Judiciary Act of 1948.

The court, nevertheless, convicted the defendant of indirect bribery under Art. 211, holding the information sufficient indictment for that crime.

B. CRIMINAL PROCEDURE

The Constitution provides that "no person shall be deprived of life, liberty or property without due process of law."[1] That is a substantive right for the effective enforcement of which procedure is a great mainstay.[2] As aptly put by Justice Brandeis, "* * * in the development of our liberty, insistence upon procedural regularity has been a large factor."[3] During the third quarter of 1953, decisions of the Supreme Court in the field of criminal procedural law show decisively that tribunal's characteristic adherence to doctrinal precedents in obedience to that insistence.

1. *Change of Plea.*

May an accused government employee, who had pleaded not guilty upon arraignment to the charge of falsification of public document under Art. 171 [4] of the Revised Penal Code, be allowed by the prosecution and the trial court to enter a plea of guilty upon trial, for the crime of falsification described and punished in the last paragraph of Art. 172 [5] of the same Code?

In the case of *People v. Mendoza*,[6] the trial court allowed the defendant Mendoza to do so, and convicted him under said article, on the authority of Sec. 4, Rule 114 of the Rules of Court. On appeal by defendant, the Supreme Court held that Sec. 4, Rule 114 was misconstrued by the lower court.

According to said rule, "the defendant, with the consent of the court and of the fiscal, may plead guilty of any lesser offense than that charged which is necessarily included in the offense charged in the complaint or information." [7]

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[1] Art. III, Sec. 1, par. 1.

[2] Douglas, W. O., Procedural Safeguards in the Bill of Rights, 31 *Jrnl. of the Am. Judicature Society* (1948), 166, 168.

[3] *Burdeau v. McDowell* (1921), 256 U.S. 465, 477.

[4] The pertinent portion of the article follows: "The penalty of prision mayor and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position shall falsify a document by committing any of the following acts: * * * 6. Making any alteration or intercalation in a genuine document which changes its meaning."

[5] "The penalty of prision correccional in its medium and maximum periods and a fine of not more than 5,000 shall be imposed upon: * * * Any person who shall knowingly introduce in evidence in any judicial proceeding or to the damage of another or who, with the intent to cause such damage shall use any of the false documents embraced in the next preceding article or in any of the foregoing subdivisions of this article, shall be punished by the penalty next lower in degree."

[6] G. R. No. L-5563, prom. July 31, 1953.

[7] Justice Moran gives the reasons for the rule. According to him, "there are instances in which the fiscal charges the accused with a serious offense, though his evidence as to such serious offense is not so conclusive, his purpose being to leave

The Supreme Court ruled: "The substitution of plea could not lawfully be made, taking into consideration the fact that the crime charged in the information is falsification of a public document * * *" for the reason that "* * * the crime of falsification defined and punished in the last paragraph of Art. 172 is not necessarily included in the offense charged in the information for falsification of public document by a public officer or employee or by a private person. The crime punished in Art. 172 of the Revised Penal Code may be a lesser offense, but it certainly cannot be deemed necessarily included in the crime of falsification of a public document by a public officer or employee or by a private person."

2. *Venue in Treason Case*

The question of venue is procedural in character rather than substantive. It relates to the jurisdiction of the court over the person rather than the subject matter. It establishes a relation, not between the court and the subject matter, but between the plaintiff and the defendant.[8] The general rule in criminal procedure is that no one is triable for the commission of a crime except in the place where he committed it. This is based upon legal provision establishing the essential requisites of a valid complaint or information. One of these requisites is that the complaint or information must contain an allegation that the offense was committed within the jurisdiction of the court and is triable therein.[9]

Public interest, as well as the desire to secure the best results and effects in the punishment of crime, requires that the criminal be prosecuted and punished in the very place, as near as may be, where he committed the crime.[10] To the general rule, however, there are exceptions, as when the offense charged is a continuing offense,[11] or when it was committed on moving vehicles,[12] or on board Philippine vessels.[13]

In the case of *People v. Pacheco*,[14] the Supreme Court had occasion to pass upon the proper venue of a treason charge. In that case, the accused was convicted by the Court of First Instance of Bulacan for the acts performed in Polo, Bulacan, as well as for those commit-

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the court to form its own judgment as to the truth of such evidence. When the accused in such case, willing to disclose the true offense he has committed, enters a plea of guilty of a lesser offense included in the charge, the court shall inquire from the fiscal as to the nature and character of the evidence he has, to prove the offense charged, and if both the court and the fiscal find that such evidence is only sufficient to establish conclusively the lesser offense of which accused wishes to plead guilty, they may give their consent to the plea. (II MORAN, COMMENTS ON THE RULES OF COURT, 1952 ed., pp. 828-829.

[8] *MRR v. Attorney General* (1911), 20 Phil. 523.

[9] See Sec. 9 and sec. 14, Rule 106, Rules of Court.

[10] See note 8.

[11] See Sec. 14(a), Rule 106, Rules of Court.

[12] See Sec. 14(b), *ibid.*

[13] See Sec. 14(c), *ibid.*

[14] G. R. No. L-4570, prom. July 31, 1953.

ted in the City of Manila. He elevated the case to the Supreme Court, questioning the jurisdiction of the lower court to take cognizance of the acts allegedly perpetrated in Manila. The prosecution's theory was that the crime charged was a continuing offense, consisting of several acts occurring in different provinces. Such being the case, the prosecution maintained, the offense, under the principle governing venue, may be prosecuted in any province wherein any material ingredient of the offense is shown to have been committed. The Supreme Court upheld the prosecution's theory. Reiterating the doctrine in *Guinto v. Veluz*,[15] it said:

> "The crime of treason may be committed by executing, either a single or several intentional overt acts, different or similar but distinct and for that reason, it may be considered one continuous offense."

The Court also pointed out the adverse effects that might ensue from sustaining the contention of the accused. To the court, "to uphold appellant's contention would be to permit another prosecution against him in the Court of First Instance of Manila." [16] The rule is that, where an offense is a continuing one, it cannot be divided arbitrarily into several terms or parts for the purpose of charging separate offenses.[17] To allow multiple criminal actions would be to subject the defendant to double jeopardy, against which he is protected by the Constitution.[18]

3. *Discharge of Sureties to a Bail Bond.*

Among the constitutional rights of an accused person is the right to bail.[19] Bail is defined by the Rules of Court as the "security required and given for the release of a person who is in the custody of the law, that he will appear before any court in which his appearance may be required as stipulated in the bail bond or recognizance." [20]

According to Malcolm and Laurel, the right to bail implies that a particular kind of bond is given to secure the personal liberty of one held in restraint upon a criminal charge. To bail an arrested person is to deliver him to others who become entitled to his custody and responsibility for his appearance when and where agreed, in fulfillment of the purposes of the arrest. When the obligation of the bail is assumed, the sureties become in law, the jailer of the principal.[21] On the other hand, the liabilities of the sureties on a bail is limited to the precise terms of the contract.[22]

In the recent case of *People v. de la Cruz*,[23] the Supreme Court passed upon the rights of the sureties to a bail bond. The accused was charged with theft of large cattle in the justice of the peace court of Tagkawayan, Quezon. He put up a bond of ₱1,500 signed by the

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[15] 77 Phil. 798 (1947).
[16] Citing *Guinto v. Veluz, supra.*
[17] *U. S. v. Arcos* (1908), 11 Phil. 555.
[18] Art. III, Sec. 1, par. 20.
[19] Art. III, Sec. 1, par. 16.
[20] Sec. 1, Rule 110, Rules of Court.
[21] PHILIPPINE CONSTITUTIONAL LAW (1936), pp. 491-492.
[22] *U. S. v. Bonoan* (1912), 22 Phil. 1.
[23] G. R. No. L-5794, prom. July 23, 1953.

appellants in this case. Meanwhile, the justice of the peace court of Paracale, Camarines Norte, had issued a warrant for the arrest of the accused Mamerto de la Cruz, also for theft of large cattle. The sureties surrendered the accused to the proper authorities. The accused was forthwith transferred to Camarines Norte with the consent of the Quezon court. The case in Quezon province was set for arraignment and a subpoena served upon sureties who refused to sign, because the accused was then being held for trial in Camarines Norte. From then on, the bondsmen were ignored by the Quezon court in matters connected with the defendant's case. Later, the accused escaped from confinement in Paracale. A series of postponements of the trial of the case in Quezon was obtained by the provincial fiscal. All the while, no order to produce the accused or notice of the hearing was ever given the sureties. Finally, when the case was calendared for hearing, the Quezon court gave the bondsmen 30 days within which to show cause why the bail should not be forfeited. Bondsmen refused to sign the subpoena on the ground that they had already withdrawn as such. Thereafter, sureties moved to be discharged. The motion was denied. From the order to show cause and the order denying the motion to discharge, sureties appealed.

Previously, the settled rule was that only a judgment ordering a bondsman to pay the full amount of the bond or a part thereof may be considered final and appealable. Where the appeal is only from an order of confiscation, the appeal may be dismissed, since the order is interlocutory in nature, temporary in character, and may be set aside by the trial court.[24]

It should be noted in the instant case, that no order of confiscation or forfeiture had been entered against the bondsmen and, under the ruling in *People v. Paa,* the appeal ought not to have admitted. However, the Supreme Court, assuming that the appellants would be required to pay the amount therof unless the orders on appeal were set aside, declined to dismiss the appeal, and squarely passed on the question. In effect, this ruling may be considered a relaxation of what previously seemed to be a strict and technical rule.

The sureties in the instant case maintained that they had been released. The Quezon Court decided otherwise, relying for support on Sec. 16 (a), Rule 110 of the Rules of Court.[25] The Supreme Court reversed:

> "This rule has no bearing on the case. * * * Manifestly it has in view a situation where the prisoner is at the disposal of his sureties and these wish to be released from the obligation on the bond, before its terms are broken. The sureties' rights, duties and liabilities after the person has absconded, or when for one reason or another cannot be found, must be controlled by other statutory provisions or by the general principles of contract. Bail is nothing but a contract."

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[24] *People v. Paa,* CA-GR No. 7810, prom. November 13, 1941.

[25] The pertinent part provides: "Upon application filed with the court and after due notice to the fiscal, the bail bond shall be cancelled and the sureties discharged from liability (a) where the sureties so request upon surrender of the defendant to the court; * * *"

Reiterating its previous ruling in *US v. Bonoan*,[20] it said: "It was a good defense in an action on a bail bond for the sureties to allege that the indicted person was, when the production was ordered, in prison in another province for another offense." That precisely was what the sureties in the instant case did.

Citing extensively from *US v. Bonoan*, it continued:

> "It is the settled law of this class of cases that the bail will be exonerated where the performance of the condition is rendered impossible by the act of God, *the act of the obligor*, or the act of the law. (*Taylor v. Taintor*, 83 U.S. 366, cited in *U. S. v. Bonoan*, 22 Phil. 1).
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> "It would be against all principles of equity and justice to allow the Government to recover against sureties for not producing their principal when it had itself placed the principal beyond their reach and control. There was an implied covenant on the part of the Government when the bond was accepted that it would not in any way interfere with the due compliance of the conditions in the bond or take any proceeding against the principal which would affect the rights of the sureties. (*Reese v. U. S.*, 176 U.S. 13, citing *Rathbone v. Warren*, 10 Jones 586, etc. * * *)"

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[20] See note 22.