THE RIGHTS OF THE ACCUSED—THEIR TRUE BASIS *

NORBERTO J. QUISUMBING **

I am grateful for the honor of having been invited as your commencement speaker. I am aware of what your Director, Major (Colonel) Jose Lukban, and your Commandant, Capt. Pedro Flores, expect me to say to you. You have completed courses in criminal investigation intended to insure that the guilty will be brought before the bar of justice. As your commencement speaker, I am now expected to terminate your course by a reminder of the rights of the accused and to ask you to respect those rights. And so I will.

I beg to remind you that our Constitution in its Bill of Rights explicitly says:

> "No person shall be held to answer for a criminal offense without due process of law." [1]
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> "In all criminal prosecutions, the accused shall be presumed to be innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses in his behalf." [2]
>
> "No person shall be compelled to be a witness against himself." [3]

I beg you to recall that both American and Philippine courts have repeatedly said that

> "Under our system, society carries the burden of proving its charge against the accused *not* out of his own mouth. It must establish its case, *not* by interrogation of the accused even under judicial safeguards, but by evidence independently secured through skillful investigation. 'The law will not suffer a prisoner to be made the deluded instrument of his own conviction.'" [4]

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** LL.B. (U.P.); Chief, Prosecution Division, Department of Justice; formerly, Professorial Lecturer, College of Law, University of the Philippines.

[1] Art. III, § 1(15).

[2] *Id.*, § 1(16).

[3] *Id.*, § 1(18).

[4] Watts v. Indiana, 338 U.S. 49 (1949); 2 HAWKINS, PLEAS OF THE CROWN c. 46, § 34 (8th ed. 1824). See also Turner v. Pennsylvania, 338 U.S. 62 (1949); Harris v. South Carolina, 338 U.S. 68 (1949); McNabb v. United States, 318 U.S. 332 (1943); Rochin v. California, 342 U.S. 165 (1952); Stein v. New York, 346 U.S. 156 (1953).

Mr. Justice Carson once stated that a party must rely upon the strength of his own and not upon the weakness of his adversary's evidence; [5] in criminal cases, the guilt of the accused must be established by the strength of the evidence of the prosecution and not by the weakness of his defense.

It is no accident that, when dictatorships were perfecting their truth serums and torture methods at Belsen and Fort Santiago, the democracies ruled out confessions obtained by violence, threats and other physical abuses. Anglo-American writers instead said

> "The history of the criminal law proves overwhelmingly that brutal methods of law enforcement are essentially self-defeating, whatever may be their effect in a particular case." [6]

Today, a conflict rages between communism and democracy. And the communists have perfected new methods of extorting confessions. No longer do they rely on brutal physical techniques. They have devised methods of breaking—not a man's back—but a man's will. "Brain-wash" we call it. And stout hearts and stout wills have succumbed to its efficiency, i.e., the heroes of Korea—the martyr of the Church, Cardinal Mindzenty.

And again it is no accident that, while the communists with great success have used and are using new-found methods to coerce the innocent to confess to spying against them, courts of the democracies —while sitting in judgment on cases of communist-suspects—have yet extended and expanded the meaning of "due process", of "extorted confession", of "violence and threats"?

Now, the courts of the democracies hold that confessions obtained by protracted police interrogation, even though no physical violence is actually resorted to, still offend the standards of due process. They ruled:

> "A confession by which life becomes forfeit must be the expression of free choice. A statement to be voluntary of course need not be volunteered. But, if it is the product of sustained pressure by the police, it does not issue from a free choice. When a suspect speaks because he is over-borne, it is immaterial whether he has been subjected to a physical or mental ordeal. Eventual yielding to questioning under such circumstances is plainly the product of the suction process of interrogation and therefore the reverse of voluntary. We would have to shut our minds to the plain significance of what here transpired to deny that this was a calculated endeavor to secure a confession through the pressure of unrelenting interrogation. The very relentlessness of such interrogation implies that it is

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[5] Nolan v. Jalandoni, 23 Phil. 292 (1912).

[6] RADGINOWIEZ, A HISTORY OF ENGLISH CRIMINAL LAW AND ITS ADMINISTRATION FROM 1750.

better for the prisoner to answer than to persist in the refusal of disclosure which is his constitutional right."[7]

Yes—I am expected to remind you that you are to concede to communist-suspects those very rights which they are dedicated to destroy and abolish. You are to respect those rights even to them who denied their victims those same rights. You are required to remember those safeguards which our civilization has evolved for the administration of justice precisely when all your natural impulses to the contrary are aroused by a shocking crime.

This is not easy. In fact, I imagine it is very difficult. You are entitled to be told—Why.

They say that the rights of the accused are based upon the dignity of man and the respect it is entitled to. I suppose that is right. But I think the real basis of those rights goes much further. It goes into the recognition of the impossibility of ascertaining the absolute truth as to the guilt or innocence of a man within the limitations of time, place and capability of a court trial and the resultant necessity of keeping two equally free adversaries within the rules of the judicial contest lest the balance of justice be impaired.

Very few will admit that a lawsuit is not, and cannot be made, a scientific investigation for the discovery of truth.[8] But that is the first truth we—who are involved in the prosecution of crime—should recognize. You know the rule that, in a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. And the rule continues: proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty; moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.[9] So the very definition of the requisite proof for conviction concedes the impossibility of producing absolute certainty of guilt.

A scientist would insist in considering all the elements pertaining to a matter of inquiry. The court has to rely in the main upon data which interested parties may care to furnish him. The witnesses to a material event may only be few and fewer still may be presented at the trial. Their capacity for accurate observation and memory will differ. Their ability and their desire to narrate truly may be slight or great. Yet, the court must assume that the data presented before him are complete and he is then expected to render judgment. He has no other choice. Yet the truth about internal com-

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[7] Watts v. Indiana, *supra* note 4.
[8] MORGAN, AMERICAN LAW INSTITUTE MODEL CODE OF EVIDENCE 3-4.
[9] Rule 123, § 95, Rules of Court.

bustion was discovered only at the turn of the 20th century. The truth about the atom was known only a few years back at Alamogordo. Truth may take centuries to discover; the judge has only a few days to render judgment. Prompt decision is imperative—for, as you have heard, justice delayed could be justice denied. If the man is innocent, he should be immediately set free. If he is guilty, he should just as immediately be sentenced so that his reformation may begin.

You doubt what I say. You have taken up finger-printing and the almost certain identification of persons through its use. So your fingerprint finding proves the accused was in the room where the murder was committed and further proves the accused a liar because he denied that he had ever been in the room. Traces on the accused and the victim even prove that the accused and the victim had struggled with each other. Medical autopsy reveals death through gunshot wound. Your ballistic findings point to the pistol of the accused as the murder weapon. Gunpowder traces on his hand tend to show he recently fired a pistol. Fingerprints on the pistol show that the accused last handled the pistol. Was it murder or was it self-defense? Bits of facts are conclusively proven by your scientific tests—but the whole truth is to be gathered not from strands but from the whole—not from a few circumstances but from the mass of evidentiary data.

If then a law suit is not a scientific investigation for the discovery of truth, if the absolute truth as to the guilt or innocence of a man cannot be ascertained, why try an accused and mete out penalty on mere probability of guilt? But, Society must maintain order. To maintain order, the wrongdoor must be punished. No matter how crude or imperfect the method, society must determine the guilt or innocence of the accused. The adversary proceeding, the present-day method of trial, is the best yet devised for the ascertainment of the guilt or innocence of an accused.

At one time, the two litigants were made to walk on burning coals and the litigant whose feet were spared from scorching was believed to have told the truth. Will modern man submit to such ordeals for the settlement of disputes? And the ordeals involved were as ingenious as man's ingenuity then permitted—were as cruel as men then could be cruel. As civilization set in, the rack for stretching the body of the litigant, the whiplash that cut through the raw backs of the unfortunate accused—all these ordeals were slowly disregarded. In the 11th century, William, the Conqueror, arrived in England and brought with him two Norman modes of trial, *trial by battle* and *trial by inquisition*. Trial by battle was a

physical battle by champions representing the litigants. The consequences were so fatal they had to be disregarded in time as gallantry to the point of death waned. In trial by inquisition, the neighbors of the contending parties were called in, each to tell what he knew about the case and all together to decide which of the parties was in the right. Sometimes these inquisitors were many, at other times only a few, until an ordinance of Henry II in the 12th century set their number at 12 and specified that they be knights. At first, the inquisitors or jurors themselves were the only witnesses. Later they were allowed to call in outside witnesses. Finally, the jurors were no longer required to be knights and to know about the case in advance but sat as impartial triers of issues on the basis of facts set forth to them by the testimony of witnesses.[10]

Trial by battle was abolished by act of Parliament in 1819. Although it was abolished, the *adversary nature* of that Norman mode of trial *remained* in common law trials as their most predominant feature. The United States is included in the so-called jurisdiction of the common law world. We patterned our courts after American courts. The proceeding, the trial that takes place in our courts today, is an adversary proceeding—true, no longer a combat of physical arms, but a combat of minds.

Hence, there are always two sides to every civil suit and the State through its judge acts as arbiter. Even in criminal cases where the State is the offended party, a criminal offense being an offense against the State or people of the Philippines, the State provides an adversary for the accused in the person of a prosecutor—and a combat takes place between the prosecutor and the accused. As in the days of knighthood, when the adversaries picked their weapons, the parties-litigants pick the issues when they file their complaints. The prosecutor determines the offense he will charge the accused with. The accused need defend himself only against the offense charged and the judge must render a decision on that charge alone. You remember that the judgment must conform to the issues made out by the pleadings and the evidence presented by the parties. So it is that the parties not only pick out the issues by their pleadings, they even determine the evidence to present and the Court must decide the case or find what the facts appear to be as disclosed by the evidence submitted by the parties. You hear that the judge does not go out to look for the truth himself. He cannot even use the the knowledge about the case that he himself possesses. The State is indeed not interested in discovering the truth or even to discover what the truth appears to be as disclosed by all available

[10] TRACY, HANDBOOK OF THE LAW OF EVIDENCE 1-2.

data, but merely to find, for the sole purpose of settling the dispute between the litigants, what the facts appear to be as disclosed by the materials submitted by the parties.[11] If the data submitted by the parties leave the mind of the judge in equilibrium, then he decides the case in accordance with the rule on burden of proof. He decides the case against the party having the burden of persuasion and on the basis of presumptions—the most important of which is the presumption of innocence.

You remember that the symbol of justice is the scales, two weights suspended at each end of a fulcrum. That symbol was most accurately chosen. The greater the oscillation of the scales, the more accurately they settle on a point of equilibrium. The greater the freedom of each of the combatants in an adversary proceeding to present its side, the sharper the conflict, the more accurately the truth will emerge.[12] On the equal freedom of each combatant, the prosecutor and the accused, to present their respective sides of the issue, lies the guaranty that the probable truth that will be reached will approximate the standards of justice.

I now return to the reminder that I am to give you on the rights of the accused. Those rights are devised as necessary content of the rules governing the contest, rules intended to give both the prosecutor and the accused equal opportunities to present their sides and therefore intended to maintain the balance of justice. Violate the rights of the accused and you disturb the balance. Disturb that balance and neither the judge nor you will ever really know whether the accused is really guilty and therefore justly punished or is really innocent and therefore unjustly punished.

To you then belongs at least half of the responsibility of maintaining the balance of justice.

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[11] MORGAN, SELECTIVE ESSAYS ON THE LAW OF EVIDENCE 272.

[12] Piero Calamanbrei.