THE ESCOBEDO AND MIRANDA RULINGS IN RELATION TO PHILIPPINE JURISPRUDENCE ON CONFESSIONS

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> "Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a law-breaker, it breeds contempt for the law; it invites every anarchy. To declare that in the administration of the criminal law the end justifies the means — to declare that the Government may commit crimes in order to secure the conviction of a private criminal — would bring terrible retribution."
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> Justice Brandeis[1]

In the arena of American jurisprudence, a heated and spirited debate goes on. The issues, seemingly numerous, in reality boil down to one transcendental question: whether the police should be allowed any significant opportunity to interrogate suspects. The intellectual scuffle represents a heroic attempt at the resolution of the competing claims of crime detection and fairness to the accused. Police practices have grown increasingly sophisticated and is now a long way from extraction of confessions by whipping the accused with steel-studded belts. At that particular point in legal history, the U.S. Supreme Court relied upon the general implications of due process to reverse a state conviction based on such confessions.[2] But that was a comparatively simple matter then. For no one disputes that such barbarity merits proscription. Today, however, it has been stated that the "court's involvement in the confessions problem has resulted in a proliferation of exclusionary rules, and has reached policy issues of utmost complexity."[3]

To be sure, the dialogue is at times spiked with bits of nonsense; the arguments blurred by resort to personalities; and the legal points to a large extent dimmed by unfair generalizations and name calling. The critics of police interrogation classify themselves as fighters for civil liberties, and characterize every incriminating statement as poisonous fruit of varied police coercive processes. The investigator is pictured as a consummate hunter, to

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[1] Dissenting in Olmstead v. United States, 277 U.S. 438 (1938) at 485.

[2] Brown v. Mississippi, 297 U.S. 278 (1936).

[3] 79 Harv. L. Rev. 935 (1966).

whom the lone accused is "'game' to be stalked and cornered."[4] Sentiments are aroused by the rhetorical invocation of the "flaming demands of justice and humanity."[5] And the argument that confessions are necessary for effective law enforcement is peremptorily dismissed on the ground that ancient barbarities were justified by a similar reason.

Across the table, supporters of police and the prosecutors point out the danger that the proliferation of the exclusionary rules might "render the police powerless . . . against the criminal army."[6] Advocates of greater restrictions on the use of confessions are indicted as soft-hearted or soft-headed abettors of rape, murder and robbery. Incisive sarcasm is liberally employed when it is urged that "in our concern for criminals, we should not forget that nice people have some rights too."[7]

Although this debate has been going on for a long time,[8] new impetus for both sides have been provided by the recent decisions of the U.S. Supreme Court further restricting police interrogation practices. Most notable of these seemingly radical propositions were those embodied in the cases of *Escobedo v. Illinois*[9] and *Miranda v. Arizona*.[10] These two cases emphasize the right of the individual against self-incrimination and establish procedural safeguards, laying stress on the right to counsel as part of due process and as a necessary element in the protection against self-incrimination.

These landmarks in civil liberties are in themselves significant enough to merit note and comment. What makes these cases doubly significant for us is the fact that the rights therein re-established are no strange concepts in Philippine jurisprudence. The privilege against self-incrimination and the right to counsel are guaranteed the Filipino people in a Bill of Rights worded almost identically as the provisions in the American Constitution.

It would not be far-fetched to suppose, therefore, that the novel propositions forwarded by the Federal Supreme Court might have an important bearing on related matters in this jurisdiction. As a matter of fact, considering the similarity of the provisions embodying the rights, it would be very reasonable and logical to expect

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[4] *Id.*, at 940 citing Kamisar, "Equal Justice in the Gatehouses and Mansions of the American Criminal Procedure" *Criminal Justice in Our Time* I, 20 (Howard Ed. 1965).

[5] McCORMICK, EVIDENCE: Sec. 75 at 156 (1954).

[6] Parker, "The Cohan Decision Made Life Easier for the Criminal" *Police* 113, 118 (1956) as cited in 79 Harv. L. Rev. 935 (1966) *supra*.

[7] Killough v. United States, 315 F. 2d 241, at 265 (Miller, C.J., dissenting).

[8] The roots of the controversy could be traced to the abolition of the Star Chamber Oath in the case of Lilburn.

[9] 378 U.S. 478 (1964) hereinafter to be cited as Escobedo case.

[10] 16 L. Ed. 2d 694 (1966) hereinafter to be cited as Miranda case.

that the manifestations of the aforementioned rights be similar, if not identical in these two jurisdictions. The legal mind is thus curious as to the similarities and differences in the effectuation of these rights in the United States and in the Philippines. Similarities would, of course, necessitate no explanation. But differences require a more or less meticulous inquiry into the whys and wherefores. This paper attempts to compare the jurisprudence of both countries and to seek probable reasons for striking differences which do exist. The writer will try to discern trends, if there be any and to point out probabilities in the future as may appear to him manifest.

THE ESCOBEDO CASE

The prime actor in the Escobedo drama is one Danny Escobedo, then 26, 5 feet and 5 inches tall and 106 lbs. heavy. He was a Chicago laborer serving 20 years for first-degree murder. The case arose from the murder of Manuel Valtierra, then married to Danny's sister, Grace. The particular marriage mentioned was a stormy one and ended violently one night when Grace's husband was shot in the back as he arrived at his slum home in Chicago. The police suspected that Escobedo and his friends did the killing as a favor for Grace. But since the crime was typically clueless, the police could not do anything but haul in the suspects Escobedo, Grace and one De Gerlando for interrogation. The police was able to persuade De Gerlando to finger Danny Escobedo as the killer. Manacled, Danny was hustled into an interrogation room where no one warned him of his rights to silence and to counsel. Danny's lawyer hurried to the station house where he got a brief glimpse of Danny and vice versa but the police did not permit them to talk to each other.

With no lawyer to advise him of his rights, Escobedo fell into a well laid trap. Confronted with De Gerlando, Danny blurted: "You did it!" — thus indirectly admitting his own complicity.

Danny Escobedo was convicted and sentenced to 20 years. An appeal in *forma pauperis* was filed in the Illinois Supreme Court with lawyer Eugene Farrug as his counsel *de oficio*. In the first instance, the Illinois Supreme Court reversed the conviction on the ground of false promises by the detective who persuaded Danny to talk. But on reconsideration, the Illinois court reversed itself. The defense counsel forwarded a novel theory: that Danny's statement became *ipso facto* involuntary and therefore inadmissible, as soon as the police turned away his lawyer. An objective test was sought to be established in that if the police violate a specific rule, any confession they elicit is automatically excluded. The Illinois court refused to accept this theory, believing that the enforcement of such rule would entitle the lawyers to monitor all police question-

ing. The result, feared the court, "would effectively preclude all interrogation — fair as well as unfair."[11]

The defense counsel then appealed to the Federal Supreme Court where his theory appeared to have gained acceptance.

The Supreme Court through Mr. Justice Arthur Goldberg and by a slim five to four majority held that where the investigation is no longer a general inquiry into an unsolved crime but has begun to "focus" upon a particular suspect; when the process shifts from investigatory to accusatory and its purpose is to elicit a confession — the adversary system begins to operate, and, under the circumstances of the Escobedo case, the accused must be permitted to consult his lawyer. Failing this, any incriminating statement elicited by the police during interrogation is inadmissible.

The Federal Supreme Court recalled that in *Massiah v. United States*[12] it stated that a "Constitution which guarantees a defendant the assistance of counsel at... trial could surely vouchsafe no less to an indicted defendant under interrogation by the police in a completely extrajudicial proceeding. Anything less... might deny a defendant 'effective representation by counsel at the only stage when legal aid and advice would help him.' "[13]

To explain the rationale of the decision the court cited several rulings in the past. "The 'guiding hand of counsel' was essential to advise petitioner of his rights in this delicate situation."[14] This was the "stage when legal aid and advice" were most critical to petitioner.[15] "It was a stage surely as critical as was the arraignment in *Hamilton v. Alabama*,"[16] and the preliminary hearing in *White v. Maryland*.[17] What happened at this interrogation could certainly "affect the whole trial"[18] since rights may be "irretrievably lost," if not then and there asserted, as they are when an accused represented by counsel waives a right for strategic purposes.[19] "It would exalt form over substance to make the right to counsel under these circumsances depend on whether at the time of the interrogation, the authorities had secured a formal indictment. Petitioner had, for all practical purposes, already been charged with murder."[20]

The Federal Supreme Court likewise cited the New York Court of Appeals and affirmed that in the circumstances herein prevail-

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[11] *Bringing the Constitution to the Police Station.* Time Magazine, April 29, 1966 p. 31 citing Illinois Supreme Court's decision on Escobedo.

[12] 377 U.S. 201 (1964).

[13] *Id.*, at 204 quoting Justice Douglas' concurring opinion in Spano. v. New York, 360 U.S. 315 (1959) at 326.

[14] *Ibid.* citing Powell v. Alabama, 287 U.S. 45 (1932).

[15] *Ibid.* citing Massiah v. U.S., 377 U.S. 201 (1964).

[16] 368 U.S. 52 (1961) at 82.

[17] 373 U.S. 52 (1963) at 85.

[18] Escobedo *supra* citing Hamilton v. Alabama, 368 U.S. 52 (1961), 54.

[19] *Ibid.*

[20] Escobedo at 481.

ing, no meaningful distinction can be drawn between interrogation of an accused before and after formal indictment. The court observed that it "would be highly incongruous if our system of justice permitted the district attorney, the lawyer representing the state, to extract a confession from the accused while his own lawyer, seeking to speak with him was kept from him by the police."[21] Finally the court commented that the rule sought by the State would make the trial "no more than an appeal from the interrogation" and the right to use counsel would be a very hollow thing if for all practical purposes, the conviction was already assured by pre-trial examination.[22]

Immediately upon promulgation of this decision, the Supreme Court was forced to clarify its own decision. Although the decision was clear in its application to the Escobedo case, it had some inherently vague points when an attempt was made to apply it generally. Many opined that the decision was so vague in its general application that it could be interpreted as requiring lawyers throughout some police interrogations. Five confession cases were then admitted for resolution by the court and these five cases[23] raised six vital issues: 1) When do a suspect's constitutional rights begin? 2) Must police inform him of these rights? 3) Does he need a lawyer to waive them? 4) Are indigents entitled to lawyers in the police station? 5) Does Escobedo retroactively threaten pre-1964 confessions? 6) To what extent does it forbid the whole process of U.S. police interrogations?

In the case of *Miranda v. Arizona*[24] these questions were answered. In a decision penned by Chief Justice Warren, the court stated the purpose of the decision thus: "... in order to explore some facets of the problems, thus exposed, of applying the privilege against self-incrimination to in-custody interrogation and to give concrete constitutional guidelines for law enforcement agencies and courts to follow."[25]

As some sort of explanation, Mr. Chief Justice Warren stated: "We start here ... with the premise that our holding is not an innovation in our jurisprudence, but is an application of principles long recognized and applied in other settings.

"... These precious rights were fixed in our Constitution only after centuries of persecution and struggle. And in the words of C.J. Marshall, they were secured 'for ages to come and ... designed

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[21] People v. Donovan, 13 N.Y. 2d at 152 as cited in Escobedo, *supra*.

[22] Here the court cited In Re Groban, 352 U.S. 330 (1957).

[23] Only one decision was handed down by the court by reason of the similarity of the issues raised. The result was the Miranda decision, incorporating the decisions in the other cases.

[24] 16 L. Ed. 2d 694 (1966).

[25] *Id.* at 697.

to approach immortality as nearly as human institutions can approach it.' "[26]

As to what these rights were, the Supreme Court laid down the general rule that the *prosecution may not use statements, whether inculpatory or exculpatory, stemming from custodial interrogation of the defendant unless the prosecution demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination.* To further clarify the statement, custodial interrogation was defined as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way."[27] The procedural safeguards required by the court were *firstly,* that prior to any questioning the person must be warned that a) he has a right to remain silent, b) any statement he makes may be used as evidence against him and c) that he has a right to the presence of an attorney either retained or appointed.

Secondly, the defendant may waive the rights provided that the waiver is made voluntarily, knowingly and intelligently. *Thirdly,* if the defendant indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking, there can be no questioning. The *fourth* procedural safeguard defined by the court is that if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. And *lastly,* the mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney. Thereafter, he may consent to be questioned.

Justices Harlan, Stewart and White dissented from the decision of the majority. They were of the view that the decision of the court represents poor constitutional law and entails harmful consequences for the country at large. Mr. Justice White further commented that the proposition that the privilege against self-incrimination forbids in-custody interrogations without the warnings specified and without a clear waiver of counsel, has no significant support in the history of the privilege or in the language of the Fifth Amendment. Mr. Justice Clark on the other hand concurred. in part and dissented in part. He expressed the view that the admissibility of a confession obtained by custodial interrogation should depend on the "totality of circumstances."[28]

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[26] *Id.* citing Cohens v. Virginia, 6 Wheat 264, 387, 5 L. Ed 257 (1821).

[27] Miranda v. Arizona, *supra.* n. 24.

[28] The totality of circumstances theory would resort to a subjective appraisal of each case to determine whether in any particular case, the confession could be deemed involuntary. This was formerly the test adopted by the courts until its abandonment in 1963, in the case of Gideon v. Wainwright, 372 U.S. 335.

At this point in American jurisprudential history, two important Constitutional rights meet in complement to each other. In the court's concern to prevent the subversion of the privilege against self-incrimination, it has extended the application of the right to counsel to in-custody interrogation. It must be noted that the primary concern of the court was the effectuation of the privilege against testimonial compulsion. In the search for safeguards to ensure that this particular right is not transgressed upon, the Federal Court came upon certain objective tests, undoubtedly arbitrary, calculated to afford maximum protection to the above-mentioned right. The Court, in adopting an objective criterion, virtually acknowledged the deficiency of subjective tests until then resorted to in resolving the voluntariness of repudiated confessions. The subjective test employed had the vice of degenerating into a swearing contest between the police and the accused, a contest in which the accused is understandably at a disadvantage. With the promulgation of the objective tests in the *Miranda v. Arizona* case, swearing contests were virtually avoided.

The fusion of these two rights is a curious phenomenon. Historically, they have always been distinct guarantees. They are embodied in separate amendments in the U.S. Constitution and indeed spring from different sources. The privilege is embodied in the Fifth Amendment in these words: "No person... shall be compelled in any criminal case to be a witness against himself..." The right to counsel on the other hand, is provided for in the Sixth Amendment where it is provided that "In all criminal prosecutions, the accused shall have the right... to have the assistance of counsel for his defense." The right to counsel and the right against self-incrimination are truly ancient rights. Historians trace the first to the advent of the Roman Empire when the complex legal system necessitated someone specializing in the field of law to make an effective presentation of a party's case. There are others who allege that the seeds of objection to self-incrimination can be found in the Holy Scriptures themselves.[29] Most writers, however, trace the origin of the privilege against self-incrimination from the universal disenchantment of the inquisitorial methods employed by the Star Chamber and Spanish inquisition courts. Upon the abolition of the Star Chamber the accusatorial system was established whereby conviction was supposed to be effected by use of evidence other than testimony of the accused himself.

Even as ancient and settled rights, there had been a renaissance of interest by reason of the novelty of their application. More specifically, the decision in Escobedo and Miranda attracted much

[29] 79 Harv. L. Rev. 935 (1966) op. cit. at p. 938 wherein the privilege was traced to certain statements in the Old Testament.

notice and comment by the application of the particular guarantees to cover extrajudicial proceedings.

In proceeding with this study, American jurisprudence will first be discussed, with emphasis laid on history as it is believed that the implications of the rulings herein subject of inquiry may be better understood this way. Subsequently, the Philippine law on the matter will be discussed with a thorough explanation to the end that the effect, and probable effect of the first on the latter may be clarified. This paper shall, however, limit itself to a dissertation on the right against self-incrimination as applied to extrajudicial confessions.

THE RIGHT AGAINST SELF-INCRIMINATION

Confusion has, more than once, prevailed in the treatment of extrajudicial confessions. Although in the United States there has long ago been no doubt as to inadmissibility of confessions extracted through physical torture, the uncertainty arises on the question of the basis of such inadmissibility. And the same is true of all confessions in general. There have always been the question and the doubt as to how to treat confessions. Whether it should be considered purely from the point of view of evidence or considered in relation to the rights affected by them. If the former is to be true, then the confession-rules of common law are to apply; if the latter, then the Constitutional guarantees should be reckoned with. A discussion of this point is practically made necessary by the acute confusion present in Philippine jurisprudence on this matter.

In the *Escobedo* and *Miranda* cases, an exclusionary rule was promulgated on the lines of policy considerations rather than on purely the "procedural" point of view. Reliability, it must be noted, was a factor ignored in the decision. Rather, the court proceeded on the assumption that the extraction of confessions during custodial interrogation was a matter in which the public was concerned. Thus the procedural safeguards therein enumerated did not have a direct bearing on the reliability of confessions extrajudicially made.

The place of confessions has ever been high in the scale of evidence.[80] As once stated: "Basically, these statements (confessions), being relevant, material, and competent, are admissible. The problem is whether any specific rule excludes them, whether there is some idiosyncrasy which denies them the general basic rule of admissibility otherwise applicable."[81] The 'specific rule' which might cause exclusion of the confessions from the judicial records may be based either on the danger of unreliability or by reason of the

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[80] 3 WIGMORE, EVIDENCE Sec. 866 (3d Ed. 1940) hereinafter cited as WIGMORE.

[81] Jones v. United States, 296 F. 2d 398, at 403-404 (1962).

transgression of some fundamental rights of the accused in its extraction.

In the early cases of *Brown v. Mississippi*[32] and *Chambers v. Florida*[33] the confessions excluded by the U.S. Court were clearly of doubtful reliability and furthermore were obtained clearly in violation of the rights of the accused. The difference therefore was minimized in importance by reason of the absence of necessity of delineating the same. In one case[34] the confessions of the Negro petitioners were obtained by whipping them with steel-studded belts. And in the *Chambers* case, the ignorant Negroes were held for an all-night examination that finally yielded incriminating statements. The court, in these cases, emphasized that the petitioners may have been so terrorized that they said whatever was necessary to obtain their momentary freedom. Obviously, in these cases, there was no necessity to distinguish between the privilege and the confession rule, the circumstances of the cases being such that the confession would be inadmissible under either theory. Subsequently, the United States courts made several explicit avowals that reliability is a goal of the due process test. Thus in *Stein v. New York*[35] the court asserted that "reliance on a coerced confession vitiates a conviction because such a confession combines the persuasiveness of apparent conclusiveness with what judicial experience shows to be illusory and deceptive evidence."

There was, however, a sprinkling of cases where affirmative indications were present that the Court's finding of inadmissibility was not based on grounds of probably unreliability. Such was the case of *Lisenba v. California* where the court made this comparison:

> The aim of the rule that a confession is inadmissible unless it was voluntarily made is to exclude false evidence. Tests are invoked to determine whether the inducement to speak was such that there is a fair risk the confession is false . . . The aim of the requirement of due process is not to exclude presumptively false evidence, but to prevent fundamental unfairness in the use of evidence, whether true or false.[36]

And in an obiter dictum in the case of *Rochin v. California*[37] the court asserted that "States may not base convictions upon confessions, however much verified, obtained by coercion."

Wigmore, in his treatise on evidence, clarified the confession rule and distinguished it from the privilege against self-incrimination. Thus he wrote "...a confession is not rejected because of

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[32] 297 U.S. 278 (1936).
[33] 309 U.S. 227 (1940).
[34] Brown v. Mississippi, *supra*, n. 2 page 1.
[35] 346 U.S. 156 (1953) at 192.
[36] 314 U.S. 219 (1941) at 236.
[37] 342 U.S. 165 (1952).

any connection with the privilege protects against a disclosure which is compulsory, and that one of the tests for a confession is whether it is voluntary or not have naturally led to the occasional use of both arguments at once by counsel in opposing the use of such a confession: but the courts have properly kept the two principles distinctly apart. Where the privilege has been violated, there is no need of resorting to confessional principles to exclude it, since the theory of the privilege itself suffices to prevent the use of evidence obtained in consequence of such a violation. The sum and substance of the difference is that the confession-rule aims to exclude self-criminating statements which are false, while the privilege rule gives the option of excluding those which are true."[38]

It must be noted that Wigmore believes that "the courts have properly kept the two principles distinctly apart . . ."[39] But the reading of some decisions of American courts would lend serious doubt to the accuracy of Wigmore's assertions. In *Hendrickson v. People*[40] for example, Mr. Justice Selden wrote:

> "If by voluntary is meant 'uninfluenced by the disturbing fear of punishment or by flattering hopes of favor' the expression may be accurate. But it is liable to mislead, because (of) the idea that the rejection of what are termed involuntary confessions flows from the principle of the common law which is supposed mercifully to exempt persons from all obligations to criminate themselves, and which is expressed by the maxim 'nemo tenetur prodere seipsum.' It might, I think, be shown that the principle embodied in it has its formulation and foundation in the uncertain and dangerous nature of all evidence of guilt drawn from the statements of a party conscious of being suspected of crime. But, however, this maybe, it is certain that the statements of an accused person made under oath are never excluded on account of any supposed violation of the immunity of the party from self-crimination."

There is, of course, an important distinction between the confession-rule and the privilege against self-incrimination. In the first place each could be traced to different origins and completely distinct, albeit oftentimes overlapping, historical developments. In the second place, whereas the privilege is granted in the form of a basic right of man, the confession rule is a precept of evidence and its main concern is admissibility and probative value. As has been noted above, the confession is relevant and material to the subject of inquiry, it having been given by someone who purports to have been a participant in the commission of the offense. According again to Wigmore there are two axioms of admissibiliy, to wit:

1) None but facts having rational probative value are admissible and 2) All facts having rational probative value are admissible,

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[38] 3 WIGMORE Sec. 823.
[39] *Ibid.*
[40] 10 N.Y. 13 (1854).

unless some specific rule forbids.[41] Indubitably a confession, without regard to circumstances surrounding its extraction, has rational probative value. The query would thus be limited to whether or not there is any specific rule which forbids its admissibility.

Insofar as evidentiary rules are concerned, the essential consideration is reliability. Fairness to the defendant and public policy of humanity are considerations 'aliunde.' It is to be expected, therefore, that rules on evidence be comparatively indifferent to the circumstances of questioning, except as to those which might have a direct bearing on the reliability of the confessions to prove the truth of the statements therein contained. Wigmore defends the rules' comparative indifference with the argument that "there is nothing in the mere circumstance of compulsion to speak in general... which creates any risk of untruth."[42] This theory would perhaps partly explain the present ruling of the Philippine Supreme Court that mere proof of force or violence in obtaining the confession is not enough to make it inadmissible. According to the court, the defense has the burden of proof to show that the confession is likewise false.[43]

The distinction between the two concepts would be better appreciated if a brief glimpse of their origin and historical development is had. Manifestly and as to be seen below, two different problems gave rise to these two different solutions which, however, time and convenience appear to have welded into one.

Treatises on evidence record four distinct stages in the history of the use of confessions in criminal prosecutions. The earliest stage goes back to the times of the Tudors and the Stuarts and was marked by the unrestricted use of confessions at trial. Not even the fact that a confession had been obtained by torture could cause exclusion. It was then regarded as the highest form of evidence of guilt and the degree of reliability laid upon it was sought to be justified by the theory that no sane man would confess complicity in an offense were this fact not true. The second stage, during the second half of 1700, was marked by the start of the consideration of the matter of exclusion. It was then recognized that some confessions should be rejected as untrustworthy. More specifically in 1775, in Rudd's case,[44] the accused applied for release in consequence of having confessed under an assurance of pardon to be received as an accomplice testifying for the crown. Lord Mansfield, in discussing

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[41] 1 WIGMORE, Sec. 9.

[42] 3 WIGMORE, Sec. 845.

[43] This legal oddity could be seen in the cases of People v. de los Santos G.R. No. 4880, decided May 18, 1953 and People v. Villanueva 98 Phil. 327 (1956). Note also the similarity of the rule in these cases with the first stage of the history of the use of confessions. It would appear that the Philippine rule is that obtaining during those ancient times.

[44] King v. Rudd, 1 Leach C.L. 115, 198 Eng. Rep. 234, 235.

the practice of using approver's confession, seemed to see nothing unlawful in it. But at the same time, he made the first judicial utterance limiting the admissibility of ordinary confessions, thus: "The instance has frequently happened of persons having made confessions under threats or promises; the consequences as frequently have been that such examinations and confessions have not been made use of against them on their trial."[45]

But in 1783, in the case of *King v. Warickshall*,[46] there emerged the principle that to "a confession forced from the mind by the flattery of hope or by the torture of fear . . . no credit ought to be given." During the third stage in the 1800s, the principle of exclusion became the rule, admission the exception. The reason for the sudden emergence of concern with the reliability of confessions is not at all clear. No traces of confession rules are apparent a century and a half before, at the time of the abolition of the Star Chamber and the High Commission — the most notorious users of torture in judicial proceedings;[47] it was at that time that the privilege against self-incrimination was established.[48] At this particular point, the whole attitude of the judges had changed; there was a general suspicion of all confessions, a prejudice against them as such and an inclination to repudiate them upon the slightest pretext.

The fourth and last stage noted by Wigmore is marked by the "setting in of a reaction here and there, but such reaction represents a future rather than a present movement and little is accomplished in the way of changing the law or the practice."[49] A fifth stage could perhaps be added to the four noted by Wigmore. And that fifth stage could be said to be marked by the primacy of the privilege against self-incrimination as a consideration in the use of confessions in criminal prosecutions. Such stage could perhaps be said to have had culmination, or the approximation of a culmination, in the adoption by the Warren Court of the *Escobedo* and *Miranda* doctrines wherein reliability of a confession sought to be introduced in trial is virtually ignored and emphasis laid, rather, on certain arbitrary procedural safeguards to ensure the Constitutional guarantee against self-incrimination.

Because confessions furnish "the strongest evidence of imputed guilt,"[50] it was early decided in the United States that acceptance of a false confession was likely to result in the grave injustice of an unwarranted conviction; confessions were thus to be carefully scru-

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[45] *Ibid.*
[46] 1 Leach C.L. 263-64, 168 Eng. Rep. 234, 235.
[47] Harv. L. Rev. *op. cit. supra*, n. 3.
[48] 8 WIGMORE, Sec. 2250.
[49] 3 WIGMORE, Sec. 845.
[50] Commonwealth v. Dillon, 4 Dall 116, 118 (Pd. 1792) as cited in Harvard L. Rev. *op. cit. supra*, n. 47.

tinized before being admitted. A variety of tests were then developed to assist judges in the determination of circumstances in which it was considered that a confession might be untrue. Confessions that failed to satisfy the tests were excluded entirely from the jury's consideration, rather than being sent with cautionary instructions. The confessions rules were thus rules of admissibility rather than of weight. The rationale of the rule was articulated in the case of *Regina v. Baldry*[51] wherein it was stated that a confession was to be excluded not because the law "presume (s) that (the confession) . . . is untrue; but rather that it is uncertain whether a statement so made is true." Otherwise stated, the statements are not excluded on pretensions that all confessions taken under the specified circumstances are necessarily untrue, but that since some may be false and there is no reliable means of distinguishing one from the other, all are excluded. In weighing, therefore, the countervailing interests of the state to convict criminals on one hand and of the individuals not to be convicted wrongly, the court has chosen to cast its lot with the individual and his civil rights.

Thereafter, the exclusionary rules were alternately stringent and loose, depending upon the temperament of the court. But whatever was the degree of strictness, the passage of time resolved many doubts and clarified many a muddled issue. Also, somewhere along the line, and after the privilege against self-incrimination had been definitely established, interested parties who sought exclusion of confessions began using a double-barreled assault on admissibility with the use of two-pronged arguments wherein the failure of one would still leave some sort of a safety valve in the form of the other. With this, confusion was inevitable. Courts began excluding confessions on the basis of one concept, while at the same time justifying such exclusion with arguments proper only to the other. An instance of the misconception could perhaps be given by citing a part of the decision in the *Miranda v. Arizona* case. Referring to the right against self-incrimination, and after recalling its origin the court stated: "So deeply did the requisites of the ancient system impress themselves upon the minds of American colonists that the States, with one accord, made a denial of the right to question an accused person a part of their fundamental law, so that a maxim which in England was a *mere rule of evidence* became clothed in this country with the *impregnability of a constitutional enactment.*"[52] (Italics supplied) As was explained above, the exclusionary rule of evidence has no reference to the right against self-incrimination. What was clothed in America with the "impregna-

[51] 2 Den. C.C. 430, 196 Eng. Rep. 568 (Ct. Crim. App. 1852).
[52] Miranda v. Arizona, citing Brown v. Walker, 161 U.S. 591 (1896) at 596-597.

bility of a constitutional enactment" was not the "mere rule of evidence" in England. The rule of evidence in England was the confession-rule which excluded confessions on the basis of presumed or proven unreliability. What was adopted in the American constitution, on the other hand, was a substantive right against compulsion in criminal proceedings to be a witness against one's self and not the exclusionary rule of evidence based on unreliability. The privilege against self-incrimination is without regard to the truth or falsity, reliability or unreliability of any piece of confession. Its sole concern is the method by which the confession is obtained.

The right against self-incrimination was the result of many years of disenchantment with the inquisitorial methods of prosecution in the Star Chamber Courts and the High Commission. The Court, in *Miranda v. Arizona* traced the origin of the privilege. It stated: "The maxim *nemo tenetur seipsum accusare* had its origin in a protest against the inquisitorial and manifestly unjust methods of interrogating accused persons which has long obtained in the continental system, and until the expulsion of the Stuarts from the British throne in 1688, and the erection of additional barriers for the protection of the people against the exercise of arbitrary power, was not uncommon even in England. While admissions or confessions of the prisoner, when voluntarily and freely made, have always ranked high in the scale of incriminating evidence, if an accused person be asked to explain his apparent connection with a crime under investigation, the case with which the questions put to him may assume an inquisitorial character, the temptation to press the witness unduly, to browbeat him if he be timid or reluctant, to push him into a corner, and to entrap him into fatal contradictions, which is so painfully evidenced in many of these earlier state trials, notably in those of Sir Nicholas Throckmorton and Udall, the Puritan minister, made the system so odious as to give rise to a demand for its total abolition. The change in the English Criminal procedure in that particular seems to be founded upon no statute and no judicial opinion, but upon a general and silent acquiescence of the courts in a popular demand."[53]

Later in the decision, the court once again exhorted and posited: "We sometimes forget how long it has taken to establish the privilege against self-incrimination, the sources from which it came and the fervor with which it was defended. Its roots go back to ancient times. Perhaps the critical historical event shedding light on its origin and evolution was the trial of one John Lilburn, a vocal anti-Stuart leveller who was made to take the Star Chamber Oath. The oath would have bound him to answer all

[53] *Ibid.*

questions posed to him on any subject.[54] He resisted the oath and declaimed the proceedings stating: 'Another fundamental right I then contended for was, that no man's conscience ought to be racked by oaths imposed, to answer to questions concerning himself in matters criminal, or pretended to be so.' On account of Lilburn, Parliament abolished the inquisitorial method and the Court of Star Chamber and went further in giving him generous reparation."

But even before the final case of Lilburn, the inquisitorial manner of prosecution had grown very unpopular as in the case of John Udall. In 1590, an English grand jury indicted John Udall, a cleric, for maliciously publishing slanderous and infamous libels against the Queen's Majesty.[55] The defamations had appeared in books uttered under the pen name of "Martin Marprelate", an author whose sharp wit aggravated his evil writings. The Marprelate tracts were anti-episcopal lampoons which amused misguided Englishmen and set them laughing at the Queen's prelates.[56] Udall on the other hand was a Puritan Minister whose preachings tended against the Churchly Establishment. If Udall was Marprelate, everybody thought of him as a dangerous fellow and fit for execution.

On the day of the trial, Udall was put in the dock of Croyden Assize on trial for his life before Judge Clarke and a jury. Being without counsel, Udall pleaded the judge that he be allowed one, citing the novelty of the case as the basis of his request. This was promptly denied. The Judge then asked Udall if he had an 'exception' against any of the jurors. Udall remarked that he was ignorant of the law in this regard and begged for the judge to advise him. Instead of heeding Udall's pleas, the judge evaded his questions and finally stated that he (the judge) was there to judge and not to give counsel. As the trial proceeded, the Judge exhibited extreme hostility against the accused and at one point asked him sharply to take an oath and deny authorship of the books, if this was his defense. Udall refused to take the oath. Then the Judge practically asked the jury to convict Udall on an inference of guilt from Udall's refusal to swear to his innocence. The jury did just that and found Udall guilty. The unfortunate cleric was sent to prison and there died before the date set for the execution.

Lilburn's trial had striking similarities with that of Udall. In spite of the gap of time of about fifty years, both were subjected to the practice of judicial inquisition. As Udall refused to swear to his innocence under oath, so did John Lilburn refuse and stymied all attempts at exploratory questioning by the Court of Star

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[54] Miranda citing The Trial of John Lilburn and John Wharton., 3 How. St. Tr. 1315 (1637-1645).

[55] Sutherland, *Crime and Confession* 79 Harv. L. Rev. at 21.

[56] *Ibid.*

Chamber. As Udall had to pay for his recalcitrance by spending the rest of his lonely days in prison, the price Lilburn had to pay was being publicly flogged in his back until it was raw and being locked in a London pillory. But the cruel treatment of Lilburn and his bold resistance brought forth significant results for the effort. He stirred public sympathy and helped bring the long Parliament to abolish the Star Chamber in 1641. This would also pave the way for the judicial establishment of the privilege against self-incrimination for trials at common law by about the end of the seventeeth century.[57]

In 1791, the privilege against self-incrimination found a place in the Fifth Amendment to the United States Constitution. And as of the present, almost all of the States have explicitly guaranteed to the accused immunity from self-incrimination in criminal proceedings. The Fifth Amendment finds application only as a deterrent against Federal abuse. On June 15, 1964, however, the Supreme Court in *Mallov v. Hogan*[58] decided that the Fourteenth Amendment's due process clause forbids the states to require self-incrimination just as the Fifth Amendment forbids the Federal government.

Upon inclusion into the Bill of Rights by way of the Fifth Amendment, the privilege against self-incrimination assumed implications very different from those enunciated in the *Escobedo* and *Miranda* cases. It was believed that Wigmore's assertions on the distinction between the privilege and the confession rule was characteristic of the popular conceptions of the privilege in the early stages of its history. Wigmore believed that the great difference between the two doctrines was that they did not possess the same boundaries; i.e. "the privilege covers only statements made in court under process as a witness: the confession rule covers statements made out of court, but may also, overlapping, cover statements made in court."[59]

The conclusion by Wigmore that the privilege applies only to statements made in court under process as a witness is very understandable. The wording of the Fifth Amendment itself lends basis to this conclusion. It speaks of 'criminal cases' and compulsion to be 'witness against himself.' From the word *case* could be inferred the requirement of trial and from the word *witness*, the inference is 'process'. And for more than a century[60] it has been thus understood and interpreted.

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[57] 8 WIGMORE Sec. 2250.
[58] 378 U.S. 1 (1964).
[59] 8 WIGMORE Sec. 2266.
[60] From 1791, when it was embodied in the Fifth Amendment, to 1897, the promulgation of Bram v. U.S.

In 1897, however, in the case of *Bram v. United States*[61] the first significant judicial assertion as to the applicability of the privilege against self-incrimination to extrajudicial statements of the accused was promulgated. In that case the Court, in a very radically different approach to confessions stated that "In criminal trials, in the courts of the United States, wherever a question arises whether a confession is incompetent because not voluntary, the issue is controlled by that portion of the Fifth Amendment to the Constitution of the United States, commanding that no person 'shall be compelled in any criminal case to be a witness against himself.' "[62] Ironically, this precedent setting decision was based on a somewhat erroneous historical analysis. The court in this case concluded that the Fifth Amendment privilege was "but a crystallization of the doctrine relative to confessions."[63] As has been pointed out in detail above, this is not so.

The Bram ruling is doubly startling if the fact is considered that less than a year before, in *Wilson v. United States,* the same court rejected the argument that failure to provide counsel or warn suspect of the right to remain silent bore on the admissibility of the statement, commenting that "these were matters which went to the weight of credibility of what he said . . ."[64]

From then on, it was more or less accepted, with very few exceptions,[65] that coerced extrajudicial confessions were inadmissible not because it was unreliable but on the ground of public policy. Witness, for example, the declaration that "A coerced confession is offensive to basic standards of justice, not because the victim has a legal grievance against the police but because declarations procured by torture are not premises from which a civilized forum will infer guilt."[66] Or that "To be sure, confessions cruelly extorted may be . . . untrustworthy. But the constitutional principle of excluding confessions that are not voluntary does not rest on this consideration."[67] Or the statement in *Spano v. New York*[68] that "The abhorrence of society to the use of involuntary confessions . . . turns on the deep-rooted feeling that the police must obey the law while enforcing the law."

The extension of the applicability of the privilege to extrajudicial statements of the accused seems to be an attempt by the court to articulate what it increasingly recognizes as the fundamental value at stake in the interrogation context, i.e. the pro-

[61] 168 U.S. 532 (1897).
[62] *Id.* at 542.
[63] *Id.* at 543.
[64] 162 U.S. 612 (1896).
[65] In U.S. v. Carignan, 342 U.S. 36 (1951), for example, the court expressed doubts as to the real basis of exclusion of coerced confessions.
[66] Lyons v. Oklahoma, 322 U.S. 596 (1944).

tection of the individual's trial rights from pre-trial subversion by unfair methods. Mr. Justice Harlan, dissenting in *Mapp v. Ohio* 367 U.S. 643 (1961) posited "That this (right not to be convicted by means of a coerced confession) is a procedural right and that its violation occurs at the time his improperly obtained statement is admitted at trial, is manifest. For without this right all the careful safeguards erected around the giving of testimony, whether by accused or any other witness, would become empty formalities in a procedure where the most compelling possible evidence of guilt, a confession, would have already been obtained at the unsupervised pleasure of the police."[69] The Court must have felt that the real trial goes on the police squeal room with the detectives and district attorneys acting as prosecutors and judges and with the suspect alone on the side of the defense. It would be worthy to recall at this point the criticism by the Warren court of the theory of the prosecution in the case of *Escobedo* when it stated that the rule sought by the state would make "the trial no more than an appeal from the interrogation."[70]

With the Federal Court taking this stand and resorting to this line of reasoning, it was to be expected that restrictions on police interrogation were forthcoming. With the use of force and violence, there has hardly been any dispute at all. With the use of veiled threats and other forms of duress, the court resorted to the totality of circumstances theory as explained. But progressive thinking was not a monopoly of the courts. Sophisticated methods of interrogation were devised[71] designed to strip individuals and suspects of their equanimity and defenses in the police interrogation room. Detectives were instructed on the technique of interrogation wherein there would not be compulsion as defined by the courts and yet effect some sort of psychological duress to "force" a suspect to blurt out incriminating statements. The law enforcement agencies capitalized on the ignorance of many of their rights. Resort was had to devices which, though not exactly fair, still do not transgress upon individual rights as defined by the courts. All these were done in the name of law enforcement. And the courts were once again back in the process of balancing between the conflicting claims of countervailing interests — that of the community concerning protection against criminals and that of the individual concerning protection against the awesome machinery of the State.

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[67] Rogers v. Richmond, 365 U.S. 534 (1961).
[68] 360 U.S. 315 (1959) at 320.
[69] See 31 U. Chi. L. Rev. 313 (1964).
[70] Escobedo v. Illinois, *op. cit.*
[71] See e.g. Mulbar, *Technique of Criminal Interrogation*, in SYNDER, HOMICIDE INVESTIGATION 37, 42 (1944) and Barrett, *Police Practices and the Law*, 50 Calif. L. Rev. 40-44 (1962).

The attempts of the American courts to reconcile the competing considerations and to effect a happy medium are nothing short of heroic. Nearly a century of improvisation and invention would be the greatest evidence of this effort. The numerous tests and doctrines improvised, applied and later abandoned would eloquently attest to the non-ending process of trial and error utilized. The Utopian ideal of perfection, needless to say, was unattainable. And it would be sheer naivete to expect a human, therefore fallible, tribunal to formulate some omniscient rule that would meet each and every manifestation of police ingenuity, picking out coerced confessions from a multitude of borderline cases and letting the rest be included or vice-versa. Clearly, between the two competing considerations, the court had to take a choice and sacrifice the other. It must weaken one to strengthen the other. And the choice, the alternative choices, is a matter of policy considerations. In *Escobedo* and *Miranda*, the choice was made. And the decision therein reached is a mere re-assertion of the principle, long ago established, that it is lesser evil to have a hundred guilty men escape punishment than have one innocent man suffer the consequences of an erreous and false conviction.

CONFESSIONS IN PHILIPPINE JURISPRUDENCE

Philippine law extends to individuals within the jurisdiction protection against self-incrimination identical with the above-discussed safeguard in the United States. At the very least this is so in paper. As would subsequently be seen, the same right is interposed by the Philippine courts in a very different way, unfortunately so.

The Philippine Constitution, like its American counterpart, guarantees the individual his right against self-incrimination. Article III, Sec. 1, Clause 18 of the Constitution provides that "No person shall be compelled to be a witness against himself." Apparently, the wording of the local constitutional safeguard is broader in scope than its Federal counterpart in the United States. Notice the absence of the limitation "in a criminal case" which is present in the Fifth Amendment to the U.S. Constitution. Wigmore's comment therefore that the privilege applies only to "statements made in court under process as a witness"[72] has less applicability to this jurisdiction than in the American jurisdiction. And conversely, therefore, the applicability of the privilege to extrajudicial processes would be comparatively easier to justify.

The Anglo-American concept of the privilege against self-incrimination was first extended to the Philippines as part of Pres. Mc-

[72] 8 WIGMORE, Sec. 2266.

Kinley's Instructions to the Taft Commission. In the "Instructions", the Taft Commission was directed to afford to the inhabitants of the Philippine Islands certain rights even then considered fundamental in the American jurisdiction. It is noteworthy that the rights guaranteed the inhabitants of the Philippines were identical to those contained in the American Bill of Rights. Among these rights, all of which were subsumed under the 8th subheading entitled "Bill of Rights", was the guarantee that ". . . no person shall . . . be compelled in any criminal case to be a witness against himself."

Substantially, the same provision was embodied in the Philippine Bill of 1902, entitled "An Act Temporarily to Provide for the Administration of the Affairs of Civil Government in the Philippine Islands, and For No Other Purposes." This organic act provided "That no person . . . shall be compelled in any criminal case to be a witness against himself."[73] In precisely the same language, the privilege against self-incrimination was reiterated in the Jones Law of 1916 approved August 29, 1916. In the Bill of Rights of said Organic Act, it is likewise guaranteed "that no person . . . shall be compelled in any criminal case to be a witness against himself."[74] It can very well be seen that in all the Organic Acts of American Origin enforced in the Philippines, the guarantee against self-incrimination was provided for by copying the exact wording of the American Constitution.

In the first draft of the Constitution, as well as in the report of the committee on Bill of Rights of the Constitutional Convention, the provision on self-incrimination was an exact copy of the U.S. Constitution's provision, which as seen above was likewise the provision embodied in the three organic acts which governed the Philippines during the American regime. The provision of the Constitution, as it reads at present, was an amendment to the draft, "presented by Delegate Lim, so that it would apply not only to the accused but also to witnesses or other persons in criminal cases."[75]

At the Constitutional Convention it appeared that the provision on the privilege against self-incrimination was one of the most vigorously debated points. As former Constitutional Convention delegate Jose Aruego[76] recalled, Delegate Arellano sponsored a proposition which was later taken up in the amendment by Delegate Calleja which read:

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[73] Phil. Bill of 1902, Bill of Rights, Sec. 5, cl. 2.
[74] The Phil. Autonomy Act of 1916, Bill of Rights, Sec. 3, cl. 3.
[75] ARUEGO, THE FRAMING OF THE PHILIPPINE CONSTITUTION (1936) p. 185.
[76] *Id.* at 186.

> The accused shall not be compelled to testify against himself, and his confession or admission shall not be admitted as evidence unless made in open court during the trial of the case.[77]

Delegate Aruego stated that "the amendment was one of the propositions intended to insure the establishment of social justice. It was alleged that such a provision in the Constitution would do away with no practice of using *third degree* methods in securing evidence for the prosecution of the accused. During the interpellation, there emerged some doubt as to the wisdom of including the term *admissions*. The amendment was defeated because the convention felt that it was a matter that demanded more study. It felt that there would be cases where confessions should be admissible and cases where they should not be; and that consequently, the matter should be left to legislation."[78]

Legislation on the matter of the admissibility of extrajudicial confessions was first embodied in Act No. 619. Act No. 619 was a statute enacted by the Philippine Commission and entitled "An Act to Promote Good Order and Discipline in the Philippine Constabulary." In Section 4 of the said statute, however, an extremely stringent exclusionary rule was provided. It provided that "No confession of any person charged with a crime shall be received as evidence against him unless it first be shown that such confession was voluntarily made; or was not given as a result of violence, intimidation, threat or promise of reward or leniency." It is noteworthy that the law above-cited laid emphasis on the procedural aspect and seemingly provide the limitations by reason of the violation of certain substantive rights.

It is significant that this statute, like the *Escobedo* and *Miranda* doctrines laid the burden of proof upon the prosecution in proving the absence of force, violence, etc. This early restriction could compare favorably with the most modern rulings of the U.S. Supreme Court on the same matter. Ironically, however, our modern rulings can not even compare favorably with the ancient American decisions on the subject. Whereas logic and a reasonable application of the fundamental precepts of evidence would militate for the rule that one who wishes to retract or dispute the validity of sworn statement must prove the causes which he alleges to have vitiated such validity, the legislators in this instance provide for the opposite. To get a clearer picture of the implications of the law, it would be wise to outline the procedure taken in accordance with such law.

At the onset there is a confession, on the face of it valid. The prosecution then presents this confession to prove the truth of the

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[77] *Id.* at 185.
[78] *Ibid.*

facts therein stated. According to the rule enunciated in Act No. 619, the prosecution must not only identify the instrument and prove that the confession was in fact made by the accused. Rather, the law requires additional proof in that the confession was made without the use force, violence, intimidation or threats upon the accused. This, apparently, even if the accused does not present a scintilla of proof to impeach the validity of the statements extrajudicially made. Thus, the law requires such evidence as a condition precedent for the admissibility of the confessions. That would be the strict interpretation of the law. A more reasonable inference from its provisions is that the requirement of evidence to prove the facts in the law enumerated, shall be applicable only if the accused chooses to contest the admissibility of the confessions. A study of the confession cases reveals that the courts never resorted to the strict interpretation above-illustrated. Rather, the latter and more reasonable interpretation has always been the one followed. The courts have even criticized the extreme stringency of the exclusionary rules in Act No. 619 although the same courts have expressed sympathy with the avowed purpose of the statute in question.[79]

It is believed that the legislators have gone too far out on the limb with this law. The requirements for admissibility have been somewhat unreasonable specially considering the nature of the facts required to be proved, which are negative facts. The laudable purpose was evidence, in that the legislature sought to ensure that only voluntary confessions would be used against the accused. The extents to which the legislators were willing to go to ensure voluntariness of confessions reveal a deep sense of distrust and lack of reliance on police agencies. The law as worded almost presumes neglect by the police of their duties as men sworn to uphold the law. In the concern for civil rights the lawmakers appear willing to impugn the sense of responsibility of law enforcement agencies.

This act was however repealed upon the passage of the Administrative Code of July 1, 1916. Such repeal then altered the procedure in the introduction of confessions into evidence. After the repeal, the defense would then carry the *onus probans* to satisfactorily offset the natural presumption that the extrajudicial statement, in the absence of irregularity on its face, was made voluntarily and knowingly by the accused. According to the Philippine Supreme Court in the case of *U.S. v. Zara*,[80] the repeal "in no wise impairs the general rule of jurisprudence which rejects a confession obtained by the means or under the conditions stated in (Sec.

[79] See e.g. The Court's criticism of Act 619 in U.S. v. Lozada, 4 Phil. 226 (1905).

[80] 42 Phil. 308 (1921).

4, Act No. 619) . . . The repeal of (Sec. 4) . . . . , however, has modified the law relative to the burden of proof upon the point as to whether the confession was in fact given under such circumstances as to entitle it to be accepted against the accused."

This process or chronology of presentation of evidence appears to be more in consonance with the rules of evidence, more specifically, those dealing with legal presumptions. Such, for instance, derives reason from the general presumption that a public officer has rightfully and regularly been performing his duties. It would be a very dangerous precedent if and when the legislature itself starts presuming that public officers and employees of the government have been remiss in their legally imposed duties and obligations.

Before the advent of the present rulings on the admissibility of confessions, the Philippine courts have always been careful because rulings on the matter indicate the awareness by the courts of the danger of wrong or erroneous conviction on the basis of false confessions. As in the United States, confessions in the Philippines have always been regarded as ranking high in the scale of incriminating evidence. The rule in the Philippines, in fact, has always been that an extrajudicial confession will support a conviction if corroborated by evidence of the *corpus delicti*.[81] And the high probative value of confessions is due to the strong presumption that no sane person will deliberately confess to the commission of a crime, unless prompted to do so by truth and conscience.[82]

But even the caution with which the Philippine courts have treated extrajudicial confessions does not approximate the fastidiousness and zeal of its American counterparts in scrutinizing the same before admission. There have been several instances when faced with the same set of facts, American courts excluded the confessions while the Philippine courts were very reluctant to do so.[83]

As noted before, the Philippine guarantee against self-incrimination covers a wider field, as worded. Upon the face of the provision, the privilege covers compulsory testimonial evidence, not necessarily one given in court but also outside. Thus, in a prosecution for illegal detention,[84] the Supreme Court held that in the light of a similar provision of the then organic law, the defendant could not be sentenced to the higher penalty prescribed by the former Penal Code on one who illegally detains another and fails to give information concerning his whereabouts or does not prove that

[81] See Rule 133, Sec. 3, Rules of Court; People v. Ong Lay, 60 Phil. 788 (1934); People v. Quianzon, 62 Phil. 162 (1934); People v. Cruz, 76 Phil. 666 (1946).

[83] Compare e.g. U.S. v. Tan Teng, 23 Phil. 145 (1912) with Rochin v. California 342 U.S. 165. Or see U.S. v. Agatea, 40 Phil. 596 (1919) as compared with Escobedo to Miranda cases.

[84] U.S. v. Navarro, 3 Phil. 643 (1904).

he set him at liberty. For if the accused either at the investigation conducted before filing the charges against him or at the trial itself, were to state what he knew of the whereabouts of the detained person or that he had set him at liberty, he would, at the same time accept that he cleared himself of the more serious offense, be admitting that he had committed another though lesser offense, that of having illegally detained another. By claiming his absolute privilege to remain mute and so not incriminate himself, he cannot be convicted of the higher offense, as otherwise the privilege would lose its meaning.

The preponderance of the confession cases in the Philippines, however, would indicate that the local courts have a tendency to think of the privilege as applicable only to testimonial compulsion during trial, not in any extrajudicial proceeding. Proof of this is the fact that nowhere in the many confession cases already decided by the court is there any express statement applying said privilege to confession made out of court. Furthermore, the resolution of the questions about exclusion of confessions has always been had by resort to the exclusionary rules of evidence, rather than by application of the rights against self-incrimination. These would show that the local courts are convinced that inculpatory or exculpatory statements of the accused made out of court are not within the protection of the mantle of the privilege. The approach of the American courts in giving emphasis on the privilege in the treatment of extrajudicial confessions reveals a deep-seated difference in the temperaments of the people. Which difference is hard to explain historically. For whereas the Americans have the Star Chamber inquisition to seethe about and which in turn develops their strong feelings about the right against self-incrimination, the Philippines has had its own share of frightening experiences in inquisition under the Spanish rule. If at all there should be a difference in temperament, the Filipinos must be more sensitive of their right against self-incrimination for having experienced oppression personally during the Spanish and Japanese times, while the American experience in this field has been nothing more than vicarious.

Of course, it can also be noted here that the method of interrogation in this jurisdiction is particularly interesting. The preponderant majority of sworn statements resulting from interrogation by law enforcement agencies has, as preliminary statement, are express waiver by the affiant or subject of interrogation of his right against self-incrimination. In most of these cases, the affiant does not even know he has made such a waiver, or at the very least is unable to comprehend the seriousness of such a waiver.

In Philippine jurisprudence, the general rule is to reject a confession shown to have been made involuntarily.[85] As in other jurisdictions, involuntary confessions were formerly uniformly held inadmissible as evidence. Some courts on the ground of unreliability and others on the ground of humanitarian principles which abhor all forms of torture or unfairness toward the accused in criminal proceedings. There even was once a ruling which provided that when a confession is satisfactorily shown to be involuntary it stands discredited in the eyes of the law and is regarded as a thing that never existed.[86] It is noteworthy, however, that not a single decision of the Philippine courts has held a confession inadmissible on the ground of violation of the privilege against self- incrimination. This would support the writer's theory that courts deem the privilege against self-incrimination inapplicable to confessons.

The early decisions of the courts relative to confessions were replete with restrictions. Such advent of restrictions was manifest in the criminal cases against Baluyot,[87] Lozada[88] and Mercado.[89] In the Baluyot case, the issue in the appeal was the sufficiency and competency of the evidence on which his conviction was secured. The only evidence presented against the accused was his own confession, which, according to the court, "unfortunately . . . seems to have been made under such circumstances as to raise the presumption that it was induced by fear of physical violence." It bears notice in this case that no proof at all was adduced to prove that violence was committed on the person of the accused. Rather, it was only shown that torture was applied to a co-accused. The fact, however, that such violence was inflicted in the hearing of the accused and almost within his immediate presence constituted intimidation and duress and affected the confession so as to make it ". . . not of such free and voluntary character as to give it weight and value as competent evidence."[90] This kind of duress was equated by the court to an 'open threat' that similar ill-treatment shall be inflicted upon the accused should he further persist in his denials of guilt.

In the same case, the court likewise held that before ". . . confessions may have any weight whatever with courts of justice, as legal proof, it is absolutely necessary that they should be freely

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[85] U.S. v. Zara, 42 Phil. 308 (1921); People v. Cabrera, 43 Phil. 64 (1922); People v. Singh, 45 Phil. 676 (1924).

[86] U.S. v. de los Santos, 24 Phil. 329 (1913); People v. Nishisima, 57 Phil. 26 (1932). But this ruling has long been abandoned.

[87] U.S. v. Baluyot, 1 Phil. 451 (1902).

[88] U.S. v. Lozada, 4 Phil. 226 (1905).

[89] U.S. v. Mercado, 6 Phil. 332 (1906).

[90] U.S. v. Baluyot, *supra*, n. 87.

and voluntarily made. If they are brought about by menace, threat or intimidation or by a promise of reward or even leniency, they are stripped of the only element which makes them valuable to the courts as determining the truth."[91] Reference is made in the last statement to the "only element" of value to the courts in determining the truth. Such according to the decision, is stripped by menace, threat etc. There is, however, no clarification as to what that "only element" was which would make a confession valuable to the court. Could it perhaps be reliability? But if this were so, why should the circumstance of such confession being brought about by "menace, threat or intimidation or by promise of reward or even leniency" strip a confession of reliability? Clearly, according to Wigmore, "there is nothing in the mere circumstance of compulsion to speak in general . . . which creates any risk of untruth."[92] And if compulsion does create any risk of untruth, how can the same conceivably strip confessions of reliability? Perhaps the court subscribed to the belief that "a (coerced) confession combines the persuasiveness of apparent conclusiveness with what judicial experience shows to be illusory and deceptive evidence."[93] Evidently, the court's only concern was reliability and it impliedly rejected the idea that the requirement of voluntariness "is not to exclude presumptively false evidence, but to prevent fundamental unfairness in the use of evidence, whether true or false."[94] While being strict therefore, the court displayed base unconcern for the protection of individual rights — by emphasizing the rules of evidence rather than elementary principles of rights of man, Constitutionally enumerated.

In *U.S. v. Lozada*,[95] the court came closer to discovery that self-incrimination is actually compelled when a confession is extracted out of an individual by torture. The decision gives the impression above-noted by the court's statement that the principle in such a manner cannot be used as evidence against the defendant on trial . . . is proverbial in law. One would think that such comment springs out of the awareness by the court of the long line of decisions following the tenor of *Bram v. U.S.* (168 U.S. 532) wherein it was first judicially asserted that the privilege against self-incrimination is applicable to extrajudicial statements of the accused. Such hopes however failed when later in the decision, after criticizing the provision of Act No. 619 and in praising the law's purpose the court stated that the laws "show the praiseworthy endeavor

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[91] *Ibid.*
[92] 3 WIGMORE Sec. 845.
[93] Stein v. New York, 346 U.S. 156 (1953) at 192.
[94] Lisenba v. California, 314 U.S. 219 (1941) at 219.
[95] 4 Phil. 226 (1905).

of the legislature that the confession of any person charged with crime shall be made as voluntary as possible in order to be admited as evidence."

The closest, it is believed, that the Supreme Court came into supporting the Bram doctrine was in *U.S. v. Mercado*[96] where a more stringent rule of admission was enunciated. Here the court held that "where violence or intimidation has been used to extort a confession from an accused person, the mere fact that a confession made by him some time thereafter appears to have been made freely and voluntarily is not sufficient to justify the admission of such confession unless it is proven beyond reasonable doubt that the mind of the accused was wholly relieved of the fear which would naturally ensue from being subjected to such violence or intimidation." The concern of the court about a confession so obtained is understandable and the shifting of the burden of proof to the prosecution is very reasonable considering the circumstances of the cases decided. The court virtually placed the issue of voluntariness in the same rank as that of guilt with the ruling that such voluntariness, like guilt was to be proved beyond reasonable doubt. Apparently, in this case, the court was not concerned merely with the reliability of the statements. There was the undertone of public policy consideration in the decision and although such policy was not therein defined, it could very well be protection of the individual against compulsion to be witness against himself. But, of course, it could also very well not be that.

Whatever may have been the consideration which impelled the decision, however, such appeared to be the last significant and reasonable ruling on the matter. The next leading case which entered the scene was a curiosity incomparable in all our jurisprudential history. Without parallel in jurisprudence, the Supreme Court adopted a stance most deplorable as it betrayed all the humanitarian reasons that impelled the adoption of the privilege against self-incrimination. Were it not for the fact or knowlege that the Filipino people will no stand for it, one would surely suspect, with the advent of these court rulings, that the Star Chamber and the Spanish inquisition were back.

Reference is made to the ruling enunciated in the case of *People v. de los Santos*,[97] which decision was reaffirmed by a unanimous court in *People v. Villanueva*.[98] In *People v. de los Santos* decided May 18, 1953 the confession, repudiated by the accused, was admitted by the court as evidence against him. After citing the principal reasons for so holding it was stated: ". . . But there is

[96] 6 Phil. 332 (1906).
[97] 93 Phil. 83 (1953).
[98] 52 O.G. 5864.

still another reason why the confession must be accepted as evidence against the appellant. Neither the appellant nor his counsel has ever claimed that the confession is false. A confession, to be repudiated, must not only be proved to have been obtained by force and violence, but also that it is false or untrue, for the law rejects the confession when, by force or violence or intimidation, the accused is compelled against his will to tell a falsehood, not when by such force and violence he is compelled against his will to tell the truth. This is in consonance with the principle that the admissibility of evidence is not affected by the illegality of the means with which it was secured."[99]

This principle was affirmed by a unanimous court in the later case of *People v. Villanueva* where it was stated: "There is one legal point raised by the Solicitor General. He says that while counsel for the appellants claims that the affidavits in question were obtained irregularly and by the use of force, violence and intimidation, there is no claim or insinuation that the contents of said affidavits are not true and he contends that an affidavit or confession may be rejected only when the affiant is compelled against his will to state or admit something which is against the truth. In other words, the admissibility of that kind of evidence depends not on the supposed illegal manner in which it is obtained but on the truth or falsity of the facts or admission contained therein. We agree with the Solicitor-General on this point."[100]

Were it only for the fact that abhorrence for physical torture in the extraction of confession is universal and such methods are shocking to the conscience of civilized communities throughout the world, the Philippine rule embodied in these two cases should be abandoned. But that is not all. Such rule is apparently without solid basis in logic, reason, and the fundamental precepts of civilized justice. It is contrary to the Anglo-American law and jurisprudence of the last century or so. Side by side with the recent rulings of *Escobedo* and *Miranda*, the Philippine rule indicates a brazen unconcern for the welfare of the individual and a shameless disregard of his fundamental rights as recognized the world over. It is opportune at this point to cite proof of the universal opinion that an extrajudicial confession, if proved to be involuntary, is inadmissible in evidence against the accused from whom it was extorted through duress or torture.

The International Congress of Jurists, consisting of 185 judges, practicing lawyers and teachers of law from 53 countries which as-

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[99] 93 Phil. at 92 (1953).
[100] 52 O.G. *supra* at 5869.

sembled in New Delhi in January, 1959, adopted the following recommendations as stated in the Report of Committee III:[101]

> No one should be compelled to incriminate himself. No accused person or witness should be subject to physical or psychological pressure (including anything calculated to impair his will or violate his dignity as a human being . . .)
>
> Evidence obtained in breach of any of these rights ought not to be admissible against the accused.

In criticism of the *de los Santos* rule, textbook writers are in unanimity. Note for instance this comment: (the rule) "betrays the humanitarian reasons that impelled the adoption of the privilege (against self-incrimination). The admission in evidence of confessions forcibly extracted from the lips of a suspect through physical or mental torture is the surest way of encouraging the same Spanish Inquisition and Star Chamber methods that brought in their wake mutilated limbs, broken bodies and shattered minds. Most often, the victims of police brutalities are the poor and the ignorant, the weak and the friendless. And surely, the scar in the national memory of the sufferings of numerous Filipinos in Fort Santiago and in many Japanese garrisons and stockades at the hands of enemy interrogators who were bent on obtaining 'true confessions,' should be a standing reminder of the inhumanity of a rule admitting involuntary confessions in evidence.

"The basis of moral and legal responsibility is freedom to act. This is a better reason for rejecting involuntary confessions than their mere untrustworthiness.

"The Supreme Court's test of the admissibility of an involuntary confession (s) — is it true? . . . The test suffers from the vice of the circle, if truth be considered to be that which the confession alone purports to contain. If the truth is considered to be that which is sufficiently established by independent evidence, then the admission or non-admission of the confession ceases to be of any practical consequence. If what is considered the truth be that which is shown by the confession and other independently, the test of admissibility would also beg the question. In this last hypothesis, moreover, there is this matter to be weighed. If the police are ruthless enough to torture a confession out of a suspect, they would be unscrupulous enough either to edit the confession to fit the other evidence in their possession, or edit such other evidence to fit the confession."[102]

The Philippine rule has very disturbing effects and implications. As concretely illustrated, the rule would be this: Suppose Juan

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101 II, INTERNATIONAL COMMISSION OF JURISTS JOURNAL, No. I, pp. 14-15.
102 2 TAÑADA AND CARREON, POLITICAL LAW, 284-286 [1963 Ed].

de la Cruz is the prime suspect in the murder of X. The police will then pick Juan up for questioning and interrogation. Because of the difficulty in gathering evidence for the solution of the crime, the police decides to extort a confession out of Juan, no matter how. So he is brought to the police station, told to sit in a very uncomfortable chair, under glaring klieg lights and surrounded by scowling, obviously hostile faces. He is then given the full-treatment, more popularly known as the third degree. And in the end, to gain respite from his very disconcerting situation, Juan de la Cruz is persuaded to sign something he is not even able to read. This is then presented to the court as evidence of the guilt of Juan de la Cruz. The defense counsel objects to such admissibility and adduces sufficient proof to prove beyond reasonable doubt that the torture inflicted upon the accused forced him to sign the statement. The counsel then moves to the court that such confession be excluded for being involuntary. The court, informs him, however, that such proof is not enough. Juan de la Cruz must likewise prove that he did not commit the crime. He must prove that he did not kill X, that he is innocent.

Evidently, such rule works violence on many of the old and settled precepts of liberty. Rendered useless and nugatory are several fundamental rights allegedly guaranteed the accused person. In effect, for example, the accused is deprived of his right to be presumed innocent until proven guilty beyond reasonable doubt. In effect his right to due process of law as a condition precedent for the deprivation of his life and liberty is reduced to a mockery. The trial is reduced to a travesty. For the real trial has commenced and ended right in the police station, without bothersome and cumbersome procedure, without irritating defense counsels, without recognized rights and privileges save those the police might want to extend in their magnanimity, and where the only defense acceptable is stamina and Herculean strength and courage in resisiting torture.

The only parties benefited by such ruling would be the prosecutors and the police who, instead of diligence and technique need only torture and intimidation to secure convictions. After exacting a confession from a suspect by any means whatever, the police and the prosecutors need only sit down and fold their hands over their chests and simply wait for whatever evidence the accused might present in proving the latter's innocence. This is a perversion of the basic concepts of the accusatorial system indeed.

For of what use or import is the right against testimonial compulsion if coerced confessions could nonetheless be admitted as evidence. We must recall that after such confession is introduced in evidence, only proof of the corpus delicti is further required to

justify a conviction. Of what substantial significance are the trial rights of an accused person when they are, after all, susceptible to pre-trial subversion at the unsupervised pleasure of the police? And in fact, of what use and importance is the trial when the conviction has, for all practical purposes, already been assured by pre-trial interrogation? Indeed, what would be the use of all purported rights of an accused person in our accusatory system if the police could after all go around the technicalities of the law by the sheer use of force?

And if such rule persists and stays long in our jurisprudence, then we may successfully invite the critical eyes of the world to focus on our small, even insignificant country. For by then the Philippines might be serving history by furnishing new impetus, new drive to re-assertion of civil rights. The lessons we learn might likewise teach the globe not to be lethargic in their vigilance over their rights. For then the Philippines would be setting the example in proving that eternal vigilance is truly the price of liberty.

What is additionally curious is the fact that the promulgation by the Supreme Court of such a ruling did not raise as many proverbial eyebrows as might have been expected in other jurisdictions. Or even if it did, it curiously did only just that. Hardly a note of protest was heard from those who should have been concerned. The reaction of the people was strangely lethargic. Or perhaps it was not recognized that the import of the decisions might very well be the beginning of the erosion of the erstwhile well-founded rights of the people.

In a country where polemics in Congress is a matter of daily occurrence, where students attend public demonstrations more regularly than their classes, where the press is reputed to be freest in the world, the silence is almost defeaning. Not one privileged speech, not a public demonstration, not an article of significance has been written or heard or staged in protest of the decisions under discussion.

The conclusion is inevitable that the Filipino people, notwithstanding the lessons of valor in Bataan and Corregidor, in spite of Rizal and the Noli Me Tangere, are yet to be aware of the importance of civil rights. Consciousness of civil liberties is sadly lacking and the only recognized threats to freedom are those apparent even to the sightless. The people are yet to be made to understand that the erosion of democratic traditions may start not only with Malacañang or Congress, but in the Supreme Court as well.

It would be thoroughly unfair to the Philippine Supreme Court, however, if no attempt is made to examine the possible motivations and line of reasoning that might have led to a seemingly absurd proposition. It is this writer's opinion that the present Philippine

rule is Constitutionally indefensible, but this is not to say that the same is completely without basis in reason and jurisprudence.

As has been noted, the approach made by the Philippine courts towards confessions has consistently been on the procedural side. Admission and exclusion of confessions have always been regarded by the courts as questions involving only principles of evidence. And in evidence proper, admission and exclusion should be and most often are on the basis of its probative value as tending to prove the facts contained in the confession. Otherwise stated, pure 'evidence' requires exclusion only on the basis of unreliability.[103] A confession is therefore to be excluded only on the basis of its being unreliable, if one were to go strictly by the rules of evidence proper.[104] Now, a confession is properly presumed reliable until proven otherwise. The query should therefore be directed as to what kind of proof this would be. In some legal systems, as in the United States for example, proof that the confession has been extorted is sufficient in this regard. There then arises the presumption of unreliability. Again, if one were to go by the rules of evidence strictly (meaning, unadulterated with considerations of policy) such presumption would be merely *prima facie* and subject to contradiction. Contradiction here may be in the form of corroboration by evidence other than the confession. The issue would at that point be credibility, rather than the admissibility of the confessions.

Policy considerations, however, have evolved to such an extent as to constitute, or reconstitute, proof of coercion in the extraction of confessions conclusive evidence of the unreliability of the particular confession in point. More accurately, the presumption of unreliability of confessions arising out of proof of coercion has been constituted as conclusive by reason of policy considerations, rather than rebuttable as it should properly be.

Coming to intimidation, force and coercion as the means of extraction of confessions, there is nothing in such methods as to necessarily impeach the reliability of all confessions so obtained. Mere physical violence upon an individual does not mean his confession is necessarily false. To be sure, false confessions could indubitably be obtained by these methods. But such methods employed would not make a true confession any less true, in the same way that a false confession is nonetheless false even if voluntarily given.

Thus, if one is to proceed upon an examination of whether a confession is admissible or not, with the sole consideration of its probative value, mere evidence of coercion in obtaining the con-

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[103] 3 WIGMORE Sec. 845.

[104] Evidence is qualified by the word "proper" because in almost all legal systems, the rules on evidence are effected to a large degree by rules based on considerations of policy, rather than of probative value, as it should be.

fession would not lead one to conclude it is inadmissible. As a matter of fact, he would arrive at exactly the same position as the Supreme Court has taken on the matter, i.e. he would require additional proof as to the falsity of such confession.

This is the reason of the court in arriving at the patently wrong ruling. The logic is unimpeachable but the premises utilized are of seriously doubtful validity. The court started with the premise that its function is merely to ascertain the guilt or innocence of the accused. The court must have indulged in the erroneous assumption that the reliability of the confession is all that it had to consider. Manifestly, the court erred in this respect. For its function is not only to ascertain the guilt of the accused but likewise to see to it that in the process of doing justice to the community, no injustice is done to the individual. The Philippine Supreme Court overlooked the fact that it exists in a very peculiar situation of guardian of the competing interests between community and individual. It is duty bound to protect the rights of the individual even as it seeks to protect the community against the same. The court must have forgotten momentarily that even the most guilty of criminals is still guaranteed by our constitution with certain fundamental and inalienable rights, one of which is the privilege not to be compelled to be a witness against himself.

The present rule in the Philippines and that in the American jurisdiction on the admissibility of confessions are therefore contrary to each other. The relation is curious, considering the identity of the wordings of the Constitutional provisions granting the privilege. On the one hand the U.S. rule as enunciated in *Miranda* is that the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. On the other hand, the Philippine rule as contained in the case of *People v. de los Santos*, is that a confession, to be repudiated, must not only be proved to have been obtained by force and violence, but also that it is false or untrue.

Shown such incompatibility, the most natural question would then be whether the recent American rulings of *Escobedo and Miranda*, considering the identity of the self-incrimination provisions of the two constitutions, would probably influence a change in the present Philippine rule.

This writer believes he must qualify. He believes there will presently be some changes in the local rule. But the change will not attempt to approximate the rulings in the *Escobedo* and *Miranda*. A change of attitude towards coerced confession is inevitable, with

or without the *Escobedo* and *Miranda* rulings. At most, these decisions will only facilitate the admendment in the rule. It is said that change is inevitable primarily because of the absurdity of the rule. That such rule has stayed in the books for as long as 14 years is something phenomenal and it is believed that the Supreme Court can no longer close its eyes upon extremely strong legal arguments militating for change. It will not be long before the court recognizes the unquestionable fact that the privilege against self-incrimination will be as ineffective as a bottomless pitcher unless the present rule on confessions is substantially altered. And it will not be long before the Supreme Court will open itself to the fact that the matter of admission of coerced confessions is not dictated purely by principles of evidence but that policy considerations are inextricably intertwined with exclusionary rules.

It is believed, finally, that it would be farfetched to expect the Philippine courts to follow the tenor of the radical U.S. decisions.

Although it is felt that the *Escobedo* and the *Miranda* doctrines are based on very sound constitutional grounds, pragmatic considerations make this writer hesitant to forecast such sudden change of heart in this jurisdiction. It must be remembered that even in the United States, there was a gap of some one hundred years between the recognition of the applicability of the privilege against self-incrimination and the Escobedo decision. The Philipppine courts have not even come to recognize the above-mentioned applicability. Judicious thinking leads one to believe that our Courts would take some very important leaps towards emasculating the local privilege against self-incrimination but a change from "de los Santos" to "Escobedo" would be unthinkably fantastic. Considering however, the unpredictability of the Philippine Supreme Court, one will really never know.

Finally it is hoped that in deciding the next confession cases, the most honorable members of the Supreme Tribunal of this land bear in mind these jurisprudential gems:

From the U.S. Supreme Court:

> ". . . ours is an accusatorial and not an inquisitorial system — a system in which the state must establish guilt by evidence independently and freely secured and may not by coercion prove its charge against an accused out of his own mouth."[105]
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> "The abhorrence of society to the use of involuntary confessions . . . turns on the deep-rooted feeling . . . that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminal themselves."[106]