THE UNSATISFACTORY STATUS OF THE LAW ON ARREST AND DETENTION *

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Liberty and Order

Over 2,500 years ago, a Greek philosopher declared that the major problem of human society is to combine that degree of liberty without which law is tyranny with that degree of law without which liberty becomes license.[1]

The law on arrest and detention is part of this ancient and yet modern attempt to reconcile the antithetical claims of individual liberty and social order. On one hand, government must have sufficient power to protect the community against crime and other forms of anti-social conduct. It needs power to protect individual rights and liberties and to promote public welfare and social justice.[2] And yet, the exercise of governmental power must be controlled or it may destroy the very values that it is supposed to protect and promote.[3]

Two recent Supreme Court decisions, widely publicized and commented upon, underscore the urgent need for a re-examination of the law on arrest

* This article is the result of a study commissioned by the Committee on the Judiciary, House of Representatives, Congress to ascertain the knowledge and practices of Greater Manila police officers on the law of arrests and detentions. Half of the study is a statistical survey conducted by the U.P. Institute of Mass Communications to ascertain police knowledge and practices. The survey's theoretical and conceptional framework, methods and procedures, results and findings, levels of knowledge and levels of practise, the 54 statistical tables and various appendices form the latter half of the report submitted to the lower house.

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[1] Heraclitus of Ephesus, also known as the weeping philosopher, 540-480 B.C. cited in VANDERBILT, THE DOCTRINE OF SEPARATION OF POWERS AND ITS PRESENT DAY SIGNIFICANCE 37 (1953)

[2] See SINCO, PHILIPPINE POLITICAL LAW, 613 (1962) on Freedom and Restraint. The various clauses of the Bill of Rights on individual liberty represent the real essentials of life. At the same time, living as he does in an organized society, the individual has to be content with regulated freedom. The individual may be preeminent in the Philippine legal and political system (*id.* at page 122) but this preeminence must be reconciled with Article II, Section 5 of the Constitution which states—"The promotion of social justice to insure the well-being and economic security of all the people should be the concern of the State." Thus, Sinco states that the new conception of justice must take into account not only the legal rights of the individual as an independent unit but also his place as a member of the community, his relations with the social group, and the effect of his own social and economic condition upon the general welfare of the state and society.

[3] See discussion of Freedom and Restraint, SINCO, PHILIPPINE POLITICAL LAW, 613 (1962); Physical Liberty, FERNANDO, THE BILL OF RIGHTS, 170-262 (1970).

and detention and for the creation of more effective curbs on police abuses incident to criminal prosecutions.

In *People v. Imperio*[4] and *People v. Urro*,[5] the various defendants were convicted of murder on the basis of alleged confessions. In both cases, the lower court judgments were reversed by the Supreme Court because the confessions were ascertained to be involuntary or coerced. The Court lent credence to evidence which showed that the confessions were obtained through cruel and inhuman methods. It suggested to the executive department that more painstaking and reliable investigations should be conducted so that the true perpetrators of the crimes may be apprehended even at this late date.

In *People v. Imperio*, a father and son were sentenced to death on the basis of confessions which, on appeal, were determined to have been secured through torture.[6] In *People v. Urro*, the four defendants were each sentenced

[4] G.R. No. 26194 March 29, 1972.

[5] G.R. No. 28405 April 27, 1972.

[6] The Court pointed to at least 14 circumstances which cast grave doubt on the guilt of the accused. These include substantial contradictions between the alleged confessions of the accused and the testimony of prosecution witnesses, absence of necessary laboratory tests, unexplained initials on the bolo supposedly used in the killing, non-relevance to the case of items introduced in evidence, an alleged motive for the crime appearing to be too pat a concoction of the police to merit belief, absence of any investigation of angles which literally cried out for further investigation, identical nature of the alleged confessions of the two defendants, and various disturbing inconsistencies in the testimonies of prosecution witnesses. The Court gave credence to the testimony of the accused especially where the maltreatment they suffered was supported by the findings of the medico-legal officer of the National Bureau of Investigation who examined them at the office of the provincial warden in Cabanatuan City. The fact that police authorities of Gapan denied communication between the accused and their relatives and friends, apparently to hide the injuries suffered by the accused, led the Court to further believe the narration of the defendants. The testimony of the defendants narrated the methods used by the police officers to secure confessions. Among the things described by Amando Imperio - he was brought to the town cemetery by about eight police officers, dumped into a niche, ordered to kneel, asked whether he knows how to pray, and asked about the crime while guns were being poked at him. When told to board the jeep again, he could not do so because his sides were aching. He was held by the armpits and feet and thrown into the jeep. Taken to a barrio six kilometers away, at around midnight, he was handed a pick and ordered to dig. When he could not do so because of the pain in his sides and abdomen, two policemen dug a hole in the ground about waist-high. He was then hog-tied and told to tell the truth or this would be his end. When he still denied the crime, he was kicked in the stomach causing him to fall backward beside the hole. While lying on his back, a piece of wood was placed in his mouth to keep it open; water was drawn from a nearby creek in a can formerly used to contain lard; and the water was poured into his mouth. Afterwards, blows were given on his abdomen by the chief of police, the police lieutenant, and one policeman. When he still refused to confess, gin was poured down his nostrils. With a pick held against his stomach, he was asked to sign a piece of paper the contents of which were not read to him. The paper was finally signed on top of the hood of the jeep with the aid of a flashlight and guided by a policeman holding his hand. The other accused was later given similar treatment. The father who had just signed his "confession" was asked to rouse the son from sleep. The latter was taken to the irrigation canal, given fist blows in the stomach, subjected to the same water treatment, boxed several times on the stomach and the sides, submerged from head to chest in the irrigation canal, and told that if he did not sign the document, he would be killed. The son signed the document also on the top of the jeep hood with the aid of a flashlight. Both accused were taken to jail.

to *reclusion perpetua* in a lower court decision which while convicting them, conceded in effect the use of violence, brutal tactics and intimidation by the municipal mayor and town policemen to extract confessions.[7] The two decisions serve as official reminders of the fact that the continued acceptance of even "valid and admissible" confessions to sustain judgments of convictions leads to sloppy police investigations, to a lack of initiative, industry, and resourcefulness on the part of police officers, and to gross miscarriages of justice in many cases which must forever remain unknown.[8]

The law on arrest embodies the permissible procedures which the government, primarily acting through police agencies, may use in applying its power against individual citizens suspected of having something to do with the commission of an offense.[9] Without in any way minimizing the importance of giving police forces ample latitude in the legitimate exercise of their duties, the thrust of any study of the law on arrest must be towards the full and effective implementation of the policy which led to its promulgation — towards the creation of more effective safeguards against oppressive and arbitrary, albeit at times, well, meaning state power. There is no denying the fact that the accused suffers an enormous disadvantage when confronted by the overwhelming interests of the state in public order, public safety, or its own self-preservation. He has such a disadvantage when government power and

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About midnight the following night, Eugenio Imperio was taken outside the municipal building, given several blows, and ordered to run while the policemen cocked their guns. Instead, the defendant embraced the sergeant of police. He was again boxed several times and taken back to jail. The father was later taken out of his cell by the chief of police and some policemen who slapped him several times and then told him to sign another document.

[7] The decision mentions two telling earmarks of prefabrication of the alleged confessions of the four defendants. First, it was impossible from the record to tell just who actually reduced the statements to writing. Second, the diction and style unerringly show that the four confessions were the products of one mind and not four different minds. The police sergeant declared that the statements were typed by the chief of police. The latter declared on the witness stand that he does not know how to type and that the first time he laid eyes on the statements was the evening of January 30, 1962 after they were already signed by the defendants and subscribed and sworn to before the town mayor. The confessions of the defendants were sentence for sentence, almost word for word, except for necessary changes in the names of the accused, so parallel and homologous that they could not have been the product of the minds of different persons. The Court summarized several other circumstances and considerations which led it to reverse the judgment of conviction. It also mentioned convincing evidence to establish brutal tactics used against the defendants, findings of physical injuries by the municipal health officer who examined three of the accused, the fact that one of them was forcibly kept in a toilet to avoid his being medically examined, plus the testimonies of the accused which recounted in detail the force and violence inflicted upon them.

[8] People v. Imperio, *supra.*

[9] The history of freedom is in no small measure the history of procedure, Mallinski v. N.Y. 324 U.S. 401, 414, 65 S.Ct. 781, 89 L.Ed. 1029 (1945). The development of procedure has been marked by a deliberate effort to establish and maintain a series of safeguards designed to curb the power of the government in its dealings with the individual. See EMERSON AND HABER, POLITICAL AND CIVIL RIGHTS IN THE UNITED STATES, 103-247 (1952).

resources coupled with the private motives of government officials are used against him.[10]

The old argument that society's need for efficient law enforcement outweighs and, therefore, condones occasional violation of individual liberties should have no place in a democratic form of government.[11] The improvement of police procedures, the development of anti-crime techniques, and the perfection of law enforcement systems should go hand in hand with strict adherence to the law on arrest. Very often, such development of methods is possible only when the traditional, authoritarian, and easier procedures are no longer available.

A high ranking police official is said to have remarked that policemen throughout the Philippines have only one degree, the "third degree." While the remark was uttered partly in a joking mood, statements later made during the convention of provincial and city fiscals tended to confirm that the method of investigation which policemen throughout the Philippines know best is the method of beating up the accused and extorting a confession from him.[12] If illegal procedures are widespread during the interrogation of a suspect who is under detention the same should be true about a less understood subject - the process of apprehension which leads to the detention.

Elements of Arrest

What is an arrest?

The Rules of Court define arrest as the taking of a person into custody in order that he may be forthcoming to answer for the commission of an offense.[13] An arrest is made by an actual restraint of the person to be arrested or by his submission to the custody of the person making the arrest.[14]

Is this definition of arrest adequate, not only for purposes of court procedure but for police practices and procedures as well? To answer this question, one must go into the traditional elements of arrest.

First, an arrest must be made under authority of law.[15] Thus, peace officers are charged by law with the duty to preserve peace and order, pre-

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[10] This is the strongest criticism against the so-called "balancing of interest" test in freedom of expression. As many American writers point out, the scales tend to always tip in favor of the tremendous interests of the State. However, see the discussion in FERNANDO, *op. cit,* 113-116.

[11] There can be no small encroachments on liberty because each member of the smallest and most unorthodox minority is protected. American Communications Association v. Douds, 339 U.S. 382, 448 70 S.Ct. 674, 94 L.Ed. 925 (1950).

[12] Diokno, *Preliminary Investigation in Criminal Cases* U.P. LAW CENTER, TRIAL PROBLEMS IN CITY AND MUNICIPAL COURTS, 264, 285 (1970).

[13] REV. RULES OF COURT, Rule 113, sec. 1.

[14] *Ibid,* sec. 1.

[15] The REVISED PENAL CODE punishes detention or deprivation of liberty of a person without legal ground; see Arts. 124, 125, 126, 269.

vent the commission of crimes, protect life, liberty and property, and arrest violators of laws and ordinances within their jurisdiction.[16] However, they may exercise the general power to make arrests, searches and seizures only in accordance with law.[17] The law also defines and limits the authority of private persons to effect arrests.[18]

Second, the person making the arrest must have the intention of holding the subject so he may be forthcoming to answer a criminal charge.[19] Mere forcible seizure without the intent to take the subject into lawful custody is not an arrest.[20] The intent to take a person into custody is necessarily based on the purpose of the arrest. The Rules of Court state that an arrest is made so that the subject "may be forthcoming to answer for the commission of an offense.[21] Arrest may be made in order to prevent the commission of an offense as when a peace officer or a private person arrests, without warrant, a person who is about to commit an offense in his presence.[22] There is also mention of arrest in order to recapture one who escapes or is rescued from an earlier lawful arrest or detention.[23] The intent to make an arrest is best expressed by clear words to that effect - I am arresting you. However, it can also be gathered from the facts and circumstances surrounding the seizure and detention. It may be shown by the fact that the arrested person is kept in sight, controlled in his actions, or otherwise actually restrained.[24] However manifested, intent is an essential element. The Rules of Court state that in an arrest with a warrant, the officer shall inform the person to be arrested of the cause of the arrest and of the fact that a warrant has been issued for his arrest except when he flees or forcibly resists before the officer has the opportunity to so inform him or when the giving of such information will imperil the arrest.[25] In arrests without a warrant, the officer must inform the person to be arrested of his authority and the cause of the arrest except, again, in the foregoing circumstances or when the person to be arrested is engaged in the commission of an offense or is pursued immediately after its commission or after an escape.[26] Similar provision for the express declaration of the intent is made by the Rules for arrests made by a private person.[27]

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[16] POLICE MANUAL, Rule 11, sec 1. (Exec. Order No. 113, Dec. 30, 1967).
[17] *Ibid.*
[18] REV. RULES OF COURT, Rule 113, sec. 10.
[19] See 4 MARTIN, RULES OF COURT IN THE PHILIPPINES, 207 (1969).
[20] State v. Beckendorf, 79 Utah 360, 10 P.2d 1073 (1932); The officer removed Martha Beckendorf from the scene of the search to prevent her interference. There was no arrest.
[21] REV. RULES OF COURT, Rule 113, sec. 1.
[22] *Ibid.* sec. 6.
[23] *Ibid,* sec. 15.
[24] MARTIN, *op.cit.,* p. 207.
[25] REV. RULES OF COURT, Rule 113, sec. 8.
[26] *Ibid.* sec. 9.
[27] *Ibid.* sec. 10.

Third, there must be actual restraint.[28] An arrest is effected by the taking, seizing, or detaining the person of another, touching or putting hands upon him, or any act through which the subject of the arrest is placed under the power or control of the person making the arrest.[29] It is also effected by the submission of the subject to the custody of the person making the arrest.[30]

Fourth, the person taken into custody must understand that he is being arrested.[31] This requirement can be better appreciated in a case where there is submission to custody. The arrested person should understand that such submission was necessary. In other words, he should know that he is submitting so that the necessary and reasonable force authorized by law will not have to be used against him. Intent of the arresting officer and knowledge on the part of the arrested person as requirements of arrest are material where the person being arrested resists the arrest and is charged for such resistance.[32]

A person may wish to prove that what he was subjected to by police officers was an arrest, in order to show that he was a victim of an illegal arrest. Conversely, the apprehended person may want to show that he was not arrested so that the incidental search following his apprehension would be illegal and the evidence secured not admissible in evidence.[33] In many other situations, a clear understanding of the meaning and elements of arrest may become essential.

Minimum Requirements

Emphasis on the traditional elements of arrest may lead one to fall into a definitional trap. One writer argues that the very critical questions involving individual liberties and protection of society against crime are not served by leaning on artificial and obscure definitions.[34] Inspite of this danger, the need for using distinctly essential requirements as minimums or starting points is urged.

For instance, in the very common practice of police officers of "inviting" suspects to the police precinct for questioning, the intention to arrest

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28 *Ibid.* sec. 2.

29 U.S. v. Tabiana, 37 Phil. 515 (1918); Hoppes v. State, 70 Okl. Cr. 179, 105 P.2d 433, 439 (1940); State v. District Court, 70 Mont. 378, 225 P 1000 (1924).

30 REV. RULES OF COURT, Rule 113, sec. 2.

31 4 MARTIN, *op. cit* p. 207; State v. Williams, 116 S.E. 2d 858, 860 (1960); Davis and Allcott Co. V. Boozer, 215 Ala. 116, 110 So. 28 (926).

32 REV. PEN. CODE, art. 151; U.S. v. Bautista, 31 Phil. 308 (1915).

33 Under Rule 26, Section 12, a search and seizure, without warrant, may be made on a person who is arrested. However, the arrest must be lawful and the search must be an incident of the arrest. Thus, if there is no lawful arrest, there can be no valid search and seizure. The evidence secured would be inadmissible under Stonehill v. Diokno, G. R. No. 19550, June 19, 1967, 20 SCRA 383 (1967).

34 Pilcher, *The Law and Practise of Field Interrogations*, 58 J. CRIM. L. 465, 457 (1967).

and the understanding of the suspect that he has been arrested may not be present. Even if the intent is present from the start, it may not be clear especially to the person taken into custody. And yet, there is no doubt that the "invited" person has been deprived of his liberty. To say that suspects who are "invited" by police comply voluntarily and out of a sincere desire to promote the cause of justice would be to allow semantics to becloud the reality of the restraint.

Preliminary research during the planning stage of a congressional study on the law of arrest and detention indicated that a great number of persons who are eventually taken into custody to answer criminal charges are not arrested—with or without warrants—but are simply "invited." Not having been "arrested" these individuals cannot claim whatever protection the law on arrest may give them. From the moment of "invitation" until the act of booking and preparation of the arrest report,[35] there is no dividing line between a general inquiry into unsolved crime and a custodial interrogation focusing upon the "invited" person as the one particular suspect.[36]

At what stage may a person "invited" to the police station know that he has in fact been arrested? When is there a mere accosting, a field interrogation, or a checking out of a person to determine his identity and to secure an explanation of what he is doing in a certain locality? When are a person's answers to police interrogation merely part of his civic duty to help in the solution of a crime and when are they statements that may incriminate him as an accused? What degree of interference by police officers with a person's freedom of movement may be deemed an "arrest"? Are police "invitations" constitutional?

In the light of the actual protections which an arrested person may effectively claim while he is in the hands of the police, is it really important whether he has been "invited" or arrested? How clear is the law on arrests regarding the requirements before a warrant may issue? How much discretion or opportunity for abuse is given by the law on arrests without warrants?

Most of the answers to these questions have not yet been fully given or elaborated by our jurisprudence. Even where court rulings expound on limitations and guarantees, the results of the questionnaire in the congressional study on the law of arrest and detention which limited itself to the most basic and fundamental requirements show that most police officers are blissfully unaware of the court decisions.[37]

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[35] An arrest report and a booking report are required to be accomplished for all persons arrested. See POLICE MANUAL, Rule XV, sec. 8(b).

[36] Escobedo v. Illinois, 378 U.S. 478, 84 S.Ct. 1758, 12 L.Ed. 2d. 977 (1964) gives this distinction to determine when a person has been taken into custody and when his right to counsel must be affirmatively made known to him.

[37] The items in the questionaires were simple. They consisted of multiple choice questions on factual situations on when a policeman is authorized to make an arrest,

Due Process and Arrests

A study of the law on arrests and detentions starts with the Constitution.

The Bill of Rights provides in its very first clause that "no person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws".[38] To emphasize the importance of this guarantee the Bill of Rights reiterates fourteen clauses later that "no person shall be held to answer for a criminal offense without due process of law." [39]

The due process clause is a fundamental principle of justice and not a specific rule of law. It is very broad and not susceptible of one adequate definition.[40] Its meaning can be ascertained only by the process of inclusion and exclusion in the course of its application in various specific decisions.[41] This nature of due process however does not render vague or ineffective the original significance of the clause, that a person should not be deprived of his life, liberty, or property except in accordance with the procedures established by law. In fact, the guarantee of due process in its substantive aspects will invalidate even procedures established by statute if these procedures are contrary to fundamental fairness, ordered liberty, or justice.[42] Due process may be invoked whenever there is a need to challenge the validity of any arbitrary exertions of executive power. Any deprivation or impairment of liberty must be pursuant to law. A statute which impairs liberty must itself pass the test of due process. Any extra-legal deprivation is inconsistent with the guarantee. Hence, its relevance to the law on arrests.

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authority to issue warrants of arrests, procedure in making arrests without warrants, time when an arrested person may be allowed to call and confer with his lawyer, length of time a policeman may detain an arrested person, official to whom a person is to be delivered for detention, any crime committed by a private person who detains another without legal grounds, crime when a policeman delays a prisoner's release inspite of a court order (only 2 percent of respondents answered this item correctly), right of a policeman to break into a building to effect an arrest, what to do if a court orders the arrest of a congressman implicated in murder, what to do if the chief of police orders the arrest of a suspected hit and run driver, what to do with a suspect who is the mayor's son, and similar hypothetical situations. Inspite of the fact that the respondents had only to choose from multiple choices, the level of knowledge was mainly low or mediocre up to moderate. While a higher degree of education indicated better knowledge and practice, table 20 showed that policemen with law or criminology degrees do not significantly know more about arrest law than those with other degrees. However, the policemen with law or criminology degrees practiced arrest law better than policemen with other degrees. Another finding - while attendance at police seminars especially Police Commission seminars is not as good as it should be, the number of courses and seminars attended is a poor indicator of the policemen's knowledge of the law on arrest. Police Knowledge and Practise of the Law of Arrest and Detention in the Greater Manila Area. See *infra* note 105.

[38] CONST., art. III, sec. 1(1).

[39] *Ibid,* sec. 1 (15).

[40] SINCO, *op. cit,* 561-562.

[41] *Id.* Citing Twining v. New Jersey, 211 U.S. 78, 29 S.Ct. 14, 53 L.Ed 97 (1908) and Holden v. Hardy, 169 U.S. 366, 18 S. Ct. 383, 42 L.Ed. 780 (1898).

[42] See the standard of due process in Ermita-Malate Hotel & Motel Operators Association v. City Mayor, G.R. No. 24693, July 31, 1967, 20 SCRA 849 (1967).

In the United States, the due process clause has been used by the Supreme Court to raise the minimum requirements of fair play which the various states must follow as they administer their criminal laws.[43] Thus, due process has been interpreted to include freedom from unreasonable searches and seizures,[44] freedom from invasions of privacy,[45] the exclusion from court use of confessions obtained by police through coercion,[46] the exclusion of evidence secured through illegal search,[47] the right of an arrested person to be *informed* that he may remain silent during police interrogations,[48] the right of that arrested person to remain silent if he chooses not to answer the questions of the investigators,[49] and the right of an arrested person to be told by interrogators that he has a right to be assisted by a lawyer during questioning by police.[50] The American Supreme Court has used the constitutional guarantee of due process and the idea of fundamental fairness implicit in the clause, to upgrade the rights of detained persons and to force state prosecutors and police officers to respect those upgraded rights.

This generous use of the due process clause was made necessary by the peculiar relationship between the federal government and the states and the fact that the guaranties of the American Bill of Rights are directed against federal intrusions while the express limitation on the power of fifty states over persons is essentially the due process clause of the Fourteenth Amendment.[51] Thus, specific provisions of the first ten amendments have to be read into the fourteenth amendment's due process provision.

In the Philippines, there is no need to read specific clauses of the Bill of Rights into the due process clause. All guarantees of the Bill of Rights are limitations on government actions at all levels. At the same time, the availability of the other guarantees and protections against arbitrary acts of police agencies has led to a failure to liberally invoke the due process clause in order to protect persons during arrest and detention.

Unfortunately, therefore, due process in criminal offenses has been interpreted mainly in terms of court procedure. The accepted meaning is that an accused must be tried before a competent court, must be given a fair trial, and must be allowed to use all legal means to defend himself.[52] Com-

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[43] See KAUPER, CONSTITUTIONAL LAW CASES AND MATERIALS, 788-841 (1960).

[44] Wolf v. Colorado, 338 U.S. 25, 69 S.Ct. 1359, 93 L.Ed. 1782 (1949).

[45] Griswold v. Connecticut, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed. 2d 510 (1965).

[46] Chambers v. Florida, 309 U.S. 227, 60 S.Ct. 472, 84 L.Ed. 716 (1940).

[47] Mapp. v. Ohio. 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed. 2d 1081, 84 A.L.R. 2d. 933 (1961).

[48] Escobedo v. Illinois, *supra,* note 36; Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 2d. 694, 10 A.L.R. 3d. 974 (1966).

[49] *Ibid.*

[50] *Ibid.*

[51] Kauper, *The Nationalization of Right,* lecture delivered July 13, 1961 as part of the Special Series of Lectures and Exhibitions in *The Civil War,* University of Michigan.

[52] See Banco Español-Filipino v. Palanca, 37 Phil. 921 (1918); Arnault v. Pecson, 87 Phil. 418 (1950); Vera v. People, G.R. No. 31218, February 18, 1970, 31 SCRA 711 (1970); See FERNANDO, *op. cit,* 50-55 for the latest rulings.

pared to the rulings on fair trial, jurisprudence on the constitutional rights of "suspects" in custody is almost barren. It is unfortunate that the words "shall be held to answer for a criminal offense" in Clause 15 of the Bill of Rights have not been categorically and repeatedly interpreted to include all kinds of "holding" or physical restraints by agents of the law, on suspects and accused alike. The need is very apparent for court rulings to bring the language of decisions on individual liberty into the aspects of criminal procedure which precede the filing of charges in Court. There is ample jurisprudence on the importance of protecting a person everytime there is any arbitrary restraint on his freedom. However, these rulings are generalizations on individual liberty and have not been particularized to apply specifically to problems of arrested or detained persons before trial.[53]

One thought which runs through all the Supreme Court's conceptions of liberty is that it may be subjected only to reasonable restraints by general law for the common good.[54] The problem lies in trying to ascertain what the Supreme Court would deem an arbitrary restraint on liberty and the extent of the specific protections the court would impose as due process requirements during police accostings, invitations, interrogations, and detentions. If uncertainty exists in such a frequently discussed requirement as, for example, preliminary investigation, it is understandable why doubt should prevail in the judicially uncharted area of police invitations, arrests, and detentions.[55]

Arrest is a Seizure

The Constitution provides that "the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue but upon probable cause to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce and

[53] The right to liberty guaranteed by the Constitution includes the right to exist and the right to be free from arbitrary personal restraint or servitude. Rubi v. Provincial Board of Mindoro, 39 Phil. 660, 705 (1919). Furthermore, individual freedom is too basic, too transcendental and vital in a republican state, like ours, to be denied upon mere general principles and abstract consideration of public policy. Indeed, the preservation of liberty is such a major preoccupation of our political system that, not satisfied with guaranteeing its enjoyment in the very first paragraph of section I of the Bill of Rights, the framers of our Constitution devoted paragraphs 3, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 16, 17, 18 and 21 to the protection of several aspects of freedom. People v. Hernandez, 99 Phil. 515, 551 (1956). That while crime should not go unpunished and the truth must be revealed, such desirable objectives should not be accomplished according to means or methods offensive to the high sense of respect accorded the human personality. Pascual v. Board of Medical Examinees, G.R. No. 25018 May 26, 1969, 28 SCRA 344 (1969).

[54] Rubi v. Provincial Board of Mindoro, *supra,* 704.

[55] FERNANDO *op. cit,* 195-197 where the implications of Hashim v. Boncan, 71 Phil. 216 (1941); People v. Monton, G.R. No. 23906, June 22, 1968 23 SCRA 1024 (1968); and People v. Figueroa, G.R. No. 24273, April 30, 1969, 27 SCRA 1239 (1969) are discussed. See Rodriguez v. Arellano, 96 Phil. 954 (1955); Lozada v. Hernandez, 92 Phil. 1051 (1953); People v. Carlos, 78 Phil. 535 (1947).

particularly describing the place to be searched and the persons or things to be seized."[56]

The Constitution does not mention anything about arrests but an arrest is clearly a form of seizing and therefore the guarantee against unreasonable "seizures" applies. More important, other forms of temporary detentions which police agencies may not want to classify under the technical definition of "arrest" would fall under the broader term "seizures."[57] "Invitations" could conceivably fall under "seizures" which, according to the Constitution, must meet the standard of reasonableness.

In the United States, it is now clear that arrests and even police restraints which do not ripen into "arrests" are included in the meaning of "seizure". In answer to the contention that such police practices as field interrogations or "stop and frisk" measures are outside the protection of the Fourth Amendment because these are merely minor inconveniences and petty indignities which citizens must bear in the interest of effective law enforcement and neither action rises to the level of a "search and seizure", the United States Supreme Court stated:

> "We emphatically reject this notion. It is quite plain that the Fourth Amendment governs "seizures" of the person which do not eventuate in a trip to the station house and prosecution for crime-"arrests" in traditional terminology. It must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has seized" that person."[58]

Since the clause on "unreasonable searches and seizures" in the Philippine Constitution is an almost verbatim copy of the American Fourth Amendment, there is no reason why a similar meaning should not prevail in this jurisdiction.

If any fine distinctions are to be introduced at all, they should be in the determination of what is an unreasonable seizure, in the setting of standards for reasonableness. The Constitution does not prohibit searches and seizures. The guarantee is only against unreasonable ones.[59]

Arrest with Warrants

If the seizure of a person is based on a warrant of arrest, the Bill of Rights requires that the warrant shall issue only upon probable cause to be determined by a judge after examination under oath or affirmation of the complainant and the witnesses he may produce.[60]

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[56] CONST., art. III, sec. 1(3).
[57] See the discussion of the broad meaning of seizure in Cook, *Varieties of Detention and the Fourth Amendment*, 23 ALA. L. REV. 287 (1971).
[58] Terry v. Ohio, 392 U.S. 1, 16 88 S.C.T. 1868, 20 L.Ed. 2d. 889; 903 (1968).
[59] SINCO, *op. cit.*, 683.
[60] CONST., art. III, sec. 1(3).

The determination of probable cause as well as the issuance of the warrant must be made by a judge. An executive officer such as the Commissioner of Immigration may not issue a warrant of arrest for purposes of investigation even in cases falling under his jurisdiction.[61]

(a) *Preliminary examination*

The inquiry as to the existence of probable cause is called a preliminary examination.

What is a preliminary examination?

The Rules of Court define it as a previous inquiry or examination made before the arrest of the accused by a judge or *officer authorized to conduct the same,* with whom a complaint or information has been filed imputing the commission of an offense cognizable by the Court of First Instance for the purpose of determining whether there is a reasonable ground to believe that an offense has been committed and the accused is probably guilty thereof, so that a warrant of arrest may be issued and the accused held for trial.[62] (Underscoring supplied.) In the case of persons charged with light offenses, a rule that calls for the issuance of summons instead of a warrant of arrest is provided.[63]

(b) *Preliminary examination distinguished from preliminary investigation*

To avoid the rather widespread tendency to confuse a preliminary examination with a preliminary investigation, a preliminary examination is usually classified as the first phase or stage of a preliminary investigation.[64] It is the examination of the complainant and his witnesses prior to the issuance of a warrant of arrest.[65] The second stage, the so-called "preliminary investigation proper" is the right of the accused, after his arrest, to be informed of the complaint or information filed against him, to be given access to the evidence presented during the preliminary examination, and to present evidence in his favor. The purpose of this second stage is to ascertain whether the accused should be released or held before the competent court for trial on the merits.[66]

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[61] Vivo v. Montesa, G.R. No. 24576, July 29, 1968, 24 SCRA 155, (1968). The Constitution does not distinguish between warrants in a criminal case and administrative warrants in administrative proceedings. And if one suspected of having committed a crime is entitled to a determination of the probable cause against him by a judge why should one suspected of a violation of an administrative nature deserve less guarantee. *Id* at 161.

[62] REV. RULES OF COURT, Rule 112, sec. 1.

[63] *Ibid.*, sec. 9.

[64] See 3 Martin, RULES OF COURT IN THE PHILIPPINES, 190-191. (1969 ed.).

[65] Rule 112, sec. 1 gives the purpose to determine whether there is a reasonable ground to believe that an offense has been committed and the accused is probably guilty thereof, so that a warrant of arrest may be issued and the accused held for trial.

[66] Biron v. Cea, 73 Phil. 673 (1942).

(c) *Criticism of the distinction*

One shortcoming of this classification is its failure to emphasize the fact that preliminary examination is a constitutional requirement under the "searches and seizures" clause of the Bill of Rights. On the other hand, until our Supreme Court categorically declares that a preliminary investigation is "fundamental fairness" required by the due process clauses, the second and better known stage is only a statutory right.[67]

The result is a downgrading of a constitutional requirement and the upgrading of a mere statutory right. In a 1946 case, the Supreme Court stated that the preliminary examination prior to the issuance of a warrant of arrest is not part of due process of law. Assuming that the examination to determine probable cause is not part of fundamental fairness nor of procedural due process, the fact remains that it is required by the searches and seizures provision of the Bill of Rights. Unfortunately, the Court did not go into the privilege against unreasonable searches and seizures. It limited itself to due process and emphasized that if any investigation is to be considered part of due process, it is the preliminary investigation proper, the so-called second stage of the procedure.[68]

A further source of confusion lies in the fact that there is no uniform mode of conducting investigations. Judges and courts of first instance conduct preliminary investigations which include the preliminary examination. Thus, under the Rules of Court,[69] the CFI judge may conduct both preliminary examination and investigation simultaneously and on a finding of reasonable ground to believe that the defendant has committed the offense charged, shall issue the warrant of arrest and thereafter refer the case to the fiscal for the filing of the corresponding information. Provision is similarly made for a combined preliminary examination and investigation by provincial or city fiscals or by state attorneys in cases cognizable by the Courts of First Instance.[70] The procedure followed by the different officials is not uniform.

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[67] In 1915 the Supreme Court laid down the rule that where the law provides for preliminary investigation, the same cannot be withheld because that would be deprivation of liberty without due process. U.S. v. Banzuela, 31 Phil. 564 (1915). In other words, now it is due process, now it is not, depending on the whims of Congress. See Diokno *op. cit., supra,* note 12, and Diokno, THE CONDUCT OF PRELIMINARY INVESTIGATIONS in U.P. LAW CENTER, LAW PRACTICE FOR THE YOUNG LAWYER, 65-118 (1968).

[68] People v. Moreno, 77 Phil. 548. 555 (1946). The Court ruled that whether or not the warrant of arrest issued by the Zamboanga municipal judge was issued without probable cause cannot be raised for the first time on appeal from the judgment of conviction. The People v. Moreno ruling was reiterated in Luna v. Plaza, G.R. No. 27511, November 29, 1968, 26 SCRA 310 (1968) where the Court strengthened its findings on the validity of the preliminary examination by adding the obiter—"Moreover, the Court has held that preliminary examination is not an essential part of due process of law."

[69] REV. RULES OF COURT, Rule 112, sec. 13.

[70] *Ibid,* sec. 14; Rep. Act. No. 5180 (1967).

An obvious result of the lumping into one category of two distinct procedures is that Supreme Court decisions on "preliminary investigations" are indiscriminately applied or understood to apply to both the preliminary examination and the preliminary investigation since the two are considered only as stages of a preliminary investigation.

The formulation of a neat and convenient system of investigation unfortunately results in an apparent violation of the searches and seizures provision. The Constitution is clear that a warrant shall issue only upon probable cause which must be determined by the judge in the manner set forth in the provision.[71] There is also legislative expression of how this guarantee should be implemented—a personal examination by the judge of witnesses, examination under oath, and examination reduced to writing in the form of searching questions and answers.[72]

In the case of preliminary examination and investigation by fiscals or state attorneys, the determination of probable cause is made by the fiscal or prosecutor and not by the judge. After the completion of the examination and investigation, the information is filed with the Court and, if the accused is not yet in custody, the warrant for his arrest issues. The judge is supposed to ask some questions to show that the determination is made by him but the very nature of the procedure rules out any meaningful examination. The judge who issues the warrant no longer conducts the examination for probable cause, which under the Constitution he must personally attend to. He relies on the fiscal's investigation and the filing of the information. Fiscals perform a function reserved by the Constitution for judges. In a few cases, the judge may demand further proof of probable cause. It is only in these cases where the determination of probable cause is clearly a judicial determination.[73] In most cases, however, the issuance of a warrant upon the prosecuting fiscal's determination or finding is a matter of course.

(d) *Role of municipal mayors*

An apparently more serious violation is present when a municipal mayor is allowed to determine probable cause.

The Rules of Court allows a municipal mayor, in the temporary absence of the municipal judge and the imperative need for a preliminary examination not only to conduct the examination but to order the arrest of the defendant and to grant bail.[74] Unless, the mayor becomes a judicial officer

[71] See Stonehill v. Diokno, G.R. No. 19550, June 19, 1967, 20 SCRA 383 (1967).
[72] The Judiciary Act, Rep. No. 296, (1948), as amended, sec. 87. The provision, while limited to municipal and city judges, shows how all judges should implement the constitutional requirement.
[73] See Amarga v. Abbas, 98 Phil. 739 (1956).
[74] REV. RULES OF COURT, Rule 112, sec. 3.

by virtue of the Rules, it is difficult to understand how this procedure could be valid under the "searches and seizures" guarantee of the Constitution.[75]

In the *People v. Urro* case,[76] the double role of investigator and *ex officio* judge played by the mayor in the execution of the prefabricated and involuntary confessions led to the miscarriage of justice. In this case, the town mayor, Antonio Adaptar conducted the investigation of the alleged murder of the victim, who happened to be a brother of his son-in-law. In the absence of the justice of the peace, the mayor acted on the complaint filed by his chief of police and issued the warrants of arrest as *ex officio* justice of the peace. The double role of Mayor Adaptar as investigator and judge was declared by the Court as a deplorable denial of due process to the accused. Since the issue was not raised, there is nothing in the decision about the unconstitutionality under the searches and seizures clause, of a non-judicial officer ascertaining probable cause and issuing warrants of arrests.

The emphasis on the distinction is not intended to minimize the importance of a preliminary investigation proper. The preliminary examination is usually *ex parte* and more summary in nature while the preliminary investigation is more detailed and the law requires that a person to be charged before the Court of First Instance must be notified of the preliminary investigation to be conducted by the fiscal or prosecutor.[77] The accused has the opportunity to cross-examine witnesses against him.[78]

The procedure in preliminary investigation if followed faithfully will secure its purposes—to protect the innocent from hasty, malicious, and oppressive prosecutions, protect him from the trouble, expenses, and anxiety of a public trial, and save the state from useless and expensive prosecution.[79]

At the same time, more attention to and understanding of a preliminary examination will free suspects from the ignominy and other harmful consequences of unjustified arrests. The searches and seizures clause has received greater interpretation with respect to the issuance of search warrants. It is time that the guarantee should also become meaningful in seizures of persons, more meaningful than in seizures of papers, effects, and things. At any rate, it must be emphasized that what the Constitution declares must be followed, and followed in substance, not only in form.

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[75] See the two lectures of Jose W. Diokno cited in footnotes 12 and 67 *supra.*

[76] *Supra.*

[77] Rep. Act No. 5180 (1967).

[78] The earlier rule did not give him the right to be present and to cross-examine unless he made a prior request for the purpose. Lozada v. Fernandez, 92 Phil. 1051 (1953); Santos v. Flores, G.R. Nos. 18251 & 18252, August 31, 1962, 5 SCRA 1136 (1962).

[79] Santos v. Flores, *ibid;* Hashim v. Boncan, *supra,* note 55.

(e) *Particularity of the Examination*

The Constitution requires the judge to determine probable cause only after examining, under oath or affirmation, the complainant and his witnesses.

How particular should the examination be?

As pointed out, Congress has prescribed the procedure which municipal and city judges must personally follow. The examination under oath must be in the form of searching questions and answers.[80]

Taking into consideration the purpose of a preliminary examination, questions are searching if they have the tendency to show the commission of a crime and the perpetrator thereof. What would be searching questions would depend on what is sought to be inquired into, such as: the nature of the offense, the date, time, place of its commission, the possible motives for its commission; the subject, his age, education, status, financial and social circumstances, his attitude towards the investigation, social attitude, opportunities to commit the offense; the victim, his age, status, family responsibilities, financial and social circumstances, characteristics, and other factors. The points that are the subject of the inquiry may differ from case to case. The questions, therefore, must depend to a great degree upon the judge making the investigation.[81]

The fact that personal determination by a judge is a constitutional requirement is very clear. The Supreme Court has stressed this need for personal examination. There is insufficient compliance with the Constitution if the issuance of the warrant of arrest is based on mere affidavits without searching questions and answers personally made by the judge. The Supreme Court has stated that a warrant of arrest is defective if on account of a change of judges, it is issued by a judge other than the one before whom the affidavits were sworn to.[82]

In *Luna v. Plaza*,[83] the Supreme Court scrutinized the adoption by the municipal judge of the statements taken by a constabulary sergeant. In this case, the Court of First Instance did not invalidate the procedure adopted by the municipal judge who simply read to the prosecution witnesses "all over again the questions and answers" made in the investigation by T-Sgt. Candido Patosa. The Supreme Court did not disturb this lower court ruling.

[80] *Supra*, note 72.

[81] Luna v. Plaza, *supra*, note 68, at 320.

[82] Doce v. CFI of Quezon, G.R. No. 26437, March 13, 1968, 22 SCRA 1028 (1968). The emphasis on personal examination and searching questions was unfortunately diminished by the ruling that the giving of a bail bond by the accused constituted a waiver of the irregularity surrounding her arrest. *Id* at 1031.

[83] *Supra*, notes 68 and 81.

It stated there was a personal examination by the municipal judge. However, it discouraged such a procedure.

The questions propounded by Constabulary Sergeant Patosa may have been exceptionally good and the municipal judge may have felt that he could not possibly improve upon them and, therefore, asked exactly the same questions and received exactly the same answers. While accepting this procedure in this particular case, the Supreme Court clearly frowned upon it when it ruled:

> We wish to stress, however, that what has been stated in this opinion is certainly not intended to sanction the return to the former practice of municipal judges of simply relying upon affidavits or sworn statements that are made to accompany the complaints that are filed before them in determining whether there is a probable cause for the issuance of a warrant of arrest . . . . We wish to emphasize strict compliance by municipal or city judges of the provision of Section 87 (c) of the Judiciary Act of 1948 as amended by Republic Act 3828, in order to avoid malicious and or unfounded criminal prosecution of persons.[84]

Unfortunately, the discussion in the decision is essentially an interpretation of procedural due process, statutory provisions, and Rules of Court. The Court in an obiter declared that a preliminary examination is not an essential part of due process of law, but failed to discuss its relationship to a more relevant guarantee—the searches and seizures clause of the Bill of Rights.

The need for a definitive Supreme Court decision is clear if we further consider the apparent violation of the searches and seizures provision by the Rules of Court when they provide that "if the judge be satisfied from the preliminary examination conducted by him *or by the investigating officer* that the offense complained of has been committed and that there is reasonable ground to believe that the accused has committed it, he must issue a warrant or order for his arrest.[85] (Emphasis supplied). At the very least, the Court should declare the extent of reliance by the judge on the examination by an investigating officer.

Arrests Without Warrants

The Bill of Rights defines and limits the power of the State when it makes seizures or arrests with warrants.

The Constitution is silent when it comes to seizures or arrests without warrant. Obviously, the absence of a provision cannot mean that arrests may not be made without warrants. The protection of lives and property, prevention of crime, and proper administration of justice require that cer-

[84] *Ibid* at 323.
[85] REV. RULES OF COURT, Rule 112, sec. 6.

tain arrests must be made without the arresting officer or person having to run to a court to secure a warrant of arrest.[86]

(a) *Limitations*

The fact that certain arrests without warrants are valid does not also mean that there are no constitutional limitations. The guarantees against deprivation of liberty without due process of law and against unreasonable searches and seizures require that an arrest without warrant may be made only upon reasonable grounds. In fact, the Supreme Court has ruled that an arrest without warrant may be made by a police officer only in the instances when he is expressly authorized by law to do so.[87]

(b) *Responsibility of police officer*

When a police officer makes an arrest without a warrant, he is called upon to decide highly complex questions of law. Instead of relying upon a judge to determine the existence of probable cause, he has to make that determination and make it immediately. Among the questions that he has to answer in a briefly fleeting moment are: Am I expressly authorized by law to make this arrest or am I subjecting myself to the probability of prosecution for a crime? Do the circumstances before me really reasonably tend to show that this person has committed, is committing, or is about to commit a penal offense? Do the acts that he is performing amount to a crime under our statutes? Am I really acting on reasonable grounds or have I become too suspicious and am acting on mere speculation? I am in doubt; should I let this person proceed unmolested or not? If I arrest him, may I validly search his person, his car, his *aparador,* and immediate surroundings? How much force must I use to make this arrest successful since I do not know how much resistance, if any, he will offer?

A cursory examination of the determination which a police officer must make indicates the difficulty, if not impossibility, of promulgating standards sufficient for all circumstances. The Supreme Court recognizes the problem in a ruling which, although a little uncomplimentary to police officers, decides doubts in their favor:

> One should, however, not expect too much of an ordinary policeman. He is not presumed to exercise the subtle reasoning of a judicial officer. Often he has no opportunity to make proper investigation but must act in haste on his own belief to prevent the escape of the criminal. To err is human. Even the most conscientious officer must at times be misled. If therefore, under trying circumstances and in a zealous effort to obey the orders of his superior officer and to enforce the law, a peace officer makes a mere mistake in good faith, he should be exculpated. Otherwise, the

[86] Not all searches and seizures of things without a search warrant are illegal. See Papa v. Mago, G.R. No. 27360, February 28, 1968, 22 SCRA 857 (1968).

[87] Sayo v. Chief of Police, 80 Phil. 859, 870 (1948).

courts would put a premium on crime and will terrorize peace officers through a fear of themselves violating the law.[88]

(c) *Applicable criteria for police action*

Notwithstanding the difficulty, some standards have been provided by statute, rules, and court decisions. Since these standards deal with a complex subject it is imperative that they should be more carefully framed and effectively disseminated and enforced.

The Rules of Court[89] provide:

> A peace officer or a private person may, without warrant, arrest a person:
>
> a. When the person to be arrested has committed, is actually committing, or is about to commit an offense in his presence;
>
> b. When an offense has in fact been committed, and he has reasonable ground to believe that the person to be arrested has committed it;
>
> c. When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending or has escaped while being transferred from one confinement to another.

The charter of the City of Manila authorizes peace officers to pursue and arrest, without warrant, any person found in suspicious places or under suspicious circumstances reasonably tending to show such person has committed, or is about to commit, any crime or breach of the peace; to arrest or cause to be arrested, without warrant, any offender when the offense is committed in the presence of a peace officer, or within his view.[90]

It may be noted from the foregoing that an arrest without warrant is valid only if it rests upon a reasonable and well founded belief that an offense has been committed or is about to be committed by that particular person and not upon a mere hollow suspicion or the possibility of the commission thereof.[91] Personal knowledge of the arresting officer is essential, if not of the commission of an offense *in flagranti,* then, of the time, place, or circumstances which reasonably tend to show the commission of the offense.[92]

Where an offense has just been committed or is, in fact, being committed, the determination of probable cause should be relatively easier, at least in the majority of cases.

There is an arrest *in flagranti* when the offense is committed in the officer's presence, where he sees the offense or hears the disturbances and proceeds at once to the scene.[93] If the offense has already been committed,

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[88] U.S. v. Santos, 36 Phil. 853, 855 (1917).
[89] REV. RULES OF COURT, Rule 113, sec. 6.
[90] Rep. Act No. 409, (1949) as amended, sec. 37.
[91] MORAN, COMMENTARIES ON THE RULES OF COURT, 136 (1970).
[92] Sayo v. Chief of Police, *supra,* note 87; Lava v. Gonzales, G.R. No. 23048 July 31, 1964, 11 SCRA 650, (1964).
[93] U.S. v. Samonte, 16 Phil. 516 (1910).

the officer must be reasonably certain that it has, in fact, been committed. Of course, the bases are not the facts of a crime but the nature of the deed or the acts, from which the characterization of a crime may reasonably be inferred by the officer.[94] Still, no arrest may be made if the purpose is merely to determine whether a crime has been committed or not.[95]

The officer should know, or in good faith, believe that a crime has actually been committed.

A greater difficulty lies in determining probable cause for an arrest in a case where the person is about to commit an offense in the officer's presence.

Early jurisprudence which has not yet been over-ruled tends to give great and permissive leeway to police action and discretion. For instance, the use of *U.S. v. Santos*,[96] to illustrate when an arrest without warrant may validly be made creates a wrong impression of the extent to which liberties of individuals who have not committed any crime may be impaired. In this particular case, the police officer arrested two persons whom he found loitering at midnight in front of an uninhabited house and entering an uninhabited camarin. The Court ruled that good people do not ordinarily lurk about streets and uninhabited premises at midnight. It stated, "Surely, the officer must not be forced to await the commission of robbery or other felony."[97]

Suspicious behavior where no crime has been committed may justify temporary restraints short of formal arrest, or restraints as "stop and frisk", or on-the-spot questioning, or surveillance, or orders to "move on" but there appears to be no legal basis for the arrest followed by a detention in jail for six or seven hours of these persons who had committed no crime.[98] Any basis for the allegation of reasonable ground is nullified by the seven hours imprisonment. The use of this old ruling to guide police officers in determining what action they can lawfully take should cease.

The rule on arrests where a crime is about to be committed requires clearer and more restrictive interpretation.

Temporary Restraints and Detention

Sound law enforcement may justify certain restraints on liberty or temporary detentions which do not mature into arrests and regular detentions.

[94] U.S. v. Sanchez, 27 Phil. 442 (1914) citing an 1885 decision of the Supreme Court of Spain.
[95] U.S. v. Hachaw, 21 Phil. 514 (1912). The officer gave as reason for the arrest—"I wanted to see if he had committed a crime."
[96] U.S. v. Santos, 36 Phil. 853 (1917).
[97] *Ibid*, 856.
[98] *Ibid.*

The most common of these restrainst are the field interrogations or "stop and frisk" practices of policemen.[99] There is a field interrogation when a police officer asks questions, pertaining to a crime or a suspected crime, of a person, prior to the time when that person is taken, by force or submission, to a police station for further questioning.[100] Thus, when a police officer accosts a person behaving suspiciously, asks him to identify himself, and explain what he is doing and his movements in the neighborhood and, perhaps, hold him while victims of a crime just committed try to identify him, there is a field interrogation. If the detained person satisfactorily answers the questions he is allowed to proceed and no arrest is effected. If probable cause for an arrest is found, e.g. the suspect has just committed an offense, the person is arrested and brought to the police station for further interrogation and booking. The field interrogation was not an arrest but it, definitely, is a form of detention.

"Stop and frisk" powers have been justified as necessary for crime prevention. The frequent stopping and questioning of suspicious persons is supposed to lower crime rates wherever practised. Criminals will not frequent areas which are patrolled and where they will be stopped for interrogations. It is supposed to avoid the need for making arrests and reduces police lawlessness and frustrations.[101] Frisking is intended to reduce danger to the policemen and aid crime prevention through the confiscation of guns, knives, and other weapons.[102]

Strong arguments for the outlawing of field interrogations and stop and frisk practices have been made in other countries. Statistics have been introduced to show that gains from these practices are not really what police claim they are.[103] Statistics regarding the negligible benefits of frisking have also been presented to show that police work is actually much safer than many other outdoor occupations.[104] It is argued that any attempt to justify or validate infringements of personal liberty, security, and privacy must be based on strong and preponderant reasons. In these countries, the police have so far failed to factually overcome these allegations. They simply state they need these powers but fail to statistically and convincingly prove that need.

Considering the comparatively primitive level of police techniques and methods of crime detection here, it is doubtful if these trends critical of

[99] See Pilcher *op. cit. supra*, note 34, and Schwartz, *Stop and Frisk*, 58 J. CRIM. L. 433 (1967).

[100] Pilcher, *id.* at 465.

[101] See Schwartz, *op. cit.*, 450-460. Strong counter arguments are given. The slight reduction in crime rates does not outweigh the costs resulting from resentments and frictions due to the police activity. There is no reduction in arrests because the police usually arrest persons who fail to give satisfactory answers. There is no lessening of police abuses through tolerance or encouragement of the practice.

[102] *Ibid*, 450; 460-462.

[103] *Ibid*, see citations on p.453.

[104] *Ibid*, 461.

field interrogations could be introduced in the Philippines. Even if they are introduced, it is highly unlikely police will comply with such restrictions. As it is, less restrictive standards are already flouted or ignored. The congressional study on police knowledge of the law of arrest and detention indicates that even where police know the law, they do not necessarily follow it in practice.[105] Furthermore, the conscientious officers who try to practice the requirements of law are often frustrated by the dirty hand of politics.

In these types of restraints, the independent safeguards or controls provided by law against police abuses can come into operation only after the accosted person has been arrested. The others who have been stopped, frisked, interrogated, and then, allowed to proceed cannot, on the basis of these acts alone, possibly vindicate any wrongs in court. The immediate protection of the individual would lie in the good faith, better training, and effective supervision of police officers.[106]

Better police administration is the best protection but the law on arrests can help by clarifying probable cause in these temporary restraints and detentions. A writer states that he knows of no responsible authority who advocates authorizing police officers to pick a citizen at random off the streets, detain him, interrogate him or confine him in any way unless there were some circumstances which set this particular individual apart from the general public.[107] In other words, even "stop and frisk" practices must be based on reasonable ground. There must be facts which draw the attention of police to a particular individual.

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[105] The statistical and opinion survey conducted by the Institute of Mass Communications for the congressional study regarding police knowledge and practice of the law on arrest and detention came out with interesting results. The survey was limited to police forces in the Greater Manila area. Metropolitan policemen are relatively highly educated, higher than what the law requires. Most are also relatively old, if age 36 and over is considered old. Six out of ten had a low level of attendance in police training courses and seminars. Ninety seven percent had a low level of attendance in Police Commission Training seminars. The results appearing in Table 54 of the survey show that policemen in the Greater Manila area have an inadequate knowledge and poor practice of the law on arrest and detention. A significant finding however, is that the knowledge of detention law is not associated with practice of the said law. The analysts state that a much stronger factor or factors than knowledge may explain the findings on practise. One such factor may be the intervention of an authority figure (obviously referring to a politician) in detention situations. The discussion of individual items in the questionnaires explains why political interference is a major cause of police misbehavior. See Part II pp. 1-68 Report on Knowledge and Practices of Greater Manila Policemen on Arrest and Detention, December 22, 1971, Committee on the Judiciary, House of Representatives, Congress of the Philippines.

[106] See UNITED NATIONS STUDY OF THE RIGHT OF EVERYONE TO BE FREE FROM ARBITRARY ARREST, DETENTION AND EXILE, 27 (1964). In this regard, a hypothetical situation may be given. Suppose a jeepney driver failed to yield a right of way to police officers not in uniform and driving a private vehicle or beat them to a choice parking spot. What remedies could the jeepney driver have against subsequent harassment? In other words, there are not too many remedies other than more effective supervision against various harassments based on non-criminal causes.

[107] Pilcher, *op. cit., supra*, note 34, at 469.

Probable cause in the sense it is understood when applied to regular arrests or searches may not be present. Probable cause for the temporary detention should, however, be present. As a recent American case put it, "Would the facts available to the officer at the moment of the seizure warrant a man of reasonable caution in the belief that the action taken was appropriate?" Anything less would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches. And simple good faith on the part of the arresting officer is not enough.[108]

The need for standards of probable cause in temporary restraints is further illustrated by the police checkpoint or roadblock.

There is certainly involuntary restraint and a certain degree of detention of the occupants of all vehicles who must stop at a check point. However, probable cause as commonly understood is absent. There is usually no probable cause to stop any particular or specific vehicle in connection with any offense or crime because the checkpoint operates on the law of averages to achieve its purpose. The presence of suspicion upon which stop and frisk operations are based cannot be found in check points or roadblocks.[109] The overwhelming majority of vehicles thus stopped do not carry "suspects" or people who would expect to be stopped, interrogated, and frisked. They are stopped simply because they are in a vehicle.

Some checkpoints will probably pass the test of validity. A checkpoint at an international border or a customs area and a checkpoint intended to enforce safety standards on motor vehicles, measure smoke belching by buses, or apprehend escaped jailbreakers near the national penitentiary have been cited as examples.[110] However, the indiscriminate use of checkpoints or roadblocks in the hope that a crime might be discovered or to protect the security of affluent areas is invalid and illegal.

Since every agency[111] — public or private, legitimate or spurious — which feels it exercises a little crime prevention power usually sets up a checkpoint on a public highway or street, the unsatisfactory status of the law on this form of detention is clearly manifest.

Clearer statutes and regulations on field interrogations and roadblocks or checkpoints are very necessary.

There are many other little restraints on individual liberty which most people resent but decide to tolerate thinking there are more significant viola-

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[108] Terry v. Ohio, 392 U.S. 1, 21-22 88 S.Ct. 1868, 206 L. Ed. 2d. 889 (1968).

[109] Cook, *op. cit, supra;* note 57 at 307-312. The article gives citations of decisions concerning roadblocks.

[110] *Ibid,* 312.

[111] City and municipal police forces, Philippine Constabulary officers, Armed Forces of the Philippines, agents of licensing agencies, private security guards, university or college security men, and many other groups sporting arms and uniforms frequently set up checkpoints and roadblocks.

tions of constitutional liberties which should first be punished. The subjects of these restraints are often the ex-convicts who go in and out of Bilibid Prison regularly, the outcasts, the poor, and underprivileged who would have no way of raising constitutional issues. Restraints of affluent or well-educated individuals are usually conducted in a courteous and apologetic manner. The owners of a late model car who are stopped at a checkpoint, for instance, will feel that the temporary deprivation of liberty is for their own good — the purpose is directed only at malefactors and evil men, the police are all smiles and exceedingly polite in dealing with them. The scene is so different from the treatment given to scavengers at a garbage dump or to persons going from house to house trying to beg money to bury a dead relative.

Constitutional standards of probable cause in all forms of detention, clarified by reasonable classifications wherever warranted and clearly articulated by the Supreme Court are necessary. Based on these standards, the Congress, Police Commission, and local legislative bodies can promulgate implementing statutes, ordinances and rules for each level or degree of detention. From the rules, police training will follow.[112]

Invitations

Among the issues raised, at least in the newspapers, by the persons detained under the presidential proclamation suspending the privilege of the writ of habeas corpus was the legality of the apprehension leading to their detention.

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[112] Schwartz, *op. cit., supra,* note 99, lists so-called suspicious circumstances stated as guidelines by the New York State Combined Council of Law Enforcement Officials to help determine the reasonableness of a stop and frisk and the existence of probable cause:

1. Demeanor of the suspect.
2. Gait and manner of the suspect.
3. Any knowledge the officer may have of the suspects character or background.
4. Whether the suspect is carrying anything and what he is carrying.
5. The manner in which the suspect is dressed, including bulges in clothing—when considered in the light of all of the other factors.
6. The time of the day or night the suspect is observed.
7. Any overheard conversation of the suspect.
8. The particular streets and areas involved.
9. Any information received from third persons, whether they are known or unknown.
10. Whether the suspect is consorting with others whose conduct is "reasonably suspect".
11. Suspect's proximity to known criminal conduct.

As the Guidelines point out, the listing is not all inclusive. Such guidelines are important in the United States because recent Supreme Court decisions on probable cause and due process have forced state police agencies to re-examine their practices and make them conform to constitutional standards. Continuous prodding by the Courts is resulting in improved police techniques and procedures.

Detainees alleged that they were merely "invited" to shed light on certain investigations but were instead detained and incarcerated.[113]

The "invitations" highlight a common practise of police agencies. Police officers who suspect a certain individual as having committed a crime but who have no evidence to support a request for the issuance of a warrant of arrest may decide to simply "invite" him for questioning. The "invitation" is a convenient way of fishing for evidence and avoiding the delay and difficulties attendant to securing a warrant of arrest. On the debit site, it is also less humiliating to the suspect who is released after the questioning fails to implicate him in anyway. At the same time, the widespread use of the "invitation" not only leads to abuses but is already an abuse in itself.

When a person accepts an "invitation", he waives the protection which the law on warrants of arrest provides. There is no violation of a constitutional right when the "invited" person voluntarily consents to give a statement at the police station. No responsible police officer can, however, assert that acceptance of invitations is indeed voluntary. An ex-convict, for instance, has no other choice but to accept an invitation. Only those who have the means to hire a lawyer, really refuse to honor invitations. It is unfortunate that the study on police knowledge and practices on the law of arrests and detentions did not get statistical data on "invitations."[114] Based on available knowledge, the widespread use of this method is alarming.

Rights of the Accused During Police Interrogation

In 1966, the United States Supreme Court came out with the *Miranda v. Arizona* decision.[115] Because of the identical provisions of the Philippine and American Constitutions that are involved and the concrete constitutional guidelines given to law enforcement agencies and lower courts to follow, the facts and the ruling will be briefly mentioned. In the four cases covered by the *Miranda* ruling and in the earlier *Escobedo* v. *Illinois*[116] decision, police officers took a defendant into custody and interrogated him in a police station for the purpose of obtaining a confession. The police did not effectively advise him of his right to remain silent or of his right to consult with his attorney. While handcuffed and standing he was confronted with alleged accomplices, questioned for hours until he confessed. The attorney who had come to the police station was prevented from consulting with him. At the trial, the confession was introduced over his objection.

[113] See Lansang v. Garcia, G.R. No. 33964, December 11, 1971, 42 SCRA 448, 455-458 (1971) and "PC Invites, Detains One More" *Manila Times*, October 21 1971, p. 1.

[114] The project on *Police Knowledge and Practices On the Law of Arrests and Detentions* pointed to the need for re-examining the practice on 'invitations".

[115] 384 U.S. 436, 86 S Ct. 1602, 161, L. Ed. 2d. 694, 10 A.L.P. 3d. 97e (1966).

[116] *Supra;* also see Massiah v. U.S. 377 U.S. 201, 84 S. Ct. 1199, 12 L. Ed. 2d. 246 (1964).

After discussing the psychological and physical aspects of in-custody interrogation,[117] the techniques used by police,[118] the heavy toll on individual liberty,[119] and the trading upon weaknesses of individuals,[120] the Court arrived at the following constitutional requirements:

> 1. At the outset, if the person in custody is to be subjected to interrogation, he must first be informed in clear and unequivocal terms that he has the right to remain silent.

[117] The Court took cognizance of physical coercion and brutality. It stated — From extensive factual studies undertaken in the early 1930's including the famous Wickersham Report to Congress by a Presidential Commission, it is clear that police violence and the "third degree" flourished at that time. In a series of cases decided by this Court long after these studies, the police resorted to physical brutality—beating, hanging, whipping—and to sustained and protracted questioning incommunicado in order to extort confessions. The 1961 Commission on Civil Rights found much evidence to indicate that "some policemen still resort to physical force to obtain confessions," 1961 Comm'n on Civil Rights Rep., Justice, pt. 5, 17. The use of physical brutality and violence is not, unfortunately, relegated to the past or to any part of the country. Only recently in Kings County, New York, the police brutally beat, kicked and placed lighted cigarette butts on the back of a potential witness under interrogation for the purpose of securing a statement incriminating a third party. People v. Portelli, 15 N.Y. 2d 235, 205 N.E. 2d 857, 257 N.Y.S. 2d 931 (1965). However, it pointed out that coercion nowadays is more psychological than physical. See *Infra*, note 118.

[118] To be alone with the subject is essential to prevent distraction and to deprive him of any outside support. The aura of confidence in his guilt undermines his will to resist. He merely confirms the pre-conceived story the police seek to have him describe. Patience and persistence, at times relentless questioning, are employed. To obtain a confession, the interrogator must "patiently maneuver himself or his quarry into a position from which the desired objective may be attained." When normal procedures fail to produce the needed result, the police may resort to deceptive strategems such as giving false legal advice. It is important to keep the subject off balance, for example, by trading on his insecurity about himself or his surroundings. The police then persuade, trick, or cajole him out of exercising his constitutional rights.

[119] Even without employing brutality, the "third degree" or the specific strategems described above, the very fact of custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals. This fact may be illustrated simply by refering to three confession cases decided by this Court in the Term immediately preceding our Escobedo decision. In Townsend v. Sain, 372 U.S. 293, 63 S. Ct. 745, 9 L. Ed. 2d. 770, (1963), the defendant was a 19-year-old heroin addict, described as a "near mental defective," *id.*, at 307-310. The defendant in Lynumn v. Illinois, 372 U.S. 528, 83 S. Ct. 917, 9 L. Ed. 922 (1963), was a woman who confessed to the arresting officer after being importuned to "cooperate" in order to prevent her children from being taken by relief authorities. This Court similarly reversed the conviction of a defendant in Haynes v. Washington, 373 U.S. 503 83 S. Ct. 1336, 10 L. Ed. 2d. 513 (1963), whose persistent request during his interrogation was to phone his wife or attorney. In other settings, these individuals might have exercised their constitutional rights. In the incommunicado police-dominated atmosphere, they succumbed.

[120] In these cases, we might not find the defendants' statements to have been involuntary in traditional terms. Our concern for adequate safeguards to protect precious Fifth Amendment rights is, of course, not lessened in the slightest. In each of the cases, the defendant was thrust into an unfamiliar atmosphere and run through menacing police interrogation procedures. The potentiality for compulsion is forcefully apparent, for example, in Miranda, where the indigent Mexican defendant was a seriously disturbed individual with pronounced sexual fantasies, and in Stewart, in which the defendant was an indigent Los Angeles Negro who had dropped out of school in the sixth grade. To be sure, the records do not evince overt physical coercion or patented psychological ploys. The fact remains that in none of these cases did the officers undertake to afford appropriate safeguards at the outset of the interrogation to insure that the statements were truly the product of free choice.

It is obvious that such an interrogation environment is created for no purpose other than to subjugate the individual to the will of his examiner. This atmosphere

> 2. After being expressly informed of the right to remain silent and not to answer questions, he must be told that anything he says can and will be used against him in court.
>
> 3. The person being interrogated must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during the interrogation. He does not have to ask for a lawyer. The police investigators should tell him, without his having to ask for one, that he has the right to counsel at that point.
>
> 4. He should be warned that not only has he the right to consult with an attorney, but also that if he is indigent, a lawyer will be appointed to represent him.
>
> 5. The moment the person being interrogated asks for a lawyer, the interrogation must cease until an attorney is present.
>
> 6. If the foregoing protections and warnings are not demonstrated by the prosecution during the trial, no evidence obtained as a result of the interrogation can be used against him.

The difference between the interpretation by the Philippine Supreme Court and the United States Supreme Court of identical provisions of the Constitution is illustrated by the 1971 case of *People v. Jose*.[121] In this decision of our Supreme Court, the *Miranda, Massiah* and *Escobedo* doctrines were invoked by two of the accused. The Court answered the invocation of constitutional rights by stating—

> The rule in the United States need not be unquestioningly adhered to in this jurisdiction, not only because it has no binding effect here, but also because in interpreting a provision of the Constitution, the meaning attached thereto at the time of the adoption thereof should be considered. And even there the said rule is not yet quite settled, as can be deduced from the absence of unanimity in the voting by the members of the United States Supreme Court in all the three above cited cases.[122]

It is, therefore, clear from this decision that the right to counsel during police interrogation is not a constitutional right in the Philippines.

The Rules of Court provide that *at the request of the person arrested or of another acting in his behalf,* his attorney has the right to visit and confer privately with him, in the jail or any other place of custody at any hour of the day, or in urgent cases at night.[123] Legislation punishes those who prevent the lawyer from visiting his client.[124] However, the person arrested or one acting in his behalf must ask for a lawyer. Later, it must be proved that a request for a lawyer was indeed made.

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carries its own badge of intimidation. To be sure, this is not physical intimidation, but it is equally destructive of human dignity. The current practice of incommunicado interrogation is at odds with one of our Nation's most cherished principles—that the individual may not be compelled to incriminate himself. Unless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice.

[121] G.R. No. 28232, February 6, 1971, 37 SCRA 450 (1971).

[122] *Ibid*, 473.

[123] REV. RULES OF COURT, Rule 113, sec. 18.

[124] Rep. Act No. 857, (1953) as amended.

In practice, only those who know they have this statutory right and who can afford the services of a lawyer can avail themselves of the protection. The implementation leaves much to be desired. There are no clear exclusionary rules on evidence secured when a lawyer is not present. A brilliant prosecution may get punishment for the police officers who deny a lawyer to the detainee but the evidence taken or the leads secured are not necessarily invalidated.

The right to have counsel from the arraignment to the promulgation of the judgment is underscored by the Supreme Court. Among the rights of the defendant *at the trial* is the right "to be present and defend in person and by attorney at every stage of the proceedings, that is, *from the arraignment to the promulgation of the judgment.*"[125] (Underscoring supplied.) There is no discussion on the question whether or not the presence of a lawyer is necessary or even more essential during the police interrogations which precede the filing of charges.

The *People v. Jose* discussion on no right to counsel during interrogation was brief and in passing. Apparently, the defense just threw it in without much hope that it would be seriously considered. As a result, the treatment was sketchy. Nonetheless, the ruling is the stand of the Supreme Court. It is the law and its effects must be considered particularly in the light of the police practice of not arresting but merely issuing invitations. A person who has been invited to a police station is not under arrest and even if he asks for a lawyer, he is not, under the Rules of Court, entitled to one. Even the fiscal or state prosecutor has no jurisdiction over him because he has not been arrested. It may be argued that he is not being detained, that he is free to leave anytime he wants to, that nobody is compelling him to give testimony, but these reassuring statements are not really true. Non-application of the exclusionary rule will simply embolden continued adherence to the illegal practice of invitations and make efforts at reform more difficult.

The *People v. Jose* ruling allows the drawing of artificial boundaries in the entire period of detention. After arraignment or at one stage of what is, in fact, one continuous procedure of criminal prosecution, an important constitutional right exists. At another or before arraignment, it does not. We may divide the procedure into four phases. First, is the "stop and frisk" and field interrogation phase. The law has, so far, neglected the constitutional aspects of this phase. Second, the suspect is "invited" to the police station and interrogated. Third, the fiscal or prosecutor conducts a combined preliminary examination — preliminary investigation. Fourth, the trial court acquires jurisdiction with the filing of charges. Under the Rules of Court and the *People v. Jose* ruling, the right to counsel and the sanction of the

[125] People v. Jose, *supra*, 472 where the Supreme Court stressed implementation of the constitutional right through Rule 115, sec. 1.

exclusionary rule can be availed of only in the fourth stage. At the third stage, it is only the statutory requirement that brings it into the ambit of procedural due process. And at a most crucial stage, the police interrogation when admissions and confessions are secured, there is no constitutionally protected right to counsel. Because of the deceptive meaning given to "invitations", the availability of counsel to the overwhelming mass of the citizenry, and the well known attitude of police to those who have challenged their authority, neither is there any effective statutory right.

The brief reasons given in *People v. Jose* are not convincing. A rule from a foreign jurisdiction is invoked not because of any binding effect but because it could be inherently sound. Is the right to counsel and exclusion of evidence taken without counsel protected by the Bill of Rights and effectively guaranteed to those who are supposed to have that guarantee? Is the guarantee one of form or is it one of substance? Should not the *rights given by law* be more liberally interpreted in a country whose citizens cannot effectively enjoy those rights *in fact and practice?* These are the issues.

The second reason — the meaning is that which attached in 1935 — is even more difficult to accept whenever individual liberty is at stake.

> When an 18th century Constitution forms the charter of liberty of the 20th century government, must its general provisions be construed and interpreted by an 18th century mind in the light of 18th century conditions and ideals? Clearly not. This were to command the race to halt in its progress, to stretch the state upon the bed of Procrustes.[126]

Constitutional provisions for the security and liberty of individuals must be liberally construed. A constitution, particularly a charter of rights and liberties should be interpreted to meet new conditions and circumstances arising in the course of the progress of the community.[127]

The third argument is, that the *Miranda* ruling is not settled doctrine in the United States and there is lack of unanimity among the members of the court. Whether settled doctrine or not, if the Miranda ruling is necessary to enforce constitutional rights of individuals, it should be adopted. Whether the doctrine comes from a unanimous American court or is simply a suggestion from a law journal, if it is the correct meaning of a specific phrase or clause of the Bill of Rights, it should be adopted. Foreign decisions are to be adopted or rejected because of their intrinsic merits or demerits and not because of any binding effect or unanimous adoption.

The decisions in *People v. Imperio* and *People v. Urro* are reiterations of the Court's and the statutes' condemnation of the use of force and intimidation in securing confessions. Any compulsory disclosure of incriminating

[126] Borgnis v. Falk Co., 137 Wis. 327 cited in GARCIA, PHILIPPINE POLITICAL LAW, PRINCIPLES AND PROBLEMS, 101-102 (1951).

[127] See Garcia, *op cit.*, 100-102.

facts, if alleged and found to be true, invalidates such evidence. In other words, a confession, to be admissible, must be voluntary.

This requirement of voluntariness raises a very interesting question. How many law enforcement officers and judges in the Philippines can, with clear consciences, state that confessions they introduce or accept are indeed voluntary? The decision in *Miranda v. Arizona* states that unless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendent can truly be the product of his free choice.[128] To the average detainee, force and third degree methods are not the only elements of compulsion. Compulsion is inherent in custodial surroundings, and to admit a confession as valid in the absence of positive evidence of torture, beatings, and other primitive forms of coercion or to innocently declare that, since coercion was not proved, a confession must be voluntary is to let a fictitious presumption prevail over truth.

The Court should, instead, ascertain whether the listing of rights in *Miranda v. Arizona* is necessary if the constitutional rights of individuals are to be enforced against over-zealous police practices in the Philippines.

> It was necessary in Escobedo, as here, to insure that what was proclaimed in the Constitution had not become but a "form of words" in the hands of government officials. And it is in this spirit, consistent with our role as judges, that we adhere to the principles of Escobedo today . . .
>
> 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. By custodial interrogation we mean 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.[129]

One further point about *People* v. *Jose*. The ruling on admissibility of extrajudicial statements, taken in the absence of a lawyer, was not even necessary. The Court stated that even if it disregarded the in-custody statements of Jose and Cañal, the mass of evidence on record was still sufficient to convict the two.[130]

It is hoped that a ruling with such tremendous implications for civil liberties and so permissive in its tolerance of police procedures violative of human dignity will be more thoroughly re-examined at a later day and in a case more directly in point, a case where the issues are more squarely presented and where a decision on the exclusionary rule is unavoidable.

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[128] Miranda v. Arizona, *supra*, note 48 at 444.
[129] *Ibid*, 458. Also see p. 479 on the procedural safeguards and exclusionary rule.
[130] People v. Jose, *supra*, note 121 at 472.

Conduct of Police

The Rules of Court state that no unnecessary or unreasonable force shall be used in making an arrest and the person arrested shall not be subjected to any greater restraint than is necessary for his detention.[131]

What is unnecessary or unreasonable force is of course subjective. The Supreme Court has ruled that the police officer may use such force as is reasonably necessary to secure and detain the offender, overcome his resistance, prevent his escape, recapture him if he escapes and protect himself from bodily harm by the offender.[132] Even if the subject of the arrest is a notorious criminal, a life termer, and a fugitive from justice, resort to dangerous means or the use of wanton violence is illegal. Thus, the usual "shoot-to-kill" orders of chiefs of police so routinely issued that they have ceased to have any dramatic or newsworthy impact are illegal unless considered as merely precautionary warnings to subordinates. At the very least, they are misleading instructions.

The use of force is also justified when the police officer has to break open a door or window or any building in which the person to be arrested is or is reasonably believed to be because the officer is refused admittance after announcing his authority and purpose.[133] A door or window may also be broken to effect the liberation of a police officer who is detained in the building he has broken into.[134]

Police regulations are replete with provisions on proper conduct towards prisoners and other persons. No member of the police force shall treat any person cruelly.[135] All members of the police force shall refrain from unnecessary force or violence or uncomplimentary or harsh language in making arrests or investigations and shall not employ high handed tactics, methods, and violence upon any other person except in self defense or to overcome physical resistance in making an arrest.[136] Courtesy and civility toward the public and each other is demanded of all members of the force. They shall, in their conduct and deportment, be quiet, civil, orderly, and at all times be attentive and zealous in the discharge of their duties, controlling their temper and exercising the utmost patience, and discretion. They shall refrain from using coarse, violent, profane, or offensive language.[137] There are many more regulations including a beautiful Code of Ethics, and among them is one that requires - "all members of the police force shall familiarize themselves with these rules and regulations and shall conduct themselves in

[131] REV. RULES OF COURT, Rule 113, sec. 2.
[132] People v. Oanis, 74 Phil. 257 (1943); People v. Dehina, 46 Phil. 738 (1922).
[133] REV. RULES OF COURT, Rule 113, sec. 12.
[134] *Ibid.*, secs. 13 and 14.
[135] POLICE MANUAL, Rule III, sec. 14.
[136] *Ibid.*, sec. 15.
[137] *Ibid.*, sec. 5.

accordance with their precepts.[138] The nationwide furor, the editorials and news items, the congressional investigations, and the sound and fury which followed the *People v. Imperio* and *People v. Urro* decisions and the recent death well case in Quezon City are unimpeachable testimony that the Code and other police regulations are not faithfully followed. The results of the survey on police knowledge and practise of the law of arrest and detention indicate a need for their re-examination. A more effectvie method of insuring compliance should be devised.

Detentions not Connected with Crime

An examination of the law on arrests and other forms of detentions must include restraints or police encounters with individuals, which are not connected with the prosecution of a crime. The complexity of this branch or subdivision of the law is apparent if we consider that not all valid detentions call for probable cause.

Various examples have been cited. A drunk may be stopped not to arrest him but to help him find his way home. Police may mediate a domestic quarrel threatening to blow up into violence. Streetwalkers may be harassed in an area known for prostitution not to arrest them but to discourage or drive them away. Police may effect a dragnet search of all teenagers in a certain locality for weapons because of reports of an impending gang fight or rumble.[139] A quarantine to protect the community from contagious diseases, the picking up of a lost child on the streets, the detention of an illegal entrant into the country, and the restraint of a person attempting suicide have been cited as examples of "reasonable" detentions which do not involve any arrest.[140] There is no probable cause but the rule of reasonableness applies. The law should also be clarified to avoid confusing these forms of detention with arrests or detentions akin to arrest. Standards of reasonableness should be formulated for these types of police activity.

Interlocking Factors

The unsatisfactory status of the law on arrests and detentions calls for greater attention to this hitherto neglected field.

The Supreme Court should make it clear that workable rules governing arrests, searches, and seizures - all forms of detentions and restraints on liberty - may be developed to meet the practical demands of effective criminal investigation and law enforcement without having to violate constitutional prohibitions. The Court should never allow or tolerate acts which make the guarantees of the Bill of Rights inaccessible or ineffective, especially for those who cannot, without positive assistance from elsewhere, assert their rights.

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[138] *Ibid.*, sec. 3.
[139] Cook, *op cit., supra,* note 57 at 298.
[140] Pilcher, *op. cit., supra,* note 34 at 468.

The improvement of the law on arrests is complicated by many interlocking factors. Some of them bear recapitulation and re-emphasis.

The trial of the accused is not the whole of the administration of criminal justice.[141] Philippine law has concentrated too much on criminal procedure during trial, neglecting the equally important stages that precede it and leaving the custodial interrogation stage largely to police agencies and, for whatever it is now worth, the supervision by the Police Commission. The concern for constitutional rights should be stronger for those who are not yet under the watchful eye of the judge. Effective protection must start from the moment a person has been deprived of his freedom of action and movement in any significant way. This deprivation of freedom or taking into custody may commence with an arrest, an "invitation" as practised by police agencies, or any other form of significant "seizure." There are no strong reasons why the same defendant who can insist on remaining silent in court, who can refuse to answer any and all questions during trial[142] should not have a similar right during police interrogations similar in the sense that the right to be silent is effectively protected by safeguards, not merely in form but in substance.

The present law on confessions and other inculpatory statements of the accused is unsatisfactory. Statements that are the result of violence, intimidation, threat, menace, artifice, deception or of promises or offers of reward or leniency[143] are not admissible as evidence but there is no positive safeguard to insure that no such statements are ever taken. On the contrary, the most knowledgeable officials on police administration and the average convict will undoubtedly admit that the third degree is a fact of life throughout the Philippines. Involuntariness is a matter of proof and the illiterate and hapless accused who gives statements incommunicado is at a serious disadvantage in proving the coercion or deception. In fact, unless evidence showing him beaten up black and blue somehow gets to court or unless influential sectors and mass media use him to highlight a crusade, the odds are almost impossible against him.

As shown by *People v. Imperio* and *People v. Urro,* brutality is still employed but even where it is not, police interrogation techniques - relentless questioning, giving of false advice, persuasion, trickery, cajoling, the unfamiliar atmosphere of a police interrogation room, threats against relatives,

[141] Burger, "Paradoxes in the Administration of Criminal Justice", 58 J. OF CRIM. L.C. and P.S. 430 (1967) Chief Justice Burger states that the total process is a deadly serious business that begins with an arrest, proceeds through a trial, and is followed by a judgment and a sentence to a term of confinement in a prison or other institution. He deplores the tendency to think of the administration of justice in terms of the criminal trial alone.

[142] Chavez v. Court of Appeals, G.R. No. 29169, August 19, 1968, 24 SCRA, 663 (1968).

[143] People v. Nishima, 57 Phil. 26 (1932); People v. Cabrera, 43 Phil. 65 (1922); People v. Agatea, 40 Phil. 596 (1919).

etc. amount to coercion, The persons who confess are usually of low intelligence, uneducated, social outcasts of whose weaknesses it is easy to take advantage.[144]

A statement rich in details does not necessarily mean it is voluntary.[145] It could mean resourcefulness on the part of the police or a complete breakdown by the accused after initial coercion. The fact that plenty of corroborative evidence is secured from other witnesses should not lead to a cavalier treatment of the allegedly coerced statements of the accused. Corroborative evidence may have been secured not through police industry and initiative but by compelling the accused to furnish leads and names yielding evidence against him.

Miranda v. Arizona stresses and even *Stonehill v. Diokno* intimates that one strong deterrent to police abuses during arrests [146] and detentions would be the inadmissibility of any statements taken without effective procedural safeguards. The safeguards must guarantee that the statement is indeed free. Proof in court will, therefore, consist of proving the safeguards such as a warning to the detained person that he may remain silent and the presence of a lawyer during interrogations. Instead of tying to wrestle with the problem of whether a confession was coerced or not, the courts will strike the evil at its source.

> As we understand it, the reason for the exclusion of evidence competent as such, which has been unlawfully acquired is that exclusion is the only practical way of enforcing the constitutional privilege. In earlier times, the action of trespass against the offending officer may have been protection enough; but that is true no longer. Only in case the prosecution which itself controls the seizing officials, knows that *it cannot profit by their wrong, will that wrong be repressed.* [147]

Our fondness as a people for the trappings of authority - the low numbered car, the fancy sounding title or position, the bigger office desk, the exemption from the bundy clock, and, of course, the uniform and pistol and other badges associated with the *"malalakas"* must be taken into account in improving the law on arrests. We must add to this another national weak-

[144] Miranda v. Arizona, *supra*, note 48, gives an analysis of police interrogation methods and their effect on the detained person.

[145] The present rule makes richness of detail a sign of voluntariness. See People v. Jose, *supra*, note 121; People v. Opiniano, G.R. Nos. 18546-47, January 29, 1968, 22 SCRA 177 (1968); People v. Castro, G.R. No. 17465, August 31, 1964, 11 SCRA 699 (1964); People v. Sy Pio, 93 Phil. 885 (1954). People v. Castro states that the burden of proof to clearly show involuntariness is on the accused, *ibid*, 711.

[146] A person who is beaten up, coerced, or threatened while being apprehended or arrested is more likely to be "cooperative" during the interrogation which follows. It is also extremely difficult for the average detainee to prove that the beating up was unprovoked or that the force used was more than necessary considering the nature of the provocation and that the force used was not due to his resisting arrest. The police officer's words, the presumption of good faith and regularity in the performance of official duties, and not his self-serving remarks will be believed.

[147] Stonehll v. Diokno, *supra*, note 71 at 394. Citing Judge Learned Hand.

ness. Persons given power and authority - including policemen are, as a rule, extremely courteous to the point of slavishness when dealing with those they consider their superiors or betters but are overbearing and intolerant when dealing with inferiors, especially when those inferiors are, pursuant to prevailing opinion, the scum of society.

There are other built-in potentials for abuse. The *esprit de corps* among policemen when one of them is threatened is strong. Police have an almost complete control of the investigative process that precedes the filing of a criminal case. The House Committee on the Judiciary commissioned an earlier survey in the Manila area on police practices and declared in the newspapers that over ninety percent of all arrests by metropolitan police are illegal when tested by existing laws.[148] And yet an informal survey of records in the Police Commission on cases brought against policemen in the metropolitan area shows that they are almost entirely administrative cases. During a period covering the past three years, researchers have looked in vain for a judgment of conviction rendered by a metropolitan court against a police officer, for arbitrary detention or coercion.[149] Somehow, "illegal" arrests never get to the courts.

There are certain accepted commandments. One does not talk back to a policeman or the latter will find some way of later getting back at you.[150] One does not refuse an "invitation" to police headquarters. One does not kill a police officer because summary execution will follow.[151]

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[148] 'Ninety percent of all arrests made by the police and other law enforcement were unlawful arrests, arrests without warrants, or arrests made without basis". The Manila Times, August 11, 1971.

[149] See Appendix A—Police Knowledge and Practise of the Law of Arrest and Detention in the Greater Manila Area. Out of 58 administrative cases filed in 1967, only one was for arbitrary detention. Out of 136 cases in 1968, not one was for arbitrary detention, Out of 117 cases in 1969, only one was for arbitrary detention. Out of 136 cases in 1970, not one was for arbitrary detention. Out of 95 cases in the first half of 1971, not one was arbitrary detention. Out of the 542 cases from 1967 to the first half of 1971, there were only two cases for unlawful arrest. The records of the police departments may, however, possibly include violations of the rights of persons who were later on arrested or of the rights of detainees disguised under such headings as misconduct, coercion, immorality, less serious physical injuries, maltreatment, extortion and notoriously disgraceful conduct.

[150] The commandment is probably worldwide although in varying degrees. See Schwartz, *op. cit., supra* note 140 at 453 for the American practice.

[151] One reference to this unwritten law was made by newspaper columnists who commented on the way Leonardo Manecio better known as "Nardong Putik" was killed while attempting to escape from police officers who cornered him. The latest example, however, is the "death well" case in Quezon City. As reported by newspapers:

Three men were arrested as suspects in the killing of a QC policeman some days ago. Soon after their arrest, they were reported to have escaped. One of the escapees was then reported to have been killed in an encounter with QC policemen. The two others were unheard of until one of them crawled out of a deep well half-dead from stab wounds and told a chilling story to Metrocom probers. He said that about 20 men, "most of whom were policemen," took him and the other alleged escapee to the deep well. They were stabbed numberless times, pistol-whipped and dumped into the well. Metrocom agents were able to recover the other body. It may be said that only a miracle saved the survivor, for he, too, had been dumped on the supposition that he was already dead. As it is, he is hovering between life and death in the hospital because of his numerous stab wounds and contusions.

All these point to the fact that the need is not for greater authority or discretion for agents of the law. If the hands of the police are sometimes tied, it is not the law but politics and a wrong sense of values which restrict them. The need is for a proper and disciplined use of the authority and discretion, both legal and extra-legal, which they already enjoy.

Social justice calls for improvement of the law on arrest. Most of the victims of abuses are ignorant of their rights and do not have the resources to defy those who have wronged them. Quite often, they are habitual offenders whose reaction to abuse is to sink deeper and deeper into crime.

The wealthy offender is seldom arrested. He is "surrendered" by his parents and voluntarily goes to the commanding general of the constabulary or the chief of police, accompanied by a battery of lawyers, oversolicitous physicians, and a flock of newspaper photographers and reporters. His rights are fully protected from the very moment he comes into police custody.

The survey which accompanied the study on police knowledge and practices on the law of arrest and detention resulted in disappointing percentages on ignorance or, worse, non-compliance inspite of knowledge by police officers regarding the simplest aspects of the law on arrest and detentions.[152] Inspite of those findings, there are hardly any criminal cases brought against police officers for arbitrary detention, coercion, or maltreatment. This signifies the ineffectiveness of criminal sanctions where the complainants are detainees and the accused are police officers. Administrative action is also not a practical sanction especially where the officer using illegal methods secures evidence of crime. To punish a police officer who, even though using wrong methods, catches a criminal is a difficult thing to do. Definitely, more effective sanctions against violations of the law are needed.

One suggestion is the passage of a law making the employing agency such as the Philippine constabulary or the city or municipality civilly liable for abuses in field interrogations, arrests, and detentions, arising out of bad faith, negligence, or ignorance. Procedures for securing the civil liability must be as speedy and informal as possible along the lines of workmen's compensation, if feasible.[153]

A Few General Proposals

By way of summary, any statutory or judicial reforms of the law on arrests and detentions should consider the following general propositions:

It has been an open secret among people in the know that alleged killers of policemen do not survive capture." "Cop-slay suspects seldom live long" the *Manila Times*, June 21, 1971, p. 4. A third suspect in the killing of Patrolman Simeon Cabating was reported by the QC police to have escaped after the interrogation but was later reported killed while shooting it out with policemen during an encounter. "Liquidation survivor accuses QC Police the *Manila Times* June 19, 1972, p. 1.

[152] *Supra*, note 105.

[153] See Pilcher, *op. cit., supra*, note 34, 491.

1. The concern and attention given by the judiciary to unreasonable searches and seizures of papers and things should be extended to seizures of persons.

2. The term "seizures" should be clearly defined to include all forms of detention where custodial interrogation, not merely general inquiries into unsolved crime, are being conducted. Applicable and realistic standards of probable cause and reasonableness should be devised for "stop and frisk" acts, field interrogations, "invitations", arrests with warrants, arrests without warrants, and other forms of detention.

3. The preliminary examination required by the searches and seizures clause before a warrant of arrest may issue should be emphasized as a constitutional requirement in its own right and not shelved into insignificance on the ground that it is not part of the general guaranty of due process.

4. Until such time as the Bill of Rights is amended, what it provides must be respected. When it states that "no warrants shall issue but upon probable cause, to be determined by the judge after examination. . .'", the examination and determination should be made by a judge and not a fiscal, municipal mayor, or other executive officer. If the Supreme Court does not allow a municipal judge to issue a warrant based on the examination conducted by another municipal judge who preceded him, it should similarly inhibit CFI judges from relying on examinations conducted by non-judicial officers.

5. If the prosecution introduces evidence taken from the accused, such evidence should be inadmissible unless the prosecution proves that prior to obtaining it, the accused was clearly and positively informed of his right to remain silent and of his right to counsel during the custodial interrogation.[154] Denial of these two rights should be declared a violation of law. At the very least, greater protection for the rights of persons who are in police custody - whether invited or arrested - should be *effectively* given.

6. Continuing education for law enforcement personnel by cooperative endeavor of the Police Commission and a proven, appropriate center of continuing education related to law enforcement such as the U.P. Law Center should be instituted. This is in line with the important goal of preserving public order which requires specialized in-service training. This will meet the needs that law enforcement agencies themselves could not provide. This program could be brought to the different regions and participation may be available to provinces and cities for their law enforcement personnel. The development of a truly professionalized and disciplined police, well selected

[154] A bill introduced by Senator Salvador H. Laurel would make all extrajudicial confessions inadmissible. It is very unlikely that S. No. 48 would get anywhere in Congress.

and well paid, competent and dedicated, and conscious of the limits of their authority must be given paramount attention.

Competent law enforcement and sound administration of justice will come about only when constitutional rights are effectively protected and guaranteed. It police forces are efficient and just, there is no reason why anyone should object to protective measures given to detained or arrested persons. The contention that guaranteeing the right to remain silent and the right to counsel during all police interrogations would mean a breakdown of law and order simply means that crime investigation techniques continue to be inefficient and only the use of methods that cannot stand the scrutiny of light can bring about convictions. Police techniques and procedures will never be improved and perfected as long as recourse to "easier" methods is tolerated and not proscribed. The change does not need to be abrupt but it has to start now. The direction of change must be clear and manifest to all.

Legislation and court decisions imposing stricter and more meaningful curbs on police practices during custodial interrogations will force and hasten the development of a truly professionalized and disciplined police, of police officers proudly zealous in the proper performance of their duties and sensitive to the limits of their authority.