REVISITING THE LAW ON THE RIGHT OF SILENCE AND TO COUNSEL*

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I. HISTORY OF THE RIGHTS

It is a generally-held belief that in this jurisdiction the rights to silence and the assistance of counsel in criminal prosecution are of relatively recent origin—compared, that is, to the American and English experience—and became part of our law only with the advent of American rule at the turn of the century.

In the United States

Of the history of the right to silence, for example, it is noted by the American Supreme Court in *Bram v. U.S.*[1] that "there can be no doubt that long prior to our independence the doctrine that one accused of crime could not be compelled to testify against himself had reached its full development in the common law, was there considered as resting on the law of nature, and was imbedded in that system as one of its great and distinguishing attributes."[2]

In the Philippines

View of Inexistence of Rights under Spanish Law; Justice Mapa's Contrary View

In contrast, in *U.S. v. Navarro*[3] decided by the Philippine Supreme Court on January 11, 1904, the majority opinion, remarking on the inquisitorial character of the system of criminal procedure under Spanish Law, stated that under said system it was lawful to require a suspected or accused person to give evidence touching the crime with which he was charged or of which he was suspected; this in much the same way, it might be supposed, that under the Inquisition, to which the term "inquisitorial" owes one of its less agreeable connotations, it was routinary to put suspected heretics to the rack the easier to obtain from them confessions of heresy. On the strength of what it held to be the newly-established legal guarantee against self-incrimination given, first in General Order No. 58 and later in the

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1 168 U.S. 532, 42 Led. 568, 18 S. Ct. 183, (1897).

2 18 S. Ct. Rep. at 187-188.

3 3 Phil. 143.

Philippine Bill of 1902, *U.S. v. Navarro* struck down the second paragraph of Article 483 of the Penal Code then in force, which imposed a greater penalty for the crime of illegal detention when the person detaining failed to give information concerning the whereabouts of the person detained or did not prove that he set the latter at liberty. That penal provision was held as compelling the accused person, to all intents and purposes, to testify against himself, in violation of said guarantee against self-incrimination.

The later case of *U.S. v. Luzon*,[4] decided in 1905, cited *Navarro* with evident approval, and affirmed the observation made therein that under the old procedure, the court had authority to examine the defendant in a prosecution for illegal detention, and require him to testify as to the whereabouts of the person alleged to be illegally detained by him; otherwise the court could increase the penalty.[5]

To be sure, in *Navarro*, Justice Mapa, with whom concurred Justices Willard and Torres, entered a dissent wherein he propounded and sought to prove the thesis—that even under the Spanish law, there already existed an inviolable right to silence in favor of the accused:

> "Article 554 of the compilation of rules concerning criminal procedure, approved by the royal decree of May 6, 1880, cited in the majority opinion, by providing that "the defendant can not decline to answer the questions addressed him by the judge or by the prosecuting attorney with the consent of the judge, or by the private prosecutor, even though he may believe the judge to be without jurisdiction, in which case he may record a protest against the authority of the court," does in fact appear to support the opinion of the majority with respect to the obligation which it is assumed rested upon the accused under the old system of procedure to appear as a witness. This provision of law, however, carefully considered, lacks a great deal of having the meaning and scope attributed to it in the majority opinion for neither the article in question nor any other article in the royal decree cited, or any other provision of law of which we are aware, provides for any penalty in case the accused should refuse to testify. Far from it, paragraph 2 of article 545 of the royal decree in question provides that "in no case shall the defendant be questioned or cross-examined," and article 541 in its last paragraph provides: "Nor shall the defendant be in any way threatened or coerced." Article 543 provides that a judge who disregards this precept shall be subject to a disciplinary correction unless the offense is such as to require heavier punishment.[6]
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> It follows then that if the accused could under no circumstance be compelled to testify against this will under the procedural law prior to General Order No. 58, and of that procedure the principle of the presumption of innocence of the accused until the contrary is proven formed part, and that notwithstanding this the provisions of paragraph 2 of article 483 existed, it is logical to conclude, against the opinion of the majority, that in establishing that precept the legislator in no wise took

[4] 4 Phil. 343.
[5] *Id.* at 347-348.
[6] Navarro, 3 Phil. at 158-159.

> into consideration the supposed obligation of the accused to testify as to the charge against him, and did not consider it incompatible with that presumption of innocence, for then as now the accused was under no obligation to testify, and then as now the presumption referred to constituted a fundamental right of the accused under the law of procedure.[7]
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Implantation by American Government

Whatever the truth of the matter, which may be of only academic interest at this time, it is probably a fair statement that such right (of silence), as well as the right to counsel, first found clear and categorical expression, and a permanent tenure in our legal system, in General Orders No. 58 and the Philippine Bill of 1902 already referred to. These were preceded, as history records, by President McKinley's famous "instructions" to the Second Philippine Commission issued on April 7, 1900 called by at least one editor of the time the "Magna Carta of the Philippines," wherein it was directed that there be imposed "as inviolable rules" upon every division and branch of the government of the Philippines (then still under a military administration) most of the guarantees of the bill of rights provisions of the Constitution of the United States. These included the right of the accused "in all criminal prosecutions" "to have the assistance of counsel for his defense"[8] as well as the right that "no person shall be compelled in any criminal case to be witness against himself."[9] General Orders No. 58 issued on April 23, 1900 followed with the guarantees against self-incrimination and of the right to counsel formulated in exactly the same way in its Section 15. And these same guarantees, with little or no change in language, were incorporated, successively, in the Philippine Bill of 1902 (Section 5, second and third paragraphs) and the Jones Law of 1916 (second and third paragraphs).

The 1935 Constitution

The 1935 Constitution adopted the guarantee of counsel also without change in the language of the earlier laws. It declared, as did the earlier organic acts, that "in all criminal prosecutions" the accused had the right among others, "to have the assistance of counsel for his defense." A change was, however introduced in regard to the right of silence. Where both the Philippine Bill of 1902 and the Jones Law of 1916 had articulated the right thus: "No person shall be compelled *in any criminal case* to be a witness against himself," the counterpart provision in the 1935 Constitution left out the phrase "in any criminal case" and read only as follows: "No person shall be compelled to be a witness against himself." The reason for the change was explained by the late President Laurel during the proceedings of the 1935 Convention. He said:

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[7] *Id.* at 164.
[8] U.S. CONST. amend. VI.
[9] U.S. CONST. amend. V.

> SR. LAUREL. La enmienda realmente afecta a la disposicion porque en vez de "he" que se refiere al acusado, se dicen enterminos generales "no person". Quiere decir que no solamente el precepto con respecto a que ninguna persona debe ser obligada a declarar contra si misma tendra applicacion no solamente al mismo acusado, sino al mismo testigo o a cualquiera persona, que es un principio bastante consagrado en nuestro derecho procesal. Con todo el comite quiere anunciar que acepta la enmienda con tal que se elimine esta parte de "no law", en vez de decir "no person", etc.[10]

As a member of the Supreme Court in 1937, President Laurel, in his concurring opinion in *Bermudez v. Castillo,*[11] stated that the alternation in phraseology was "to make the letter conform with the evident spirit of the provision." He went on to quote Professor Wigmore,[12] thus:

> "This variety of phrasing then, *neither enlarges nor narrows* the scope of the privilege as already accepted, understood and judicially developed in the common law. The detailed rules are to be determined by the logical requirements of the principle, regardless of the particular words of a particular constitution. This doctrine, which has universal acceptance, leads to several important consequences:
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> (a) A clause exempting a person from being 'a witness against himself' protects as well as a *witness* as a *party* accused in the cause; that is, it is immaterial whether the prosecution is then and there 'against himself' or not. So a clause exempting 'the accused' protects equally a mere witness.
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> (b) A clause exempting from self-incriminating testimony 'in criminal cases' protects equally in *civil cases,* when the fact asked for is a criminal one.
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> (c) The protection, under all clauses, extends to *all manner of proceedings* in which testimony is to be taken, whether litiguous or not, and whether 'ex parte' or otherwise. It therefore applies to all kinds of *courts* * * * in all *methods of interrogation* before a court * * * and in investigations by a legislature or body having legislative functions."

In effect, therefore, the provision is assured as recognizing two (2) distinct rights:

First, the right of an ordinary witness, while testifying, to refuse to answer any question tending to incriminate him;

Second, the right of the accused in a criminal case to be exempt from testifying at all; and this, not without reason, since it is not logical to suppose that the framers of the 1935 Constitution, in reenacting the rights provisions of the earlier organic acts, albeit with certain omissions, forgot or deliberately ignored the well-settled distinction in rights between an ordinary witness and the accused in a criminal trial *vis-a-vis* self-incrimination.

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10 4 LAUREL, PROCEEDINGS OF THE PHILIPPINE CONSTITUTIONAL CONVENTION at 33.
11 64 Phil. 483.
12 4 WIGMORE, §2252, at 834, 835.

However, neither this consideration nor Wigmore's assurance that the altered phraseology "neither enlarges nor narrows" the accepted and generally understood scope of the provision, may dispel lingering doubts that the second right cannot reasonably be deduced from the language of the 1935 provision. One reading of it can justify the interpretation that said provision alone, absent any other guarantees, does not protect the accused from being called to testify at his own trial and restricts him to invoking the right of silence only when asked incriminating questions. On this assumption, the conclusion would follow that for the last 51 years, there has been no constitutional recognition of the right of an accused to be exempt from being called to testify at his own trial; this, because the language of the 1935 provision was carried over into the 1973 Constitution and from there to the Provisional, "Freedom," Constitution. It would likewise follow that if in that time, accused persons had been vouchsafed such a right, it has not been thanks to the Constitution, but to General Orders No. 58 and since, their effectivity in 1940, to the Rules of Court. The first, in section 15 entitled "Rights of the Accused at the Trial," provided that the accused was entitled to be exempt from testifying against himself. The same right is guaranteed in the same express terms in the Rules (section 1(e), Rule 115, Revised Rules of Court; section 1, Rule 111 of the former Rules). In *Suarez v. Tengco*[13], for example, apparently in support of its pronouncement that 'x x x an accused in a criminal case may not be compelled to testify, or as much as utter a word, even for his defense x x x, the Supreme Court, in addition to cases, specifically cited section 1(c) of the (former) Rules of Court. And one of the cases mentioned in the citation, *U.S. v. Junio*[14] held that compelling an accused, who had pleaded not guilty, to answer the complaint against him was an infringement of his rights under section 15 of General Order No. 58.

II. RIGHTS OF SILENCE AND TO COUNSEL FROM 1935 TO 1973

Right of Witnesses, Generally

In any event—and regardless of whether or not a casual relation exists between the constitutional provision that "No person shall be compelled in General Order No. 58 and the Rules of Court that an accused had the right, at the trial, to be exempt from testifying against himself, on the other, the decisions of the Supreme Court from 1935 to 1973 (when a new Constitution became effective) appear to have settled the principles governing the right to silence as it respectively applied to witnesses in general, and to defendants or accused in criminal actions. The constitutional right of every person not to be compelled to be a witness against himself becomes relevant and can be invoked only when that person is called upon to be

[13] G.R. No. 17113, 2 SCRA 71 at 73.
[14] 1 Phil. 50.

a witness in any action or proceeding. It has no application otherwise. The right may be claimed by the witness only at the time a specific question is put to him the tendency of which is to incriminate him for a crime because it seeks to elicit from him testimony implicating him in the offense. The witness can not invoke the right at any other time. Nor may he invoke it to justify his refusal to respond to the *subpoena* served on him, or to take the witness stand, be placed on oath, or answer questions. The witness has to obey the *subpoena,* appear before the tribunal issuing it, be sworn and answer any and all questions propounded to him. It is only when a particular question is directed to him which he takes to be incriminatory that the right becomes available to him.[15]

Right of Accused, Distinguished from Right of Witness

On the other hand, under General Order No. 58 and the Rules of Court, it was and is the right of an accused in a criminal action, or a defendant in a proceeding of penal character, not only to refuse to answer specific questions but to answer any question whatsoever, and indeed, even to take the witness stand altogether. To be sure, under said laws, the accused had and has the counterpart right alternatively to take the stand and testify in his behalf, in which event he opened himself to cross-examination like an ordinary witness. But the option of testifying or not is left entirely to his judgment and is his recognized prerogative.

Rights of Suspects under Custodial Interrogation Prior to the 1973 Constitution

It may unreasonably be inquired at this point if under the 1935 Constitution or the Rules of Court, there was a right of silence or to counsel for that matter, as regards persons other than witnesses, or defendants in a criminal action; more specifically as regards suspects in police custody.

Since their aforementioned implantation in 1900 and until the coming into effect of the 1973 Constitution on January 17 of said year, the rights of silence and to counsel were uniformly considered to be available only during the period of trial, these having been specifically guaranteed "at the trial" in General Order No. 58, and the qualifying phrase "in all criminal prosecutions" used in connection therewith in ensuing organic acts having been construed as referring only to the period from arraignment to the promulgation of judgment, as was later expressly provided in sec. 1(b) of Rule 115, Rules of Court. It was so ruled in the early case of *U.S. v.*

[15]Gonzales v. Secretary of Labor, 94 Phil. 325; Suarez v. Tengco, *supra;* Chavez v. C.A., G.R. No. 29169, 24 SCRA 663; Bagadiong v. Gonzales, G.R. No. 25966, 94 SCRA 906. These cases are cited in Chief Justice Teehankee's dissenting opinion in *Galman v. Pamaran,* 138 SCRA 294 which traces the history of the right back to President McKinley's Instructions to the Taft Commission.

Beecham,[16] decided in 1912, and affirmed in *U.S. v. Agatea*,[17] a 1919 case, where the Supreme Court, speaking through Justice Malcolm, ruled that "x x x An extra-judicial confession is not like a deposition in a judicial proceeding, hence the constitutional provision that the defendant in a criminal case shall not be a witness against himself has no application."[18] And that this was the invariable rule until the 1973 Constitution may be gleaned from *People v. Jose*,[19] decided in 1971, where with reference to the right to counsel, the Beecham interpretation of the term "criminal prosecutions" was cited and the Supreme Court held that the only instances where an accused is entitled to have counsel before arraignment, should he so request, are during the second stage of preliminary investigation (Rule 112, Section 11) and after arrest (Rule 113, Section 18).

Argument of Existence of Rights under Natural Law

Let it not be inferred, however, that prior to 1973, there was no right on the part of an accused or suspect to remain silent before arraignment and trial, as when he is arrested or questioned in the course of a police investigation of the crime with which he is later charged. Prescinding from *Bram v. U.S.*,[20] which held the right to silence to rest on the law of nature, it is an eminently tenable thesis that such right is in truth a natural right, requiring no sanction in positive law and the exercise of which no human authority can restrict or curtail. It is inherent in the faculty of free will, and what in effect the constitutional or statutory enactments conferred was only the recognition that such right could be invoked in a criminal trial and that silence alone carried no penalty and raised no adverse presumption against whoever properly invoked the right. But we digress into what may be philosophical ground.

The Actual Situation

In practical terms, and in context of the law before 1973, an accused or suspect who refused to answer any questions in the police precinct or station house could not expect the police not to draw any unfavorable inferences from his silence, where, contrarily, and in view of the constitutional guarantee, he had every right to expect that the judge who later tried him would not draw any adverse presumptions from his silence or convict him merely because he refused to testify.

The fact is that prior to 1973, while there was no legal provision conferring on such a suspect the right to remain silent during police investigation, neither was there any law or rule imposing on him the obligation

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[16] 13 Phil. 258.
[17] 40 Phil. 596.
[18] *Id.* at 600.
[19] G.R. No. 28232, 37 SCRA 450.

to answer questions by any police interrogator or public officer. And any answers proven to have been involuntarily given by him faced rejection by the court upon adequate proof of their involuntariness. It could thus be said that the suspect in a police investigation had the right to remain silent, not by virtue of any positive grant by statute but by reason of the non-existence of any obligation on his part to answer any question or a prerogative granted to an investigator to compel answer, if not indeed upon the general principle already adverted to that it is inherent in the faculty of free will.

Of course as regards representation by counsel, certain it is that prior to 1973 no such right existed during police interrogation.

In fine, prior to 1973 the suspect in police custody had the option to remain silent, or to confess or answer questions made to him concerning a crime in which he was believed implicated in some way.

III. Problem of Voluntariness of Extrajudicial Confessions Prior to Miranda

Now, again in the pre-1973 context, and even at present, pleas of guilty or confessions or admissions made at arraignment or in the course of trial, the accused having waived the right to remain silent, obviously did not and do not generally pose any problem as to voluntariness, for quite obvious reasons, being made publicly, in open court, with the accused almost always represented by counsel.

It was the extrajudicial confessions, those made to the police authorities while under custodial interrogation that made necessary an inquiry into their admissibility from the standpoint of whether or not they were voluntarily and freely given, or were obtained by force, duress or other improper influence. The chief question obviously was one of voluntariness.

American Jurisprudence: Doctrine of "Totality of Circumstances"

In this regard, American Jurispjrudence had developed a "totality of circumstances" approach applied on a case-by-case basis in considering such confessions and decisions.

Philippine Jurisprudence

Our Supreme Court followed the same line. This is familiar ground to most lawyers and there is little need to pursue the subject at length. Some general observations will suffice. *U.S. v. Agatea*[21] already referred to had expressed the general rule that an extrajudicial confession is admissible if made "without hope of benefit, without fear or duress, and without the

[20] Bram v. U.S., *supra.*
[21] *Supra.*

use of threats, torture, violence, artifice or deception. The age of the confessor and his mental condition are also important factors in determining its voluntariness." From subsequent cases, more specific guidelines have emerged, and to call some outstanding examples, extrajudicial confessions have been held voluntary:

1. where, having been offered in evidence, they are not objected to by the defendant;[22]
2. where they are sufficiently corroborated by other and independent evidence.[23] It is notworthy that these two cases were still being cited as late as in 1981 in *People vs. Crisostomo*,[24] for instance, where the Supreme Court refused to sustain a plea that the questioned confessions were inadmissible as obtained in violation of the Miranda safeguards on the ground that said safeguards applied only to confessions made *after* the effectivity of the 1973 Constitution;
3. if made in the presence of impartial persons, such as reporters;[25]
4. if made with the assistance of counsel;[26]
5. where they are replete with details known only to the confessant,[27] such as, how the crime was planned and committed,[28] the place of the accused in the hierarchy of the gang,[29] the employment relationship between the victim and the accused, which could not have been known to the police investigating him during that time;[30]
6. where the appellant's answers were more than called for by the questions,[31] although this was qualified in *People v. Verges*[32] where the confession, though "rich in details," was preceded by an interrogation of other suspects, and the investigators had, therefore, knowledge of said details when it became the appellant's turn to be questioned.

Parenthetically, one theory was for a time adopted that a confession, in order to merit exclusion, must be proved, not only to have been obtained by force or violence, but also to be false or untrue. The rationale was that the law rejects a confession when, by force, violence or intimidation, the accused is compelled against his will to tell a falsehood, not when, by the same means, he is compelled to tell the truth[33] (People v. De los Santos, et al., L-4880, May 18, 1963; People v. Villanueva, et al., 52 O.G. 5864; also v. Prias, L-13767, July 30, 1960). This theory was quickly abandoned and rightly so.

In short, prior to 1973, the voluntariness of an out-of-court confession was weighed and determined, in each instance, by an inquiry into the contents

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[22] *Id.*
[23] People v. Tolentino, 40 Phil. 808.
[24] G.R. No. 38180, 108 SCRA 288 at 295.
[25] People v. Lacson, G.R. No. 46 338, 102 SCRA 457; People v. Vizcarra, G.R. No. 38859, 115 SCRA 743.
[26] People v. Gajetas, G.R. No. 38325, 103 SCRA 74.
[27] People v. Regular, G.R. No. 38674, 108 SCRA 23; People v. Agbot, G.R. No. 37641, 106 SCRA 325.
[28] People v. Hipolito, G.R. No. 31402, 106 SCRA 610.
[29] People v. Rosales, G.R. No. 38625, 108 SCRA 339.
[30] People v. Lupangco, G.R. No. 32633, 109 SCRA 109.
[31] People v. Revotoc, G.R. No. 37425, 106 SCRA 22.
[32] G.R. No. 36436-38, 108 SCRA 231.
[33] People v. De los Santos, et al., G.R. No. 4880, 93 Phil. 83; People v. Villanueva, 52 O.G. 5864; People v. Prias, G.R. No. 13767, 109 Phil. 48.

and substance of the confession itself, the factual circumstances surrounding its obtention, such personal circumstances of the confessant as his age, intelligence, education and station in life, whether it is supported, on the one hand, or confuted, on the other, by the other evidence, and by the plausibility of other independent evidence bearing on whether or not it was given under fear, duress, or other improper influences. The emphasis was on the factors that in a substantial sense either showed the confession to be the product of the confessant's free and unfettered will, or that it was wrung from unwilling lips or a broken spirit, rather than on the largely procedural aspect of whether or not the accused had been warned or advised that he could remain silent and that if he did speak, whatever he said could be used against him.

IV. ADVENT OF MIRANDA IN 1966

Then in 1966 came *Miranda v. Arizona,*[34] which altered dramatically and drastically the landscape of the law on the rights to silence and to counsel.

The Miranda Precursor

Miranda was presaged by *Escobedo v. Illinois,*[35] which preceded it by almost exactly two years, and may have made *Miranda* inevitable, given the substance of the decision rendered therein. The facts in *Escobedo* need not be gone into in detail, although it may be *apropos* to recall that said appellant was, in the words of the U.S. Supreme Court, "* * * a 22-year-old of Mexican extraction with no record of previous experience with the police." The following syllabus from the decision expresses both the basic facts and the kernel of the ruling briefly and succinctly:

> "The accused in a state prosecution is denied the assistance of counsel in violation of the Sixth Amendment to the Constitution as made obligatory upon the states by the Fourteenth Amendment, and no pre-trial statement elicited by the police during interrogation may be used against him at a criminal trial, where the police investigation, conducted prior to indictment, is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect, the suspect has been taken into police custody, the police carry out a process of interrogation that lends itself to eliciting incriminating statements, the suspect has requested and been denied an opportunity to consult with his lawyer, and the police have not effectively warned him of his constitutional right to remain silent."[36]

The U.S. Supreme Court further held that in the circumstances stated, no meaningful distinction could be drawn between interrogation of an accused before and after formal indictment, and thus by necessary inference,

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[34] Miranda v. Arizona, 384 U.S. 436; 86 S.Ct. 1602, 16 L.ed. 2d 694 (1966).
[35] 378 U.S. 478; 84 S.Ct. Rep. 1758; 12 L.ed. 2d 977.
[36] 12 L.ed. 2d at 978.

though not in so many words, that the guarantees of the Sixth Amendment (to counsel) as well as the Fifth (to silence) applied as well during police interrogation as during trial.

The Ruling and Its General Effects

The door that was thus pushed ajar by *Escobedo* was opened wide by *Miranda.* As already pointed out, the *Escobedo* ruling being what it was, something like *Miranda* was bound to come along sooner or later. In fact, certiorari was granted in *Miranda* and its three companion cases apparently in order to resolve to some extent "the spirited legal debate" sparked by *Escobedo* and the varying conclusions reached by state and federal courts in assessing its implications, as well as speculations of the police and prosecutors as to its range and desirability. *Miranda* presented this situation, which was typical of the three other cases that were decided together with it: The appellant, Ernesto Miranda, was arrested on suspicion of kidnaping and rape, and taken to the Phoenix Police Station where he was identified by the complaining witness. Thereafter the police took him to an interrogation room where he was questioned by two police officers who later admitted at the trial that he was not advised that he had a right to have a lawyer present. After two hours, the officers emerged from the room with a written confession signed by Miranda, at the top of which was a typed paragraph to the effect that the confession was made voluntarily, without threats or promises of immunity and "with full knowledge of my legal rights, understanding any statement I make may be used against me." At Miranda's trial, the confession was admitted in evidence over the objections of defense counsel, and the officers testified to the prior oral confession that Miranda had made during the interrogation. Found guilty of the accusation, kidnapping and rape, Miranda appealed to the Supreme Court of Arizona, which affirmed his conviction. In reversing Miranda's conviction (as it did those in the fourth), the U.S. Supreme Court in effect brought the American Constitution into the police station house and, to coin a word, "constitutionalized" the warnings that it required to be given to every person taken into custody by law enforcement officers before he is subjected to interrogation, and absent which any statement obtained from him during such interrogation could not be used in evidence against him. The Court held the following measures to be procedural safeguards to secure the constitutional privilege against self-incrimination, measures with which we have since become thoroughly familiar, namely:

1. prior to any questioning, the person questioned or taken into custody must be warned that he has a right to remain silent and that any statement he makes may be used as evidence against him;
2. he must be advised that he has a right to the presence of an attorney, and that if he cannot afford an attorney, one will be appointed for him prior to any questioning if he so desires;
3. he may waive these rights, provided the waiver is made voluntarily, knowingly and intelligently; if, however, he indicates in any manner

> and at any stage of the process that he wishes to consult with an attorney before speaking, there can be no questioning; if he is alone and indicates in any manner that he does not wish to be interrogated, he may not be questioned; and the mere fact that he may have answered some questions or volunteered some statements does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned.

Such an epochal ruling predictably raised tidal waves, not only among bench and bar in America, but also in the institutions directly and vitally affected — the law enforcement and prosecutorial agencies, where the *Miranda* constraints were perceived to raise great obstacles to the investigation, solution and punishment of crime.

Influence on Philippine Case Law (1966-1973)

As far as the Philippines was concerned, considering that the rights taken up and interpreted in *Miranda* were American implants, and with the weight and acceptance owed and usually accorded to precedents laid down in the country of origin, it might be supposed that little time would be lost in applying the doctrine in appropriate venues here. Surprisingly, this was not the case. *Miranda* was at first ignored, even rejected, and Philippine courts continued to adhere to the established "totality of circumstances" test in cases involving repudiated extra-judicial confessions. As late as in 1971, five years after *Miranda,* in *People v. Jose,*[37] where the ruling was invoked by one of the appellants, our Supreme Court held that it had no binding effect here, besides not being "quite settled" even in the United States. The same was affirmed and even quoted in the 1974 case of *People v. Paras,*[38] where the Court waved aside the objections of one of the appellants to the admission of his extrajudicial statement on the ground that he was not assisted by counsel during custodial investigation, and went on to rule that in the light of the circumstances in which it was made said statement was voluntary and was properly admitted. Note, however, that both cases involved confessions or statements given before the coming into effect of the 1973 Constitution.

V. Adoption of Miranda in the 1973 Constitution

The turning point came with the adoption of the 1973 Constitution with section 20 of its Article IV, a frank derivation from *Miranda,* reading as follows:

> No person shall be compelled to be witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent, and to counsel, and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates

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[37] *Supra.*

[38] G.R. No. 23111, 56 SCRA 248.

> the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence.[39]

It is not remarkable that the Convention which framed the 1973 Constitution wrote the *Miranda* ruling into the Bill of Rights. Since *Miranda* interpreted rights under the Fifth and Sixth Amendments of the American Constitution which have had their counterparts in our organic laws since General Order No. 59, and Philippine procedural rules have strong affinity to, and are in fact mainly derived from American law and jurisprudence, what seems surprising as already pointed out, was the initial reservations about, if not hostility to, the *Miranda* safeguards, and that it needed a constitutional rescript to bring *Miranda* into our law. There was certainly no lack of occasion for the application of Miranda even before 1973, and we can only speculate that it was not deemed prudent or appropriate to embrace a novel or innovative doctrine while many voices were still being raised against it even in the country of its origin.

The 1973 Constitution seems to have settled all doubts and erased all reservations. *Magtoto v. Manguera*[40] was probably the first case which ruled that the Constitution had indeed written *Miranda* into its provisions, although a divided Court held that the relevant section 20 of Article IV was prospective in application and could not be invoked to exclude confessions obtained in violation of the *Miranda* warnings before the 1973 Constitution went into effect.

Sidelights: Ruiz Castro Dissent in Magtoto; Teehankee Opinion in Ribadajo (July, 1986)

An interesting sidelight of *Magtoto* is that in what seems a distant echo of Justice Mapa's dissent in the 1905 case of *U.S. v. Navarro*,[41] Justice Fred Ruiz Castro wrote a dissent where he argued that a detained person had been granted the right to counsel as early as on June 15, 1954, when Republic Act No. 1083 introduced the second paragraph of Art. 125 of the Revised Penal Code reading:

> In every case the person detained shall be informed of the cause of his detention and shall be allowed upon his request to communicate and confer at any time with his attorney or counsel.

His arguments failed to impress his brethren. Since, even then, the right to counsel during custodial investigation had already received fiat by the Constitution, no less, there seemed to be no chance that the question raised in his dissent would ever come up again. But in *People v. Ribadajo, et al.*,[42]

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[39] The entire Article IV of the 1973 Constitution was adopted as part of the Provisional or "Freedom" Constitution promulgated in Proclamation No. 3, dated March 4, 1986, by President Corazon C. Aquino.

[40] G.R. No. 37201-02, 63 SCRA 4.

[41] *Supra.*

[42] G.R. No. 40294, July —, 1986.

decided only last July (1986), Chief Justice Teehankee, in a separate opinion, found occasion to quote the Castro dissent and reaffirm his concurrence therein. The case involved "uncounseled" confessions obtained prior to the enactment of the 1973 Constitution.

VI. The Course of Miranda in the Philippines

Once written into the Constitution, *Miranda* became grist for the judicial mill. Case after case provided the opportunity — and perhaps the temptation — to "flesh out" rules that were probably perceived to be not specific enough and yet too narrow in scope for the particular factual situations that merited their application. In the period that followed, a body of rules took shape that seems to have gone beyond *Miranda* and established new rights not contemplated therein.

Specific Rights Laid Down by Case Law

In synthesis, the rulings laid down in the cases of *People v. Jimenez*,[43] *People v. Caguioa*,[44] *People v. Dilao*,[45] *People v. Duero*,[46] *People v. Matilla*,[47] *People v. Pascual, Jr.*,[48] *People v. Inquito*,[49] *Morales v. Enrile*,[50] *People v. Ramos*,[51] *People v. Galit*,[52] 135 SCRA 465, and *People v. Sison*,[53] have held Section 20 of the Bill of Rights as requiring that the accused at a custodial investigation be advised that:

1) he will be asked questions regarding the crime or offense for which he had been brought in for questioning and that he is suspected of such crime or offense;
2) however, he has the right to remain silent, i.e., to refuse to answer any question at all;
3) he also has the right to counsel, i.e., he can engage counsel of his choice and have him present before the commencement of the investigation and at every moment thereof; and if he wishes to have the assistance of counsel but has not the means to retain one, the State will provide one for him without cost;
4) he has the right to communicate with his lawyer, a relative or anyone he chooses by the most expedient means available;
5) he can waive these rights, but only if he fully understands their nature and knows that they are his to invoke and only if that waiver is made with the assistance of counsel;
6) if he did waive his rights, and opt to undergo interrogation, he could still avail of either or both rights at any subsequent stage of the interrogation; and

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43 G.R. No. 40677, 71 SCRA 187.
44 G.R. No. 38975, 95, SCRA 2.
45 G.R. No. 43259, 100 SCRA 358.
46 G.R. No. 52016, 104 SCRA 379.
47 G.R. No. 53570, 105 SCRA 768.
48 G.R. No. 53403, 109 SCRA 197.
49 G.R. No. 53497, 117 SCRA 641.
50 G.R. No. 61016, 121 SCRA 538.
51 G.R. No. 59318, 122 SCRA 312.
52 G.R. No. 51770, 135 SCRA 465.
53 G.R. No. 70906, May 30, 1986.

7) if he does waive his rights, any and all answers given by him under interrogation may be used against him in any court of law.

Thus, in the present state of our law, a suspect under custodial investigation has no less than seven (7) specific rights of which he must be informed before questioning may begin, some of which, although not explicitly stated in the Constitution, have been declared by judicial pronouncement as corollary to or necessarily deriving from those specifically guaranteed.

Seeming Trend Towards Expansion of Miranda Doctrine

At least two of them may be singled out as apparently, clearly expansive of the letter of both *Miranda* and section 20. One is the right of the suspect to communicate with his lawyer, a relative or anyone he chooses. While *Morales v. Enrile*,[54] which first recognized and gave expression to this right may be taken to mean that the requirement is complied with if the accused or suspect is given an opportunity to communicate with either his lawyer, or alternatively, a relative, or any person of his choice, the more logical reading of the ruling is that the accused or suspect should be allowed, if he so desires after being advised of his right to do so, to talk to his lawyer *as well as* to a relative or any other person of his choice. It must be so because communication with a lawyer is already assured, to all intents and purposes, by the separate guarantee of the right to counsel and to be advised of such right prior to questioning, and there would be no point in establishing a distinct right of communication with a lawyer, a relative or other person, only to consider the right sufficiently served as long as the accused has been allowed to communicate with his lawyer. Moreover the proviso that the opportunity be given to communicate with the persons referred to "* * * by the most expeditious means — by telephone, if possible — or by letter or messenger * * *," would appear to raise the specter of contention or dispute as to the sufficiency of compliance. How long a delay, for example, in allowing the accused communication with a parent or a friend is permissible, before it becomes a violation of his constitutional right? Among the justifications advanced for the Miranda ruling was that the totality of circumstances test furnished no clear guidelines for appraising voluntariness of extrajudicial confessions and that the warnings established diminished the uncertainty and speculation brought about by case-by-case analysis. What has thus been added to those advisories may well prove to be equally elusive standards.

Regarding waiver of the right to counsel, *Miranda,* as we have noted, requires only that it be made voluntarily, knowingly and intelligently. We have gone *Miranda* one better, it seems, with the requirement established in *Morales v. Enrile* and expressly reaffirmed in *People v. Galit,* that such waivers, to be valid, must be made with the assistance of counsel. The

[54] *Supra.*

statement of that rule even sounds like a contradiction in terms, being practically equivalent to saying that the right to counsel cannot be waived. In fact, suggestions have not been absent that since waiver of counsel requires the assistance of counsel — there is simply no way of verbalizing the rule without making it sound awkward or redundant — said rule might as well be extended to prohibit waiver of the right to counsel and thus exclude altogether all "uncounseled" confessions obtained during custodial interrogation. While such suggestions may appear extreme and have yet to receive the nod of the Supreme Court, the latest word from the Constitutional Commission currently in session is that there has been approved on third reading an amendment of section 20 of the Bill of Rights to the effect that the rights of silence and to counsel in an investigation for crime cannot be waived except in writing and in the presence of counsel.

It would therefore appear, not only that there has been an unqualified and uncritical acceptance of the correctness of Miranda and a mechanical application of its standards to all extrajudicial confessions, but also a pronounced tendency to expand and enlarge the doctrine beyond its express terms and clear implications.

The Ver Exclusion Cases

Nowhere is this predilection more clearly visible than in the result of the sensational Ver exclusion cases[55] involving the admissibility of the testimony given before the Fact-Finding Board by Gen. Fabian Ver and 7 other soldiers later charged with complicity in the Aquino-Galman murder cases, which was excluded by the Sandiganbayan in the murder trial. Easily the most controversial aspect of the Supreme Court's decision upholding the exclusion ruling of the Sandiganbayan was the pronouncement made in the majority opinion that the Miranda warnings incorporated in section 20 of the Bill of Rights extended to persons not in actual custody. It will be recalled that General Ver was invited by the Fact-Finding Board to give testimony in the inquiry into the circumstances surrounding the killing of Senator Aquino. He appeared, accompanied by a battery of aides and lawyers, and readily and voluntarily answered all questions put to him, often referring to his own thick files arranged neatly in appropriately labeled folders. He was in no sense in custody or under detention while testifying. He was not considered a suspect, nor, it appeared, did he consider himself one. His posture was, in fact, that of an accuser or an advocate supporting the military version that Senator Aquino had been shot and killed by Rolando Galman. The seven other military men who objected to the admission of their testimony before the Agrava Board had testified under essentially similar circumstances. Thus, as was later argued before the Sandiganbayan and the Supreme Court, there had been no legal necessity

[55] Galman v. Pamaran, et al., G.R. No. 71208-09, 138 SCRA 294; People v. Sandiganbayan, et al., G.R. No. 71212-13, 138 SCRA 294.

or obligation to apprise these witnesses of rights available to a suspect under custodial interrogation; nor had their right against self-incrimination been abridged because they had not demurred to any questions put to them, though they were represented by counsel, and such rights, as far as an ordinary witness is concerned, could be invoked only when a question deemed to be incriminatory was asked. The decision of a divided Court affirmed that the testimony in question had been correctly excluded from the murder trial blurred the otherwise clear distinctions between the right against self-incrimination available to every witness in any judicial or quasi-judicial proceeding, civil or criminal,[56] and the right of an accused or suspected person to remain silent at his trial,[57] or while under custodial interrogation.[58] More importantly, it added a new dimension to the *Miranda* doctrine and carried it into a gray area of undefined boundaries. So far has *Miranda* been subverted — I would hesitate to say, perverted — that conceivably it may now be argued that a person who testifies in a fact-finding inquiry is entitled to the Miranda advisories, in addition to having the right to refuse to answer questions that may incriminate him.

VII. CONTRASTING COURSE OF MIRANDA IN THE UNITED STATES

The trend in the Philippines toward erecting a thicket of rights about a suspect during an in-custody investigation is the antithesis of that which has prevailed in the United States ever since *Miranda* was announced. *Miranda* had, in fact, sharply divided the United States Supreme Court, and the dissenting members had criticized the majority opinion as poor constitutional law.

Trend Towards Restriction and Eventual Abandonment

Commentators and observers have put it that the American Supreme Court itself began moving away from *Miranda* almost as soon as it was promulgated. The debate, the dissent, the criticism and ambivalent reactions that it has sparked have not yet subsided and, indeed, even appear to be growing. And a survey of the cases since decided on the subject show a clear and continuing tendency to dilute, weaken or limit the doctrine, rather than fortify, enlarge or expand it.

Barely a week after *Miranda* was promulgated, the same Supreme Court handed down its decision in *Johnson v. New Jersey*,[59] limiting the retroactivity of the *Miranda* sanctions to trials begun after June 13, 1966.

In *Harris v. New York*,[60] it was ruled that the prosecution could use statements obtained in violation of *Miranda* warnings to impeach the de-

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56 PHIL. CONST. art. IV, §20.
57 RULES OF COURT, RULE 115 §1 (e)
58 PHIL. CONST. art. IV, §20.
59 384 U.S. 719.
60 401 U.S. 222 (1971).

fendant's testimony at trial, a holding later affirmed in *Oregon v. Hass*,[61] decided in 1975.

Michigan v. Tucker[62] has been considered in some quarters as having "x x x all but overruled Miranda," though this is probably a "worst-case" scenario and an exaggeration. The main ruling in that case is that the *Miranda* provisions are "prophylactic standards" developed to protect rights under the Fifth Amendment, and the required warnings are procedural safeguards, but not themselves guaranteed by the U.S. Constitution. Accordingly, while the Court excluded statements of a defendant to the police elicited in violation of the *Miranda* rules, it authorized admission of statements incriminating the defendant made by a witness whose name had been furnished by the defendant during interrogation to support an alleged alibi, thereby refusing to apply to the case the "fruit of the poisonous tree" doctrine outlawing evidence obtained through illegal police activity.[63] This doctrine had been established and traditionally applied in cases involving violations of the Fourth Amendment of the United States Constitution on illegal searches and seizures, and as developed in the cases referred to, held that evidence—whether it consisted of tangible things or of verbal statements—directly seized or indirectly taken in the course of an illegal search could not be received in evidence against the victim of the search. In *Tucker,* although there was a clear analogy between an illegal search and a police investigation without, or with defective, Miranda warnings, the Federal Supreme Court, as noted, made the distinction that while the former abridged a constitutional privilege, the latter did not.

Michigan v. Mosely,[64] addressed itself to the problem of if and when interrogation may resume after a defendant had exercised his right to remain silent, as to which *Miranda* had provided no clear guidelines. Mosely had been arrested in connection with certain robberies and had chosen to remain silent after the investigating officer had read him his *Miranda* rights. Interrogation had forthwith ceased and he had been taken to a cell. More than two hours later, another police officer took Mosely to another place in the building and, after properly warning him about his rights, questioned him concerning an unrelated holdup murder and obtained an incriminating statement, Mosely not having indicated that he wished to remain silent or wanted to consult with a lawyer. Mosely moved to suppress said statement at the murder trial on the ground that *Miranda* rules prohibited the second questioning about the murder after he had refused to answer the first officer's questions about the robberies. The Supreme Court, ruling against Mosely, held that in the circumstances stated, Miranda neither

[61] 420 U.S. 741 (1975).
[62] 417 U.S. 433.
[63] Boyd v. U.S., 116 U.S. 616; Weeks v. U.S. 323 U.S. 383; Wong Sun v. U.S., 371 U.S. 471.
[64] 423 U.S. 96.

indefinitely proscribed nor imposed a blanket prohibition on further questioning, nor permitted a resumption of questioning after a momentary cassation, and that the admissibility of incriminating statements obtained after a person in custody had initially decided to remain silent depended on whether his right to cut off questioning had been scrupulously honored.

Beckwith v. U.S.[65] refused to apply *Miranda* requirements to questioning under noncustodial circumstances; as did *Oregon v. Mathiason*,[66] where it was held that since the defendant, though invited to the station-house, was told that he was not under arrest and was free to leave, he was not in truth in custody and the *Miranda* warnings were not necessary, the Court stating that while almost all police questioning has an element of coerciveness, coercive atmosphere alone does not determine the issue of custody.

In *Brewer v. Williams*,[67] the Court avoided reliance on *Miranda* by ruling to exclude a defendant's incriminating declarations on the basis, not of the Fifth Amendment right to silence, as argued by him, but of the Sixth Amendment right to counsel.

In *Fare v. Michael C.*,[68] the Court held that a request to see a probation officer is not equivalent to a request to see a lawyer, as far as the *Miranda* rule was concerned; and in *Minnesota v. Murphy*,[69] it refused to extend *Miranda* requirements to interviews with probation officers.

New York v. Quarles[70] decided in 1984, is in the opinion of some "the most radical and blatant departure" from *Miranda*. Quarles had been apprehended in the middle of the night in an empty supermarket following a woman's report that she had just been raped by a man who had then entered the supermarket carrying a gun. Upon being handcuffed and searched, an empty holster was found on his person, and when one of the police officers asked him, "Where is the gun?" he nodded toward some empty cartons a few feet away and answered, "The gun is over there." The officer then retrieved the gun, formally placed Quarles under arrest, and read him his *Miranda* rights. Quarles indicated that he would answer questions without a lawyer and admitted ownership of the gun. As it was clear that Quarles had been questioned while he was in custody and before he had been given the required pre-interrogation warnings, lower courts ruled to suppress his statement and the gun, as well as the statements given by Quarles only minutes later, as having been tainted by the same defect inhering in his pre-warning statement as to the location of the gun and its seizure. On certiorari, the Supreme Court reversed and held that on the facts, there

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[65] 425 U.S. 341 (1976).
[66] 429 U.S. 711 (1977).
[67] 430 U.S. 387 (1977).
[68] 442 U.S. 707 (1979).
[69] 104 S. Ct. 1136 (1984).
[70] 104 S. Ct. 2626 (1984).

was a public safety exception to the Miranda pre-interrogation warnings and that overriding considerations of public safety justified the police officer's failure to give those warnings before asking questions directed towards locating the abandoned weapon.

VIII. REASSESSMENT OF MIRANDA

We see how divergent have been the paths taken by developing legal thought in the United States and in the Philippines in approaching the subject of the constitutional rights of silence and to counsel as these were significantly affected by *Miranda.* In contrast to the continuing trend in the very jurisdiction that produced *Miranda,* towards limitation and narrowing, if not abridgement and eventual abandonment of its ruling, there is, in the venue of its adoption, a steady progress towards its enlargement and expansion and the proliferation and amplification of the constitutionally-derived rights that it is supposed to encompass. The suggestion has been made that we pause to reassess the wisdom of such a course on the basis of some important considerations:

Miranda Never Meant to be Immutable

The *Miranda* safeguards were never intended to be immutable rules. The Warren majority frankly conceded that other equally effective alternatives to what was prescribed may be discovered or devised, and pointedly encouraged Congress and the States to continue their search for such alternatives. One suggestion has been the adoption of new techniques of supervision, combining electronic listening and recording devices with judicial visitation of interrogation venues to insure close monitoring of the investigative process and adequate and effective protection of suspects under questioning.[71]

Theory Prejudice to Fair Police Work

A recurring criticism against the *Miranda* rules is that, on the one hand, they have been prejudicial to fair and honest police work and, on the other, they pose no deterrent to unscrupulous police officers. As Justice Harlan pointed out in his dissent, "* * * The new rules are not designed to guard against police brutality or other unmistakably banned forms of coercion. Those who use third degree tactics and deny them in court are equally able and destined to lie as skillfully about warnings and waivers. Rather, the thrust of the new rules is to negate all pressures, to reinforce the nervous or ignorant suspect, and ultimately to discourage any confession at all. The aim in short is toward 'voluntariness' in a utopian sense, or to view it from a different angle, voluntariness with a vengeance.

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[71] Gorecki, Miranda and Beyond — The Firth Amendment Reconsidered, 3 U. FLA. L. REV. 295 (1975).

No Absolutes in Law

There are no absolutes in law. Law and doctrine are always to be applied, having in mind the reason for them. Mechanical, unreasoning and indiscriminate application, particularly of new doctrine, may lead to grievous errors and great mischief. The decision in the Ver exclusion proceedings is a case in point. At the least, there may be need, on an appropriate occasion, to renounce the clearly erroneous pronouncements made therein or declare that they do not constitute binding precedent.

Logical Untenability of Application to Persons at Home in "Police-Dominated Atmosphere"

Miranda represents an attempt to provide an antidote to the inherently coercive and intimidating influence that custodial interrogation in a "police-dominated atmosphere" exerts on a suspect's mind and will. Swept from familiar surroundings into the hostile and vaguely menacing climate of a police precinct or station-house, with no one to turn to for comfort or reassurance, a suspect is often led to make statements he would not make under normal circumstances, often simply to please his captors. This is particularly true of suspects who are young, uneducated and underprivileged. While we know nothing of the personal circumstances of Ernesto Miranda and cannot, therefore, hazard a guess as to the extent to which they may have influenced the rules which bear his name, we at least know that the Danny Escobedo of the earlier *Escobedo* case was a 22-year-old Mexican who had had on previous brushes with the police. The fact, however, that that *Miranda* rules find a particular relevance in the case of the young, illiterate, and inexperienced suspect conduces to recognition of exceptions or restrictions in their application. Since the avowed rationale of Miranda is to counteract the intimidating influence of a police-dominated atmosphere in the interrogation process, it should follow that as regards persons who cannot possibly be thus affected, the *Miranda* rules should not apply.

Many such exceptions can, indeed, be envisioned, where the suspects are so circumstanced that they would not in the least be discomfited by arrest and interrogation: the hardened criminal, for example, for whom the police precinct holds no surprises or unknown terrors; the police officer accused by a citizen, to whom the precinct is familiar territory and the investigating officers his friends and brothers-in-arms; the city mayor or official, whose position is his shield against police abuse or misconduct and is therefore, not cowed by the prospect of interrogation; the politician, who relies on his clout to get him fair and respectful treatment from the police. It would be naive to believe that any of these would need the protection of *Miranda*, and to suspect the voluntariness of any confession they might give without the Miranda pre-interrogation warnings. "Cessante ratione legis,

cessat ipsa lex."[72] The law should no longer command obedience when the reason for it ceases to exist.

Logical Untenability of Application to Persons Already Familiar with Specific Rights

Again, if the purpose of *Miranda* is to make the suspect aware of certain rights during the custodial interrogation — precisely to preclude his being intimidated into making statements he would not otherwise make — it would also follow that it should not apply to the knowledgeable suspect, who is fully aware of his rights and may be more familiar with them than the investigating officers themselves: a judge, a professor of law, a reporter on the police beat, an instructor in a police academy, to mention some examples. And it may be well to observe in his connection that the more intelligent the suspect, the more likely he is to confess, having a more developed conscience and a greater consciousness of moral and ethical principles, so true it is that "conscience make(s) cowards of us all." In cases like these, it would be absurd to require a ritualistic reading of the suspect's rights.

Voluntariness: True Test of Extrajudicial Confessions

The true test of admissibility of an extrajudicial confession is voluntariness. It should be self-evident that the mere absence of *Miranda* warnings does not necessarily render a confession involuntary, any more than giving such warnings necessarily guarantees that it is freely made. Nor does apparent voluntariness afford complete assurance of the truth of what is confessed, truth, in fact, being the ultimate purpose for requiring that extrajudicial confessions, to be admissible, must be voluntary. The recorded case of Timothy John Evans of Wales, for instance, chronicles how the man had confessed, not once but four times, to the murder of his wife, and had been executed for it, only for the authorities to discover, years later, that the murder and six others had been committed by another. It is arguable, therefore, that the "totality of circumstances" test, whatever its shortcomings, provides a more reliable standard of voluntariness than warnings reducible to written formulas that sooner or later degenerate into rote. In fact, one view of *Michigan v. Tucker*[73] is that it holds defective *Miranda* warnings as merely one factor in a "totality of circumstances" determination of whether the right to silence has been violated. It is a view which we can interpret as heralding an eventual return in American doctrine to the "totality of circumstances" standard of voluntariness.

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[72] People v. Almuete, G.R. No. 26551, 69 SCRA 410.
[73] *Supra.*

Confession an Eminently Human Phenomenon

What seems to have been overlooked is that confession is an eminently natural, human phenomenon. It fulfills a human need to ease the burden of guilt and restore peace to a spirit troubled by remorse. Throughout history, prophets and teachers, poets and sages, have written about its salutary effects. "A fault confessed is half redressed," "A sin confessed is half forgiven." "Open confession is good for the soul." In a more relevant context, American peace officers have gone on record as citing among the operative factors leading to confessions, sense of guilt, remorse and the satisfaction of conscience, as well as hope to lessen punishment. One police chief has been quoted as referring to "the good old theory" that confession is good for the soul. We should not close our eyes, therefore, to the possibility that a confession may be truthful and voluntary even if a reading of the rights of the confessant is absent or flawed.

From a practical standpoint, it is undeniable that confessions are a legitimate and valuable aid to the solution of crime. Very often, crimes are solved only through the confession of suspects and additional evidence necessary for a conviction is obtained only through their revelations. One has but to browse through the Supreme Court reports to realize the high incidence of cases where confessions are important, if not crucial, parts of the evidence for the prosecution. Justice Harlan's dissent in *Miranda* foresaw the withering away of confessions as a consequence of the rules prescribed therein. The reason is more clearly explained in one writer's observations. He said:

> "If faithfully implemented, the dictates of *Miranda* can only result in the virtual disappearance of confessions. Although a suspect may confess when confronted by the police with conclusive evidence gathered beforehand, the confessions would be useless. A confession has value only if its absence makes collecting other incriminating evidence difficult or impossible. Miranda, if fully implemented, will enable the suspect to understand this situation. Thus, whenever a confession is of value he will not confess unless he wants to do so, irrespective of the consequences."[74]

Perfect Reading of Rights, No Guarantee of Trustworthiness

A perfect and comprehensive reading of rights and warnings to a suspect is no guarantee that any confession he may give will be true and voluntary. Soon, police officers will formulate ritualistic statements, or a series of interrogative statements, to be put to suspects, embodying each and every one of the rights flowing from or corollary to the rights of silence and to counsel as provided in the Constitution and interpreted by the Supreme Court. However complete and comprehensive these statements

[74] Gorecki, *supra.*

will be, in the nature of things they furnish no assurance that any statement thereafter given will be voluntary.

Indispensable Judicial Function to Determine Voluntariness of Confessions

Even if a confession is found admissible under present Miranda-derived standards, it is still incumbent upon the court to assess its worth in the light of what it contains and the other evidence presented by the prosecution as well as the defense. *Miranda,* therefore, does not save too much time or make it appreciably easier for the courts than the "totality of circumstances" test.

What is important, in the final analysis, is striking a just balance between protection of the rights of the accused and the undoubted public interest in efficient law enforcement and the punishment and repression of crime. In this context, what appears to be the undue emphasis being laid on the former to the inevitable detriment of the latter, merits serious and thoughtful study.

There may be one disquieting consideration, however. The decision in *Michigan v. Tucker,* where the United States Supreme Court declared the *Miranda* warnings to be "prophylactic standards" or procedural safeguards and not in themselves constitutional guarantees, suggests that we may have painted ourselves into a corner when we wrote *Miranda* into our Constitution. We may have forfeited the judicial option that was taken by the United States Supreme Court in *Tucker* and other cases to limit or restrict Miranda, and made any retreat from our own *Miranda*-derived standards possible only through constitutional amendment.

IX. Conclusion

There is, therefore, every reason to make haste slowly, as the saying goes. The libertarian zeal which thus far appears to have shaped and dominated our approach to these constitutional rights as they have been affected by *Miranda* is wholly praiseworthy. But it should not blind us to the fact that legal doctrine cannot be the product, or the answer to, transient causes or fleeting prejudices. Rather, to be enduring, it must pass the test of long and careful study in the light of both past knowledge and experience and thoughtful projections of the probable effects of its application over the long run.

I have tried to approach the subjects of this brief inquiry as objectively as possible. If it has nonetheless made certain conclusions obvious, it is only because the plain facts make them so, regardless of my own personal views. My main concern is to encourage interest in, and reflection on, the

future course of jurisprudence and/or legislation on the rights referred to, because they affect so intimately and importantly, not only the lives and security of individual citizens, but also the indubitable public interest in the effective administration of criminal justice.