THE RIGHT TO COUNSEL IN CUSTODIAL INTERROGATIONS

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The role of counsel in police custodial interrogations has assumed a critical and larger importance because of the recognition that after an accused, who is unaided, has given a statement to the police, the ensuing trial is little more than an appeal from interrogation. One can then imagine a cynical prosecutor saying: "Let him have the most illustrious counsel, now. There is nothing that counsel can do for him at trial."

I. Right to Counsel Was Developed as Part of Protection Against Involuntary Confessions

Act No. 619

Since the introduction of the American accusatorial system of criminal procedure in the Philippines, the rule has been that involuntary confessions are inadmissible in evidence against the accused. The converse is true: The declaration of an accused expressly acknowledging his guilt of the offense charged is admissible in evidence against him.[1]

The question is on whom the burden of proof is placed. The early rule placed the burden of proving that the confession was voluntary and, therefore, admissible in evidence, on the prosecution. Thus, section 4 of Act No. 619 provided that "no confession of any person charged with crime shall be received in evidence against him by any court of justice unless it be first shown to the satisfaction of the court that it was freely and voluntarily made and not the result of violence, intimidation, threat, menace, or promise or offer of reward or leniency." It was held that a confession not shown to have been voluntarily given could be objected to at any stage of the proceedings, even for the first time on appeal in the Supreme Court.[2]

Act No. 619 was later repealed by the Administrative Code of 1916. The new rule placed the burden of proof on the accused to show that his confession was involuntary. Under the new rule, it was sufficient that the confession was given under conditions which accredit prima facie its admissibility, leaving it to the accused to show that it was obtained by undue pressure.[3]

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1 United States v. Pascual, 2 Phil. 457 (1903).

2 *Id.*

3 United States v. Zara, 42 Phil. 308 (1921); United States v. De los Santos, 24 Phil. 329 (1913).

A further change in the rule took place in 1953 when, in *People v. De los Santos,*[4] the Supreme Court held that "A confession, to be repudiated, must not only be proved to have been obtained by force and violence, but also that it is false or untrue, for the law rejects the confession when, by force or violence or intimidation, the accused is compelled against his will to tell a falsehood, not even when by such force and violence he is compelled to tell the truth." The rule announced was greatly influenced by the Court's earlier rejection of the exclusionary rule in the case of illegally-obtained evidence.[5] As the later case of *People v. Villanueva*[6] stated, "the admissibility of that kind of evidence [the confession] depends not on the supposed illegal manner in which it is obtained but on the truth or falsity of the facts or admission contained therein."

The Effect of the Exclusionary Rule in Search and Seizure Cases

The adoption in 1967 of the exclusionary rule in search and seizure cases[7] worked a parallel development in the law of confession. Without expressly overruling its decision in *De los Santos* and *Villanueva,* the Court, in *People v. Urro,*[8] went back to the former rule that involuntary or coerced confessions, regardless of their truth, are null and void. Said the Court:[9]

> It is established doctrine that the confession or "declaration of an accused expressly acknowledging his guilt of the offense charged" may be given in evidence against him, where it is *voluntary.* [Rule 130, section 29] *Involuntary* or *coerced* confessions obtained by force or intimidation are *null and void* and are abhorred by the law, which proscribes the use of such cruel and inhuman methods to secure a confession. A coerced confession "stands discredited in the eyes of the law and is as a thing that never existed." [U.S. v. De los Santos, 24 Phil. 329; People v. Nishisima, 57 Phil. 26.]

Indeed, in the United States it is said that an "unconstitutional coercion will render inadmissible even the most unquestionably true inculpatory statements."[10] As Justice Frankfurter explained in *Rogers v. Richmond*:[11]

> . . . [C]onvictions following the admission into evidence of confessions which are involuntary, *i.e.,* the product of coercion, either physical or psychological, cannot stand. This is not because such confessions are unlikely to be true but because the methods used to extract them offend an underlying principle in the enforcement of our criminal law: that ours is an accusatorial and not an inquisitorial system — a system in which the

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[4] 93 Phil. 83, 92-93 (1953).

[5] Moncado v. People's Court, 80 Phil. 1 (1948) (The illegality of the means used in obtaining evidence does not affect its admissibility).

[6] 98 Phil. 327, 335 (1956).

[7] See Stonehill v. Diokno, L-19550, June 19, 1967, 20 SCRA 383, *overruling* Moncado v. People's Court, *supra* note 5; Bache & Co. (Phil.) v. Ruiz, L-32409, Feb. 27, 1971, 37 SCRA 823.

[8] 44 SCRA 473 (1972).

[9] *Id.* at 484.

[10] J. MAGUIRE, EVIDENCE OF GUILT 127 (1959).

[11] 365 U.S. 534, 540-41 (1961).

> State must establish guilt by evidence independently and freely secured and may not by coercion prove its charge against an accused out of his own mouth. . . . To be sure, confessions cruelly extorted may be and may have been to an unascertained extent found to be untrustworthy. But the constitutional principle of excluding confessions that are not voluntary does rest on this consideration. Indeed, in many of the cases in which the command of the Due Process Clause has compelled us to reverse state convictions involving the use of confessions obtained by impermissible methods, independent corroborating evidence left little doubt of the truth of what the defendant had confessed.

The Miranda Rule

Meanwhile, the U.S. Supreme Court held in *Miranda v. Arizona*:[12]

> 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 to custody or otherwise deprived of his freedom of action in any significant way. As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statements he does make may be used in evidence against him and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of 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. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him.

This case spurred defense lawyers in the Philippines to invoke a similar protection for their clients.[13] As a matter of practice, law enforcement officers had been giving warnings of the privilege against self-incrimination and of the consequence of foregoing the privilege in police interrogations. But the provision for counsel was something new. In *People v. Jose,*[14] and again, in *People v. Paras,*[15] the Philippine Supreme Court rejected the *Miranda* rule on the ground that under the Rules of Court the right to counsel could be availed of at the earliest only at the stage of arraignment. This ruling, of course, misconceived the basis of *Miranda v. Arizona.* For the basis of the *Miranda* requirement of counsel was not the Sixth Amendment Right to Counsel, which is the counterpart of Art. III, sec. 14(2) of our Constitu-

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[12] 384 U.S. 436 (1966).

[13] See the questions and answers during the open forum following Justice Castro's lecture on *Challenging Judicial Precedents,* in LAW PRACTICE FOR THE SENIOR LAWYERS 51, 85-88 (1969).

[14] 37 SCRA 450 (1971) (forcible abduction with rape).

[15] 56 SCRA 248 (1974) (kidnapping for ransom with murder).

tion. Rather it was the Fifth Amendment Self Incrimination Clause, or what is Art. III, sec. 17 of our Constitution.

The 1973 and 1987 Constitutions

But the proponents of the *Miranda* rule won in the Constitutional Convention of 1971 what they could not get from the courts. The effectivity of the 1973 Constitution ushered in a new rule of admissibility of confessions. Art. IV, sec. 20 provided:

> No person shall be compelled to be a 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 the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence.

The 1987 Constitution now provides in Art. III, sec. 12:

> (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.
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> (2) No torture, force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Secret detention places, solitary, *incommunicado*, or other similar forms of detention are prohibited.
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> (3) Any confession or admission obtained in violation of this or Section 17 shall be inadmissible in evidence against him.
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> (4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families.

II. IN TURN MIRANDA WARNINGS WERE DEVISED AS MEANS OF SECURING THE RIGHT TO COUNSEL

The Rationale

Miranda v. Arizona requires certain warnings to be given by police interrogators before a person in custody may be interrogated. These warnings have been adopted by the Philippine Supreme Court.[16] They are as follows:

First, the person in custody must be informed in clear and unequivocal terms that he has a right to remain silent. The purpose is to apprise him of his privilege not to be compelled to incriminate himself, to overcome the inherent pressures of the interrogation atmosphere, and to assure the

[16] People v. Duero, 104 SCRA 379 (1981); People v. Decierdo, G.R. No. L-46956, May 7, 1987.

individual that his interrogators are prepared to recognize his privilege should he choose to exercise it.

Second, the person in custody must be warned that anything he will say can and *will* be used in court against him. This warning is intended to make him aware not only of the privilege but also of the consequences of foregoing it. For this reason, the previous practice of warning the individual under custody that anything he will say *may* be used against him in court no longer suffices.

Third, since the circumstances surrounding in-custody interrogation can operate very quickly to overbear the will of one merely made aware of his privilege by his interrogators, it is indispensable that he has the assistance of counsel.

The requirement to give warnings constitutes a radical departure from the prevailing rule that if there is no evidence that a confession has been made involuntarily it is admissible whether or not made with caution that the confessor need not talk and that if he does what he says will be used against him.[17]

The Custodial Phase of Investigation

At what stage of the police interrogation must the warnings be given? To be sure, the Constitution does not state at what stage of the interrogation process they must be made. It simply says that "any person under investigation for the commission of an offense" must be given the warnings. But in *Miranda,* from which we derived our constitutional provision, the Court specified that it is only at the custodial phase of the interrogation — the stage after a person is taken into custody or otherwise deprived of freedom of action in a significant way — that its ruling applied. As the Court indicated in the earlier case of *Escobedo v. Illinois,*[18] it is only after the investigation ceases to be a general inquiry into an unsolved crime and begins to focus on a particular suspect, the suspect is taken into custody, and the police carries out a process of interrogation that leads itself to eliciting incriminating statements that the rule begins to operate.

In *Gamboa v. Cruz*[19] the accused was arrested, without a warrant, for vagrancy. The arrest took place on July 19, 1979 at 7 A.M. He was taken to Police Precinct No. 2 in Manila. The next day, he was included in a police line-up of five detainees and was pointed to by the complainant as a companion of the main suspect, on the basis of which the accused was ordered to stay and sit in front of the complainant, while the latter was interrogated. The accused was thereafter charged with robbery. After the prosecution had rested, the accused moved to dismiss the case against him on the ground that he had been denied the assistance of counsel during the

[17] United States v. Agatea, 40 Phil. 596 (1919).
[18] 378 U.S. 473 (1964).
[19] G.R. No. 56291, June 27, 1988.

line-up. However, his motion was denied. He then filed a petition for certiorari.

The Supreme Court 12 to 3 dismissed the petition. The majority opinion of Justice Padilla stated that the right to counsel attaches only upon the start of an investigation, when the police officer starts to ask questions designed to elicit information and/or confessions or admissions from the accused. As the police line-up in this case was not a part of the custodial inquest, the petitioner was not entitled to counsel, according to the majority.

Chief Justice Yap dissented, contending that the investigation had commenced the moment the accused was taken from the police line-up and made to sit in front of the complainant, while the latter made a statement to the police. The right to counsel must be afforded the accused the moment he is under custodial investigation and not only when a confession is being exacted from him, he argued.

Justice Sarmiento, joined by Justice Gancayco, also dissented. He pointed out that the accused was in custody so that his confrontation with the complainant became adversarial and not informational. He said that while a police line-up is not per se so critical because in most cases it is merely part of evidence-gathering process, in this case the fact that the accused stood charged with an offense (vagrancy) and had been detained made the case different.

On the other hand, Justice Cruz concurred in a separate opinion, pointing out the lack of showing that improper suggestions had been made by the police to influence the witnesses in the identification of the accused.

III. WAIVER OF RIGHTS

It is important to distinguish between the waiver of rights and the waiver of warnings. The first can be made provided the waiver is "voluntary, knowing and intelligent" but the second cannot. As the warnings are the means of insuring that the suspect is apprised of his rights so that any subsequent waiver of his rights can be "voluntary, knowing and intelligent," it is obvious that there can be no valid waiver of the warnings. A waiver of rights will not be presumed.

With respect to the waiver of the rights of silence and of counsel, the decisions of the Philippine Supreme Court reveal two distinct approaches to the question of voluntariness. One approach considers the totality of the circumstances under which the person under custody was informed of his rights. Thus, in *People v. Nicandro*,[20] the Court reversed a conviction for selling marijuana cigarettes after finding that appellant's statement, given during custodial investigation, was involuntary. The opinion of the Court,

[20] 141 SCRA 289 (1986).

written by Justice Plana, stressed the duty of police interrogators to give "meaningful information rather than just the ceremonial and perfunctory recitation of an abstract constitutional principle" to the person under investigation. [The interrogator] is not only duty bound to tell the person the rights to which the latter is entitled; he must also explain their effects in practical terms, *e.g.*, what the person under interrogation may or may not do, and in a language the subject fairly understands. . . . [W]here the right has not been adequately explained and there are serious doubts as to whether the person interrogated knew and understood his relevant constitutional rights when he answered the questions, it is idle to talk of waiver of rights." In this case, the Court said, "what specific rights [Pat. Joves] mentioned to appellant, he did not say. Neither did he state the manner in which the appellant was advised of her constitutional rights so as to make her understand them."

The ruling in *Nicandro* was reiterated in *People v. Duhan*[21] in which the Court again reversed a conviction, also for selling marijuana leaves and cigarretes. The appellants were rounded up in a police "saturation drive" against dope pushers in Ermita, Manila. Their conviction rested on an entry in the Booking and Information Sheet of the police, stating: "Accused, after being informed of his constitutional right to remain silent and to counsel, readily admitted his guilt but refused to give any written statement." The Court held it was error to admit the Booking and Information Sheets in view of the denial of the appellants that they had ever verbally made confessions.

On the other hand, in *People v. Poyos*,[22] the Court ruled that the interrogator had failed to give a meaningful warning to the appellant where the interrogator merely said that the appellant had a right "to hire a lawyer of your own choice" and then asked him whether he agreed "to continue this investigation even if for a moment you have no lawyer to help you." The Court said:

> It is doubtful, given the tenor of the question, whether there was a definite waiver by the suspect of his right to counsel. His answer was categorical enough to be sure, but the question itself was not as it spoke of a waiver only "for the moment." As worded, the question suggested a tentativeness that belied the suspect's supposed permanent foregoing of his right to counsel, if indeed there was any waiver at all. Moreover, he was told that he could "hire a lawyer" but not that one could be provided for him for free.

Similarly, it was held in *People v. Lasac*,[23] that the warning given to the accused, that he had a right not to make any statement and to have counsel of his own choice, did not satisfy the requirements of art. IV, sec. 20

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[21] 142 SCRA 100 (1986).
[22] 143 SCRA (1986).
[23] 148 SCRA (1987).

of the 1973 Constitution. The Court held that while he was informed of his right to remain silent, he was not told that anything he might say could and would be used against him and that, if he was indigent, counsel would be appointed for him. Furthermore, he was not made to understand that if at any time during the interrogation he wished the assistance of counsel, the interrogation would cease until an attorney was present. Accordingly, the Court reversed the appellant's conviction for parricide.

In *People v. Jara,*[24] the Court held that the presumption is against the waiver of rights and, therefore, the prosecution must prove "with strongly convincing evidence . . . that the accused willingly and voluntarily submitted his confession." It rejected the appellants' confessions which, although showing that the Miranda warnings had been given, contained nothing but the curt answers "Opo" or "Yes, sir" of the appellants. Through Justice Gutierrez, the Court said:

> This stereotyped "advice" appearing in practically all extrajudicial confessions which are later repudiated has assumed the nature of a "legal form" or model. Police investigators tither automatically type it together with "Opo" as the answer or ask the accused to sign it or even copy it in their handwriting. Its tired, punctiious, fixed, and artificially stately style does not create an impression of voluntariness or even understanding on the part of the accused. The showing or a spontaneous, free and unconstrained giving up of a right is missing.

Accordingly, it set aside the conviction of the appellants who had been found guilty of robbery with homicide as there was no other evidence against them.

But in *People v. Polo,*[25] even though the waiver was couched in similar fashion, and the answers of the appellant to the questions were simply "Opo" ("Yes, sir"), the Court, through Justice Paras, held that the appellant had been "fully apprised of his constitutional rights under custodial interrogation and the consequences of his waiver of said rights." The Court did not mention its decision in *Jara,* although Justice Padilla said in a concurring opinion that whether the waiver is voluntary or not should turn on the facts of each case, *i.e.,* whether the appellant was illiterate. However, there is nothing in the main opinion or in the concurring opinion to distinguish this case from the *Jara* case. Justice Gutierrez, who wrote the Court's opinion in *Jara,* merely said he concurred in the opinion of Justice Paras for the Court and the observation of Justice Padilla.

On the other hand, in *People v. Ochavido*[26] the Court found substantial compliance with the requirements of Art. IV, Sec. 20 of the 1973 Constitution. The appellants, who were inmates of the National Penitentiary, signed extrajudicial confessions admitting that they had stabbed to death another

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[24] 144 SCRA 516 (1986).
[25] 147 SCRA 551 (1987).
[26] 142 SCRA 193 (1986).

inmate on January 1, 1973 inside the penitentiary. The confessions were given after the appellants had been informed of their rights by the prison guard, after which the confessions were ratified by them before the provincial fiscal. "There was . . . a substantial compliance with the *Miranda* provision of the fundamental law then in force," according to Justice Abad Santos who wrote for the Court.

In all these case, the Court appraised the circumstances under which the waivers were made to determine whether they were voluntary. But, on March 20, 1985, in *People v. Galit*,[27] the Court, drawing on what it had said by way of dictum in another case, *Morales v. Ponce Enrile*,[28] stated also by way of dictum: "No custodial investigation shall be conducted unless in the presence of counsel engaged by the person arrested, or by any person on his behalf, or appointed by the Court upon petition either of the detainee himself or of anyone on his behalf. The right to counsel may be waived but the waiver shall not be valid unless made with the assistance of counsel. Any statement obtained in violation of this procedure, whether exculpatory or inculpatory, in whole or in part, shall be inadmissible in evidence."

In 1986, in *People v. Sison*,[29] the government appealed from an order excluding a confession on the ground that the accused had not been assisted by counsel in waiving his right. The government argued that the statement in *Morales* was merely dictum. The Court rejected the government's plea. Instead, it ruled that *People v. Galit* had "put to rest all doubts regarding the ruling in *Morales v. Enrile* and *Moncupa v. Enrile* cases." Accordingly, it upheld the trial court's ruling, rejecting the extrajudicial confession of a member of the New People's Army, charged with subversion, on the ground that the confession was given without the aid of counsel.

The Court thus adopted a flat rule of judicial administration: No extrajudicial confession given without the assistance of counsel is admissible even if the accused has been informed of his rights to silence and to counsel, unless he was assisted by counsel at the beginning in waiving those rights. In *People v. Nabaluna*,[30] the Court gave the new rule a prospective effect only, that is, applying it merely to cases decided by trial courts after March 20, 1985. That the *Galit* rule is not retroactive is also the implication of Chief Justice Teehankee's separate opinion in *People v. Ochavido*,[31] in which he said that although "the prevailing rule was that announced in *People v. Galit*, 134 SCRA 465 (1985) to the effect that waivers of the right to counsel by persons under custodial interrogation require the assistance of counsel, . . . this was not in issue in this case," apparently because the confession there had been made in 1978.[32]

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[27] 135 SCRA 465 (1985).
[28] 121 SCRA 538 (1983).
[29] 142 SCRA 219 (1986).
[30] 143 SCRA 446 (1986).
[31] *Supra* note 26.
[32] For a critique of the *Galit* rule, see Mendoza, *Law, Politics, and a Changing Court — The Fateful Years 1985-1986*, 61 PHIL. L. J. 1 (1986).

The matter was settled with the adoption of the 1987 Constitution. Art. III, Sec. 12(1) now provides:

> Any person under investigation for the commission of an offense shall have a right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. It the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

The requirement that the waiver must be in writing is an additional requirement.

How do we summarize the different rules announced in the cases? I believe they may be restated as follows:

First, with respect to confessions obtained before January 17, 1973, the rule that the suspect must be warned that he has a right to remain silent and to have the assistance of counsel does not apply. Such confessions, even though presented in evidence in a trial after the effectivity of the 1973 Constitution, are admissible, provided they are voluntary, using the traditional test of voluntariness.

Second, with respect to confessions obtained after January 17, 1973 but before March 20, 1985, when the decision in *People v. Galit*[33] was handed down, the rule is that the voluntariness of a waiver of the rights to silence and to counsel must be determined on a case-to-case basis, taking into account the circumstances under which the waiver was made.

Third, with regard to confessions obtained after March 20, 1985 but before February 2, 1987, when the present Constitution took effect, the rule is that a waiver of the rights to remain silent and to the assistance of counsel, to be valid, must be made with the assistance of counsel.

Fourth, with regard to confessions given after February 2, 1987, the present Constitution requires that the waiver, to be valid, must be in writing and with the assistance of counsel.

IV. THE EXCLUSIONARY RULE

The Inadmissibility of Uncounselled Statements

The Constitution states that "Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him."[34] Thus, no distinction is made between confession or admission. Any uncounselled statement is, by this provision, rendered inadmissible in evidence. Although the previous Constitution spoke of confessions only, I

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[33] *Supra* note 27.
[34] Art. III, sec. 12(3).

have argued elsewhere that it was not so limited but that it also embraced uncounselled statements.[35] For as the U.S. Supreme Court explained in *Miranda,* from which Art. IV, sec. 20 was taken, "If a statement made were in fact exculpatory, it could . . . , never be used by the prosecution. In fact, statements merely intended to be exculpatory by the defendant are often used to impeach his testimony at trial or to demonstrate untruths in the statement given under interrogation and thus to prove guilt by implication."

Exceptions to the Exclusionary Rule

The exclusionary rule implementing the *Miranda* rule bears comparison with the exclusionary rule in case of illegal searches and seizures. The latter rule states: "Any evidence obtained in violation of this or the preceding section shall be inadmissible *for any purpose in any proceeding.*"[36] The phrase "for any purpose in any proceeding" conveys the idea that the rule excluding evidence illegally obtained is absolute. No similar phraseology is used in the exclusionary rule implementing the *Miranda* rule. Does this mean there can be instances where uncounselled statements may nevertheless be admissible in evidence, albeit for a limited purpose?

In *Harris v. New York,*[37] it was held that although a confession obtained without complying with the *Miranda* rule was inadmissible for the purpose of establishing in chief the confessor's guilt, it may nevertheless be presented in evidence to impeach his credit. Petitioner, as defendant in a prosecution for selling heroin, claimed that what he had sold to a police officer was baking powder, as part of a scheme to defraud the purchaser. He was asked if he had given a statement to the police immediately following his arrest, which partially contradicted his direct testimony. He replied he could not remember. Thereupon a police officer was called to testify to a statement of the defendant contradicting his testimony in court. The defendant was convicted, and on appeal it was argued that the statement could not be used to impeach his credibility because it was made under circumstances rendering it inadmissible under *Miranda v. Arizona.* In affirming his conviction, the U.S. Supreme Court held, through Chief Justice Warren, that "the shield provided by *Miranda* cannot be pervertd into a license to use perjury by way of a defense, free from the risk of confrontation with prior inconsistent utterance."

On the other hand, in *New York v. Quarles,*[38] the Supreme Court created a "public safety" exception to the *Miranda* rule. Two policemen, responding to a complaint by a woman that she had been raped, went to the

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[35] Mendoza, *The 1973 Constitution and the Admissibility of Extrajudicial Confessions,* 3 J. of the IBP 187 (1975).
[36] Art. III, sec. 3(2).
[37] 401 U.S. 222 (1971); *aff'd* in Oregon v. Haas, 420 U.S. 714 (1975).
[38] 104 S. Ct. 2626 (1984).

supermarket where they were told the suspect had gone. Officer Kraft spotted Quarles, who matched the woman's description. Kraft pursued Quarles and, after three other officers arrived, frisked the suspect and found he had a holster which was empty. Kraft handcuffed Quarles and, before giving him the Miranda warnings, Kraft asked, "Where is the gun?" to which Quarles said, "The gun is over there," referring to a stack of empty cartons. The police recovered the gun and later charged Quarles with criminal possession of a weapon. The trial court excluded both Quarles's statement and the gun. The New York appellate court affirmed the suppression order.

The Supreme Court, however, reversed. In an opinion by Justice Rehnquist, the Court held that "there is a public safety exception to the requirement that *Miranda* warnings be given before a suspect's answers may be admitted in evidence." It held that the warnings were not themselves constitutional rights but merely "prophylactic" measures to insure the right against self incrimination. The Court noted the cost imposed on the public by the rule, namely, that the giving of warnings might deter suspects from answering questions, and this might lead in turn to fewer convictions. It then ruled that the social cost is higher when the giving of warnings might deter suspects from answering questions than are necessary to avert an immediate threat to public safety. In the Court's view, when answers are not actually coerced, this social cost outweighs the need for *Miranda* safeguards. In such exigent situations, police officers must not be made to choose between giving the warnings at the risk that public safety will be endangered and withholding the warnings at the risk that probative evidence will be excluded.

V. RETROACTIVITY OF THE NEW RULE

In *Magtoto v. Manguerra*[39] the Court held Art. IV, sec. 20 of the 1973 Constitution inapplicable to confessions given before its effectivity on January 17, 1973 on the ground that the right to counsel and to be informed of such right was new and that to make it retroactive "would have a great unsettling effect on the administration of justice in this country." The Court has since steadfastly adhered to this rule of nonretroactivity.[40]

On the same principle, the Court held in *People v. Nabaluna*[41] that the new rule in *People v. Galit,*[42] requiring the presence of counsel for waiving the right to counsel did not apply to waivers made before March 20, 1985, the date of the new rule. Although in two later cases[43] the Court gave the new rule retroactive effect, it appears that its decision actually rested

[39] 63 SCRA 4 (1975).

[40] *See, e.g.*, People v. Ribadajo, 142 SCRA 537 (1986); People v. Garcia, 96 SCRA 497 (1980); People v. Page, 77 SCRA 348 (1977).

[41] *Supra* note 30.

[42] *Supra* note 27.

[43] People v. Albofera, 152 SCRA 123 (1987) and Olaes v. People, G.R. Nos. 78347-49, Nov. 9, 1987.

on a finding that even tested by the voluntariness test of *People v. Caguioa*,[44] the waivers there would be involuntary, as the police had failed to give, beyond what was merely perfunctory, meaningful warnings to the accused of his rights to silence and to counsel.

VI. The Challenge to Law Enforcement Agencies

The observation was earlier made that the right to counsel in police interrogations has assumed larger and laregr importance, as we struggle toward humane and civilized standards of criminal procedure. But as the foregoing survey of cases has shown, the exclusionary rule is not cost-free. Quite possibly, when a confession is excluded for failure of the police to observe the *Miranda* rule, society pays a price — that of letting the criminal escape. Accordingly, the challenge to law enforcement agencies is to refine their investigative tools and make them fit the new rule.[45]

This is not an easy thing to do. It may be that the old test requiring courts, on a case-to-case basis, to look for aggregate unfairness and coercion in determining voluntariness has proved so much weariness of flesh and of spirit that it was replaced with a flat rule of judicial administration, by considering all waivers made, without counsel's assistance, to be involuntary. The question is whether the new rule will not result in the disappearance of extrajudicial confessions, as a suspect, assisted by counsel, is not likely to waive the assistance of counsel during interrogation and as assistance of counsel is in turn likely to result in the suspect eventually claiming the right of silence.

I for one agree with Justice Padilla that whether or not the waiver of the right to counsel is voluntary should turn on whether he is intelligent or illiterate.[46] Or, we can perhaps require that, if the police cannot provide an attorney to assist the suspect at the initial stage, the police may simply be required to give meaningful warnings and, within a specified period, to take the suspect to the municipal judge so that he can ratify his confession. But, with the adoption of an absolute rule requiring counsel before a suspect can waive the right to counsel, it behooves police agencies to devise means of obtaining confessions, while respecting the new rights of suspects.

For saying all this, I trust you will not think me to be counting the cost for the enjoyment of constitutional rights or to be advocating a cost-benefit analysis of a constitutional issue. I am for paying the price of maintaining our constitutional liberties if we have to. But, considering the high

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[44] 95 SCRA 2 (1980).

[45] Compare Narvasa, *Revisiting the Law on the Right of Silence and to Counsel*, 61 PHIL. L. J. 194, 210-217 (1986), arguing that extrajudicial confessions have a place in the law of evidence and urging that we "make haste slowly" in expanding the *Miranda* rule, especially in light of the opposite trend in the United States towards the limitation or even eventual abandonment of the rule.

[46] People v. Polo, *supra* note 25 (concurring).

cost to society of applying the exclusionary rule, with the distinct possibility of letting the criminal go scot-free because, in Cardozo's phrase, "the constable has blundered," let us reduce the occasions for such blunders by improving investigative techniques. For the enduring constitutional dilemma is how to reconcile the interest of One with the interest of the Many.

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