COMPARATIVE STUDY OF THE PROCEDURAL RULES FOR THE DETERMINATION OF COMPETENCY TO STAND TRIAL AND THE DISPOSITION OF INCOMPETENT ACCUSED PERSONS UNDER PHILIPPINE AND AMERICAN LAWS*

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I. Introduction

Consider if you will the following scenario. Three persons, *N, J* and *D*, are jointly charged with the crime of serious physical injuries under article 263 of the Revised Penal Code. During their arraignment, it is very apparent that *D*, who is not insane, is suffering from an unsound mental condition which effectively renders him unable to fully understand the charge against him and to intelligently plead thereto. Because of this, the court, in accordance with Rule 116, section 12(a) of the Revised Rules of Court,[1] suspends *D*'s arraignment and orders his mental examination.

As such examination positively shows that *D* is incapacitated to plead intelligently and to stand trial, he is, by order of the court, committed to an institution wherein he can undergo treatment that would restore his competency. The order of commitment provides that the accused is not to be released from the institution until he has fully regained his competency to stand trial and only upon obtaining the permission of the court which ordered his commitment.

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[1]REV. RULES OF COURT, Rule 116, sec. 12 (a) provides:

> The arraignment shall be suspended, if at the time thereof:
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> (a) The accused appears to be suffering from an unsound mental condition which effectively renders him unable to fully understand the charge against him and to plead intelligently thereto. In such case, the court shall order his mental examination and, if necessary, his confinement for such purpose.

As to the two other accused, their arraignment goes on as scheduled and the court proceeds to try their case. In the course of the trial, it is proved that *J*, who has since recovered his sanity, was insane at the time he, *N* and *D* committed the offense complained of. *N*, on the other hand, presents no evidence to show that he was not sane either at the time the offense was committed or at the time of the trial.

At the termination of the trial, the trial court acquits *J* in accordance with article 12(1), paragraph 1 of the Revised Penal Code[2] and convicts *N* for committing the crime of serious physical injuries. The former, despite the fact that he is no longer insane, is ordered committed by the court to the National Center for Mental Health where he is to remain until he obtains a certification from the Secretary of Health[3] to the effect that he is no longer insane and the permission of the same court to be released from confinement. Due to the proverbial red tape, *J* gets the required certification from the Secretary only after more than one year from the time he was ordered committed to the Center. *N*, on the other hand, is sentenced to two years and four months of imprisonment. This is the maximum penalty prescribed by law for the said crime.[4] After spending a little over two years in prison, *N* is released therefrom.

Years after the release of *N* from prison, *D* is still confined in the institution to which he was committed. Only after six years of confinement is he ordered released by the trial court. Upon *D*'s release, the court reinstates the criminal action against him since it has been determined that he has recovered his competency to stand trial. After trial, the court sentences him to imprisonment of not more than two years of *prision correccional*. Since no appeal is taken, *D* is forthwith committed to the custody of the Director of Prisons for the service of his sentence.

J was correctly acquitted on the ground that, although he was sane at the time of the trial, he had successfully proven that he was insane at the time he and the other accused committed the crime. Under article 12(1) of the Revised Penal Code, he is exempt from

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[2]Said section provides:

> The following are exempt from criminal liability:
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> (1) An imbecile or an insane person, unless the latter has acted during a lucid interval.
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> ....

[3]The Secretary of Health is formerly the Director of Health.

[4]REV. PEN. CODE, art. 263 (Serious physical injuries is punishable by imprisonment of *arresto mayor* in its maximum period to *prision correccional* in its minimum period if the physical injuries inflicted shall have caused the illness or incapacity for labor of the injured person for more than thirty days).

criminal liability. His commitment to the National Center for Mental Health was likewise correct, based on a strictly literal reading of paragraph 2 of the same provision.[5]

On the other hand, *N*, who did not claim the defense of insanity either at the time of the commission of the offense or at the time of the trial, was also properly convicted since his guilt was proved beyond reasonable doubt.

As to the accused *D*, it can be said that his case was also disposed of strictly in accordance with law. The initial order for his confinement in an institution was in full accord with Rule 116, section 12, paragraph (a) of the Revised Rules of Court which provides that in case of the apparent inability of the accused "to understand the charge against him and to plead intelligently thereto . . . the court shall order . . . if necessary, his confinement . . . ." *D*'s confinement for six years was also legal as the said provision does not give a time limit for such commitment.

The reinstatement of the criminal case against *D* after his release from the institution to which he was committed by the court is likewise supported by law. As one commentator opines, "when the accused becomes insane at the time of the trial. . .the trial shall be suspended until the mental capacity of the accused be restored to afford him a fair trial."[6]

D's conviction, as long as it is based on proof beyond reasonable doubt, can not be attacked. It cannot be said that *D* is exempt from criminal liability.

Article 12(1), paragraph 1 of the Revised Penal Code provides that an imbecile or an insane person is exempt from criminal liability. This provision has been interpreted to apply to accused persons who are imbecile or insane at the time of the commission of the crime and not at the time of the trial.[7] Such an interpretation is supported by the fact that the provision itself provides an exception to the exemption – when the insane accused was found to have acted during a lucid interval. This exception shows that it is the insanity or imbecility of the accused at

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[5]REV. PEN. CODE, art. 12(1), par. 2 ("When the imbecile or an insane person has committed an act which the law defines as a felony (*delito*), the court shall order his confinement in one of the hospitals or asylums established for persons thus afflicted, which he shall not be permitted to leave without first obtaining the permission of the same court.").

[6]1 L. REYES, THE REVISED PENAL CODE 217 (12th ed. 1981).

[7]*Id.*

the time of the commission of the offense that exempts him from criminal liability. Thus, *D*, who was not insane at the time of the commission of the offense charged, is not exempt from liability therefor.

Finally, the fact that the trial court still ordered *D*'s imprisonment for the crime of serious physical injuries despite the fact that he had been deprived of his liberty for six years when he was confined in an institution as ordered by the court is not a reversible error. Under the Revised Penal Code,[8] the period of confinement of the accused in the institution to which he was ordered committed is not to be considered as a penalty and is therefore not credited to the term of the sentence eventually imposed upon him.[9]

Thus, it can be said that, under our present-day rules, the three accused were all proceeded against legally. However, it is very clear that the result of such strict adherence to the law is unjust to accused *D*, who was deprived of his liberty for a total of eight years, and to accused *J*, who was ordered committed to a mental institution despite his being sane.

The hypothetical example given above shows that the present state of Philippine law on trial competency is far from perfect. There is something definitely wrong with a system that causes one accused to spend more years of deprivation of liberty than another accused who is equally guilty just because the former became insane at the time of the trial. It is the objective of this paper to see where such errors lie and to explore the areas where additions and amendments may be made in our substantive and procedural rules in order to eliminate, or at least minimize, the inequities.

II. Scope and Limitations of the Paper

This paper is a comparative study of Philippine and American law and jurisprudence on the competency of the accused to stand trial. It must be noted from the start, however, that the main thrust of this paper is the analysis of the various aspects of Philippine rules on the subject matter, especially of their sufficiency in and responsiveness to the imperative of safeguarding the constitutional rights of the incompetent defendant.

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[8] *See* REV. PEN. CODE, art. 24.

[9] *See generally* 1 L. REYES, THE REVISED PENAL CODE 575 (12th ed. 1981) (Paragraph 1 of article 24 does not refer to the confinement of an insane or imbecile who has not been arrested for a crime. It refers to "accused persons" who are detained "by reason of insanity or imbecility.").

Thus, this paper presents an in-depth analysis of the competency determination process in the Philippines, while only selectively dissecting its counterpart in American state and federal law. The inclusion of American law and jurisprudence on trial competency in this paper serves a two-fold purpose: first, its well-developed rules provide a glaring contrast to our poorly-developed body of rules on incompetency of the accused to stand trial; and second, it provides a source of possible additions and amendments to our own law on competency determination.

This paper has three principal parts. The first is a discussion of the general legal concept of competency, wherein definitions of the term under criminal, civil and administrative law are compared and differentiated. A discussion of the procedural aspects of competency determination in both Philippine and American law is likewise included.

The second part is an analysis of Philippine law on competency determination. This part is not a mere restatement of the analyses embodied in the first part; it is an extensive examination of Philippine law on competency determination with a view to pinpointing the specific areas of confusion and misunderstanding. It is here that the problems and inadequacies of the system are bared and, where applicable, comparisons with pertinent foreign rules are made.

Finally, the last portion of this paper is devoted to recommendations on the changes and additions which are believed necessary to avoid, or at least minimize, the inequities that result from the application of prevailing Philippine rules on the incompetency of the accused to stand trial.

III. Competency In General

A. Under Philippine Law

Insanity under the law is not synonymous with incompetency to stand trial. A person may be adjudged incompetent and yet be legally sane. In legal parlance, insanity is used to denote that degree of mental illness which negates the individual's responsibility or capacity.[10]

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[10]BLACK'S LAW DICTIONARY 714 (5th ed. 1979). Under the Revised Administrative Code, insanity is defined as "a manifestation in language or conduct of disease or defect of the brain or a more or less permanently diseased or disordered condition of the mentality, functional or organic, and characterized by perversion, inhibition, or disordered function of the sensory or of the intellective faculties or by impaired or disordered volition." REV. ADM. CODE, sec. 1039 (1917).

Not every aberration of the mind or exhibition of mental deficiency is insanity.[11] In the eyes of the law, insanity exists when there is a complete deprivation of intelligence in committing an act, that is, the accused is deprived of reason or completely without the power to discern, or there is a total deprivation of the will.[12] It has been held to include *dementia praecox*,[13] epilepsy,[14] somnambulism,[15] and malignant malaria which affects the nervous system and causes such complications as acute melancholia and insanity.[16]

The incompetency of accused persons to stand trial should be distinguished from "incompetence" in civil cases which would warrant the appointment of a guardian over the person or property of the incompetent under Rule 93 of the Revised Rules of Court. For civil purposes, the word "incompetent" includes:

> persons suffering the penalty of civil interdiction, or who are hospitalized lepers, prodigals, deaf and dumb who are unable to read and write, those who are of unsound mind, even though they have lucid intervals, and persons not being of unsound mind, but by reason of age, disease, weak mind, and other similar causes, cannot, without outside aid, take care of themselves and manage their property, becoming thereby an easy prey for deceit and exploitation.[17]

B. Under American Law

In 1898 Thomas Youtsey was indicted on federal charges of embezzling and willfully misapplying some $60,000 as cashier of the First National Bank of Newport, Kentucky.[18] Trial preparation was hampered by a series of epileptic attacks experienced by the defendant which impaired his memory to such an extent that he had trouble remembering even day-to-day events. Under such circumstances, he could not be expected to remember the transactions that were the basis of the indictment. Accordingly, counsel for Youtsey sought continuance on

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[11]People v. Guendia, 31 Phil. 337, 345 (1918).

[12]*See* People v. Renegado, 57 SCRA 175 (1974); *see generally* People v. Formigenes, 87 Phil. 658 (1952); People v. Remigio Cruz, 109 Phil. 288 (1960) (These cases held that it is necessary that there be a complete deprivation of intelligence in committing the act, that is, the accused is totally deprived of reason or freedom of the will and, therefore, cannot be held responsible for his own acts. It may also be that he acts without the least discernment or completely lacks the power to discern.).

[13]People v. Bonoan, 64 Phil. 93 (1937).

[14]People v. Mancao, 49 Phil. 887 (1927).

[15]People v. Gimena, 55 Phil. 604 (1931).

[16]People v. Lacena, 69 Phil. 350 (1940).

[17]REV. RULES OF COURT, Rule 92, sec. 2.

[18]U.S. v. Youtsey, 91 F. 864, 866, 868 (C.C.D. Ky. 1898).

the ground that Youtsey's memory and judgment were impaired. In addition to offering the affidavits of three physicians who had examined the defendant, counsel was willing to have the defendant undergo any mental or physical examination that the court may find appropriate to determine whether the defendant should be tried.

The court denied the motion for continuance and the jury convicted Youtsey, rejecting the arguments of the defense that Youtsey was not sane or, assuming he was sane, his mind was so impaired that he lacked the requisite *mens rea* for the crime charged.[19]

On appeal, the appellate court for the Sixth Circuit reversed Youtsey's conviction, holding that the trial court's denial of the defense counsel's pre-trial motion was erroneous.[20] The court noted that the motion for continuance of the defense was in reality aimed at preventing any trial due to the "present insanity" of the defendant. The Court stated that when the issue of "present insanity" is raised, the accused has the right to have that issue considered because "[i]t is not 'due process of law' to subject an insane person to trial upon an indictment involving liberty of life."[21]

Although there was no federal statute specifying the procedure for the disposition of the issue, the court held that the trial judge should have employed a method of his own choice in order to determine if the defendant was capable of defending himself. According to the court, "some mode, in the discretion of the court, should be adopted for a thorough investigation of the sanity of the accused"[22] before Youtsey could be retried.

Youtsey illustrates the important distinction between competency to stand trial and insanity as a defense. The term "competency at the time of the offense" is often used in the context of a discussion of insanity,[23] while the term "insanity at the time of trial" is used in regard to questions of competency, creating the impression that competency and insanity as a defense are closely related.[24] Although

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[19]91 F. at 871-872, 876, 880.

[20]Youtsey v. U.S., 97 F. 937, 940(6th Cir. 1899).

[21]97 F. at 941.

[22]*Id.*

[23]*See, e.g.*, U.S. v. Munz, 542 F.2d 1382 (10th Cir. 1976); U.S. v. Maret, 433 F.2d 1064, 1066 (8th Cir. 1970).

[24]*See, e.g.*, Lee v. Wiman, 280 F.2d 257, 264 (5th Cir. 1960); U.S. *ex rel.* Leon v. Banmiller, 179 F. Supp. 390, 392 (E.D. Pa. 1959).

experts in psychiatry are relied upon in determining questions of both competency and insanity, the issues involved are very different.[25]

In the law of evidence, the term competency means "the presence of those characteristics, or the absence of those disabilities, which render a witness legally fit and qualified to give testimony in a court of justice."[26] When used in regard to the competency of an accused to stand trial, the term takes on a much broader meaning that extends to matters beyond the mere competency of the accused to testify as a witness.

While insanity is a defense which concerns the defendant's mental condition at the time of the commission of the crime, competency concerns the defendant's ability to interact with his attorney and to understand the proceedings he faces.[27] Thus, it has been held that a person lacks competency to stand trial if he or she lacks the capacity to understand the nature and object of the proceedings, to consult with counsel, and to assist in the preparation of his or her defense.[28] A defendant may not have been mentally ill at the time of the commission of the offense, but may nevertheless be incompetent to stand trial. The primary issue in determining incompetency is therefore not the defendant's mental condition at the time of the commission of the offense, but his condition at the time of trial.[29]

The inquiry into trial incompetency is a narrow one. A diagnosis that the defendant is "mentally ill" does not in itself justify a finding of incompetency.[30] A defendant can be severely mentally ill -- even overtly psychotic -- and still be competent to stand trial.[31] Moreover, a history of some previous mental disorder or commitment in a mental institution does not suffice as proof of incompetency to stand trial. A mentally ill individual may not be declared incompetent unless his illness substantially interferes with his ability to play the role of defendant in the criminal process.[32]

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[25]Pizzi, *Competency to Stand Trial in Federal Courts: Conceptual and Constitutional Problems*, 45 U. CHI. L. REV. 15, 23(1977).

[26]BLACK'S LAW DICTIONARY 257 (5th ed. 1979).

[27]Pizzi, *supra* note 25, at 23.

[28]Drope v. Missouri, 420 U.S. 162, 95 S. Ct. 896, 903, 43 L. Ed. 2d 103, 112 (1975).

[29]Winick and DeMeo, *Competency to Stand Trial in Florida*, 35 U. MIAMI L. REV. 25, 31 (1980).

[30]Winick & DeMeo, *supra* note 29, at 35 (citing Robey, *Criteria for Competency to Stand Trial: A Checklist for Psychiatrists*, 122 AM. J. PSYCH. 616, 617 (1975)).

[31]*Id.*

[32]Winick and DeMeo, *supra* note 29, at 36.

Among common law countries, it is a basic tenet – one which is probably included in the constitutional protection of due process – that an accused may not be tried or sentenced while "insane."[33] The requirements of elementary due process prohibit the government from prosecuting a defendant who is legally incompetent to stand trial.[34] If, by reason of insanity, drunkenness, or other infirmity, the accused is unable to plead or defend himself, he cannot be tried upon a criminal charge during the continuance of the incapacity.[35]

Such principle takes into account two fundamental policy considerations. One is that if an accused is competent to stand trial, his full assistance, or so much of it as he volunteers to provide, will be available in developing the "true facts" of the case.[36] Through the kind of assistance which only a competent accused can provide, the probability that a correct determination of criminal culpability will result from the trial is greatly increased. A second consideration for requiring that defendant be competent to stand trial relates to the fundamental fairness of trial proceedings.[37] Only when the defendant is mentally competent will he be able to exercise effectively the rights which a democratic society extends to accused persons. A trial at which the defendant is mentally incapable of exercising his or her rights is, in essence, a trial at which those rights do not exist.[38]

IV. Determining the Competency of the Accused to Stand Trial

A. When and How the Question of Competency is Raised

1. Under Philippine Law

a. Under the Revised Penal Code

Under the second paragraph of article 12(1) of the Revised Penal Code, it is provided that:

> When the imbecile or an insane person has committed an act which the law defines as a felony (*delito*), the court shall order his confinement in one of the hospitals or asylums established for persons thus afflicted,

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[33]4 BLACKSTONE, COMMENTARIES 24, 395 (9th ed. 1773).

[34]Drope v. Missouri, 420 U.S.162, 95 S. Ct. 896, 904, 43 L. Ed. 2d 103, 113 (1975); Pate v. Robinson, 383 U.S. 375, 385, 86 S. Ct. 386, 15 L. Ed. 2d 815 (1966).

[35]5 F. WHARTON, WHARTON'S CRIMINAL LAW AND PROCEDURE 159 (1957).

[36]*See id.* at 358.

[37]*See id.*

[38]*See id.* at 159.

> which he shall not be permitted to leave without first obtaining the permission of the same court.

The phraseology of this provision renders it susceptible of two interpretations, both of which bear on when the issue of the competency of an accused to stand trial may be raised.

The first interpretation is that the second paragraph of article 12 (1) has reference only to how an accused, who was insane at the time of the commission of the crime and has successfully invoked the defense of insanity, shall be disposed of.

The above-quoted provision forms part of the article of the Revised Penal Code on circumstances exempting a person from criminal liability[39] and should be read together with the first paragraph of article 12(1) which reads:

> An imbecile or an insane person [is exempt from criminal liability], unless the latter has acted during a lucid interval.

Reading the second paragraph in relation to the first paragraph of article 12(1), the first thing that can be noticed is the use of the article "the" in the former before the words "imbecile or an insane person."[40] This indicates that the imbecile or insane person referred to in the second paragraph is the same imbecile or insane person who is exempt from criminal liability under the first paragraph.

The use in the second paragraph of the phrase "has committed" must also be noted. This seems to indicate that the article contemplates a situation where there has been a prior judicial finding that the accused perpetrated the crime charged against him, but he is nevertheless exempt from criminal responsibility because he was insane at the time he committed the said crime, in accordance with the first paragraph of Article 12(1).

It is submitted that, interpreted in this manner, the second paragraph of article 12(1) does not relate to the competency of the accused to stand trial. It merely provides for a mode of disposition of an accused who is exempt from criminal liability because he or she was found to be insane or imbecile at the time of the commission of the crime.[41]

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[39]REV. PEN. CODE, art. 12.

[40]The second paragraph reads: "When *the* imbecile or insane person has committed an act which the law defines as a felony (*delito*). . . ."

[41]That the accused's insanity or imbecility exists at the time of the trial does not disallow the application of Article 12(1), paragraph 1 of the Revised Penal Code as

Thus, if the alleged insanity of the accused existed not during the commission of the offense but subsequent thereto and lasted up to the time of the trial, the court has no authority under the Revised Penal Code to order his confinement in a mental institution. In such a case, it is submitted that a possible remedy[42] is for the guardian of the accused or, if he has none, his relatives to petition the court before which the accused is being tried to order such confinement. If the insanity of the accused is apparent to the court, it may perhaps also direct the Director of Health (now Secretary of Health) or his representative to institute civil commitment proceedings under Rule 101 of the Revised Rules of Court.[43]

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long as such insanity or imbecility was also present at the time of the commission of the crime. It is the existence of insanity or imbecility at the latter point in time which is important.

[42]This and the following remedies are based merely on the opinion of the authors.

[43]RULE 101 (Proceedings for Hospitalization of Insane Persons) provides:

> Section 1. *Venue. Petition for Commitment.* -- A petition for the commitment of a person to a hospital or other place for the insane may be filed with the Court of First Instance of the province where the person alleged to be insane is found. The petition shall be filed by the Director of Health in all cases where, in his opinion, such commitment is for the public welfare, or for the welfare of said person who, in his judgment, is insane, and such person or the one having charge of him is opposed to his being taken to a hospital or other place for the insane.
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> Sec. 2. *Order for Hearing.* – If the petition filed is sufficient in form and substance, the court, by an order reciting the purpose of the petition, shall fix a date for the hearing thereof, and a copy of such order shall be served on the person alleged to be insane, and to the one having charge of him, or on such of his relatives residing in the province or city as the judge may deem proper. The court shall furthermore order the sheriff to produce the alleged insane person, if possible, on the date of the hearing.
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> Sec. 3. *Hearing and judgment.* -- Upon satisfactory proof, in open court on the date fixed in the order, that the commitment applied for is for the public welfare or for the welfare of the insane person, and that his relatives are unable for any reason to take proper custody and care of him, the court shall order his commitment to such hospital or other place for the insane as may be recommended by the Director of Health. The court shall make proper provisions for the custody of property or money belonging to the insane until a guardian be properly appointed.
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> Sec. 4. *Discharge of insane.* -- When, in the opinion of the Director, the person ordered to be committed to a hospital or other place for the insane is temporarily or permanently cured, or may be released without danger he may file the proper petition with the Court of First Instance which ordered the commitment.
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> Sec. 5. *Assistance of fiscal in the proceeding.* -- It shall be the duty of the provincial fiscal or in the City of Manila the fiscal of the city, to prepare the petition for the Director of Health and represent him in court in all proceedings arising under the provisions of this Rule.

This reading of the second paragraph of article 12(1) of the Revised Penal Code seems fair enough, except that it does not take into consideration the absurdity that would result when applied to the situation of an accused such as *J* in the hypothetical case discussed in the introductory portion of this paper. It is entirely possible that an accused like *J*, although he was insane at the time of the commission of the crime, could have regained his sanity in the meantime. Using this strict reading of the second paragraph of article 12(1), such a mentally healthy accused would be ordered by the court to be committed in a mental institution just because he had availed of the insanity defense under the first paragraph of article 12(1) of the Revised Penal Code.

A second possible interpretation of the second paragraph of article 12(1) is that the requirement of confinement applies not only to an accused who was insane or an imbecile at the time of the commission of the offense and continues to be so at the time of the trial, but also to an accused who became insane only at the time of the trial. Relevant in this respect is the opinion of one commentator that when an accused is "sane at the time of the commission of the crime, but he becomes insane at the time of the trial, he is criminally liable. The trial, however, will be suspended until the mental capacity of the accused be restored to afford him a fair trial."[44]

This construction of the second paragraph of article 12(1) would make it possible for an accused, who does not claim the defense of insanity but raises the issue of insanity or imbecility at the time of the trial, to move for the suspension of the proceedings so that the the issue of "present insanity" can be resolved. Thus, even if the insanity or imbecility were discovered only in the course of the trial, that is, after arraignment, such would still constitute a valid ground for suspending the proceedings and committing the accused to a mental institution. This procedure is not available under the first interpretation of the same provision, which provides for the automatic commitment of the accused only after it is established in a full blown trial that he was insane at the time of the commission of the offense, regardless of whether or not he was insane during the trial.

Whichever view of the second paragraph of article 12(1) is taken, it should be noted that it deals with "imbeciles" and "insane" persons. As observed earlier, the word "insane" in the context of the defense of insanity has acquired a technical meaning in this jurisdiction. Such meaning does not include a person who is not totally deprived of his mental faculties but suffers from certain forms of mental defect that

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[44]L. REYES, *supra* note 6, at 217.

render him incapable of comprehending the nature of criminal proceedings. While it is true that an insane person is necessarily incompetent, the reverse is not always true.

In view of this, it becomes immaterial which of the two interpretations of article 12(1) presented above is adopted for the purpose of suspending the criminal proceedings on the ground that the accused is incompetent to stand trial. As to what rules shall be observed in resolving the issue of incompetency of the accused to stand trial, article 12(1) is silent.

b. Under the Revised Rules of Court

Section 12, paragraph (a) of Rule 116 of the Revised Rules of Court provides for the suspension of the arraignment of the accused who is incompetent at the time of the arraignment.[45] The said provision reads in part:

> The arraignment shall be suspended, if at the time thereof:
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> a) The accused appears to be suffering from an unsound mental condition which effectively renders him unable to fully understand the charge against him and to plead intelligently thereto. In such case, the court shall order his mental examination and, if necessary, his confinement for such purpose.

Under this provision, once the incompetency of the accused to stand trial is brought to the attention of the court at the time of arraignment, the latter is mandated to suspend the proceedings and order the mental examination of the accused. If one follows the literal import of the provision, the only time the issue of the competency of the accused may be raised is during arraignment. Apparently, this provision can no longer be invoked during trial (that is, after arraignment of the accused).[46]

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[45]Rule 116, sec. 1, par. (a) is a new provision introduced by the Supreme Court in 1988.

[46]There are two possible reasons why the issue *might* be raised even during the trial. One is that the accused was competent to enter a plea upon his arraignment, in which case there was no opportunity to raise the issue of competency then. Another is that even during the arraignment, the accused was already incompetent but such incompetency was not apparent and did not come to the attention of the court or of counsel for the accused or, if it was known to the latter, he chose not to seek the suspension of the proceedings because he might have felt that his client would have better chances of acquittal or of getting a lesser penalty.

Rule 116, section 12, paragraph (a) is likewise silent on who has the primary responsibility of bringing the question of the competency of the accused to be arraigned to the attention of the court. Arguably, this duty should devolve on the defense counsel by virtue of his relationship with the accused, which offers him ample opportunity to observe the latter and form a more or less accurate assessment of his mental condition. It must be remembered, however, that there are situations where the defense counsel may not want to raise the issue of competency and may choose to proceed to trial instead. This would normally occur when the crime for which the accused is being prosecuted is a light offense or when the accused is a first-time offender. In these cases, the penalty prescribed by law may be short such that the accused would rather risk conviction than face the prospect of indefinite commitment to a mental institution.

The wording of Rule 116, section 12, paragraph (a) seems to indicate that the judge may suspend *motu proprio* the arraignment proceedings and order the mental examination of the accused who "appears to be suffering from an unsound mental condition which effectively renders him unable to fully understand the charge against him and to plead intelligently thereto."[47] What is not clear is whether the court may make such an order over the objection of the accused who prefers to go to trial. In view of the apparent intention to give the court as much leeway in determining whether there exist sufficient grounds for the suspension of the proceedings, it seems reasonable to infer that the suspension of the arraignment is largely within the sound discretion of the trial court to order, and it may do so even over the objection of the accused.

2. *Under American Law*

Under American law, the issue of competency of the accused to stand trial is raised at the arraignment or other initial appearance. This does not, however, preclude the accused from raising such issue at any other point in the criminal process.[48] In fact, the uniform rule adopted in the United States for more than forty years now is that the question of the competency of the accused may be raised at any stage of the proceedings and that the raising of such a question is sufficient ground to order the suspension of the proceedings.[49]

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[47]REV. RULES OF COURT, Rule 116, sec. 12, par. (a).

[48]Winick, *Incompetency To Stand Trial: An Assessment of Costs And Benefits, And A Proposal For Reform*, 39 RUTGERS L. REV. 243 (1987) (citing Stone, *Mental Health and Law: A System in Transition*, DHEW Pub. No. (ADM) 75-176 (1975)).

[49]*See* 18 U.S.C. secs. 4244-48 (1970) (In 1949, the U.S. Congress first enacted legislation that deals comprehensively with problems presented by defendants who

There are several stages at which proceedings may be suspended whenever it appears that the mental condition of the accused is such that warrants postponement or suspension. These stages are trial,[50] promulgation of judgment,[51] execution[52] and appeal.[53]

It has been held that the court has the inherent power to determine preliminarily whether the defendant is mentally capable of defending himself and protecting his constitutional rights.[54] In *Youtsey*,[55] it was held that while it is preferable that the application to determine the defendant's sanity be made upon arraignment prior to the commencement of the trial, the court must take cognizance of the question whenever and however it arises.[56]

An earlier case held that the failure of the trial court to hold a preliminary hearing on the competency of the accused to stand trial is not a ground for reversal when no request was made for such preliminary determination and there was nothing to create a doubt in the judge's mind as to the defendant's competency.[57] A later decision, however, held that the failure of the court to order an evaluation of the defendant when reasonable grounds exist to question his competency, even if the defense did not raise the issue, violates the constitutonal guarantee of due process, thus requiring reversal of any conviction obtained.[58] The U.S. Supreme Court cautioned that "a trial court must always be alert to circumstances suggesting a change that would render the accused unable to meet the standards of competence to stand trial."[59] As a result, prudent trial judges now order a formal competency

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await trial and might be incompetent, or who are in prison pursuant to conviction and are believed to have been incompetent at the time of trial, or who became insane and dangerous while in prison and whose sentences are about to expire. In determining the competency of the first group of defendants prior to the start of the trial, the statute requires the United States Attorney to file a motion for judicial determination of the competency of the accused whenever the former has "reasonable cause to believe" that the accused "may be presently insane or otherwise so mentally incompetent as to be unable to understand the proceedings against him or properly to assist in his own defense.").

[50]U.S.C., sec. 4244 (1970).

[51]U.S.C., sec. 4245 (1970).

[52]*Id.*

[53]U.S.C., sec. 4247 (1970).

[54]5 F. WHARTON, *supra* note 35, at 163 (citing White v. Commonwealth, 197 Ky 79, 245 S.W. 892 (1922)).

[55]Youtsey v. U.S., 97 F. 937 (6th Cir. 1899).

[56]97 F. at 940, 941, 944.

[57]State v. Schlaps, 78 Mont. 560, 254 Pac. 858 (1927).

[58]Drope v. Missouri, 420 U.S. 162, 181.

[59]*Id.*

evaluation when any doubt about competency is raised to avoid possible reversal of judgment.[60]

There is no prescribed procedural rule for raising the question of competency. It may be done in any manner, even orally, as long as the supporting matter is sufficient to raise a reasonable doubt about the accused's mental condition. Similarly, almost anyone can bring the matter to the attention of the court, including the prosecution, the defense, and the court.[61] The special responsibility of the trial court to raise the issue of the competency of the accused *sua sponte* has long been recognized in common law jurisdictions,[62] and has been reaffirmed by the U.S. Supreme Court in two recent cases.[63]

With respect to the question of whether or not the prosecution is duty bound to disclose to the court any knowledge it might have of evidence tending to disclose the incompetency of the accused to stand trial, section 4244 of the United States Code imposes upon the prosecution the duty to raise the issue of competency whenever it has reasonable cause to believe that a defendant "may be" incompetent.[64] In one case,[65] a district court held that the prosecutor's failure to present

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[60]*See* WINICK & DE MEO, *Incompetency To Stand Trial: Developments In The Law*, MENTALLY DISORDERED OFFENDERS: PERSPECTIVES FROM LAW AND SOCIAL SCIENCE 3, 5 (1983).

[61]U.S.C., sec. 4244 (1970) provides in part:

> Upon the government attorney's motion or a similar motion on behalf of the accused, or on its own motion, the court shall cause the accused, whether or not previously admitted to bail, to be examined as to his mental condition by at least one qualified psychiatrist, who shall report to the court. For the purpose of the examination, the court may order the accused committed for such reasonable period as the court may determine to a suitable hospital or other facility to be designated by the court. If the report of the psychiatrist indicates a state of present insanity or such mental incompetency in the accused, the court shall hold a hearing, upon due notice, at which evidence as to the mental condition of the accused may be submitted, including that of the reporting psychiatrist, and make a finding with respect thereto.

Similarly, the Florida Rule of Criminal Procedure 3.210(b) provides:

> If before or during the trial the court on its own motion, or upon motion of counsel for the defendant or for the State, has reasonable ground to believe that the defendant is not mentally competent to stand trial, the court shall immediately enter its order setting a time for a hearing to determine the defendant's mental condition.

[62]*See* 2 J. BISHOP, CRIMINAL PROCEDURE sec. 666 (3d ed. 1880); *see also* Pizzi, supra note 25, at 26 (citing Rex v. Frith, 22 How. St. Tr. 307, 310 (1790)).

[63]*See* Pate v. Robinson, 383 U.S. 375 (1966); Drope v. Missouri, 420 U.S. 162 (1975).

[64]18 U.S.C., sec. 4244 (1970).

[65]Evans v. Kropp, 254 F. Supp. 218, 220 (E.D. Mich. 1966).

evidence of incompetency to the trial judge prior to the acceptance of a plea of guilty violated due process.

Perhaps the responsibility for raising the issue of competency greatly rests on the defense counsel. Indeed, the key to the competency issue is the defense attorney who has the most exposure to the defendant and, unlike the court or prosecutor, is witness to his client's behavior on various occasions, settings and circumstances. He generally has the best opportunity to notice any defect in the defendant's "ability to consult with his lawyer."[66] In most instances, however, this responsibility is tempered by the possible adverse consequences of raising the issue of competency.[67] For a defendant facing minor charges or who is a first time offender, a finding of incompetency may result in an involuntary hospitalization that substantially exceeds any sentence that may result from his conviction, and after he regains competency, he still faces possible conviction and sentence on the outstanding criminal charges.[68]

Thus, the person with the best access to indicia of a defendant's incompetency - the defense attorney - may have strong incentives not to reveal his knowledge. In fact, the consensus among commentators is that counsel should raise the issue only if it is in "the client's best interests."[69] This view is particularly disturbing. To leave disclosure to the discretion of defense counsel is, in effect, to assert that there is nothing improper in an attorney's proceeding to trial with an incompetent accused. If counsel is free to decide that, despite his client's incompetency, it is in the client's best interest to proceed, the accused will be deprived of the right to participate intelligently in his own defense.[70]

Moreover, while it is the defense counsel's function to present plea alternatives and recommendations to his client, the decision to plead belongs solely to the defendant and the latter may see his interests differently from his attorney.[71] It should be borne in mind that counsel, no matter how experienced or well-versed he is in procedural matters, is nonetheless merely an assistant, the final decisions

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[66]*See* Pizzi, *supra* note 25, at 27.

[67]*See* 18 U.S.C., sec. 4248 (1970) (authorizing protective detention by the Attorney General or transfer to an institution of the state of defendant's residence if defendant is found to be dangerous); *see also* Jackson v. Indiana, 406 U.S. 715 (1972); U.S. v. Curry, 410 F.2d 1372 (4th Cir. 1969).

[68]Pizzi, *supra* note 25, at 28-29; *see also* Guy v. Ciccone, 439 F.2d 400, 401 (8th Cir. 1971).

[69]Pizzi, *supra* note 25, n.43.

[70]Pizzi, *supra* note 25, at 29.

[71]Pizzi, *supra* note 25, at 29-30.

ultimately resting on the client.[72] Such freedom to decide would necessarily be vitiated if defendant were allowed to proceed to trial despite his incompetency because his counsel has so decided. Even if counsel could guarantee a fair trial, something essential in the criminal process is lost when a defendant is convicted in a proceeding he does not understand and in which he cannot play even a minimal role.[73]

As mentioned earlier, neither the Federal Rules of Procedure nor the rules of criminal procedure of the various states prescribe a particular form for, or manner of, raising the issue of incompetency. However, in at least two states,[74] the law requires that an application for an inquiry into the accused's competency must be accompanied by a certificate of a reputable physician. In two other states,[75] the application has been elevated to the stature of a plea and requires a "special plea." In still two others,[76] the law requires a written notice of intent to place in issue the competency of the accused to stand trial.

If, for one reason or another, the accused was not able to obtain a hearing for the determination of his competency during the trial, he may, under certain conditions, obtain a determination of such issue even after his conviction. If it is subsequently found that he was incompetent at the time of the trial, the proceedings under which he was convicted will usually be voided and a new one ordered.[77]

There are two ways of raising the issue of competency after conviction. One is by appeal and the other is by collateral attack. As to the first method, the prevailing doctrine is that the refusal to hold a requested special hearing on the defendant's competency to stand trial may, in a given case, constitute an abuse of discretion.[78] This presupposes, however, that the issue of competency was brought before, or at least suggested to, the court during the trial.

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[72]*See* Faretta v. California, 422 U.S. 806, 820 (1975).

[73]A compromise solution is presented in those states that have statutes which allow counsel to proceed with legal motions not requiring the personal participation of the defendant, *e.g.*, N.Y. CRIM. PROC. LAW, sec. 730.60(5)(1971); MONT. REV. CODES ANN., sec. 95-506(c)(1969); or those which allow "acquittal only" trials of particular defenses which cannot result in a guilty verdict, *e.g.*, MASS. ANN. LAWS., ch. 123, sec. 17(b)(1972). Such statutes were noted by the U.S. Supreme Court in *Jackson* without disapproval. Pizzi, *supra* note 25, n.53.

[74]*See* COLO. REV. STAT. ANN. sec. 39-8-6; OHIO REV. CODE ANN. sec. 2945.37.

[75]*See* GA. CODE ANN. sec. 27-1504; WYO. COMP. STAT. ANN. sec. 7-2404.

[76]*See* MICH. COMP. LAWS sec. 768.20; VT. STAT., sec. 4803.

[77]Youtsey v. US, 97 F. 937, 947 (6th Cir. 1899).

[78]People v. Jackson, 105 Cal. App. 2d. 811, 234 P. 2d. 261, 264 (3d Dist. 1951); People v. Geary, 298 Ill. 236, 131 N.E. 652, 655 (1921).

On the other hand, the remedy of collateral attack may take the form of an application for a writ of *habeas corpus*, a motion to vacate judgment, or a petition for certification of probable cause from the Director of the Bureau of Prisons. With respect to the remedy of *habeas corpus*, the prisoner has to allege that the competency issue was not considered during the trial and that at the time of the application, there was an outstanding unreversed order directing his hospitalization in a mental institution.[79]

A motion to vacate the judgment may also be availed of to nullify the previous proceedings. In order to qualify for this remedy, the convicted defendant must allege that: (a) he was incompetent at the time of trial or promulgation of judgment; (b) the issue of competency was not adjudicated in the prior proceeding; and (c) a certificate of probable cause has not been issued by the Director of the Bureau of Prisons.[80]

The third remedy is a petition for certification of probable cause from the Director of the Bureau of Prisons under 18 U.S.C.A., section 4245. In this procedure, a Board of Examiners conducts an examination of the petitioner and submits a report to the Director of Prisons. If the latter considers that the report indicates probable cause for believing that the petitioner was incompetent at the time of trial or promulgation of judgment, he may submit a certification of probable cause to the court. However, it must appear that the petitioner was not only probably incompetent but also that his incompetency was not suggested at the previous proceedings.[81]

B. How Competency is Determined

1. Pertinent Philippine Rules

Prior to the introduction of the 1988 amendments to the Revised Rules of Court, our criminal law was concerned with only two types of incompetency of the accused to stand trial -- (total) insanity and imbecility.[82] article 12(1) of the Revised Penal Code lists these forms of incompetency of the accused among the exempting circumstances and, in

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[79]Ashley v. Pescor, 147 F. 2d. 318, 319-321 (8th Cir. 1945).

[80]Bistran v. U.S., 171 F. Supp. 258, 259-260 (D.C. N. Dakota 1959); Simmons v. U.S., 253 F. 2d. 909, 912, 913(8th Cir. 1958); Gregori v. U.S., 243 F. 2d. 48, 52-54 (5th Cir. 1957).

[81]Bistran v. U.S., 171 F. Supp. 258, 260 (D.C.N. Dakota 1959); U.S. v. Fooks, 132 F. Supp. 533 (Dist. D.C. 1955); *see also* 18 U.S.C., sec. 4245 (1970).

[82]*See* REV. PEN. CODE, art. 12(1) and cases holding that insanity must be total.

its second paragraph, provides for the automatic commitment[83] of the accused who successfully proves the presence of the same. The said second paragraph of article 12(1) of the Revised Penal Code, however, does not state who determines the competency or incompetency of the accused to stand trial, nor does it state how such determination is to be made.

With respect, therefore, to the kind and the quantum of evidence necessary to find the accused insane or imbecile for purposes of the second paragraph of article 12(1) of the Revised Penal Code, the only guidelines available would be the fundamental considerations of justice and fairness.

As far as the criminal law in this jurisdiction is concerned, the accused is either totally sane or totally insane. However, in the absence of proof to the contrary, it is presumed that a person is of sound mind.[84] Thus, whenever the insanity of the accused is alleged (as a defense or as a ground for his exemption from responsibility under article 12(1) of the Revised Penal Code), the burden of proof lies with the defense because the presumption is always in favor of sanity.[85]

As to the evidence necessary to overthrow the presumption of sanity, the Supreme Court, in one case, stated:

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[83]The second paragraph of Article 12(1) of the Revised Penal Code, which embodies the rule regarding the disposition of insane or imbecile accused, states:

> When an imbecile or an insane person has committed an act which the law defines as a felony (*delito*), the court shall order his confinement in one of the hospitals or asylums established for persons thus afflicted . . . .

Note that the word "shall" is used before the phrase "order his confinement." This indicates that the court does not exercise its discretion in ordering such confinement; it shows that, as a consequence of the exemption of the insane or imbecile accused under paragraph 1, the accused shall automatically be ordered committed by the court to the proper institution.

[84]CIVIL CODE, art. 800.

[85]Chin Ah Foo v. Concepcion, 54 Phil 775, 778 (1930). It must be noted, however, that there are times when the presumption of sanity does not arise. In the dissenting opinion of Justice Diaz in the case of People v. Bonoan, 64 Phil 89, 103 (1937), it was stated that

> if the insanity is only occasional or intermittent in its nature, the presumption of its continuance does not arise. He who relies on such insanity proved at another time must prove its existence also at the time of the commission of the offense. Where it is shown that the (accused) had lucid intervals, it will be presumed that the offense was committed in one of them. But, a person who has been adjudged insane, or who has been committed to a hospital or to an asylum for the insane is presumed to continue to be insane.

> In order to ascertain a person's mental condition at the time of the act, it is permissible to receive evidence of the condition of his mind during a reasonable period both before and after that time. Direct testimony is not required, nor are specified acts of derangement essential to establish insanity as a defense. Mind can be known only by outward acts. Thereby, we read the thoughts, the motives and emotions of a person and come to determine whether his acts conform to the practice of people of sound mind. To prove insanity, therefore, circumstantial evidence, if clear and convincing, will suffice.[86]

With the promulgation by the Supreme Court of the 1988 Amendments to the Revised Rules of Court, the incompetency of the accused as a ground for suspension of arraignment would now seem to include unusual mental conditions short of insanity that effectively prevent the accused from fully understanding the charge against him and to intelligently plead thereto.[87] It is sad to note, however, that there has yet to be a corresponding change in the law addressing the question of how the incompetency of the accused can be determined and proved.

Section 12(a), Rule 116 of the 1988 Revised Rules of Court, which is the provision that expanded the scope of incompetency of the accused recognized by our criminal law, is vague as to the guidelines to be used by the trial court in determining whether the accused is competent to stand trial. Fortunately, unlike the second paragraph of article 12(1) of the Revised Penal Code which is completely silent on the issue, the Revised Rules of Court provision at least states that there shall be a mental examination of the accused which will be ordered by the trial court. This somehow indicates that the outcome of such mental examination shall determine whether or not the accused is indeed suffering from an incompetency that is a proper ground for the suspension of arraignment. The silence of the rule on the quantum of proof required to show the incompetency of the accused may be interpreted as leaving such matter to the sound discretion of the trial judge, to be resolved according to the circumstances of each particular case.

There is, however, one disturbing aspect about this absence of definite guidelines on the procedure for determining the competency of the accused. More often than not, judges tend to rely solely on the findings on the competency of the accused of court-appointed "experts" or psychiatrists without considering other evidence on the matter. In practical effect, it is the so-called experts who make the final determination of whether or not the accused is competent to stand trial.

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[86]People v. Bonoan, 64 Phil. 89, 93 (1937).

[87]*See* REV. RULES OF COURT, Rule 116, sec. 12(a).

The judge merely echoes such findings to give them the stamp of judicial approval.

2. Pertinent American Rules

Under American jurisprudence, an accused is eligible for trial if he is capable of understanding the nature and object of the proceedings against him, if he rightly comprehends his own condition with reference to such proceedings, and if he can conduct his defense in a rational manner, although on some other subject his mind may be deranged or unsound.[88]

In *Dusky v. United States*,[89] the Supreme Court of the United States held that the test of whether the accused is competent to stand trial is whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, and whether he has a rational as well as factual understanding of the proceedings against him.[90] Otherwise stated, the test is not whether he is of unsound mind or is mentally ill, but whether he is thereby rendered incompetent to make a rational defense.[91]

Technically speaking, the incompetency of the defendant is not a defense since ultimately a finding of incompetency does not alter the criminal liability of the accused. Nevertheless, when the competency of the accused is put in issue, a preliminary determination of the question must be made.[92] In fact, the determination of such issue is now generally conceded as a ground for suspending the criminal proceedings.[93] For instance, the California Penal Code provides that a person cannot be tried, adjudged to punishment, or punished for a public offense, while he is insane.[94]

If, at any time during the pendency of an action and prior to judgment, doubt arises as to the sanity of the defendant, the court must order the question of his sanity to be determined by trial and, from the time of such order, all proceedings in the criminal prosecution shall be suspended until the question of the sanity of the defendant has been determined.[95] The terms "insane" and "insanity," as used in the statute,

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[88]State v. Severns, 184 Kan. 213, 336 P. 2d 447, 452 (1959).
[89]362 U.S. 402, 80 S.Ct. 788 (1960).
[90]80 S.Ct. at 789.
[91]*Ex parte* Hodges, 314 S.W. 2d 581, 584 (Tex. Crim. App. 1958).
[92]ORFIELD, CRIMINAL PROCEDURE FROM ARREST TO APPEAL 2 (1958).
[93]Drope v. Missouri, 420 U.S. 162, 179 (1975).
[94]CALIF. PEN. CODE sec. 1367 (1980).
[95]CALIF. PEN. CODE sec. 1368 (1980).

have been interpreted to mean the capacity of a defendant to understand the nature and purpose of the proceedings against him and to conduct his own defense in a rational manner.[96]

At the federal level, the U.S. Code provides:

> Whenever, after arrest and prior to the imposition of sentence or prior to the expiration of any period of probation, the United States Attorney has reasonable cause to believe that a person charged with an offense against the United States may be presently insane or otherwise so mentally incompetent as to be unable to understand the proceedings against him or properly to assist in his own defense, he shall file a motion for a judicial determination of such mental competency of the accused, setting forth the ground for such belief with the trial court in which proceedings are pending.[97]

When a motion for judicial order for examination has been filed by or on behalf of the accused, the judge, after evaluating the facts on which the motion is based, has the discretion to order an examination of the defendant to determine whether he or she is competent to stand trial.[98]

In whatever manner the issue may be presented, the evidence relied upon to require a hearing on the issue of present capacity to stand trial must be sufficient to raise a reasonable doubt in the mind of the judge.[99] Many of the existing statutes require an investigation of the issue only "if a doubt arises," or "if the court has reasonable grounds to believe," or "if the defendant appears to be insane."[100] An inquiry on the matter is, therefore, not required upon a bare unsupported suggestion that the defendant is insane or incompetent,[101] or even upon a suggestion supported by affidavits,[102] or by the testimony of witnesses.[103] Such

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[96]*See, e.g.,* People v. Pennington, 66 Cal. 2d 508, 515, 58 Cal. Rep. 374, 426 P.2d 942 (1967).

[97]18 U.S.C. sec. 4244 (1970).

[98]T. BLAU, THE PSYCHOLOGIST AS EXPERT WITNESS 59 (1984).

[99]H. WEIHOFEN, MENTAL DISORDER AS A CRIMINAL DEFENSE 443 (1954).

[100]*Id.*

[101]*See* Grayson v. State, 85 Okla. Crim. 266, 188 P. 2d 696 (1947); Howell v. Todhunter, 181 Ark. 250, 25 S.W. 2d 21 (1930); People v. Croce, 208 Cal. 123, 280 P. 526, 236 Ia. 377, 17 N.W. 2d 843 (1929); Comm. v. Endrukat, 231 Pa. 259, 80 Atl. 1049 (1911); State v. Khoury, 149 N.C. 454, 62 S.E. 638 (1908).

[102]*See* State v. Gunter, 208 La. 6947, 23 So. 2d 305 (1945); State v. Mitchell, 204 S.W. 801 (1918); Kearns v. State 14 Okla. Crim. 142, 148, 168 Pac. 242 (1917); State v. Harrison, 36 W. Va. 729, 739, 15 S.E. 982 (1892); Webber v. Comm., 119 Pa. 223, 13 Atl. 427 (1888).

[103]*See* State v. Bruntlett, 240 Ia. 3389, 36 N.W. 2d 450 (1949); Bingham v. State, 82 Okla. Crim. 5, 165 P. 2d 646 (1946); Lee v. State, 200 Ark. 964, 141 S.W. 2d 842 (1940); Comm. v. Scovern, 292 Pa. 26, 140 Atl. 611 (1927); Bulge v.

showing must be sufficient to create a reasonable doubt in the judge's mind.[104] If such a doubt is created, an inquiry is necessary and the same cannot be waived.[105]

In the absence of a statute, the choice of the method of determining such present competency still lies within the sound discretion of the judge.[106] He may determine the question himself, or submit it to a jury impaneled for the purpose, or appoint a commission of experts to conduct an examination of the accused.[107]

In some states which allow the judge to try the issue himself, the law imposes the additional requirement that the judge shall appoint one or more impartial psychiatrists to examine the defendant and make a report,[108] or that he may commit the defendant to a state hospital for a period of observation.[109]

The evaluators must assess the defendant's competency in terms of a number of specified factors. If the court determines that there is "reason to believe that the defendant may require involuntary hospitalization," it must also order the experts to consider this issue in their reports.[110] The Committee Note to Florida Rule of Criminal Procedure 3.210 indicates that the expert should inquire into involuntary hospitalization not as a matter of course, but only if the court so orders.[111] When hospitalization of the defendant appears likely to the court, it will order the experts to consider the applicability of the involuntary commitment standards, so that the court may consider at the competency hearing whether to commit a defendant it finds incompetent. If the defendant files a notice of intent to rely on the

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People, 61 Colo. 187, 156 Pac. 800 (1916); State v. Peterson, 24 Mont. 81, 60 Pac. 809 (1900);

[104]H. WEIHOFEN, *supra* note 99, at 444.

[105]*See* People v. Ah Ying, 42 Cal. 18, 20 (1906); People v. Grace, 77 Cal. App. 752, 247 Pac. 585, 588 (1926); State v. Detar, 125 Kan. 218, 263 Pac. 1071, 1072 (1928); State v. Fold, 56 N.W. 583, 247 P. 2d 165, 170 (1952).

[106]F. WHARTON, *supra* note 35, at 159.

[107]*Id. But see* Rose v. U.S., 513 F.2d 1251 (1975); United Stated v. McEachern, 465 F. 2d 833, *cert. denied*, 409 U.S. 1043 (1972) (Under U.S.C. sec. 4244, it is provided that the court shall order a psychiatric examination once a motion raising the question of competency has been filed. Thus, unless the motion is made in bad faith or is patently frivolous, the court must order this examination.).

[108]If the court decides that a competency evaluation is necessary, FLA. R. CRIM. P. 3.210(b) (1977) requires it to appoint expert evaluators and "immediately enter its order setting a time for a hearing to determine the defendant's mental condition, which shall be held no later than twenty (20) days after the date of the filing of the motion."

[109]H. WEIHOFEN, *supra* note 99 at 443, 445.

[110]FLA. R. CRIM. P. 3.211 (1977).

[111]*Id.*, Committee Note.

insanity defense, then the court may also order the experts to consider and report on the issue of the defendant's sanity at the time of the commission of the offense.[112]

Rule 3.210(b), as well as section 925.21(2) of the Florida Statutes, requires that the court appoints two or three experts to determine the defendant's mental condition. Section 925.21(2) provides that, if possible, at least one of the appointed experts shall be a psychiatrist, psychologist, or physician employed by the state or by a community mental health board. The testimony and evidence introduced by the court-appointed experts, however, do not limit either party who may introduce additional evidence at the hearing.[113]

In appointing the experts, the Florida Rules provide that the court must order that they examine the defendant before the date of the hearing, which must be no later than twenty (20) days from the filing of any motion for competency evaluation.[114] The experts examine the defendant in jail, or in the case of a defendant on bail or other pre-trial release, in an appropriate local facility or other place for evaluation designated by the court.[115]

Traditionally, the examiner and the defendant are the only people present at the examination.[116] The new Florida Rules broke tradition by permitting the presence of attorneys for both the state and the defendant.[117] The Revision Committee based this new provision on its assumption that the examination is a "critical stage" in the proceedings and therefore subject to the sixth amendment right to counsel.[118]

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[112]FLA. R. CRIM. P. 3.211(c) (1977).

[113]*Id.* at 3.212.

[114]*Id.* at 3.210(b).

[115]*Id.* at 3.210(b)(3).

[116]Winick, *supra* note 48, at 39, 41.

[117]FLA. R. CRIM. P. 3.210(b).

[118]*See* Winick, *supra* note 48, at 41. The overwhelming majority of cases that had considered the sixth amendment issue, however, had reached the opposite conclusion, in the context of both the evaluation of competency and the examination of legal insanity. In fact, the Florida Supreme Court, in the context of psychiatric examination for civil commitment, had rejected the contention that the right to counsel permits attorneys to be present at the interview. In view of the (Florida) Supreme Court's concern that such presence "would unduly interfere with the objective evaluation of the patient's mental condition by the examining physician," it is surprising that the court approved the presence of counsel at the competency evaluation. *Id.*

Rule 3.210(b) of the Florida Statutes does not mention whether the defendant may have his own psychiatrist or other experts observe the examination. This observation should be permissible if the examiner does not object. Several federal cases, however, had rejected the contention that the defendant has the right to have his own psychiatrist present at the examination.[119]

The actual examination may take one of several forms and may last from about one-half hour to several hours. However, regardless of the form of examination, the examiner must apply the *Dusky* standard and, if so ordered, must also consider the application of the involuntary commitment standards or the criminal responsibility standard. The examiner, frequently a psychiatrist, typically performs a standard psychiatric evaluation of the defendant, including taking the history[120] and mental status examination of the individual.[121] Sometimes, the examiner also performs a physical examination, although this is rarely necessary for competency evaluation.[122]

It is common federal practice to order a "dual purpose examination" whenever competency is raised. This permits a psychiatrist to examine the defendant for the purpose of determining both his competency to stand trial and his sanity at the time of the commission of the offense.[123] This practice has been criticized by some quarters as susceptible to abuse by the prosecution who can use the examination for discovery purposes, thereby preempting an insanity defense.[124] It has also been observed that in a number of cases, the psychiatric expert called by the government to rebut the insanity defense is the same psychiatrist who was originally employed to determine the defendant's competency to stand trial.[125]

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[119] *Id.* at 42.

[120] *Id.* The history portion of the examination includes collecting information about the defendant's present illness and its cause; his past history, including past medical history; his social history, including work history, school performance, and prior encounters with the law; and his family history, including relation with parents and other relatives, and any problems of marital adjustment.

[121] *Id.* at 43. The mental status examination consists of collecting information about the defendant's general appearance and behavior; his "stream of talk," including his rate of speech and the manner in which he expresses ideas; his "affect" or mood; his thought content, including the existence of delusions or hallucinations; his "sensorium," including information about the individual's orientation, his recent and remote memory, and his intelligence; and his insight and judgment.

[122] *Id.*

[123] Pizzi, *supra* note 25, at 38.

[124] *Id.* at 39-40.

[125] *See, e.g.*, U.S. v. Reifsteck, 535 F.2d 1030 (8th Cir. 1976); U.S. v. Alvarez, 519 F.2d 1036 (3d Cir. 1975); U.S. v. McCracken, 488 F.2d 406 (5th Cir. 1974); U.S.

After evaluation, conducted either in a hospital setting, court clinic, or jail, the clinicians or experts, as the case may be, prepare written evaluation reports for submission to the court. Section 4244, U.S.C. provides for a hearing if the psychiatric report indicates that the defendant may be incompetent. Unfortunately, said provision does not require the court to examine the defendant in every case in which the issue of competency is properly raised. If the psychiatrist's report indicates that the defendant is competent, neither a hearing on the question nor a finding by the court will be required.

Under the Florida Rules, after the experts have completed their evaluation of the defendant, they prepare written reports analyzing the factors set forth in Rule 3.211 of the Florida Statutes. They then submit the reports to the court, with copies furnished the attorneys for the state and the defense.[126] If the court questions the evaluation, it may appoint different evaluators.[127] If the reports are unanimous in their conclusions and are accepted by the court, the prosecution and defense will frequently stipulate the acceptance of the reports, in which case a formal hearing is unnecessary.[128] Otherwise, the court will hold a hearing at which the attorneys have an opportunity to offer evidence and examine witnesses, including the examining experts.[129]

Occasionally, such clinicians or experts are called upon to testify in a competency hearing. At the hearing, the court-appointed experts, whether called by the court or by either party, are "court witnesses . . . and may be examined as such by either party."[130] Counsel may thus ask leading questions or impeach the court-appointed expert, even if the party represented by counsel called the expert to testify.[131]

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v. Mattson, 469 F.2d 1234 (9th Cir. 1972); U.S. v. Bennet, 460 F.2d 872 (D.C. Cir. 1972).

[126]FLA. R. CRIM. P. 3.211.

[127]Wexler, *Criminal Commitments and Dangerous Mental Patients: Legal Issues of Confinement, Treatment and Release* 39-41, DHEW Pub. No. (ADM) 76-391, (1976), *cited in* Winick And De Meo, *Incompetency to Stand Trial: Developments in the Law*, in MENTALLY DISORDERED OFFENDERS: PERSPECTIVES FROM LAW AND SOCIAL SCIENCE 3,5 (1983).

[128]*See* Fowler v. State, 255 So. 2d 513 (Fla. 1971). Either party, however, is entitled to insist upon a formal hearing. *Id. See also* State *ex rel.* Matalik v. Schubert, 57 Wis. 2d 315, 204 N.W.13 (1973) (Even if both counsel wish to waive the hearing, due process requires a hearing if the defendant himself wishes to contest the reports.).

[129]FLA. R. CRIM. P. 3.212 (1977).

[130]*Id.*

[131]Winick, *supra* note 48, at 50.

a. Quantum of Proof Required to Show Incompetency

To be adjudicated as mentally incompetent to stand trial, the defendant must be shown by a preponderance of evidence to have a mental defect, illness, or condition that would result in a denial of his right to a fair trial.[132] However, since mental capacity is, by nature, not susceptible of direct observation, the presence or absence of facts indicating that the accused may be mentally incompetent may be inferred from circumstantial evidence.[133]

Once it has been determined that a hearing is necessary, the courts are given wide discretion as to the type of evidence to be presented. Section 4244, U.S.C. provides that "evidence as to the mental condition of the accused may be submitted, including that of the reporting psychiatrist."[134] It is thus clear that both real and testimonial evidence are admissible in competency hearings. Of the latter kind, opinion testimony is what is most often presented in such hearings.

Opinion testimony of incompetency is of three types: lay opinion, expert opinion, and official opinion. Lay opinion refers to that which is given by any lay person. The rules of evidence in all jurisdictions, including ours, permit any lay witness to give his opinion of a person's mental competency. However, for his opinion to be admissible, the witness must fulfill the requirement of knowledge, that is, it must be shown that he had an opportunity to observe the defendant, to learn enough about the latter, and to form an opinion as to his mental condition.[135] The ordinary lay witness must also divulge the facts upon which he bases his opinion. If he does not lay the foundation

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[132]T. BLAU, *supra* note 98, at 59, 60.

[133]2 J. H. WIGMORE, WIGMORE ON EVIDENCE 9 (1979). Such circumstantial evidence may be in the form of any of the following classes of facts: (a) the person's outward conduct manifesting the inward and causing condition; (b) pre-existing external circumstances tending to produce a special mental condition; and (c) the prior or subsequent existence of the condition from which its existence at the time in question may be inferred. *Id.*

Such facts may be observed by the court directly from an examination of the accused in open court, or it may be brought to the attention of the court by opinion testimony from third persons based on either of the two means of observation, i.e., direct and indirect. *Id.* The latter means of observation will be given more emphasis in this paper because of the complex nature of the procedures adopted by the courts and the differences in the relative weights accorded to such opinion testimony.

[134]Pizzi, *supra* note 25, at 38, 53.

[135]J. H. WIGMORE, WIGMORE ON EVIDENCE Sec. 689 (3rd ed. 1940), *cited in* SELECTED WRITINGS ON EVIDENCE AND TRIAL 543 (W. Fryer ed. 1957).

for his opinion on direct examination, such may be ferreted out of him on cross-examination.[136]

On the other hand, expert testimony is that which is given by persons who have special qualifications not possessed by the ordinary witness which enable him to give an expert opinion. Like the opinion of a lay witness, it must also be based upon facts. However, it differs from the former in that the expert need not obtain his data by direct observation (although he often does); it may be furnished by others.[137] This kind of evidence is, perhaps, the most important basis upon which the judge's determination of the competency of the accused is made to rest.[138]

Courts generally rely heavily on the testimony of psychiatrists and psychologists appointed by it to assist in determining the competency of an accused to stand trial. In fact, as a rule, each state specifies, with varying degrees of detail, what is required by way of an opinion or a report from an expert appointed to advise the court on the competency of the accused to stand trial.[139] For instance, the Florida Rules of Criminal Procedure are quite explicit:

> 1) In considering the issue of competency to stand trial, the examining experts should consider and include in their report, but are not limited to, an analysis of the mental condition of the defendant as it affects each of the following factors:
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> a) Defendant's appreciation of the charges;
>
> b) Defendant's appreciation of the range and nature of the possible penalties;
>
> c) Defendant's understanding of the adversary nature of the legal process;
>
> d) Defendant's capacity to disclose to attorney pertinent facts surrounding the alleged offense;
>
> e) Defendant's ability to relate to attorney;
>
> f) Defendant's capacity to realistically challenge prosecution witnesses;
>
> g) Defendant's ability to manifest appropriate courtroom behavior;
>
> h) Defendant's capacity to testify relevantly;

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[136] *Id.*

[137] *Id.*

[138] *But see In re* Collins' Estate, 174 Cal. 663, 670, 164 Pac. 1110, 1113 (It should be noted, however, that in earlier decisions, courts were wont to discredit the testimony of experts, oftentimes stigmatizing them as the "weakest and most unsatisfactory" kind of evidence.); *see also* Davis v. Phillips, 85 Mich. 198, 203; 48 N.W. 513, 514.

[139] T. BLAU, *supra* note 98, at 51.

i) Defendant's motivation to help himself in the legal process;

j) Defendant's capacity to cope with the stress of incarceration prior to trial.[140]

The extent to which the expert appointed by the court may assert his opinion as to the competency of the accused is not, however, without limitations. Such experts are sought merely to assist judges in settling competency issues. They do not make the competency determination and their reports serve only as recommendations to the court.[141]

The final determination of competency remains a formal judicial procedure to be made by the judge alone.[142] In fact, under Rule 704(b) of the Federal Rules of Evidence, no expert witness testifying to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged, or of a defense thereto. Such ultimate issues are matters to be resolved by the trier of facts alone.[143]

The third type of opinion testimony admissible as evidence in a competency proceeding is official opinion. Judgments or decrees of incompetency rendered or promulgated in another proceeding, whether prior or subsequent to the criminal proceedings before the court, are generally admissible. They are, however, regarded merely as evidentiary facts of incompetency to be considered with all the other facts and are therefore inconclusive.

Whatever may be the basis of the judge in determining the issue of competency, it is important that the competency evaluation in general should address the issue of whether the defendant is, to a reasonable degree, capable of understanding and perceiving the nature of the

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[140]FLA. R. CRIM. P. 3.2111.

[141]T. BLAU, *supra* note 98, at 51.

[142]*See generally* U.S. v. Zovluck, 425 F. Supp. 719(1977); U.S. v. Horowitz, 360 F. Supp. 772 (1973).

[143]*See* FED. R. EVID., Rule 704 (b) (1987). This prohibition seeks to address the four dangers which are perceived to be concommitant to the unrestricted admission of expert testimony, namely, that: (a) mental health experts, in giving expert testimony, oftentimes state impermissible legal conclusions; (b) expert testimony on the issue of a defendant's mental condition invades the province of the trier of facts; (c) conflicting expert mental health testimony confuses the trier of facts; and (d) conclusions as to sanity involve an impermissible moral judgment. On the other hand, the rule has been criticized as being unduly restrictive of testimony crucial to an insanity defense. Cohen, *Punishing the Insane: Restriction on Expert Psychiatric Testimony by Federal Rule of Evidence* 704(b), 40 FLA. L. REV. 552 (1988).

judicial process.[144] The accused must understand how and why he is being charged, the pre-trial and trial procedures that will occur, what will happen in case he is convicted, and his constitutional rights and privileges to participate in the process.[145]

In addition, the expert, if the court chooses to rely on one, must determine if the defendant has any mental defect that will prevent a reasonable degree of cooperation with his lawyer in pursuing a good representation and a fair trial.[146] Finally, the expert should be prepared to address the issue of whether the accused has any mental defect or disease that would preclude making a reasonable self-presentation, in his or her own best interests, during the trial proceedings.[147]

V. Disposition of Incompetent Defendants

A. Under Philippine Law

What happens when an accused is found to be either insane or mentally incompetent either during arraignment or during trial? The answer depends on the interpretation one gives to the two relevant provisions of law on the matter.[148]

With respect to article 12(1) of the Revised Penal Code, one can adopt either of the two interpretations presented earlier in this paper.[149] If one considers the said provision to be merely a mode of disposition of persons who have availed of the insanity defense successfully, then the accused, instead of being set free, shall, upon termination of the proceedings, be ordered confined to an insane asylum for treatment and he shall stay there until the court finds that he has recovered his sanity and may be released therefrom without danger. The confinement is therefore ordered with a view to treating the insane person and helping him recover his sanity. The assumption is that the accused is insane both at the time of the commission of the offense and at the time of the trial. His confinement is therefore a consequence of a finding of insanity at the time of the commission of the offense. Once

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[144]T. BLAU, *supra* note 98, at 61.
[145]*Id.*
[146]*Id.*
[147]*Id.*
[148]*See* REV. PEN. CODE, art. 12(1); REV. RULES OF COURT, Rule 116, sec. 12(a).
[149]*See* discussion *infra*.

such a finding is made, the court is left with no choice except to order the commmitment of the accused to a hospital for the insane.[150]

The problem with this interpretation is that it does not seem to cover a case where the accused, although insane during the commission of the offense, is no longer insane at the time of the trial. In such a case, the application of article 12(1) would result in the absurd situation where the accused is automatically committed to a hospital for the insane despite the fact that he is no longer insane. The absurdity becomes more apparent if we consider that once committed, he cannot leave the institution without the requisite certification of the Director of Health and the permission of the court which ordered his commitment. Considering the proverbial snail's pace at which administrative matters are processed, the accused would probably remain in confinement for an indefinite period of time, although such confinement is of no use to him.

On the other hand, if one adopts the other interpretation of article 12(1), and say that the second paragraph thereof is independent of the insanity defense, a finding of insanity during trial will result in the suspension of the proceedings and the commitment of the accused to a hospital for the insane until he shall have fully recovered his sanity. Upon his release therefrom, the criminal proceedings against him shall be reinstated. If the court finds that the accused is guilty of the crime charged, it shall impose upon him the proper penalty which he shall serve in full regardless of the length of time he spent in confinement in the mental institution. This conclusion is supported by the opinion of one commentator who stated that "[W]hen [the accused] was sane at the time of the commission of the crime, but he becomes insane at the time of the trial, he is liable criminally. The trial, however, will be suspended until the mental capacity of the accused be restored to afford him a fair trial."[151]

With respect to the provisions of Rule 116, section 12(a) of the Revised Rules of Court, one can also adopt two interpretations with respect to the disposition of the incompetent accused.

On one hand, it is possible to construe the said provision as authorizing the court to order the confinement of the accused only for the

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[150]A reading of the second paragraph of article 12(1) indicates that the court is required to automatically order the commitment of the accused to the proper institution. It is submitted that the use of the phrase "the court shall order his commitment" in the said provision does not allow for the exercise by the court of its discretion in the matter of the commitment of the accused.

[151]L. REYES, *supra* note 6, at 217.

purpose of subjecting him to mental examination. It should be noted that the provision reads: "the court shall order his mental examination, and, if necessary, his confinement for such purpose."[152] The literal import of this is that the phrase "for such purpose" refers to the mental examination mentioned in the preceding phrase. If this be the case, it follows that the court has no authority to order the confinement of an accused for a period longer than that necessary to complete the mental examination of the latter regardless of whether or not the results of such examination show that the accused is suffering from some mental defect that renders him incompetent to be arraigned or, for that matter, that he is totally insane.

In the latter case, it would seem that the remedy is for the court to direct the Director of Health to institute the proper civil commitment proceedings under Rule 101 so that the accused may be committed to a hospital for insane persons. This however still leaves unsettled the question of what will happen to the criminal case pending against the accused. It must be noted that under Rule 117, section 3 of the Revised Rules of Court, the insanity of the accused is no longer a ground for a motion to quash unless the complaint or information contains allegations as to such insanity, in which case the accused may move for the quashal of the information on that ground.[153] It is submitted that the more appropriate remedy is to order the provisional dismissal of the criminal case (with the consent of the accused) until the accused shall have been released from confinement, after which the proceedings shall be reinstated.

Suppose, however, the results of the mental examination of the accused reveal that although he is not totally insane, he is nevertheless incompetent to proceed to trial on account of some mental defect that incapacitates him from understanding fully the nature of the charges against him and from rendering effective assistance to his counsel. A restrictive interpretation of Rule 116, section 12(a) would prohibit the court from ordering the continued confinement of the accused. But this construction does not authorize the court to proceed with the trial because to do so would violate the due process rights of the accused who cannot be truly said to possess that requisite mental capacity needed for a fair trial.

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[152]REV. RULES OF COURT, Rule 116, sec. 12(a).

[153]REV. RULES OF COURT, Rule 117, sec. 3 provides in part:

> The accused may move to quash the complaint or information on any of the following grounds:
>
> . . . .
>
> (g) That it contains averments which, if true, would constitute a legal excuse or justification . . . .

On the other hand, Rule 116, section 12(a) may also be understood to mean that the court may order the confinement of the accused once he is found incompetent to stand trial, or his continued confinement, if he has been initially committed for mental examination. This construction, although seemingly contrary to the literal import of the Rule, may be justified if one sees the said Rule to be complementary to the provisions of the second paragraph of article 12(1) which, in turn, may be interpreted as prohibiting the trial of insane persons and, by analogy, of incompetent ones. Moreover, it may also be argued that the lack of detailed rules on the disposition of incompetent accused under Rule 116, section 12(a) reflects the intention of the Supreme Court to leave such matters to the discretion of the trial judge who is in the best position to observe the demeanor of the accused and to determine whether or not, under the particular circumstances of each case, the accused who has been found to be incompetent should be committed to a hospital for persons thus afflicted.

In fine, therefore, both the second paragraph of article 12(1) of the Revised Penal Code and Section 12, Rule 116 of the 1988 Revised Rules of Court authorize the court to order the incompetent accused (that is, the insane or imbecile accused under the penal provision and the accused who is suffering from an unsound mental condition that effectively renders him unable to fully understand the charge against him and to plead intelligently thereto under the Rules of Court provision) confined, at least for the purpose of subjecting him to mental examination, in a hospital or asylum established for persons thus afflicted.

The second paragraph of article 12(1) of the Revised Penal Code further states that the insane or imbecile accused shall not be allowed to leave such place of confinement without prior permission of the same court. The Revised Rules of Court, on the other hand, is silent on this point. However, Rule 116, section 12(a) specifically states that the arraignment shall only be suspended by the finding of incapacity of the accused to stand trial. As to how the court should proceed with the case in the meantime will have to depend on the circumstances of each case. It is submitted that the court may issue such orders as may be proper for the protection of the accused, bearing in mind his constitutional rights to due process and to speedy trial.

B. Under American Law

A finding of incompetency generally results in the commitment of the accused in a hospital or asylum for insane persons. Under the U.S.

Code,[154] such a finding authorizes the court to commit the accused to the custody of the Attorney General until he becomes mentally competent to stand trial or until the pending charges against him are disposed of in accordance with law. Earlier decisions construing this provision authorized the indefinite commitment of the accused in insane hospitals or asylums until they were considered "sane," i.e., competent enough to stand trial. A study of Massachusetts defendants committed because of incompetency to stand trial, however, revealed that few of said defendants had been to trial as competent, although many, upon examination, were found to be so.[155]

Prior to the decision of the U.S. Supreme Court in *Jackson v. Indiana*,[156] the treatment and consideration of the problem posed by incompetent defendants were generally subsumed under the general rules applicable to insane persons. Standards used for the treatment and disposition of insane persons were applied to incompetent defendants as well, and the almost inevitable result was the imposition upon the latter of what in effect were indeterminate sentences of confinement in security mental institutions.[157] Many defendants were never restored to competency and some who were remained institutionalized for lengthy periods because their improvement did not come to the attention of, or were ignored by, the hospital staff.[158]

In *Jackson*, the U.S. Supreme Court finally ruled that the indefinite commitment of incompetent defendants is a violation of the latter's constitutional rights to due process and to equal protection of the law. Thus, the court held that the only need for holding the accused who is unfit for trial is to make him fit for such trial.[159] Lacking movement in that direction, he must be released unless, apart from the criminal charge against him, he can be civilly committed.[160]

As a result of the decisions in *Jackson* and *In re Davis*,[161] a number of states enacted legislations that introduced significant changes in the procedure for the disposition of incompetent defendants. For

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[154]18 U.S.C. sec. 4246 (1970).

[155]Mc Garry & Bendt, *Criminal v. Civil Commitment of Psychotic Offenders: A Seven-year Follow-up*, 125 AM. J. PSYCHIATRY 1387, 1391 (1969).

[156]406 U.S. 715 (1972).

[157]*See* A. MATTHEWS, MENTAL DISABILITY AND THE CRIMINAL LAW: A FIELD OF STUDY 134 (1970).

[158]Winick, *supra* note 48, at 250.

[159]406 U.S. 715, 738 (1972).

[160]*Id.*

[161]8 Cal.3d 798, 505 P.2d 1018 (1973).

instance, under the Florida Statutes,[162] if the court determines that the defendant is not competent, it shall consider the issue of involuntary hospitalization of the defendant if examination of that issue has been previously ordered. If the court decides that the defendant, although incompetent to stand trial, does not meet the criteria for involuntary commitment, it may release him "on appropriate release conditions for a period not exceeding one (1) year."[163]

The court may likewise order out-patient treatment at a local facility and periodic evaluation to determine whether he has regained his competency.[164] If the defendant fails to comply with the conditions of release, or if his condition deteriorates and requires in-patient care, the court may again hold a hearing and modify the conditions of release or commit the accused to the Department of Health and Rehabilitative Services for treatment.[165]

On the other hand, if the court decides that an accused found incompetent meets the criteria for involuntary commitment, it shall require his transfer to a treatment facility or order that he receives out-patient treatment at any other appropriate facility or service on an involuntary basis. If hospitalization is ordered, the order of commitment must contain the following: (1) findings of fact relating to the issues of competency and involuntary hospitalization; (2) copies of reports of the experts filed with the court pursuant to the order of examination; (3) any other psychiatric, psychological or social reports submitted to the court relative to the mental state of the defendant; and (4) the charging instrument and supporting affidavits or other documents used in the determination of probable cause.[166]

Because the purpose of committing the incompetent accused is to restore him to capacity to stand trial,[167] such commitment must entail treatment that makes it substantially probable that he will attain that capacity in the foreseeable future.[168] In view of such purpose, the Florida Statutes provide that if the administrator of the facility where the accused has been committed determines, on the basis of the response of the accused to the treatment, that the latter has become competent to stand trial or no longer meets the criteria for involuntary commitment,

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[162]FLA. R. CRIM. P. 3.212(b) (1977).

[163]*Id.*

[164]*Id.* at 3.212(c).

[165]FLA. LAWS, Ch. 80-75, sec. 1 (1980).

[166]FLA. R. CRIM. P. 3.212(b)(2) (1977).

[167]Jackson v. Indiana, 406 U.S. 715, 737 (1972); Garret v. State, 390 So.2d 97 (1980).

[168]Jackson v. Indiana, 406 U.S. at 737.

he must notify the court as well as all the parties of such determination.[169]

The defense counsel may also move the court for a hearing on the issue of the eligibility of the defendant for release.[170] However, such a motion must certify that counsel made it on reasonable grounds and, without invading the attorney-client privilege, must recite specific observations in conversations with the accused that form the basis of such a motion. The courts upon receipt of the notice sent by the administrator of the facility or of the defense counsel's motion, shall then order a hearing to be held on the issue.[171]

If, following the hearing, the court finds the defendant competent to stand trial, it shall enter its order so finding and shall proceed with the trial.[172] On the other hand, if it finds that the defendant remains incompetent and still meets the criteria for involuntary commitment, it must order continued hospitalization or treatment.[173] If the court determines that the defendant remains incompetent but no longer meets the criteria for involuntary commitment, it may order conditional release.[174] Such conditional release is subject to appropriate release conditions and shall not exceed one year. Moreover, the court may also order that the defendant receives outpatient treatment at an appropriate local facility and that he reports for further evaluation at specified dates during the release period.[175]

If the defendant remains incompetent for five years after a determination of incompetence in the case of a defendant charged with a felony, or for one year in case of a defendant charged with a misdemeanor, Rule 3.213(a) requires that the court conducts a hearing.[176] If, after hearing, the court determines that the defendant remains incompetent and there is no substantial probability that he will become competent in the foreseeable future, the court must dismiss the charges against the defendant. In such a case, the court must also determine whether the defendant meets or continues to meet the criteria for involuntary commitment.[177]

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[169]FLA. R. CRIM. P. 3.212(b)(2) (1977).
[170]*Id.* at 3.212(b)(3)(i).
[171]*Id.* at 3.212(b)(3)(ii).
[172]*Id.* at 3.212(b)(5).
[173]*Id.* at 3.212(b)(4).
[174]FLA. R. CRIM. P. 3.212(c) (1977).
[175]*Id.*
[176]FLA. R. CRIM. P. 3.213(a) (1977).
[177]*Id.* at 3.123(a)-(b).

However, even if the court has dismissed the charges against the defendant, the prosecutor may refile such charges should the defendant be subsequently declared competent to stand trial. Rule 3.214 (a) of the Florida Rules[178] as well as section 925.24 of the Florida Statutes[179] provides that the prior dismissal "shall not constitute former jeopardy." In addition, the statute of limitations shall not be applicable to criminal charges dismissed because of the incompetency of the defendant to stand trial.[180]

VI. Comparative Analysis of Philippine and American Rules on Trial Incompetency

Throughout the earlier discussions in this paper, a deliberate effort was made to present separately the different procedural rules on the issue of trial incompetency in both Philippine and American jurisdictions. It is hoped that the resulting juxtaposition of such rules enabled the reader to view the contrasting provisions in the context of the differences in the theoretical, as well as structural, frameworks on which the rules of procedure in the two jurisdictions are based. This part of the paper integrates the various components of the largely disjointed provisions of our procedural rules, with a view to pinpointing the areas where gaps are felt to exist. In addition, we shall also examine whether such gaps can be supplemented by rules patterned after those in force in the United States, taking into account, of course, the peculiarities of the two legal systems.

A. Conceptual and Constitutional Problems in Our Law on Trial Incompetency

As may have been observed from our earlier discussion of the existing Philippine laws on trial incompetency, there seems to be, at present, a confusion of the concepts of insanity and incompetency to stand trial. One is oftentimes used synonymously with the other; and this confusion is translated into the phraseology of the various provisions of our law on the matter. It is further reflected in the commentaries of various authors on the same topic.[181]

As a general proposition, one can safely say that the term incompetency includes insanity. There can be no quarrel that an insane

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[178]FLA. R. CRIM. P. sec. 3.214(a) (1977).

[179]FLA. STAT. sec. 925.24 (Supp. 1980).

[180]*Id.*

[181]*See generally* L. REYES, supra note 6, at 215-216; 2 F. REGALADO, REMEDIAL LAW COMPENDIUM 132, 313 (5th ed. 1989).

person is likewise incompetent - whether for purposes of trial or otherwise. To say, however, that the converse is always true, i.e., that an incompetent person is necessarily insane, is to betray a misunderstanding of the essential distinctions between these two concepts. Insanity connotes the total deprivation of a person's mental faculties, the complete breakdown of his cognitive as well as other mental processes to such an extent that he is totally deprived of his intelligence. On the other hand, incompetency implies a mere defect of the mind, a reduced ability to comprehend without necessarily completely depriving a person of his intelligence.

The significance of this distinction can perhaps be better appreciated if one views it in the context of the criminal process, particularly in the disposition of both insane and incompetent accused persons. While both our substantive and procedural rules recognize the principle that prohibits the trial of insane as well as incompetent persons, the point of confusion lies in the manner by which these two classes of criminal defendants are proceeded against once they are found to be insane or incompetent, as the case may be.

As far as insane persons suspected of having committed crimes are concerned, the law mandates that they are to be confined to a mental institution until they shall have regained their sanity to such a degree will afford them a fair trial. This mode of disposition is not, however, expressly extended to those who are merely incompetent. This has prompted the proposition that in such cases, the incompetent accused should be dealt with in the same manner as insane persons.

In fairness to the proponents of this view, it may be conceded that considering the silence of our procedural rules, the analogy may indeed be the most feasible way by which one can approximate a sense of uniformity of procedure. The alternative solution would be to leave the decision to the trial judge alone, who may then proceed against the incompetent accused as he deems proper. In doing so, the judge shall be guided only by the facts of each case and by his own appreciation of the degree of the incompetency of the accused.

However, neither considerations of uniformity of procedure nor expectations that the judge shall, in all cases, exercise his discretion in a manner that accords full protection to the rights of the accused warrant the inference that the two classes of criminal defendants, i.e., the insane and the incompetent, should be accorded the same treatment under the law.

In the first place, the very distinctions between the concepts of insanity and incompetency constitute the strongest arguments for the

segregation of the two classes of defendants and the adoption of rules applicable only to one class and not to the other. In the second place, to leave the decision solely to the sound discretion of the trial judge, without providing the latter with sufficient standards on which to base his decision, might result in unfair consequences. Incompetent defendants who may be laboring under the same or similar degrees of incompetency may be treated differently only because such incompetency was manifested differently in each particular case.

In this jurisdiction, there may be more reasons that weigh against the practice of ordering the commitment of incompetent defendants to mental institutions than in other jurisdictions. Unlike in the United States, for instance, where rapid technological advances and an abundance of resources have resulted in the development of sophisticated facilities for the treatment of incompetent or even insane persons, our own mental institutions are generally plagued by a multitude of problems like overcrowding, insufficient supplies, outdated and inadequate treatment facilities, and lack of qualified personnel. These factors can very well be determinative of the length of time that an incompetent may have to spend in confinement before he could be certified as having regained his competency, if at all. Confinement in such institutions would in effect be no different from the imposition of an indeterminate penalty upon the incompetent for an alleged crime where his guilt had not been established beyond reasonable doubt.

It is a well-settled principle in this jurisdiction that the constitutional guarantees of due process and speedy trial are available to all accused persons. The circumstance that one may be suffering from a condition that places him at a lower intellectual level than others does not deprive him of such fundamental rights. And yet, the application of our present laws and procedural rules to cases of incompetent criminal defendants could very well render such rights illusory.

Even if the accused were subsequently released after a lengthy confinement, he still faces the prospect of prosecution for the outstanding charges against him, which had been merely suspended upon his confinement. During the trial, the time he spent in confinement is not deducted from the sentence he has to serve if subsequently convicted. In the meantime, he has to contend with the task of marshalling his evidence and witnesses, some of whom may no longer be available. Even under the best of circumstances, it is never easy to secure the attendance of witnesses during trial. The lapse of time between the initial stages of the proceedings and their reinstatement may compound this problem, thus causing further delays which do not in any way contribute to ensuring the right of the accused to speedy trial.

In contrast to the silence pervading our substantive and procedural rules, the rules laid down in the various states of the United States are quite explicit and detailed. The most salient provisions of such rules at both the federal and state levels include those limiting the length of time that the incompetent accused shall be confined in a mental institution;[182] procedures for periodic examination of confined defendants to determine their progress towards regaining competency;[183] conditional release for incompetents not meeting the criteria for involuntary civil commitment;[184] dismissal of charges against incurable incompetents and the institution of civil commitment proceedings where applicable;[185] and deduction of the time spent in confinement from the sentence which the accused has to eventually serve in case of conviction.[186]

The common thread in such provisions is that they are all aimed at ensuring that the incompetent accused will not be deprived of his constitutional rights to due process and to speedy trial.

Even with such safeguards, controversies have still arisen regarding the propriety of committing incompetent defendants to mental institutions. Recently, there has been a growing criticism of the rule allowing a plea of incompetency to stand trial in the light of the possible infringing effects of such a plea on the rights of the accused to due process and to speedy trial. A number of commentators have advocated the abolition of such a plea.[187] Instead, they advocate for the trial of incompetents under special rules which take into consideration their peculiar circumstances. On the other hand, some states have responded to the controversy by allowing the conditional release of those incompetents who do not meet the criteria for involuntary commitment, under appropriate release conditions.[188]

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[182]*See generally* FLA. R. CRIM. P. sec. 3.213(a) (1977) (limiting the period of confinement to five years).

[183]FLA. R. CRIM. P. sec. 3.212(c) (1977).

[184]*Id.*

[185]FLA. R. CRIM. P. sec. 3.213(a) (1977).

[186]*See* Guy v. Ciccone, 439 F.2d 400, 401 (8th Cir. 1971).

[187]*See, e.g.*, Morris, *The Criminal Responsibility of the Mentally Ill*, 33 SYRACUSE L. REV. 477, 490 (1982); *see also* Fentiman, *Whose Right Is it Anyway?: Rethinking Competency to Stand Trial in Light of the Synthetically Sane Insanity Defendant*, 40 U. MIAMI L. REV. 1109 (1986); Burt & Morris, *A Proposal for the Abolition of the Incompetency Plea*, 40 U. CHI. L. REV. 66 (1972); *contra* Pizzi, *Competency to Stand Trial in Federal Courts: Conceptual and Constitutional Problems*, 45 U. CHI. L. REV. 29 (1977).

[188]*See, e.g.*, Fla. R. Crim. P. sec. 3.212(c) (1977) (authorizing conditional release subject to out-patient treatment in a local facility and periodic evaluations during the period of such release).

B. Procedural Problems Surrounding Philippine Incompetency Law

Aside from the conceptual and constitutional problems created by the void in our competency law, there are equally pressing procedural questions left unanswered by the formulations of our substantive as well as procedural rules. The almost total lack of guidelines on both Rule 116, section 12(a) of our Rules of Court and article 12(1) of the Revised Penal Code has not helped clarify these questions. Foremost among these is the issue of whether or not the defense counsel is under any obligation to raise the issue of competency, considering the manner by which such issue is generally urged to be disposed. The weight of the commentaries, as earlier noted, seems to favor the commitment of the accused to a mental institution once the issue of his incompetency is raised, although the exact scope and limitations of such confinement have yet to be defined. In view of this, defense counsel may entertain doubts about raising the issue at all and may opt to proceed to trial notwithstanding the possible incompetency of his client. On one hand, such a procedure may ultimately result in the accused being convicted by virtue of proceedings in which he was not even able to play a minimal role, much less actively participate in the conduct of his own defense, thereby denying him of his right to be informed of the nature of the charges against him.

On the other hand, defense counsel may also be genuinely concerned about the possible adverse effects of raising the incompetency issue, especially if the accused is a first-time offender or if the crime for which he is charged is a light felony. In these instances, it may indeed be better for the accused to proceed to trial and risk conviction under a relatively light penalty than to claim incompetency and face possible lifetime commitment in a mental institution.

In this regard, the proposal forwarded by some American commentators to abolish the incompetency plea and allow the accused to proceed to trial under special rules would seem to be relevant. According to this proposal, incurable incompetent criminal defendants should be allowed to go to trial notwithstanding such incompetency. The proposal traces its origin to the holding in *Jackson v. Indiana* that the state may allow, at a minimum, an incompetent defendant to raise certain defenses such as the insufficiency of the indictment, or to make certain pretrial motions through counsel.[189] Using this ruling as a justification, some states now have statutes permitting trial of possible exonerating issues where the incompetent defendant's personal participation is not

[189]406 U.S. 715, 741 (1972).

necessary.[190] Other states go even further by allowing a full-scale trial of the incompetent with the qualification that a guilty verdict must be set aside and the case retried after the defendant has become fully competent.[191] However, the expense and possible duplication of efforts involved in the latter procedure have led to the recommendation against the adoption of such "innocent-only" trials of incompetent defendants.[192]

The gist of the proposal allowing trial of incompetents is that the incompetency of the accused to stand trial goes no further than to work as a ground for granting trial continuance.[193] It urges that whenever the issue of incompetency is raised, the trial should be deferred to allow the accused to be as mentally fit for trial as treatment in or out of a mental hospital (whether on bail or not) can make him.[194] However, such continuance should be granted only where (a) the court finds that there is a substantial probability that the defendant will be competent to stand trial "within the foreseeable future;" and (b) the consequent delay does not exceed a period of six months.[195] If after the continuance he remains gravely impaired, trial should proceed but under special rules of discovery, corroboration, and other procedures designed to minimize his personal or mental disadvantages.[196]

This proposal, now widely gaining popularity in the United States, appears workable in this jurisdiction. It must be noted that under our rules of procedure, the presence of the accused during trial is not mandatory, unless such presence is specifically ordered by the court for purposes of identification.[197] In fact, it has been held that the accused may waive his right to be present at any stage of the trial even if he is charged with a capital offense.[198]

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[190]*See, e.g.*, MONT. REV. CODE ANN. sec. 95-506(c) (1960); N.Y. CODE CRIM. PROC. sec. 730.60(5) (1971). *But see* U.S. v. Barnes, 175 F. Supp. 60 (S.D. Cal. 1959).

[191]*See generally* MASS. GEN. LAWS ANN. ch. 123; sec. 17 (1972).

[192]*See* MENTAL ILLNESS, DUE PROCESS AND THE CRIMINAL DEFENDANT: A SECOND REPORT AND ADDITIONAL RECOMMENDATIONS BY THE SPECIAL COMMITTEE ON THE STUDY OF COMMITMENT PROCEDURES AND THE LAWS RELATING TO INCOMPETENTS OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK 115 n. 104 (1968) [hereinafter SPECIAL COMMITTEE STUDY].

[193]Burt and Morris, *supra* note 187, at 75.

[194]Morris, *supra* note 187, at 494.

[195]Burt & Morris, *supra* note 187, at 86.

[196]*See* Morris, *supra* note 187, at 494.

[197]REV. RULES OF COURT, Rule 115, sec. 1(c) (amended 1988); *see also* CONST. art. III, sec. 14.

[198]Aquino v. Military Commission No. 2, 63 SCRA 546 (1975).

Viewed in this perspective, Rule 116, section 12(a) could be amended to include provisions which incorporate, with some modifications, of course, the proposal discussed above. Thus, after the initial suspension of the arraignment, the judge must make a finding as to the degree of the incompetency of the accused. If such incompetency appears incurable, then the judge must order a discharge of the accused and direct the initiation of involuntary civil commitment proceedings under Rule 101.[199] On the other hand, if it appears that there is a substantial likelihood that the accused will regain his competency in the foreseeable future, the court may grant a continuance for a period to be fixed by the rules, preferably not to exceed the reasonable period necessary for him to undergo treatment inside or outside a hospital. In the meantime, the accused may be allowed to present pre-trial motions which do not require his personal participation, such as matters ordinarily taken up during the pre-trial proceedings. If the accused is under detention, he should be allowed to post bail so as to enable him to secure medical assistance at a hospital or facility of his own choice.

After the initial continuance, if it appears that the accused is competent enough to be arraigned, arraignment should forthwith proceed and, thereafter, trial should be conducted. However, the rules of procedure for such trial should be designed in such a way as to take into account the possible mental handicap of the accused. Among other things, the court may require a more stringent burden of proof from the prosecution, with special rules for discovery and corroboration in favor of the accused.

One question to which neither Rule 116, section 12(a) nor article 12(1) provides any answer relates to the degree of proof required for a finding of incompetency. The judge when determining the issue of incompetency is presumably guided only by the general rules of admissibility of evidence. Considering the peculiar and narrow questions to be decided in incompetency proceedings, heavy reliance is likely to be placed on the testimony of expert witnesses. The latter's testimony in turn depends largely on the results of the mental examination of the accused.

In contrast, the procedure under American law, notably that of Florida, provides for guidelines as to the type and quantum of evidence necessary for a finding of incompetency. These guidelines are designed not only for the judge but also for the examining experts. For instance, the commitment order issued by the judge normally contains an enumeration of the factors to be considered by the examining physicians

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[199] *See* REV. RULES OF COURT, Rule 101.

in conducting the mental examination of the accused. These factors are geared towards determining whether or not the accused is *legally* competent for purposes of trial, although he may not necessarily fit into the class of persons generally diagnosed as *medically* competent. This distinction is important for purposes of delimiting the scope of the competency examination, that is, whether such incompetency is sufficient to bar the criminal prosecution of the accused. Flowing from the delimitation of the scope of the competency examination, the examining expert's testimony is thus focused on the legal consequences of the mental condition of the accused and not on the medical implications thereof.

In addition to delimiting the scope of the examination, the Florida rules likewise expressly provide that the judge is not duty bound to adopt the findings and recommendations of the examining expert. If he has sufficient basis to doubt the accuracy of such findings as to the legal implications of the mental condition of the accused, he may order that the latter be reexamined by a new group of experts. Only when he has reasonable grounds to believe that the accused may be truly incompetent to proceed to trial will the judge resolve the issue.

It is submitted that similar rules can be adopted in this jurisdiction. For one, it is not altogether farfetched to surmise that in cases where our courts order the mental examination of an accused, the examining physicians base their conclusions and recommendations on the medical implications of the accused's mental condition, without regard to whether or not such recommendations conform to the legal ramifications of a finding of incompetency. The judge who relies solely on such findings may in reality be merely echoing the conclusion that the accused is medically incompetent. It must be borne in mind that the purpose of such examination is to determine whether the accused is suffering from a form of incompetency that incapacitates him to understand the legal consequences of the proceedings against him and to intelligently plead to the charges. This issue is not necessarily synonymous with the question of medical incompetency, as the latter may have broader implications than the former.

In the light of the foregoing, it is therefore imperative that rules be promulgated to ensure that the quantum of proof required for a finding of incompetency be clearly defined. Not only would such rules go a long way towards clarifying the confusion which has resulted from the existence of gaps in our procedural rules, but they would better ensure that the incompetent accused is accorded the protection of their constitutional rights to due process and to speedy trial.

VII. Conclusions and Recommendations

The conceptual as well as practical differences between insanity and mental incompetency to stand trial render it necessary that different approaches be adopted in tackling these two distinct legal problems. In this jurisdiction, our statutes generally leave much to be desired in terms of ensuring adequate protection for the rights of persons who, while not totally insane, are incompetent to stand trial by reason of some mental disorder that incapacitates them to understand the nature of the proceedings to which they are subject. Our statutes reflect the old extremist approach, formerly in force in the United States, of lumping mental incompetents with insane persons and applying the same treatment and disposition standards to both classes. Needless to say, this kind of treatment is inequitous to those who are merely incompetent. The basic constitutional rights of the accused to due process and to speedy trial militate against such an approach.

In the United States, the increasing recognition of the dissimilarities between the situations of these two classes of persons has spurred the enactment of laws and the promulgation of rules and regulations especially adopted to the unique needs of each class of persons. Courts nowadays generally apply different standards when dealing with mental incompetents on one hand, and with those who are legally insane on the other. Even in the face of such safeguards, questions still persist with respect to whether or not they are compatible with the fundamental rights of the accused to due process, equal protection of the laws, bail, and speedy trial, among others.

We believe that it is now high time for the Philippines to follow the example set by the United States. For too long, the misunderstanding and misapprehension of the unique situation that mental incompetents find themselves in have resulted in confusion. Coupled with the silence of the law on the matter, this confusion has been largely responsible for the undeserved continued confinement of mentally incompetent criminal defendants in state institutions which have little or no facilities for their rehabilitation.

In considering what rules to enact for the protection of mentally incompetent defendants, the legislature or the Supreme Court, as the case may be, should take into consideration the factors weighing against the indefinite commitment of incompetent persons and balance them carefully against the countervailing public interest of protecting society from the dangers posed by mentally disordered persons. In this respect, the following suggestions and recommendations are hereby forwarded:

1) The Supreme Court should examine the present procedural rules with a view to filling the gaps in the rules. Along this line, it is suggested that such amendments should include provisions which allow the prosecution or the court, *motu proprio*, to raise the issue of the incompetency of the accused. Moreover, instead of the automatic commitment procedures being observed at present, the Court or the legislature should consider such alternatives as allowing those incompetents who do not appear to be incurably so to proceed to trial after a reasonable period of continuance to enable them to avail of psychiatric and medical treatment aimed at restoring their competency. Moreover, such trial should be held under special rules that take into account the peculiar circumstances of the incompetent accused.

2) In cases of incurable incompetents, the Supreme Court should also consider such alternatives as the dismisal of the charges and the institution of civil commitment proceedings against the incompetent. This would remove the inequity created by the prospect of criminal prosecution upon discharge of the accused from the mental institution, without the benefit of deduction of the time spent in confinement from the term of the sentence subsequently imposed on him.

3) In cases where the confinement of the accused is necessary for treatment purposes, there should be provisions for deduction of the time spent in confinement from the term of the imprisonment to be served by the accused should he be subsequently convicted.

4) The Supreme Court should also promulgate rules governing the quantum of proof required for the determination of incompetency. The present rules contain no such provisions, thus leaving such matters to the discretion of the trial judge. Not that there is anything inherently wrong with allowing the judge to exercise his discretion in proper cases. However, if only for the sake of ensuring uniformity of procedure and for the guidance of the parties and their respective counsels, the exercise of such discretion should be canalized within definite metes and bounds which protect the accused from excesses in the exercise thereof.

5) Lastly, the Supreme Court should further examine existing provisions regarding the disposition of incompetent criminal defendants. It is of general knowledge that our mental institutions operate under conditions which can hardly be considered conducive to the recovery of persons confined therein. More often than not, such hospitals are understaffed, ill-equipped, and generally outdated in terms of facilities for the rehabilitation of incompetents. Any procedural safeguards adopted to ensure that the accused is accorded his fair day in court will be rendered nugatory if, after all, he will have to spend long years in confinement with little or no hope for recovery.

In line with this, the Supreme Court should consider adopting alternative modes of disposition such as out-patient treatment, or, in cases where the incompetency of the accused appears to be of a lesser degree, to commit him to the care and custody of his family or a judicially appointed guardian.