# CRIMINAL JUSTICE JOURNAL

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## EDITORIAL

*Criminal justice systems the world over, speak grandly of the need for public involvement. Well and just. However, there is a fly in the ointment.*

*William Clifford writes that at a United Nations Congress on the Prevention of Crime and the Treatment of Offenders, a working paper was passed to all the delegates in order to determine how the term "public participation" was understood in the member countries. The answers in the questionnaire reveal that in all countries where police or correctional workers called for public participation, the former really meant public support for implementing policies which they, the official services, had designed beforehand. The same answers also reveal a "fear of too much public participation which might lead to laymen telling the professionals what to do."*

*Clifford emphasizes that the public, in line with its being a pillar of the criminal justice system, or the base thereof, has to have its input at the policy level, because it would be easier for the public to accept and implement programs which they feel to be their own and adapted to their needs.*

*David Osborne, author of "Reinventing Government," and Ted Gaebler corroborate this and wrote that citizens are people who understand their own problems in their own terms and believe in their capacity to act. They observe that before 1900, what little control existed over neighborhoods, health, education, and the like lay primarily with local communities. With the emergence of an industrial economy of mass production, we began to hire professionals and bureaucrats to do what families, neighborhoods, churches and voluntary associations had done. Osborne and Gaebler conclude: "We started with the best intentions, to heal the new wounds of an industrial, urban society. xxx But along the way, we lost something precious. The progressive confidence in 'neutral administrators' and 'professionalism' blinded us to the consequences of taking control out of the hands of families and communities."*

*Fortunately, the parochial mentality of criminal justice practitioners is gradually opening up, and the mobilized community, such as the nongovernment organizations (NGOs) and people's organizations (POs), is being accepted as a component in both the policy and implementation processes.*

B.R. Calibo


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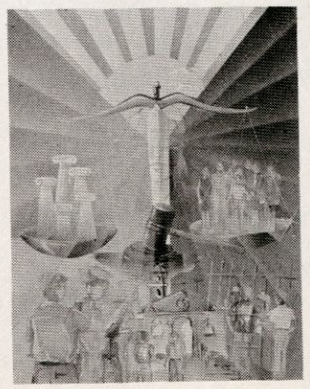

### Cover Concept

Public involvement, in the very nature of things, should permeate every pillar of the criminal justice system. A criminal justice system without the comprehensive involvement of the public would be an exercise in futility — tantamount to fish out of water.

In law enforcement, the public is a vital cog in such matters as the reporting of crime incidents, description of suspects, location of hideouts, among other things. In prosecution and the judiciary, the public is invaluable as witness and as the base of the court-watch process, which has time and again compelled prosecutors to prepare better and for judges to decide more promptly. And in corrections, the public is a *conditio sine qua non* for the rehabilitation of the offender and his acceptance back into mainstream society.

The success of neighborhood-based criminal justice systems constitute mute testimony to the effectiveness of the method. - CJJ

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*Pacifico A. Agabin**

# THE CONCEPT OF ARREST FOR PURPOSES OF CONSTITUTIONAL GUARANTEES

## DEFINITION

ARREST IS A DREADED WORD. Anyone who has gone through the experience of being arrested knows that the mere mention of the word strikes a chord of fear and fright in the heart of the ordinary layman. The word itself evokes visions of being interrogated under the glare of bright, blinding lights, secret detention cells, torture, both physical and psychological, and ignominy. Franz Kafka's "The Trial," the story of a man who awakes to find that he has been charged with a serious crime, of which he knows nothing about, evokes this frightening vision.

As our Supreme Court has described:

> *After a person is arrested and his custodial investigation begins, a confrontation arises which at best may be termed unequal. The detainee is brought to an army camp or police headquarters and there questioned and cross-examined not only by one but as many investigators as may be necessary to break down his morale. He finds himself in strange and unfamiliar surroundings and every person he meets he considers hostile to him. The investigators are well-trained and seasoned in their work. They employ all the methods and means that experience and study have taught them to extract the truth, or what may pass for it, out of the detainee. Most detainees are unlettered and are not aware of their constitutional rights, and even if they were, the intimidating and coercive presence of the officers of the law in such an atmosphere overwhelm them into silence.*[1]

As defined in our Rules of Court, "arrest" is the taking of a person into custody in order that he may be forthcoming to answer for the commission of an offense.[2] It is made by an actual restraint of the person to be

*Dean, University of the Philippines College of Law.
[1] *People v. Ayson, 175 SCRA 218.*
[2] *Sec.1, Rule 113.*

arrested or by his submission to the custody of the person making the arrest.[3] Under this definition, there are four (4) distinct elements of an arrest:

1. Purpose or intention to effect arrest under real or pretended authority;

2. Actual or constructive seizure or detention of person to be arrested by one having power to control him;

3. Communication by the arresting officer of his intention or purpose then and there to make the arrest; and

4. Understanding by the arrestee that such is the intention of the arresting officer.[4]

This definition is much more technical than the ordinary meaning of the word, which, according to Webster, is "the taking or detaining in custody by authority of law." But this underlines the necessity of attempting to redefine the concept for purposes of invoking the constitutional guarantees accorded the arrestee under our Bill of Rights.

## THE CONSTITUTIONAL GUARANTEE FOR A PERSON UNDER INVESTIGATION

Under our Bill of Rights,"any person under investigation for the commission of an offense shall have the right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel."[5] The same article also provides that any confession obtained in violation of said rights would be inadmissible in evidence in any proceeding against him.

Is it necessary under this provision of the Bill of Rights that the person under investigation be "arrested" before he could invoke the right to remain silent and to have independent counsel? If the debates in the Constitutional Commission are to be any guide, the answer is no. As declared by the sponsoring delegate, Commissioner Colayco:

*MR. COLAYCO. Section 21 is, we might say, an expansion of the provision in*

[3] *Sec.2, Rule 113.*
[4] *U.S. v. Raidl, 250 F. Supp. 278.*
[5] *Sec. 12 (1), Art. III.*





*the 1973 Constitution which concerns the so-called custodial examination, which was the result precisely of a complaint of Commissioner Garcia that it has been the practice of military investigators to prohibit the assistance of counsel to persons suspected of being subversive on the ground that custodial interrogation is different from tactical interrogation. So the Vice-Chairman assigned us, Commissioners Sarmiento, Garcia, and myself, to further study the problem, and we have come up with this.*

*We will notice that under the old rule, the mantle of protection where the suspect or accused under investigation could only claim the right against self-incrimination and the right to be informed of his right to have counsel and to remain silent, was apparently limited to that portion of the investigation when he was already under the technical custody of the investigator. That is why it was referred to as custodial investigation.*

*We went further by extending the mantle of protection to the time immediately after the commission of any offense, whether the policeman or the person making the investigation has any suspect under custody. Thus, it is stated in Section 21 that it would be the duty of the investigating officer, when making preliminary investigation on the spot, on the place of the crime or elsewhere, to remind any person or suspect that he is entitled to remain silent, to have counsel and that if he does not have any, he could demand the service of one.*

*So, in effect, the custodial theory was extended, and we will notice we did not use the word "custodial" anymore, so that the military investigator could not go around the provisions by saying that tactical interrogation was different from custodial interrogation; in other words, to avoid other interpretations.*

*MS. AQUINO. Mr. Presiding Officer, a follow-up question to that. Would this section proscribe detention preliminary to technical custody; that would mean in the nature of temporary detention before technical custody or maybe temporary detention incidental to preliminary interrogation?*

*MR. COLAYCO. It depends on the situation. Under the rules, a person who is in the act of committing, who is about to commit or after committing an offense, may be arrested without a warrant of arrest.*

*Under the law, while he can be detained without a warrant of arrest, he must be released unless the case is brought to the court within the period prescribed by the Revised Penal Code. During that time when he is under custody even without a warrant of arrest, this Section 21 definitely applies.*

*MS. AQUINO. No. What I was contemplating is a situation which is not properly covered by appropriate warrants, but which may fall under the practice of tactical interrogation. So it will be a situation of temporary detention incidental to preliminary interrogation. Does this Section 21 likewise proscribe that kind of a practice?*

*MR. COLAYCO. Yes, because as I explained earlier, the wording does not make use anymore of the adjective "custodial." (underscoring supplied)*

*MS. AQUINO. The same "custodial" was not also used in the 1973 Constitution.*

*MR. COLAYCO. No, it was not, Mr. Presiding Officer.*

*MS. AQUINO. It mentioned only investigation.*

*MR. COLAYCO. Yes, I would like to invite the Commissioner's attention to the last sentence of the first paragraph of Section 21, which states: "Secret detention places and incommunicado detentions are prohibited," which amply covers the problem the Commissioner has voiced.*[6]

Indeed, the implementing law, R.A. 7438, provides that:

(a) Any person arrested, detained or under custodial investigation shall at all times be assisted by counsel.

(b) Any public officer or employee, or anyone acting under his order or in his place, who arrests, detains or investigates any person for the commission of an offense shall inform the latter, in a language known to and understood by him, of his right to remain silent and to have competent and independent counsel, preferably of his own choice, who shall at all times be allowed to confer in private with the person arrested, detained, or under custodial investigation. If such person cannot afford the services of his own counsel, he must be provided with a competent and independent counsel by the investigating officer.[7]

[6] Proceedings of the 1987 Constitutional Commission, July 17, 1986, pp. 682-684.
[7] Sec. 1.





## COMPARED WITH U.S. JURISPRUDENCE

The use of the words, "arrested, detained, or under custodial investigation" shows the intent of the law to cover not only situations of arrest but also of simple detention, like detaining a person to ask questions about the offense. This covers a broader ground than that carved out by the US Supreme Court in *Miranda* that for a person in police custody, "in-custody interrogation" is regarded as the commencement of an adversary proceeding against the suspect, when the "focus" of the investigation is on the detainee, and that it is at this point that his rights to counsel and to remain silent must be accorded him by the arresting officer. As the US Court stated in the case of Escobedo v. Illinois,[8] it is only after the investigation ceases to be a general inquiry into an unsolved crime and begins to focus on a particular suspect, the suspect taken into custody, and the police carries out a process of investigation that lends itself to eliciting incriminating statements, that the rule begins to operate. The rationale for the *Miranda* rule is given by Chief Justice Warren of the US Supreme Court:

*We stress that the modern practice of in-custody interrogation is psychologically rather than physically oriented. Since Chambers v. State of Florida, this Court has recognized that coercion can be mental rather than physical, and that the blood of the accused is not only the hallmark of an unconstitutional inquisition. Interrogation still takes place in privacy. Privacy results in secrecy and this results in a gap as to what in fact goes on in the interrogation rooms."*

x x x x x

*An individual swept from familiar surroundings into police custody, surrounded by antagonistic forces, and subjected to the techniques of persuasion described above cannot be otherwise than under compulsion to speak. As a practical matter, the compulsion to speak in the isolated setting of the police station may well be greater than in courts or other official investigations, where there are often impartial observers to guard against intimidation or trickery.*[9]

It was in the light of this reasoning that we had to redefine "arrest" or "in custody" to determine at what point the detainee would be entitled to the constitutional guarantees to remain silent and to be afforded counsel.

We take first the American cases decided in the US Supreme Court,

[8] 378 U.S. 473.
[9] Miranda v. Arizona, 384 US 436.

since these are more instructive than the cases we have.

The US Supreme Court case of California v. Beheler,[10] shows that after respondent called the police to report a homicide in which he was involved, he voluntarily accompanied them to the station house, having been told that he was not under arrest. At the station house, the police did not advise respondent of his rights under Miranda v. Arizona,[11] and after an interview that lasted less than 30 minutes, he was allowed to leave. He was arrested five days later and, after receiving *Miranda* warnings, gave a second confession during which he admitted that his earlier interview had been given voluntarily. Subsequently, respondent was convicted in a California state court for aiding and abetting first-degree murder, the court having admitted into evidence respondent's statements at both interviews. The California Court of Appeals reversed, holding that the first police interview constituted custodial interrogation, which activated the need for *Miranda* warnings.

HELD: *Miranda* warnings were not required at respondent's first interrogation with the police. For *Miranda* purposes, "custodial interrogation" means questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. Respondent was neither taken into custody for the first interview nor significantly deprived of his freedom of action. Although the circumstances of each case must influence a determination of whether a suspect is "in custody," the ultimate inquiry is merely whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest. *Miranda* warnings are not required simply because the questioning takes place in a coercive environment in the station house or because the questioned person is one whom the police suspect.[12] It is doubtful if this ruling would still be applicable in the Philippines.

It was found in Berkener v. McCarty[13] that after observing respondent's car weaving in and out of a highway lane, an officer of the Ohio State Highway Patrol forced respondent to stop and asked him to get out of the car. Upon noticing that respondent was having difficulty standing, the officer concluded that respondent would be charged with a traffic offense and would not be allowed to leave the scene, but respondent was not told that he would be taken into custody. When respondent could not perform a field sobriety test without falling, the officer

[10] *463 U.S. 1121.*
[11] *384 U.S. 436.*
[12] *Cf. Oregon v. Mathiason, 429 U.S. 492.*
[13] *468 U.S. 420.*





asked him if he had been using intoxicants, and he replied that he consumed two beers and had smoked marijuana a short time before. The officer then formally arrested respondent and drove him to a county jail where a blood test failed to detect any alcohol in respondent's blood. Questioning was then resumed, and respondent again made incriminating statements, including an admission that he was "barely" under the influence of alcohol. At no point during this sequence was respondent given the warnings prescribed by Miranda v. Arizona.[14] Respondent was charged with the misdemeanor under Ohio law of operating a motor vehicle while under the influence of alcohol and/or drugs, and when the state court denied his motion to exclude the various incriminating statements on the asserted ground that their admission into evidence would violate the Fifth Amendment because respondent had not been informed of his constitutional rights prior to his interrogation, he pleaded "no contest" and was convicted. After the conviction was affirmed on appeal by the Franklin County Court of Appeals and the Ohio Supreme Court denied review, respondent filed an action in the Federal District Court for *habeas corpus* relief. The District Court dismissed the petition, but the Court of Appeals reversed, holding that *Miranda* warnings must be given to all individuals prior to custodial interrogation, whether the offense investigated is a felony or a misdemeanor traffic offense, and that respondent's post-arrest statements, at least, were inadmissible.

HELD: A person subjected to custodial interrogation is entitled to the benefit of the procedural safeguards enunciated in *Miranda*, regardless of the nature or severity of the offense of which he is suspected or for which he was arrested. Thus, respondent's statements made at the station house were inadmissible since he was "in custody" at least as of the moment he was formally arrested and instructed to get into the police car, and since he was not informed of his constitutional rights at that time. To create an exception to the *Miranda* rule when the police arrest a person for allegedly committing a misdemeanor traffic offense and then question him without informing him of his constitutional rights would substantially undermine the rule's simplicity and clarity and would introduce doctrinal complexities, particularly with respect to situations where the police, in conducting custodial interrogations, do not know whether the person has committed a misdemeanor or a felony. The purposes of the *Miranda* safeguards as to ensuring that the police do not coerce or trick captive suspects into confessing, relieving the inherently compelling pressures generated by the custodial

[14] *384 U.S. 436, 16 L Ed 2d 694, 86 Ct 1602, 10 ALR3d.*

setting itself, and freeing courts from the task of scrutinizing individual cases to determine, after the fact, whether particular confessions were voluntary, are implicated as much by in-custody questioning of persons suspected of misdemeanors as they are by questioning of persons suspected of felonies.

The roadside questioning of a motorist detained pursuant to a routine traffic stop does not constitute "custodial interrogation" for the purposes of the *Miranda* rule. Although an ordinary traffic stop curtails the "freedom of action" of the detained motorist and imposes some pressures on the detainee to answer questions, such pressures do not sufficiently impair the detainee's exercise of his privilege against self-incrimination to require that he be warned of his constitutional rights. A traffic stop is usually brief, and the motorist expects that, while he may be given a citation, in the end he most likely will be allowed to continue on his way. Moreover, the typical traffic stop is conducted in public, and the atmosphere surrounding it is substantially less "police dominated" than that surrounding the kinds of interrogation at issue in *Miranda* and subsequent cases in which *Miranda* has been applied. However, if a motorist who has been detained pursuant to a traffic stop thereafter is subjected to treatment that renders him "in custody" for practical purposes, he is entitled to the full panoply of protections prescribed by *Miranda*. In this case, the initial stop of respondent's car, by itself, did not render him "in custody," and respondent has failed to demonstrate that, at any time between the stop and the arrest, he was subjected to restraints comparable to those associated with a formal arrest. Although the arresting officer apparently decided as soon as respondent stepped out of his car that he would be taken into custody and charged with a traffic offense, the officer never communicated his intention to respondent. A policeman's unarticulated plan has no bearing on the question whether a suspect was "in custody" at a particular time; the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation. Since respondent was not taken into custody for the purposes of *Miranda* until he was formally arrested, his statements made prior to that point were administered against him.

Statements made by the petitioner taxpayer to Internal Revenue agents during the course of a noncustodial interview in a criminal tax investigation was held admissible against him in the ensuing criminal tax fraud prosecution even though he was not given warnings required by





Miranda v. Arizona in Beckwith v. United States.[15] Although the "focus" of the investigation may have been on petitioner when he was interviewed, in the sense that his tax liability was under scrutiny that is not equivalent of "focus" for *Miranda* purposes, which involves "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way."[16]

After the effectivity of the 1987 Constitution but applying a provision of the 1973 Constitution similar to that of the 1987, where "custodial" does not also modify "investigation," our Supreme Court held, in **People v. Ayson**,[17] that where an accused PAL ticket agent, during an administrative investigation conducted by the PAL manager prior to the filing of the estafa case against him, signed a virtual confession admitting his participation in irregularities in the sale of tickets and offering to pay, this was not done while he was under custodial interrogation as defined in the *Miranda* rule, and the admission that he signed may not be excluded as evidence, notwithstanding the provision of the 1973 Constitution that guaranteed his rights to counsel and to silence when he is "under investigation for the commission of an offense."[18] In administrative investigations, according to the Court,

> *"the employee may, of course, refuse to submit any statement of the investigation; that is his privilege. But if he should opt to do so, in his defense to the accusation against him, it would be absurd to reject his statements, whether at the administrative investigation, or at a subsequent criminal action against him, because he had not been accorded, prior to his making and presenting them, his "Miranda rights" (to silence and to counsel and to be informed thereof, etc.) which, to repeat, are relevant only in custodial investigations.*[19]

The Supreme Court partly relied here on an earlier case not covered by the 1973 Constitution, **People v. Taylaran**,[20] where the Court refused to exclude the statement made by the accused, upon surrendering to the police, that he killed the deceased because the latter was threatening to kill the accused by witchcraft. The Court in the *Taylaran* case agreed with the observation of the Solicitor General that if the accused voluntarily admits the killing, the constitutional safeguards to be informed of his rights

[15] *425 US 341, 48 L Ed 2d 1, 96 S Ct 1612.*
[16] *Id., 444 (emphasis supplied).*
[17] *175 SCRA 219 (1989).*
[18] *Sec. 20, Art. IV, 1973 Const.*
[19] *176 SCRA 236.*
[20] *108 SCRA 373.*

to silence and to counsel may not be involved.

By way of footnote, the Court in *Ayson* also quoted with approval American constitutional authorities that "when investigating crimes, an officer may inquire of persons not under restraint, and such general on-the-scene questions are not thought to be accusatory because they lack the compelling atmosphere inherent in the process of in-custody interrogation."[21] As stated above, it is doubtful if this kind of reasoning would hold water in the light of the deliberations in the Constitutional Commission tending to show that any person "under investigation" for the commission of an offense enjoys the right to counsel and the right to silence under the Bill of Rights. Yet the trend of Supreme Court decisions in cases decided before the effectivity of the 1987 Constitution shows adherence to American jurisprudence drawing the line between general inquiry and custodial interrogation.

In **People v. Dimaano,**[22] the court held that identification of the accused at the police line-up is not the start of an investigation, i.e. when the investigating officer starts to ask questions to elicit information or admissions from the accused. Therefore, the police could not have violated their rights to counsel as the confrontation between the state and the accused has not yet begun.

To the same effect, the Court in **People v. Hatton**[23] said that where the accused was brought to the police station only to be identified, he was not yet under custodial interrogation, and therefore he was not entitled to counsel. Citing **Gamboa v. Cruz,**[24] the Court held that the right to counsel attaches only upon the start of an investigation. The police line-up is not part of the custodial inquest, according to the Court.

But an "interview" conducted by a police investigator after the accused was already arrested as one of the principal suspects cannot be considered merely as a general inquiry but rather a custodial investigation, declared the Court in **People v. de Jesus.**[25]

And the fact that the accused had already verbally confessed to the crime during the investigation would not render such confession admissible where it was made without the presence of counsel.[26]

Where the accused in a drug buy-bust operation signed a "Receipt for Property," for the marijuana allegedly

[21] 175 SCRA 231.
[22] 109 SCRA 819 (1992).
[23] 210 SCRA 1 (1992).
[24] 162 SCRA 642.
[25] 213 SCRA 345 (1992).
[26] *People v. Miana*, 216 SCRA 799 (1992).





seized from him, which is much like an extrajudicial confession, this would not make such signature admissible against him where the prosecution did not prove that the constitutional law requisites for admission of an extrajudicial confession had been complied with.[27]

## CONCLUSION

Summing up, we could arrive at the following tentative conclusions:

1. "Arrest" is not the only situational criterion for the enjoyment or guarantee of the constitutional rights to counsel and to silence; any form of investigation even prior to arrest, for the commission of an offense, guarantees these rights of the accused, as long as he has been deprived of his freedom to move and the questions begin to focus on his participation. In other words, mere detention of a suspect and asking questions for the purpose of eliciting information from him as to his participation in the commission of an offense is sufficient to trigger the operation of these constitutional guarantees.
2. Since these constitutional guarantees are essentially for the benefit of the accused in criminal cases, these may not operate in routine administrative investigations where the respondent includes admission as part of his defense in the administrative disciplinary action.
3. In detention cases where the investigators have not started asking searching questions of any suspect, as a police line-up or stopping a moving vehicle, these constitutional guarantees would not be applicable.
4. Voluntary confession or admission made by a suspect, as part of the *res gestae* or out of remorse or sense of guilt, before detention are, of course, outside the contemplation of the constitutional protection.

✍

Why passion or obfuscation is mitigating.

*When there are causes naturally producing in a person powerful excitement, he loses his reason and self-control, thereby diminishing the exercise of his will power. (U.S. vs. Salandanan, 1 Phil. 464, 465)*

[27] *People v. Deocariza*, 219 SCRA 488 (1993).

*Reynaldo JD Cuaderno**

# TOWARDS HIGHER ETHICAL STANDARDS IN THE PUBLIC SERVICE

THE NEED FOR GREATER accountability and higher ethical standards in the public service is a central theme in the renewal program of the government. This is a logical consequence of the principle that public office is a public trust[1] and that every delegation of authority to an agent must be accompanied by a corresponding degree of accountability.

Widespread involvement of certain government officials in questionable activities has served to widen public interest in ethical issues. This growing public interest in ethics is reflected in the mass media, which often highlight moral issues. Escalating numbers of stories about conflicts of interest, official wrong-doings, and inappropriate professional conduct frequently find themselves on the covers of magazines or the front pages of newspaper. From time to time, the public express a general concern for the low level of ethical sensitivity in government service.

## The Concept of Ethics

Ethics is the practical science of the morality of human conduct.[2] It is that branch of philosophy dealing with values relating to human actions. It is concerned with the rightness and wrongness of certain actions and the goodness and badness of the motives and ends of such actions.

From different perspectives, we can define ethics as the science of morals; as man's moral ideals and goals; a field dealing with moral duty; the branch of philosophy which is concerned with human character and conduct; the moral standards of a given profession; or simply the science of right living.

The name Ethics is derived from the Greek word "ethos," which means "a characteristic way of acting" — the characteristic way of human acts. Hence, Ethics is sometimes called Moral Philosophy.[3]

*Deputy Executive Officer, National Police Commission.

[1] *Section 1, Article XI of the Constitution of the Republic of the Philippines prescribes that "Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives."*

[2] *Paul J. Glenn, Ethics: A Class Manual in Moral Philosophy (Missouri: B. Herder Book Co., 1965), p. ix.*

[3] *Ibid.*



The primary concern and point of view of Ethics is the right morality or rectitude of human acts. Ethics employs the marvelous faculty of human reason upon the supremely important question of what an upright life is and must be.

## Morals and Ethics Distinguished

Although the words "morals" and "ethics" are used interchangeably, the two terms can be differentiated in the sense that "morals" refers to absolute standards that exist beyond time, standards of the good and the true. They constitute transcendent standards that exist through time. "Ethics," in turn, pertains to the contemporary standards at any point in time in terms of which men evaluate their conduct and that of men about them. "Morals" are more absolute and infinite, while "ethics" are more transitory and finite in nature.[4]

"Moral" implies conformity with the generally accepted standards of goodness or rightness in conduct or character. On the other hand, "ethical" implies conformity with an elaborated, ideal code of moral principles, sometimes, specifically, with the code of a particular profession.[5]

"Ethical" primarily implies a relationship to ethics, the branch of philosophy which deals with moral principles, or more specifically with the principles governing ideal human character and with the ideal ends of human action. Although "ethical" is often used interchangeably with "moral," it characteristically gives a slightly different impression owing to certain subtle connotations; thus, ethical principles may, according to the context, convey a strong suggestion of principles derived from a certain school of ethics, or of a formulated code behind them, or of an idealistic quality; an action is often described as ethical rather than moral when it accords with what the writer or speaker believes to be a higher or finer standard of morality than the one generally accepted, or when it is in keeping with the code of ethics governing a profession. The phrase "an ethical person" often differs from the phrase "a moral person," in suggesting an assent to ethical principles or an attention to the niceties of ethics or to the ideal ends suggested by a system or code of ethics.[6]

The related word "virtuous" implies a morally excellent character, connoting justice, integrity, and

[4] *Robert T. Golembiewski, Men, Management and Morality: Toward a New Organizational Ethic (New York: McGrawhill Book Company, 1965), p. 61.*

[5] *Webster's New World Dictionary of the American Language (Cleveland, Ohio: World Publishing Co., 1962), p. 956.*

[6] *Webster's New Dictionary of Synonyms (Massachusetts: G. and C. Merriam Co., 1978), p. 547.*

often, specifically, chastity. "Righteous" implies being morally blameless or justifiable.

## Essentials of Moral Behaviour in Public Service

In a memorial essay to Paul H. Appleby,[7] the well-known political scientist Stephen K. Bailey synthesized the essentials of moral behavior in public service in two categories: moral qualities and mental attitudes. The essential moral qualities are three: optimism, courage, and fairness tempered by charity. The words in all three cases are inadequate to the intended meaning. Optimism is the confidence and capacity to deal with ambiguous situations constructively and purposively. Courage is the ability to decide and act in the face of difficulties for which withdrawal would be an easier response and to abide by principle even in unpopular causes. Fairness tempered by charity is demanded by the standards of justice and the necessity that value-laden decisions be governed by the public interest.[8]

The "mental attitudes" which Bailey identifies as requisites of personal ethics in the public service are also three in number. All are cognitive in nature, based upon knowledge and understanding and therefore, learnable and teachable. They consist of recognition of (1) the moral ambiguity of all men and of all public policies; (2) the contextual forces which condition moral priorities in the public service; and (3) the paradoxes of procedures. Under the first of these, Bailey stresses the ambivalence of most public decisions as between personal and private interests and the public interest, and as a corollary, the morally ambivalent effects of public policies. Seldom, if ever, can a policy be either totally right or totally wrong. In his reference to the awareness of context, Bailey emphasizes the shifting of value priorities, the necessity of flexibility and the increasing difficulty and complexity of value-choices as one rises in hierarchy. In his reference to procedures, Bailey again stresses flexibility — the use of laws, rules, and procedures to promote fairness and openness; and their abuse to prevent action and to obscure the public interest.[9]

## Aspects of Responsibility

Responsibility has a confusing wealth of different meanings and shades of meanings. Mosher identifies two (2) aspects of responsibility.[10] The first, objective

[7] *"Ethics and the Public Service," in Roscoe C. Martin (ed.), Public Administration and Democracy: Essays in Honor of Paul H. Appleby (Syracuse: Syracuse University Press, 1965).*
[8] *Frederick C. Mosher, Democracy and the Public Service (New York: Oxford University Press, 1968), pp. 213-214.*
[9] *Ibid.*





responsibility, connotes the responsibility of a person or an organization to someone else, outside of self, for something or some kind of performance. It is closely akin to accountability or answerability. The second, subjective or psychological responsibility, is focused more upon to whom and for what one feels responsible and behaves responsibly, and not upon to whom and for what one is responsible (according to the law and the organization chart). This meaning is more nearly synonymous with identification, loyalty, and conscience than it is with accountability and answerability. And it hinges more heavily upon background, the processes of socialization, and current associations in and outside the organization than does objective responsibility. It introduces the possibility — indeed the inevitability — of competition and conflict among responsibilities.

Alluding to the conflict between objective and subjective responsibility, Friedrich opined that the responsible administrator is one who is responsive to these two dominant factors: technical knowledge and popular sentiment. He urged the necessity of professional responsibility, enforceable principally by fellow professionals and by one's own conscience.[11]

## Values Associated with Administrative Responsibility

There are certain values relevant to the ideal of administrative responsibility. Most of the values implied in the concept of administrative responsibility[12] are elaborated below.

**Responsiveness**. This term refers to the prompt acquiescence by an organization to the popular demands for policy change. Responsiveness can also mean that government does more than merely react to popular demands. In some cases, it can mean that government takes initiatives in the proposal of solutions for problems and even in the definitions of problems.

Responsiveness pertains to the attitude of one who stands ready to meet certain needs with or without formal accountability.[13]

Organizations can be classified according to their level of organizational responsiveness. Philip Kotler (1975:40-43) finds four types. First is the unresponsive organization that does nothing to measure the needs, perceptions, preferences, or satisfaction of its constituent public or

[10] *Ibid., p. 7.*
[11] *Donald C. Rowat (ed.), Basic Issues in Public Administration (New York: The Macmillan Company, 1961), p. 462.*
[12] *Grover Starling, Managing the Public Sector (Illinois: Dorsey Press, 1982), pp. 132-141; C. E. Gilbert, "The Framework of Administrative Responsibility," Journal of Politics, May 1959.*
[13] *John A. Rohr, Ethics for Bureaucrats: An Essay on Law and Values (New York: Marcel Dekker, Inc., 1989), p. 51.*

makes it difficult for them to place inquiries, complaints, or suggestions. Second is the casually responsive organization that does show an interest in learning about constituent needs and complaints. Third is the highly responsive organization that uses systematic information collection procedures (e.g., formal opinion surveys and consumer panels); creates formal systems to facilitate complaints and suggestions (e.g., comment cards); and where called for, takes steps to adjust services and procedures. Fourth is the fully responsive organization that overcomes the "us and them" attitude of most organizations by accepting its publics as voting members. Examples of organizations that are seen, in principle at least, as existing for and serving the interest of the constituents are churches and trade unions.

Public administrators sincerely interested in the responsiveness of their agencies might find it useful to think of clients as consumers. What this means in practice is that all an agency's efforts should be focused on satisfying consumer needs — instead of producing a good or service and then trying to find a buyer. When an agency tries to find out what the consumer wants and then to produce that good or service consistent with that, we say it has a marketing (as opposed to a selling) orientation.[14]

**Flexibility**. In the formulation and implementation of policy, administrators should not ignore individual groups, local concerns, or situational differences relevant to the attainment of policy goals.

**Competence**. Administrative responsibility also requires that the formulation and implementation of public policy should be guided by recognized objective standards, where they are available. Administrative action should be prudent rather than hasty and should display care for the consequence rather than negligence. Competency also requires that appropriate expertise should be sought whenever necessary. It has been appropriately said that "The worst form of corruption is incompetency."

**Due Process**. This embodies the prescription that no citizen shall "be deprived of life, liberty, or property without due process of law." It is an assurance that the government will be administered by laws, not by arbitrary will of people who condemn without a public hearing. It serves as a major limitation on administrative discretion. Thus, agencies must have jurisdiction over the matters with which they deal; must give fair hearings to all persons affected by their rulings; must give adequate

[14] *Starling, op. cit., p. 134.*





notice of such hearings well in advance of the dates when they are held; and must allow any interested persons to appear. Moreover, their decisions must be based upon substantial evidence.

**Accountability**. A good synonym for this term is answerability. The organization must be answerable to someone or something outside themselves. When things go wrong, someone must be held responsible.

**Honesty**. Honesty connotes sincerity, frankness and credibility. One dimension of honesty is candor, which refers to the notion that policymaking and administration should be at some stage open to public scrutiny. Gilbert (1959:376) elaborates: "the political and governmental system in general should reach and decide the merits of issues rather than obscure them through personal or procedural obfuscation. A further requirement might include that of reasoned justification of governmental decisions. Though logically three separate notions, they are lumped together here since they all have presumed value for public discussion, education, and the sense of individual responsibility for public policy." High standards of honesty mean that one has a conscience about what one says and what one believes. They mean that one takes some trouble to determine what speaks for and against a view, what the alternatives are, what speaks for and against each, and what alternatives are preferable on these grounds. This is the heart of rationality, the essence of the scientific method, and the meaning of intellectual integrity.[15] Relatedly, Edmund G. Brown, former Governor of California, commented that "the most certain way to restore confidence in government is to insist on a relentless honesty in every step."[16]

## Higher Demands of Public Service

The public demands of its servants more exacting and exemplary conduct than it expects of private citizens. It is an inescapable fact that a public official has no private life; as soon as he enters public service and so long as he remains therein, his conduct, whether on or off duty, will be subjected to the unrelenting scrutiny and critical analysis of the public he serves.[17]

[15] *W. Kaufmann, Without Guilt and Justice (New York: Peter H. Wyden, 1973), p. 178.*
[16] *Starling, op. cit., p. 169.*
[17] *Don L. Kooken, "Ethics in Police Service," Journal of Criminal Law and Criminology and American Journal of Police Science, XXXVIII, No. 2, (July - August 1947), p. 61-74.*

## Complexity of Decision-Making in the Public Service

In developing a construct of responsibility and morality in public decision-making, certain ingredients need to be considered. One is that there is a high ethical content in most significant public decisions; public problems do not succumb simply to factual analysis. A second is that the standards of ethical behavior that are applicable and sufficient to a private citizen in his private social relationships are not in themselves adequate for the public decisions of an administrator. The public character of governmental decisions adds complicating dimensions to moral behavior. A third is that public decision problems are seldom black or white in relation to their ethical content and consequences. Finally — and least understood — is the proposition that politics and administrative organization are themselves the best protectors of administrative morality, provided they are open and public.[18]

## Creating New Patterns of Discipline in the Public Service

Devising methods for ensuring ethical and moral behavior and for reducing the incidence of corruption among government officials is a continuing task.

In an article entitled "Self-Discipline and Organizational Behavior" published at the Philippine Journal of Public Administration,[19] Manuel Flores Bonifacio suggests the following measures to create new patterns of self-discipline among government employees:

1. New role models. The new role models should come from the leaders because they not only symbolize authority but also parental surrogates. Even if the relationship were completely devoid of such parentalistic underpinnings, there would always be some implicit perception of the leader as a benevolent father. Such perception will be difficult to erase since it would entail a total change in our family structure. Thus, changes should always take into consideration such implicit perception. In fact, it should be tapped if it can be used to change our behavior.

2. New rewards and punishment structures. Incentives such as salary increases, promotions, security of tenure, bonuses and any such rewards should be used to create a new discipline. It must be explicitly emphasized that such rewards are extended on the basis of compliance

[18] *Mosher, op. cit., p. 215.*

[19] *Philippine Journal of Public Administration, College of Public Administration, University of the Philippines, XVII, No. 1 (January 1973), p. 58-67.*





to objectified rules and not on the basis of personal loyalty.

The idea of *palakasan* should fade with the realization that what is important is not whom you know but what you know in order to make the organization more efficient. Also loyalty to the aims and goals of the organization should take precedence over personal loyalty. Identification should be in terms of the organization rather than the individuals.

3. Small re-examination groups. Breaking up each office into small re-examination groups where members are co-equal may facilitate their examination of possible kinks in the smooth operation of the office. Members should be made to feel responsible to each other so that they can objectively assess each other's performance, admit one's shortcomings, and consider ways and means of improving one's self. The integrating concept of such groups should be the larger organization and the country as a whole.

4. Educating the public. All efforts to objectify the organization will turn to naught if the public does not cooperate in the endeavor. If they insist on utilizing the *lakad* or *pakikisama* system, the organization shall find it very difficult, if not impossible, to change itself. The public must be informed that they can demand legitimate services and if unable to obtain these, that there are ready and available channels through which they can voice their complaints. They must be made to realize that connection, influence and other illegitimate means are prohibited and anyone caught committing such acts will be punished together with his accomplices.[20]

Government employees are most likely to be public-spirited and honest if they operate in an organizational milieu that promote these values. More focus should be given to developing and promoting a supportive organizational climate that uplifts and reinforces ethical standards in government agencies.

## Some Approaches to Developing Ethical Consciousness

Some of the proposed approaches to ethics can be categorized into the "low road" that emphasizes adherence to formal rules and the "high road" that stresses social equity.

The "low road" approach addresses ethical issues almost exclusively in terms of adherence to agency rules. The approach in question appeared in "Ethics and Conduct"— a workshop training

[20] *Ibid.*

manual designed by a private corporation for the United States Department of Agriculture (USDA).[21]

The manual is composed of five exercises intended to enhance the understanding of USDA employees on the sorts of conduct that are permissible or not under departmental regulations. In one exercise, the course participants are confronted with a series of statements with which they are supposed either to agree or disagree. The "Leader's Guide" provides school solutions to each situation. Participants are divided into small groups. Each participant must first indicate whether he agrees or disagrees (circle A or D) with the statement, and then after some discussion a group decision is made. For example:

*An employee who willfully uses or authorizes the use of a Government-owned vehicle for other than official purposes may be suspended for one month or removed from office.*

| *Personal Choice* | | *Group Choice* | |
|---|---|---|---|
| **A** | **D** | **A** | **D** |

*(School Solution)*

*The answer to this statement is "A" (agree). The penalties ... for willfully using or authorizing the use of a Government-owned vehicle are suspension for at least one month or removal from position.*

Among the topics covered in the foregoing exercise are the following: (1) whether office equipment can be used for personal business; (2) whether government telephones can be used for personal calls; (3) Whether USDA can take action against employees who fail to pay personal debts; and so on.

A second exercise provides the participants with three boxes marked P (permissible), NP (not permissible), PWA (permissible with written approval). They are to mark one of these boxes in response to situations such as the following:

*On a Sunday afternoon, on the way to a field location in an official Government vehicle, a USDA employee who was traveling on Sunday to be at his destination for a Monday morning assignment, drove approximately 8 miles off the main route he was taking to visit some relatives whom he had not seen for several years.*

| *Personal Choice* | | | *Group Choice* | | |
|---|---|---|---|---|---|
| **P** | **NP** | **PWA** | **P** | **NP** | **PWA** |

*(School Solution)*

[21] Ethics and Conduct: A Series of Workshop Exercises (Cranford, NJ:Didactic Systems, Inc., 1976); Cited in John A. Rohr, Ethics for Bureaucrates: An Essay on Law and Values (New York: Marcel Dekker, Inc., 1989), pp. 60-64.





*This statement is questionable. One could easily make the point that it is permissible, not permissible or possibly even permissible but only with prior written approval. It is probably safe to say, however, that such a situation should be avoided, if at all possible.*

*An employee on a two-week field trip was spending a weekend at a motel; during the weekend, he used a Government vehicle to take his laundry into town to a local laundromat. Public transportation was available, but much less convenient than the use of the automobile.*

*(School Solution)*

*There is no single correct answer here, though. It is likely that if the laundry needed dry cleaning because it was soiled from the business trip, it would be permitted; an employee is generally allowed to take such actions while away on business, where such personal services are required.*

It is significant to note that participants are told to "measure" their success in the exercises "by the number of new ideas you gain and not necessarily by the frequency with which you personally achieve the 'right' solution to the situation." It would do well for government employees taking this exercise if they would judge the success of the course by the quality and truth of their ideas rather than by their number and novelty.

The "high road" approach to ethics based on social equity is grounded in political philosophy or humanistic psychology. Under this concept, the equitable administrator is one who actively intervenes to enhance the political power and economic well-being of disadvantaged minorities in order to redress the neglect suffered by such minorities at the hands of the customary procedures of representative democracy. The content of social equity is undoubtedly egalitarian in principle and redistributive in policy.[22]

## Internal and External Checks on Official Behavior

Another aspect of ethics and morality is the question of internal (personal) versus external (legal-institutional) checks on the behaviour of the individual employee or administrator. Over the years, a debate has gone on over whether one or the other type of controls is more effective in ensuring ethical behavior, accountability, and responsibility. The classic

[22] Rohr, op. cit., p. 64.

exchange on this subject came forty years ago, between political scientists Carl Friedrich and Herman Finer.[23] Friedrich argued essentially that administrators are "responsible" if they are responsive to two "dominant factors": technical knowledge and popular (majority) sentiment. He urged reliance on these criteria for assessing responsibility, laying little if any stress on mechanisms for ensuring adherence to those standards. Finer, writing a year later, criticized the absence, in Friedrich's formulations, of any institutional safeguards for administrative responsibility. He suggested that while Friedrich defined responsibility as a "sense of responsibility, largely unsanctioned, except by deference or loyalty to professional standards ...," he (Finer) regarded it as "an arrangement of correction and punishment even up to dismissal both of politicians and officials..." Finer went on to warn that "sooner or later there is an abuse of power when external punitive controls are lacking."[24]

Thus, the central question, as framed in this exchange, is whether responsibility can be achieved by reliance on internal checks primarily, or whether it requires political checks and sanctions in addition to the individual administrator's own moral sense. Recent commentaries seem to be inclined toward the position that both types are needed.

One central point made by a number of observers can be summed up as follows: "The public has to be able to rely on the self-discipline of the great majority of public servants. Otherwise, the official restraints and sanctions must be so numerous and so cumbersome that effective public administration is impaired greatly."[25] The essential point is that while there may be some things we can — and perhaps must — do to try to ensure ethical actions in the public service, the ultimate safeguard is in the character and inclinations of bureaucrats themselves.[26]

## Need for Developing Self-Regulation on the Part of Public Employees

Of all feasible methods to enhance ethical consciousness and accountability of public employees, the most promising, in terms of effectiveness in the long run, is self-regulation and self-control on the part of administrators and employees themselves. Such restraint is conducive to responsible and responsive discharge of duty to the public.

[23] *See Carl J. Friedrich, "Public Policy and the Nature of Administrative Responsibility," Public Policy 1 (1940), 3-24; and Herman Finer, "Administrative Responsibility and Democratic Government," Public Administration Review, 1 (Summer 1941), pp. 335-350.*

[24] *Ibid., p. 337.*

[25] *DeWitt C. Armstrong III and George A. Grahamn, "Ethical Preparation for the Public Service," The Bureaucrat, 4 (April 1975), 6-23, at p. 6.*

[26] *George J. Gordon, Public Administration in America, (New York: St. Martin's Press, Inc., 1982), pp. 547-548.*





Self-discipline can be defined as the ability of a person to normatively control his own behavior. What is important here is the ability of a person to control his own behavior, not just control it but normatively control it. This is the key element here. In other words, it is necessary for us to develop a repertoire of inner standards that will serve as inner constraints to our potential deviant or destructive behavior.[27]

Sensitizing public employees to ethical matters should go beyond answering questions about what is right and wrong and instead assist these employees in the process of self-discovery and encourage self-exploration to assist the students in developing means and a process for achieving their own moral judgments. Development of self-regulation enables an individual to make moral choices without relying heavily upon external direction. The most promising approach is to create within individuals an awareness of the questions rather than seeking to provide them with the answers.[28]

## The Code of Conduct and Ethical Standards for Public Officials and Employees

Republic Act No. 6713, otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees" was passed on February 20, 1989[29] with a vision of a more ethical civil service through attitudinal and structural changes.

Salient features of the measure include:

*Norms of conduct for public officials and employees, such as professionalism, justness and sincerity, political neutrality, responsiveness to the public, commitment to democracy and simple living.

*Duties such as acting within fifteen (15) days on letter or requests sent by the public, submitting within forty-five (45) days from the end of the year their annual performance reports, processing of papers within a reasonable time, acting immediately on the public's personal transactions, and making documents accessible to the public.

*A system of annual incentives and rewards that may take the form of bonuses, citations, directorships in government corporations, scholarships and paid vacations for deserving employees and officials.

*Prohibition of financial and material interests in any transaction requiring the approval of their office,

[27] *M. F. Bonifacio, loc. cit.*

[28] *Ibid.*

[29] *Took effect on March 25, 1989.*

outside jobs and other activities related to their office, disclosure or misuse of confidential information, and soliciting or acceptance of gifts.

*A requirement to file an itemized statement of assets, liabilities and networth, disclosure of business interests and financial connections, and the identification and disclosure of relatives. These documents should be filed within thirty (30) days after assumption of office, on or before April 30 of every year thereafter, and within thirty (30) days after separation from service.

*Resignation from a position or divestment of shareholdings or interests in any private enterprise whenever a conflict of interest arises.

*Penalties of a fine not exceeding the equivalent of six (6) months salary or suspension of one (1) year at most or removal from office, imprisonment for a maximum of five (5) years and/or a fine of P5,000.00 for violation of the provisions on prohibited acts and transactions, or failure to comply with the requirements on filing of financial statements or divestment.

The avowed aim of the Code of Conduct and Ethical Standards is to ideologize the bureaucracy and to instill in public servants a tradition of accountability and service.

## Advocacy for an Ethics Appreciation Course Among Government Employees

As a means of heightening ethical consciousness among government employees, an Ethics Appreciation Module should be incorporated as an integral part of training courses in all government agencies. Such systematic study of values can help develop a more workable framework of moral choice for the public employees.

Several practical reasons for studying ethics can be mentioned.[30] First, the study of ethics can help public administrators arrive at decisions more quickly. When confronted with decisions involving conflicting values, the individual who has thought through and clarified his own values does not lose time wondering what to do. Such an individual can act more swiftly, assuredly, and consistently. A second reason for studying ethics is that it leads to greater consistency in decision making. Administrators who are capable of this are seen by subordinates as fair. Third, the study of ethics can reveal the value dimensions of a decision that would otherwise seem value-free. Fourth, the study of ethics can help public administrators make more reflective judgments — ones that can be defended in public.

[30] *Starling, op. cit., pp. 164-165.*





A variety of purposes may be served in the teaching of ethics among government employees, and some contexts may place more emphasis on one purpose than on others. Generally, an ethics appreciation course should focus on three aims: (1) the reinforcement of moral resolve; (2) moral sensitization; and (3) the imparting of moral expertise. Each has its own nuances.[31]

The purpose of a course in ethics may be seen as the promotion of a closer correspondence between belief and action, between commitment and conduct, between intention and behavior. Its goal will be to counter akrasia — weakness of will, the failure of moral nerve, susceptibility to temptation, loss of self-control. The stimulation of motivation and incentives for responsible behavior is an appropriate goal for an ethics course.

Government employees generally have to work in a mixed social and cultural environment, and unless they have been sensitized to perspectives other than the ones to which they are accustomed, their encounters may be inappropriately conducted. Thus, a major goal of ethics course may be seen as the development of moral sensitization, the nurturing of moral breadth and depth. Certainly, one of the purposes served by courses in ethics will be a widening of moral horizons, stimulating a greater sensitivity to the rich fabric, many layers, and finer nuances of human interaction. Public employees need to possess a moral sensitivity equal to their communal responsibility.

The development of rational skills does encourage and provide for an ever expanding and deepening appreciation of the world of human transactions. Moral expertise deepens and shapes the respect for persons that is at the heart of moral sensitivity. Sometimes, the situations confronted by public officers are both complex and problematic. Unless they have developed some expertise in detecting the multiple ramifications their actions may have and in mediating between the competing claims that present themselves, they may act in ways that compromise or violate the norms that ought to prevail in human intercourse. They should be encouraged to recognize the complexity of the decisions they face and then to approach them in a systematic and theoretically informed manner. Through development of moral expertise, sensitivity will most likely be heightened and resolve strengthened.[32]

Study of ethics should stress values rather than behavior and should aim at inviting reflection rather than providing answers. Such study might help to provide bureaucrats with informed consciences.

[31] *John Kleinig, "Teaching and Learning Police Ethics: Competing and Complementary Approaches," Journal of Criminal Justice, XVIII (1990), p. 8-11.*

[32] ***Ibid.***

*Jesus M. Elbiñias**

# HYPNOSIS IN THE CRIMINAL JUSTICE SYSTEM

SHOULD HYPNOSIS BE USED IN aid of the administration of justice in the Philippines?

The very first decision authorizing the use of hypnosis in a criminal case was rendered in 1959 by the California Supreme Court. The defendant was Paul LeClair Conrey, a 28-year-old warehouse clerk accused of the murder of Maria Martin, 45, whose mutilated body was found in a ditch in a vacant lot in San Diego. One of the four suspects was Conrey. He admitted that he had gone on a drinking spree after cashing his paycheck and remembered nothing from 11:00 o'clock on the night of the supposed murder until the following morning. When he regained his senses, his mind was a total blank concerning what had occurred in the latter part of his drinking bout, and he simply drove home to go to bed. When an examination of Conrey's car revealed a small piece of skull bone and a hairpin embedded underneath, Conrey was arrested. He engaged Atty. Richard D. Cornell to handle his case, but all the information that his lawyer could get from him was a shrug of the shoulder and a bewildered look. Lawyer Cornell, overwhelmed by the problem, turned to hypnosis; and its use altered the course of the case.

Lawyer Cornell employed a professional hypnotist to work on his client, but when he called on the sheriff to ask permission for the purpose, the officer refused. This prompted Atty. Cornell to appear before Superior Court Judge John A. Hewicker and plead for permission to have his client examined by the hypnotist; the judge denied the request, insisting that he knew of no precedent for such a move. This left the lawyer no choice but to carry his plea to the District Court of Appeals; but the latter court sustained the lower court's denial. Cornell then elevated the case to the California Supreme Court. In part, the Supreme Court justices said:

> *Admissibility of any evidence that may be secured during such an examination [hypnosis] is not the question here presented. Cornell is now seeking to learn facts that may be of assistance in preparing for the defense of the crime charged. He wants to ascertain, if possible, the accused's whereabouts on the night in question. His hope, of course, is that he may learn of a bona fide alibi. Whether the evidence so secured would or would not be admissible is a false factor. Obviously, it is reasonably possible that evidence so secured, whether or not it is admissible, may put Cornell in possession of facts which, when followed up, would result in the discovery of admissible evidence that might constitute a complete defense of the charge. This being so, Cornell, with the consent of his client, is entitled to conduct the proposed examination.*
>
> x x x x
>
> *The use of hypnosis for the purpose desired, is recognized by medical authorities.... There is no substantial legal difference between the right to use a hypnotist in an attempt to probe into the client's subconscious recollection, and the use of a psychiatrist to determine sanity....*
>
> *It is ordered that the writ of mandamus issue, requiring the trial court to issue an order to the sheriff, permitting the petitioner to examine the accused with the aid of a hypnotist. The order shall further provide that such an examination be conducted in private unless the accused waives that right.*[1]

With that authority, Conrey was hypnotized in prison; and, in trance, he was able to name five bars which he had visited, admitting that he had consumed 21 bottles of beer in addition to considerable amounts of hard liquor; he recalled he had met Maria Martin in one of those bars. She insisted on accompanying him wherever he would go and even demanded that he drive her home. Later, Maria, who was herself drunk, left the vehicle, crawled to a roadside culvert, and fell in. When he finally came to his senses, Maria was gone; when he tried to turn the car, he must have driven over Maria's body as she lay asleep in the darkness.

This vital information from Conrey's subconscious mind was used to justify the modification of the charge against him. The first degree murder charge was reduced to a lesser degree, thus sparing him from the death penalty.

**Associate Justice, Court of Appeals and Member/Former Instructor, Philippine Hypnosis Society.*

[1] *Eugene B. Block,* ***Hypnosis: A New Tool in Crime Detection*** *(New York: David McKay Co., 1976), pp. 54-63.*

The use of hypnosis in the above case was authorized by the California Supreme Court and done in prison. The next case to be discussed also involves hypnosis, but this was done on the accused, not extrajudicially, such as during detention, but during trial in open court.

In June 1962, a history-making murder trial, a kind that had never occurred before in the history of American judicial proceedings, unfolded in a courtroom in Columbus, Ohio, presided over by Judge Joseph M. Harter. The defendant sat rigidly in the witness chair as he was being hypnotized. The purpose was to bring him down to a state of trance so that his subconscious mind would yield his version of a double shooting tragedy. In deep trance, the defendant reenacted the grim living room scene in which he had fired four bullets into his wife's body and mortally wounded a man he had never seen before. Traumatized by the occurrence, he had forgotten how it all took place.

The hypnotized defendant, Arthur C. Nebb, was the estranged husband of Bernice Nebb, two years younger than he, and the father of his attractive, 17-year old daughter, Camellia. The shooting climaxed years of domestic discord between the Nebbs, who had separated several months earlier. The wife had obtained a court order restraining her husband from visiting her.

The circumstances of the case are almost similar to the case of O.J. Simpson, the football hero, who is currently standing trial for the double murder of his ex-wife and her male friend.

In the Nebb's case, on the night of September 14, 1961, at 9:25, police were summoned to Mrs. Nebb's home on McComb Road by a telephone call advising them of the shooting and urging that an ambulance be sent at once. Upon arriving at the scene, the police found Estel J. Stepp, 25, dead on the living room floor, and Mrs. Nebb unconscious in a pool of blood beside him.

In answer to the officers' query, Camellia and her fiance, Nelson Stepp, an 18-year old son of the dead man, said that the victims had been sitting together on a living room couch, watching television and eating homemade pizza, when Arthur Nebb suddenly entered the front door with a revolver in his hand. In a state of shock, they explained that Nebb, walking silently into the room, shot Stepp in the head. As the others screamed in horror, Nebb aimed the gun at his terrified wife and fired four bullets into her body in quick succession, toppling the woman to the floor, bleeding and shrieking with pain. Nebb, her husband, quietly slipped out of the house, jumped into his green Ford pickup parked at the curb, and drove away.





Stepp was pronounced dead on arrival at the Mt. Carmel Hospital. Mrs. Nebb, wounded in the neck, chest, thigh and leg by small caliber bullets, and considered in critical condition, eventually survived.

The charge of first degree murder was filed against Nebb. The hunt for Nebb soon assumed nationwide proportions.

Almost a month after the incident, Nebb phoned Mrs. Clara Cory, a lawyer who had represented him in two divorce actions, and told her that he had been hiding in Georgia swamps, but was now ready to surrender and would do so only in the office of the Prosecutor. An hour later, Nebb walked into the office. He was booked at once. He told the Prosecutor that as regards the details of the double shooting, his mind had gone blank, and could not recall what he had done with the gun.

After entering two pleas — not guilty to the murder indictment and not guilty by reason of insanity — Nebb appeared before Judge Harter for trial; and a jury was sworn in. The prosecution presented Dr. Dante F. Scarpelli, a State University pathologist, who told of his examination of Stepp's body, and his interview of Mrs. Nebb, who related her long marital difficulties and described in detail the shooting. The prosecution also presented Camellia. Based on their testimonies, the prosecution rested their case.

The defense counsel, Atty. George Tyack, collaborating with Mrs. Clara Cory, stepped to the bench and told Judge Harter that although Nebb's mind had been a blank, he had recollected almost all of the tragic events while under hypnosis by Dr. T. B. Huxtable, a few days before. Thus, the defense requested that Nebb be hypnotized in open court to testify on what he had recollected about the incident. Although the request was an unusual one without any precedent, Judge Harter granted the request, there being no objection from the prosecution, on condition that he would not pass on the admissibility of Nebb's testimony until after it had been heard. The jurors were then excused and the spectators were advised to maintain order.

Summoned to the courtroom, Dr. Huxtable appeared and, in answering Judge Harter's questions, stated that hypnosis is medically acceptable, and allows total recall of memory. It enables a good subject to talk without restrictions. Having used hypnosis professionally for nine years, the doctor said he could always tell if his subject was faking. In further answer to the judge's questions, Dr. Huxtable said that hypnosis could be used on all persons except the mentally deficient or psychopaths.

The questioning from the judge over, the doctor stepped before Nebb seated in the witness chair, and told him in a soft voice to relax, repeating the instructions many times until Nebb closed his eyes, opened his mouth, and began breathing quickly. The hypnotist used a penknife to jab Nebb's arms several times to ascertain whether the subject was in full trance. At first Nebb winced with signs of pain, but the test was repeated a number of times until the knife jabs produced no reactions.

After Dr. Huxtable announced that Nebb was now under hypnosis, the defense lawyers and prosecutor alternated in asking questions, to which Nebb responded in a loud and clear voice, drawing from his subconscious mind the answers, reciting what had occurred on the night of the shooting.

The subject said that he had returned to his former home to present his daughter with a watch. He looked into the house through a front window and saw his wife clasping the fingers of a male hand. He watched her as she kissed the man whom he had never seen before, and then saw the two moving into the bedroom.

He drove back to his lodging place to call his lawyer to meet him at his wife's home; then he returned, but as he stepped on the brake, his revolver slid out from under the front seat. He picked it up, entered the house with the gun with the intention of detaining the pair until his lawyer and other witnesses would arrive.

He approached his wife and as she grabbed his hand holding the gun, it was discharged. After that he kept on shooting and even continued to click the gun several times after all the shots had been fired.

After the lawyers had finished their examinations, Dr. Huxtable snapped his fingers and ordered Nebb to come out of the trance. Because Nebb complained of a headache upon waking up, the hypnotist immediately brought him back to his trance. When Nebb was reawakened, his headache was gone.

The judge and jury were impressed by Nebb's testimony under hypnosis although his account of the shooting varied in many respects from the versions of his wife and daughter. But all the parties concerned agreed that the discrepancies were attributed to the excitement of the others present at the scene of the shooting.

The defense counsel and the prosecutor now gathered around the judge's bench expecting the latter's ruling on the admissibility of Nebb's testimony. But before Judge Harter could give his ruling, the defense lawyers, who had conferred with Nebb, announced that their client was





willing to plead guilty to a reduced charge of manslaughter. The Prosecutor, who had insisted earlier that he would only accept a guilty plea to second degree murder, agreed; obviously, Nebb's testimony under hypnosis had changed the prosecutor's mind. The prosecutor then moved that the first degree be reduced to a second degree murder charge. It was to this charge that Nebb pleaded guilty. He was committed to the Ohio State Penitentiary. The sentence of one to twenty years made him eligible for parole in eight months. Without this development, he might have received the death sentence.

In what area of law enforcement is hypnosis most useful?

In *HYPNOSIS in Criminal Investigation* by Harry Arons, a world-famous, hypnotist, the author states:

> *It is in the investigative and preparatory phases of criminal cases that hypnosis can be most useful. Subjects may be witnesses to a crime, the victims in some instances, arresting officers and possibly previous investigators who failed to include minor details in written reports. In most cases the fact that hypnosis was used need not be divulged in court at all, as it is not really pertinent to the matter. Here is a summary of the general areas of application:*[2]
>
> *1. Recall of license plate numbers, names and places, and other details of an event. It is amazing how a person is able, even in a light hypnotic state, to recall numerous details which are not elicited in standard interrogation. Scientific research tells us that we retain most of our experiences in our subconscious storehouse of memories. Incidents which are very insignificant, occurrences which we bypass without taking any apparent notice, are nonetheless stored somewhere in the back of our minds. Under the right conditions, we are able to retrieve most of these impressions and bring them back to conscious awareness. More significant, meaningful and emotion-tinged experiences make proportionately more profound impressions and are therefore retained much longer. However, emotion-laden material of a painful character is often "repressed" and thus relegated to a deeper niche in the subconscious; because of its painful content, this material often resists being brought back to the fore, in line with the human tendency to avoid facing painful or disturbing reality. Nevertheless, there are several techniques by means of which both significant and apparently irrelevant material can be dug out of the subconscious sphere. It is not only logical and proper for law enforcement officers to*

[2] Harry Arons, **Hypnosis in Criminal Investigation,** Charles C. Thomas, publisher (Illinois; 1973), pp. 2-3.

*employ these techniques where indicated; it is, in my opinion, a dereliction of duty to the taxpayers if the police do not use every means at their disposal to protect the public against crime.*

*Merely getting a witness to recall a few more digits in a partially remembered license plate number may set the police on the trail of a criminal who otherwise, because of a dearth of clues, might remain free to perpetrate other crimes. From the point of view of timesaving alone when one considers the cost of checking out a dozen or more combinations of numbers, the use of hypnosis to facilitate matters is amply justified. And, on more than one occasion, the hypnotic recall of a minor detail by a witness has been instrumental in saving a human life. What greater justification can there be than this?*

*2. Breaking amnesia. There probably is not a police department in the country which has not at one time or another encountered an amnesia case. A person is found wandering in the street, in a drunken stupor and is brought to the police station. If interrogation, routine checks with missing persons bureaus and newspaper writeups are not productive, the victim usually ends up in the local hospital. The case ordinarily terminates in identification by relatives or friends, or in spontaneous recovery, but it often takes days and sometimes weeks for the matter to be resolved.*

*Hypnosis undoubtedly presents the quickest solution. With the exception of cases involving brain injury, amnesia is a spontaneous phenomenon very similar to the experimental amnesia which can be produced in hypnosis, it can almost as easily be dissipated through hypnotic suggestion. Even if the amnesia occurred as a result of a mental or emotional disorder, it can still be broken, the person returned to his home and arrangements made for him to receive competent psychological or psychiatric treatment. The intelligent police officer should realize, however, that an amnesia spell very likely indicates an unconscious attempt to "escape" from something, and should bend every effort to make the family recognize the need for professional attention.*

*3. Hypnosis and the polygraph. Hypnosis and the polygraph have similar problems. Both are subject to criticism and prejudice, both are inadmissible in court — and both are useful and effective in the preparation and investigation of criminal cases. Hypnosis can, additionally, be of inestimable help to the polygraph in certain cases where the lie detector alone does not elicit conclusive findings. Research is at present under way to determine how, by combining the two techniques, truth verification methods can achieve greater validity and wider acceptance.*

*4. Lie detection. Even without the polygraph, and in spite of the fact that a subject under hypnosis can lie if it serves his purpose, there are reliable methods for determining that the subject is prevaricating. Used on material and other witnesses, the elimination of the possibility of deception through hypnotic lie-detection techniques can greatly facilitate the preparation of a case.*





At present, more and more law enforcement agencies in various countries are employing hypnotists on a permanent basis as part of their staff. In the U.S., Detective Sergeant Jim Bratt, a certified member of the Association to Advance Ethical Hypnos, is the first law enforcement officer to hold the official position of hypnotist on the staff of a law enforcement agency, the Sheriff's Office of Sedgewick County, Kansas.

This was followed by the New York Police Department, which also installed an official hypnotist in the person of Detective Sergeant Charles Diggett. In the book, *HYPNOCOP: True-Life Cases of the N.Y.P.D.'s First Investigative Hypnotist,*[3] Sergeant Diggett said: "As the New York Police Department's official hypnotist, it is my job to capture the forgotten detail, the crucial circumstance or bit of information that a witness' or victim's mind more than likely has recorded but is reluctant to relinquish to the conscious memory. Hypnosis' success rate in providing investigators with new and useful material has remained steady at about 60 percent. The revelations that lie within this percentage are often all that is needed to tip the scales of justice in favor of the solution of a case. Many of the investigations I have been called in on, over the past five years, to perform my seeming magic have been among the toughest to crack, and have involved some of the most bizarre crimes I have encountered in my twenty-nine years on the force."

Is it not time for our government now to incorporate hypnosis into any of the five pillars of the criminal justice system?

[3] *Charles Diggett and William C. Mulligan, **HYPNOCOP: True-Life Cases of the N.Y.P.D.'s First Investigative Hypnotist** (New York: Double Day and Co., Inc., 1982), pp. 27-29, 31.*

*Nilo C. Mariano**

# THE LAWS ON WITNESS PROTECTION AND VICTIM'S COMPENSATION, AND RELATED DOJ POLICIES

ABOUT FOUR YEARS AGO, one chilly morning in January, an incident happened to a winsome lass in Metro Manila. Her name has escaped our memory, but let us just call her Shiela, the oldest of a brood of three children, the apple of her mother's eye, who had just graduated from college, and who, fortunately, through her efforts, had been lucky enough to land a job in one of the big department stores in Makati — an achievement that she was immensely proud of, as she was now in a position to help her widowed mother who had long been doing laundry work to support her and her younger brother and sister.

She had been working for two weeks, and as had been customary and routinary on her part, she woke up at 4 o'clock in the morning, took a bath, ate breakfast and tread the lonely patches of field leading to the highway at 5 o'clock so she could avoid the early morning rush and traffic jam. Midway to the highway, however, she was suddenly met by three males who were apparently high on drugs. They pounced on her and punched her frail body, and, thereafter, brought her unconscious to an abandoned warehouse where they took turns in abusing her. Not contented with carnal lust, one of them got a wooden stick and spiked the symbol of her womanhood, and to silence her cries of pain and agony, the other two bashed her head with a big adobe. That fateful evening, a forlorn mother, and anxious brother and sisters waited in vain for Shiela — not knowing that she was no more.

Unfortunately for Shiela, no one saw the dastardly crime, as the place of incident was still dark and deserted at the time. And even if one did, it is doubtful whether that witness would have come out in the open for fear of his safety. And if he were brave enough to testify, he would be discouraged by the number of days he would have to expend just to testify.

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First, he would fear appearing before the police investigator, then, before the prosecutor with whom the case would be filed, either for inquest or preliminary investigation; and later, before the judge, where he will have to face the rigors of direct and cross-examination, as well as the intermittent delays before he can finish his testimony. If he is working, he will certainly think twice before testifying, as he would not want to lose his job because of the absences he may incur by being a witness, absences which management may not tolerate. These are the reasons why witnesses shy away from witness duty. Fortunately, there is now the Witness Protection, Security and Benefit Law which encourages witnesses to come out in the open to perform their civic duty of testifying to the commission of the crime they have actively seen or have information about.

## The Witness Protection, Security and Benefit Law

The following are qualified for coverage under the law:

1. Any person who has witnessed or has knowledge of or information on the commission of a crime and has testified or is testifying or about to testify before any judicial or quasi-judicial body, or before any investigating authority, may be admitted into the WPSB program, provided that:

   a) The offense in which his testimony will be used is a grave felony as defined under the Revised Penal Code, or its equivalent under special laws;

   b) His testimony can be substantially corroborated in its material points;

   c) He or any member of his family within the second civil degree of consanguinity or affinity is subjected to threats to his life or killed, forced, intimidated, harassed or threatened with bodily injury or there is a likelihood that he will be corrupted to prevent him from testifying, or to testify falsely or evasively;

   d) He is not a law enforcement officer, even if he would be testifying against other law enforcement officers. In such a case, only the immediate members of his family may avail of the protection provided under the Act.[1]

2. In case of legislative investigations in aid of legislation, a witness, with his express consent,

[1] *Sec. 3, R.A. No. 6981.*

may be admitted into the program upon the recommendation of the legislative committee where his testimony is needed when in its judgment there is pressing necessity therefor, provided that such recommendation is approved by the President of the Senate or the Speaker of the House of Representatives, as the case may be.[2]

3. Any person who has participated in the commission of a crime and desires to be a witness for the state, whenever the following circumstances are present:

a. The offense in which the testimony will be used is a grave felony as defined under the Revised Penal Code or its equivalent under special laws;

b. There is absolute necessity for his testimony;

c. There is no other direct evidence available for the proper prosecution of the offense committed;

d. His testimony can be substantially corroborated in its material points;

e. He does not appear to be the most guilty; and

f. He has not at any time been convicted of any crime involving moral turpitude.[3]

4. An accused discharged from an information or criminal complaint by the court in order that he may be a state witness pursuant to the provisions of Sections 9 and 10, Rule 119 of the 1985 Rules on Criminal Procedure, as amended, and who is qualified under the law.[4]

Once admitted into the program, the witness shall have the following rights and benefits:

1. To have a secure housing facility until he has testified or until the threat, intimidation or harassment disappears or is reduced to a manageable or tolerable level. When the circumstances warrant, the witness shall be entitled to relocation and/or change of personal identity at the expense of the program. This right may be extended to any member of the family of the witness within the second civil degree of consanguinity or affinity:

2. The DOJ shall, whenever practicable, assist the witness in obtaining a means of livelihood. The witness relocated pursuant to R.A. No. 6981 shall be entitled to financial

[2] *Sec. 4, ibid.*
[3] *Sec. 10, ibid.*
[4] ***Ibid.***





assistance from the program for his support and that of his family in such amount and for such duration as the DOJ shall determine.

3. In no case shall the witness be removed from or demoted in work because or on account of his absences due to his attendance before any judicial or quasi-judicial body or investigating authority, including legislative investigations in aid of legislation, in going thereto and in coming therefrom; provided, that his employer is notified through a certification issued by the DOJ, within a period of 30 days from the date when the witness last reported for work; provided further, that in the case of prolonged transfer or permanent relocation, the employer shall have the option to remove the witness from employment after securing clearance from the DOJ, upon the recommendation of the Department of Labor and Employment.

Any witness who failed to report for work because of witness duty shall be paid his equivalent salaries or wages corresponding to the number of days of absence occasioned by the program. For purposes of this Act, any fraction of a day shall constitute a full day's salary or wage. This provision shall be applicable to both government and private employees.

4. To be provided with reasonable travelling expenses and subsistence allowance by the program in such amount as the Department may determine for his attendance in court, body or authority where his testimony is required, as well as conferences and interviews with prosecutors or investigating officers.

5. To be provided with free medical treatment, hospitalization and medicines for any injury or illness incurred or suffered by him because of witness duty in any private or public hospital, clinic, or at any such institution at the expense of the program.

6. If a witness is killed because of his participation in the program, his heirs shall be entitled to a burial benefit of not less than P10,000.00 from the program exclusive of any other similar benefits he may be entitled to under other existing laws.

7. In case of death or permanent incapacity, his minor or dependent children shall be entitled to free education, from primary to college level, in any state, or private school, college or university as may be determined by the DOJ, as long as they shall have qualified thereto.[5]

In return, the witness placed under the program shall have the following duties and responsibilities:

[5] *Sec. 8, **ibid.**, Sec. 1, Title V, WPSBP Implementing Rules and Regulations.*

1. To testify before and provide information to all appropriate law enforcement officials, in all appropriate proceedings, in connection with or arising from the activities involved in the offense charged;

2. To avoid the commission of a crime;

3. To take all necessary precautions to avoid detection by others of the facts concerning the protection provided him under the law;

4. To comply with legal obligations and civil judgments against him;

5. To cooperate with respect to all reasonable requests of officers and employees of the government who are providing protection under the law;

6. To regularly inform the appropriate program official of his current activities and address; and,

7. To comply with such other conditions as may be imposed by the Secretary of Justice.[6]

It should be noted that under Section 14 of R.A. No. 6981, any witness admitted into the program cannot refuse to testify or give evidence or produce books, documents, records or writings necessary for the prosecution of the offense or offenses for which he has been admitted into the program on the ground of the constitutional right against self-incrimination. He shall, however, enjoy immunity from criminal prosecution and cannot be subjected to any penalty or forfeiture for any transaction, matter or thing concerning his compelled testimony or books, documents, records or writings produced.

Where the witness refuses to testify or give evidence or produce books, documents, records or writings, on the ground of the rights against self-incrimination, and the state prosecutor or investigator believes that such evidence is absolutely necessary for a successful prosecution of the offense or offenses charged or under investigation, he, with the prior approval of the Department, shall file a petition with the appropriate court for the issuance of an order requiring said witness to testify, give evidence or produce the books, documents, records, and writings described, and the court shall issue the proper order.

The court, upon motion of the state prosecutor or investigator, may then order the arrest and detention of the witness in any jail contiguous to the place of trial or investigation until such time that the witness is willing to give such testimony or produce such documentary evidence.

Furthermore, under Section 13 of the Law, any witness registered

[6] *Sec. 5, **ibid.***





under the program who fails or refuses to testify or to continue to testify without just cause when lawfully obliged to do so, shall be prosecuted for contempt. If he testifies falsely or evasively, he shall be liable to prosecution for perjury. If a state witness fails or refuses to testify, or testifies falsely or evasively, or violates any condition accompanying such immunity without just cause, as determined in a hearing by the proper court, his immunity shall be removed and he shall be subject to contempt or criminal prosecution. Moreover, the enjoyment of all rights and benefits under the program shall be deemed terminated.

Likewise, it should be stressed that a witness who has been placed under the program, and is being given the protection and benefits provided for under the law, shall not be admissible in evidence to diminish or affect his credibility.[7]

Moreover, there is a provision of the law penalizing harassment of a witness. Thus, any person who harasses a witness and thereby hinders, delays, prevents or dissuades a witness from:

1. Attending or testifying before any judicial or quasi-judicial body or investigating authority;

2. Reporting to a law enforcement officer or judge the commission or possible commission of an offense, or a violation of conditions of probation, parole or release pending judicial proceedings;

3. Seeking the arrest of another person in connection with the offense;

4. Causing a criminal prosecution, or a proceeding for the revocation of a parole or probation; or,

5. Performing and enjoying the rights and benefits under the law or attempts to do so, *shall be fined not more than P3,000.00 or suffer imprisonment of not less than six (6) months but not more than a year, or both. He shall also suffer the penalty of perpetual disqualification from holding public office in case he is a public officer.*[8]

How does one avail of the program? Any person desiring admission into the program shall fill up and file an application form provided for the purpose with the Secretariat, Office of the WPSB Implementor, DOJ, Padre Faura, Manila. Thereafter, he will be subjected to examination and his application evaluated, after which he will be duly notified of the action taken by the DOJ.

[7] *Sec. 16, **ibid.***
[8] *Sec. 17, **ibid.***

As of December 31, 1993, 352 witnesses had been placed under the program; 76 witnesses under the program had completed their testimonies; 9 cases had resulted in conviction, due to the testimonies of witnesses, while 3 cases had resulted in the acquittal of the accused.[9]

### The Law Creating the Board of Claims (*Victims' Compensation Law, R.A. 7309*)

Another law that is being administered by the DOJ as part of its service in the administration of justice is the grant of compensation to victims of unjust imprisonment or detention and victims of violent crimes. For this purpose, R.A. No. 7309 created the Board of Claims under the DOJ. It would appear that government and society have become notably indifferent to unjust imprisonment or detention and victims of violent crimes. Congress felt that a judicial way of filing a claim for compensation may be too long, hence, it enacted R.A. No. 7309, creating the Board of Claims and providing for an administrative procedure for such claims.

Under the said law, those who may apply for compensation are:

a. A person who was unjustly accused, convicted and imprisoned and subsequently released by virtue of a judgment of acquittal;

b. A person who was unjustly detained and released without being charged;

c. A person who is a victim of arbitrary detention by the authorities as defined in the Revised Penal Code under a final judgment of the courts; or,

d. A person who is a victim of a violent crime (this includes rape and offenses committed with malice) which resulted in death or serious physical and/or psychological injuries, permanent incapacity or disability, insanity, abortion, serious trauma, or which was committed with torture, cruelty or barbarity.[10]

It should be noted, however, that the claim should be filed with the Board by the person entitled to compensation within six (6) months after being released from imprisonment or detention or from the date he suffered damage or injury; otherwise, he is deemed to have waived his claim.[11]

A claimant may file a claim with the Board by filling up an application

[9] *Records of the WPSB Secretariat.*
[10] *Sec. 3, R.A. No. 7309.*
[11] *Sec. 5, **ibid.***





form provided for the purpose with the Secretariat of the Board of Claims, DOJ, Padre Faura, Manila. Thereafter, he will be interviewed and duly notified of the action taken by the Board.

The awards that may be given are as follows:

a. For the victims of unjust imprisonment, the compensation shall be based on the number of imprisonment and every fraction thereof shall be considered one month, but in no case shall such compensation exceed P1,000.00 per month.

b. In all other cases, the maximum for which the Board may approve a claim shall not exceed P10,000.00 or the amount necessary to reimburse the claimant the expenses incurred for hospitalization, medical treatment, loss of wage, loss of support or other expenses directly related to the injury, whichever is lower, to be determined by the Board.[12]

Republic Act No. 7309 became effective on April 14, 1992 after its publication in 2 newspapers of general circulation, the Philippine Star and the Philippine Daily Inquirer, on April 13, 1992. Under Section 12 of said law, the Act shall take effect after its publication in 2 newspapers of general circulation.

The provisions of this Act shall, however, be applied prospectively. All incidents or bases for filing an application under Section 3 of R.A. No. 7309 must have happened on or after April 14, 1992, for it to be covered by the law and within the period of 6 months provided for under said Act.

The Board has processed 617 claims as of the end of March 1994, with 365 claims still pending. Based on records, the Board has granted awards to 97 applicants in the total amount of P1.003 million as of December 31, 1993.

### Other DOJ Policies Enhancing the Administration of Justice

The National Prosecution Service (NPS) is under the Office of the Secretary of Justice. The Undersecretary for the NPS assists the Secretary in the implementation of policies and overall supervision of all prosecutors in the Philippines. On the other hand, the Chief State Prosecutor assists the Secretary in exercising supervision and control over the NPS.[13]

[12] *Sec. 4, **ibid.***
[13] *Administrative Code of 1987.*

There are 5 divisions under the Office of the Chief State Prosecutor, namely: (1) the Review Division; (2) the Investigation and Prosecution Division; (3) the Special Cases/ Projects Division; (4) the Special Appeals and Administrative Discipline Division; and, (5) the Personnel Management, Field Operations and Miscellaneous Matters Division. There are also the Offices of the Regional State Prosecutors and the Offices of the Provincial and City Prosecutors. The 130 State Prosecutors and Prosecution Attorneys under the Office of the Chief State Prosecutor are distributed among the 5 divisions.

The Secretary of Justice has organized several task forces to assist concerned government agencies in the investigation and prosecution of cases involving violation of laws being enforced by them as well as cases of national importance. These task forces are:

1. Task Force on Narcotics and Dangerous Drugs
2. Task Force on Bank Fraud Cases
3. Task Force on Revenue Cases
4. Task Force on Tariff and Customs Cases
5. Task Force on DENR Cases (Illegal Logging and Anti-Graft and Administrative Cases)
6. Task Force on Public Works and Highways
7. Task Force on National Power Corporation Cases
8. Task Force on NAIA Cases
9. Task Force on Anti-Intellectual Property Piracy
10. Task Force on Constabulary Highway Patrol Group (CHPG) Cases
11. Task Force on Passport Irregularity Cases
12. Task Force on Agrarian Reform Cases
13. Task Force on Anti-Illegal Fishing
14. Task Force on Kidnapping Cases
15. Task Force on Human Rights Cases
16. Task Force on Anti-Graft Cases
17. Task Force on Illegal Recruitment

There are presently 18 task forces in the DOJ, including the task forces constituted under Department Order No. 254, dated July 8, 1993, and Department Order No. 226, dated July 2, 1993, which assist the Presidential Anti-Crime Commission (PACC).

The prosecutors assigned to these task forces, as well as the prosecution field offices of the DOJ, are obliged under Circular No. 49, dated July 14, 1993, and reiterated in Department Circular





No. 15, dated February 22, 1994, to investigate and resolve cases under preliminary investigation within 60 days, under pain of the administrative disciplinary sanctions ranging from withholding of salary to suspension without pay.

Department Circular No. 54, dated August 25, 1993, has likewise been issued directing all prosecutors in the National Prosecution Service to accept, for purposes of inquest proceedings, results of field tests conducted on confiscated drugs by a PNP Narcotics Command (NARCOM) operative who has been duly accredited by the PNP Crime Laboratory Service. However, the inquest prosecutor shall require the arresting officers to submit to the prosecutor the final forensic chemistry report within 5 days from date of inquest.

With the issuance of Memorandum Circular No. 12, dated October 14, 1992, the Secretary of Justice implemented Administrative Order No. 14 of the Office of the President, dated October 9, 1992, providing for the creation in each region of a Task Force *Katarungan* (TAFKA). The TAFKA shall have the primary duty of monitoring the prosecution of criminal cases that it has identified as significant by reason of strong public sentiments, and of coordinating all government efforts in their prosecution before the courts.

Each regional TAFKA shall be organized into the following committees:

1. Committee on Smuggling and Tax Evasion
2. Committee on Illegal Logging
3. Committee on Syndicates and Heinous Crimes
4. Committee on Crimes by Law Enforcers and Public Officers
5. Committee on Dangerous Drugs
6. Committee on the Service of Warrants

Department Circular No. 23, dated March 15, 1994, also revised the rules in fixing the amount of bail for violation of R.A. No. 6425, as amended by R.A. No. 7659.

Memorandum Circular No. 2, dated April 15, 1994, was issued by the Secretary of Justice, in which he provided for guidelines on the jurisdiction over cases involving PNP members, based on the *Asuncion* case.[14]

Thus, on the basis of the Supreme Court decision, members of the PNP are subject to the

[14] *People of the Philippines v. Hon. Maximiano C. Asuncion, et al., G.R. No. 108208, 11 March 1994.*

jurisdiction of the Sandiganbayan with respect to: (a) violation of R.A. No. 3019, as amended; R.A. No. 1379; and Chapter II, Sec. 2, Title VII of the Revised Penal Code (Bribery, Indirect Bribery and Corruption of Public Officials, Arts 210, 211 and 212); and (b) other offenses or felonies committed by them in relation to their office where the penalty prescribed by law is higher than *prision correccional* or imprisonment of six (6) years or a fine of P6,000.00.[15]

Other remedial measures and policies adopted by the DOJ to enhance the administration of justice are the following:

1. **Shortening of Period for Preliminary Investigation**

Specific periods were set for the completion of the preliminary investigation and the resolution of cases by prosecutors. While the pertinent laws on the matter provided for the period of 30 to 40 days within which to complete the preliminary investigation of cases,[16] these were merely considered directory. Thus, in contrast to the previous practice of allowing cases to age, the period of 60 days was prescribed for the completion of the preliminary investigation of the case, and another 60 days for the resolution thereof.[17] Thereafter, DOJ Circular No. 35, dated September 17, 1991, was issued shortening the entire period for investigation and resolution of cases under preliminary investigation to only 90 days. Under the same circular, cases originally investigated by Municipal Trial Courts, records of which are transmitted to provincial/ city prosecutors for appropriate action (pursuant to Section 5, Rule 112 of the 1985 Rules on Criminal Procedure), shall be assigned to an investigating prosecutor within five (5) days from receipt of records, and the investigating prosecutor shall be given 30 days within which to terminate and resolve the case. Thereafter, under Department Circular No. 49, dated July 14, 1993, and as reiterated under Department Circular No. 15, dated February 22, 1994, prosecutors have been enjoined to resolve, within 60 days, cases under preliminary investigation. As administrative sanction for non-compliance, salaries of those

[15] *P.D. No. 1606, as amended by P.D. No. 1861.*
[16] *P.D. No. 911, P.D. No. 77, R.A. No. 5180, Sec. 3, Rule 112, the 1985 Rules on Criminal Procedure, as amended.*
[17] *Department Circular No. 27, dated September 16, 1988 and DOJ Circular No. 1, dated January 16, 1990.*





concerned are withheld, in addition to said withholding of salary. If circumstances warrant, they may be administratively charged for neglect of duty.

2. **Lessening of Grounds to Appeal Resolutions to the Office of the Secretary**

Department Circulars were likewise issued limiting the grounds and period within which resolutions of provincial and city prosecutors may be appealed to the Department. Only meritorious appeals are entertained, while frivolous and dilatory appeals are discouraged. Thus, in the resolution of cases wherein a penalty higher than *prision correccional* may be imposed (over six (6) years imprisonment), the same may be appealed to the Department of Justice under Ministry Circular No. 36, dated July 1, 1980. Likewise, the resolution on appeals, where the penalty prescribed for said offense would not exceed *prision correccional*, has been delegated to the regional state prosecutors, and their resolution shall be final.[18] Furthermore, the period within which to appeal has been shortened from 30 days to 15 days.[19] The shortened period to appeal is expected to expedite the filing and prosecution of cases in court.

On June 30, 1993, the Secretary of Justice issued Department Circular No. 223, revising the rules on appeals from resolutions in preliminary investigation and reinvestigation. This circular further lessened the period within which to act on appeals or petitions for review, as it enjoined petitioners/ appellants to merely attach certified photocopies of pertinent documents, instead of requiring the prosecution office concerned to elevate the record of the subject case, as was earlier practiced, which took time for the office concerned to comply with.

3. **Standardization of Inquest Procedure**

The issuance of Department Circular No. 5, dated March 1, 1989, standardized the procedure in the conduct of inquest cases so as to hasten the disposition thereof, thus benefiting innocent persons who may have been

[18] *Department Circular No. 17, dated May 26, 1989; Department Circular No. 7, dated January 25, 1990.*
[19] *Department Circular No. dated January 1990 and No. 29, dated June 28, 1990.*

unjustly arrested and detained after office hours or during weekends and legal holidays when courts are not functioning. This has been superseded by Department Circular No. 61, dated September 21, 1993.

4. **Assistance to Indigent Parties in the Preparation of Affidavits**

To assist indigent parties in criminal cases, the Justice Secretary has also issued Memorandum Circular No. 5, dated June 22, 1990, giving appropriate directions to prosecutors and public attorneys in the preparation of complaint-affidavits, counter-affidavits and affidavits of witnesses. Under this circular, the public attorney, during custodial investigation, is required to encourage the accused or suspect to tell the truth, and thus facilitate the investigation of the crime and the prosecution of the perpetrators.

5. **Guidelines for Prosecutors to Insure Appearance of the Accused, Particularly Aliens**

Department Circular No. 38, dated August 15, 1990, was likewise issued dealing on Hold Departure Orders (HDO) and the cancellation of travel documents. This enjoins prosecutors to ensure that criminal offenders are punished and put in their proper place by taking the necessary steps to prevent them from leaving for abroad during the pendency of criminal proceedings. They may either move for the issuance by the court of a Hold Departure Order against the accused and for the Bureau of Immigration to implement the same or, where the accused has jumped bail and fled to a foreign country, report the same to the Chief State Prosecutor, so that the latter may make appropriate representations with the Department of Foreign Affairs for the cancellation of the passport and other travel documents so as to make him an undocumented alien.

6. **Designation of Prosecutors Specializing on Human Rights Violations**

The Justice Secretary also issued Department Circular No. 21, dated April, 1990, which provides for a list of prosecutors who are designated to handle human rights cases pursuant to DOJ Memorandum Circular No. 37, dated December 12, 1988, and Memorandum Circular No. 9, dated February 1, 1990. Said Circular is intended to





inform the public and non-government organizations, which are espousing the cause of human rights, of the prosecutors assigned in various provinces and cities to handle, investigate and prosecute cases involving violations of human rights.

7. **Directive to Prosecutors to Assist in the Training of Barangay Tanods on Arrest and Service of Processes**

Department Circular No. 34, addressed to the Metro Manila City Prosecutors and the Rizal Provincial Prosecutors was likewise issued, directing them to coordinate with the local executives, particularly in conducting seminars, so that barangay tanods may be properly trained in the service/return of subpoenas, and in the procedure for effecting arrest of accused persons pursuant to Metro Manila Peace and Order Council Resolution No. 3-90. Aside from Metro Manila, Regional State Prosecutors in the regions have likewise been advised to direct provincial and city prosecutors within their jurisdiction to conduct seminars for barangay captains and other barangay officials concerning the administration of the *Katarungang Pambarangay* and in the implementation of Sec. 407 of R.A. No. 7160, otherwise known as the Local Government Code of 1991.

8. **Appointment and Promotion of More Prosecutors**

To improve the service and bolster the morale of prosecutors in the country, the DOJ Secretary has recommended the appointment and promotion of some 238 prosecutors. Moreover, the DOJ Secretary has recommended the permanent appointment of about 324 prosecutors who had been previously appointed in an acting capacity, between the period 1991-1992, after a strict evaluation of their performance.

Last May 17, 1993, about 288 prosecutors were appointed by the President. This was followed by the appointment of another 187 prosecutors on February 16, 1994.

Alongside the promotion of prosecutors and their salary upgrading, strict disciplinary measures have been imposed in order to weed out and penalize the scalawags and recalcitrants in the service.

As of December 31, 1993, the Secretary has recommended to the President the dismissal from the service of

11 prosecutors, the suspension of five prosecutors, and reprimand of eight prosecutors. Nine case were referred to other investigative bodies, e.g., the Ombudsman.

### 9. Payment of Representation and Transportation Allowance of Prosecutors out of National Funds

The DOJ Secretary has also worked for the payment of the representation and transportation allowances of prosecutors out of national funds, instead of having them paid from the coffers of city and provincial governments. The total of the monthly allowance range from P2,200.00 to P3,000.00.

### 10. Constitution of the NPS Performance Audit Team

The DOJ has created a National Prosecution Service - Performance Audit Team (NPS-PAT) which goes around the country from time to time to conduct on-the-spot inspection of provincial/city prosecution offices in order to pinpoint weaknesses in work processes, to eliminate redundant procedural steps, and to check and validate the submitted accomplishment reports of individual prosecutors.

### 11. Self-sufficiency in Office Supplies/Equipment to Insure Independence from Local Politicians

In order to wean prosecutors away from the influence of local officials, the DOJ has provided them with office equipment.

They have also been provided with motorcycles to improve mobility in the service of sub-poenas and other processes, especially in remote places.

A special disbursing officer has been designated in each Prosecutor's Office to facilitate the immediate purchase of supplies/materials.

### 12. Justice Infrastructure Program

The Justice Infrastructure Program (JUSIP) is intended to provide decent offices to judges and prosecutors and other members of the criminal justice system. In 1993, about 27 Halls of Justice were constructed or repaired.

### 13. Computerization Program

The DOJ has also embarked on a computerization program in the Prosecutor's Offices in order to facilitate monitoring





and case-tracking. The DOJ selected the Quezon City and Rizal (Pasig) Prosecution Offices as pilot areas for the project.

### 14. Regionalization of the National Prosecution Service

The DOJ implemented the regionalization of the NPS by appointing 12 Regional State Prosecutors and their staff for the 12 regions of the country, excluding NCR, which is under the supervision and administration of the OCSP. More effective supervision by the Department of Justice of the various provincial and city prosecutors may now be expected through the assistance of the Regional State Prosecutors.[20]

Certain duties and responsibilities have been delegated by the Secretary of Justice to the Regional State Prosecutors to hasten the resolution of cases, including: (a) authority to finally resolve appealed cases where the penalty imposed is not more than *prision correccional* (6 years imprisonment),[21] and (b) to assist in the implementation of the Witness Protection, Security and Benefit Act.[22]

Finally, let me emphasize again the need for proper coordination and cooperation among the five pillars of the criminal justice system. We have to help one another if we are to effectively combat crime and criminals, and to secure peace and order in our country against those who threaten its stability and our national security. Like the bow and arrow, which have been likened to man and woman, the prosecution and the other components of the criminal justice system would be useless without the other.

✍

Hairline distinction between craft and fraud.

*When there is direct inducement by insidious words or machinations, fraud is present; otherwise, the act of the accused done in order not to arouse the suspicion of the victim constitutes craft. (Luis B. Reyes, "The Revised Penal Code: Criminal Law," 1993)*

[20] *Department Order No.318, series of 1991.*
[21] *Department Order No. 34, dated 14 February 1992.*
[22] *Department Order No. 2, dated 3 January 1992.*

# OPINIONS OF THE SECRETARY OF JUSTICE

**OPINION NO. 4, s. 1994**

**Issue: Whether a national agency can recover rights over real properties turned over to LGUs due to devolution Addressed to Undersecretary of Health Jaime R. Galvez**

This refers to your request for opinion relative to the rights of the Philippine Medical Care Commission (PMCC) over properties turned over to local government units (LGUs) due to the devolution of hospitals to LGUs under the Local Government Code of 1991 (R.A. No. 7160).

You state that before the PMCC became an attached agency of the Department of Health (DOH), it acquired certain parcels of land, including the improvements thereon, intended as sites of Medicare Community Hospitals; that when the DOH was reorganized pursuant to Executive Order No. 119, the property rights of the PMCC over said parcels of real estate were turned over to the DOH; and that under the Local Government Code of 1991, the LGUs now exercise control over the aforementioned properties.

You now inquire as to whether or not the PMCC may recover its proprietary rights over the real properties abovementioned which are presently in the possession of the LGUs concerned.

It is noted that Section 17 of Chapter 2, Title I, Book I of R.A. No. 7160 pertinently provides:

*SECTION 17. Basic Services and Facilities -*

(a) *Local government units shall endeavor to be self-reliant and shall continue exercising the powers and discharging the duties and functions currently vested upon them. They shall also discharge the functions and responsibilities of national agencies and offices devolved to them pursuant to this Code. Local government units shall likewise exercise such other powers and discharge such other functions and responsibilities as are necessary, appropriate, or incidental to efficient and effective provision of the basic services and facilities enumerated herein.*

(b) *Such basic services and facilities include, but are not limited to, the following:*



(1) For a Barangay:

xxx xxx

(iii) *Services and facilities related to general hygiene and sanitation, beautification, and solid waste collection,* xxx

(2) For a Municipality:

xxx xxx

(iii) *Subject to the provisions of Title Five, Book I of this Code, health services which include the implementation of programs and projects on primary health care, maternal and child care, and communicable and non-communicable disease control services; access to secondary and tertiary health services; purchase of medicines, medical supplies, and equipment needed to carry out the services herein enumerated;* xxx

(3) For a Province:

xxx xxx

(iv) *Subject to the provisions of Title Five, Book I of this Code, health services which include hospitals and other tertiary health services;* xxx

(4) For a City:

*All the services and facilities of the municipality and province* xxx

(e) National agencies or offices concerned shall devolve to local government units the responsibility for the provision of basic services and facilities enumerated in this Section within six (6) months after the effectivity of this Code.

*As used in this Code, the term "devolution" refers to the act by which the national government confers powers and authority upon the various local government units to perform specific functions and responsibilities.*

(f) *The national government or the next higher level of local government unit may provide or augment the basic services and facilities assigned to a lower level of local government unit when such services or facilities are not made available or, if made available, are inadequate to meet the requirements of its inhabitants.*

xxx xxx

(i) *The devolution contemplated in this Code shall include the transfer to local government units of the records, equipment, and other*

***assets and personnel of national agencies and offices corresponding to the devolved powers, functions, and responsibilities. (Emphasis supplied)***

It is clear from the foregoing provisions of law that among the basic services which the devolution to the LGUs has mandated under the abovecited Code are "health services which include hospitals and other tertiary health services." Said provisions further specify that such devolution shall include the transfer of "assets and personnel of national agencies and offices corresponding to the devolved powers, functions and responsibilities." The legislative intention to effect a devolution of functions from the national government agencies to the LGUs is made more manifest by Section 5 of the Code which provides that "in case of doubt, any question thereon shall be resolved in favor of devolution of powers."

In the light of the foregoing, it is believed that the PMCC may not recover its former properties which are now in the hands of LGUs pursuant to R.A. No. 7160. A contrary view would contravene the evident intention and express policy of devolution laid down in said statute. Moreover, allowing such recovery would contradict the rationale behind Article 31, Rule V of the 1991 Local Government Code's implementing rules and regulations which, in part, provides that in the event that an LGU cannot continually maintain the operation of transferred assets, the appropriate national government agency may be directed by the President "to provide financial, technical, or other form of assistance" and that any such assistance shall be "at no extra cost on the part of the LGU."

**OPINION NO. 15, s. 1994**

**Issue: Whether sovereign guarantee can be issued for direct foreign borrowings of local government units**
**Addressed to Undersecretary of Finance Romeo L. Bernardo**

You state that under Rule XXXIII of the 1991 Local Government Code (R.A. No. 7160), LGUs are given the authority to incur indebtedness and enter into credit transactions to finance their infrastructure and socioeconomic development projects; that LGUs have, thus, taken initiatives to secure external financing from "official sources;" that some of these foreign creditors are amenable to extend direct loans to LGUs, but they require the guarantee of the Philippine Government; and that under the Foreign Borrowings Act (R.A. No. 4860, as amended), such guarantee could only be issued to loans incurred by government-owned and controlled corporations





as well as government financial institutions.

We agree with the view that under the Foreign Borrowings Act, the guarantee of the Philippine Government could only be issued to loans granted to government-owned or controlled corporations and government financial institutions.

The pertinent provision of the Foreign Borrowings Act reads:

> "*Sec. 3. The President of the Philippines, upon recommendation of the Secretary of Finance, the Monetary Board of the Central Bank of the Philippines and the National Economic and Development Authority, is further authorized, in behalf of the Republic of the Philippines, to guarantee such loans, credits or indebtedness as may be necessary and upon such terms and conditions, not inconsistent with this Act, as may be agreed upon with the governments of foreign countries with whom the Philippines has diplomatic or trade relations or which are members of the United Nations, their agencies, instrumentalities or financial institutions or with reputable international organizations or nongovernmental national or international lending institutions, loans, credits or indebtedness extended directly to, or bonds, debentures, securities or other evidences of indebtedness for sale in international markets issued by*
>
> (a) *Corporations owned and controlled by the Government of the Philippines,* Provided, *That the proceeds of bonds, debentures, securities or other evidences of indebtedness, floated or issued, shall be used to undertake industrial, agricultural, or other economic development projects which are authorized by law or by their respective charters, including but not limited to those enumerated in Annex "A" or by their respective charters and such projects which may from time to time be recommended by the National Economic and Development Authority and approved by the President of the Philippines.*
>
> (b) *Government-owned or controlled financial institutions for relending to individuals, partnerships, cooperatives, associations or private corporations, whose capital stock, if not fully subscribed, is open to subscription by the general public for projects authorized by the charters of such financial institutions.*
>
> xxx xxx xxx

It is unmistakably clear from the aforequoted provision that the authority of the President to guarantee foreign loans, credits or indebtedness thereunder is limited to those incurred

by government-owned or controlled corporations and financial institutions. There is nothing in the provision which authorizes the President to extend said guarantee to external borrowings of the LGUs. Pertinent rules in statutory construction state that a meaning which does not appear nor is intended to be reflected in the language of the statute cannot be placed therein (Manikad vs. Tanodbayan, 127 SCRA 724), and that where a provision of law limits its application to certain transactions, it cannot be extended by interpretation to include other transactions (Hongkong and Shanghai Bank vs. Peters, 16 Phil. 284).

Section 20, Article VI of the Philippine Constitution, authorizing the President to "contract or guarantee foreign loans on behalf of the Republic of the Philippines with the prior concurrence of the Monetary Board, and subject to such limitations as may be provided by law," cannot provide the legal authority for sovereign guarantees of the LGUs' foreign loans. The reason is that such authority is made subject to restrictions provided under existing laws, such as those provided in the Foreign Borrowings Act (R.A. No. 4860, as amended, *supra).* There is, however, no provision in the Local Government Code of 1992 which empowers the Chief Executive to issue guarantees for LGU borrowings.

**OPINION NO. 20, s. 1994**

**Issue: Whether the Movie and Television Review and Classification Board can impose fines without going to court**

**Addressed to Senator Ernesto M. Maceda**

This has reference to your request for opinion on "whether or not the Movie and Television Review and Classification Board (MTRCB), under P.D. No. 1986, can impose fines up to as much as P250,000.00 without going to court, apparently based on the ... schedule of fines promulgated by the MTRCB."

You state that the instant query is prompted by the numerous complaints which your office had received from movie producers and theater owners against the MTRCB for imposing "exorbitant" fines on them. It is your view that under P.D. No. 1986 (MTRCB Charter), "only the regular courts can impose such fines to the exclusion of the MTRCB."

A previous opinion (Op. No. 165, s. 1991) of this Department, rendered upon the request of the Fiber Industry Development Authority (FIDA), on this point is instructive.

In said Opinion No. 165, s. 1991, this Department ruled:





*Coming now to the specific issue raised as to whether FIDA itself could impose the penalty under Section 50 of Administrative Order No. 1, or whether it should go to court for that purpose, it is believed that FIDA should go to court.*

*Even when the law provides that any violation of the rule or regulation issued pursuant thereto is punishable and prescribes the corresponding penalty therefor, the administrative body concerned cannot itself impose the penalty but must go to court for its enforcement (Weigall vs. Shuster, 11 Phil. 340). This is because only the courts can impose a criminal penalty (Civil Aeronautics Board vs. Philippine Air Lines, 63 SCRA 524). An administrative body may, however, be empowered by law to impose civil penalties or administrative fines, but such grant of power must be clear from the law itself (ibid). It has been held that a penalty is criminal in nature whenever the law provides that the penalty involving a fine and/or imprisonment is imposable in the discretion of the Court, or upon conviction or after condemnation (Scoty's Dept. Store vs. Micaller, 99 Phil. 762; Weigall vs. Shuster, supra). It is a civil or administrative penalty where no such qualification appears in the law or where the penalty is expressly denoted as such (CAB vs. PAL, supra).*

**OPINION NO. 31, s. 1994**

**Issue: Whether the compulsory retirement age for PNP personnel is applicable to the PNP Chief**

**Addressed to the Secretary of the Interior and Local Government**

This refers to your request for opinion on whether Section 39 of R.A. No. 6975 fixing the compulsory retirement age for personnel of the Philippine National Police (PNP) at 56 is applicable to the PNP Chief.

You state that the National Police Commission, pursuant to its Resolution No. 94-002, dated January 13, 1994, holds the view that the aforecited section of law does not apply to the PNP Chief since under Section 26, as reiterated in Section 31 (d) of R.A. No. 6975, he has been given a definite term of office of four (4) years. It thus contends that the PNP Chief should be deemed retired from the service only upon the completion of such 4-year term, or when sooner terminated or replaced by the appointing authority, regardless of age.

We concur with the abovestated view.

The pertinent provisions of R.A. No. 6975, otherwise known as "The

Department of the Interior and Local Government Act of 1990," read as follows:

> "*SEC. 26. Powers, Functions and Term of Office of the PNP Chief.* - x x x *Chief of the PNP shall be appointed by the President from among the senior officers down to the rank of chief superintendent, subject to confirmation by the Commission on Appointments:* Provided, That the Chief of the PNP shall serve a term of office, not to exceed four (4) years: Provided, further, *That in times of war or other national emergency declared by Congress, the President may extend such term of office" (Emphasis supplied).*
>
> *"SEC. 31. Appointments of PNP Officers and Members. - The appointment of the officers and members of the PNP shall be effected in the following manner:*
>
> xxx xxx xxx
>
> (d) *Director General - Appointed by the President from among the senior officers down to the rank of chief superintendent in the service, subject to confirmation by the Commission on Appointments:* Provided, That the Chief of the PNP shall serve a tour of duty not to exceed four (4) years: Provided, further, *That in times of war or other national emergency declared by Congress, the President may extend such tour of duty." (Emphasis supplied)*
>
> *"SEC. 39. Compulsory Retirement. - Compulsory retirement, for officer and non-officer, shall be upon the attainment of age fifty-six (56):* Provided, *That, in case of any officer with the rank of chief superintendent, director or deputy director general, the Commission may allow his retention in the service for an extendible period of one (1) year."*

Section 39 applies to all members of the PNP in general, whereas Sections 26 and 31 (d) apply solely to the PNP Director General. While the former section is worded broadly enough to include the PNP Chief, it should be deemed qualified by the latter sections whenever there would arise a conflict in their application. It is well settled in statutory construction that in case of conflict between a general provision of law and a special one, the latter should prevail as an exception to, or a qualification of the former (Lichauco vs. Apostol, 44 Phil. 138; Cassion vs. Banco Nacional Filipino, Phil. 560).

Moreover, it is noted that the PNP Chief is not among the higher





ranking officers mentioned in the proviso of Section 39 who are allowed to be retained in the service for one (1) more year after reaching the compulsory retirement age. The exclusion of the PNP head from that enumeration is an added indication that he is not subject to compulsory retirement upon reaching 56 years of age, if he has not yet completed his 4-year term. A contrary conclusion would be illogical. For, if the Congressional intent was to subject him to the mandatory retirement age of 56, he should have been included among those allowed a one-year extension since there is no justifiable reason why he should not have been granted this privilege, being the top man of the PNP.

**OPINION NO. 46, s. 1994**

**Issue: Mutual repatriation of prisoners between the Philippines and Thailand; pardon and service of sentence Addressed to the Secretary of Foreign Affairs**

This refers to the request of the Philippine Embassy in Bangkok for guidance relative to the suggestion of the Minister of Justice of Thailand to explore a mutual repatriation of prisoners between the Republic of the Philippines and Thailand.

It appears that Philippine Ambassador to Thailand Rosalinda V. Tirona, during a courtesy call on Thailand's Minister of Justice Sawsai Patano, reiterated a request for the grant of royal pardon or royal amnesty to convicted Filipino prisoners presently serving sentence in Thailand, and that the Justice Minister said that the King may grant such request unilaterally but suggested that a mutual repatriation of prisoners be explored. Hence, this query.

The presidential prerogative known as executive clemency is contained in the following provisions of the Constitution:

**ARTICLE VII**

**Executive Department**

xxx xxx xxx

*"Sec. 19. Except in cases of impeachment, or otherwise provided in this Constitution, the President may grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction by final judgment.*

*He shall also have the power to grant amnesty with the concurrence of a majority of all the Members of the Congress." (Emphasis supplied)*

The pardoning power of the President involves the exercise of discretion which may not be controlled by the legislature or reversed by the Courts, save only when it contravenes the limitations imposed by the Constitution. (*Ex parte* Garland, 4 Wall [US] 380). Being essentially a discretionary power, any agreement for mutual repatriation of prisoners would be constitutionally doubtful if it would call for the automatic grant of pardon to convicted foreigners in the Philippines, and reduce the President, even by his own will, to a mere rubber stamp which would mechanically authorize the release of alien-convicts from criminal responsibility.

In this connection, any such agreement for mutual repatriation of prisoners would also be legally infirm if it would involve a transfer of service of sentence of convicted Filipino prisoners abroad. We have stressed in several opinions previously rendered for that Department, that the proposal of foreign governments for an exchange of prisoners, which would entail service of prison terms by Filipinos in the Philippines for their convictions abroad, may run afoul of existing laws since it would require the Philippine Government, not only to recognize, but also to enforce in the Philippines a judgment of a foreign court in a Philippine court which is not authorized by Philippine law (see Op. Nos. 2 and 142, s. 1992; No. 118, s. 1987; No. 80, s. 1986).

With respect to an agreement which would call for the automatic grant of pardon to convicted foreigners by the President of the Philippines, such an agreement would be of doubtful constitutionality since it would remove the element of discretion which is inherent in the President's pardoning power.

**OPINION NO. 49, s. 1994**

**Issue: Whether a Memorandum of Understanding between the governments of the Philippines and Korea requires Senate concurrence**
**Addressed to the Acting Secretary of National Defense Rufo de Vera**

This has reference to your request for opinion on whether the proposed Memorandum of Understanding (MOU) on logistics and defense industry cooperation between the Philippine government and the Korean government can be considered an executive agreement and will not therefore require Senate concurrence.

It appears that the proposed MOU was entered into for the purpose of enhancing the existing friendly relations between the





Armed Forces of the Philippines and South Korea; and that both countries have agreed therein to strengthen the logistics support capabilities of their military forces by expanding and promoting cooperation in logistics as well as in defense industry areas.

Section 21, Article VII of the 1987 Philippine Constitution, insofar as pertinent, reads:

> *No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the members of the Senate.*

The phrase "international agreement" in the aforequoted constitutional provision has been interpreted by this Department, in previous opinions, as referring to agreements which are permanent in nature and does not include executive agreements (Secretary of Justice Opn. Nos. 70 and 71, s. 1987; and No. 84, s. 1990). The last-cited opinion quoted the distinction made by the Supreme Court between a treaty and an executive agreement, to wit:

> *International agreements involving political issues and changes of national policy and those involving international arrangements of a permanent character usually take the form of treaties. But international agreements embodying adjustments of detail carrying out well-established national policies and traditions and those involving arrangements of a more or less temporary nature usually take the form of executive agreements. (Commissioner of Customs vs. Eastern Sea Trading, 3 SCRA 356)*

An examination of its provisions convinces us that the proposed MOU constitutes an executive agreement. For one thing, the proposed document does not lay down new policy directions but merely implements the current government program of developing military cooperation with neighboring Asian countries to, among others, wean us from dependence upon US military assistance. Under Section 2, Article II of the Constitution, the government is mandated to adhere to a policy of cooperation and amity with all nations. For another, the joint efforts intended to be undertaken by the contracting governments under the draft MOU are limited to the fields of logistics and the defense industry and the duration of such undertaking is only for five (5) years, thus clearly showing its restricted and temporary character.

Accordingly, the proposed memorandum of understanding in issue would not require Senate concurrence.

**OPINION NO. 50, s. 1994**

**Issue: Scope of the powers of the Movie and Television Review and Classification Board (MTRCB) vis-a-vis fines and sub judice matters Addressed to the Chairman of the MTRCB**

This refers to your request for a "written legal opinion" concerning certain powers of the Movie and Television Review and Classification Board (the Board) under the following provisions of Presidential Decree No. 1986 (The Board's charter):

> *"SEC. 3. Powers and Functions - The Board shall have the following functions, powers and duties:*
>
> x x x x x x x x x
>
> c) *To approve or disapprove, delete objectionable portions from and/or prohibit the importation, exportation, production, copying, distribution, sale, lease, exhibition and/or television broadcast of the motion pictures, television programs and publicity materials subject of the preceding paragraph, which, in the judgment of the BOARD applying contemporary Filipino cultural values as standard, are objectionable for being immoral, indecent, contrary to law and/or good customs, injurious to the prestige of the Republic of the Philippines or its people, or with a dangerous tendency to encourage the commission of violence or of a wrong or crime, such as but not limited to:*
>
> x x x x x x x x x
>
> (vii) *Those which may constitute contempt of court or of any quasi-judicial tribunal, or pertain to matters which are sub judice in nature.*
>
> x x x x x x
>
> d) *To supervise, regulate and grant, deny or cancel, permit for the importation, exportation, production, copying, distribution, sale, lease, exhibition, and/or television broadcast of all motion pictures, television programs and publicity materials to the end that no such pictures, programs and materials as are determined by the Board to be objectionable in accordance with paragraph (c) thereof shall be imported, exported, produced, copied, reproduced, distributed, sold, leased, exhibited and/or broadcast by television:*
>
> x x x x x x
>
> f) *To close moviehouses and other similar establishments engaged in the public exhibition of motion pictures and television programs which violate the provisions of this Act and the rules and regulations promulgated by the Board pursuant hereto;* x x x." *(Emphasis supplied)*





Specifically, you pose the following queries:

1. "How does Section 3, paragraph (c), subparagraph (VII) affect the reviewing powers of the Board?" Should the Board "stop reviewing anything that is in court" or should it "go on and leave the question of *sub judice* to the courts?"

2. Can the Board exercise its powers under Section 3, paragraphs (d) and (f) without going to court, notwithstanding the opinion of this Department that the Board has no power to impose fines as penalty for violations of P.D. No. 1986 and its implementing rules and regulations?

With reference to your first query, we assume that you wish to ask whether the Board should outrightly not act on a motion picture, television program or publicity materials which may constitute contempt of court or pertain to a matter which is pending in court. We believe that this is not the intention of the law. The power of the Board under Section 3, paragraph (c) should be viewed in relation to its power under paragraph (b) of the same Section 3, because the two are corollary powers.

Paragraph (b) empowers the Board -

> *"To screen, review, and examine all motion pictures as herein defined, television programs, including publicity materials such as advertisements, trailers and stills, whether such motion pictures and publicity materials be for theatrical or non-theatrical distribution, for television broadcast or for general viewing, imported or produced in the Philippines, and in the latter case, whether they be for local viewing or for export." (Emphasis supplied)*

On the other hand, paragraph (c) authorizes the Board -

> *"To approve and disapprove, delete objectionable portions from and/or prohibit the importation, exportation, production, etc. of motion pictures, television programs and publicity materials subject to the preceding paragraph (referring to paragraph [b]), which in the judgment of the Board, applying contemporary Filipino cultural values as standard, are objectionable for being immoral, indecent, contrary to law, etc." (Emphasis supplied)*

Construing these two provisions together, what we can discern to be the intention of the law is that the Board is mandated under paragraph (b) to screen, review and examine all motion pictures, television programs and publicity materials and, under paragraph (c), to approve or disapprove, delete objectionable portions from and/or prohibit the importation, exhibition, etc. of the motion picture, television program and publicity material that it has screened, reviewed and examined pursuant to paragraph (b), applying the standards and criteria provided for in paragraph (c). This intention is quite evident from the language of paragraph (c) which employs the phrase "subject of the preceding paragraph" (referring to paragraph (b)), to denote what motion pictures, television programs and publicity materials shall be covered by the Board's actions (i.e., to approve/ disapprove/delete, etc.) under said paragraph (c).

There is no debate that the Board can only effectively act pursuant to paragraph (c) if it has previously screened, reviewed and examined a motion picture, television program or publicity material as provided for in paragraph (b). These two powers, we repeat, are corollary powers.

It bears stress that subparagraph VII of paragraph (c) which reads: "Those which may constitute contempt of court or of any quasi-judicial tribunal, or pertain to matters which are *sub judice* in nature" provides just one of the specific standards to be applied by the Board in determining whether to approve or disapprove, or delete portions from, and/or prohibit the importation, exportation, copying, production, distribution, exhibition, sale, lease and/or television broadcast of a motion picture, television program or publicity material. Said provision does not outrightly preclude the Board from screening, reviewing and examining a motion picture, television program or publicity material which is *sub judice* or may constitute contempt of court, as in fact, in many cases, these conditions may not even be apparent at all and may be known to the Board only after it shall have screened, reviewed and examined the material.

In regard to your second query as to whether the Board can exercise its power to cancel permits under Section 3(d) and to close moviehouses and similar establishments under Section (f) without going to court, our answer is in the affirmative.

In Opinion No. 165, series of 1991, we ruled that an administrative body has no inherent power to prescribe penalties for violation of its rules and regulations but that





such power must be expressly granted to it by law. The reason is that the authority to prescribe penalties is a legislative power, and in the absence of a clear grant of authority by the legislative body to an administrative body, the latter, in the exercise of rule-making, is bereft of authority to prescribe penalties for violation of the rules and regulations so promulgated.

We likewise ruled in said opinion that even if the administrative body is authorized by law to prescribe penalties for violation of its rules and regulations, the said administrative body cannot itself impose the penalty, if it is criminal in nature, but it must go to court for its enforcement. However, the administrative body can impose administrative or civil penalties without need of court action.

Pertinently, a penalty is criminal in nature whenever the law provides that the penalty involving a fine and/or imprisonment is imposable "in the discretion of the Court," or upon "conviction," or after "condemnation." (Scoty's Dept. Store vs. Micaller, 99 Phil. 762; Weigall vs. Shuster, 11 Phil. 340) It is a civil or administrative penalty where no such qualification appears in the law or where the penalty is expressly denoted as such (Civil Aeronautics Board vs. Philippine Air Lines, 63 SCRA 524). Examples of administrative or civil penalties are: cancellation of permit or closure of establishment, as in the case of the sanctions prescribed in Section 3(d) and (f) of the MTRCB charter; revocation of license; or administrative fines.

An examination of P.D. No. 1986 shows that it has a penalty clause which penalizes violations, not only of the provisions of said Decree, but also of the rules and regulations promulgated by the Board. It provides:

> *"SEC. 11.* Penalty. - *Any person who violates the provisions of this Decree and/or the implementing rules and regulations issued by the Board, shall, upon conviction be punished by a mandatory penalty of three (3) months and one day to one (1) year imprisonment plus a fine of not less than fifty thousand pesos but not more than one hundred thousand pesos. The penalty shall apply whether the person shall have committed the violation either as principal, accomplice or accessory. If the offender is an alien, he shall be deported immediately. The license to operate the moviehouse, theater, or television station shall also be revoked. Should the offense be committed by a juridical person,*

*the chairman, the president, secretary, treasurer, or the partner responsible therefor, shall be the persons penalized.* x x x." *(Emphasis supplied)*

The penalty under this provision, which consists of a prison term and fine, being imposable upon conviction, is a criminal penalty which can be imposed only by the proper court.

But this is not all that the law provides to enforce compliance with its provisions. P.D. No. 1986, in some other provisions, provides sanctions which are administrative or civil in nature, and therefore, imposable by the Board itself in the exercise of its regulatory powers. Among these sanctions are those provided for in paragraphs (d) and (f) of Section 3 abovementioned.

It should be stressed, however, that the imposition of these sanctions by the Board is subject to the observance of due process, that is, after notice and hearing.

✍

Exceptions to the prospective application of criminal laws.

*Whenever a new statue dealing with crime establishes conditions more lenient or favorable to the accused, it can be given a retroactive effect.*

*But this exception has no application:*

1. *Where the new law is expressly made inapplicable to pending actions or existing causes of action. (Tavera vs. Valdez, 1 Phil. 463, 470-471)*
2. *Where the offender is a habitual criminal under Rule 5, Article 62, Revised Penal Code. (Art. 22, RPC)*



# THE SUPREME COURT REPORT

*Daniel T. Martinez*

## SUMMARY OF SUPREME COURT RULINGS IN CRIMINAL LAW

A. GENERAL PRINCIPLES

1. Criminal Liability

a. *Malum Prohibitum and Malum in Se*

(1) Bouncing Checks Law

When a check is presented for payment, the drawee bank will generally accept the same regardless of whether it was issued in payment of an obligation or merely to guarantee the said obligation. What the law punishes is the issuance of a bouncing check not the purpose for which it was issued nor the term and conditions relating to its issuance. The mere act of issuing a worthless check is *malum prohibitum*. **Cruz v. Court of Appeals**, *G.R. 108738, 17 June 94, First Division, Kapunan, J.*

The mischief created by unfunded checks in circulation is injurious not only to the payee or holder, but to the public as well. This harmful practice can very well pollute the channels of trade and commerce, injure the banking system and eventually hurt the welfare of society and the public interest. **Cruz v. Court of Appeals**, *G.R. 108738, 17 June 94, First Division, Kapunan, J.*

(2) Illegal Recruitment

A person who violates any of the provisions under Article 13(b) and Article 34 of the Labor Code can be charged and convicted separately of illegal recruitment and estafa [Revised Penal Code, Article 315, 2(a)] because illegal recruitment is a *malum prohibitum* where the criminal intent of the accused is not necessary for a conviction while estafa is a *malum in se* where criminal intent of the accused is necessary for a conviction. **People v. Manungas, Jr. y Go @ "Percy,"** *G.R. No. 91552-55, 10 March 94, Second Division, Nocon, J.*

(3) Elements

(a) *Criminal Intent*

**FOR EXAMPLE**: Appellant contends that he is guilty only of serious physical injuries, not frustrated homicide as he had then no intent to kill the victim.

**HELD**: In applying Article 249 of the Revised Penal Code, the essential element of intent to kill the victim must be clearly established in order to convict one of the crime of homicide. There was intent to kill on the part of the appellant, considering "the number and location of the stab wounds inflicted upon the victim – two stab wounds on the lower right breast, and the weapon used by the accused which was a double-bladed dagger measuring about 13 inches including the handle." Hence, appellant is guilty of frustrated homicide. **People v. Cabalhin**, *G.R. 100204, 28 March 94, Second Division, Padilla, J.*

## B. PERSONS CRIMINALLY LIABLE

### 1. Principals

#### a. *By Direct Indispensable Cooperation*

To be a principal by indispensable cooperation, one must participate in the criminal resolution, a conspiracy or unity in criminal purpose and cooperation in the commission of the offense by performing another act without which it would not have been accomplished. **People v. Jorge**, *G.R. No. 99379, 22 April 94, First Division, Bellosillo, J.*

#### b. *Conspiracy*

##### (1) Proof of Conspiracy

**FOR EXAMPLE**: Celso and Gildo simultaneously assaulted the Oro brothers. While Celso lunged at Pacifico, Gildo aimed his slingshot at Danilo who was hit by its dart, and immediately attacked Pacifico with a knife.

**HELD**: Under the circumstances, Gildo and Celso acted in unison and cooperated with each other toward the accomplishment of a common felonious objective. There was conspiracy between the brothers Gildo and Celso, and it was not necessary to prove a previous agreement to commit the crime since from their overt acts, it was clear that they acted in concert in the pursuit of their unlawful design. **People v. Amaguin**, *G.R. 54344-45, 10 Jan. 94, Bellosillo, J.*

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The evidence shows that appellants, who were live-in partners, were moved by a common design to victimize the complainants. As a consequence, they are enmeshed in the same criminal liability for their conspiracy,





which makes the act of one the act of both. **People v. Taguba**, *et al., G.R. No. 95207-17, 10 Jan. 94, First Division, Cruz, J.*

Conspiracy, as with any other ingredient of the offense, must be proved as indubitably as the crime itself through clear and convincing evidence and not merely by conjecture. As such, proof beyond reasonable doubt is required. **People v. Lug-aw**, *et al., G.R. 85735, 18 Jan. 94, Third Division, Romero, J.*

Direct proof is not essential to prove conspiracy. It may be shown by acts or circumstances from which may be logically inferred the existence of a common design among the accused to commit the offense charged; it may likewise be deduced from the mode and manner in which the offense was perpetrated. To extricate himself from criminal liability, the conspirator must have performed an overt act to dissociate or detach himself from the unlawful plan to commit the felony. **People v. Lug-aw**, *et al., G.R. 85735, 18 Jan. 94, Third Division, Romero, J.*

While it was not shown that Pelones also stabbed Malto, Pelones is nonetheless liable therefor since conspiracy among the perpetrators was indubitable as may be gleaned from their concerted, harmonious and methodical movements without need of express instructions, thereby proving undeniably an agreement to commit the crimes he actually perpetuated. **People v. Pelones**, *G.R. Nos. 86159-60, 28 Feb. 94, First Division, Bellosillo, J.*

Pelones also finds improbable the absolute silence of the conspirators while committing the crime, asserting that since he allegedly had an ax to grind against Solina, he could have at least confronted the latter by asking, "*Bakit mo ako isinumbong*?"

**HELD**: The alleged silence is a strong indication of a well-planned crime, with each of the perpetrators knowing beforehand what he was to do, without need of conversations or instructions to accomplish the plánned deed. **People v. Pelones**, *G.R. Nos. 86159-60, 28 Feb. 94, First Division, Bellosillo, J.*

The manner by which the killing of Josefino was carried out persuasively demonstrates that the assailants were all moved by one common purpose; if not precisely to slay Josefino, certainly to inflict serious injuries on him with the weapons they each had in hand. They came at Josefino together, each with a weapon; they encircled their victim and they all stabbed him, or hit him with cane cutters; they did not cease until Josefino had been stabbed and cut, and lay prostrate, his blood spilling to the ground from several wounds, some fatal, others

superficial. They acted in conspiracy, each performing specific acts in the killing of Josefino with such closeness and coordination as unmistakably to indicate a common purpose or design. **People v. Campa**, *et al., G.R. No. 105391, 28 Feb. 94, Second Division, Narvasa, C.J.*

A conspiracy need not be proven by direct evidence. Proof of previous agreement to commit a crime is not essential to establish conspiracy. It may be inferred from the acts of the accused. The conduct of the accused-appellant before, during and after the commission of the crime may be considered to show the existence of conspiracy. It is sufficient that the accused be shown to have acted in concert pursuant to the same objectives. Whether a conspirator inflected the fatal wound itself — this is not required to sustain a conviction. **People v. Lucindo**, *et al., G.R. 97432, 1 March 94, Third Division, Bidin, J.*

The acts of the accused clearly established conspiracy among them. Thus, they were together in going to the store of the victim that evening. Intoy Lucindo and Ricky Galit entered the store, while Marlon Galit and Raquel Tagalog acted as lookouts (by posting themselves at the entrance). Inside the store, Ricky Galit boxed salesgirl Lucena, to prevent her from giving aid to Matulac, who was then being subdued by Lucindo. As Lucena ran to the beauty parlor nearby, Tagalog chased her. Lucindo had stabbed the victim, while Ricky Galit had scooped the money from the cash box. Both ran out to the street and shouted at Marlon Galit and Tagalog to run away. All four of them ran in different directions. The fact that accused Ricky Galit, Marlon Galit and Raquel Tagalog ran away from the scene of the crime together with Into Lucindo, the assailant, even though they did not stab the victim, is indicative of their conspiracy and guilt. Flight is indicative of guilt. Such behavior cannot be anything but positive and convincing evidence of their consciousness of guilt. Upon apprehension of Lucindo and the Galit brothers at the residence of Reynaldo Villanueva, nine hundred pesos (₱900.00), part of the loot, and three (3) kitchen knives, were recovered from them. **People v. Lucindo**, *et al., G.R. 97432, 1 March 94, Third Division, Bidin, J.*

(See also **People v. Orehuela**, G.R. Nos. 108780-81, 29 April 94, Third Division, Feliciano, J.; **People v. Vivas**, G.R. 100914, 6 May 94, Cruz, J.; **People v. Silong**, et al., G.R. 110830, 23 May 94, Third Division, Melo, J.; **People v. Calegan**, G.R. 93846, 30 June 94, First Division, Bellosillo, J.)





**FOR EXAMPLE**: Romero was the caretaker of the house of Brown in Cainta, Rizal, while Pacheco is the husband of a niece of Brown. The two were brought to Palawan just three days before the incident in question. Romero claimed that Nenita was the first to hack Brown at the back. Both Romero and Pacheco also testified that Ricky speared Brown at the back. The autopsy report of Dr. Narciso Leoncio did not show any serious wounds, much less any stab or hack wounds at the back of Brown.

**HELD**: We cannot rely on the testimonies of the prosecution witnesses. In evaluating the evidence on the claim of the prosecution that appellants simultaneously attacked Brown from all sides, we should not discount the fact that Brown had two companions, who served as his bodyguards, and the three were armed with a "*piko*," a shovel and a grass cutter. Romero, on cross-examination, admitted that he did not see the children of Inocentes when the latter and his wife confronted Brown.

The nature of the wounds sustained by Edgar lends credence to his version that he was not able to get near Brown because he was intercepted by Romero and Pacheco, who delivered hacking blows on him. According to Dr. Nieto H. Gepigon, Edgar suffered the following injuries: "(1) incised wound about one inch long; non-penetrating, involves superficial muscle on (R) anterior axilla; (2) incised wound about two inches traversely on scapular region; (3) incised wound (R) upper mid-back involving muscles, non-penetrating traversely about three-and-a-half inches long; and (4) lineal abrasion longitudinally back, spinal region."

It is hard to believe the claim of Brown's two companions, Romero and Pacheco, that they simply watched appellants attack Brown, without coming to his aid.

Hence, conspiracy was not established and that the guilt of Nenita and her four children was not proven beyond reasonable doubt. **People v. Daguinito**, *et al., G.R. No. 93807, First Division, 27 June 94, First Division, Quiason, J.*

(a) *Proof Beyond Reasonable Doubt*

In order to convict appellant as a principal by direct participation, it is necessary that conspiracy among him and his co-accused be proved. No conspiracy here was established. Conspiracy, like any other ingredient of the offense, must be proved as sufficient as the crime itself through clear and convincing evidence, not only by mere conjectures. Proof

beyond reasonable doubt is required to establish the presence of criminal conspiracy. **People v. Jorge**, *G.R. No. 99379, 22 April 94, First Division, Bellosillo, J.*

There was no conspiracy likewise in the killing of Alfaro. Settled is the rule that neither joint nor simultaneous action per se is a sufficient indicium of conspiracy. The evidence shows that it was the victim who chanced upon Manlapaz and the two accused drinking, and decided to join them. Accused Manlulu was not even armed when he went to the drinking spree. Conspiracy must be established beyond reasonable doubt. Here, the prosecution failed to show that Manlulu and Samson conspired to kill Alfaro. There being no conspiracy, each is liable for his own acts. **People v. Manlulu**, *G.R. 102140, 22 April 94, First Division, Bellosillo, J.*

Conspiracy, as with any other ingredient of an offense, must be established not by mere conjecture but by evidence which satisfies the requirement of proof beyond reasonable doubt. **People v. Orehuela**, *G.R. Nos. 108780-81, 29 April 94, Third Division, Feliciano, J.*

**FOR EXAMPLE**: With respect to appellant Arturo Pandiano, the defense contends that the fact that all three eyewitnesses were each silent as to his specific individual participation, other than saying that "he was among the group who participated in the incident," should be counted in Pandiano's favor and work towards his acquittal.

**HELD**: We agree. Although we affirm the trial court's finding of conspiracy among the accused, we hold that the records justify the exclusion of Arturo Pandiano therefrom. It must be remembered that conspiracy here was not directly established, that is, no direct evidence of an actual agreement between the six accused to commit the crime exists. Conspiracy was inferred merely from their coordinated acts which were specifically pointed out and testified to by the three eyewitnesses. Thus, according to the latter's combined testimony, Fernando Ergo boxed the deceased while Jovencio Nuguit held the latter back, that Felipe Ergo pulled out a double-bladed eight-inch knife which he used in stabbing the deceased, and that Reynaldo Borac threw an adobe stone at Janson's face when the latter was already down. However, with respect to Arturo Pandiano's individual participation, witness Labor could only say that he was "among Felipe Ergo's companions who boxed Manny Janson" while Roberto Samonte recounted that Pandiano "helped" in the assault, and witness Edwin Yorac even admitted that he "did not see what he (Pandiano) did, but he was among





the group who participated in the incident."

To our mind, such general testimony passing off as evidence for conviction is grossly insufficient to hold Arturo Pandiano liable for murder. To justify such conviction, there must be stronger evidence other than that on hand tending to establish that Arturo Pandiano was there to accomplish the evil design of killing Janson or at least help his companions in doing so. That there was a marked absence of testimony identifying his specific individual participation while the eyewitnesses apparently had no trouble in pinpointing that of the other accused, engenders in our mind a reasonable doubt as to Pandiano's criminal liability. The possibility cannot be discounted that Arturo Pandiano arrived at the scene of the crime totally ignorant of what his other companions intended to do but was merely rooted to the spot and unable to shake off his shock at what was being perpetrated before his eyes. More, it may even be that he intended to stop his companions and help Janson, as witness Yorac intended to do, but was simply overcome by fear. Hence, we consider his mere presence alone as inadequate evidence for his conviction. However, we are not in any way proclaiming his innocence. We are only saying that a doubt has been created in our mind serious enough to bar a conviction. This Court is constrained by the fundamental and most basic precept in the administration of justice that to justify a conviction, a man's guilt must be established to a moral certainty, that is, precluding all reasonable doubt as to his guilt. **People v. Pandiano**, *et al., G.R. 90893, 30 May 94, first Division, Bellosillo, J.*

**FOR EXAMPLE**: The testimony of prosecution witness, Rudito Basilan, supports appellant's protestation of innocence. According to him, he was also forced to go to Barangay Bulo-an by Bulan to gather bamboo.

If appellant's culpability was based on the sole fact that he was seen near the house of Gerona when the latter was kidnapped, then Basilan should likewise have been indicted because he was also in the crime scene.

**HELD**: A careful perusal of the testimonies of the prosecution witnesses against appellant casts doubt as to whether he was really an active participant in the criminal enterprise. *1987 Summary (July to December).*

Time and again, the Court has held that conspiracy must be proven beyond reasonable doubt. The reason is obvious. Under the law, a conspirator, even though how

minimal his participation in the crime, is as guilty as the principal perpetrator of the crime. We do not find, however, that appellant is a conspirator. His was a passive presence in the scene of the crime. Mere presence of the accused at the scene of the crime does not imply conspiracy. (**People v. Campos**, *202 SCRA 387 (1991)*)

Moreover, the prosecution has failed to prove any overt act on the part of appellant, showing that he joined Bulan's gang to perpetrate the criminal act. Mere knowledge, acquiescence to or agreement to cooperate is not enough to constitute one as a party to a conspiracy, absent an active participation in the commission of the crime, with a view to the furtherance of the common design and purpose. (**People v. Bragaes**, *203 SCRA 555 (1991)*; **Taer v. Court of Appeals**, *186 SCRA 598 (1990)*; **Orodio v. Court of Appeals**, *165 SCRA 316 (1988)*). **People v. Cedon**, *G.R. No. 101117, 15 June 94, First Division, Quiason, J.*

(b) *Accused's Passive Presence Not Proof of Conspiracy*

There is no evidence that Bannay shared Lug-aw's criminal intent. Thus, although he did not do anything in contravention of the supposed conspiracy, his mere passive presence at the scene of the crime did not make him liable therefor. We should take into account the doctrine that, in case of doubt as to the culpability of an accused, it should be resolved in accordance with the presumption of innocence. **People v. Lug-aw**, *et al., G.R. 85735, 18 Jan. 94, Third Division, Romero, J.*

(c) *Unity of Purpose and Unity in Execution*

Unity of purpose and unity in the execution of the unlawful objective are essential to establish the existence of conspiracy. In this case, no unity of purpose was shown. The only involvement of appellant was his holding of the hand of Palma when he was stabbed by Bernales on the left chest. There was no other evidence to show unity of design. The simultaneousness of the act of stabbing the victim by Bernales with the holding of the hand of the same victim by appellant does not of itself demonstrate concurrence of wills or unity of purpose and action. For it is possible that the appellant had no knowledge of the common design, if there was any, nor of the intended assault until the victim was actually stabbed. The thrust could have been made at the spur of the moment, totally unexpected by appellant. The mere holding of the victim's hand does not necessarily prove intention to kill. If the tragedy was a chance





stabbing, there can be no conspiracy to speak of. **People v. Jorge**, *G.R. No. 99379, 22 April 94, First Division, Bellosillo, J.*

(2) Act of one, Act of all

Under the facts of the case and with accused-appellants having acted in conspiracy and with treachery and the victims having been killed not by one shot but by a volley of shots, each accused-appellant is guilty of as many separate crimes of murder as there are victims killed. **People v. Silong**, *et al., G.R. 110830, 23 May 94, Third Division, Melo, J.*

Where conspiracy is shown to exist, the act of one is the act of all. While it has not been established that it was accused-appellant who actually shot the victim, conspiracy having been found to exist, he is equally guilty of the special complex crime of robbery with homicide. Stated differently, whenever homicide has been committed as a consequence or on the occasion of robbery, all those who took part as principals in the robbery will also be held guilty as principals of the special complex crime of robbery with homicide although they did not actually take part in the homicide. **People v. Calegan**, *G.R. 93846, 30 June 94, First Division, Bellosillo, J.*

(3) Effect of Absence of Conspiracy

(a) *Each Accused Responsible for the Consequences of His Own Acts*

It was error to rule that accused Willie was an accomplice of his brothers. There being no sufficient evidence to link him to the conspiracy, he should be liable for the natural and logical consequence of his own felonious acts. **People v. Amaguin**, *G.R. 54344-45, 10 Jan. 94, Bellosillo, J.*

In the absence of conspiracy, each of the accused is responsible only for the consequences of his own acts. All that appellant did was to hold the hand of Palma, which is not a crime. **People v. Jorge**, *G.R. No. 99379, 22 April 94, First Division, Bellosillo, J.*

(b) *Accomplices*

i) Requisites

In order that a person may be considered an accomplice, the following requisites must concur: (a) community of design, i.e., knowing the criminal design of the principal by direct participation, he

concurs with the latter in his purpose; (b) he cooperates in the execution of the offense by previous or simultaneous acts; and, (c) there must be a relation between the acts done by the principal and those attributed to the person charged as accomplice. **People v. Jorge**, *G.R. No. 99379, 22 April 94, First Division, Bellosillo, J.*

(c) *Knowledge of Criminal Intent of Principal*

The cooperation that the law punishes is the assistance knowingly or intentionally rendered, which cannot exist without previous cognizance of the criminal act intended to be executed. It is therefore required in order to be liable either as a principal by indispensable cooperation, or as an accomplice, that the accused must unite with the criminal design of the principal by direct participation. **People v. Jorge**, *G:R. No. 99379, 22 April 94, First Division, Bellosillo, J.*

C. CIRCUMSTANCES MODIFYING CRIMINAL LIABILITY

1. Justifying Circumstances

a. *Self-Defense*

(1) Burden of Proof

Having pleaded self-defense, the accused necessarily admitted having shot and killed the victim with an unlicensed firearm. It was then incumbent upon him, to avoid criminal liability, to prove that justifying circumstance to the satisfaction of the court. To do so, he must rely on the strength of his evidence and not on the weakness of that of the prosecution, for even if that were weak it could not be disbelieved after he had admitted the killing. Being an affirmative allegation, its elements, namely, (a) unlawful aggression on the part of the victim, (b) reasonable necessity of the means employed to repel the aggression, and (c) lack of sufficient provocation on the part of the accused, must be proved with certainty by sufficient and convincing evidence which excludes any vestige of criminal aggression on the part of the person invoking it. **People v. Deunida**, *G.R. 105199-200, 28 March 94, First Division, Davide, Jr., J.*

**FOR EXAMPLE**: Inocentes admitted that he was the one who killed Brown but claims that he did so in self-defense.

**HELD**: With this admission, the burden of proving self-defense shifts to him. In doing so, he must rely on the strength of his own evidence and on the weakness of the evidence of the prosecution. He must establish his claim by clear and convincing evidence.





For self-defense to exist, three requisites must be complied with, to wit: (1) unlawful aggression; (2) reasonable necessity of the means employed to repel it; and (3) lack of sufficient provocation on the part of the person defending himself.

With respect to the unlawful aggression, Inocentes testified: (1) that when he saw his wife being chased by Brown, he rushed to her aid; (2) that Brown shifted his attention to him; that when he saw Brown armed with a small *kris*, he fled; and (3) that Brown chased him and hacked him at the back.

The medical findings belie the claim of Inocentes that he was the victim of an unlawful aggression by Brown. According to the Medical Legal Slip, Inocentes suffered the following injuries: "(1) Incised wound (R) eyebrow superficial transversely about 2 cm.; (2) small lacerated wound - 1 cm. at lateral portion canthus (R) eye; and (3) contusion hematoma (R) eye, including conjuctial - with a duration of ten (10) days."

The medical report of the examination conducted by Dr. Gepigon did not mention any wound on the back of Inocentes, much less a wound caused by a *kris*.

As to the necessity of the means employed to repel the unlawful aggression, Inocentes testified that after he was hit on the back by the *kris* of Brown, he hit Brown with his air gun. Inasmuch as Brown continued to advance, Inocentes fired two more shots from the air gun. As testified to by Dr. Leoncio, who conducted the autopsy on the body of Brown, the gunshot wounds on the infra-orbital area were fatal.

Such gunshot wounds could have been enough to disable Brown. Dr. Leoncio testified that the gunshot wounds caused the collapse of the lungs and sudden death of Brown five minutes later. There was no need therefore for Inocentes to hack Brown with a bolo after his air gun ran out of pellets.

As to the third element of self-defense, there was no sufficient provocation by the person defending himself. In the natural order of things, the one who was deeply offended by the acts of his adversary is deemed to be the one who struck the first blow. Inocentes was the one grievously offended by the entry of Brown into the disputed land without asking permission from Inocentes, who still claimed the right of possession of the land. **People v. Daguinito**, *et al., G.R. No. 93807, First Division, 27 June 94, First Division, Quiason, J.*

See also **People v. Ocana**, *G.R. 63009, 19 Jan. 94, Third Division, Romero, J.*; **People v. Deunida**, *G.R. 105199-200, 28 March 94, First*

*Division, Davide, Jr., J.;* **People v. Manlulu**, *G.R. 102140, 22 April 94, First Division, Bellosillo, J.;* **People v. Manlulu**, *G.R. 102140, 22 April 94, First Division, Bellosillo, J.;* **People v. Gapasin**, *G.R. No. 73489, 25 April 94, First Division, Quiason, J.;* **People v. Quino**, *G.R. 105580, 17 May 94, Third Division, Romero, J.*

(2) Elements

The essential elements of self-defense are: (a) unlawful aggression; (b) reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the person defending himself. **People v. Quino**, *G.R. 105580, 17 May 94, Third Division, Romero, J.*

(a) *Unlawful Aggression*

Danilo did not act in self-defense when he stabbed the victim. Rosana testified that Pat. Arguelles, who rushed to the scene because the accused were being unruly, fired a warning shot. There was no evidence that said victim aimed the gun at Danilo other than the self-serving testimony of said accused and that of his co-accused. The lower court found this allegation of the accused-appellant incredible. **People v. Manalo**, *et al., G.R. 107329, 24 Jan. 94, Second Division, Puno, J.*

**FOR EXAMPLE**: Hilario Gementiza was charged with murder for repeatedly stabbing his brother Leon to death with a bolo. He declared that he killed his brother in self-defense and testified that in the afternoon of January 5, 1991, he and his brother, Leon Gementiza, were attending a meeting when the latter, who was drunk and had a bolo tucked on his waist, took his (Leon's) son from accused-appellant's lap and told him: "Do not get near him because I will kill him." Thereafter, Leon Gementiza went to the kitchen and came back with a jar which he dropped in front of accused-appellant and said: "Who desires to fight and be killed?" Before Leon Gementiza could pull out his bolo, accused-appellant suddenly stood up and stabbed his brother. Accused-appellant further testified that he and his brother were not in good terms since 1969. In fact, his brother was convicted for stabbing his right hand sometime in 1989.

On September 12, 1991, the RTC of Tagbilaran City, Br. I, found him guilty and sentenced him accordingly. Hence, this appeal.

The Supreme Court affirmed the judgment of the trial court. It found that there is no compelling reason to disturb the trial court's findings





that accused-appellant did not act in self-defense as he failed to prove unlawful aggression which would have justified the killing.

**HELD**: 1. When an accused admits having killed his victim, but invokes self-defense, the burden of proving the elements of that defense by clear and convincing evidence lies with the accused. Inasmuch as the unrebutted testimonies of the prosecution witnesses indicate that there was no unlawful aggression on the part of victim, accused-appellant's plea of self-defense must necessarily fail. For self-defense to prosper, it must be positively shown that there was a previous unlawful and unprovoked attack on the person of the defendant that placed him in danger, thereby forcing him to repel the attack and to inflict more or less severe wounds upon his assailant employing reasonable means therefor to resist the same.

2. The evidence on record does not show any unlawful aggression on the part of the victim. Therefore, accused-appellant has nothing to prevent or repel. Not only was there an absence of unlawful aggression in the case at bar, but the claim of self-defense is likewise negated by the physical evidence. Accused-appellant suffered no harm or injury physically. The number and nature of the wounds inflicted on the victim proved that if at all the attack came from the accused-appellant. The victim had no chance to defend himself even if armed. **People v. Gementiza**, *G.R. 106635, 18 Feb. 94, Second Division, Nocon, J.*

There was no unlawful aggression on account of the fact that appellant did not sustain a single minor injury despite the alleged "repeated blows" with a piece of wood by the victim. He was not even bruised or dazed despite alleged hard blows on his neck and shoulder. Furthermore, it would have been the accused, and not the victim, who would be irked or angered by the father's refusal to lend the carabao. Even then, if it were also true that the accused was simply brandishing his hunting knife by swinging it from side to side, the knife would not have caused a deep and penetrating wound which had to be drawn out from his father's chest. **People v. Quino**, *G.R. 105580, 17 May 94, Third Division, Romero, J.*

The Court no longer discussed the other elements of self-defense, it having been convincingly established that there was lack of unlawful aggression and, therefore, there cannot be any self-defense, complete or incomplete. **People v. Quino**, *G.R. 105580, 17 May 94, Third Division, Romero, J.*

The number of wounds, the point of entry of the second wound, the

position of the victim in relation to the assailant when the second wound was inflicted, as well as the fact that appellant did not sustain any injury, conjointly belie any pretension of self-defense. The nature and the number of wounds inflicted by an assailant are constantly and unremittingly considered important incidents which disprove a plea of self-defense. **People v. Quino**, *G.R. 105580, 17 May 94, Third Division, Romero, J.*

i) Definition of Real Actual Danger

The two accused failed to show that there was unlawful aggression on the part of Alfaro. A gun aimed at the accused, without more circumstances, is insufficient to prove unlawful aggression. For unlawful aggression to be appreciated in self-defense, there must be an actual, sudden and unexpected attack or imminent danger thereof, and not merely a threatening or intimidating attitude. **People v. Manlulu**, *G.R. 102140, 22 April 94, First Division, Bellosillo, J.*

ii) Mere Shouting Does Not Constitute Unlawful Aggression

The foremost requirement of self-defense in order to be appreciated is unlawful aggression which is a sudden, unprovoked attack against the person defending himself. The person attacked must face a real threat to his life, safety or rights and the peril must be imminent or actual. If no unlawful aggression attributable to the victim is established, there can be no self-defense, either complete or incomplete (**People vs. Ganut**, *118 SCRA 35 (1982)*).

In the case at bar, there was no actual or imminent assault on appellant Lucindo by the victim. The victim was not even armed. All that the victim did was to raise his voice during the altercation with appellant Lucindo which, according to the said appellant, put him to shame. There was no unlawful aggression whatsoever on the part of the victim. Unlawful aggression presupposes an actual, sudden and unexpected attack or imminent danger thereof and not merely a threatening or intimidating attitude (**People vs. Rey**, *172 SCRA 149 (1989)*). *People v. Lucindo, et al., G.R. 97432, 1 March 94, Third Division, Bidin, J.*

(b) *Reasonable Necessity of Means Employed*

The means employed to repel or prevent the supposed attack was not reasonable. For, even if we disregard the gunshot wound which Samson claims to have resulted from an accidental firing, the victim also





suffered seven other stab wounds, three of which were fatal, one of which was admittedly inflicted by Samson, while the other two, by accused Manlulu. Definitely, it was not necessary to stab, more so repeatedly, the victim. Considering their relative positions as they drank — each within the other's reach — all that was necessary was for the two accused to band together and overpower the lone victim with their bare hands, assuming the deceased was indeed pointing his gun at one of them. A stab wound may not necessarily be fatal and thus enable the victim to fire his gun. But a firm grasp by the two accused of the victim's arm holding the gun, or of the gun itself, could prevent the victim from shooting them. At any rate, the number of wounds suffered by Alfaro indicates a determined effort of both accused to kill the victim, which negates self-defense. **People v. Manlulu**, *G.R. 102140, 22 April 94, First Division, Bellosillo, J.*

(c) *Lack of Sufficient Provocation*

The accused further failed to prove the third requisite of self-defense. On the contrary, his own evidence discloses that minutes before the shooting incident the accused's daughter reminded the victim of the two empty beer bottles which he had borrowed from the accused's store. The victim, who appeared drunk as shown by his bloodshot eyes and "broken voice," arrogantly told her that no one had yet shouted at him. Because of the victim's attitude, the accused told him to return the empty bottles. The victim came back with the bottles which he dropped on top of the table in the store shouting at the same time, "*Eto na ang bote. Wala na akong utang sa inyo na bote*," which "irritated" the accused. When the victim left, the accused even remarked, "*Pag hindi mo hahabaan ang pasensiya mo dito kay Ato, mababaril mo.*"

Finally, his own version of how the shooting took place further befuddled his belated claim that the victim himself pressed the trigger of the gun, thereby suggesting that the latter accidentally fired the gun and killed himself. This is belied by the physical evidence showing that the victim was shot from behind at a distance since there were no contusions or gunpowder burns on the skin at the point of entry of the bullet. The demonstration made by the accused in court further showed that it was physically impossible for the victim to have shot himself, if indeed he was positioned in the manner demonstrated. The following findings and observations of the trial court are well taken:

The vacillating and chameleonic stance of the Accused bespoke of the unreliability of his testimony. It must be borne in mind that when he testified before the Court, and as borne by his Necropsy Report, *Exhibit B,* Dr. Marcial Cenido averred that the trajectory of the bullet which hit the back of the deceased was obliquely forward, slightly downward and very slightly towards the lateral, grazing the left lateral side of the 8th thoracic vertebra of the deceased. If the muzzle of the gun was directed to the left side of the body of the deceased when it fired, the deceased could not have been hit or that if he was hit by the bullet from the gun, the trajectory should have been directed well towards the left side of the body of the deceased, and not obliquely forward, slightly down-ward only and very slightly towards the lateral side.

On the other hand, if, as claimed by the Accused, his left palm held the right palm of the deceased and pressed it against the back of the deceased, the muzzle of the gun could not have been directed toward the back of the deceased, but towards the left side of the deceased. More, the deceased would have to move his right hand outward from his back and from the waist and bended his hand from his wrist towards his back which would have been extremely difficult, if not impossible, for the deceased to do considering that the right arm of the Accused was holding the right arm of the deceased between the elbow and the wrist.

The scenario evolved by the Accused could not have happened for another reason. According to Marcial Cenido, *infra,* he found no contusion collar or gunpowder burns on the skin of the point of entry of the bullet on the body of the deceased which meant that the deceased must have been twenty-four (24) inches away from the muzzle of the gun, thus, belying the claim of the Accused that the gun was pressed against the back of the deceased when the latter was shot. The medical report corroborated the testimony of Belen Fortes that the Accused shot the deceased at a distance of about two (2) feet from the store." **People v. Deunida**, *G.R. 105199-200, 28 March 94, First Division, Davide, Jr., J.*





b. *Defense of Stranger or Relative*

(1) Elements
(2) Unlawful Aggression

**FOR EXAMPLE**: The defense would want us to believe that the deceased, Antonio, would suddenly attempt to rape Igleceria Eustaquio; and then follow through on his threat, not by making lascivious acts towards her, but by grabbing the collar and side of her dress. As if these were not enough, the defense peddled the downright incredible reaction of accused-appellant Domingo to the alleged attack by the deceased Antonio on Igleceria. The defense claimed that he went "casually" to the kitchen without arming himself in any way, even though he knew that Antonio was bigger than him. Then, according to the testimony of Jeanita, Domingo, "in a low and soft voice," asked Antonio what he was doing to Igleceria.

To top it all, Eustaquio claimed that Domingo single-handedly inflicted the numerous injuries sustained by the deceased Antonio by first stabbing him, and then finishing him of with a piece of bamboo.

**HELD**: We have no reason to disturb the trial court's ruling that the defense version of the killing of the victim is incredible. The version is incongruous with reality.

It offends common sense why a man, who is defending the honor of his wife, would discard the bladed weapon he had used to stab his bigger and sturdier opponent, and pick up a mere piece of bamboo to finish off his opponent.

The defense's story was an obvious fabrication. It was intended to shield the other members of the Eustaquio family from prosecution by showing that accused-appellant Domingo alone killed the deceased. It was also designed to provide Domingo with a justifying circumstance for such killing, the alleged attack on the honor of his wife, Igleceria. **People v. Eustaquio**, *et al., G.R. 104398, 1 March 94, Second Division, Puno, J.*

2. Exempting Circumstance

a. *Generally*

**See 1990B:1076**

b. *Entrapment*

(1) Distinguished from Inducement or Instigation

In entrapment, the idea of committing the crime originates from the accused. Nobody induces or prods him into committing the

offense. This act is distinguished from *inducement or instigation* wherein the criminal intent originates in the mind of the instigator and the accused is lured into the commission of the offense charged in order to prosecute him. The instigator practically induces the would-be accused into the commission of the offense and himself becomes a co-principal. **People v. Manalo**, *G.R. 107623, 23 Feb. 94, Second Division, Puno, J.*

(a) *Buy-Bust Operation*

**FOR EXAMPLE**: Appellant claims that it was impossible for the prosecution eyewitnesses to see the teabag at a distance of 15 to 20 meters away since he could not see them at such a distance.

**HELD**: To satisfy the principles of due process as the liberty of the appellant is at stake, the claim of appellant can be easily explained by the fact that in a buy-bust operation, the suspected drug pusher does not — at the moment of entrapment — even suspect that he is being watched. The entrapping agents watch his every move like the receipt of the marked money and the delivery of the teabags while the unwary suspected drug pusher cannot do likewise, i.e., watch the NARCOM officers observing him, otherwise buy-bust operations will not have a raison d'etre. **People v. Lucero**, *G.R. 84656, 4 Jan. 94, Second Division, Nocon, J.*

**FOR EXAMPLE**: Accused-appellant claims that he was merely instigated to commit the offense.

**HELD**: Such ploy must be brushed aside, a belated and contradictory defense as it is. At any rate, accused-appellant was not really induced to breach the law, for independently of such imaginary temptation, the police officers merely confirmed his illegal activity via the process of entrapment which spawned the arrest *in flagrante delicto*. The Court once again characterized a buy-bust operation as a form of entrapment. **People v. Macasa**, *G.R. 105203, 21 Jan. 94, Third Division, Melo, J.*

Accused-appellant's defense that there was inducement and not entrapment runs counter to the evidence. The facts of the case show legitimate entrapment. A buy-bust operation is a form of entrapment resorted to by peace officers to trap and catch a malefactor *in flagrante delicto* and entrapment is no bar to prosecution and conviction, not being prohibited by law. **People v. de los Reyes**, *G.R. 106874, 21 Jan. 94, Third Division, Melo, J.*

Contrary to all the accused's protestations, in the following case, there was an actual buy-bust





operation that was conducted in order to trap or capture a law-breaker. A buy-bust operation or entrapment in a drug case is allowed by law and has long been recognized as an effective means of apprehending drug peddlers. The police officers involved therein were thus acting pursuant to their official duty. The regularity in the performance thereof is presumed and has not been rebutted by the accused. **People v. Sibug**, *G.R. 108520, 24 Jan. 94, First Division, Davide, Jr., J.*

**FOR EXAMPLE**: Appellants asserted that the team of Sgt. Mugot was not provided with a warrant of arrest when appellants were apprehended.

**HELD**: This specious argument is readily disposed of by Section 5(c) of Rule 113 which provides that a peace officer or a private person may effect an arrest without a warrant when an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it. Sgt. Mugot had personal knowledge of the commission of the crime, having been present in the *locus criminis* and having actually witnessed the unlawful transaction. The interval between the commission of the crime and the time of the arrest was only four to five minutes.

A buy-bust operation is a form of entrapment employed by peace officers to apprehend a malefactor *in flagrante delicto*, that is, to catch him red-handed while selling marijuana to a person acting as a poseur-buyer. Consequently, and contrary to the claim of the defense, appellants were positively identified by the poseur-buyer, Raterta, and Sgt. Mugot, who were undeniably eyewitnesses to the crime. **People v. Yap**, *et al., G.R. 103517, 9 Feb. 94, Second Division, Regalado, J.*

Ponsica has failed to show that the Narcom agents, in testifying against him, were motivated by reasons other than their duty to curb drug abuse. Appellant himself admitted before the trial court that he had no misunderstanding or trouble of any kind with SPO2 Recla or SPO1 Sultan at any time prior to his arrest. In the absence of proof of any intent on the part of the police authorities falsely to impute such a serious crime against appellant, the presumption of regularity in the performance of official duty as well as the principle that findings of the trial court on the credibility of witnesses are entitled to great respect, must prevail over the self-serving and uncorroborated claim of appellant that he had been "framed." **People v. Ponsica**, *G.R. No. 108176, 14 Feb. 94, Third Division, Feliciano, J.*

The Supreme Court recognizes the conduct of buy-bust operations as an established means of entrapment for the apprehension *in flagrante delicto* of persons engaged in illegal drug trades. Hence, the argument of the accused-appellant that she was merely instigated to sell "shabu" does not hold water. Moreover, the circumstances attending her arrest clearly proved her intent to sell "shabu." For one, at the time of her arrest, she was carrying a ready supply of the regulated drug. Moreover, she immediately made a sale when propositioned by PO2 Corpuz. **People v. Manalo**, *G.R. 107623, 23 Feb. 94, Second Division, Puno, J.*

Entrapment is an effective method of apprehending drug peddlers. The positive testimonies of the NARCOM agents in this case, against whom no improper or ulterior motive was established, deserve full faith and credit. No proof to the contrary having been made, they are presumed to have regularly performed their duties. The sweeping accusation made by the counsel for the accused against the law enforcers is unfounded, if not irresponsible, since he offered no proof whatsoever in support of his allegations. **People v. David @ Butch**, *G.R. 105667, 1 March 94, First Division, Davide, Jr., J.*

c. *Frame-up*

The Supreme Court is cognizant of the fact that the practice of planting evidence for extortion, as a means to compel one to divulge information or merely to harass witnesses, is not uncommon. By the very nature of anti-narcotics operations, with the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. Hence, courts must be extra vigilant in trying drug charges lest an innocent person be made to suffer the unusually severe penalties for drug offenses. **People v. Cruz**, *G.R. 102880, 25 April 94, Second Division, Regalado, J.*

3. Mitigating Circumstance

a. *Minority; Suspension of Sentence*

(1) Not available where youthful offender has been convicted of offense punishable by life imprisonment or death.

The benefits of suspension of sentence are not available where the youthful offender has been convicted of an offense punishable by life





imprisonment or death. The last paragraph of Section 2 of Presidential Decree No. 1210, which amended certain provisions of P.D. 603, provides:

> The benefits of this article *shall not apply to a youthful offender* who has once enjoyed suspension of sentence under its provisions *or to one who is convicted of an offense punishable by death or life imprisonment* or to one who is convicted for an offense by the military Tribunals. (Par. 4, Sec. 2 P.D. No. 1179, as amended by P.D. No. 1210; italics supplied)

The Offense charged in this case, Robbery with Homicide, is punishable by *reclusion perpetua* to death (Art. 294(1), R.P.C.). As a matter of fact, the herein appellants were sentenced to suffer the penalty of *reclusion perpetua.* Consequently, the suspension of sentence as provided under Art. 192 of P.D. 603, as amended, does not apply to accused Raquel Tagalog and Ricky Galit. **People v. Lucindo**, *et al., G.R. 97432, 1 March 94, Third Division, Bidin, J.*

**FOR EXAMPLE**: The accused-appellants were convicted and sentenced to suffer the penalty of *reclusion perpetua* and likewise ordered to indemnify the heirs of the victim the sum of P103,168.80 for actual damages and P50,000 as moral damages. However, the trial court suspended the sentence with respect to Raquel Tagalog and Ricky Galit on the ground of minority, pursuant to Article 189 of P.D. 603.

**HELD**: With respect to the suspension of the sentence of accused Raquel Tagalog and Ricky Galit, who are said to be youthful offenders, pursuant to Article 189 of P.D. 603 (the Child and Youth Welfare Code), we find the same to be erroneous.

However, the accused Ricky Galit and Raquel Tagalog did not appeal from the judgment of the trial court. Neither did the People question the suspension of their sentence. The benefits of suspension of sentence are not available where the youthful offender has been convicted of an offense punishable by life imprisonment or death.

Nonetheless, considering that the decision against accused Ricky Galit and Raquel Tagalog had become final, this Court can no longer alter the judgment rendered by the trial court however erroneous it may have been. This Court has no jurisdiction to pass judgment on an accused who did not appeal the sentence of conviction imposed by the trial court. (**People v. Medrano**, *122 SCRA 586 (1983)*)

Counsel for accused Ricky Galit prays for the latter's release from the National Training School for Boys as recommended in the Final Report submitted by the Senior Officer of the NTSB on the ground that Ricky Galit had complied with the conditions of his rehabilitation. The Solicitor General interposed no objection to the final release of Ricky Galit from the custody of NTSB, DSWD, provided accused Galit's civil liability is not extinguished as provided in Articles 198 and 201 of the Child and Youth Welfare Code.

Be that as it may, it is not the responsibility of the Supreme Court to order the release of accused Ricky Galit without the benefit of a review of the recommendation of the Department of Social Welfare by the trial court. Art. 196 of P.D. 603 provides:

> Art. 196. Dismissal of the case. - If it is shown to the satisfaction of the court that the youthful offender, whose sentence has been suspended, has behaved properly and has shown his capability to be a useful member of the community, even before reaching the age of majority, upon recommendation of the Department of Social Welfare, it shall dismiss the case and order his final discharge.

In cases where the DSWD recommends the discharge of a youthful offender, it is the trial court before whom the report and recommendation is subject to judicial review. Recommendation alone is not sufficient to warrant the release of a youthful offender. In reviewing the DSWD's recommendation, the trial judge must not base his judgment on mere conclusions but should seek out concrete, material and relevant facts to confirm that the youthful offender has indeed been reformed and is ready to reenter society as a productive and law-abiding citizen.

Caution, however, is given to the trial court. To begin with, the youthful offender is not to be tried anew for the same act for which he was charged. The inquiry is not a criminal prosecution but is rather limited to the determination of the offender's proper education and rehabilitation during his commitment in the Training Center and his moral and social fitness to rejoin the community. **People v. Lucindo**, *et al., G.R. 97432, 1 March 94, Third Division, Bidin, J.*

b. *Voluntary Surrender*

(1) Elements

While it may have taken both Willie and Gildo a week before turning themselves in, the fact is,





they voluntarily surrendered to the police authorities before arrest could be effected. For voluntary surrender to be appreciated as a mitigating circumstance, the following elements must be present: (a) the offender has not been actually arrested; (b) the offender surrendered himself to a person in authority; and (c) the surrender must be voluntary. All these requisites appear to have attended their surrender. **People v. Amaguin**, *G.R. 54344-45, 10 Jan. 94, Bellosillo, J.*

There is no indication in the record that appellants had, of their own volition, come forward and presented themselves before the authorities, signifying their desire to spare the Government the time, effort and expense of seeking them out; what happened simply was that they willingly accepted the invitation of police officers to undergo investigation for the killing of Josefino Jagocoy. **People v. Campa**, *et al., G.R. No. 105391, 28 Feb. 94, Second Division, Narvasa, C.J.*

**FOR EXAMPLE**: After appellant stabbed the three (3) victims, he voluntarily went to the Taytay Police Station on that same night of 22 February 1987 and surrendered to Police Captain Davan.

**HELD**: We uphold the ruling of the trial court in appreciating the mitigating circumstance of voluntary surrender. **People v. Cabalhin**, *G.R. 100204, 28 March 94, Second Division, Padilla, J.*

(2) Voluntary surrender not appreciated when appellant gave himself up only to insure his safety

The requisites of voluntary surrender are that the offender had not been actually arrested, that he surrendered himself to a person in authority or to the latter's agent, and that the surrender was voluntary. The element of voluntariness required that it be spontaneous, showing the intent of the accused to submit himself unconditionally to the authorities, either because he acknowledges his guilt or because he wishes to save them the trouble and expenses which would be necessitated for his apprehension. Neither of these reasons can apply to appellant who gave himself up only to insure his safety since, as he admitted, he could not go on hiding. **People v. Fuertes**, *G.R. 104067, 17 Jan 94, Second Division, Regalado, J.*

(3) Where accused were arrested

The mitigating circumstance of voluntary surrender should not be appreciated since both appellants were arrested. **People v. de Guzman**, *et al., G.R. 92537, 25 April 94, Second Division, Padilla, J.*

c. *Passion and Obfuscation*

(1) *Elements*

The mitigating circumstance of passion or obfuscation may not be appreciated in favor of the appellants. According to them, they were overcome by passion when stones were hurled at their house by some unidentified individuals. There is no sufficient evidence of this stoning incident and even if there were, there is no proof whatever that the victim was in any way responsible therefor so as to be made the subject of appellants' overwhelming rage. **People v. Campa**, *et al., G.R. No. 105391, 28 Feb. 94, Second Division, Narvasa, C.J.*

**FOR EXAMPLE**: The trial court ruled that the appellant was entitled to two (2) mitigating circumstances; the first, for having acted upon an impulse so powerful as naturally to have produced passion or obfuscation (as provided for in Article 13, paragraph no. 6, of the Revised Penal Code) and, the second, for voluntary surrender (Article 13, paragraph no. 7 of the Code).

The records show that on 22 February 1987 appellant went to the house of the Saldivia family after being informed that he would find there his wife (Marianita) together with her alleged paramour, Rolito Saldivia. The stabbing incident happened, according to the trial court, because appellant acted upon an impulse so powerful as naturally to have produced passion or obfuscation. The evidence further discloses that after appellant stabbed the three (3) victims, he voluntarily went to the Taytay Police Station on that same night of 22 February 1987 and surrendered to Police Captain Davan.

**HELD**: We uphold the ruling of the trial court in appreciating the two (2) mitigating circumstances above-cited. **People v. Cabalhin**, *G.R. 100204, 28 March 94, Second Division, Padilla, J.*

d. *Provocation*

Sufficient provocation could neither mitigate the criminal liability of the accused. He cannot claim that he was provoked by Pfc. Ontuca when the latter ran away from him because, understandably so, the hapless victim feared for life having been beaten up twice by his assailants that same evening. To flee when danger lurk is human and can never be regarded as a source of provocation sufficient to come within the ambit of the Revised Penal Code. In fact, when an offended party flees from his aggressor, the latter has no reason to pursue and attack him. **People v. Padilla**, *G.R. No. 75508, 18 June 94, First Division, Bellosillo, J.*



# NAPOLCOM RULINGS AND OPINIONS

THIS PERTAINS TO THE LETTER of Atty. Ronaldo T. Reyes, Chairman, People's Law Enforcement Board, requesting clarification on the issue of conflict of jurisdiction with particular reference to PLEB II Adm. Case No. PM 98-94, entitled "Victor C. Ocampo, Complainant, versus, P/Sr. Supt. MARIO CRUZ, Respondent" for "Grave Misconduct." *

**FACTS**: "A complaint for Grave Misconduct against Police Sr. Supt. Mario Cruz was filed before the Makati PLEB on March 14, 1994; that during the hearing on April 22, 1994, respondent, instead of filing his answer, presented an Order dated April 15, 1994 from Police Director Percival Adiong, preventively suspending him for ninety (90) days effective on even date; that likewise, he submitted a letter from Police Director Enrique Bulan dated March 24, 1994 that on even date the said case was referred to the PNP Inspector General for investigation and/or prosecution; that on May 19, 1994, respondent filed a Motion to Quash the Complaint on the ground that the same states more than one offense which is in violation of the Rules of Court; that after an Opposition had been filed by the complainant, the Board issued an Order denying the Motion for lack of merit; that on June 7, 1994 respondent filed his answer attaching therewith the affidavits of his witnesses; that at the hearing of June 17, 1994, respondent presented a Memorandum from Police Senior Supt. Efren Quimpo Fernandez, PNP Inspector General, addressed to the Director, PNP Legal Service, asking said office to resolve the issue of jurisdiction by making reference to February 17, 1994, as the date that "Mr. Victor Ocampo, through his counsel Atty. Jose Calida, had originally filed the complaint for Grave Misconduct/Abuse of Authority against P/Sr. Supt. Mario Cruz with the Office of the Inspector General;" that on June 30, 1994, PLEB II issued an Order that it (the Board) had validly acquired jurisdiction over the case in the light of the presentation of Director Bulan's letter that the complaint had been referred to the Inspector General on March 24, 1994, while February 17, 1994 was the date when

*Ruling dated 16 August 1994.

one P/Sr. Supt. Jaime had gone to the residence of complainant, upon instruction of P/Sr. Supt. Acop, to investigate the case, and to request a copy of the affidavit dated February 15, 1994 which was submitted to the Office of the Assistant Prosecutor; that during the hearing of July 15, 1994, respondent informed the Board that the PNP Director for Legal Service had recommended his suspension for one month; and that in a letter dated July 20, 1994 PNP Inspector General Fernandez informed complainant's counsel that no decision yet has been made by the PNP Chief, who is the Summary Dismissal Authority."

**Ruling**: Anent the query, attention was invited to the provisions of Sec. 41 (c) of RA 6975, which pertinently provides:

> *(c) "**Exclusive Jurisdiction** - A complaint or charge filed against a PNP member **shall be heard and decided exclusively by the disciplining authority who has acquired original jurisdiction over the case** and notwithstanding the existence of concurrent jurisdiction as regards the offense: **Provided,** That offenses which carry higher penalties referred to a disciplining authority shall be referred to the appropriate authority which has jurisdiction over the offense. (Emphasis supplied)*

Following the aforequoted provision of law, it is clear that the administrative complaint for Grave Misconduct against P/Supt. Mario Cruz was filed with, and received by, the Makati PLEB on March 14, 1994, as stamped on the photocopy of the complaint dated March 10, 1994.

The PNP, however, disagrees on the date when the authorities took cognizance of said case. The PNP Director for Personnel, in his letter of March 24, 1994 to the DILG Secretary, said "*the complaint of Victor O. Ocampo was referred to the PNP Inspector General on March 24, 1994 for investigation of subject officer and/or prosecution.*" While in a Memorandum dated May 30, 1994 of the PNP Inspector General to the PNP Director for Legal Service relative to his request on the resolution of the issue of jurisdiction on the instant case, he made reference to February 17, 1994 on the statement "*it appearing that Mr. Victor Ocampo, through his Counsel Atty. Jose Calida, has originally filed a complaint for Grave Misconduct/Abuse of Authority against P/Supt. Mario Cruz with the Office of the Inspector General on February 17, 1994 and with the PLEB II of Makati on March 14, 1994.*"

After a review of the records of the case and the aforecited provision





of law, this Commission rules that Makati PLEB had first acquired jurisdiction over the case of P/Supt. Mario Cruz, to the exclusion of the PNP disciplining authority.

The referral of the case to the Office of the PNP Inspector General, whether on February 17, 1994 or March 24, 1994 (the former date was disputed since P/Sr. Supt. Jaime of the Office of the Inspector General only went to the residence of complainant Ocampo to secure a copy of the affidavit which he submitted to the Prosecutor's Office for use in his investigation upon order by PNP Inspector General Romeo Acop), is only for the purpose of preliminary investigation or pre-charge investigation to determine the existence of probable cause which will be the basis of the disciplining authority in assigning or designating a Summary Hearing Officer who will accept the complaint and conduct summary hearing, which is the standard procedure in the PNP.

Attached to the records of the case is a DF/Memorandum of the PNP Director for Legal Service, wherein item 5 thereof had made reference to: "*The Office of the PNP Inspector General who first took cognizance of the case x x x and recommended that respondent be preventively suspended from the police service for a period of ninety (90) days and thereafter be subjected to Summary Dismissal Proceedings. This recommendation was approved by the Chief PNP on 8 April 1994.*" The foregoing clearly indicates that the disciplining authority, the PNP Chief, only gave his approval or imprimatur to conduct a formal hearing on the case on April 8, 1994. Stated in fine, it was only on April 8, 1994 that the formal complaint could legally be said to have been filed with the disciplining authority.

*Not resisting arrest is not analogous to voluntary surrender.*

(People vs. Rabuya, No. L-30518, Nov. 7, 1979, 94 SCRA 123, 138)

## CAPITAL PUNISHMENT

Is not capital punishment murder? Why punish crime by committing another crime?

The State has the right to inflict death for grievous crime, and thereby to preserve public order and security. Thomas Aquinas expressly states that "such killing is not murder" (IIa. IIæ., Q. 100 art. 8, ad. 3).

The Old Testament prescribed the death penalty for certain crimes (Gen. ix, 6; Exod. xxi. 12; 14, 23; Lev. xx. 2; xxiv. 17; Deut, xvii, 6; xix. 12). The New Testament takes it for granted that the State has the right to put criminals to death (John xix. 10, 11; Acts xxv. 11), because it is "God's minister, an avenger to execute wrath upon him that doth evil" (Rom. xiii. 4). While clearly asserting the right of capital punishment, Christianity has never demanded its infliction as the only possible deterrent of crime, however heinous. That she leaves to the judgment of the individual citizens.

The one convincing argument for capital punishment is the State's right of self-defense. Just as the individual has the right to defend his life against the attacks of an unjust aggressor, so the State has the right to defend itself against external (war) and internal enemies (capital punishment), who by their crimes undermine the very foundations of the social order. "The slaying of an evildoer is lawful," says Thomas Aquinas, "inasmuch as it is directed to the welfare of the whole community" (IIa. IIæ., Q. 64, art. 3).

Many today deny the right of capital punishment, because they deny the freedom of the will and consider crime as a disease due to heredity or environment. They would segregate the criminal indeed as one segregates the man afflicted with smallpox in a pest-house, but they deem imprisonment ample punishment even for the most heinous murder.

Others will say that life imprisonment is more severe and more effective a punishment than the death penalty. This is not true with regard to the vast majority of criminals. At any rate, logically, if one admits that the State has the right to inflict a severer punishment than death, one must likewise admit that it has the right to inflict death itself.

It is certainly more in harmony with Christian values to limit the death penalty to certain grave crimes like murder, piracy or treason. Blackstone in his Commentaries rightly condemned the English laws of the eighteenth century which made one hundred and sixty offenses liable to capital punishment (Book VI., ch.1)

Bertrand L. Conway, *The Question Box*, 420-421.


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