Beyond Stonehill: Extending the Exclusionary Rule to Uncounselled Media Confessions

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In *Stonehill v. Diokno,l* one of the landmark decisions penned by the late Chief Justice Roberto Concepcion, the Supreme Court held definitively that *evidence unlawfully obtained should be excluded.* It rejected the contrary rule enunciated in *Moncado v. people's Court.*[2] The Court said: "Upon mature d~liberation, however, we are unanimously of the opinion that the position taken in the Moncado case must be abandoned. "3 Thus began the formal adoption of the exclusionary rule in Philippine jurisprudence. Since then, however; the exclusionary rule has been expanded not only to cover instances of unlawful searches and seizures.[4] It has also been adopted and adapted to iipply to uncounselled admissions or cOfifesslons from suspects in the course of their custodial investigation.

Even before the adoption of the exclusionary rule with regard to violation of the constitutional provision on searches and seizures, it has been the rule that no person may be compelled to be a witness

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2 80 Phil. 1 (1948)

3 *Swnehill,* at 393.

4 "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized." (Article III, Section 1 (3), 1935 Constitution)

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against himself. Thus, confessions which were not *voluntarily* given, or those *coerced* or *compelled* from the unwilling lips of the accused, were not admissible. This was subsequently changed, however, such that the rule which obtained before Stonehill was to the effect that the exclusion of coerced confessions was made to depend on whether the statements were true or false. The change brought about by Stonehill in adopting the exclusionary rule effected a radical departure from the then prevailing jurisprudence, and this fact highlights the importance of the case. As the Court noted in *Magtoto v. Manguera,5* tracing the twists and turns in jurisprudence:

> The fundamental rule is that a confession, to be admissible, must be voluntary. And the first rule in this connection was that before the confession could be admitted in evidence, the prosemtion must first show to the satisfaction of the Court that the same was freely and voluntarily made, as provided for in Section 4 of Act 619 of the Philippine Commission *(U.S. vs. Pascual,* August 29, 1903, 2 Phil. 458). But with the repeal of said provision oflaw by the Administrative Code in 1916, the burden of proof was changed. Now, a confession is admissible in evidence without previous proof of its voluntariness on the theory that it is presumed to be voluntary until the contrary is proved (5 Moran, Comments on the Rules of Court, p. 264; People vs. Dorado, 30 SCRA 53, 57, citing *U.S. vs. Zara, 42* Phil. 308; *People vs. Cabrera,* 43 Phil. 64; *People v. Singh,* 45 Phil. *676; People v. Pereto,* 21 SCRA 1469).
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> And once the accused succeeds in proving that his extrajudicial confession was made involuntarily, it stands discredited in the eyes of the law and is as a thing which never existed. It is incompetent as evidence and must be rejected. The defense need not prove that its contents are false *(U.S. vs. Delos Santos,* 24 Phil. 329, 358; *U.S. vs. Zara,* 42 Phil. 325, November, 1921) ...
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> This rule was, however, changed by this Court in 1953 in the case of *People vs. Delos Santos, et al.,* C.R. No. L-4880, citing the rule in *Moncada vs. People's Court, et al.,* 80 Phil. I, and followed in the case of *People vs. Villanueva, et al.* (C.R. No. L-7472, January 31, 1956), to the effect that "a confession to be

563 SCRA 4 (1975)

repudiated, must not only be proved to have been obtained by force or violence or intimidation, *but also* that it is false or untrue, for the law rejects the confession when by force or violence, the accused is compelled against his will to tell a falsehood, not when by such force and violence is compelled totell the truth." This ruling was followed in a number of cases.

But the ruling in *Moncada vs. People's Court, et al.,* 80 Phil. 1, which was the basis of the leading case of People vs. Delos Santos, *supra,* was overruled in the case of *Stonehill vs. Diokno* (20 SCRA 383, June 19, 1963), holding that evidence illegally obtained is IlDt admissible in evidence. So, we reverted to the original rule. As stated by this Court, speaking through Justice Teehankee in *Peoplevs. UTTO* (44 SCRA 473, April 27, 1972), "involuntary or coerced confessions obtained by force or intimidation are *null and void* and are abhorred by law which proscribes the use of such cruel and inhuman methods to secure a confession." "A coerced confession stands discredited in the eyes of the law and is as a thing that never existed. " The defense need not prove that its contents are false. Thus, We turned full circle and returned to the rule originally established in the case of *U.S. vs. Delos Santos,* 24 Phil. 323 and *People vs. Nishishima,* 42 Phil. 26. (See also *People vs. Imperio,* 44 SCRA 75).

It must be noted that all these Philippine cases refer to coerced confessions, whether the coercion was physical, mental and/ or emotional. [6]

It could then be appreciated that by what the Supreme Court did in *Stonehill,* the beneficial effects of the exclusionary rule was extended not only to those taken during illegal searches and seizures b~t also to confessions or admissions taken in violation of the privilege against self-incrimination. And, once adopted, the other situations in which the exclusionary rule could be invoked could very well go beyond its original application, such as to those involving custodial investigations in which no prior advice of the right to remain silent and to counsel was given.·Ultimately, the exclusion extended to those situations where admissions or confessions were made, no matter how true, but without the presence of a *competent* and *effective* counsel.

6 *Magtota,* at 16-17.

Nevertheless, in spite of the fact that such a salutary rule has been expanded to cover the taking of uncounselled admissions or confessions from suspects, the same was not extended to those made during the course of media interviews, the same being considered as not within the constitutional proscription since they are more in the nature of *voluntary* or *spontaneous* disclosures. Moreover, they were made to private persons which are not within the ambit of the prohibitions contained in the Bill of Rights. Nevertheless, in *People v. Endino,*[7] the Court, realizing the inherent danger which lurks in such media interviews, cautioned trial courts against precipitate and uncritical admission of such confessions just because they were made to the media. Said the Court:

> Apropos the court *a quo's* admission of accused-appellant's videotaped confession, we find such admission proper. The interview was recorded on video and it showed accused appellant unburdening his guilt willingly, openly and publicly in the presence of newsmen. Such confession does not form part of custodial investigation as it was not given to police officers but to media men in an attempt to elicit sympathy and forgiveness from the public. Besides, if he had indeed been forced into confessing, he could have easily sought succor from the newsmen who, in all likelihood, would have been sympathetic with him ...
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> ... However, because of the *inherent danger in the use of television as a medium for admitting one's guilt,* and the recurrence of this phenomenon in several cases,[8] it is prudent that trial courts are reminded that extreme caution must be taken in *further* admitting similar confessions. *For in all probability the police, with the connivance of unscrupulous media practitioners, may attempt to legitimize coerced extrajudicial confessions and place them beyond the exclusionary rule by having an accused admit an offense on television. Such a situation would be detrimental to the guaranteed rights of the accused and thus imperil our criminal justice system.*

[7] 352 SCRA 307 (2001)

[8] *People v. Vizcarra,* 115 SCRA 743 (1982); *People v. Bernardo,* 220 SCRA 31 (1993); *People v. Andan,* 269 SCRA 95 (1997).

> We do not suggest that videotaped confessions given before media men by an accused with the knowledge of and in the presence of police officers are impermissible. Indeed, the line between proper and invalid police techniques and conduct is a difficult one to draw, particularly in cases such as this where it is essential to make sharp judgments in determining whether a confession was given under coercive physical or psychological atmosphere.
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> A word of counsel then to lower courts: *we should never presume that all media confessions described as voluntary have been freely given. This type of confession always remains suspect* and therefore should be thoroughly examined and scrutinized. Detection of coerced confessions is 'admittedly a difficult and arduous task for the courts to make. It requires persistence and determination in separating polluted confessions from untainted ones. *We have a sworn duty to be vigilant and protective of the rights guaranteed by the Constitution.* [9]

The foregoing pronouncement is in the same light as that observed by the Court in *People* vs. *Morada*[10] where it clarified the rule on admissibility of media confessions or admissions. Said the Court:

> In *People v. Andan,* [11] this Court held that the constitutional guarantees during custodial investigation do not apply to spontaneous statements not elicited through questioning by the authorities and given in an ordinary conversation or during media interviews, whereby the suspect orally admits the commission of the crime. *Our ruling in that case does not, however, authorize the police to obtain confessions they cannot otherwise obtain through media reporters who are actually acting for the police.* [12]

There is no doubt that confessions or admissions made to the media may be a valuable tool in the solution of crimes. They could provide evidence which might otherwise be excluded if procured by the law enforcement officers themselves.[13] Nevertheless, as the Court observed

9 At 313-314; Emphasis added.

10 307SCRA 362 (1999)

11 269 SCRA 95 (1997)

12 *Morada,* at 373-374; Emphasis supplied.

13 See *People v. Andan,* 269 SCRA 95 (1997), *PeoPle v. Domantay,* 307 SCRA 1 (1999), and, *People v. Ordofio,* 334 SCRA 673 (2000).

in Morada, its ruling in Andan does not allow the police to circumvent the constitutional proscription by obtaining confessions through media reporters acting for them. The question might be asked, however, is it not about time that media interviews be also subject to some form of procedural safeguards along the lines enunciated in Miranda and which were engrafted and enlarged in the 1973 and 1987 Constitutions?

Given the rationale for the exclusionary rule, the considerations that went into *Miranda* rights, and the constitutional framers' intent to incorporate *Miranda* into the fundamental law, there appear to be good reasons for extending the exclusionary rule to uncounselled media confessions. In view of the dangers to constitutional rights of suspects inherent in such a situation, and further taking into account the difficulty in drawing the line between pr0per and invalid police techniques and conduct that accompany a "media interview," the reasons which made for the *Miranda* warnings to become the touchstone of constitutional validity in obtaining extrajudicial confessions commend themselves to supporting the proposition that *uncounselled media confessions* are as perilous to the constitutional guarantee against self-incrimination as purely coercive police behavior or atmosphere. In short, to ensure that the rights of suspects guaranteed by the Constitution are not diluted or even taken or given away wittingly or unwittingly, it might as well be required that suspects who are already in custody, or otherwise under investigation by the police, be first accorded counsel before they are allowed - or thrust before the klieg lights and flash bulbs - to be interviewed by members of the press.

THE ADVENT OF *STONEHILL'S EXCLUSIONARY RULE*

As the Court enunciated in Stonehill, the old rule which was recognized in *Moncada* was in line with the American common law rule that the criminal should not be allowed to go free merely "because the constable has blundered," This in turn was based on the theory that the constitutional prohibition against unreasonable searches and seizures is protected by means other than the exclusion of evidence unlawfully obtained, such as an action for damages against the searching officer, against the party who procured the issuance of the search warrant and, against those assisting in the execution of an illegal

search. Or, those responsible may also be criminally prosecuted. But the Court in *Stonehill,* surveying most common law jurisdictions, agreed that the exclusionary rule IS *"the only practical means of enforcing the constitutional injunction against unreasonable searches and seizures."*[14] Quoting Judge Learned Hand, the Court echoed: "Only in case the prosecution which itself controls the seizing officials, knows that *it cannot profit by their wrong, will that wrong be repressed."*[15]

The Court, in adopting the exclusionary rule and expressly abandoning the contrary doctrine, summed up the rationale in this manner:

> Indeed, the non-exclusionary rule is contrary, not only to the letter, but, also, to spirit of the constitutional injunction against unreasonable searches and seizures. To be sure, if the applicant for a search warrant has competent evidence to establish probable cause of the commission of a given crime by the party against whom the warrant is intended, then there is no reason why the applicant should not comply with the requirements of the fundamental law. Upon the other hand, if he has no such competent evidence, then it is *not possible* for the judge to find that there is probable cause, and, hence, no justification 'for the issuance of the warrant. The only possible explanation (not justification) for its issuance is the necessity of *fishing* evidence of the commission of a crime. But, then, this fishing expedition is indicative of the absence of evidence to establish a probable cause.
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> Moreover, the theory that the criminal prosecution of those who secure an illegal search warrant and/or make unreasonable searches or seizures would suffice to protect the constitutional guarantee under consideration, overlooks the fact that violations thereof are, in general, committed by agents of the party in power, for, certainly, those belonging to the minority could not possibly abuse a power they do not have. Regardless of the handicap under which the minority usually - but, understandably - finds itself in prosecuting agents of the majority, one must not lose sight of the fact that the psychological and moral effect of the possibility of securing their

[14] *Stonehill,* at 394.

[15] *Ibid.;* Emphasis in the original.

conviction, is watered down by- the pardoning, power of the party for whose benefit the illegality had been committed.[16]

Significantly, a year before Stonehill was decided, the United States Supreme Court had already come up with its holding in *Miranda v. Arizona* [17] which eventually created further constitutional developments in the exclusionary rule, even though on delayed basis insofar as the Philippines is concerned.

THE MIRANDA RIGHTS

In *Miranda,* "a decision described as an 'earthquake in the world of law enforcement, '"[18] the United States Supreme Court set out what it considered to be the procedural safeguards which would be in accordance with the constitutionally guaranteed privilege against self-incrimination insofar as persons under custodial investigation are concerned. It was intended "to give concrete constitutional guidelines for law enforcement agencies and courts to follow" in regard to the application of the privilege against self-incrimination to in-custody interrogation.[19] Harking back to what it earlier held in *Escobedo v. Illinois,* [20] where it declared inadmissible any incriminating statements from a person under custodial investigation after he had sought assistance of counsel but was denied the same, the Court said:

16 *Id.,* at 396-397. 17 384 U.S. 436 (1966)

18 *People v. Ayson,* 175 SCRA 216 (1989), at 228, citing *People v. Duero,* 104 SCRA 379 (1981), at 386.

19 *Miranda,* at 441-442 .

20 378 U.S. 478 (1964): In *Escobedo,* the Court declared: "We hold, therefore, that where, as here, the investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect, the suspect has been taken int6 police custody, the police carry out a process of interrogations that lends itself to eliciting incriminating statements, the suspect has requested and been denied an opportunity to consult with his lawyer, and the police have not effectively warned him of his absolute constitutional right to remain silent, the accused has been denied 'the Assistance of Counsel' in violation of the Sixth Amendment to the Constitution as 'made obligatory upon the States by the Fourteenth Amendment; *Gideon v. Wainwright,* 372 U.S., at 342, and that no statement elicited by the police during the interrogation may be used against him at a criminal trial." (At 490-491)

> Our holding will be spelled out with some specificity in the pages which follow, but, briefly stated, it is this: the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking, there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned.[21]

Miranda did not claim to set out a new rule. Instead, it declared that it was simply applying pre-existing principles which needed to be distilled in more recognizable and binding form. The Court explained: "We start here, as we did in *Escobedo,* with the premise that our holding is *not an innovation* in oUr jurisprudence, but is *an application of principles long recognized and applied in other settings.* We have undertaken a thorough reexamination of the *Escobedo* decision and the principles it announced, and we reaffirm it. That case was but

21 *Miranda,* at 444-445.

an explication of basic rights that are enshrined in our Constitution."[22] What is not new is the principle that *involuntary* confessions are inadmissible. It also held that the right to counsel was properly available to one who needed it at a critical phase in the criminal investigation process. As it said in *Escobedo,* "The right to counsel would indeed be hollow if it began at a period when few confessions were obtained. There is necessarily a direct relationship between the importance of a stage to the police in their quest for a confession and the criticalness of that stage to the accused in his need for legal advice. Our Constitution, unlike some others, strikes the balance in favor of the right of the accused to be advised by his lawyer of his privilege against self-incrimination."[23] What may have been new and earthshaking in *Miranda,* however, was the requirement that the police inform a suspect of his rights to remain si~Ilt and to counsel on pain of having any admissions or confessions taken without such warning being thrown out. Prior to *Miranda* and *Escobedo,* the test of voluntariness and admissibility was basically predicated on due process considerations, taking into account the totality of the circumstances. As the U.S. Supreme Court explained in *Dickerson v. United States:*

> [F]or the middle third of the 20th century, our cases based the rule against admitting coerced confessions primarily, if not exclusively, on notions of due process. We applied the due process voluntariness test in "some 30 different cases decided during the era that intervened between Brown and *Escobedo v. Illinois,* 378 U.S. 478 [(1964)]." *Schneckcloth v. Bustamonte,* 412 U.S. 218, 223 (1973). See, e.g., *Haynes v. Washington,* 373 U.S. 503 (1963); *Ashcraftv. Tennessee,* 322 U.S. 143 (1944); *Chambers v. Florida,* 309 U.S. 227 (1940). Those cases refined the test into an inquiry that examines "whether a defendant's will was overborne" by the circumstances surrounding the giving of a confession. *Schneckcloth,* 412 U.S. at 226. The due process test takes into consideration "the totality of all the surrounding circumstances - both the characteristics of the accused and the details of the interrogation." *Ibid* ... The determination

[22] *Id.,* at 442; Emphasis supplied.

[23] *Escobedo,* at 488.

"depend[s] upon a weighing of the circumstances of pressure against the power of resistance of the person confessing." *Stein v. New York,* 346 U.S. 156, 185 (1953).[24]

With the advent of *Escobedo* and *Miranda,* however, the admissibility of an extrajudicial confession was determined by reference to its compliance with the procedural safeguards provided for in the *Miranda* warnings..

Miranda was based principally on the privilege against self-incrimination and the need to ensure that such privilege is not rendered inutile by failure of those who might need it most but fail to invoke it due to ignorance, fear, or other circumstances inherent in the coercive atmosphere of a police precinct.[25] As a corollary to an effective invocation of the privilege, the right to counsel necessarily had to come in, too. The Court noted several significant considerations why the procedural guidelines it set out are essential. For one, "the very fact of custodial interrogation exacts a heavy toll on individual liberty, and trades on the weakness of individuals."[26] Where the person arrested and detained is thrust into an unfamiliar atmosphere and run through menacing police interrogation procedures, the potentiality for compulsion is forcefully apparent, and which raises doubts whether the resulting statements are truly the product of free choice. "Unless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice."[27] Further, "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 ar~ often impartial observers to guard against intimidation or trickery."[28]

24 530 U.S. 428 (2000), at 433-434.

25 "The accused who does not know his rights and therefore does not make a request may be the person who most needs counseL" *(Miranda,* at 470-471)

26 *Miranda,* at 455.

27 *Id.,* at 458.

28 *Id.,* at 461.

On the relevance and importance of the privilege against self-incrimination, the Court also enunciated that such privilege "- the essential mainstay of our adversary system - is founded on a complex of values" and that

> All these policies point to one overriding thought: the constitutional foundation underlying the privilege is the respect a government - state or federal - must accord to the dignity and integrity of its citizens. To maintain a "fair state-individual balance," to require the government "to shoulder the entire load," 8 Wigmore, Evidence 317 (McNaughton rev.I961), to respect the inviolability of the human personality, our accusatory system of criminal justice demands that the government seeking to punish an individual produce the evidence against him by its own independent labors, rather than by the cruel, simple expedient of compelling it from his own mouth. *Chambers v. Florida,* 309 U.S. 227, 235-238 (1940). In sum, the privilege is fulfilled only when the person is guaranteed the right "to remain silent unless he chooses to speak in the unfettered exercise of his own will." *Malloy v. Hogan,* 378 U.S. 1,8 (1964).29

As for the warning requirement, the Court explained:

> For those unaware of the privilege, the warning is needed simply to make them aware of it - the threshold requirement for an intelligent decision as to its exercise. More important, such a warning is an absolute prerequisite in overcoming the inherent pressures of the interrogation atmosphere. It is not just the subnormal or woefully ignorant who succumb to an interrogator's imprecations, whether implied or expressly stated, that the interrogation will continue until a confession is obtained or that silence in the face of accusation is itself damning, and will bode ill when presented to a jury. Further, the warning will show the individual that his interrogators are prepared to recognize his privilege should he choose to exercise it.[30]

29 *Id.,* at 460.

30 *Id.,* at 468.

Then, in regard to the essentiality and necessity for the availability of counsel at such a critical phase, the Court had this to say:

> There [in *Escobedo],* as in the cases today, we sougrt a protective device to dispel the cOIT.1pelling atmosphere of the interrogation ... *The presence of counsel,* in all the cases before us today, would be the *adequate protective device* necessary to make the process of police interrogation conform to the dictates of the privilege. *His presence would insure that statements made in the government-established atmosphere are not the product of compulsion.* [31]
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> The circumstances surrounding in-custody interrogation can operate very quickly to overbear the will of one merely made aware of his privilege by his interrog~~ors. Therefore, the right to have counsel present at the interrogation is indispensable to the protection of the Fifth Amendment privilege under the system we delineate today. Our aim is to assure that the individual's right to choose between silence and speech remains unfettered throughout the interrogation process. A once-stated warning, delivered by those who will conduct the interrogation, cannot itself suffice to that end among those who most require knowledge of their rights. A mere warning given by the interrogators is not alone sufficient to accomplish that end. Prosecutors themselves claim that the admonishment of the right to remain silent, without more, "will benefit only the recidivist and the professionaL .. " Thus, the need for counsel to protect the Fifth Amendment privilege comprehends not merely a right to consult with counsel prior to questioning, but also to have counsel present during any questioning if the defendant so desires.[32]

[31] *Id,* at 465-466; Emphasis added.

[32] *Id.,* at 469-470. The Court further added: "The presence of counsel at the interrogation may serve several significant subsidiary functions, as well. If the accused decides to talk to his interrogators, the assistance of counsel can mitigate the dangers of untrustworthiness. With a lawyer present, the likelihood that the police will practice coercion is reduced, and, if coercion is nevertheless exercised, the lawyer can testify to it in court. The presence of a lawyer can also help to guarantee that the accused gives a fully accurate statement to the police, and that the statement is rightly reported by the prosecution at trial." (At 4 70)

Talking of the *warning* requirement and presence of counsel elements, the Court said: "Without the protections flowing from adequate warnings and the rights of counsel, 'all the careful safeguards erected around the giving of testimony, whether by an accused or any other witness, would become empty formalities in a procedure where the most compelling possible evidence of guilt, a confession, would have already been obtained at the unsupervised pleasure of the police.'"[33]

In a nutshell, the following passage from *Miranda* may serve to wrap up the underlying philosophy and the rationale for the procedural safeguards set forth therein:

> Today, then, there can be nO doubt that the Fifth Amendment privilege is available outside of criminal court proceedings, and serves to protect persons in all settings in which their freedom of action is curtailed in any significant way from being compelled to incriminate themselves. We have concluded that, without proper safeguards, the process of in-custody interrogation of persons suspected or accused of crime contains inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely. In order to combat these pressures and to permit a full opportunity to exercise the privilege against self-incrimination, the accused must be adequately and effectively appraised of his rights, and the exercise of those rights must be fully honored."[34]

Finally, while the suspect has the rights to silence and counsel, and to be informed of the same and of ancillary rights flowing from them, he may still decide to "waive effectuation of these rights, provided the waiver is made *voluntarily, knowingly* and *intelligently."*[35]

What is important, though, is that he was informed of - and knew - what his rights were such that it would then be his own lookout if he, of his own free will and volition, still decided to forgo them.

33 *Id.,* at 466.

34 *Id,* at 467.

35 *Id.,* at 444.

Thirty-four years after *Miranda,* the United States Supreme Court revisited its teachings and found out that it is very much alive and kicking. Indeed, it had become part of the American legal culture which could not simply be undone, not even by Congress - "Mirand † become embedded in routine police practice to the point where the warnings have become part of our national culture."[36] The Court then declared: "In sum, we conclude that *Miranda* announced a constitutional rule that Congress may not supersede legislatively. Following the rule of *stare decisis,* we decline to overrule *Miranda* ourselves. "[37]

By then, however, it has taken much further roots in the Philippines which firmly planted it in the Constitution itself and in a flowering field of jurisprudence.

MIRANDA RIGHTS IN PHILIPPINE EXPERIENCE ADOPTION AND ADAPTATION

The provisions of the American Constitution upon which the *Miranda* rights were based are the Fifth and Sixth Amendments. The former contains the guarantee of the privilege against self-incrimination, providing that "No person shall.... compelled in any criminal case to be a witness against himself ..." On the other hand, the Sixth Amendment provides for the assistance of counsel guarantee:
"In all criminal prosecutions, the accused shall enjoy the right ... to have the assistance of counsel for his defence." The counterparts of those provisions in the Philippine Constitution then were in Article III, Section I, paragraphs 18 and 17, respectively, of the 1935 Charter. Par. 18 provided that "No person shall be compelled to be a witness against himself." Par. 17 stated: "In all criminal prosecutions the accused ... shall enjoy the right to be heard by himself and counsel ..."

As noted earlier, in *Miranda* the American Supreme Court said that it was not coming up with an innovation but was simply restating the principles relating to the constitutionally guaranteed privilege against

[36] *Dickerson v. United States,* 530 U.S. 428 (2000), at 443.

[37] *Id.,* at 444.

self-incrimination and the right to counsel found in the American Bill of Rights whose language was almost identical to the then existing provisions in the Philippine Constitution. The Philippine Supreme Court did not share the same outlook however. Instead, it distanced the Philippine rule from the American case, declaring that" [t]he rule in the United States need not be unquestioningly adhered to in this jurisdiction, not only because it has no binding effect here, but also because in interpreting a provision of the Constitution the meaning attached thereto at the time of the adoption thereof should be considered." [38] After the 1973 Constitution - which incorporated the *Miranda* rights - had come into effect, the Supreme Court still acted with inhospitality to the new rule by refusing to accord it retroactivity. But, once it has started to apply the new provision, however, the Philippine Court started to expand it until it extended farther than what *Miranda* decreed. Thus, it required not only that the suspect be informed of his rights to remain silent and to counsel. It also conditioned the validity of a waiver of right to counsel to prior assistance of counsel.

In *People v. Jose,* the sensational Maggie de la Riva multiple rape case committed in 1967 but only decided in 1971 by the Supreme Court, *Miranda* was invoked but the Court rejected the adoption of such alien jurisprudence. It held:

> The admissibility of his extrajudicial statements is likewise being questioned by Jose on the other ground that he was not assisted by counsel during the custodial interrogations. He cites the decisions of the Supreme Court of the United States in *Massiah vs. U.S.* (377 U.S. 2m), *Escobedo vs. Illinois* (378 U.S. 478) and *Miranda vs. Arizona* (384 U.S. 436).
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> The provision of the Constitution of the Philippines in point is Article III (Bill of Rights), Section I, par. 17 of which provides: "In all criminal prosecutions the accused shall ... enjoy the right to be heard by himself and counsel. .. " While the said provision is identical to that in the Constitution of the United States, in this jurisdiction the term criminal prosecutions was interpreted by this Court, in *U.S. vs. Beecham,* 23 PhiL, 258 (1912), in connection with a similar provision in the Philippine Bill of Rights (Section 5 of Act of Congress of July I, 1902) to mean proceedings before the

38 *People v. Jose,* 37 SCRA 450 (1971), at 473. This was reiterated in *People v. Paras, 56* SCRA 248 (1974), at 262-263.

> trial court from arraignment to rendition of the judgment. Implementing the said constitutional provision, We have provided in Section 1, Rule 115 of the Rules of Court that " In' all *criminal prosecutions* the defendant shall be entitled ... (b) to be present and defend in person and by attorney at every stage of the proceedings, that is, from the arraignment to the promulgation of the judgment. "The only instances where an accused is entitled to counsel before arraignment, if he so requests, are during the second stage of the preliminary investigation (Rule 112, Section 11) and after the arrest (Rule 113, Section 18). The rule in the United States need not be unquestioningly adhered to in this jurisdiction, not only because it has no binding effect here, but also because in interpreting a provision of the Constitution the meaning attached thereto at the time of the adoption thereof should be considered. And even there the said rule is not yet quite settled, as can be deduced from the absence of unanimity in the voting by the members of the United States Supreme Court in all the three above-cited cases·.[39]

It could thus be seen that in the eyes of the Philippine Supreme Court, the right to counsel could only be availed of from arraignment to rendition of the judgment, or, if he so requested, during the second stage of the preliminary investigation and after the arrest. There was no such right to counsel during custodial interrogation, as was recognized by the U.S. Supreme Court in *Escobedo* and *Miranda.*

The parsimonious attitude of the Court towards the *Miranda* doctrine continued even after the 1973 Constitution was already in effect. The framers, in reaction to what the Court held in *Jose,* decided to incorporate the *Miranda* rights in the fundamentallaw.[40] Article IV; Section 20 of said fundamental provided:

[39] 37 SCRA 450 (1971), at 472-473. *People v. Paras, supra.,* echoed the stand of the Court. *Paras* was decided after the 1973 Constitution was already in effect but ·involving kidnapping for ransom with murder committed way back in 1963 ..

[40] ;'The Constitutional Convention at the time it deliberated on Section 20, Article IV of the New Constitution was aware of the Escobedo and Miranda rule which had been rejected in the case ofJose. That is the reason why the Miranda-Escobedo rule was expressly included as a new right granted to a detained person in the present provision of Section 20, Article IV of the New Constitution." *(Magtoto v. Manguera,* 63 SCRA4 (1975), at 18.)

In his dissenting opinion, then Justice, later Chief Justice, Fernando, added his own observation, thus: "Precisely it must have been partly the dissatisfaction by the Constitutional Convention with the doctrine announced [in *Jose]* that led to its inclusion with its express prohibition against the admission of confessions so tainted, without any qualification as to when it was obtained." (At 36.)

> No person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. NQ force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence.

Despite this new constitutional provision, however, the Court refused to give it a retroactive effect. In *Magtoto v. Manguera* and its companion cases, the Court declared:

> We hold that this specific portion of this constitutional mandate has and should be given a prospective and not a retrospective effect. Consequently, a confession obtained from a person under investigation for the commission of an offense, who has not been informed of his right (to silence and) to counsel, is inadmissible in evidence if the same had been obtained after the effectivity of the New Constitution on January 17, 1973. Conversely, such confession is *admissible* in evidence against the accused, if the same had been obtained *before* the effectivity of the New Constitution, even if presented after January 17, 1973, and even if he had not been informed of his right to counsel, since no law gave the accused the right to be so informed before that date.[41]

The Court went on to and that "Section 20, Article *N* of the New Constitution granted, *for the first time,* to a person under investigation for the commission of an offense, the right to counsel and to be informed of such right. "[42] It also referred anew to what it

[41] *Magtoto,* at 12.

[42] *Id.,* at 13; Emphasis in the original. The Court also stated that only the right to counsel and to be informed of the same during custodial investigation are the *new* rights introduced by the 1973 Constitution. "We here hmit Ourselves to a discussion of this right to counsel and to be informed of such right, because that is the only principal issue in these cases, and that is the only new right given to an accused by the New Constitution with respect to extrajudicial confessions. Under the Old Constitution, there was already the provision that no person shall be compelled to be a witness against himself (Art. III, Section 1 (18); this right included the right to remain silent (U.S. vs. Luzon, 4 Phil. 343); and confessions obtained through force, violence, threat, intimidation or any other means which vitiates the free will were already declared inadmissible against an accused person in a number of Our decisions to which We shall refer in the course of this opinion, although they were raised into the category of a constitutional mandate under Section 20, Article IV of the New Constitution." (n. 1, at 11-12)

held in *Jose* regarding the inapplicability of the *Miranda* doctrine before the advent of the 1973 Constitution. Then, it declared that it is a "historical fact that the constitutional and legal guarantees as well as the legal precedents that insure that the confession be voluntary, underwent a slow and tedious development. The constitutional guarantee in question might indeed have come late in the progress of the law on the matter. But it is only now that it had come under Section 20 of Article IV of the 1973 Constitution. That is all that our duty and power ordain us to proclaim; We cannot properly do more. "[43]

Insofar as the new provision is concerned, it is noteworthy that, pursuant to its bp.sis in *Miranda,* it was joined with the provision on the privilege against self-incrimination. Thus, in *People v. Ayson,* the Court had to clarify that there are actually two sets of rights dealt with in said section, namely, the right against self-incrimination and the rights of a person in custodial interrogation, i.e., a suspect.[44] "That first sentence of Section 20, Article IV of the 1973 Constitution does not impose on the judge, or other officer presiding over a trial, hearing or investigation, any affirmative obligation to advise a witness of his right against self-incrimination. It is a right that a witness knows or should know, in accordance with the well known axiom that every one is presumed to know the law, that ignorance of the law excuses no one. "[45] The second set of rights exists only in "custodial interrogations," or "in-custody interrogation of accused persons. "[46] However, the Court pointed out in *People v. Maqueda* that, as formulated in the second sentence of Section 20, Article IV of the 1973 Constitution, which is also adopted in the 1987 provision, the word *"custodial"* used in *Miranda* with reference to investigation was excluded. ': Clearly then, the second paragraph of Section 20 has even broadened the application of *Miranda* by making it applicable to the investigation for the commission of an offense of a person not in custody. "[47]

43 *Id.,* at 19.

44 175 SCRA 216 (1989), at 225-226.

45 *Id.,* at 227.

46 *Id.,* at 230.

47 242 SCRA 565 (1995), at 586-587.

Signficantly, during the effectivity of the 1973 Constitution, the consolidated cases of *Morales v. Ponce Enrile* and *Moncupa v. Ponce Enrile*[48] were decided by the Court in a manner that could be characterized as quaint - amusing and unusual in a sense that almost all the members of the Court came up with their own individual views such that there was only a majority insofar as the result of the case is concerned. What is striking about the case, however, is the fact that the writer of the main opinion, Justice Herinogenes Concepcion, Jr., seemed to have formulated a new rule about the rights of suspects without any discussion about his basis except perhaps his own personal observations and views. In the course of his discussions and peregrination through various legal paths, he ended up with an entirely trailblazing expansion of the rights of suspects. He wrote, ostensibly for the Court, though only a minority concurred with him in his opinion, that:

> 7. At the time a person is arrested, it shall be the duty of the arresting officer to inform him of the reason for the arrest and he must be shown the warrant of arrest, if any. He shall be informed of his constitutional rights to remain silent and to counsel, and that any statement he might make could be used against him. The person arrested shall have the right to communicate with his lawyer, a relative, or anyone he chooses by the most expedient means - by telephone if possible - or by letter or messenger. It shall be the responsibility of the arresting officer to see to it that this is accomplished. No custodial investigation shall be conducted unless it be in the presence of counsel engaged by the person arrested, by any person on his behalf, or appointed by the court upon petition either of the detainee himself or by anyone on his behalf. *The right to counsel may be waived but the waiver shall not be valid unless made with the assistance of counsel.* Any statement obtained in violation of the procedure herein laid down, whether exculpatory or inculpatory, in whole or in part, shall be inadmissible in evidence.[49]

[48]121 SCRA 538 (26 April 1983). *49*
ld" at 554; Emphases supplied.

At best, the foregoing passage may be considered as an *obiter dictum.* Aside from the fact that the discussion on rights of those arrested was not the main issue to be resolved - the cases were petitions for *habeas corpus* which the Court dismissed - only a minority fully agreed with his opinion while the others who did not dissent concurred in the result only. The Court seems to have just given general guidelines with respect to several issues regarding subversion, arrests, detentions, suspension of the privilege of *habeas corpus* and other related aspects of maintaining peace and order but did not directly address any alleged violation of suspects' rights. Be that as it may, when Justice Concepcion became the *ponente* in *People v. Calit,50* he referred to what he said in Morales and quoted it in the body of the decision[51] that was concurred in by twelve members of the Court, with one taking no part. Thus, what might have been only an obiter in Morales became doctrinal in Galit. Here, the very issue is the legality of the treatment of the accused after arrest and during detention and the circumstances surrounding the execution of his extrajudicial confession.

Subsequently, the Court held that the judge-made rule in *Morales* and *Galit* had no retroactive effect - "the requirements and restrictions outlined in *Morales* and *Galit* have no retroactive effect and do not reach waivers made *prior to* 26 *April* 1983, the date of promulgation of *Morales. "52*

With the adoption of the 1987 Constitution, the rights of suspects were again expanded. Not only was the rule on *uncounselled waiver* announced in *Morales* and *Calit* incorporated in the new Charter. It also added other enhancements. The new provision, which is now separated from the section on privilege against self- incrimination, states:

50 135 SCRA 465 (20 March 1985). This case involves a charge for robbery with homicide.

51 "10. This Court, in the case of *Morales vs. Ponce Enrile,* laid down the correct procedure for peace officers to follow when making an arrest and in conducting a custodial investigation, and which We reiterate .••• " *(Id.,* at 472)

52 211 SCRA 36 (1992), at 50. See also *People v. Sison,* 142 SCRA 219 (1986). It might be debatable, however, if the effectivity of the new rule regarding inadmissibility of uncounselled waivers should be reckoned *horn* the date of promulgation of *Morales* or from that of *Calit.*

> SECTION 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of. his right to remain silent and to have *competent and independent* counsel *preferably of his own choice.* If the person cannot afford the services of counsel, he must be provided with one. *These rights cannot be waived except in writing and in the presence of counsel.*
>
> (2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.
>
> (3) Any confession or admission obtained in violation of this or Section 17 hereof shall be *inadmissible in evidence against him.*
>
> (4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families. [53]

Immediately noticeable is the fact that the right to counsel has been given some qualifications designed to favor the suspect. Thus, it is not enough that a counsel be made available. He must be one who is *competent* and *independent,* and *preferably* the choice of the suspect. At the same time, while the right to counsel may only be waived with the assistance of counsel, the Constitution has added the requirement that
. the waiver should be in *writing.* These requirements have, in turn, spawned their own catena of jurisprudence generally geared towards a more favorable treatment of suspects. One sour note, however, is in regard to the wording of the exclusionary rule under the new provision. It makes the illegally obtained confession or admission 'inadmissible as *against him,* which phrase has led the Court to hold that "What is provided by the modified formulation in the 1987 Constitution is that a confession taken in violation of said Section 12 and Section 17 of the same Article eshall be inadmissible in evidence against him,! meaning the confess ant. This objection can be raised only by the confessant whose rights have been violated as such right is personal in nature. "[54]

53 Article III; Emphasis supplied.

54 *People v. Balisteros,* 237 SCRA 493 (1994), at 515; Emphasis in the original. The counterpart provision in the 1973 Constitution, e_mbodied in Article *N,* Section 20, stated: . "Any confession obtained in violation of this section shall be inadmissible in evidence."

And when it comes to the communication of the rights to the suspects, the advice is intended to be done in a meaningful manner. It is one thing to simply tell the suspect his rights. It is an entirely different thing to make him understand what he is being told. The explanation of his rights must be done in such a manner that he is understands what he is being told. It contemplates the transmission of meaningful information rather than just the ceremonial and perfunctory recitation of an abstract constitutional principle. [55]

In the meantime, Congress has also stepped into the picture to further enhance the protection of those who might be arrested, *invited,* or detained, enacting Republic Act No. 7438.[56] The law declares that it is the policy of the State "to value the dignity of every human being and guarantee full respect for human rights. "[57] And, it also provides that "Any person arrested detained or under custodial investigation shall at all times be assisted by counsel."[58] Moreover, to prevent any possible attempts at circumvention or to sugar-coat an arrest, the law also provides that *"custodial investigation"* shall include the practice of issuing an *"invitation"* to a person who is investigated in connection with an offense he is suspected to have committed. [59]

In regard to the need to keep the rights relevant and responsive to changing times, the Court also said in *People v. Mahinay:*

> Lastly, considering the heavy penalty of death and in order to ensure that the evidence against an accused were obtained through lawful means, the Court, as guardian of the rights of the people lays down the procedure, guidelines and duties which the arresting, detaining, inviting, or investigating officer or his companions must do and observe at the time of making an arrest and again at and during the time of the custodial interrogation in accordance with the Constitution, jurisprudence

55 *People v. Sevilla,* 339 SCRA 625 (2000), at 650.

56 "An Act Defining Certain Rights of Person Arrested, Detained or under Custodial Investigation as Well as the Duties of the Arresting, Detaining and Investigating Officers, and Providing Penalties for Violations Thereof," which took effect on 7 July 1992.

57 Section 1, R.A. 7438.

58 Section 2 (a), R.A. 7438.

59 Section 2 (f), second par., R.A. 7438.

> and Republic Act,No. 7438. It is high-time to educate our law-enforcement agencies who neglect either by ignorance or indifference the so-called *Miranda rights which had become insufficient and which the Court must update in the light of new legal developments.* * * *[60]

From the foregoing it could be easily seen that through the years law and jurisprudence have tended to provide for greater safeguards for the person who might find himself arrested, detained, or simply *invited* for questioning. Before proceeding further, however, it would be appropriate to examine the other component of the *Miranda* rights.

THE COUNSEL GUARANTEE

Essential and pivotal in the framework of the *Miranda* doctrine is the presence of a lawyer. The U.S. Supreme Court did not deem it sufficient that a suspect be simply made aware of his right to remain sHerit. He was also entitled to know that he may have the assistance of counsel. if he so wanted it. As the Court explained, *"The presence of counsel. ..* would be the *adequate protective device* necessary to make the process of police interrogation conform to the dictates of the privilege. *His presence would insure that statements made in the government-established atmosphere are not the product of compulsion.* "[61]

It is significant to note that the right to counsel has not always been that expansive and latitudinarian as what *Miranda* might seem to suggest. Indeed, it has grown through the years. And, two years before *Miranda,* the Supreme Court had to so declare that it was available to one under custodial interrogation such that if the same was denied a suspect after having demanded it, whatever incriminating statements he might have made would be inadmissible. [62]

Previously, the Sixth Amendment "assistance of counsel" guarantee basically was understood to mean that the right to the assistance of one learned and skilled in law was at the stage of the criminal proceeding where there was already a case begun in court,

60 *People v. Mahinay,* 302 SCRA 455 (1999), at 487.

61 *Id,* at 465-466; Emphasis added.

62 *Escobedo v. Illinois,* 378 U.S. 478 (1964)

i.e., after indictment, just like what the Philippines Supreme Court held in *Jose.* It was only subsequently that this was expanded to include . other phases of a criminal prosecution which were considered as critical stages, such a post-indictment lineup.63 As the U.S. Supreme Court elucidated in *United Statesv. Ash:*[64]

> The right to counsel in Anglo-American law has a rich historical heritage, and this Court has regularly drawn on that history in construing the counsel guarantee of the Sixth Amendment. We reexamine that history in an effort to determine the relationship between the purposes of the Sixth Amendment guarantee and the risks of a photographic identification. In *Powell v. Alabama,* 287U.S. 45, 666 (1932}, the Court discussed the English common law rule that severely limited the right of a person accused of a felony to consult with counsel at trial. The Court examined colonial constitutions and statutes, and noted that, "in at least twelve of the thirteen colonies, the rule of the English common law, in the respect now under consideration; had been definitely rejected, and the right to counsel fully recognized in all criminal prosecutions save that, in one or two instances, the right was limited to capital offenses or to the more serious crimes." *[d.* at 64-65. The Sixth Amendment counsel guarantee, thus, was derived from colonial statutes and constitutional provisions designed to reject the English common law rule...
>
> A concern of more lasting importance was the recognition and awareness that an unaided layman had little skill in arguing the law or in coping with an intricate procedural system. The function of counsel as a guide through complex legal technicalities long has been recognized by this Court... The Court frequently has interpreted the Sixth Amendment to assure that the "guiding hand of counsel" is available to those in need of its assistance. See, for example, *Gideon v. Wainwright,* 372 U.S. 335, 344-345 (1963), and *Argersinger v. Hamlin,* 407 U.S. 25,31 (1972).

63 United SCates v. Wade, 388 U.S. 218 (1967)

[64]413 U.S. 300 (1973)

Another factor contributing to the colonial recognition of the accused's right to counsel was the adoption of the institution of the public prosecutor from the Continental inquisitorial system ... Thus, an additional motivation for the American rule was a desire to minimize the imbalance in the adversary system that otherwise resulted with the creation of a professional prosecuting official. Mr. Justice Black,. writing for the Court in *Johnson v. Zerbst,* 304 U.S. 458, 462-463 (138), spoke of this equalizing effect of the Sixth Amendment's counsel guarantee:

"It embodies a realistic recognition of the obvious truth that the average defendant does not have the professional legal skill to protect himself when brought before a tribunal with power to take his life or liberty, wherein the prosecution is presented by experienced and learned counsel."

This historical background suggests that the core purpose of the counsel guarantee was to assure "Assistance" at trial, when the accused was confronted with both the intricacies of the law and the advocacy of the public prosecutor. Later developments have led this Court to recognize that "Assistance" would be less than meaningful if it were limited to the formal trial itself.

This extension of the right to counsel to events before trial has resulted from changing patterns of criminal procedure and investigation that have tended to generate pretrial events that might appropriately be considered to be parts of the trial itself. At these newly emerging and significant events, the accused was confronted, just as at trial, by the procedural system, or by his expert adversary, or by both ...

* * * * *

Throughout this expansion of the counsel guarantee to trial-like confrontations, the function of the lawyer has remained essentially the same as his function at trial. In all cases considered by the Court, counsel has continued to act as a spokesman for, or advisor to, the accused. The accused's right to the "Assistance of Counsel" has meant just that, namely, the right of the accused to have counsel acting as his assistant...

* * * * *

This review of the history and expansion of the Sixth Amendment counsel guarantee demonstrates that the test

> utilized by the Court has caned for examination of the event in order to determine whether the accused required aid in coping with legal problems or assistance in meeting his adversary ... 65

Philippine case law and experience are not wanting in regard to the essential contributions and value of a lawyer in protecting a person's rights. "[T]he right to be heard would be a farce if it did not include the right to counsel, " so did the Philippine Supreme Court declare in *People v. Maqueda.* 66 In *Reyes v. Court of Appeals,* the Court made the observation that "even lawyers, who are parties in a case, need the guiding hand of counsel. Skill in drafting pleadings (which is practically the only 'lawyerly' thing petitioner did) is vastly different from skill needed in the courtroom. Preparing pleadings can be done at leisure with the luxury of consultation, either of books or of people. Trial work, however, demands more. It requires the ability to think fast on one's feet and the psychologist's feel for the witness' mood and motive."67

The following passage from Chief Justice Moran's explanation about the need for lawyers in the defense of an accused is oft-referred and reiterated:

> In criminal cases there can be no fair hearing unless the accused be given an opportunity to be heard by counsel. The right to be heard would be of little avail if it does not include the right to be heard by counsel. Even the most intelligent or educated man may have no skill in the science of the law, particularly in the rules of procedure, and, without counsel, he may be convicted not because he is guilty but because he does not know how to establish his innocence. And this can happen more easily to persons who are ignorant or uneducated. It is for this reason that the right to be assisted by counsel is deemed so important that it has become a constitutional right and it so implemented that under our rules of procedure it is not enough for the Court to apprise an accused of his right to have an attorney, it is not enougli to ask him whether he desires the aid

6S *Ash,* at 306-313.
66242 SCRA 565 (1995), at 588. [67]267 SCRA 543 (1997), at 555.

of an attorney, but it is essential that the court should assign one *de oficio* for him if he so desires and he is poor or grant him a reasonable time to procure an attorney of his own.[68]

As a matter of general proposition, a lawyer is an indispensable component of due process in criminal proceedings. It is always better that someone who has a wider perspective, not clouded by personal involvement, have direction and control of the proceedings. A lawyer is the one who is conversant with the requirements and nuances of criminal law and of what might be needed for trial, not to mention the labyrinthian ways of the law, something akin to "a riddle wrapped in a mystery inside an enigma. "[69]

As adverted to earlier, the 1935 Constitution also contained a provision similar to the Sixth Amendment. However, even as the Supreme Court conceded that the said provision was identical to that in the Constitution of the United States, in the Philippine setting the term *criminal prosecutions* meant proceedings before the trial court from arraignment to rendition of the judgment, thus not properly applicable to custodial interrogations.[70] Accordingly, it had to take a new constitution before the right to counsel at custodial investigations could be recognized.[71]

But once recognized and constitutionalized, the right to counsel during custodial investigations took a life of its own. It became a right independent of, and detached from, the right to counsel in *criminal prosecutions.* Through case law and another constitution, it expanded to spell out its corollary and un articulated, but logical, ramifications, such as the necessity for a *competent* and *independent,* and *effective* and *vigilant* counsel, *preferably* of a person's own choice. Then, of course,

68 *People v. Holgado,* 85 Phil. 752 *(1950),* at 756-757.

69 Winston Churchill in a radio broadcast, 1 October 1939, referring to an action taken by Russia. (Bartlett's *Familiar Quotations,* 16th ed., at *620).*

70 See *People v. Jose,* 37 SCRA *450* (1971), at 472-473.

71 It is worth noting that while the right to assistance of counsel in regard to custodial investigation may basically be to help the suspect in keeping intact his right to remain silent so as not to incriminate himself, the right to counsel as part of the trial proper is meant to assist the accused get his version of the story across for consideration and appreciation by the court.

possibly not trusting alone the words of the suspect and those of his handlers, there also came the rule which required that waiver of right to counsel could only be done with the assistance of counsel - a lawyer being needed to dispense with his assistance.

The importance of a lawyer assisting and giving counsel to one who stands on the verge of forfeiting his privilege against self-incrimination could never be underestimated or downplayed.

> Under the Constitution and the rules laid down pursuant to law and jurisprudence, a confession to be admissible in evidence must satisfy four (4) fundamental requirements: (a) the confession must be voluntary; (b) the confession must be made with the assistance of competent and independent counsel; (c) the confession must be express; and, (d) the confession must be in writing. *Among all these requirements none is accorded the greatest respect than an accused's right to counsel to adequately protect him in his ignorance and shield him from the otherwise condemning nature of a custodiaL investigation.* The person being interrogated must be assisted by counsel to avoid the pernicious practice of extorting false or coerced admissions or confessions from the lips of the person undergoing interrogation for the commission of the offense. Hence, if there is no counsel at the start of the custodial investigation any statement elicited from the accused is inadmissible in evidence against him. This exclusionary rule is premised on the presumption that the defendant is thrust into an unfamiliar atmosphere and runs through menacing police interrogation procedures where the potentiality for compulsion, physical and psychological, is forcefully apparent. [72]

In another case, the Court proudly declared: "We have constitutionalized the right to counsel because of our hostility against the use of duress and other undue influence in extracting confessions from a suspect. Force and fraud tarnish confessions and render them inadmissible. We take pride in constitutionalizing this right to counsel even while other countries have desisted from elevating this right to a

72 *People v. Ordofio,* 334 SCRA 673 (2000), at 685-686.

higher pedestal. We have sustained the inviolability of this precious right with vigor and without any apology."[73]

It is also significant that when the Constitution did not simply limit itself to guaranteeing right to counsel but also took pains to qualify the kind of lawyer that should be assigned to a suspect, namely, a "competent and independent counsel," this could only have meant that a suspect must not simply be given someone who claims to be a lawyer. Such counsel must be one who is also equal to the task.

> It is noteworthy that the modifiers *competent* and *independent* were terms absent in all organic laws previous to the 1987 Constitution. Their addition in the fundamental law of 1987 was meant to stress the primacy accorded to the voluntariness of the choice, under the uniquely stressful conditions of a custodial investigation, by according the accused, deprived of normal conditions guaranteeing individual autonomy, an informed judgment based on the choices given to him by a competent and independent lawyer.[74]

And, the counsel who is to help a suspect in the execution of an extra judicial confession must be one whose assistance is not limited to the written waiver only.[75] The Court has considered wanting assistance extended by a counsel who would "come and go" and who was not within hearing distance of the suspect but merely "within the premises."[76] In another case, the counsel was also considered wanting because he was working on another case while ostensibly assisting the suspect. "A counsel who could just hear the investigation going on while working on another case hardly satisfies the minimum

[73] *People v. Lucero,* 244 SCRA 425 (1995), at 434.

[74] *People v. Deniega,* 251 SCRA 626 (1995), at 637. In another case, the Court said: modifier *competent and independent* in the 1987 Constitution is not an empty rhetoric. It stresses the need to accord the accused, under the uniquely stressful conditions of a custodial investigation, an informed judgment on the choices explained to him by a diligent and capable lawyer." *(People v. Suela,* 373 SCRA 163 [2002], at 182)

[75] *People v. Silongan,* - SCRA - (G.R. No. 137182, 24 April 2003), at 11-12 in the Advance Sheet.

[76] *People v. Bacamante,* 248 SCRA 47 (1995).

requirements of effecting assistance of counsel. "77 He can not just go through the motions of assisting in form but not in substance. He must be one devoted to his client's cause in a manner that really protects him and not one who throws in only a lackadaisical effort. His assistance must be continuous, from beginning to end.7[8] He must be present throughout the interrogation and not simply be engaged at the time of the signing by the suspects to validate retroactively what previously has been taken illegally. "Admissions obtained during custodial investigation without the benefit of counsel although reduced into writing and later signed in the presence of counsel are still flawed under the Constitution. "79

As a corollary to having a lawyer who is *competent,* he must also be one who is *effective* and *vigilant.* He must be one devoted to his client's cause in a manner that really protects him and not one who throws in only a lackadaisical effort. His assistance must be continuous, from beginning to end.[80] In *People v. Bacamante,* the Court explained:

> The term *"effective and vigilant counsel"* necessarily and logically requires that the lawyer be present and able to advise and assist his client from the time the confessant answers the first question asked by the investigating officer until the signing of the extrajudicial confession. Moreover, the lawyer should ascertain that the confession is made voluntarily and that the person under investigation fully understands the nature and consequence of his extrajudicial confession in relation to his constitutional rights. A contrary rule would undoubtedly be antagonistic to the constitutional rights to remain silent, to counsel and to be presumed innocent.[81]

Nevertheless, the Court has qualified that "[t] o be an effective counsel, a lawyer need not challenge all the ques~ions being propounded to his client. The presence of a lawyer is not intended to stop an accused from saying anything which might incriminate him but, rather, it was

77 *People v. Patungan,* 354 SCRA, at 429.

78 *People v. Rodriguez,* 341 SCRA 645 (2000).

79 334 SCRA 673 (2000), at 688.

80 *People v. Rodriguez,* 341 SCRA 645 (2000).

81 248 SCRA 47 (1995), at 56.

adopted in our Const~tution to preclude the slightest coercion as would lead the accused to admit something false. The counsel, however, should never prevent an accused from freely and voluntarily telling the truth. "[82] But then again, even if counsel may not necessarily have to dissuade the person under investigation from confessing, his bounden duty is to properly and fully advise his client on the nature and consequences of an extrajudicial confession. And he certainly cannot use as an excuse in his failure to properly advise the suspect to keep quiet that the same would be tantamount to "obstruction in the investigation." The Court held that such act on the part of counsel showed !that he was incapable or unwilling to advise appellants that remaining silent was a right they could freely exercise without fear of any untoward consequence. As counsel, he could have stopped his clients from answering the propounded questions and advised them of their right to remain silent, if they preferred to do so. That the process of investigation could have been 'obstructed' should not have concerned him because his duty was to his clients and not to the prosecution or to the police investigators. "[83]

Also, the counsel whose assistance would be needed in order that the right to counsel may be waived must be one who is a real lawyer, a member of the bar. [81] In *People v. Ordoiio,* since there were no practicing lawyers in some remote rural area, the statements of the accused were taken in the presence of the parish priest, municipal mayor, chief of police, other police officers, plus the wife and mother of one of the accused. It was only two days later when they were brought to a lawyer. The Court said: "To the credit of the police, they requested the presence of the Parish Priest and the Municipal Mayor of Santol as well as the relatives of the accused to obviate the possibility of coercion, and to witness the voluntary execution by the accused of their statements before the police. Nonetheless, this did not cure in any way the absence of a lawyer during the investigation."[85] There simply is no substitute for a lawyer, at least, in such a situation.

82 People v. Suarez, 267 SCRA 119 (1997), at 137. *83*

People v. Suela, 373 SCRA 163 (2002), at 185.

84 See *People v. Basay,* 219 SCRA404 (1993), at 419, citing *People v. Decierdo,* 149 SCRA 496 (1987). In *Basay,* the person who assisted the suspect acted as "friend-counsel." He obtained a law degree but, unfortunately, failed in three Bar Examinations (At 420-421).

[85]334 SCRA 673 (2000), at 686-687.

The Constitution likewise requires that in order for counsel to really be of service to the needs of the suspect for which counsel is guaranteed, the lawyer must be one whose interests do not run contrary to his representation of the suspect. He must be independent in that he will not be serving two masters at the same time, so to speak. "The phrase 'competent and independent' and 'preferably of his own choice' were explicit details which were added upon the persistence of human rights lawyers in the 1986 Constitutional Commission who pointed out cases where, during the martial law period, the lawyers made available to the detainee would be one appointed by the military and therefore beholden to the military."86 Along this line, the Court has considered the following lawyers as *not* independent counsel within the contemplation of the Constitution: municipal mayor,87 City Legal Officer or a Municipal Attorney,89 a police station commander,89 a lawyer applying for a job at the National Bureau of Investigation,90 or, an associate of the private prosecutor in the case in which the suspect is implicated.[91] The, Court has also cautioned against the appointment of lawyers who have practically been retained by the police for such purpose. - if they are regularly engaged by the police as counsel *de officio* for suspects who cannot avail of the services of counsel, their independence would itself become suspect.[92] The Court has likewise warned about the possibility of a symbiotic relationship between the

86 *People v, Barasina,* 229 SCRA 450 (1994), at 465, citing I Record of the Constitutional Commission 731-734 and 1 *Bernas,* The Constitution of the Republic of the Philippines, 1987 Firsted., at 347. See also *People v. Basay,* 219 SCRA404 (1993), at 419-420: "The adjectives *competent* and *independent,* which qualify the kind of counsel an accused is entitled to during investigation, were not found in the previous Constitution. Their incorporation in the 1987· Constitution was thus meant to stress the primacy of this right to counsel."

87 *People v. Taliman,* 342 SCRA 534 (2000).

88 *People v. Espanola,* 271 SCRA 689 (1997), and *People v. Culala,* 316 SCRA 582 (1999). 89 *People v. Obrero,* 332 SCRA 190 (2000).

90 *People v. Januario,* 267 SCRA 608 (1997).

91 *People-v. Agustin,* 240 SCRA 541 (1995).

92 *People v. Labtan,* 320 SCRA 140 (1999). It was also held in this case that a lawyer who notarizes the sworn statement of a suspect whom he assists seriously compromises his independenc~ because by so doing, he vouches for the regularity of the circumstances surrounding the taking of the sworn statement by the police.

police and the lawyers they make available to suspects.[93] An election registrar, however, was considered an independent counsel.[94]

What all the foregoing discussions disclose is the important role played by lawyers in protecting rights guaranteed by the Constitution, principally the right against self-incrimination - and, the solicitous regard the fundamental law has for the meaningful recognition of the rights of suspects. The lawyer is there in order to ensure that rights are protected and respected, though the suspect may still choose, provided done *voluntarily* and *freely,* to speak up. But the point is, the lawyer is there to advise a person, whether ignorant or not of his rights, of what those rights are and the consequences of waiving them, if he so decides. At least, he is first given sufficient basis for *informed* judgment, and not simply made to jump not knowing what awaits him.

THE MASS MEDIA AND CRIMINAL DUE PROCESS

There is no denying the important and vital role that the mass media play in society. However, it is also a truism that the interests of those in such a profession do not always or necessarily jibe with those who might be the object of their reports - suspects. Thus, there is always the possibility of conflict between values sought to be promoted by the press, especially the freedom of expression and of the right of the people to know, *vis-a-vis* the need to guarantee the right of suspects and accused persons to fair treatment and trial. Casebooks are replete with cases where this conflict are brought out and tried to be resolved, though not always with satisfactory results. Publicity could have a distorting effect on the trial such that judges may not see the case for what it really is but as distorted through the noise outside, or as bent and modified by the pens and lens of the mass media.[95]

93 "Lawyers engaged by the police, whatever testimonials are given as proof of their probity and supposed independence, are generally suspect, as in many areas, the relationship between lawyers, and law enforcement authorities can be symbiotic." *(People v. Deniega, 251* SCRA 626 (1995), at 638; See also, *People v. Taliman,* 342 SCRA 534 [2000], at 542.)

94 *People v. Montiero,* 246 SCRA 786 (1995).

95 "There can be no denying that the character of the crime may have an impact on the decisional process." (Justice Stevens, concurring in *Nix v. Williams,* 467 U.S. 431 (1984], at 451)

> There is certainly language in our opinions interpreting the First Amendment which points to the importance of !the press! in informing the general public about the administration of criminal justice. In *Cox Broadcasting Corp. v. Cohn,* 420 U.S. 469,491-492 (1975), for example, we said, "in a society in which each individual has but limited time and resources with which to observe at first hand the operations of his government, he relies necessarily upon the press to bring to him in convenient form the facts of those operations." See also Richmond *Newspapers; Inc. v. Virginia,* 448 U.S. 555, 572-573 (1980). No one could gainsay the truth of these observations or the importance of the First Amendment in protecting press freedom from abridgement by the government. But the Fourth Amendment [here, the constitutional protection of the rights of suspects] also protects a very important right, and, in the present case, it is in terms of that right that the media ride-alongs must be judged.[96]

Not so long ago, the Supreme Court dealt with the issue of undue publicity taken in relation to the rights of an accused to criminal due process, fair and impartial trials, and public prejudice. It said, among others:

> Admittedly, the press is a mighty catalyst in awakening public consciousness, and it has become an important instrument in the quest for truth. Recent history exemplifies media's invigorating presence, and its contribution to society is quite impressive. The Court, just recently, has taken judicial notice of the enormous effect of media in stirring public sentience during the impeachment trial, a partly judicial and partly political exercise, indeed the most-watched program in the boob-tubes during those times, that would soon culminate in EDSA II.
>
> *****
>
> The propriety of granting or denying the instant petition involve the weighing out of the constitutional guarantees of freedom of the press and the right to public information, on the one hand, and the fundamental rights of the accused, on

96 *Wilson v. Layne,* 526 U.S. '603 (1999), at 612-613.

the other hand, along with the constitutional power of a court to control its proceedings in ensuring a fair and impartial trial.

When these rights race against one another, jurisprudence tells us that the right of the accused must be preferred to win.

With the possibility of losing not only the precious liberty but also the very life of an accused, it behooves all to make absolutely certain that an accused receives a verdict solely on the basis of a just and dispassionate judgment, a verdict that would come only after the presentation of credible evidence testified to by unbiased witnesses unswayed by any kind of pressure, whether open or subtle, in proceedings that are devoid of histrionics that might detract from its basic aim to ferret veritable facts free from improper influence, and decreed by a judge with an unprejudiced mind, unbridled by running emotions or passions.

Due process guarantees the accused a presumption of innocence until the contrary is proved in a trial that is not lifted above its individual settings nor made an object of public's attention and where the conclusions reached are induced not by any outside force or influence but only by evidence and argument given in open court, where fitting dignity and calm ambiance is demanded.[97]

Or, as pointed out by the Court in another sensational case, "while the light of publicity may be a good disinfectant of unfairness, too much of its heat can bring to flame an accused's right to fair trial."[98]

While the foregoing pronouncements were in regard to publicity and possible prejudice to the rights of those who are already accused in courts of law, the same principles may also apply in regard to interviews of suspects conducted by media men and women within the confines of a police precinct or other equivalent circumstances, such as press conferences conducted by politicians where they display alleged suspects in sensational cases. It simply is the point that these kinds of activities may be as damaging and prejudicial to a suspect, a

97 *Re: Request Radio-IV Coverage of the Trial in the Sandiganbayan of the Plunder Cases Against the Former President Joseph E. Estrada,* 360 SCRA 248 (2001), at 259-260.

98 *Webb v. De Leon,* 247 SCRA 652 (1995), at 692.

potential accused, as the acts of the police which gave rise to the *Miranda* warnings. Then again, it must also be not forgotten that the right of a suspect against incriminating himself is also a dictate of due process.[99] In the same manner that the *Miranda* rights were not meant to completely prohibit the police from making inquiries from suspects, a similar and analogous prophylactic protection may also be adopted in regard to media interviews as a manner of preserving and giving effect to the privilege, even if considered in the context of private persons and not the police.

Further, it is also significant to remember that normally the media interviews involve crimes which are otherwise sensational due to their brutality, ruthlessness or heinous nature and in regard to which the pressure to find the culprits or to satisfy the public's desire for results may somehow affect the way by which the media subject the suspect to questioning. The questions asked are likely to be ones which would lead to a hoped-for solution, which invariably means an incriminating admission by the suspect. And, once (1il interview has cast a suspect in an unfavorable light because of answers he gave, it would hardly be easy for him to get out from the corner he painted himself into, or the hole he dug himself in. How can he still deny authorship of a crime if he is already deemed to have confessed to the press people?

The admissibility as evidence of media interviews and confessions is basically predicated on the reasoning that such incriminating statements are *spontaneous* or, at least *voluntarily* given, and, on the general proposition that the proscriptions in the Bill of Rights are meant to restrain the hands of the government authorities but do not concern themselves with the conduct of private persons.[100]

Given the circumstances under which such media interviews are conducted, however, it is seriously doubted if those reasons can stand. For one, the matter of *spontaneity* and *voluntariness* may be more a fiction than reality, as shown by an analysis of the cases. For another, the distinction between public authorities and private persons may

99 See *Dickerson v. United States,* 530 U.S. 428 (2000), at 433-434.

IOU See *People V. Marti,* 193 SCRA 57 (1991), and, *People v. Andan,* 269 SCRA 95 (1997).

not really be that substantial when it is seen that the interview actually happens in the confines of the police precinct or similar areas where the authorities have the control of who may visit and interview, as well as retain custody of the suspects thereafter. In such a situation, the fact that the person asking the questions is a private individual is of less substantial concern than the fact that the act is done within the police precinct, or that he is laboring under circumstances that indicate that the suspect is under investigation and is not free to move about or simply walk away. Moreover, should it be tolerable to allow persons who are already in *custody or government control* to have their constitutionally guarantee rights squandered or lost simply because the acts by which the same is effected are done by non-governmental individuals? Would a hotel be allowed, for instance, to set itself free from accountability to its guests for the losses of the latter in the premises simply on the excuse that the person responsible is not its employee? Paraphrasing *Palmore v. Sidote,*[101] the Constitution may not control such private interviews which tend to incriminate suspects, but neither may it tolerate them. Private 'acts may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect. Public officials sworn to uphold the Constitution may not avoid a constitutional duty by bowing to the hypothetical effects of private acts that they assume to be both widely and deeply accepted.

It should not also be lost sight of that when a person is arrested or *invited* by the police in regard to an on-going criminal investigation, he is practically transported to an entirely different world of strangers. He is most likely to be in need of one to whom he can relate, from whom he can get solace, or in whom he may unburden himself. Anybody who might appear to him as sympathetic to his needs would be most welcome, no matter that their interest would not be necessarily identical or even in the same side as his. In such a situation, the suspect

[101] *Palmore v. Sidoti,* 466 U.S. 429 (1984), at 433. The Court here was talking about private racial prejudices, In the language of the Court: "The Constitution cannot control such prejudices, but neither can it tolerate them. Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect. 'Public officials sworn to uphold the Constitution may not avoid a constitutional duty by bowing to the hypothetical effects of private racial prejudice that they assume to be both widely and deeply held:"

is very likely to fall prey to the blandishments or offers of assistance from anybody who might present an opportunity by which he might think he could be helped. When media men thus approach a suspect and the latter opens his mouth, it could not simply be assumed that what he does is one that is *freely, spontaneously* and *voluntarily* done in the context of the privilege against self- incrimination. For all that the media might be doing is to lead the clueless individual to start digging his own grave.

The present rule presumes and assumes that just because it is not the police who are asking the questions, then the suspect is not really coerced or compelled to say anything. He is free not to provide any answers and simply to keep quiet. But this may assume more than is necessarily true, more of fiction than reality. A person who does not know his rights is not likely to know any better when he is before media people than when before policemen. Whether he is before uniformed authorities armed with weapons or before media men and women equipped with notepads, microphones and cameras, he is likely to feel being in a strange surrounding where he is at a loss as to how to properly act or respond to questions asked. The fear noted in Miranda that silence on the part of the suspect is unacceptable to police authorities asking questions could as well be true also with respect to questions asked by those with pens, mikes and cameras. [102]

A survey of the cases in which the media interview was considered might be instructive in this regard. In the very case[103] that called attention to the "inherent danger in the use of television as a medium for admitting one's guilt," the statements taped and aired in a news program raise some questions as to how it was done. According to the version of the prosecution, after the accused was arrested in Antipolo and while the suspect and arresting team were on their way to the airport in order to go back to Palawan (where the crime was

102 "It is not just the subnormal or woefully ignorant who succumb to an interrogator's imprecations, whether implied or expressly stated, that the interrogation will continue until a confession is obtained or that silence in the face of accusation is itself damning, and will bode ill when presented to a jury." *(Miranda,* 384 U.S. , at 468)

103 *People v. Endino,* 352 SCRA 307 (2001)

committed), they stopped at the ABS-CBN television station where the accused was interviewed by reporters. Video footages of the interview were taken showing the accused *admitting his guilt* while pointing to his co-accused-nephew, Endino, as the gunman. He also provided other details of their flight from the crime scene and as to how he got to Manila, and eventually, Antipolo. His interview was shown over the ABS-CBN evening news program *TV Patrol* and was subsequently offered as part of the evidence against him during trial. The accused disowned the 1V confession, claiming that it was induced by the threats of the arresting police officers. The trial court disregarded his protestations and admitted the same on the strength of the testimony of the police officers that no force or compulsion was exerted on the accused and upon a finding that his confession was made before a group of newsmen that could have dissipated any semblance of hostility towards him. The court gave credence to the arresting officers' assertion that it was even accused who pleaded with them that he be allowed to air his appeal on national television for his nephew to surrender. The Supreme Court sustained the trial court's admission of the videotaped confession, observing:

> The interview was recorded on video and it showed accused-appellant unburdening his guilt willingly, openly and publicly in the presence of newsmen. Such confession does not form part of custodial investigation as it was not given to police officers but to media men in an attempt to elicit sympathy and forgiveness from the public. Besides, *if he had indeed been forced into confessing, he could have easily sought succor from the newsmen who, in all likelihood, would have been sympathetic with him ...*
>
> Furthermore, accused, in his TV interview (Exh. H), freely admitted that he had stabbed Dennis Aquino, and that Edward Endino had shot him (Aquino). There is no showing that the interview of accused was coerced or against his will. Hence, there is basis to accept the truth of his statements therein.[104]

Then, the Court added the caveat regarding the dangers inherent in media interviews. [105]

[104] *Id.,* at 313; Emphasis supplied.

[105] *Id.,* at 313-314.

It is quite strange that the policemen and the accused would drop by a television station, ABS CBN, on their way to the airport. It might not be amiss to point out that said station is not really along the way from Antipolo to the airport. At the same time, why that particular station when that of GMA is also nearby? One might also wonder why a person who has just been arrested would like to go on national television and call on his co-accused to surrender. While he subsequently disowned his 'IV appearance since the same was allegedly at the behest of the policemen, the Court did not believe him. But is it something that could just be easily discounted? The Court says that if he was really coerced, "he could have easily sought succor from the newsmen who, in all likelihood, would have been sympathetic with him." Under the circumstances that he was then under, was it reasonable to expect such a course of action?

In *People v. Taboga,* [106] the results of the media interview was also utilized productively by the prosecution, whose case was saved by such evidence because the Supreme Court disregarded the uncounselled confession made to a policeman. Significantly, in his appeal the accused assigned as error the admission of his media confession, alleging that the radio reporter was acting as an agent for the prosecution. The Court brushed aside this contention, holding:

> There is nothing in the record to show that the radio announcer colluded with the police authorities to elicit inculpatory evidence against accused-appellant. Neither is there anything on record which even remotely suggests that the radio announcer was instructed by the police to extract information from him on the details of the crimes. Indeed, the reporter even asked permission from the officer-in-charge to interview accused-appellant. Nor was the information obtained under duress. In fact, accused-appellant was very much aware of what was going on. He was informed at the outset by the radio announcer that he was a reporter who will be interviewing him to get his side of the incident. * * * [107]

[106] 376 SCRA 500 (2002)

[107] *Taboga,* at 510.

The Court then proceeded to reproduce some of the questions asked by the radio announcer. The media practitioner introduced himself as a reporter from a particular radio station and he also allegedly observed that the answers given to him were "voluntary." The Court also noted that during cross-examination, defense counsel. failed to extract an admission from the reporter that the accused was under compulsion from the police to face said radioman. In sustaining the trial court's admission of the taped interview, the Court said:

> The court a quo did not err in admitting in evidence accused-appellantfs taped confession. Such confession did not form part of custodial investigation. It was not given to police officers but to a media man in an arparent attempt to elicit sympathy. The record even discloses that accused-appellant admitted to the Barangay Captain that he clubbed and stabbed the victim even before the police started investigating him at the police station. Besides, if he had indeed been forced into confessing, he could have easily asked help from the newsman ... 108

In regard to the issue of *voluntariness* in giving the confession, this is a legal question or conclusion that is for the courts to determine and not for a layman to judge by himself. And yet again, of course, there is the question as to whether the confession was voluntarily given in view of the absence of any prior consultation with a lawyer. Moreover, the interview was given after he had already admitted the same to a policeman, so what else is new to someone who might not have known from the very start that there is such a constitutional right to keep onefs mouth shut?

In *People v. Bernardo,* 109 the Court also considered admissible a statement made by the accused to a TV reporter. The Court characterized the statement as a voluntary accommodation to media questioning, thus admissible, especially so because the statement tried to justify his ungratefulness to his employer-victim. The Court also said that the fact that the tape was edited with commentaries does not

108 *Id.,* at 513-514.

[109] 220 SCRA 31 (1993), at 40.

erase the reality that such declaration came out freely from Bemardois own lips. But this might be overly simplifying the facts and circumstances. What happened before those incriminating words were given, and what were the preliminary questions asked? The answers to these questions might also go a long way in determining whether the answers given were really voluntarily given, or were the product of some coercion or pressure which tended to overpower the will to resist.

The incriminating evidence for the prosecution in *People v. Domantay*[110] was principally the media confession made by the accused. The extrajudicial confession given to a policeman was stricken out since there was failure to comply with the legal requirements. The Court was not persuaded by the claim of the accused that the atmosphere in jail when he was interviewed was "tense and intimidating" and was similar to that which prevails in a custodial investigation.

> Accused-appellant was interviewed while he was inside his cell. The interviewer stayed outside the cell and the only person beside him was an uncle of the victim. Accused-appellant *could have refused to be interviewed, but instead, he agreed.* He answered questions freely and spontaneously. According to [radio reporter] Celso Manuel, he said he was willing to accept the consequences of his act.
>
> Celso Manuel admitted that there were indeed some police officers around because about two to three meters from the jail were the police station and the radio room. We do not think the presence of the police officers exerted any undue pressure or influence on accused-appellant and coerced him into giving his confession.
>
> Accused-appellant contends that "it is ... not altogether improbable for the police investigators to ask the police reporter (Manuel) to try to elicit some incriminating information from the accused." This is pure conjecture~ Although he testified that he had interviewed inmates before, there is no evidence to show that Celso was a police beat reporter. Even assuming that he

[110] 307 SCRA 1 (1999)

was, it has not been shown that, in conducting the interview in question, his purpose was to elicit incriminating information from accused-appellant. To the contrary, the media are known to take an opposite stance against the government by exposing official wrongdoings.

Indeed, *there is no showing that the radio reporter was acting for the police or that the interview was conducted under circumstances where it is apparent that accused-appellant confessed to the killing out of fear.* As already stated, the interview was conducted on October 23, 1996, 6 days after accused-appellant had already confessed to the killing to the police.[111]

The observations made in regard to the earlier cases may also be made with respect to Domantay, especially in regard to the issue of voluntariness and lack of coercion. What is additionally notable here, however, is the fact that the confession to the radio man was made six days *after* he had already made a similar confession to the police. So to one who might not really know the law or his rights, or even if he knew but his views were already clouded by six days of detention, another confession would hardly make any difference. And, if it is any consolation, the incriminating statements made to the police were rendered inadmissible by the fact that they were uncounselled confession. The media confession therefore practically validated what was an illegal and unconstitutional act of the police in the first instance.

In regard to the questions asked by the radio reporter, they are also quite revealing. Portions of the interview would indicate that the reporter was directly asking for *incriminating* answers. Consider the following question and answer:

"Q What are those matters which you brought out in that interview with the accused Bernardino Domantay alias 'Junior Otot'?

"A I asked him what was his purpose for human interest's sake as a reporter, *why did he commit that alleged crime. And* I *asked also if he committed the crime and he answered 'yes.'* That's it."[112]

111 *Domantay,* at 17-18; Emphasis supplied.

112 *Id.,* at 11; Emphasis supplied.

In *People v. Mantung,* [113] the Court also admitted the extrajudicial confession given under the following circumstances:

> After his arrest, *accused-appellant was immediately brought to Parafiaque where he was presented to the media at a press conference called by Mayor Joey Marquez. At the said conference, when Mayor Marquez asked Mantung if he was the -one who killed the two pawnshop employees,* accused-appellant answered in the affirmative and said that he killed them because the victims had induced him to eat pork. *News reports about Mantung's admission to the killings appeared in the Philippine Daily Inquirer and the Manila Bulletin the day following. the press conference. Clippings of these reports and pictures of the press conference were presented as evidence by the prosecution during trial.* [114]

The Court ruled that the" accused-appellant's admission during the press conference called by Mayor Marquez that he killed the victims because the latter made him eat pork is likewise competent evidence that lends support to his conviction." [115] Then in answer to the contention of the accused assailing the admissibility of his extrajudicial statements as evidence since the same was was made without the assistance of counsel, the Court said, after referring to Andan:

> Never was it raised during the trial that Mantung's admission during the press conference was coerced or made under duress. As the records show, accused-appellant voluntarily made the statements in response to Mayor Marquez' question as to whether he killed the pawnshop employees. Mantung answered in the affirmative and even proceeded to explain that he killed the victims because they made him eat pork. These circumstances hardly indicate that Mantung felt compelled to own up to the crime. Besides, he could have chosen to remain silent or to do deny altogether any participation in the robbery and killings but he did not; thus, accused-appellant sealed his own fate ... [116]

113 310 SCRA 819 (1999).

114 *Mantung,* at 827-828.

115 *[d.,* at 831-832.

116 [d., 832-833.

Insofar as the circumstances under which the media disclosures were made, one may ask - are these not precisely the kind of coercive atmosphere that the Miranda rights are supposed to guard against? Was it even proper for the local executive to .go before the media and ask point blank an incriminating question? Take note that in Andan the Court qualified the admissibility of the confession made to the mayor in this manner - "It is true that a municipal mayor has 'operational supervision and control' over the local police and may arguably be deemed a law enforcement officer for purposes of applying Section 12 (1) and (3) of Article III of the Constitution. However, appellant's confession to the mayor was not made in response to any interrogation by the latter. In fact, the mayor did not question appellant at all. "[117]

When it comes to media interviews, Andan appears to be the defining case. Take note, however, that in' said case, the accused was practically the one insisting or begging to purge himself of whatever devil might have possessed him in' committing the crime. Thus, there was no need for the mayor to initiate the questioning. Indeed, the town official even had to call in the media to witness the confession of what might have been a deeply remorseful soul and seriously bothered mind.

> No police authority ordered appellant to talk to the mayor. It was appellant himself who spontaneously, freely and voluntarily sought the mayor for a private meeting. The mayor did not know that appellant was going to confess his guilt to him. When appellant talked with the mayor as a confidant and not as a law enforcement officer, his uncounselled confession to him did not violate his constitutional rights. Thus, it has been held that the constitutional procedures on custodial investigation do not apply to a spontaneous statement, not elicited through questioning by the authorities, but given in an ordinary manner whereby appellant orally admitted having committed the crime. What the Constitution bars is the compulsory disclosure of incriminating facts or confessions. The rights under Section 12 are guaranteed to preclude the slightest use of coercion by the state as would lead the accused to admit

[117] *People v, Andan,* 269 SCRA 95 (1997), at 109-110.

something false, not to prevent him from freely and voluntarily telling the truth. Hence we hold that appellant's confession to the mayor was correctly admitted by the trial court.

Appellant's confessions to the media were likewise properly admitted. The confessions were made in response to questions by news reporters, not by the police or any other investigating officer. We have held that statements spontaneously made by a suspect to news reporters on a televised interview are deemed voluntary and are admissible in evidence.

The records show that Alex Marcelino, a television reporter for "Eye to Eye" on Channel 7, interviewed appellant on February 27, 1994. The interview was recorded on video and showed that appellant made his confession willingly, openly and publicly in the presence of his wife, child and other relatives. Orlan Mauricio, a reporter for "Tell the People" on Channel 9 also interviewed appellant on February 25, 1994. He testified that:

> "Atty. Principe: You mentioned awhile ago that you were able to reach the place where the body of Marianne was found, where did you start your interview, in what particular place?
>
> Mr. Mauricio: *Actually, I started my news gathering and interview inside the police station of Baliuag and I identified myself to the accused as I have mentioned earlier, sir. At first, I asked him whether he was the one who raped and killed the victim and I also learned from him that the victim was his cousin.*
>
> Q *And what was the response of Pablito Andan?*
>
> A *His response was he* is *a cousin of the victim and that he was responsible for raping and killing the victim, sir. And then I asked him whether his admission was voluntary* or *that there was a threat, intimidation* or *violence that was committed on his person because I knew that there were five other suspects in this case and he said that he was admitting it voluntarily to the policemen. I asked him whether he was under the influence of drugs but he said no, and "nakainom lang," sir.* [118]

us *Id,* at 110-111.

* * * * *

Q Now, Mr. Mauricio, upon reaching the scene of the crime in Concepcion, Baliuag, Bulacan, what transpired?

A *I started my work as a reporter by trying to dig deeper on how the crime was committed by the accused, so we started inside the pigpen of that old house where I tried to accompany the accused and asked him to narrate to me and show me how he carried out the rape and killing of Marianne Guevarra, sir.*

Q *Did he voluntarily comply?*

A *Yes, sir, in fact, I have it on my videotape.* [119]

The Court then concluded:

Clearly, appellant's confessions to the news reporters were given free from any undue influence from the police authorities. The news reporters acted as news reporters when they interviewed appellant. They were not acting under the direction and control of the police. They were there to check appellant's confession to the mayor. They did not force appellant to grant them an interview and reenact the commission of the crime. In fact, they asked his permission before interviewing him. They interviewed him on separate days not once did appellant protest his innocence. Instead, he repeatedly confessed his guilt to them. He even supplied all the details in the commission of the crime, and consented to its reenactment. All his confessions to the news reporters were witnessed by his family and other relatives. There was no coercive atmosphere in the interview of appellant by the news reporters.

We rule that appellant's verbal confessions to the newsmen are not covered by Section 12 (1) and (3) of Article III of the Constitution. The Bill of Rights does not concern itself with the relation between a private individual and another individual. It governs the relationship between the individual and the State. The prohibitions therein are primarily addressed to the State and its agents. They confirm that certain rights of the individual exist without need of any governmental grant, rights that may not be taken away by government, rights that government has

[119] *Id,* at 112-113; Boldface added.

> the duty to protect. Governmental power is not unlimited and the Bill of Rights lays down these limitations to protect the individual against aggression and unwarranted interference by any department of government and its agencies.[120]

Be that as it may, still one could not help noticing that the questions asked by media men are those which tend to incriminate, or which bolster whatever incriminating admissions or confessions that might have already been given.

In *People v. Ordofio,*[121] even as the uncounselled incriminating statements made to the police were not admitted, the tape-recorded admissions given during an interview conducted by a radio announcer was admitted pursuant to existing jurisprudence. The following passage from the case, nevertheless, raises some questions:

> A *review of the contents of the tape* as included in [radio announcer] Roland Almoite's testimony reveals that the interview was conducted free from any influence or intimidation from police officers and was done willingly by the accused. Despite allegations to the contrary, no police authority ordered or forced the accused to talk to the radio announcer. While it may be expected that police officers were around since the interview was held in the police station, there was no showing that they were within hearing distance nor within the vicinity where the interview was being conducted. At most, the participation of the police authorities was only to allow Roland Almoite to conduct an interview. [122]

One may very well ask, given the tenor of the observation by the Court, if it would have been reasonable to expect the radio announcer to have also taped the policemen's conversations or instructions to the suspects, if any, prior to the interview proper. In addition, the interview with the radio announcer was done after the suspects had already previously confessed to the police. With such a background, would it be reasonable to assume that they knew they could have kept quiet before the police, or that they need not have repeated before a media man the substance of their earlier inadmissible confessions?

120 *Id.,* at 116-11 7.

121 334 SCRA 673 (2000)

122 *Id.,* at 691; Emphasis supplied.

People v. Vizcarra, [123] a case decided before Andan, simply took it for granted that answers given in a media interview were spontaneous and voluntary, as shown by the following passage in said case:

> In Exhibit H, Salamatin further attested to the fact that, immediately after he and his companions were taken into custody, i.e., before they had given their statements to the CIS officers, a televised interview was held in the office of Lt. Co!. Pelagio Perez, then chief of the CIS, and that in the presence of the latter and of several press reporters, he and his co-appellants spontaneously admitted that they were the ones who raped Erlinda Manzano. Thus, the written confessions they gave on July 18, 1969 merely reaffirmed their prior public admissions of culpability. [124]

In *People v. Samus,* the police tried to make use of the mediainterview exception but the Court saw through the-stratagem. The Court observed:

> SP03 Mario Bitos, on the other hand, stated in his Affidavit, also dated September 11, 1996, that during the conduct of the preliminary interview, appellant admitted "that the victim's pair of earrings made of gold was taken by him after the incident and * * * sold to Mr. Jhun Pontanos y Matriano, a resident of Bgy. Niugan, Cabuyao, Laguna, for the amount of five hundred (P500) pesos."
>
> During his testimony, however, Bitos denied that they had . conducted any investigation. Instead, he claimed that upon their arrival at Camp San Vicente Lim, an interview was conducted by the media in the presence of Major Pante, SP03 Bitos and SP03 Malabanan (the investigator). From this interview, the team was able to cull from appellant that he was responsible for the killings, and that he had stolen the earrings of Dedicacion Balisi and sold them to Pontanos for 500. This information was allegedly verified by Bitos upon the order of Major Pante.

123 115 SCRA 743 (1982). Incidentally, the crime was committed in 1969, before the effectivity of the 1973 Constitution, so there is no issue about the absence or presence of counsel during the custodial interrogation.

124 *Id.,* at 752.

> Thus, *the apprehending o.fficers co.ntend that the co.nstitutio.nal rights o.f appellant were no.t vio.lated, since they were no.t the o.nes who. had investigated ami elicited evidentiary matters from him.*
>
> We are not persuaded. The events narrated by the law enforcers in court are too good to be true. Their Sworn Statements given a day after the arrest contradict their testimonies and raise doubts on their credibility. [125]
>
> * * * * *
>
> In their affidavits, the police officers readily admitted that appellant was subjected to a preliminary interview. Yet, during their ~amination in open court, they tried to skirt this issue by stating that it was only the media that had questioned appellant, and that they were merely present during the interview.
>
> However, an examination of the testimonies of the three law enforcers show the folly of their *crude attempts t0 camouflage inadmissible evidence ...* [126]

J

The Court then concluded, noting the absence of any testimony from a media person to corroborate the alleged interview:

> In the absence of testimony from any of the media persons who allegedly interviewed appellant, the uncertainties and vagueness about how they questioned and led him to his confession lead us to believe that they themselves investigated appellant and elicited from him uncounselled admissions. This fact is clearly shown by the Affidavits they executed on September 11, 1997, as well as by their testimonies on cross-examination. [127]

Unfortunately for the accused, however, his inadmissible confession became part of the record and of the evidence for the prosecution because he failed to seasonably object.

> Nonetheless, even if the uncounselled admission per se may be inadmissible, under the present circumstances we cannot rule it out because of appellant's failure to make timely objections. "Indeed, the admission is inadmissible in evidence under Article III, Section 12(1) and (3) of the Constitution,

[125] 389 SCRA 93 (2002), at 103-104; Emphasis supplied.

[126] *Id.*, at 105; Emphasis supplied.

[127] *Id.*, at 108.

> because it was given under custodial investigation and was made wit9.0ut the assistance of counsel. However, the defense failed to object to its presentation during the trial, with the result that the defense is deemed to have waived objection to its admissibility. 11128

Whatever else may be said about the foregoing cases, and of the principle that they uphold, it is time for the Supreme Court itself to draw a bright line by which to dearly demarcate what is acceptable and admissible media interviews and what are not instead of leaving it to the trial courts to determine in each case where a particular case should be.[129] And that bright line should be made between *counselled* and *uncounselled* confessions or admissions. In this connection, just to underscore the atmosphere in the police precinct - which may not necessarily be abated by the temporary presence of media people the following passages from *People v. Deniega*[130] may be enlightening:

> In the oftentimes highly intimidating setting of a police investigation, the potential for suggestion is strong .
>
> ... In cases of crimes notable for their brutality and ruthlessness, the impulse to find the culprits at any cost occasionally tempts these agencies to take shortcuts and disregard constitutional and legal safeguards intended to bring about a reasonable assurance that only the guilty are punished. Our courts, in the process of establishing guilt beyond reasonable doubt, playa central role in bringing about this assurance by determining whether or not the evidence gathered by law enforcement agencies scrupulously meets exacting standards fixed by the Constitution. If the standards are not met, the Constitution provides the corresponding remedy by providing a strict exclusionary rule, i.e., that " [a]ny confession or admission obtained in violation of (Article III, Section 12(1)) ... hereof shall be inadmissible in evidence. "

* * * * *

128 *Ibid.*

129 Sometimes, one gets the morbid impression from reading the cases where the uncounselled media interviews are admitted that the suspects were so in need of the limelight that they would riot mind incriminating themselves for as long as they get to be seen on TV.

130 *People v. Deniega,* 251 SCRA 626 (1995)

> We stress, once again, that the exclusionary rules adopted by the framers of the 1987 Constitution were designed, hot to vindicate the constitutional rights of lawbreakers but to protect the rights of all citizens, especially the innocent, in the only conceivable way those rights could be effectively protected, by removing the incentive of law enforcement and other officials to obtain confessions by the easy route, either by psychological and physical torture, or by methods which fall short of the standard provided by the fundamental law. Allowing any profit gained through such methods furnishes, an incentive for law enforcement officials to engage in constitutionally proscribed methods of law enforcement, and renders nugatory the only effective constitutional protections available to citizens.[131]

One more thing, the interests of those in mass media may be more harmful or antithetical to that of the person sought to be interviewed. The interest of the former is to come up with something which is newsworthy, a "scoop" which may easily translate to one in which the one in the limelight is made to admit or confess. In any case, no matter the interest of the media practitioner, he or she is not likely to phrase the questions in such a manner that is sensitive to the rights of the suspect against self-incrimination. Some questions may be leading to a desired result, if not misleading and yet geared towards the same objective - securing a story that sells, which is more likely to be, or preferably, incriminating more than anything else. Also, stories that are not otherwise sensational would not really be that interesting to newsmen, and less so if there is no admission of guilt. But a sensational story with a suspect who has accepted responsibility before the mass media would then feed on itself to practically seal the fate of the accused. He would have become a convict even before he has seen the face of the judge.

RIGHTS EVOLVING

The proposition that the Court may come up with an expanded application of the *Miranda* doctrine is not something novel, or out of its powers. For one, the very notion of having counsel first before a

131 *Id.,* at 641-643.

suspect may waive his right to counsel originated from a judge-made law.[132] *Miranda* itself is an application of the judiciary's reading as to what the constitutional guarantee of the privilege against selfincrimination requires. For another, coming up with new rights based on an expansive reading of existing explicitly guaranteed rights is nothing new. Indeed, *Stonehill* is itself a good example of how the judiciary can change the rules. In *Webb v. De Leon,* the Supreme Court recognized the right of the respondents in a preliminary investigation to a discovery process even if such a right is not provided for in the Rules. The Court said:

> This failure to provide discovery procedure during preliminary investigation does not, however, negate its use by a person under investigation when indispensable to protect his constitutional tight to life, liberty and property. Preliminary investigation is not too early a stage to guard against any significant erosion of the constitutional right to due process of a potential accused ...
>
> Attuned to the times, our Rules have discarded the pure inquisitorial system of preliminary investigation. Instead, Rule 112 installed a quasi-judicial type of preliminary investigation conducted by one whose high duty is to be fair and impartial.. We uphold the legal basis of the right of petitioners to demand from their prosecutor, the NBI, the original copy of the April 28, 1995 sworn statement of Alfaro and the FBI Report during their preliminary investigation considering their exculpatory character, and hence, unquestionable materiality to the issue of their probable guilt. The right is rooted on the constitutional protection of due process which we rule to be operational even
> . during the preliminary investigation of potential accused ...
>
> In laying down this rule, the Court is not without enlightened precedents from other jurisdictions ...[133]

In *Ople v. Torres,*[134] the Court recognized the potent force of the right to privacy from a consideration of relevant and related provisions of the Bill of

132 *Morales v. Enrile,* 121 SCRA 538 (1983), and, *People v. Galit,* 135 SCRA 465 (1985).

133 247 SCRA 652 (1995), at 687-6&8.

134 293 SCRA 141 (1998)

Rights, in the same way that the United States Supreme Court had done so, locating it in the penumbra of specific guarantees in the Bill of Rights.[13s]

In the Philippines, there might even stronger basis for the Supreme Court to come up with an expansive reading of explicitly stated rights and freedoms as the Constitution itself practically obligates the Court to "[p]romulgate rules concerning the *protection and enforcement of constitutional rights,* pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and *legal assistance to the underprivileged.* "[136]

If under this provision, the inclusion in the Revised Rules of Criminal Procedure, the new time-bar rule under Section 8, Rule 117 was introduced, [137] would it too much to also provide for another rule in regard to admissibility uncounselled media confessions in order to protect and enforce constitutional rights?

In jurisprudence, there might be what is referred to as "slippery slope" adjudication, where once something is started or opened, one may never know where he will end up, especially in relation to the expansion of certain rights. [138] But one need not look at the matter so negatively. Recognition of the logical extensions of certain rights or safeguards could also be seen as an elevating exercise in the exaltation and vivification of important human rights and liberties. As succinctly put by Justice Cardozo, there is "[t]he tendency of a principle to expand itself to the limit of its logic." [139]

Further, adopting a expanded exclusionary rule in regard to uncounselled media confessions could also be seen as a reflection of the "evolving standards of decency." [140] Incidentally, in a case which

135 *E.g., Griswold v. Connecticut,* 381 U.S. 479 (1965), and, *Roe v. Wade,* 410 US 113 (1973).

136 Article VIII, Section 5 (5).

137 See *People v. Lacson,* - SCRA - (C.R. No. 149453, 1 April 2003)

138 See Justice Souter's concurring opinion in *Washington v. Glucksberg,* 521 U.S. 702 (1997), at 785

139 Benjamin Cardozo, *The Nature of the Judicial Process* 51 (1932).

140 See *Atkins v. Virginia,* 536 U.S. 304 (2002), a case involving the invalidation of a death penalty imposed on a mentally retarded convict.

upheld the forced sterilization of a feeble-minded woman, a case that must have been thought to be right at the time it was decided, the same subsequently was considered a mistake 75 years later, and for which the authorities had to issue a public apology.141 We need not wait for 75 or so years in order to see what might already be clearly seen today.

In any event, the underlying rationale for the *Miranda* rights appear to be present as well in uncounselled media confessions. There is need to protect the rights of those who might find themselves in unfamiliar surroundings and under coercive conditions which are likely to overpower the will to assert or exercise constitutional rights, specifically, the privilege against self-incrimination. Accordingly, in order for the voluntary and informed exercise or waiver of the privilege, the guiding or counselling hand of a lawyer is needed. The lawyer would serve not only to advise the suspect but at the same time provide other incidental benefits, such as providing a reason for the authorities not to engage in any improper conduct.

TOWARDS AN EXCLUSIONARY RULE FOR UNCOUNSELLED MEDIA CONFESSIONS

Given all the foregoing considerations, therefore, it would be more in accord with the spirit of the *Miranda* doctrine, as well as the Constitution and case law, that before a suspect is interviewed by media people, he should first be allowed to confer with counsel.[142] It is not to altogether prevent the suspect from speaking but to ensure that he knows what he is doing, consistent with the spirit that animated the

141 *Buck v. Bell,* 274 U.S. 200, 71 LEd 1000,47 S Ct 584 (1927). On the 75th anniversary of *Buck v. Bell* (2 May 2002), Virginia honored the memory of Carrie Buck with a historical marker and the Governor issued an apology for what happened to her and others. (See http:j jwww.healthsystem.virginia.edujin ternetjb io-ethicsjbuckbellmarker. cfm, *http://www.* he a I t h s y s tern. vir gin i a. e d u j i n tern e tj b i o - e t h i c s j h j r 299. P d f, h t t p: j j www.healthsystem.virginia.edujinternetjbio-ethicsjwarnerapology.PDF, and, http:// www.healthsystem.virginia.edujinternetjbio-ethicsjbuckcomments.dm; Accessed on 9 January 2004)

142 This may apply as well to interviews conducted by other persons or strangers who have no business in the police station asking questions from suspects, as exemplified in *People v. Maqueda,* 242 SCRA 565 (1995).

Miranda doctrine and the rationale for the privilege against self-incrimination.

One could hardly believe that a person who has been arrested or otherwise placed under investigation in the concept of a suspect is really that free to exercise, or even to recognize, his rights. That is precisely the reason why the Constitution gave him the assistance of counsel, and in that the Fundamental Law did not even trust him or the authorities enough on that. It required that any waiver of his right to counsel should be done with the assistance of a lawyer. It hardly makes any difference that the interrogation is conducted by the members of the press and not the police themselves. The interview is conducted within the area of control and responsibility of the police such that whatever may be taken from such questioning may still be substantially attributed as result of the custodial investigation under a police atmosphere. In such a situation, therefore, the rights provided for the Bill of Rights should be considered already operational, especially the right to prior consultation with counsel. Whether the police are nearby or somewhere else, the fact remains that the suspect is in custody or within the control of the police. Soon after the interview, he would only have the police to deal with. In any case, he might not really know how to react to questions asked by the media people. And to think that most of those who give interviews are those who may not really know any better about their rights to remain silent and to counsel. Further, it may also happen that what he is telling the press people are the same things that he already told to the police without the assistance of counsel, admissions or confessions that would be inadmissible in evidence. So why should the same statements become admissible just because they have been subsequently made to the press people?143 If the belated availment of the services of counsel cannot cure the initial infirmity of a confession, why should the results be any different by the simple expedient of coursing the rectification through the media?

]43 See *People v. Domantay,* 307 SCRA 1 (1999); *Peoplev. Ordono,* 334 SCRA 673 (2000); and, *People v. Taboga,* 376 SCRA 500 (2002).

The object in providing counsel before the interview is along the same rationale for doing so if the police were doing the interrogation - to make the person aware of his right not to incriminate himself, or, if he is so minded, to waive it in a manner that is voluntary and informed. If the incriminating statements in *Escobedo* and *Miranda* were excluded because they were taken by the police in a manner that ran roughshod on the suspects , privilege against self-incrimination, a similar exclusionary rule should also be adopted in a substantially similar situation, the only difference being that the questioning is done by people who are not part of the law enforcement arm of the government.

Applying the exclusionary rule to uncounselled media confessions would also prevent unnecessary wranglings about whether the so-called interview was a mere subterfuge adopted by the police or not, or whether the answers were freely, spontaneously and voluntarily given, and so on. By adopting a bright line, every one would know which is allowable and which is not. Thus, trial courts would be saved from the additional burden of carefully discerning that line which is a "difficult one to draw, particularly in cases such as this where it is essential to make sharp judgments in determining whether a confession was given under coercive physical or psychological atmosphere." [144] This would also do away with the "suspect" nature of such interviews.

In any event, it would also provide a clear guideline for the police or other authorities to follow or abide by without any unnecessary second-guessing or drawing of fine lines.

Finally, the word of caution given by the Court in *Endino,* as well as the clarification made in *Morada* about the import of *Andan* 's rule on admission of media confessions, and further taken in relation to what the Court saw as a police attempt to make use of the media interview exception in *Samus* should be strong arguments for the adoption and application of the exclusionary rule to uncounselled media confessions. The members of the press and of the mass media may conduct all the interviews that they want, provided the suspect

144 *People v. Endino,* 352 SCRA 307 (20m), at 314.

shall have previously conferred with counsel, in the same manner that he is so entitled if the police were to do the interrogation.

To paraphrase *Stonehill,* adopting the exclusionary rule in regard to uncounselled confessions of suspects made to the members of the press is the only practical and meaningful means of enforcing the constitutional privilege against self-incrimination and the constitutionally protected rights of suspects. [145] Declaring that a person has a privilege against self-incrimination, as well as the right to consult with counsel before being questioned by the police, and yet not affording him a 'similar protection when he is asked questions by members of the media in practically the same circumstances may very well be within the letter of the law, but is it within its spirit? Otherwise, it might just be similar to the "munificent bequest in a pauper's will." [146] Indeed, confining oneself to the letter of the law may deprive it of much of its vitality. It must never be forgotten that there are animating meanings beyond words. As Justice Holmes wrote, "Courts are apt to err by sticking too closely to the words of a law where those words import a policy that goes beyond them." [147]

The thrust of legal and jurisprudential developments has been to expand the applicability of the exclusionary rule in general, and to strengthen the rights of suspects, in particular. The 1987 Constitution has fortified the rights accorded a person under investigation while the Supreme Court has been at the forefront of advancing the same ever since it had overcome its initial resistance to the *Miranda* doctrine. This extension of the rule to uncounselled media confessions could be seen nothing more than a mere application of relevant and existing rules and concepts in light of circumstances. It is a matter of breathing life to rights persons not only see but more importantly, should *experience,* of rights not merely *heard* but essentially *felt,* and of law being part of their life and not some distant worl9 that belongs only

145 *Stonehill,* at 394.

146 In *De la Camara v. Enage,* 41 SCRA 1 (1971), at 9-10, the Court said, in reference to granting the right to bail but practically negating it by imposing an excessive one: "It does call to mind these words of Justice Jackson. 'a promise to the ear to be broken to the hope, a teasing illusion like a munificent bequest in a pauper's win: It is no wonder that the resulting frustration left resentment and bitterness in its wake." (The reference it to Justice Jackson's concurring opinion in *Edwards v. California,* 314 U.S. 160 (1941), at 186.)

147 Separate opinion in *Olmstead v. United States,* 277 U.S. 438 (1928), at 469

to those who care to study it. Constitutional rights and protections should be realized not through grandiloquent words but in simple deeds; not in lofty pronouncements but in down-to-earth applications; and, not to let presumptions from fictions override realistic appreciation of facts and circumstances. [148]

In fine, in the spirit of *Stonehill,* extending the exclusionary rule to uncounselled media confessions would be a practical means of enforcing the constitutional injunction against the admission of physically, emotionally or psychologically coerced confessions. [149] And, lest it be misunderstood, recognizing and enforcing the rights of suspects is not to be equated with providing sanctuary for criminals - it is simply protecting the rights of everyone. [150]

148 In *Republic v. Cocofed,* 372 SCRA462 (2001), at 474, the Court spoke of the commonsense principle that legal fiction must yield to truth. This is an instance where that principle may find application.

149 "[E]vidence derived from an illegal search is placed beyond the Court's consideration, as a practical means to enforce the constitutional injunction and to discourage violations of basic civil rights under the guise oflegitimate law enforcement." *(People v. Sevilla,* 339 SCRA 625 (2000), at 635-636)

150 Justice Fred Ruiz Castro, later ChiefJustice, ended his dissenting opinion in *Magtoto v, Manguera,* 63 SCRA 4 (1975), at 27, with these words: "Perhaps, my brethren may not begrudge this paraphrase ofJustice William Douglas as a conclusion to this dissent: the rights of none are safe unless the rights of all are protected; even if we should sense no danger to our own rights because we belong to a group that is informed, important and respected, we must always recognize that any code of fair play is also a code for the less fortunate." This was taken from *A Living Bill of Rights* (1961), at 64, which Justice Castro earlier quoted in his separate opinion in *Chavez v. Court of Appeals,* 24 SCRA 663 (1968), at 692: "The liberties of any person are the liberties of all of us" and "In short, the liberties of none are safe unless the liberties of all are protected. But even if we should sense no danger to our own liberties, even if we feel secure because we belong to a group that is important and respected we must recognize that our Bill of Rights is a code of fair play for the less fortunate that we in all honor and good conscience must observe."