

SATURNINA GALMAN AND REYNALDO GALMAN, PETITIONERS, VS. THE HONORABLE PRESIDING JUSTICE MANUEL PAMARAN AND ASSOCIATE JUSTICES AUGUSTO AMORES AND BIENVENIDO VERA CRUZ OF THE SANDI...*G.R. Nos. 71208-09. August 30, 1985*

Ponente: CUEVAS, J.

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On August 21, 1983, a crime unparalleled in repercussions and ramifications was committed inside the premises of the Manila International Airport (MIA) in Pasay City. Former Senator Benigno S. Aquino, Jr., an opposition stalwart who was returning to the country after a long sojourn abroad, was gunned down to death. The assassination rippled shock-waves throughout the en-tire country which reverberated beyond the territorial confines of this Republic. The after-shocks stunned the nation even more as this ramified to all aspects of Philippine political, economic and social life.

To determine the facts and circumstances surrounding the killing and to allow a free, unlimited and exhaustive investigation of all aspects of the tragedy,[1] P.D. 1886 was promulgated creating an Fact Finding Board which later became more popularly known as the Agrava Board.[2] Pursuant to the powers vested in it by P.D. 1886, the Board conducted public hearings wherein various witnesses appeared and testified and/or produced documentary and other evidences either in obedience to a subpoena or in response to an invitation issued by the Board. Among the witnesses who appeared, testified and produced evidence before the Board were the herein private respondents General Fabian C. Ver, Major General Prospero Olivas,[3] Sgt. Pablo Martinez, Sgt. Tomas Fernandez, Sgt. Leonardo Mojica, Sgt. Pepito Torio, Sgt. Prospero Bona and AIC Aniceto Acupido.[4]

Upon termination of the investigation, two (2) reports were submitted to His Excellency, President Ferdinand E. Marcos. One, by its Chairman, the Hon. Justice Corazon Juliano Agrava; and another one, jointly authored by the other members of the Board — namely: Hon. Luciano Salazar, Hon. Amado Dizon, Hon. Dante Santos and Hon. Ernesto Herrera. The reports were thereafter referred and turned over to the TANODBAYAN for appropriate action. After conducting the necessary preliminary investigation, the TANODBAYAN[5] filed with the SANDIGAN BAYAN two (2) Informations for MURDER — one for the kill-ing of Sen. Benigno C. Aquino which was docketed as Criminal Case No. 10010 and another, Criminal Case No. 10011, for the killing of Rolando Galman, who was found dead on the airport tarmac not far from the prostrate body of Sen. Aquino on that same fateful day. In both criminal cases, private respondents were charged as accessories, along with several principals, and one accomplice.

Upon arraignment, all the accuseds, including the herein private respondents pleaded NOT GUILTY.

In the course of the joint trial of the two (2) aforementioned cases, the prosecution represented by the Office of the petitioner TANODBAYAN, marked and thereafter offered as part of its evidence, the individual testimonies of private respondents before the Agrava Board.[6] Private respondents, through their respective counsel objected

to the admission of said exhibits. Private respondent Gen. Ver filed a formal "Motion to Exclude Testimonies of Gen. Fabian C. Ver before the Fact Finding Board as Evidence against him in the above-entitled cases"[7] contending that its admission will be in derogation of his constitutional right against self-incrimination and violative of the immunity granted by P.D. 1886. He prayed that his aforesaid testimony be rejected as evidence for the prosecution. Major Gen. Olivas and the rest of the other private respondents likewise filed separate motions to exclude their respective individual testimonies invoking the same ground.[8] Petitioner TANODBAYAN opposed said motions contending that the immunity relied upon by the private respondents in support of their motions to exclude their respective testimonies, was not available to them because of their failure to invoke their right against self-incrimination before the Fact Finding Board.[9] Respondent SANDIGANBAYAN ordered the TANODBAYAN and the private respondents to submit their respective memoranda on the issue, after which said motions will be considered submitted for resolution.[10]

On May 30, 1985, petitioner having no further witnesses to present and having been required to make its offer of evidence in writing, respondent SANDIGANBAYAN, without the pending motions for exclusion being resolved, issued a Resolution directing that, of the parties, the pending motions for exclusion and the opposition thereto, together with the memorandum in support thereof, as well as the legal issues and arguments raised therein are to be considered jointly in the Court's Resolution on the prosecution's formal offer of exhibits and other documentary evidences.[11] On June 3, 1985, the prosecution made a written "Formal Offer of Evidence" which includes, among others, the testimonies of private respondents and other evidences produced by them before the Board, all of which have been previously marked in the course of the trial.[12]

All the private respondents objected to the pro-secution's formal offer of evidence on the same ground relied upon by them in their respective motion for exclusion.

On June 13, 1985, respondent SANDIGANBAYAN issued a Resolution, now assailed in these two (2) petitions, admitting all the evidences offered by the prosecution except the testimonies and/or other evidence produced by the private respondents in view of the immunity granted by P.D. 1886.[13]

Petitioners' motion for the reconsideration of the said Resolution having been DENIED, they now come before Us by way of Certiorari[14] praying for the amendment and/or setting aside of the challenged Resolution on the ground that it was issued without jurisdiction and/or with grave abuse of discretion amounting to lack of jurisdiction. Private prosecutor below, as counsel for the mother of deceased Rolando Galman, also filed a separate petition for Certiorari[15] on the same ground. Having arisen from the same factual beginnings and raising practically identical issues, the two (2) petitions were consolidated and will therefore be jointly dealt with and resolved in this Decision.

The crux of the instant controversy is the admissibility in evidence of the testimonies given by the eight (8) private respondents who did not invoke their rights against self-incrimination before the Agrava Board.

It is the submission of the prosecution, now represented by the petitioner TANODBAYAN, that said testimonies are admissible against the private respondents, respectively, because of the latter's failure to invoke before the Agrava Board the immunity granted by P.D. 1886. Since private respondents did not invoke said privilege, the immunity did not attach. Petitioners went further by contending that such failure to claim said constitutional privilege amounts to a waiver there-of.[16] The private respondents, on the other hand, claim that notwithstanding failure to set up the privilege against self-incrimination before the Agrava Board, said evidences cannot be used against them as mandated by Section 5 of the said P.D. 1886. They contend that without the immunity provided for by the second clause of Section 5, P.D. 1886, the legal compulsion imposed by the first clause of the same Section would suffer from constitutional infirmity for being violative of the witness' right

against self-incrimination.[17] Thus, the protagonists are locked in horns on the effect and legal significance of failure to set up the privilege against self-incrimination.

The question presented before Us is a novel one. Heretofore, this court has not been previously called upon to rule on issues involving immunity statutes. The relative novelty of the question coupled with the extraordinary circumstance that had precipitated the same did nothing to ease the burden of laying down the criteria upon which this Court will henceforth build future jurisprudence on a heretofore unexplored area of judicial inquiry. In carrying out this monumental task, however, We shall be guided, as always, by the constitution and existing laws.

The Agrava Board,[18] came into existence in response to a popular public clamor that an impartial and independent body, instead of any ordinary police agency, be charged with the task of conducting the investigation. The then early distortions and exaggerations, both in foreign and local media, relative to the probable motive behind the assassination and the person or persons responsible for or involved in the assassination hastened its creation and heavily contributed to its early formation.[19]

Although referred to and designated as a mere Fact Finding Board, the Board is in truth and in fact, and to all legal intents and purposes, an entity charged, not only with the function of determining the facts and circumstances surrounding the killing, but more importantly, the determination of the person or persons criminally responsible therefor so that they may be brought before the bar of justice. For indeed, what good will it be to the entire nation and the more than 50 million Filipinos to know the facts and circumstances of the killing if the culprit or culprits will nevertheless not be dealt with criminally? This purpose is implicit from Section 12 of the said Presidential Decree, the pertinent portion of which provides —

"SECTION 12. The findings of the Board shall be made public. Should the findings warrant the prosecution of any person, the Board may initiate the filing of proper complaint with the appropriate government agency. x x x (Underscoring supplied)

The investigation therefor is also geared, as any other similar investigation of its sort, to the ascertainment and/or determination of the culprit or culprits, their consequent prosecution and ultimately, their conviction. And as safeguard, the P.D. guarantees "any person called to testify before the Board the right to counsel at any stage of the proceedings." [20] Considering the foregoing environmental settings, it cannot be denied that in the course of receiving evidence, persons summoned to testify will include not merely plain witnesses but also those suspected as authors and co-participants in the tragic killing. And when suspects are summoned and called to testify and/or produce evidence, the situation is one where the person testifying or producing evidence is undergoing investigation for the commission of an offense and not merely in order to shed light on the facts and surrounding circumstances of the assassination, but more importantly, to determine the character and extent of his participation therein.

Among this class of witnesses were the herein private respondents, suspects in the said assassination, all of whom except Generals Ver and Olivas, were detained (under technical arrest) at the time they were summoned and gave their testimonies before the Agrava Board. This notwithstanding, Presidential Decree No. 1886 denied them the right to remain silent. They were compelled to testify or be witnesses against themselves. Section 5 of P.D. 1886 leave them no choice. They have to take the witness stand, testify or produce evidence, under pain of contempt if they failed or refused to do so.[21] The jeopardy of being placed behind prison bars even before conviction dangled before their very eyes. Similarly, they cannot invoke the right not to be a witness against themselves, both of which are sacrosanctly enshrined and protected by our fundamental law. 21-a Both these constitutional rights (to remain silent and not to be compelled to be a witness against himself) were right away totally foreclosed by P.D. 1886. And yet when they so testified and produced evidence as ordered, they were not immunized from whatever prosecution that may arise by reason of the testimony given by them.

Of course, it may be argued — is not the right to remain silent available only to a person undergoing custodial interrogation? We find no categorical statement in the constitutional provision on the matter which reads:

"x x x 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." x x x[22] (Underscoring supplied)

Since the effectivity of the 1973 Constitution, we now have a mass of jurisprudence[23] on this specific portion of the subject provision. In all these cases, it has been categorically declared that a person detained for the commission of an offense undergoing investigation has a right to be informed of his right to remain silent, to counsel, and to an admonition that any and all statements to be given by him may be used against him. Significantly however, there has been no pronouncement in any of these cases nor in any other — that a person similarly undergoing investigation for the commission of an offense, if not detained, is not entitled to the constitutional admonition mandated by said Section 20, Art. IV of the Bill of Rights.

The fact that the framers of our Constitution did not choose to use the term "custodial" by having it inserted between the words "under" and "investigation", as in fact the sentence opens with the phrase "any person" goes to prove that they did not adopt in toto the entire fabric of the Miranda doctrine.[24] Neither are we impressed by petitioners' contention that the use of the word "confession" in the last sentence of said Section 20, Article 4 connotes the idea that it applies only to police investigation, for although the word "confession" is used, the protection covers not only "confessions" but also "admissions" made in violation of this section. They are inadmissible against the source of the confession or admission and against third person.[25]

It is true a person in custody undergoing investigation labors under a more formidable ordeal and graver trying conditions than one who is at liberty while being investigated. But the common denominator in both which is sought to be avoided — is the evil of extorting from the very mouth of the person undergoing interrogation for the commission of an offense, the very evidence with which to prosecute and thereafter convict him. This is the lamentable situation we have at hand.

All the private respondents, except Generals Ver and Olivas, are members of the military contingent that escorted Sen. Aquino while disembarking from the plane that brought him home to Manila on that fateful day. Being at the scene of the crime as such, they were among the first line of suspects in the subject assassination. General Ver on the other hand, being the highest military authority of his co-petitioners labored under the same suspicion and so with General Olivas, the first designated investigator of the tragedy, but whom others suspected, felt and believed to have bungled the case. The papers, especially the foreign media, and rumors from ugly-wagging tongues, all point to them as having, in one way or another participated or have something to do, in the alleged conspiracy that brought about the assassination. Could there still be any doubt then that their being asked to testify, was to determine whether they were really conspirators and if so, the extent of their participation in the said conspiracy? It is too taxing upon one's credulity to believe that private respondents' being called to the witness stand was merely to elicit from them facts and circumstances surrounding the tragedy, which was already so abundantly supplied by other ordinary witnesses who had testified earlier. In fact, the records show that Generals Ver and Olivas were among the last witnesses called by the Agrava Board. The subject matter dealt with and the line of questioning as shown by the transcript of their testimonies before the Agrava Board, indubitably evinced purposes other than merely eliciting and determining the so-called surrounding facts and circumstances of the assassination. In the light of the examination reflected by the record, it is not far-fetched to conclude that they were called to the stand to determine their probable involvement in the crime being investigated. Yet they have not been informed or at the very least even warned while so testifying, even at that particular stage of their testimonies, of their right to remain silent and that any statement given by them may be used against them. If the investigation was conducted, say by the PC, NBI or by other police agency, all the herein private respondents could not have been compelled to

give any statement whether incriminatory or exculpatory. Not only that. They are also entitled to be admonished of their constitutional right to remain silent, to counsel, and be informed that any and all statements given by them may be used against them. Did they lose their aforesaid constitutional rights simply because the investigation was by the Agrava Board and not by any police investigator, officer or agency? True, they continued testifying. May that be construed as a waiver of their rights to remain silent and not to be compelled to be a witness against themselves? The answer is yes, if they have the option to do so. But in the light of the first portion of Section 5 of P.D. 1886 and the awesome contempt power of the Board to punish any refusal to testify or produce evidence, We are not persuaded that when they testified, they voluntarily waived their constitutional rights not to be compelled to be a witness against themselves much less their right to remain silent.

"Compulsion as it is understood here does not necessarily connote the use of violence; it may be the product of unintentional statements. Pressure which operates to overbear his will, disable him from making a free and rational choice, or impair his capacity for rational judgment would in our opinion be sufficient. So is moral coercion 'tending to force testimony from the unwilling lips of the defendant'." [26]

Similarly, in the case of *Louis J. Lefkowitz v. Russel Turley* [27] citing *Garrity vs. New Jersey* [28] where certain police officers summoned to an inquiry being conducted by the Attorney General involving the fixing of traffic tickets were asked questions following a warning that if they did not answer they would be removed from office and that anything they said might be used against them in any criminal proceeding, and the questions were answered, the answers given cannot over their objection be later used in their prosecutions for conspiracy. The United States Supreme Court went further in holding that:

"the protection of the individuals under the Fourteenth Amendment against coerced statements prohibits use in subsequent proceedings of statements obtained under threat of removal from office, and that it extends to all, whether they are policemen or other members of the body politic. 385 US at 500, 17 L Ed. 562. The Court also held that in the context of threats of removal from office the act of responding to interrogation was not voluntary and was not an effective waiver of the privilege against self-incrimination."

To buttress their precarious stand and breathe life into a seemingly hopeless cause, petitioners and amicus curiae (Ex-Senator Ambrosio Padilla) assert that the "right not to be compelled to be a witness against himself" applies only in favor of an accused in a criminal case. Hence, it may not be invoked by any of the herein private respondents before the Agrava Board. The *Cabal vs. Kapunan* [28-A] doctrine militates very heavily against this theory. Said case is not a criminal case as its title very clearly indicates. It is not *People vs. Cabal* nor a prosecution for a criminal offense. And yet, when Cabal refused to take the stand, to be sworn and to testify upon being called as a witness for complainant Col. Maristela in a forfeiture of illegally acquired assets, this Court sustained Cabal's plea that for him to be compelled to testify will be in violation of his right against self-incrimination. We did not therein state that since he is not an accused and the case is not a criminal case, Cabal cannot refuse to take the witness stand and testify, and that he can invoke his right against self-incrimination only when a question which tends to elicit an answer that will incriminate him is propounded to him. Clearly then, it is not the character of the suit involved but the nature of the proceedings that controls. The privilege has consistently been held to extend to all proceedings sanctioned by law and to all cases in which punishment is sought to be visited upon a witness, whether a party or not. [29] If in a mere forfeiture case where only property rights were involved, "the right not to be compelled to be a witness against himself" is secured in favor of the defendant, then with more reason it cannot be denied to a person facing, investigation before a Fact Finding Board where his life and liberty, by reason of the statements to be given by him, hang on the balance. Further enlightenment on the subject can be found in the historical background of this constitutional provision against self-incrimination. The privilege against self-incrimination is guaranteed in the Fifth Amendment to the Federal Constitution of the United States of America. In the Philippines, the same principle obtains as a direct

result of American influence. At first, the provision in our organic laws were similar to the Constitution of the United States and was as follows:

"That no person shall be x x x compelled in a criminal case to be a witness against himself." [30]

As now worded, Section 20 of Article IV reads:

"No person shall be compelled to be a witness against himself."

The deletion of the phrase "in a criminal case" connotes no other import except to make said provision also applicable to cases other than criminal. Decidedly then, the right "not to be compelled to testify against himself" applies to the herein private respondents notwithstanding that the proceedings before the Agrava Board is not, in its strictest sense, a criminal case.

No doubt, the private respondents were not merely denied the afore-discussed sacred constitutional rights, but also the right to "due process" which is fundamental fairness.[31] Quoting the highly-respected eminent constitutionalist that once graced this Court, the former Chief Justice Enrique M. Fernando, due process —

"x x x is responsiveness to the supremacy of reason, obedience to the dictates of justice. Negatively put, arbitrariness is ruled out and unfairness avoided. To satisfy the due process requirement, official action, to paraphrase Cardozo, must not outrun the bounds of reason and result in sheer oppression. Due process is thus hostile to any official action marred by lack of reasonableness. Correctly, it has been identified as freedom from arbitrariness. It is the embodiment of the sporting idea of fair play (Frankfurter, Mr. Justice Holmes and the Supreme Court, 1938, pp. 32-33). It exacts fealty 'to those strivings for justice' and judges the act of officialdom of whatever branch 'in the light of reason drawn from considerations of fairness that reflect (democratic) traditions of legal and political thought.' (Frankfurter, *Hannah v. Larche*, 1960, 363 US 20, at 487). It is not a narrow or 'technical conception with fixed content unrelated to time, place and circumstances.' (*Cafeteria Workers v. McElroy*, 1961, 367 US 1230) Decisions based on such a clause requiring a 'close and perceptive inquiry into fundamental principles of our society. (*Bartkus vs. Illinois*, 1959, 359 US 121.) Questions of due process are not to be treated narrowly or pedantically in slavery to form or phrases. (*Pearson v. McGraw*, 1939, 308 US 313).[31-A]

Our review of the pleadings and their annexes, together with the oral arguments, manifestations and admissions of both counsel, failed to reveal adherence to and compliance with due process. The manner in which the testimonies were taken from private respondents fall short of the constitutional standards both under the DUE PROCESS CLAUSE and under the EXCLUSIONARY RULE in Section 20, Article IV. In the face of such grave constitutional infirmities, the individual testimonies of private respondents cannot be admitted against them in any criminal proceeding. This is true regardless of absence of claim of constitutional privilege or of the presence of a grant of immunity by law. Nevertheless, We shall rule on the effect of such absence of claim to the availability to private respondents of the immunity provided for in Section 5, P.D. 1886 which issue was squarely raised and extensively discussed in the pleadings and oral arguments of the parties.

Immunity statutes may be generally classified into two: one, which grants "use immunity"; and the other, which grants what is known as "transactional immunity". The distinction between the two is as follows: "Use immunity" prohibits use of witness' compelled testimony and its fruits in any manner in connection with the criminal prosecution of the witness. On the other hand, "transactional immunity" grants immunity to the witness from prosecution for an offense to which his compelled testimony relates.[32] Examining Presidential Decree 1886, more specifically Section 5 thereof, which reads:

"SEC. 5. No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to a subpoena issued by the Board on the ground

that his testimony or the evidence required of him may tend to incriminate him or subject him to penalty or forfeiture; but his testimony or any evidence produce by him shall not be used against him in connection with any transaction, matter or thing concerning which he is compelled, after having invoked his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying, nor shall he be exempt from demotion or removal from office." (Underscoring supplied)

it is beyond dispute that said law belongs to the first type of immunity statutes. It grants merely immunity from use of any statement given before the Board, but not immunity from prosecution by reason or on the basis thereof. Merely testifying and/or producing evidence do not render the witness immune from prosecution notwithstanding his invocation of the right against self-incrimination. He is merely saved from the use against him of such statement and nothing more. Stated other-wise he still runs the risk of being prosecuted even if he sets up his right against self-incrimination. The dictates of fair play, which is the hallmark of due process, demands that private respondents should have been informed of their rights to remain silent and warned that any and all statements to be given by them may be used against them. This, they were denied, under the pretense that they are not entitled to it and that the Board has no obligation to so inform them.

It is for this reason that we cannot subscribe to the view adopted and urged upon Us by the petitioners — that the right against self-incrimination — must be invoked before the Board in order to prevent use of any given statement against the testifying witness in a subsequent criminal prosecution. Such literal application of Sec. 5, P.D. 1886 fashioned upon Us is repugnant to Article IV, Section 20 of the Constitution, which is the first test of admissibility. It reads:

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

The aforequoted provision renders inadmissible any confession obtained in violation thereof. As herein earlier discussed, this exclusionary rule applies not only to confessions but also to admissions,[33] whether made by a witness in any proceeding or by an accused in a criminal proceeding or any person under investigation for the commission of an offense. Any interpretation of a statute, as in this case, P.D. 1886, which will give it a meaning in conflict with the Constitution must be avoided. So much so that if two or more constructions or interpretations could possibly be resorted to, then that one which will avoid unconstitutionality must be adopted even though it may be necessary for this purpose to disregard the more usual and apparent import of the language used.[34] To save the statute from a declaration of unconstitutionality it must be given a reasonable construction that will bring it within the fundamental law.[35] Apparent conflict between two clauses should be harmonized.[36]

But a literal application of a requirement of a claim of the privilege against self-incrimination as a condition sine qua non to the grant of immunity presupposes that from a layman's point of view, he has the option to refuse to answer questions and therefore, to make such claim. P.D. 1886, however, forecloses such option of refusal by imposing sanctions upon its exercise, thus:

"SEC. 4. The Board may hold any person in direct or indirect contempt, and impose appropriate penalties therefor.

A person guilty of x x x x x refusal to be sworn or to answer as a witness or to subscribe to an affidavit or deposition when lawfully required to do so may be summarily adjudged in direct contempt by the Board. x x x"

Such threat of punishment for making a claim of the privilege leaves the witness no choice but to answer and thereby forfeit the immunity purportedly granted by Sec. 5. The absurdity of such application is apparent — Sec. 5 requires a claim which it, however, forecloses under threat of contempt proceedings against anyone who makes such claim. But the strong testimonial compulsion imposed by Section 5 of P.D. 1886 viewed in the light of the sanctions provided in Section 4, infringes upon the witness' right against self-incrimination. As a rule, such infringement of the constitutional right renders inoperative the testimonial compulsion, meaning, the witness cannot be compelled to answer UNLESS a co-extensive protection in the form of IMMUNITY is offered.[37] Hence, under the oppressive compulsion of P.D. 1886, immunity must in fact be offered to the witness before he can be required to answer, so as to safeguard his sacred constitutional right. But in this case, the compulsion has already produced its desired results — the private respondents had all testified without offer of immunity. Their constitutional rights are therefore, in jeopardy. The only way to cure the law of its unconstitutional effects is to construe it in the manner as if IMMUNITY had in fact been offered. We hold, therefore, that in view of the potent sanctions imposed on the refusal to testify or to answer questions under Sec. 4 of P.D. 1886, the testimonies compelled thereby are deemed immunized under Section 5 of the same law. The applicability of the immunity granted by P.D. 1886 cannot be made to depend on a claim of the privilege against self-incrimination which the same law practically strips away from the witness.

With the stand we take on the issue before Us, and considering the temper of the times, we run the risk of being consigned to unpopularity. Conscious as we are of, but undaunted by, the frightening consequences that hover before Us, we have strictly adhered to the Constitution in upholding the rule of law finding solace in the view very aptly articulated by that well-known civil libertarian and admired defender of human rights of this Court, Mr. Justice Claudio Teehankee, in the case of *People vs. Manalang*,[38] and we quote:

"I am completely conscious of the need for a balancing of the interests of society with the rights and freedoms of the individuals. I have advocated the balancing-of-interests rule in all situations which call for an appraisal of the interplay of conflicting interests of consequential dimensions. But I reject any proposition that would blindly uphold the interests of society at the sacrifice of the dignity of any human being." (Underscoring supplied)

Lest we be misunderstood, let it be known that we are not by this disposition passing upon the guilt or innocence of the herein private respondents — an issue which is before the Sandiganbayan. We are merely resolving a question of law and the pronouncement herein made applies to all similarly situated, irrespective of one's rank and status in society.

IN VIEW OF THE FOREGOING CONSIDERATIONS and finding the instant petitions without merit, same are DISMISSED. No pronouncement as to costs.

SO ORDERED.

Makasiar, C.J., Concepcion, Jr., Plana, Escolin, Relova, De la Fuente, Alampay, and Patajo, JJ., see separate concurring opinion.

Teehankee and Melencio-Herrera, JJ., see separate dissenting opinion.

Gutierrez, Jr., concur and filed short separate opinion.

Aquino, J., voted to dismiss the petition for lack of merit.

Abad Santos, J., on leave.

[1] SECOND WHEREAS.

[2] Justice Corazon Juliano Agrava being the appointed Chairman of this Fact Finding Board.

[3] Gen. Fabian C. Ver & Major Gen. Prospero Olivas both appeared and testified in response to an invitation — p. 6, COMMENT.

[4] The other private respondents appeared and testified pursuant to subpoenas.

[5] Petitioner in G.R. Nos. 71212-13.

[6] Exh. VVV, tsn, April 6, 1984—Gen. Ver(1-97); Exh. VVV-1, tsn, April 6, 1984—Gen. Ver(1-54); Exh. VVV-2, tsn, April 10, 1984—Gen. Ver(1-150); Exh. VVV-3, tsn, April 23, 1984—Gen. Ver(1-135); Exh. VVV-4, tsn, April 23, 1984—Gen. Ver(1-43,90); Exh. WWW, tsn, June 27, 1984—Gen. Olivas(1-87); Exh. WWW-1, tsn, June 27, 1984—Gen. Olivas (1-81,93); Exh. XXX, tsn, Dec. 22, 1983—Martinez(1-93); Exh. XXX-1, Dec. 22, 1983—Martinez (1-82); Exh. XXX-2, tsn, Jan. 12, 1984—Martinez (1-20, 91); Exh. YYY, tsn, Dec. 28, 1983—Fernandez(1-60); Exh. YYY-1, tsn, April 25, 1984—Fernandez (18-86, 104 with page 48); Exh. YYY-2, tsn, April 30, 1984—Fernandez(1-27,80); Exh. ZZZ, tsn, Jan. 17, 1984—Mojica(1-83); Exh. ZZZ-1, tsn, Jan. 17, 1984—Mojica (1-111); Exh. ZZZ-2, no date — Mojica(57-106); Exh. ZZZ-3, tsn, March 23, 1984—Kavinta and Mojica (1-7); Exh. ZZZ-4, tsn, April 2, 1984—Mojica and Kavinta (1-43,112); Exh. AAAA, tsn, Dec. 27, 1983—Torio (1-79); Exh. AAAA-1, tsn, Dec. 27, 1983—Torio(1-25, 62); Exh. AAAA-2, tsn, no date — Torio (36-54); Exh. AAAA-3, tsn, June 21, 1984 — Torio(43-153); Exh. BBBB, tsn, no date — Bona (80-93); Exh. BBBB-1, tsn, June 28, 1984 — Bona (1-36, 83 without page 15); Exh. BBBB-2, no date — Bona (84-110); Exh. CCCC, tsn, April 25, 1984 — Acupido (87-104); Exh. CCCC-1, tsn, April 30, 1984 — Acupido (1-46).

[7] Annex "B", Petition.

[8] Annexes "B" & "C", Petition.

[9] Annex "E", Petition.

[10] Annex "F", Petition.

[11] Annex "J", Petition.

[12] Petition, page 9.

[13] Annex "N", Petition.

[14] G.R. Nos. 71212-13.

[15] G.R. Nos. 71208-09.

[16] Petition, pages 14-18.

[17] Comment, pages 8-11.

[18] Board.

[19] Where — P.D. 1886.

[20] Sec. 10, 3rd par., P.D. 1886.

[21] Section 4, P.D. 1886.

21-a Art. IV, Sec. 20, 1973 Constitution.

[22] Art. IV, Sec. 20, 1973 Constitution.

[23] *Magtoto vs. Manguera*, 63 SCRA 4 (1975); *People vs. Jimenez*, 71 SCRA 186 (1976); *People vs. Buscato*, 74 SCRA 30 (1976); *People vs. Peña*, 80 SCRA 589 (1977); *People vs. Page*, 77 SCRA 348 (1977); *Draculan vs. Donato*, 85 SCRA 266 (1978); *People vs. Molleda*, 86 SCRA 667 (1978); *People vs. Saldua*, 87 SCRA 169 (1978); *People vs. Beralde*, 91 SCRA 125 (1979); *People vs. Tampus*, 96 SCRA 624 (1980); *People vs. Comendador*, 100 SCRA 155 (1980); *People vs. Hipolito*, 106 SCRA 610 (1981); *People vs. Matilla*, 105 SCRA 768 (1981); *People vs. Umali*, 116 SCRA 23 (1982); *Morales, Jr. vs. Enrile*, 121 SCRA 538(1983); *People vs. Ramos*, 122 SCRA 312(1983); *People vs. Jose*, 124 SCRA 89 (1983); *People vs. Colana*, 126 SCRA 23 (1983); *People vs. Tuvera*, 130 SCRA 168 (1984); *People vs. Pizarro*, 131 SCRA 624 (1984); *People vs. Lachica*, 132 SCRA 230 (1984); *People vs. Pizarro*, 131 SCRA 624 (1984).

[24] *Miranda vs. Arizona*, 384 US 436 (1966).

[25] Bernas, *The 1973 Philippine Constitution, Cases & Materials, Part II*, 1974 Ed., 745 citing Session of November 25, 1972; Session of November 27, 1972 of the 1971 Constitutional Convention.

[25-a] *Id.*

[26] *Chavez vs. CA*, 24 SCRA 663, citing *State vs. Wolfe*, 266 N.W., 116, 125; 104 ALR, 464.

[27] 414 U.S. 70, 38 L. Ed. 2d 274 (1973).

[28] 6 SCRA 1059.

[29] 70 C.J. Sec. 875, page 722; *Wigmore on Evidence*, Volume 8, Section 2252, pages 834-835.

[30] President's Instructions to the Philippine Commission; Philippines Bill of July 1, 1902, Section 5, par. 3 — cited in Francisco's Revised Rules of Court in Criminal Procedure, pages 390-391.

[31] *Pinkerton v. Farr, W., Va.*, 220 S.E. 2d 682, 687.

[31-A] *Ermita Malate Hotel and Motel operators Assn., Inc. vs City Mayor of Manila*, 20 SCRA 849, 860-861 (1967).

[32] *Black Law Dictionary*, 5th Edition, 1979.

[33] *Proceedings of the Convention*, Session of November 29, 1972, cited in BERNAS; *The 1973 Philippine Constitution Notes and Cases, Part II*, 1974 ed., page 745.

[34] *In Re Guariña*, 24 Phil. 375; *Paredes v. Executive Secretary*, 128 SCRA 6 (1984).

[35] *Yu Cong vs. Trinidad*, 47 Phil. 385; *Automotive Parts & Equipment Company Inc. vs. Lingad*, 30 SCRA 248 (1969).

[36] *Araneta vs. Concepcion*, 52 O.G. 151.

[37] *Leftkowitz vs. Turley*, 414 US 70, at 85.

[38] 123 SCRA 583, 603 (1983).

CONCURRING OPINION

ALAMPAY, J.:

I vote for the dismissal of the petition in these consolidated cases.

What appears to be the basic and principal issue to which the consideration of the Court is addressed to is the singular question of whether testimonies adduced by the private respondents before the Ad Hoc Agrava Fact Finding Board and sought to be introduced against them in the Sandiganbayan wherein they have been accused were rightfully excluded as evidence against them.

I find untenable the insistence of the petitioner Tanodbayan that the private respondents should have claimed the right against self-incrimination before the said Fact Finding Board and that having omitted doing so, the said privilege afforded to them by law can no longer be invoked by them before the Sandiganbayan.

The right claimed by private respondents rests on the fundamental principle that no person shall be compelled to be a witness against himself as so stated in our Constitution and from the fact that Section 5 of P.D. 1886 disallows the use against him of such testimony or any evidence produced by him before the said Fact Finding Board, except for perjury. Petitioner argues, however, that there was a waiver of this right to self-incrimination when respondents proceeded to give their testimonies on various dates before the Agrava Fact Finding Board without formally invoking on said occasions their right against self-incrimination.

As private respondents could not have excused themselves from testifying before said Board as clearly emphasized in the very first clause of Section 5 of P. D. 1886, and as at that point of time, there was no reason for the declarant to anticipate or speculate that there would be any criminal charge or any proceeding instituted against them, it would therefore, be unnatural and illogical to expect that private respondents would even contemplate the need of prefacing their declarations with an invocation before the Fact Finding Board of their privilege against self-incrimination.

In fact for a declarant to announce his claim of the aforestated privilege prior to or while testifying before said Fact Finding Board, would irresistibly create an inference and convey an impression that said witness is burdened with his own awareness that he stands already incriminated in some wrong. To insist therefore, even in the absence yet of any proceeding against him, that the witness invoke the said privilege before the Agrava Fact Finding Board, would be obviously self-demeaning. Such an effect could not have been intended by Section 5 of P. D. 1886, which was even meant to grant to the witness a benefit rather than a burden. It is more reasonable therefore, to conclude that the privilege against self-incrimination would be accorded to said witness after he has invoked the same in a subsequent proceeding wherein he has been charged of a wrong doing, except in a case for perjury. It is only at such time when the necessity of invoking the mantle of the privilege or the immunity afforded to him by law would arise.

It cannot also be rightfully concluded that private respondents had intentionally relinquished or abandoned the said right which they claimed before the Sandiganbayan. The fact that the issue of when and before what forum should such claim to the right against self-incrimination be necessarily presented has provoked much discussion and debate because of divergent views. This has even prompted the submissions to the Court of opinions of amicus curiae or friends of the court as to how Section 5 of Presidential Decree 1886 should be construed and applied, — which are however different from and contrary to the views expressed by the Justices of the Sandiganbayan and other legal luminaries. These conflicting views negate the proposition that there was an effective waiver made by the private respondents of their rights.

It has earlier been stated by this Court that to be effective, such waiver must be certain and unequivocal and

intelligently, understandably and willingly made. (Chavez vs. Court of Appeals, et al., 24 SCRA 663). In the same cited case, it has been stated that courts indulge in every reasonable presumption against waiver of fundamental constitutional rights and that we do not presume acquiescence in the loss of fundamental rights (Citing Johnson vs. Zerbst, 304 U.S. 458, 464, 82 L. ed. 1461, 1466). Furthermore, whether the alleged waiver is express or implied, it must be intentional. (Davison vs. Klaess, 20 N. E. 2d. 744, 748, 280 N. Y. 252; 92 CJS, 1058)

I find it difficult to accept that private respondents had at any time, ever intended to relinquish or abandon their right against self-incrimination.

CONCURRING OPINION

CONCEPCION JR., J.:

1. Let me preface my opinion by quoting from my dissent in Pimentel.[1]

"1. We are committed to the mandate of the Rule of Law. We resolve controversies before Us without considering what is or what might be the popular decision No. We never, do. We only consider the facts and the law. Always — the facts and the law."

2. The issue before Us is not — I repeat, not — the guilt or innocence of Gen. Fabian C. Ver, Major Gen. Prospero Olivas, and others for their alleged participation in the assassination of for-mer Senator Benigno S. Aquino, Jr.

3. The issue is: Are the testimonies given by them before the Agrava Board admissible in evidence against them in their trial before the Sandiganbayan?

4. The issue therefore is purely a question of law. It involves the interpretation of Sec. 5, P.D. No. 1886 and calls for the application of the Rule of Law.

5. Sec. 5, P.D. No. 1886 reads:

"No person shall be excused from attending and testifying or from producing books, records, correspondence documents, or other evidence in obedience to a subpoena issued by the Board on the ground that his testimony or the evidence required of him may tend to incriminate him or subject him to penalty or forfeiture; but his testimony or any evidence produced by him shall not be used against him in connection with any transaction, matter or thing concerning which he is compelled, after having invoked his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying, nor shall he be exempt from demotion or removal from office."

6. This section means that any person who is invited or summoned to appear must obey and testify as to what he knows. Even if the testimony tends to incriminate him he must testify. Even if he claims his constitutional right against self-incrimination, he still must testify. However, his testimony cannot be used against him in any subsequent proceeding, provided that at the time it is being presented, he invokes his privilege against self-incrimination. His testimony, no matter what it may be, cannot in any way cause him harm.

The only exception is if the testimony he gave is false, in which case he can be prosecuted and punished for perjury. He may also be demoted or removed from office.

7. The testimonies given by private respondents before the Agrava Board are therefore not admissible against them in their trial before the Sandiganbayan, having invoked their privilege against self-incrimination.

[1] G.R. No. 68113, Aquilino Q. Pimentel, Jr., versus Commission on Elections, et al., promulgated December 19, 1984.

CONCURRING OPINION

DE LA FUENTE, J.:

"No person shall be compelled to be a witness against himself." [1] This basic right against self-incrimination, which supplanted the inquisitorial methods of interrogating the accused as practiced during the Spanish regime, has become an indispensable part of our laws since 1900. Pursuant thereto, an accused in a criminal case has the right not only to refuse to answer incriminating questions but also to refuse to take the witness stand. He cannot be compelled even to utter a word in his defense. [2] As stressed in *Chavez vs. Court of Appeals*, [3] the rule may otherwise be stated as "the constitutional right of the accused to remain silent." The accused can forego testimony [4] without any adverse implication drawn from his decision to do so. The burden is on the State to establish the guilt of the accused beyond reasonable doubt; the prosecution must look elsewhere for other "evidence independently and freely secured." The rule forbids what has been considered as "the certainly inhuman procedure of compelling a person 'to furnish the missing evidence necessary for his conviction'." According to Justice Harlan, it was intended "to shield the guilty and imprudent as well as the innocent and foresighted." [5] Transplanted in this country with the advent of American sovereignty [6] and firmly imbedded in our fundamental law, [7] the said privilege against compulsory self-incrimination, which is predicated on grounds of public policy and humanity, [8] "is fundamental to our scheme of justice" [9] and is one of the procedural guarantees of our accusatorial system.

1. As I see it, what the prosecution proposed to do in these cases was to present, as evidence of the alleged accessorial acts of private respondents, the transcripts of their respective testimonies 'before the Agrava Board. Confronted by the apparent unwillingness of said respondents to be called to the witness stand in subsequent criminal proceedings, the prosecution sought to put into the record of these criminal cases (in lieu of private respondents' testimonies) the said transcripts and other evidence given by, them in the course of their testimony before the Agrava Board. If allowed over and despite private respondents' objection, this would be a clear infringement of the constitutional guarantee that they can invoke in said criminal proceedings, as all of them did. Since the prosecution cannot require said respondents to testify in the criminal cases before the Sandiganbayan, it stands to reason that it is equally disabled from indirectly compelling respondents to give evidence against themselves by using their Agrava Board testimonies. The prosecution must present evidence "derived from a legitimate source wholly independent of the compelled testimony". [10]

2. It is contended, however, that these self-incriminatory testimonies were given "voluntarily" because they did not claim the constitutional guarantee before or while giving testimony to the Agrava Board. Voluntariness, I think, cannot be inferred simply from such failure to invoke the privilege. There was no fair warning or notice to the declarant that his testimony would be used against him if incriminatory, unless the privilege is invoked beforehand or during his testimony. If they were properly warned and still gave testimony without invoking the privilege, "then it would be clear that they knowingly waived the privilege. Otherwise, it meant at the most a willingness on their part to help the Agrava Board in its fact-finding investigation without waiving (a) the immunity granted by law, and (b) the constitutional guarantee against self-incrimination in case of subsequent prosecution based on their self-incriminatory testimony. For waiver, it is well-settled, to be effective, "must be certain, unequivocal and intelligently, understandably and willingly made." [11] Mere submission to an illegal search or seizure "is not consent" or waiver of objection. [12] The prosecution has the burden to prove otherwise.

The same standard should be observed in self-incrimination cases.

PD No. 1886 (as amended), which created that "independent fact-finding Board," vested it with "plenary powers to determine the facts and circumstances surrounding the killing [of former Senator Aquino] and to allow for a free, unlimited and exhaustive investigation into all aspects of said tragedy." In consonance with these objectives, the law declared that the privilege was unavailable to an Agrava Board "witness", as follows: "No person shall be excused from attending and testifying or from producing other evidence on the ground that his testimony or any evidence requested of him may tend to incriminate him,"[13] etc. At the same time, the Board was empowered to summarily hold and punish any person in direct contempt for "refusal to be sworn or to answer as a witness," its judgment being "final and unappealable."

Quite plainly, the constitutional right against compulsory self-incrimination could not be invoked by Agrava Board witnesses. The privilege was suspended or temporarily taken away for purposes of the investigation, in order that the Board would have access to all relevant evidence and all sources of information, not excluding compelled incriminatory statements of probable and possible or potential defendants. An Agrava Board witness was, under the terms of the quoted provision, placed in trilemma: (1) to answer truthfully all questions including those tending to be self-incriminatory, since he cannot invoke the privilege; (2) to lie and become liable criminally for perjury; and 3) to insist on his right to remain silent and be summarily punished by the Board for direct contempt. It is plain that such a witness was under compulsion to give self-incriminatory testimony. It was not voluntary. Precisely because of its coerced nature (an infringement of his constitutional right against self-incrimination), PD No. 1886 promised, in exchange or as substitute for the privilege, limited immunity (as provided in the next succeeding clause, same section), to wit:

"... but his testimony or any evidence produced by him shall not be used against him in connection with any transaction, matter or thing concerning which he was compelled, after, having invoked his privilege against self-incrimination, to testify or produce evidence, ..." [14]

Such immunity[15] would bar the prosecution's use against the witness of his said testimony in subsequent criminal proceedings (wherein he is charged with offenses related to his testimony). Nevertheless, this would not operate to change the involuntary nature of his self-incriminatory testimony. As far as the witness is concerned, it was "coerced", not freely given, because he was not fully accorded the "liberty of choice". The law withheld his basic freedom to choose between testifying and remaining silent without the risk of being punished for direct contempt — to forego testimony which could possibly be to his detriment.

3. I cannot agree with the proposition that the privilege should be invoked by the witness before or while giving testimony to the Agrava Board. Section 5 should be reasonably construed and fairly applied to the cases at bar, in the light of the accused's constitutional right against compulsory self-incrimination. The formula of limited-immunity in-lieu-of-the-privilege contained in said section rendered unnecessary or superfluous, the invocation of the privilege before the Board. Under, said formula, the witness was deprived of the privilege to protect himself against inquisitorial interrogation into matters that a targeted defendant or virtual respondent can keep to himself in ordinary investigations or proceedings.

Even if the provision is susceptible of an interpretation in support of the petitioner's stand, it appears that the time for invoking the privilege is not clear enough or certain from the language of the law. Equally plausible and logical is the contrary view that it may be invoked later on when it became apparent that the prosecution intended to use the testimony given before the Board to secure conviction of the declarant in the subsequent criminal proceedings. The privilege cannot be deemed waived by implication merely as a consequence of failure to claim it before the Board. It bears emphasis that the right of an accused "witness" against compulsory self-incrimination is predicated on the constitutional guarantee, not on the special law in question.

3. In the United States, the generally accepted approach in Fifth Amendment Cases (involving the constitutional guarantee under consideration) was stated as follows in *Johnson vs. Zerbst*:^[16] "It has been pointed out that 'courts indulge in every reasonable presumption against a waiver' of the fundamental rights and that we 'do not presume acquiescence in the loss of such fundamental rights.' "Because, as Dean Griswold of Harvard Law School (later, Solicitor General of the United States) eloquently puts it:

"[T]he privilege against self-incrimination is one of the great landmarks in man's struggles to make himself civilized ... [W]e do not make even the most hardened criminal sign his own death warrant, or dig his own grave ... We have through the course of history developed a considerable feeling of the dignity and intrinsic importance of the individual man. Even the evil man is a human being."^[17]

In this jurisdiction, more than four decades ago, the late Justice Jose P. Laurel — a nationalist, constitutionalist and eminent jurist, whose incisive and authoritative opinions on constitutional questions are often cited by the bench and the bar — voted to sustain a claim of the constitutional guarantee in *Bermudez vs. Castillo*.^[18] In his concurrence, he said *inter alia*:

"(1) As between two possible and equally rational constructions, that should prevail which is more in consonance with the purpose intended to be carried out by the Constitution. The provision ... should be construed with the utmost liberality in favor of the right of the individual intended to be secured ..."

"(2) I am averse to the enlargement of the rule allegedly calculated to gauge more fully the credibility of a witness if the witness would thereby be forced to furnish the means for his own destruction. Unless the evidence is voluntarily given, the policy of the constitution is one of protection on humanitarian considerations and grounds of public policy...."

"(3) The privilege should not be disregarded merely because it often affords a shelter to the guilty and may prevent the disclosure of wrongdoing. Courts can not, under the guise of protecting the public interest and furthering the ends of justice, treat a sacred privilege as if it were mere excrescence in the Constitution." (Underscoring supplied; at page 493.)

In sum, considering the pertinent legal provisions and judicial pronouncements as well as the climate prevailing when the private respondents testified before the Agrava Board, I find it unavoidable to reach the conclusion that they did so under legal, moral and psychological compulsion. Their compelled testimonies before the Agrava Board cannot thereafter be used against them in the cases at bar in view of the immunity granted by PD No. 1886. They were not obliged to invoke then and there the constitutional guarantee. If they did, that would have sufficed to afford them adequate protection. If they did not, they could do so later on when the Government prosecutors (in spite of the statutory grant of immunity) decided, in the subsequent criminal proceedings, to use against them their Agrava Board testimonies. For, as earlier stated, there was no intelligent and knowing waiver on their part of their constitutional right against self-incrimination.

Accordingly, and for other reasons well stated in the Main and separate concurring opinions, I vote to dismiss the petitions.

[1] Section 20, Art. IV, 1973 Constitution.

[2] *Bagadiong vs. Gonzales*, 94 SCRA 906.

[3] 24 SCRA 663.

[4] Pascual vs. Board of Medical Examiner, 28 SCRA 344, at 350, citing Chavez.

[5] Marchetti vs. United States, mentioned also in Chavez at page 678.

[6] President McKinley's Instructions, under date of April 7, 1900.

[7] Section 1(18), Art. 1935 Constitution; Section 20, Art. IV, 1973 Constitution.

[8] "... of policy because it would place the witnesses against the strongest temptation to commit perjury, and of humanity because it would be to extort a confession of truth by a kind of duress every species and degree of which the law abhors." (Chavez at page 679)

[9] Ibid., at page 678.

[10] Kastigar vs. US, 406 US 441, 32 L. Ed. 2d 212.

[11] Chavez, at page 682.

[12] Pasion Vda. de Garcia vs. Locson, 65 Phil. 689, 695.

[13] Section 5, PD No. 1886.

[14] "except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying, nor shall he be exempt from demotion or removal from office."

[15] which is not an immunity against prosecution, as that found in RA No. 1379.

[16] 304 U.S. 458, 464, cited in Chavez at p. 683.

[17] E. Griswold, the Fifth Amendment Today, 1955, cited by Justice Fred Ruiz Castro in his separate opinion in Chavez, at page 689, underscoring supplied.

[18] 64 Phil. 483.

CONCURRING OPINION**ESCOLIN, J.:**

I concur in the dismissal of the petitions. The admission in evidence of the testimonies of private respondents given before the Agrava Board would constitute a violation of their right against self-incrimination guaranteed under Section 20, Article IV of the Constitution. I subscribe to the majority view that Section 5 of P.D. 1886 cannot be constitutionally tenable, unless a grant of immunity is read into it vis-a-vis the compulsion it imposes upon a witness to testify. Otherwise stated, Section 5 of P.D. 1886 should be interpreted as an immunity statute, which, while depriving one of the right to remain silent, provides an immunity from prosecution that is as co-extensive, as total and as absolute as the guarantees themselves. (Jones Law on Evidence, Chapter XVIII, Section 863, pp. 1621-1623, Kastigar v. U. S., 1972, 406 US 441).

Clearly, this is how the private respondents understood the legal provision under consideration. For ably assisted as they were by counsel, they would not have allowed themselves to be deliberately dragged into what the Chief Justice would call a "booby trap". Viewed from another angle, therefore, it could not be truly said that private respondents had waived their right against self-incrimination in a manner that is clear, categorical, knowing and

intelligent. (Johnson v. Zerbst, 304 US 458, 464, cited in Abriol v. Homeres, 84 Phil. 525 and Chavez V. CA, 24 SCRA 663).

SEPARATE OPINION

GUTIERREZ, JR., J.:

I concur in the majority opinion penned by Justice Serafin R. Cuevas and in the pithy separate opinion of Justice Nestor B. Alampay but would like to add some personal observations.

This case furnishes an opportunity to appreciate the workings of our criminal justice system.

The prosecutions which led to this petition serve as a timely reminder that all of us — civilian or military, layman or judge, powerful or helpless — need the Bill of Rights. And should the time ever come when like the respondents we may have to invoke the Constitution's protection, the guarantees of basic rights must be readily available, in their full strength and pristine glory, unaffected by what is currently popular or decreed and heedless of whoever may be involved.

In many petitions filed with this Court and lower courts, the military has often been charged with riding roughshod over the basic rights of citizens. Officers and enlisted men in the frontlines of the fight against subversion or rebellion may, in the heat of combat, see no need to be concerned over such "niceties" as due process, unreasonable searches and seizures, freedom of expression, and right to counsel. They are best reminded that these rights are not luxuries to be discarded in times of crisis. These rights are the bedrock of a free and civilized society. They are the reason why we fight so hard to preserve our system of government. And as earlier stated, there may come times when we may have to personally invoke these basic freedoms for ourselves. When we deny a right to an accused, we deny it to ourselves.

The decision of the Court underscores the importance of keeping inviolate the protections given by the Bill of Rights. Acts which erode or sacrifice constitutional rights under seductive claims of preserving or enhancing political and economic stability must be resisted. Any lessening of freedom will not at all increase stability. The liberties of individuals cannot be preserved by denying them.

The dividing line between legitimate dissent or opposition on one hand and subversion or rebellion on the other may be difficult to pinpoint during troubled times. The lesson of this petition is that those charged with suppressing the rebellion and those who sit in courts of justice should ever be vigilant in not lumping legitimate dissenters and rebels together in one indiscriminate classification.

An abiding concern for principles of liberty and justice is especially imperative in periods of crisis and in times of transition. And all persons — from the mighty to the lowly — must be given the fullest measure of protection under the Bill of Rights if our constitutional guarantees are to have any meaning.

In addition to the right against self-incrimination, of not being compelled to be a witness against one's self, so ably discussed by Justice Cuevas in the Court's opinion, I am constrained by considerations of basic fairness to vote against granting the petition.

The private respondents were called to testify before the Agrava Commission. The decree creating the commission stated that no person may refuse to attend and testify or to produce evidence before it on the ground that what he says or produces may incriminate him. But since the witness is compelled to give all he knows or possesses — in effect shorn by law of his right not to incriminate himself — the decree states that the evidence

wrung from that witness may not be used against him later. This is, simply speaking, what the petition is all about.

The respondents may be prosecuted as indeed they have been prosecuted. They may eventually be convicted if the evidence warrants conviction. However, they may not be convicted solely on the evidence which came from their own mouths or was produced by their own hands. The evidence must come from other sources. It would be the height of unfairness and contrary to due process if a man is required to state what he knows even if it would incriminate him, is promised immunity if he talks freely, and is later convicted solely on the testimony he gave under such a promise of immunity.

I believe that P.D. 1886 is the first Immunity Act to be enacted in the Philippines. It may be relevant, therefore, to refer to American decisions expounding on immunity statutes, more so when a comparison of P.D. 1886 with such statutes as the U.S. Immunity Act of 1954, 68 Stat. 745, 18 U.S.C.A. Section 3486, shows a similarity in the protection given by the statutes.

The U. S. Immunity Act of 1954 was enacted to assist federal grand juries in their investigations of attempts to endanger the national security or defense of the United States by treason, sabotage, espionage, sedition, seditious conspiracy, and violations of various laws on internal security, atomic or nuclear energy, and immigration and nationality. The law stated that a witness shall not be excused from testifying or from producing books, papers, or other evidence on the ground that it may tend to incriminate him or subject him to a penalty or forfeiture. The statute then provides:

"But no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence nor shall testimony so compelled be used as evidence in any criminal proceeding x x x against him in any court."

The American statute provides immunity against prosecution, penalties, and use of the testimony. P. D. 1886 is of more limited scope. Only the use of the compelled testimony is proscribed. The witness may still be prosecuted but the prosecution will have to look for evidence other than the words of the accused given before the Agrava Commission.

In *Brown v. Walker* (161 U.S. 591) the U.S. Supreme Court was confronted with the validity of the 1893 Immunity Act. Brown was subpoenaed to testify before a grand jury investigating railroad anomalies. He refused to testify on grounds of self-incrimination, arguing that the Immunity Act compelling him to testify was unconstitutional. The Court ruled that "(W)hile the constitutional provision in question is justly regarded as one of the most valuable prerogatives of the citizen, its object is fully accomplished by the statutory immunity and we are therefore of opinion that the witness was compellable to answer." In other words, the statutory immunity takes the place of the invocation of the constitutional guarantee. There is no need at the time of taking testimony to invoke the Fifth Amendment because it would be denied any way and the witness would be compelled to testify. It would be absurd to invoke a protection which cannot be availed of when compelled to testify. The time to invoke the immunity is when the testimony is being used contrary to the granted immunity. Protected by the statutory immunity, a witness cannot even insist on his right to remain silent when testifying.

In *Ullmann v. United States* (350 U.S. 422), the court interpreted the Immunity Act of 1954 and stated:

xxx xxx xxx

"x x x Since that time the Court's holding in *Brown v. Walker* has never been challenged; the case and the doctrine it announced have consistently and without question been treated as definitive by this Court, in opinions written, among others, by Holmes and Brandeis, Justices. See, e.g., *McCarthy v. Arndstein*, 226 U.S. 34, 42; *Heike v. United States*, 227 U.S. 131, 142. The 1893 statute has become part of our constitutional

fabric and has been included 'in substantially the same terms, in virtually all of the major regulatory enactments of the Federal Government.' *Shapiro v. United States*, 335 U.S. 1, 6. For a partial list of these statutes, see, *id.*, 335 U.S. at pages 6-7, note 4. Moreover, the States, with one exception — a case decided prior to *Brown v. Walker* — have, under their own constitutions, enunciated the same doctrine, 8 Wigmore, Evidence (3d ed.), §2281, and have passed numerous statutes compelling testimony in exchange for immunity in the form either of complete amnesty or of prohibition of the use of the compelled testimony. For a list of such statutes, see 8 Wigmore, Evidence (3d ed.), §2281, n. 11 (pp. 478-501) and Pocket Supplement thereto, §2281, n. 11 (pp. 147-157)." (Emphasis supplied)

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It is interesting to note how the American Supreme Court in *Ullman* treated the immunity not only against the use of the testimony (as under P.D. 1886) but even against prosecution.

xxx xxx xxx

"Petitioner, however, attempts to distinguish *Brown v. Walker*. He argues that this case is different from *Brown v. Walker* because the impact of the disabilities imposed by federal and state authorities and the public in general — such as loss of job, expulsion from labor unions, state registration and investigation statutes, passport eligibility and general public opprobrium — is so oppressive that the statute does not give him true immunity. This, he alleges, is significantly different from the impact of testifying on the auditor in *Brown v. Walker*, who could the next day resume his job with reputation unaffected. But, as this Court has often held, the immunity granted need only remove those sanctions which generate the fear justifying the invocation of the privilege. 'The interdiction of the 5th Amendment operates only where a witness may possibly expose him to a criminal charge. But if the criminality has already been taken away, the amendment ceased to apply.' *Hale v. Henkel*, 201 U.S. 43, 67. Here, since the Immunity Act protects a witness who is compelled to answer to the extent of his constitutional immunity, he has of course, when a particular sanction is sought to be imposed against him, the right to claim that it is criminal in nature." (Emphasis supplied).

In *United States v. Murdock* (284 U.S. 141), the court ruled that "the principle established is that full and complete immunity against prosecution by the government compelling the witness to answer is equivalent to the protection furnished by the rule against compulsory self-incrimination."

P.D. 1886, being an immunity statute should not be given a strained or absurd interpretation in order to achieve a certain result. If the immunity given by the decree is equivalent to the protection furnished by the right against self-incrimination, then, paraphrasing Justice Frankfurter in *Ullman*, the same protection given by one of the great landmarks in man's struggle to make himself civilized must not be interpreted in a hostile or niggardly spirit,

xxx xxx xxx

"x x x Too many, even those who should be better advised, view this privilege as a shelter for wrongdoers. They too readily assume that those who invoke it are either guilty of crime or commit perjury in claiming the privilege. Such a view does scant honor to the patriots who sponsored the Bill of Rights as a condition to acceptance of the Constitution by the ratifying States. The Founders of the Nation were not naive or disregarding of the interest of justice..."

I, therefore, join the majority in dismissing the petition.

CONCURRING OPINION

MAKASIAR, C.J.:

To admit private respondents' testimonies and evidence before the Fact-Finding Board (FFB) against them in the criminal prosecution pending before the Sandiganbayan, would violate their constitutional or human rights — the right to procedural due process, the right to remain silent, and the right against self-incrimination.

That their testimonies and other evidence they submitted before the FFB in these criminal cases are incriminatory, is confirmed by the very fact that such testimonies and evidence were the very bases of the majority report of the FFB recommending the prosecution of private respondents as accessories.

It should be stressed that the basic purposes of the right against self-incrimination are (1) humanity or humanitarian reasons — to prevent a witness or accused from being coerced, whether physically, morally, and/or psychologically, into incriminating himself, and (2) to protect the witness or accused from committing perjury, because the first law of nature is self-preservation.

The utilization in the prosecution against them before the Sandiganbayan of the testimonies and other evidence of private respondents before the FFB collides with Section 1, Section 17 and Section 20 of the Bill of Rights of the 1973 Constitution:

"Section 1. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.

"xxx xxx xxx.

"Section 17, No person shall be held to answer for a criminal offense without due process of law.

"xxx xxx xxx.

"Section 20. No person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this Section shall be inadmissible in evidence."

The Bill of Rights constitutes the reservation of the sovereign people against, as well as the limitation on, the delegated powers of government. These rights thus enshrined need no express assertion. On the contrary, the police and prosecution officers of the country should respect these constitutional liberties as directed in the recent decision in the *Hildawa and Valmonte* cases (G.R. Nos. 67766 and 70881, August 14, 1985). The established jurisprudence is that waiver by the citizen of his constitutional rights should be clear, categorical, knowing, and intelligent (*Johnson vs. Zerbst*, 304 US 458, 464, cited in *Abriol vs. Homeres*, 84 Phil. 525 [1949] and in *Chavez vs. CA*, 24 SCRA 663, 682-683).

The use of testimonies and other evidence of private respondents before the FFB against them in the criminal cases subsequently filed before the Sandiganbayan would trench upon the constitutional guarantees that "no person shall be deprived of life, liberty, or property without due process of law x x x", that "no person shall be held to answer for a criminal offense without due process of law" and that (Section 17, Article IV, 1973 Constitution), that "no person shall be compelled to be a witness against himself. x x x" and that "a person has the right to remain silent ..." (Section 20, Article IV, 1973 Constitution).

There can be no implied waiver of a citizen's right against self-incrimination or of his right to remain silent.

Any such renunciation cannot be predicated on such a slender or tenuous reed as a dubious implication. Otherwise, it would be easier to lose the human rights guaranteed by the Bill of Rights than to protect or preserve them; it would be easier to enslave the citizen than for him to remain free. Such a result was never intended by the

Founding Fathers.

The first sentence of Section 20 of the Bill of Rights stating that "no person shall be compelled to be a witness against himself", applies to both the ordinary witness and the suspect under custodial investigation.

In support of the rule that there can be no implied waiver of the right against self-incrimination and all other constitutional rights by the witness or by the accused, is the fact that the right against double jeopardy can only be renounced by the accused if the criminal case against him is dismissed or otherwise terminated with his express consent. Without such express consent to the dismissal or termination of the case, the accused can always invoke his constitutional right against double jeopardy.

If Section 5 of P.D. 1886 were interpreted otherwise, said section would become a booby trap for the unsuspecting or unwary witness. A witness summoned either by subpoena or by invitation to testify before the FFB under Section 5, cannot refuse, under pain of contempt, to testify or produce evidence required of him on the ground that his testimony or evidence may tend to incriminate or subject him to a penalty or forfeiture; because the same Section 5 prohibits the use of such testimony or evidence which may tend to incriminate him in any criminal prosecution that may be filed against him. The law or decree cannot diminish the scope and extent of the guarantee against self-incrimination or the right to remain silent or the right against being held to answer for a criminal offense without due process of law, or against deprivation of his life, liberty or property without due process of law.

As a matter of fact, numerous decisions culled by American jurisprudence are partial to the rule that immunity statutes which compel a citizen to testify, should provide an immunity from prosecution that is as co-extensive, as total and as absolute as the guarantees themselves (Jones Law on Evidence, Chapter XVIII, Section 863, pp. 1621-1623; *Kastigar vs. US*, 1972, 406 US 441).

Even if the witness testified pursuant to an invitation, the invitation does not remove the veiled threat of compulsion, because as stated in the *Chavez* case, *supra*:

"Compulsion as it is understood here does not necessarily connote the use of violence; it may be the product of unintentional statements. Pressures which operate to overbear his will, disable him from making a free and rational choice, or impair his capacity for rational judgment would in our opinion be sufficient. So is moral coercion 'tending to force testimony from the unwilling lips of the defendant' (*Chavez vs. Court of Appeals*, 24 SCRA 663, 679).

The summons issued to private respondents has been euphemistically called as an invitation, instead of a subpoena or subpoena duces tecum, as a sign of respect for the important and high positions occupied by private respondents. But the effect of such an invitation thus worded is the same as a subpoena or subpoena duces tecum. Precisely, the phraseology of Section 5 of P.D. 1886 entices the unsuspecting private respondents to testify before the FFB, by dangling in the same Section 5 the assurance that their testimony or the evidence given by them will not be used against them in a criminal prosecution that may be instituted against them.

At the very least, their consent to testify was under such misapprehension. Hence, there can be no clear, categorical, knowing and intelligent waiver of the right to remain silent, against self-incrimination, against being held to answer for a criminal offense without due process of law, and against being deprived of life, liberty or property without due process of law — under such misapprehension.

In any event, Section 5 of P.D. 1886 creates a doubt, which doubt is accentuated by the difference of opinion thereon among the counsels in these cases and among members of this Court. And it is basic in criminal law that doubts should be resolved liberally in favor of the accused and strictly against the government.

The procedural due process both under Sections 1 and 17 of the Bill of Rights, Article IV of the 1973 Constitution simply means, in the language of Justice Frankfurter, the sporting idea of fair play. The FFB and its counsel did not inform the private respondents herein of their right to remain silent and their right against self-incrimination, and that their testimonies may be utilized against them in a court of law, before they testified. This is not fair to them, and hence, they were denied procedural due process.

It should be stressed that the FFB was merely a fact-finding agency for the purpose of gathering all the possible facts that may lead to the identity of the culprit. Such testimonies may provide leads for the FFB, its counsels and agents to follow up. The FFB and its counsels cannot rely solely on such testimonies to be used against the private respondents in these criminal cases. It should be recalled that the FFB had ample funds for the purpose of accomplishing its object. As a matter of fact, it refunded several million pesos to the government after it concluded its investigation. The Board and its counsel could have utilized the said amount to appoint additional agents to look for witnesses to the assassination. In this respect, the FFB counsel could be faulted in not utilizing the funds appropriated for them to ferret out all evidence that will identify the culprit or culprits. The failure of the FFB's counsel to use said funds reflects on the initiative and resourcefulness of its counsel. He could prosecute private respondents on evidence other than their testimony and the evidence they gave before the FFB.

As heretofore stated, the private respondents were compelled to testify before the FFB whether by subpoena or by invitation which has the effect of a subpoena as provided for in Section 5 of P.D. 1886; because private respondents then believed, by reading the entire Section 5, that the testimony they gave before the FFB could not be used against them in the criminal cases subsequently filed before the Sandiganbayan. Because the Board was merely a fact-finding board and that it was not conducting a criminal prosecution, the private respondents were under the impression that there was no need for them to invoke their rights to remain silent, against self-incrimination and against being held for a criminal offense without due process of law.

It should be recalled that the counsel of the FFB after submitting the majority report, refused to cooperate with the Tanodbayan in these cases with the pompous declaration that, after submitting their majority report, he automatically became *functus officio*. Was his refusal to cooperate with, and assist, the Tanodbayan in the prosecution of these cases, born of the realization that the FFB majority report is as weak as it was precipitate? And when the Tanodbayan has now his back to the wall, as it were, by the ruling of the respondent Sandiganbayan excluding the testimonies and other evidence of private respondents herein on the ground that the use of their testimonies and other evidence will incriminate them, the FFB counsel, without being requested by the Tanodbayan, now files a memorandum in support of the position of the Tanodbayan. What is the reason for this turn-about — to save his report from the fire which they started with such enthusiasm?

As above emphasized, it is the duty of the police and the prosecuting authorities to respect their rights under the Constitution as we stated in the recent *Hildawa* and *Valmonte* cases, *supra*.

The grant of immunity under Section 5 of P.D. 1886 would be meaningless if we follow the posture of petitioners herein. Such a posture would be correct if the phrase "after having invoked his privilege against self-incrimination" were transposed as the opening clause of Section 5 to read as follows: "After having invoked his privilege against self-incrimination, no person shall be excused from attending and testifying ... etc."

Said Section 5 has two clauses and contemplates two proceedings. The first clause from "No person shall be excused ... etc." up to "penalty or forfeiture .." refers to the proceeding before the FFB. The second clause after the semicolon following the word "forfeiture which begins with "... but his testimony or any evidence produced by him shall not be used against him in connection with any transaction, matter, or thing concerning which he is compelled, after having invoked his privilege against self-incrimination to testify ..." refers to a subsequent

criminal proceeding against him which second clause guarantees him against the use of his testimony in such criminal prosecution, but does not immunize him from such prosecution based on other evidence.

The private respondents herein, if the contention of the prosecution were sustained, would be fried in their own fat.

Consequently, the petition should be dismissed.

DISSENTING OPINION

MELENCIO-HERRERA, J.:

I vote to grant the Petitions and to reverse the ruling of the Sandiganbayan.

The resolution of the issue revolves around the interpretation to be given to Sec. 5 of PD No. 1886, reading as follows:

"SEC. 5. No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to a subpoena issued by the Board on the grounds that his testimony or the evidence required of him may tend to incriminate him or subject him to penalty or forfeiture;"

"but his testimony or any evidence produced by him shall not be used against him in connection with any transaction, matter, or thing concerning which he is compelled, after having invoked his privilege against self-incrimination, to testify or produce evidence, except that such an individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying, nor shall he be exempt from demotion or removal from office." (Paragraphing supplied)

As I read the law, Section 5 does not require that the person testifying before the Agrava Fact Finding Board (the Board, for short) shall first invoke the privilege against self-incrimination. Under said statute it is obvious that he has no such privilege.

But what is the effect of the second part providing that his testimony or any evidence produced by him shall not be used against him in connection with any transaction, matter or thing concerning which he is compelled, after having invoked his privilege against self-incrimination, to testify or produce evidence, except in case of perjury?

To my mind, the above portion does not grant to a person who has testified before the Board absolute or total immunity. It should not operate as a shield against criminal liability specially since, under Section 12 of the same Decree, the Board may initiate the filing of the proper complaint if its findings so warrant. Thus,

"SEC. 12. the findings of the Board shall be made public. Should the findings warrant the prosecution of any person, the Board may initiate the filing of the proper complaint with the appropriate government agency. x x x" (Emphasis supplied)

The inquiry before the Board was a general one. It was not directed against any particular individual or individuals. Private respondents did not testify therein as suspects or as accused persons. There should therefore be no hindrance to a criminal prosecution.

"It has been held that where an inquiry by a grand jury is a general one and is not directed against a particular individual, the fact that on the basis of the information elicited, grounds for a criminal prosecution may evolve against a witness, may not serve as a bar to such prosecution (U.S. v. Okin, D.C.N.J., 154 F. Supp. 553; Berson v. Goldstein, 124 N.Y.S. 2d 452) even though he testified before the grand jury without being warned of his

constitutional privileges against self-incrimination." (U.S. v. Okin, supra) (Underscoring supplied)

The right against self incrimination is not a prohibition of inquiry but an option of refusal to answer incriminating questions (Cabal vs. Kapunan, 6 SCRA 1059 [1962]). The kernel of the privilege is testimonial compulsion. Whether or not any specific portion of the testimonies of private respondents is incriminating should be determined by the Sandiganbayan itself. The claim against self-incrimination should be invoked when a specific question, which is incriminating in character, is put to a witness in the subsequent proceeding. There should be no automatic "immunity bath" of the entire testimony before the Board for immunity does not extend to such of the evidence as is not privileged.

"x x x But it is established that the privilege against self-incrimination must be invoked at the proper time, and the proper time to invoke it is when a question calling for an incriminating answer is propounded. This has to be so, because before a question is asked there would be no way of telling whether the information to be elicited from the witness is self-incriminating or not. As stated in Jones on Evidence (Vol. 6, pp. 4926-4927), a person who has been summoned to testify 'cannot decline to appear, nor can he decline to be sworn as a witness' and 'no claim or privilege can be made until a question calling for a criminating answer is asked; at that time, and generally speaking, at that time only, the claim of privilege may be interposed.' " (Gonzalez vs. Sec. of Labor, et al., 94 Phil. 325, 326 [1954]).

Moreover, the issue actually addresses itself to a question of admissibility or competency of evidence and not to its credibility. Whether the evidence so admitted is to be given any probative weight or credence is best addressed to the Sandiganbayan. It should be recalled that the Board was not unanimous in its assessment of the testimonies given.

There are additional considerations. While the right against self-incrimination is indubitably one of the most fundamental of human rights, Section 5 of PD No. 1886 should be construed so as to effect a practical and beneficent purpose and not in such a manner as to hinder or obstruct the administration of criminal justice.

"x x x Any statute which, while it compels him to testify, protects the witness if he does disclose the circumstances of his offense and the sources from which or the means by which evidence of its commission or of his connection with it may be obtained or made effectual for his subsequent prosecution and conviction is sufficient to comply with the constitutional requirements. Such a statute, however, should be construed to effect a practical and beneficent purpose, namely, at the same time to secure the witness in his constitutional rights and to permit the prosecuting officer to secure evidence of a crime. It should not be construed so as to unduly impede, hinder, or obstruct the administration of criminal justice." Brown v. Walker, 161 US 591, 16 Sup. Ct. 644, 40 L. Ed. 819." (People ex rel Hunt vs. Lane, 116 N.Y.S. 990, 132 App. Div. 406)

The objective in all this exercise is to arrive at the truth. "Though the constitutional provisions for the protection of one who appears x x x must be literally and fairly applied, the interests of the people are also entitled to consideration" (Wharton's Criminal Evidence, 11th Ed., Vol. 1, p. 609; People vs. Coyle, 15 N.Y.S. 2d 441, 172 Mis. 593). Specially so since, in the language of PD No. 1886 itself, the "treacherous and vicious assassination of former Senator Benigno S. Aquino, Jr. on August 21, 1983, has to all Filipinos become a national tragedy and national shame."

In the interest of eliciting the truth, the excluded testimonies should be admitted, leaving it to the Sandigan-bayan to determine which specific questions and answers are to be excluded because they are incriminatory, and which should be given credibility, if found to be competent and admissible.

CONCURRING OPINION

PATAJO, J.:

I vote for the dismissal of the petitions in these consolidated cases. Said petitions do not merit being given due course and should be dismissed outright.

I hold the view that the testimonies and evidence given before the Agrava Board are inadmissible as evidence against those who testified or gave said evidence irrespective of whether said persons were subpoenaed or invited. I believe it is not a condition sine qua non to the non-admissibility of said evidence that at the time they testified or gave evidence before the Agrava Board that they had invoked their privilege against self-incrimination.

The Agrava Board was created as an independent fact finding board to determine all the facts and circumstances surrounding the assassination of former Senator Benigno S. Aquino, Jr. on August 21, 1983. It was given plenary powers to allow for a free, unlimited and exhaustive investigation into all the aspects of said tragedy. It was given the power to issue subpoena or subpoena duces tecum and "other compulsory processes" requiring the attendance and testimony of witnesses and the production of any evidence relative to any matter under investigation by said Board.

Those who have been subpoenaed to appear and testify or produce any documentary evidence before the Board shall not be excused from testifying or presenting evidence before said Board on the ground that their testimony or evidence may tend to incriminate them or subject them to penalty or forfeiture. I believe an invitation from the Board is as much a compulsory process[1] to appear and testify before the Board as a subpoena and one receiving said invitation cannot also excuse himself from appearing and testifying before the Board.[2] Petitioners appear to share this view when they said in subparagraph (c), paragraph 7 of their petition in G.R. No. L-71208-09:

"(c) People were either invited or issued subpoenae, depending upon their rank and office, to give testimony before the Board and among those invited were respondents General Fabian C. Ver and Major General Olivas while the rest of the military respondents were issued subpoenae."

Unquestionably, it was the intention of the decree creating the Board to investigate the Aquino assassination to encourage all who have some information on any "aspect of said tragedy" to furnish the Board said information whether they are subpoenaed or issued other forms of compulsory process such as an invitation and to do so without fear that what they will say may be used against them. It is in this context that Section 5 of PD No. 1886 should be viewed. When they testified before the Board, they were given full assurance that whatever they say before the Board will not be used against them. Only if they testify falsely that they may be prosecuted for perjury. This is to prevent people from preventing the Board from finding out the truth about the Aquino assassination by giving false leads or information for ulterior reasons.

Actually Section 5 of PD No. 1886 falls under that category of statutes which do not pronounce an entire immunity by forbidding punishment or prosecution for any testimony or evidence given in connection with the investigation of certain offenses more widely known as immunity statutes, but merely prohibit in any criminal prosecution the use of the testimony of the witness. Immunity statutes as well as statutes prohibiting the use of testimony in any subsequent criminal prosecution have been the expedients resorted for the investigation of many offenses, chiefly those whose proof or punishment were otherwise impracticable because of the implication in the offense itself of all who could bear useful testimony.

"The expediency and practical utility of this mode of obtaining evidence may, as a measure of legislation, be open to argument. But the tradition of it as a lawful method of annulling the privilege against self incrimination is unquestioned in English history." Wigmore on Evidence, Vol. VIII, p. 469.

Speaking of this kind of privilege of non admission of testimony given by the witness in sub sequent prosecutions as allowed by the common law and modified by subsequent statutes, *State vs. Quarles*, 13 Ark 307, 311, said:

"The privilege in question, in its greatest scope, as allowed by the common law — and no one, be he witness or accused, can pretend to claim it beyond its scope at the common law — never did contemplate that the witness might not be proved guilty of the very crime about which he may be called to testify; but only that the witness should not be compelled to produce the evidence to prove himself guilty of that crime. His privilege, therefore, was not an exemption from the consequences of a crime that he might have committed; but only an exemption from the necessity of himself producing the evidence to establish his own crime ... So long as it might be lawful to produce in evidence against an accused party whatever he might before have voluntarily said as a witness on a prosecution against another, there were no means by which the privilege could be made available short of a claim by the witness to be silent; and as that was the rule of the common law, this was the common-law mode of making the privilege available. And that silence was but a mode of making the privilege available, and was not of the essence of the privilege itself, is conclusively proven by all that current of enlightened authority, to which we yield our fullest assent, which holds that the privilege has ceased when the crime has been pardoned, when the witness has been tried and acquitted, or is adjudged guilty, or when the prosecution, to which he was exposed, has been barred by lapse of time. . . But the Legislature has so changed the common-law rule, by the enactment in question, in the substitution of a rule that the testimony, required to be given by the act, shall never be used against the witness for the purpose of procuring his conviction for the crime or misdemeanor to which it relates, that it is no longer necessary for him to claim his privilege as to such testimony, in order to prevent its being afterwards used against him. And the only question that can possibly arise under the present state of the law, as applicable to the case now before us, is as to whether our statutory regulations afford sufficient protection to the witness, responsive to this new rule and to his constitutional guarantee against compulsory self-accusation. . ."

Considering the objectives sought to be achieved by PD No. 1886 the provision thereof making testimony and evidence given before the Board inadmissible in evidence against the ones giving the same, provides protection beyond that granted by the Constitutional provision against self-incrimination, otherwise it will be constitutionally suspect. *Counselman vs. Hitchcock*, 142 US 547, 35 L Ed 1110.

Of relevance are the observations of the District Court, N.D. Illinois, in *United States vs. Armour & Co.*, 112 Fed 808, 821, 822:

"All of these immunity acts are relied upon by the individual defendants, and, while expressed in slightly varying language, they all mean the same thing, and each of them is a substitute for the privilege contained in that clause of the fifth amendment to the Constitution, reading:

'Nor shall any person be compelled in any criminal case to be a witness against himself.'

"This fifth amendment deals with one of the most cherished rights of the American citizen, and has been construed by the courts to mean that the witness shall have the right to remain silent when questioned upon any subject where the answer would tend to incriminate him. Congress by the immunity laws in question, and by each of them, has taken away the privilege contained in the amendment, and it is conceded in argument that this cannot be done without giving to the citizen by way of immunity something as broad and valuable as the privilege thus destroyed. We are not without authority on this question. By a previous act, Congress undertook to take away the constitutional privilege by giving the citizen an equivalent, and the Supreme Court held in the case of *Counselman v. Hitchcock*, 142 U.S. 547, 12 Sup. Ct. 195, 35 L. Ed., 1110, that the substitute so given was not an equivalent. Then, at various times, the immunity acts in question were passed by Congress with full knowledge that in furnishing a substitute for this great right of the citizen, it must give something as broad as the privilege taken away. It might be broader, but it could not be narrower.

"Now, in my judgment, the immunity law is broader than the privilege given by the fifth amendment, which the

act was intended to substitute. The privilege of the amendment permits a refusal to answer. The act wipes out the offense about which the witness might have refused to answer. The privilege permits a refusal only as to incriminating evidence. The act gives immunity for evidence of or concerning the matter covered by the indictment, and the evidence need not be self-incriminating. The privilege must be personally claimed by the witness at the time. The immunity flows to the witness by action of law and without any claim on his part. *Brown v. Walker*, 161 U.S. 591, 16 Sup. Ct. 644, 40 L. Ed. 819; *Hale vs. Henkel* (recently decided) 26 Sup. Ct. 370, 50 L. Ed. __; *State v. Quarles*, 13 Ark. 307, quoted in 142 U.S. 567, 12 Sup. Ct. 199 (35 L. Ed. 1110); *People v. Sharp*, 107 N.Y. 427, 14 N.E. 319, 1 Am. St. Rep. 851; *Brown v. Walker*, approved in *Lamson v. Boyden*, 160 Ill. 613, 620, 621, 43 N.E. 781; *People v. Butler*, St. Foundry, 201 Ill. 236, 248, 66 N. E. 349.

"I am further of opinion that the immunity given by the act must be as broad as the liabilities imposed by the act. The act calls upon the citizen to answer any 'lawful requirement' of the Commissioner. 'Require' means to ask of right and by authority. Webster's Dictionary. *Tenn. Coal Co. v. Saller* (C.C.) 37 Fed. 545, 547. Anything is a requirement by a public officer which brings home to the person called upon that the officer is there officially and desires compliance. 'Demand' and 'require' are synonymous. *Miller v. Davis*, 88 Me. 454, 34 Atl. 265. The citizen may be punished for refusal to answer such lawful requirement. I am of opinion that when the Commissioner of Corporations, who has power to compel, makes his demand, it is the duty of the witness to obey.

"The contention has been made that in order to get immunity the citizen shall wait until the compulsion becomes irresistible. That is the effect of the government contention. I am not able to bring my mind to accept that doctrine. If I am right in saying that immunity flows from the law, without any claim on the part of the defendant — and at different times that has been conceded here in argument — then no act of any kind on his part which amounts to a claim of immunity, which amounts to setting up a claim of immunity, is demanded by the law. The law never puts a premium on contumacy. A person does not become a favored citizen by resistance to a lawful requirement. On the contrary, the policy of the law favors the willing giving of evidence whenever an officer entitled to make a demand makes it upon a citizen who has no right to refuse. And it would be absurd and un-American to favor the citizen who resists and places obstacles in the way of the government as against the citizen who, with a full knowledge of the law, obeys without resistance the demand of an officer who has the legal right to make the demand for something which the citizen has no legal right to refuse. This, then, is the proposition to which we are led: When an officer, who has a legal right to make a demand, makes such demand upon a citizen, who has no legal right to refuse, and that citizen answers under such conditions, he answer under compulsion of the law."

There is no merit then to the contention that private respondents should be invoked the privilege against self-incrimination before the Agrava Board for precisely PD No. 1886 had explicitly provided that the testimony of those who testified before the Board can not be used against them. It will be a meaningless act of supererogation to require that said witnesses before answering any question addressed to them must invoke their privilege against self-incrimination. The phrase "after having invoked his privilege against self-incrimination" in Section 5 of PD No. 1886 to be consistent with the intention of said decree, should refer to the time that the testimony of the witness will be used against him in another proceeding, such as the cases now pending before the Sandiganbayan. It could not refer to the proceedings before the Agrava Board because no one is being accused before said Board and no matter how self-incriminating the testimony of said witness is, he runs no risk of being prejudiced, much less convicted by the Agrava Board. It is in the prosecution of cases based on the report of said Board that the witness should invoke his right against self-incrimination. These private respondents did just that when they moved for the exclusion in evidence of their statement before the Agrava Board. Any other interpretation would defeat the very purpose of PD No. 1886.

[1] Section 3, PD No. 1886 empowers the Board to issue subpoena and "other compulsory processes". An invitation is such a compulsory process. The use of the word invitation is a mere euphemism used instead of subpoena in deference to the exalted position of those "invited". As this Court had occasion to say in *Babst vs. National Intelligence Board*, 132 SCRA 316, under certain circumstances and invitation to appear for interview are in fact "thinly veiled commands", in short summons or subpoena to appear.

In *States vs. Sacks*, 116 Kan. 148, 225 Pac. 738, the Supreme Court of Kansas said:

"The State contends that appellant cannot take advantage of this statute for the reason that no subpoena was issued for him. No subpoena was necessary. 4 *Wigmore on Evidence* 960; *U.S. vs. Armour* (DC) 142 Fed 808; *Atkinson vs. State*, 190 Ind. 1, 128 N.E. 433. The purpose of issuing a subpoena is to get a witness into court. If he appears by request of attorney for either side, it is no longer material whether a subpoena has been issued for him. His testimony is subject to the same objections and should be given the same weight and he is entitled to immunity to the same extent as though he had been served with a subpoena." See also *Atkinson vs. State*, 190 Ind. 1, 128 N.E. 433.

[2] We may assume that if the one invited will not appear in response to said invitation, he would be issued a subpoena. The Board will be remiss of its duty if it does not do so. Those invited certainly know this to be so and, therefore, regard the invitation to be as much a compulsory process as an invitation.

Concurring Opinion

PLANA, J.:

I would like to underscore some considerations underlying my concurrence:

1. According to the Constitution, no person shall be compelled to be a witness against himself. But the law (PD 1886) which created the Agrava Board decrees that no person shall be excused from testifying on the ground of self-incrimination. If the law had stopped after this command, it would have been plainly at variance with the Constitution and void. It was to ward off such a Constitutional infirmity that the law provided for immunity against the use of coerced testimony or other evidence, an immunity which, to be constitutionally adequate, must give at least the same measure of protection as the fundamental guarantee against self-incrimination.

2. Presidential Decree 1886 was not intended either to restrict or expand the constitutional guarantee against self-incrimination. On the one hand, a law cannot restrict a constitutional provision. On the other hand, PD 1886 was adopted precisely to coerce the production of evidence that hopefully would unmask the killers of Senator Aquino, although the compulsory process is accompanied by "use" immunity.

3. It is argued that the right against self-incrimination must have been invoked before the Agrava Board if the use of evidence given therein against the witness in a subsequent criminal prosecution is to be barred. I do not agree.

I fail to see why to preserve pursuant to law (PD 1886) one's constitutional right against self-incrimination, one has to offer resistance to giving testimony — a resistance which the said law itself says is futile and cannot prevail, as no witness by its specific injunction can refuse to testify.

4. The constitutional right against self-incrimination may be waived expressly. It may also be waived impliedly by speaking when one has the option to hold his tongue. Waiver by implication presupposes the existence of the right to keep silent. Thus, when one speaks because the law orders him to do so, his action is not really voluntary and therefore his testimony should not be deemed an implied waiver of his constitutional right against

self-incrimination.

5. Presidential Decree 1886 does not give private respondents absolute immunity from prosecution. It only bars the use against them of the evidence that was elicited from them by the Agrava Board. If there are other evidence available, private respondents are subject to indictment and conviction.

6. Moreover, the evidence given to the Agrava Board is not, in my view, completely immunized. What PD 1886 bars from use is only the testimony of the witness who testified before the Agrava Board and whatever was presented as part of his testimony, as such. PD 1886 could not have intended to convert non-confidential official documents into shielded public records that cannot be used as evidence against private respondents, by the mere fact that they were admitted in evidence as part of private respondents' testimony before the Agrava Board. In other words, evidence otherwise available to the prosecution, such as official documents, do not become barred just because they have been referred to in the course of the testimony of private respondents and admitted in evidence as part of their testimony. They may still be subpoenaed and offered in evidence. Conceivably, some objections might be raised; but the evidence will be unfettered by the exclusionary rule in PD 1886.

DISSENTING OPINION

RELOVA, J.:

The issue raised in these two petitions is whether the testimonies and other evidence produced by the private respondents before the Agrava Board may be used as evidence against them before the Sandiganbayan.

Respondent Sandiganbayan rejected their testimonies on the ground that "under statutes providing in substance that no person shall be excused from testifying or furnishing evidence on the ground that the testimony or evidence may tend to incriminate him, but that no person shall be subject to indictment or prosecution for anything concerning which he may testify or furnish evidence, it has been held that one who testifies concerning criminal offenses when required to do so is entitled to immunity from prosecution even though he fails to claim his privilege before giving the incriminating testimony (21 Am Jur 2d 218). He could not be required, in order to gain the immunity which the law afforded, to go through the formality of an objection or protest which, however made, would be useless (VIII Wigmore 516)." (p. 4, Resolution of Sandiganbayan)

Section 5 of Presidential Decree No. 1886 provides that:

"SEC. 5. No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to a subpoena issued by the Board on the ground that his testimony or the evidence required of him may tend to incriminate him or subject him to penalty or forfeiture; but his testimony or any evidence produced by him shall not be used against him in connection with any transaction, matter or thing concerning which he is compelled, after having invoked his privilege against self-incrimination, to testify or produce evidence x x x. " (underscoring ours)

Pursuant to the above Presidential Decree no one can refuse to testify or furnish evidence before the Fact Finding Board. However, his testimony or any evidence produced shall not be used against him after he invoked the privilege against self-incrimination. Stated differently, the privilege against self-incrimination must be invoked when the question at the hearing before the Board, calling for an incriminating answer is propounded; otherwise, before any question is asked of the witness, he would not know whether the information to be elicited from him is incriminating or not.

In the case of *Gonzales vs. Secretary of Labor, et al.*, 94 Phil. 325, this Court held that "the privilege against

self-incrimination must be invoked at the proper time, and the proper time to invoke it is when a question calling for a criminating answer is propounded. This has to be so, because before a question is asked there would be no way of telling whether the information to be elicited from the witness is self-incriminating or not. As stated in *Jones on Evidence* (Vol. 6, pp. 4926-4927), a person who has been summoned to testify 'cannot decline to appear, nor can he decline to be sworn as a witness' and 'no claim of privilege can be made until a question calling for a criminating answer is asked; at that time, and generally speaking, at that time only, the claim of privilege may properly be interposed.' " And, since it is a personal right to be exercised only by the witness, this privilege against self-incrimination may be waived by him and, when so waived, cannot thereafter be asserted. The privilege is waived by his voluntary offer to testify by answering questions without objecting and/or claiming the privilege.

When private respondents gave testimonies before the Board they were not defendants but witnesses invited and/or subpoenaed "to ventilate the truth through free, independent and dispassionate investigation." They could not refuse or withhold answers to questions propounded to them unless the inquiry calls for an incriminating answer and a timely objection is raised.

In the case at bar, since the private respondents answered questions from the Fact Finding Board without claiming the privilege against self-incrimination they cannot now be allowed to invoke the immunity clause provided in Section 5 of Presidential Decree No. 1886.

I vote to grant the petitions.

DISSENTING OPINION

TEEHANKEE, J.:

The majority decision is based on erroneous premises, viz, that the case at bar presents a "novel question;" that "this Court has not been previously called upon to rule on issues involving immunity statutes" and is burdened with the "monumental task" of "laying the criteria (to) build future jurisprudence on a heretofore unexplored area of judicial in-quiry." [1] The fact is that we have a wealth of settled jurisprudence and precedents, Philippine and foreign, that control the determination of the simple issue at bar and call for the setting aside of the exclusion order issued by respondent court (Sandiganbayan) which wrongly rules as totally and absolutely inadmissible the testimonies given by private respondents General Ver and Olivas and their six co-respondents (all charged as accessories) as well as all the documents, records and other evidence produced by them before the Fact-Finding Board, notwithstanding that all were represented by counsel [2] and none of them invoked the privilege or right against self-incrimination or made any claim or objection at the time of his testimony before the Board that any question propounded to him and which he willingly answered called for an incriminating answer against himself.

The following vital considerations based on settled jurisprudence and precedents show that respondent court acted with gross error and misconception of the applicable principles of the right against self-incrimination:

1. Respondent court grossly disregarded the settled guidelines laid down for trial courts by this Court in *People vs. Yatco* [3] thru Mr. Justice J. B. L. Reyes, speaking for a unanimous Court that —

— "By so doing [ordering the exclusion of the proffered confessions of the two accused upon a ground not raised by counsel but *motu proprio* by the trial court, i. e. lack of independent proof of conspiracy] the [trial] court overlooked that the right to object is a mere privilege which the parties may waive; and if the ground for objection is known and not seasonably made, the objection is deemed waived and the [trial] court has no power, on its own

motion, to disregard the evidence (Marella vs. Reyes, 12 Phil 1).... Suffice it to say that the lower court should have allowed such confessions to be given in evidence at least as against the parties who made them, and admit the same conditionally to establish conspiracy, in order to give the prosecution a chance to get into the record all the relevant evidence at its disposal to prove the charges. At any rate, in the final determination and consideration of the case, the trial court should be able to distinguish the admissible from the inadmissible, and reject what, under the rules of evidence, should be excluded."

— Trial courts should be liberal in the matter of admission of proof and avoid the premature and precipitate exclusion of evidence on doubtful objections to its admissibility, citing the Court's long-standing basic ruling and policy in *Prats & Co. vs. Phoenix Ins. Co.*[4] that reception and admission of evidence objected to on doubtful or technical grounds is ultimately the less harmful course to either litigant, since the Supreme Court upon appeal would then have all the materials before it necessary to make a correct judgment (instead of returning the case for a new trial which only prolongs the determination of the case); and

— "There is greater reason to adhere to such policy in criminal cases where questions arise as to admissibility of evidence for the prosecution, for the unjustified exclusion of evidence may lead to the erroneous acquittal of the accused or the dismissal of the charges, from which the People can no longer appeal." [5]

2. The right against self-incrimination is found in the first sentence of section 20 of the Bill of Rights of the 1973 Constitution stating that "No person shall be compelled to be a witness against himself." This single sentence constituted the whole text of section 18 of the Bill of Rights of the 1935 Constitution. This right against self-incrimination has a settled meaning in jurisprudence which is fully applicable here since the right against self-incrimination was first enforced here as an "inviolable rule" in U.S. President McKinley's instructions under date of April 7, 1900 to the Taft Commission.[6] As recounted by the late Mr. Justice Conrado Sanchez as ponente for a unanimous Court in the leading 1968 case of *Chavez vs. Court of Appeals*[7] "Mr. Justice Malcolm, in expressive language, tells us that this maxim was recognized in England in the early days 'in a revolt against the thumbscrew and the rack.' An old Philippine case [1904] speaks of this constitutional injunction as 'older than the Government of the United States;' as having 'its origin in a protest against the inquisitorial methods of interrogating the accused person;' and as having been adopted in the Philippines 'to wipe out such practices as formerly prevailed in these Islands of requiring accused persons to submit to judicial examinations, and to give testimony regarding the offenses with which they were charged.' " But Mr. Justice Sanchez equally stressed that "(an) accused occupies a different tier of protection from an ordinary witness. Whereas an ordinary witness may be compelled to take the witness stand and claim the privilege as each question requiring an incriminating answer is shot at him,[8] an accused may altogether refuse to take the witness stand and refuse to answer any and all questions." [9]

As restated by Mr. Justice J. B. L. Reyes for a unanimous Court in *Suarez vs. Tengco*[10] "No legal impediment exists against a litigant calling any of the adverse parties to be his witness. x x x True, an accused in a criminal case may not be compelled to testify, or to so much as utter a word, even for his own defense (U.S. vs. Junio, 1 Phil 50; U.S. vs. Luzon, 4 Phil 344; U.S. vs. Binayoh, 35 Phil 23; Sec. 1(c), Rule 111, Rules of Court). But while the constitutional guaranty against self-incrimination protects a person in all types of cases, be they criminal, civil, or administrative (Art. 111, Sec. 1, No. 18, Phil. Constitution; *Bermudez vs. Castillo*, 64 Phil 483), said privilege, in proceedings other than a criminal case against him who invokes it, is considered an option of refusal to answer incriminating question, and not a prohibition of inquiry.

"Except in Criminal cases, there is no rule prohibiting a party litigant from utilizing his adversary as witness. As a matter of fact, section 83 of Rule 123, Rules of Court expressly authorizes a party to call an adverse party to the witness stand and interrogate him. This rule is, of course, subject to the constitutional injunction not to

compel any person to testify against himself. But it is established that the privilege against self-incrimination must be invoked at the proper time, and the proper time to invoke it is when a question calling for a criminating answer is propounded. This has to be so, because before a question is asked there would be no way of telling whether the information to be elicited from the witness is self-incriminating or not. As stated in *Jones on Evidence* (Vol. 6, pp. 4926-4927), a person who has been summoned to testify 'cannot decline to appear, nor can he decline to be sworn as a witness' and 'no claim of privilege can be made until a question calling for a criminating answer is asked; at that time, and, generally speaking, at that time only, the claim of privilege may properly be interposed.' (*Gonzales vs. Sec. of Labor*, L-6409, February 5, 1954,[11] cit. in *Navarro, Criminal Procedure*, p. 302). ' "

Suarez was cited with favor and reaffirmed in *Bagadiong vs. Gonzales*,[12] wherein once again the Court, with the concurrence in the result of the now Chief Justice, under similar facts held that the petitioner (provincial treasurer) could not refuse to take the stand as an adverse party in a civil case since the privilege against self-incrimination "in proceedings other than a criminal case against him who invokes it, is considered an option to refuse to answer incriminating questions, and not a prohibition of inquiry" and "must be invoked when a question calling for an incriminating answer is propounded; because before a question is asked, there would be no way of telling whether the information to be elicited from the witness is self-incriminating or not." The Court therein denied "the petition to prohibit respondent judge from directing petitioner to take the witness stand and testify without prejudice to petitioner's properly invoking the guaranty against self-incrimination when questions are propounded to him on the stand. Costs against the petitioner."

3. All the respondents at bar were in this category of ordinary witnesses in the hearings of the Fact-Finding Board. They were not accused in any criminal case nor were they persons under custodial interrogation who under the second part of section 20 of the Bill of Rights (consist-ing of three additional sentences[13]) were given additional rights to silence and counsel and to be informed of such rights and to the outlawing of any confession obtained in violation of the rights guaranteed in the cited section by virtue of the incorporation into the Bill of Rights of the rights granted in the rulings of the U.S. Supreme Court in the *Miranda-Escobedo* cases. As noted by former Chief Justice Enrique M. Fernando, "(I)t amounts to an acceptance of the applicability in this jurisdiction of the epochal American Supreme Court decision in *Miranda vs. Arizona*, the opinion being rendered by Chief Justice Warren. It is thus now a part of our fundamental law. Such doctrine was promulgated in response to the question of the admissibility of statements obtained from an individual interrogated under police custody, considering that such a time and under the stress of such conditions, his right against self-incrimination could be rendered futile." [14] The *Miranda* pronouncements thus became necessarily a part and parcel of the additional rights granted in the cited section 20, as made by the late U.S. Chief Justice Warren in the *Miranda* case thus: "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." [15] These additional *Miranda* rights could not be invoked by respondents, as the members of the Fact-Finding Board were not law enforcement officers nor were respondents under custodial interrogation.

As ordinary witnesses before the Fact-Finding Board and under the settled, jurisprudence above-cited, they could not invoke the right to silence and refuse to take the witness stand. Their right and privilege (which is not self-executory or automatic *ipso jure*) was, while testifying, whether voluntarily or by subpoena, to invoke the privilege and refuse to answer as and when a question calling for an incriminating answer is propounded. Failure to invoke the privilege which is personal does automatically result in its loss *ipso facto*. The law, usage and settled jurisprudence uniformly require that the privilege must be asserted or else is lost. The court or board upon its invocation still has to pass upon and rule upon the proper application of the privilege. As restated by Francisco,

the rule and exceptions are: "Certainly, where the witness, on oath declares his belief that the answer to the question would criminate or tend to criminate him, the court cannot compel him to answer, unless it is clear perfectly, from a careful consideration of all the circumstances of the case, that the witness is mistaken, or is acting in bad faith, and that the answer cannot possibly have any such tendency." [16]

4. The view that withal, it is best, although not required, that a warning to the witness of his option to refuse an answer to incriminating questions — as advanced even by the Tanodbayan at the hearing — dates back to a century ago and has been long discarded as "witnesses are usually well enough advised beforehand by counsel as to their rights when such issues impend" and "as general knowledge spread among the masses and the preparation for testimony became more thorough." Thus, Wigmore, the bible on the law of evidence so remarks and adds that "there is no reason for letting a wholesome custom degenerate into a technical rule:" —

"It is plausible to argue that the witness should be warned and notified, when a criminating fact is inquired about, that he has an option to refuse an answer; and this view was often insisted upon, a century ago, by leaders at the Bar.

x x x x x x x x

"But there are opposing considerations. In the first place, such a warning would be an anomaly; it is not given for any other privilege; witnesses are in other respects supposed to know their rights; and why not here? In the next place, it is not called for by principle, since, until the witness refuses, it can hardly be said that he is compelled to answer; nor is it material that he believes himself compelled; for the Court's action, and not the witness' state of mind, must be the test of compulsion. Again, the question can at any rate only be one of judicial propriety of conduct, for no one supposes that an answer given under such an erroneous belief should be struck out for lack of the warning. Finally, in practical convenience, there is no demand for such rule; witnesses are usually well enough advised beforehand by counsel as to their rights when such issues impend, and judges are too much concerned with other responsibilities to be burdened with the prevision of individual witnesses' knowledge; the risk of their being in ignorance should fall rather upon the party summoning than the party opposing.

"Nevertheless, it is plain that the old practice was to give such a warning, when it appeared to be needed. But, as general knowledge spread among the masses, and the preparation for testimony became more thorough, this practice seems to have disappeared in England, so far at least as any general rule was concerned.

"In the United States, both the rule and the trial custom vary in the different jurisdictions. No doubt a capable and painstaking judge will give the warning, where need appears, but there is no reason for letting a wholesome custom degenerate into a technical rule." [17]

5. But from the environmental facts and circumstances of the Fact-Finding Board hearings, to require such a warning to the witness of his option of refusal to answer incriminatory questions would have been an exercise in absurdity and futility. As is a matter of public knowledge, respondents had concluded in their investigation that Galman was the assassin of the late Senator Aquino. As observed by former Senator Ambrosio Padilla as amicus curiae at the hearing on the merits of August 15, 1985, they were all too eager to testify and make a strong effort to gain support from the Fact-Finding Board and the public for the military version and report that the assassin was Galman who was forthwith gunned down by the military escorts and guards at the tarmac. It would have been ridiculous, if not bordering on officiousness and impropriety, to warn them as the highest ranking military officers of their option of refusal to answer incriminatory questions and also as the majority holds [18], of their right to remain silent. When respondents generals appeared before the Board, respondent Ver precisely made the opening statement that

"GENERAL VER:

I welcome this opportunity, Madame Justice, members of this Honorable board, Dean, gentlemen — this opportunity to assist . . . this Honorable Board in the quest for truth and justice. We all deplore this tragic incident which is now the subject of inquiry. This Board, this Honorable Board is mandated to conduct a free, full, and exhaustive investigation into the matter under investigation. We all hope that my testimony, madame, will somehow dispel any misconception, or any misin-formation surrounding this tragic incident. I am now ready to answer your questions.

JUSTICE AGRAVA:

Now, General, at the outset, we give the right and the privilege for every witness to be assisted by counsel. Do you have your counsel with you this morning?

GENERAL VER:

I did not bring any counsel, madame, but . . . if I need a counsel, madame, I could probably look for . . . probably . . .

JUSTICE AGRAVA:

Yes?

GENERAL VER:

I may call Fiscal Parena, or the Public Coordinator. I was talking to Atty. Tan to assist me, in the protection of my constitutional rights . . .

JUSTICE AGRAVA:

Yes.

GENERAL VER:

. . . if it is necessary.

ATTY. TAN:

Your Honor, please, it is part of the function of this office to help the witness if he doesn't have counsel, and so, if the General is willing to have me, I will happily serve as counsel, Your Honor.

JUSTICE AGRAVA:

All right.

GENERAL VER:

Thank you."^[19]

Respondent Olivas likewise testified before the Board in response to its invitation to assist it in determining the true facts and circumstances surrounding the double killing.

6. The majority decision would go around this by asserting without basis in the record that "(A)ll the private respondents, except Generals Ver and Olivas, are members of the military contingent that escorted Sen. Aquino while embarking from the plane that brought him home to Manila on that fateful day. Being at the scene of the crime as such, they were among the first line of suspects in the subject assassination. General Ver on the other hand, being the highest military authority of his co-petitioners labored under the same suspicion and so with General Olivas, the first designated investigator of the tragedy, but whom others suspected, felt and believed to have bungled the case. The papers, especially the foreign media, and rumors from ugly-wagging tongues, all point to them as having, in one way or another participated or have something to do, in the alleged conspiracy that brought about the assassination. Could there still be any doubt then that their being asked to testify, was to determine whether they were really conspirators and if so, the extent of their participation in the said conspiracy?" In fact, the respondent court's decision and separate opinions as well as the majority decision at bar and the separate concurring opinions all fail to specify the particular portions of the testimonies of respondents or any specific question and answer that can be in any way deemed to be self-incriminating. Indeed, even if we assumed *arguendo* that they were warned of their right against self-incrimination and tried — absurdly — to invoke the same, there is no specific question and answer by way of testimony that could be pointed to by them as having been made under compulsion — for the simple reason that their testimony was in full support of their own military report that Galman was Aquino's killer and for which they were trying to gain the Board's acceptance. In the all too brief and inadequate deliberations held on August 20 and 21, 1985 after the hearing on the merits of August 15, 1985, without reaching a definite conclusion, the ponente reported — and I share this view from a cursory examination, for want of material time, of the excluded testimonies only since the excluded documents, records and other evidence produced by them were not before the Court — that there is nothing in the excluded testimonies that could in any way be deemed self-incriminatory *per se*. So there would be no legal basis whatever for their exclusion. But the ponente circulated only last August 26th at noon his draft for dismissal of the petitions which were filed only last month. And its release has been set for August 30th.

7. There has not been enough time to weigh and ponder on the far-reaching consequences of the decision at bar.

The decision orders the total and unqualified exclusion of the testimonies and evidence produced before the Fact-Finding Board by the eight respondents charged as accessories "even though (they) failed to claim (their) privilege before giving the incriminating testimony" (citing 21 Am. Jur. 2d. 218). But the cited compilation of American State and Federal Law expressly cautions that "The question whether a witness must claim exemption from self-incrimination to be entitled to immunity from subsequent prosecution must in each case be determined in the light of constitutional and statutory provisions in the jurisdiction where the question arises" (21 Am. Jur. 2d. 151). It recites on the same cited page that "Under a statute granting immunity to persons who have been compelled to testify, one who has appeared voluntarily and testified without claiming his privilege against self-incrimination, or one who has appeared and testified pursuant to a void subpoena or one addressed to another person, without claiming the privilege, cannot say he has been compelled to testify, and therefore, he is not entitled to immunity." And the necessity of claiming the privilege against self-incrimination before an administrative officer or board such as the Fact-Finding Board is recognized to be essential, thus:

"This is not only equally true as for the case of testimony in a judicial trial, but the explicitness is here even more essential, and particularly where the administrative officer makes a general demand for documents or testimony upon a broad class of topics. The reason is clear. The officer has testimonial powers to extract a general mass of facts, of which some, many, or most will certainly be innocent and unprivileged, some may be privileged communications (e. g., between attorney and client) whose privilege remains unaffected by the statute defining his powers, and some may be privileged as self-incriminating but liable to become demandable by overriding this privilege with a grant of immunity. Among these mass of facts, then, the officer will seek those which are relevant to his administrative inquiry; he cannot know which of them fall within one or another privilege in particular, which of them tend to criminate at all, or to criminate a particular person; if such facts are there, he may not desire or be authorized to exercise the option of granting immunity so as to obtain them; his primary function and power is to obtain the relevant facts at large, and his power to obtain a special and limited class of facts by grant of immunity is only a secondary one, and one which he will not exercise till a cause arises, if even then.

"For these reasons of practical sense, then, as well as for the inherent requirements of principle already noticed for judicial officers, it is particularly true for an inquiry by an administrative officer that the witness must explicitly claim his privilege, and specifically the privilege against self-incrimination, and must then be overridden in that claim, before immunity can take effect." (VIII Wigmore on Evidence, 2282, pp. 517-518)

The concurrence of Justice Vera Cruz sounds even more ominous, thus:

"I believe that where evidence is produced by a witness in accordance with the conditions of the statute granting immunity such as P.D. No. 1886, as amended, its immunity provisions attach instantly and it is entirely immaterial what use the investigation authority makes of it (People ex rel. Massarsky v. Adams, 47 N. Y. S. 2d 375, 62 N. E. 2d 244).

"Consequently, the evidence, given before the Agrava Board by the accused in the instant cases namely, Generals Fabian Ver and Prospero Olivas, and Sergeants Pablo Martinez, Tomas Fernandez, Leonardo Mojica, Pepito Torio, Prospero Bona and Aniceto Acupido, cannot be used against them and this proscription did attach instantly when they testified before the same Board. Verily, the prohibition stands, irrespective of the purpose for which the prosecution would like to use this evidence."

The total and unqualified exclusion of the testimony and evidence granted by respondent court and sustained by the majority decision herein refers expressly to the eight respondents charged as accessories. Would not this unprecedented grant of immunity and exclusion of testimony be now claimed by the rest of the twenty-two accused charged as principals except for the lone civilian? As reported by the press, respondent court has suspended its trial and placed the pressure on the Court to rush its decision, as "(T)he so-called 'trial of the

century' has been delayed since last week on motion of the defense panel which had argued that the high court's decision on the admissibility of Ver's testimonies was a vital prerequisite to the presentation of witnesses for the defense." [20] Would this not result in the People holding an empty bag of excluded testimonies and evidence, since to all intents and purposes all respondents-accused testified before the Fact-Finding Board? Would their testimonies be inadmissible for purposes even of impeaching such testimony as they may now give before respondent court? These ponderous questions need not confront us had we but required respondent court to hew to the settled procedure and doctrine of Yatco (supra, par. 1 hereof) of giving the prosecution a chance to get into the record its relevant evidence until the final determination and consideration of the case, for the unjustified exclusion of evidence of the prosecution may lead to the erroneous acquittal of the accused or dismissal of the charges, from which the People can no longer appeal.

8. The alleged "ambiguous phraseology" of section 5 of P.D. 1886 cited in respondent court's questioned order and bolstered by the majority decision's "novel" conclusion and ruling that the cited section quoted therein [21] requires a claim from the witness of the privilege against self-incrimination but "forecloses under threat of contempt proceedings [under section 4] against anyone who makes such a claim. But the strong testimonial compulsion imposed by section 5 of P. D. 1886 viewed in the light of the sanctions provided in section 4, infringes upon the witness' right against self-incrimination. As a rule, such infringement of the constitutional right renders inoperative the testimonial compulsion, meaning, the witness cannot be compelled to answer UNLESS a co-extensive protection in the form of IMMUNITY is offered. Hence, under the oppressive compulsion of P. D. 1886, immunity must in fact be offered to the witness before he can be required to answer, so as to safeguard his sacred constitutional right. But in this case, the compulsion has already produced its desired results — the private respondents had all testified without offer of immunity. Their constitutional rights are, therefore, in jeopardy. The only way to cure the law of its unconstitutional effects is to construe it in the manner as if IMMUNITY had in fact been offered. We hold, therefore, that in view of the potent sanctions imposed on the refusal to testify or to answer question's under Sec. 4 of P.D. 1886, the testimonies compelled thereby are deemed immunized under Section 5 of the same law. The applicability of the immunity granted by P. D. 1886 cannot be made to depend on a claim of the privilege against self-incrimination which the same law practically strips away from the witness." (Emphasis supplied).

It bears emphasis that none of respondents made any such claim against self-incrimination. The "oppressive compulsion" if it may be so-called, consists of a maximum penalty of P200. — fine and/or 30 days imprisonment for direct contempt. As indicated, it would be ridiculous for any respondent to make such claim when his testimony was but in full support of their own military theory and report that Galman killed Aquino.

The language of the cited section [22] is plain and simple. It excuses no one from testifying and producing books and records but grants him immunity from prosecution (except for perjury) "after having invoked his privilege against self-incrimination." There is nothing oppressive about such compulsion in exchange for immunity provided the witness invokes his and claims his privilege against self-incrimination.

In the Court's Resolution of July 9, 1985, Mr. Justice Aquino, voting to dismiss outright the petitions, opined that "The clause 'concerning which he is compelled to testify after having invoked his privilege against self-incrimination' is surplusage. It is in conflict with the first clause which, as already stated, gives immunity to the witness except in case of perjury. So, section 5 should be read as if that clause were not there." This is contrary to the rules of statutory construction that there is no room for construction when the text is plain and simple, i. e. requires invocation, and that the provisions must be taken in context and all the words taken into account and given their full meaning. The Anti-Gambling Law, Act No. 1757, enacted on October 9, 1907 by the Philippine Commission (probably the first Philippine immunity statute) granted such absolute immunity and does

not contain the conditional clause requiring that the witness invoke his privilege against self-incrimination. Section 10 of the cited Act reads:

"Sec. 10. Upon any investigation or proceeding for violation of this Act no person shall be excused from giving testimony upon the ground that such testimony would tend to convict him of a crime, but such testimony cannot be received against him upon any criminal investigation or proceeding; Provided, however, That no person so testifying shall be exempt from prosecution or punishment for perjury committed in the course of any proceeding or investigation had by virtue of this Act. " (1 CPS [Rev. Ed.] 190)

But when the statute grants conditional immunity (and not absolute as in the above-quoted section 10 of the Anti-Gambling Act), then it explicitly contains the cited conditional clause in section 5 of P. D. 1886 granting immunity only when "he is compelled to testify after having invoked his privilege against self-incrimination."

This is but in accord with long-settled Philippine jurisprudence cited above (supra, paragraph 2 hereof), that the witness has an option of refusal to answer incriminatory questions, which he loses ipso facto if he does not invoke the privilege and nevertheless answers the questions. Here, in view of the national and international importance of the case with the country's very prestige at stake, the P.D. added the incentive of offering immunity: "The purpose of immunity provisions is to aid prosecuting officers by inducing criminals or their confederates to turn state's evidence and tell on each other, to enable prosecuting officers to procure evidence which would otherwise be denied to them because of the constitutional right against self-incrimination, and at the same time to protect every person from giving testimony which directly or indirectly would be helpful to the prosecution in securing an indictment or a conviction. The provisions for immunity are or should be as broad as or co-extensive with the constitutional provisions granting the privilege against self-incrimination." (21 Am. Jur. 2d. Criminal Law, sec. 148). It is bad enough that no state's evidence turned up to tell on his confederates in exchange of immunity. But to call the cited section "a booby trap for the unsuspecting or unwary witness" unless it was construed as granting absolute unconditional immunity from the very fact of merely testifying as a witness before the Board — without claiming immunity nor giving any incriminatory information that would aid the state to determine the true facts about Aquino's assassination — would be a sell-out. It would make a shambles of the letter and spirit as well as the salutary intent and objective of the Decree to ferret out the truth and obtain state witnesses.

9. The truncated and distorted reading of the cited section 5 which consists of a single integrated paragraph and splitting it into two isolated parts so as to allow the privilege against self-incrimination (which was already lost for failure to claim it in the Board hearings) to be resurrected and raised in a much later time frame and "subsequent criminal proceeding" is against all usage and rules of statutory construction, not to mention the long line of above-cited jurisprudence to the contrary. And if there still be doubt, we need only reproduce hereunder the similar wording of Senate Joint Resolution 137 (Public Law 88-202) after which section 5 of P.D. 1886 was patterned. Said law was enacted by the U.S. Congress in December 1963 to empower the Warren Commission to issue subpoenas requiring the testimony of witness and the production of evidence relating to any matter under its investigation. The Report of the President's Commission on the Assassination of President John F. Kennedy in its foreword on page X stated that "In addition, the resolution authorized the Commission to compel testimony from witnesses claiming the privilege against self-incrimination under the fifth amendment to the U.S. Constitution by providing for the grant of immunity to persons testifying under such compulsion." (Emphasis supplied). The cited Public Law reads:

"(e) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to a subpoena, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture (except demotion or removal from office) for or on account of any transaction, matter, or thing concerning which he is compelled, after having

claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying." (Emphasis supplied).

10. As already indicated above, none of the respondents, public and private, has indicated the specific portions of their testimony that they have been "oppressively compelled" to give, in alleged violation of their privilege against self-incrimination. The reason for this is that they all testified voluntarily and eagerly to support the military report and version that Galman killed Senator Aquino. The Board unanimously rejected the military report and found that the killings were the product of criminal conspiracy. A brief flashback is herein appropriate: Within 60 seconds from his being led away by soldiers from his plane that had just landed at the Manila International Airport on Sunday, August 21, 1983 at past one p.m., former Senator Benigno S. Aquino, Jr. who was coming home after three years of self-exile in the U.S. laid dead face down on the tarmac, with his brain smashed by a bullet fired point blank into the back of his head by a murderous assassin.[23] Also lying dead on the tarmac, face up, near the senator was another man, to be identified much later as Rolando Galman, whom the soldiers admittedly gunned, down. The military pointed to him as Aquino's assassin, who had somehow allegedly penetrated the airtight security of close to 2000 men ringing the airport. The military version met with great public disbelief and skepticism. The first fact-finding commission created under Administrative Order No 469 dated August 24, 1983 and P.D. 1879 dated August 27, 1983 was the object of several suits charging bias and that the President "had already prejudged the case, by rejecting the version of foreign media that it is one of the soldiers, supposed to guard Aquino, who fatally shot him." [24] The said commission was dissolved per P.D. 1886, dated October 14, 1983 (later amended by P.D. 1903 dated February 8, 1984) which created the Fact-Finding Board with plenary powers to investigate "the treacherous and vicious assassination (which) has to all Filipinos become a national tragedy and national shame . . . (and) to determine the facts and circumstances surrounding the killing and to allow for a free, unlimited and exhaustive investigation into all the aspects of said tragedy." The Board after extensive hearings, submitted to the President their majority report on October 24, 1984, while the chairman former Court of Appeals Justice Corazon Agrava submitted her minority report one day earlier on October 23, 1984. All five members of the Board unanimously rejected the official military version that Galman was the assassin and instead found that there was criminal conspiracy. Their main difference of opinion is that the four-member majority found twenty-five military men (headed by respondents Generals Ver, Olivas and Luther Custodio) and one civilian "indictable for the premeditated killing of Senator Benigno S. Aquino, Jr. and Rolando Galman at the MIA on August 21, 1983." The chairman's report confined the conspiracy to seven men headed by General Custodio. The Tanodbayan, after conducting the preliminary investigation, adopted the Board's majority report recommending the indictment of the 26 accused as "involved in this conspiracy, either as principals, upon the theory that the act of one is the act of all, or as accessories, for attempting to hide the corpus of the offense." The eight accessories so indicted are the private respondents herein named headed by respondents Ver and Olivas. (The chairman in her minority report had found that "(T)he indications are that the plotters had agreed that only one would be the assassin; that the others can either point to Galman as the killer; or they can state that they did not see the shooting; and that they will give false testimony to mislead and confuse."

11. Only the former lawyers of the Fact-Finding Board created under P.D. No. 1886, consisting of Messrs. Andres R. Narvasa, Bienvenido A. Tan, Jr., Mario E. Ongkiko and Francisco A. Villa have given us the answer that there is nothing incriminatory per se in the testimonies of the respondents, in the Memorandum submitted by them, to wit:

"I. The so-called 'Galman Theory' — that it was Rolando Galman who killed Senator Aquino — is either true or untrue, a matter the SANDIGANBAYAN will have to resolve.

"II. If the 'Galman Theory' be true — as advocated by the military officers concerned — then the testimony of

Ver, et al. is true. It is not self-incriminatory. There would then be no reason to exclude it.

“III. If, on the other hand, the theory be untrue — as the prosecution in turn advocates — then the testimony of Ver, et al. is untrue. It is incriminatory of them, because by giving it and thereby seeking to hide the crime, they incriminated themselves. Withal there would also be no reason to exclude it. Surely, after their plot to deceive the Board had been exposed, they should not now be allowed to use the law to bring about exclusion of the very proof of their deception.”

In short, the testimonies of respondents could only be deemed incriminating if it be found that they sought thereby to hide or cover up the crime and thus incriminate themselves, as accessories to the murder of Senator Aquino. The former Fact-Finding Board lawyers amplify their theory, as follows:

"5. The plain language of Section 5, PD 1886 precludes its interpretation as extending immunity to all testimony or evidence produced before the Board in obedience to subpoena — regardless of whether the witness giving such evidence invokes the privilege against self-incrimination or not.

"6. The fact is, the invocation by Ver, et al. of such right would have been self-defeating first, it would have prevented them from presenting evidence in substantiation of the 'Galman Theory,' which they wished the Board to accept; and second, it might have exposed to some extent their real objective, which was to deceive the Board.

"7. It would have been incongruous for Ver, et al. to have claimed that their testimony would incriminate them as accessories to the murder of Aquino when they were, by testifying, actually in process of committing that precise crime, becoming accessories.

"8. Neither PD 1886 nor the Constitution should be used as a shield for crime, fraud or trickery.

"9. The foregoing propositions were ignored by the SANDIGANBAYAN. Instead, with all due respect, it has —

- a. given Section 5, PD 1886 a strained construction not justified by and contrary to its plain language;
- b. given Section 20, Article IV, Constitution, a meaning at odds with its plain terms and contrary to relevant decisions of this Honorable Supreme Court; and
- c. sanctioned the use of legal provisions to shield persons from criminal liability arising from their perfidious testimony before the Fact-Finding Board."

There is no legal ground nor justification for the exclusion order. It is for respondent court, upon consideration of the evidence for the People, without any exclusion, and of the evidence for the defense in due course, to render its verdict of guilty or not guilty.

With a word of commendation for the former Fact-Finding Board lawyers and former Senator Ambrosio Padilla and Atty. Ramon Gonzales, whose memoranda as amici curiae, have been of great assistance, I vote, accordingly, to grant the petitions at bar and to set aside the questioned exclusion order.

[1] At page 6.

[2] Except respondent General Olivas, who as a member of the bar, represented himself.

[3] 97 Phil 940 (1955); emphasis supplied.

[4] 52 Phil 807, 816-817 (1929).

[5] Emphasis supplied.

[6] Vol. I, Public Laws of the Phil., p.1 xiii

[7] 24 SCRA 663 (1968).

[8] Gonzales vs. Secretary of Labor, 94 Phil 325, 326.

[9] Cabal vs. Kapunan, L-19052, December 29, 1962; 21 Am. Jur. 2d., p. 383; 98 C.J.S., p. 265; 8 Wigmore, Evidence 1961 ed., p. 406; 3 Wharton's Criminal Evidence, 11th ed., pp. 1959-1960.

[10] 2 SCRA 71 (1961); emphasis supplied.

[11] 94 Phil 325.

[12] 94 SCRA 906 (Dec. 28, 1979), First Division, per Pacifico de Castro, J.

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

[14] Fernando, The Constitution of the Philippines, 2nd Ed., p. 710.

[15] Miranda vs. Arizona, 384 U.S. 436 (1966).

[16] VIII Francisco's Revised Rules of Court, Evidence, Part II, p. 226.

[17] VIII Wigmore on Evidence, 2268, sec. 398-400.

[18] Separate opinion of the Chief Justice at page 4.

[19] Petition in G.R. No. 71208-09, p. 9.

[20] Metro Manila Times issue of Aug. 28, 1985.

[21] Quoted in full at page 14, majority decision.

[22] At page 14, majority decision.

[23] Par. 1.0.0., Board members' Majority Report, composed of Messrs. Luciano S. Salazar, Amado C. Dizon, Dante G. Santos and Ernesto F. Herrera.

[24] Petition in G.R. No. 64969, Ramon A. Gonzales vs. Fernando Commission, page 5; G.R. No. 64983, LABAN vs. Chief Justice Enrique M. Fernando, and G.R. No. 64993, Demetrio G. Demetria vs. Hon. E. M. Fernando, etc., et al. The three cases were eventually dismissed as moot and academic by joint Resolution of the Court dated October 20, 1983 "considering that the respondent Chairman and four members of the respondent Commission created by Administrative Order No. 469 had already tendered their resignations, which the President of the Philippines accepted with deep regret; and that the respondent Commission had been dissolved and superseded by the Commission created by P.D. No. 1886."

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