Topic Two: Community Involvement in the Prosecution of Crimes

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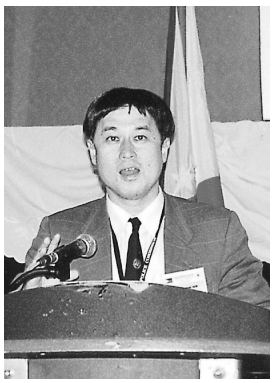

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COMMUNITY INVOLVEMENT IN THE PROSECUTION OF CRIMES

By
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Distinguished Guests,
Ladies and Gentlemen,

We wish to thank the National Police Commission for the invitation and in giving the Department of Justice (DOJ) the opportunity to participate in the Philippines-Japan Joint Seminar on Crime Prevention and Treatment of Offenders, and particularly to expound on the topic: Community Involvement in the Prosecution of Crimes.

In international practice, the criminal justice system consists of four pillars, namely; law enforcement, prosecution, courts and corrections. Other authors speak only of three pillars; law enforcement, courts and corrections – because prosecution is merged with courts. While international standards vary between three to four pillars, the Philippine Criminal Justice System is based on five pillars, namely: law enforcement, prosecution, courts, corrections, and the community (Bernardo R. Calibo, Editor-in-Chief, Criminal Justice Journal; Criminal Justice System, National Police Commission pamphlet, p. 1). Allow me to share with you, initially, the salient features of the Philippine criminal justice system.

The Criminal justice system is the machinery which Philippine society uses in the prevention and control of crimes. It operates by:

1. Preventing the commission of crimes;
2. Enforcing the law;
3. Protecting life, individual rights and property;
4. Removing dangerous persons from the community;
5. Deterring people from indulging in criminal activities;
6. Investigating, apprehending, prosecuting and sentencing those who cannot be deterred from violating the rules of society; and
7. Rehabilitating offenders and returning them to the community as law-abiding citizens (The Philippine Criminal Justice System, p. 1).

Law enforcement controls arrest and booking; prosecution controls preliminary investigation and filing of informations; courts control arraignment, trial, sentencing, probation, suspended sentence and appeal; corrections control incarceration in jail, parole, pardon and the serving of sentence; the community, represented by the non-government organizations and people's organizations, contribute to the prevention of crime and delinquency.

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The first pillar is the law enforcement pillar. It consists mainly of the officers and men of the Philippine National Police (PNP), the National Bureau of Investigation (NBI) and other law enforcement agencies. Their work consists in the prevention and control of crimes, enforcement of laws and effect the arrest of offenders, including the conduct of lawful searches and seizures to gather necessary evidence so that a complaint may be filed with the Prosecutor's office.

The NBI is an agency of the DOJ. It serves as a main artery through which programs and services instituted by the Department are delivered to the people. Though the NBI has its own specialized line of function which involves scientific criminal investigation, the guiding principle of democratized and humanized society which is the yardstick by which the DOJ operates, is incorporated in its program and services.

The territorial jurisdiction of the NBI is national in scope and extends to all cities and provinces of our country. It is empowered to investigate criminal cases upon its own initiative. The only limitations or exceptions are those provided or may be provided by pertinent laws and policies. Its various specialized units deal, among other matters, with international crimes, narcotics, fraud, graft and corruption, arson and personnel background investigation.

The second pillar is the prosecution arm of the government. It is mandated to uphold the rule of law. The National Prosecution Service is made up of the Regional, Provincial and City Prosecutors, and State Prosecutors. Their mission is to maintain peace and order in the community through the delivery of prompt prosecutional services, that is, the investigation of crimes and the prosecution of criminals.

There are two (2) prefatory stages in criminal actions. The first stage pertains to police activities, the initial investigation of crimes reported to or discovered by police authorities. The second prefatory stage is the preliminary investigation. It is the stage at which the prosecutor evaluates the findings of the police to determine if prosecution of the suspect in court is warranted. A preliminary investigation is an important substantive right of persons accused of crimes, deprivation of which is tantamount to a denial of due process. It is designed to guard against hasty and malicious prosecutions (Narvasa, Handbook on the Criminal Justice System, pp. 12-14).

Preliminary investigations may be conducted by the prosecutors, and such other officers as may be authorized by law or judges of Municipal Trial Courts or Municipal Circuit Trial Courts (Sec. 2, Rule 112, Rules of Court). As regards crimes within the jurisdiction of Regional Trial Courts, the accused may demand a preliminary investigation as a matter of right. With respect to offenses cognizable by Municipal Trial Courts, no preliminary investigation is required by law. The prosecutor determines *ex parte* if the suspect has probably committed the offense charged, then files the information in court for trial and judgment.

They say that the Prosecutor, in whatever land or clime, holds a very important and powerful office in the CJS. His is the decision whether to prosecute a case or not. He may *nolle prosequi* (decide not to prosecute) if he feels that the evidence is insufficient to gain a conviction, yet he may hold the case open for further action if and when warranted. Subject only to a few constraints, he determines who will be formally tried and for what offenses, and whether to dismiss charges or offer an accused an opportunity to plea bargain for a reduced charge or he may recommend lighter sentence. It is he, in effect, who determines which case will ever reach the courts for adjudication, and who can terminate the processing of any case anywhere in the system.

But powerful as the prosecutor may seem to be in the Philippines, as well as in any other country, yet he cannot successfully prosecute cases alone, or render justice to anyone, without the cooperation and collaboration of the other components of the criminal justice system. For the prosecutor cannot successfully prove his case without the evidence gathered by the apprehending and/or investigating police officer or law

enforcement agent. Neither may he be able to establish his case in court in the absence of fair, competent and independent-minded judge. Nor would his work and that of the judge end in the conviction of the felon, for without the dedication to duty of prison and custodial officers, and the rehabilitating assistance rendered by the community, said felon or criminal would keep coming into the system and be a burden to society. For like the bow and arrow, the prosecution and the other components of the criminal justice would be useless without the other (Speech of ACSP Nilo C. Mariano before the Konrad Adenauer Foundation).

The third pillar of the CJS is the courts pillar. It is the forum where the prosecution is given the opportunity to prove that there is a strong evidence of guilt against the accused. It is also in the courts that the accused is given his "day" to disprove the accusation against him.

The constitutional presumption is the innocence of any person accused of a crime unless proven otherwise. This means that the courts must determine the guilt of the accused beyond reasonable doubt, i.e. based on the strength of the evidence of the prosecution. If there is reasonable doubt that the accused committed the crime, he has to be acquitted.

The fourth pillar is the corrections pillar. It takes over once the accused, after having been found guilty, is meted out the penalty for the crime he committed. The punishment may be in the form of isolation of the convicts by imprisonment for the periods laid down by the courts, or in extreme cases, their execution by the method prescribed by law. When the penalty is imprisonment, the sentence is carried out either in the municipal/city jails, the provincial jail or national penitentiary depending on the length of the sentence meted out.

The Bureau of Corrections, Board of Pardons and Parole, and the Parole and Probation Administration, agencies also of the DOJ, are part of the corrections pillar. The principal task of the Bureau of Corrections is the rehabilitation of prisoners so they can become useful members of society after service of sentence. The Board of Pardons and Parole recommends to the President the prisoners who are qualified for parole, pardon or some other executive clemency. The Probation Administration exercises general supervision over all parolees and probationers and promotes the correction and rehabilitation of offenders.

There are other agencies charged with the administration and supervision of prisoners and detainees. These are the Bureau of Jail Management and Penology (which supervises city and municipal jails), and the various Offices of the Provincial Jail Warden/Provincial Governor (which administers the Provincial Jails), which are under the Department of the Interior and Local Government (DILG).

It bears emphasis that the administration of criminal justice is not the exclusive responsibility of the police, the prosecutors, the judges, and the corrections personnel. "Out of necessity," it has been said, "the criminal justice system relies on citizen participation".

Without the active participation of the members of the community, the processes of the criminal justice system cannot operate. The police rely on citizens to report crimes and to assist them in the conduct of investigations. The prosecutors and the judges depend upon citizens as witnesses in the prosecution of the offender. The corrections' staff trust them to support community-based corrections programs (Puno, Contemporary Problems in the Administration of Criminal Justice, CJ Journal, 1982, vol. 2).

The community at large is expected to formulate moral and ethical values, develop the environment for the development of civic-spirited citizens, foster respect for and observance of the Rule of Law. Public and private educational institutions, parents and guardians, churches, religious organizations, civic associations, among others, are collectively considered a component of the CJS, so are individual citizens who are supposed to prevent crimes, report offenses to the authorities, make warrantless arrests in proper cases, give evidence in court to put criminals behind bars, and help in the rehabilitation of offenders.

The community component also includes attorneys who, among other things, give counsel and help settle rights and prevent controversies.

The community pillar also includes government institutions, such as the Bureau of Posts which delivers court notices; the Bureau of Immigration and Deportation which prevent departure of suspects from the country; Bureau of Telecommunications which transmit communications by telephone, telegram, radio (Phil. Law Gazette, Narvasa).

In this regard, the mass media should be encouraged to contribute positively to the education of the public on issues of crime prevention and criminal justice, as an important tool of socialization, together with programs on civic and legal education.

We believe that broadcasters have a crucial role as social catalysts, exerting tremendous influence on the way people think and the way they live, specifically in the aspects of crime prevention and public safety. If we want a safer place for our families, friends and neighbors, citizens like you need to take an active part … NOW.

Radio and television are considered the best channels through which information can be disseminated to the general public. In reach and immediacy, nothing can beat radio because practically every Filipino household owns a radio set. On the other hand, television is becoming a national medium.

According to the Philippine Survey and Research Council (PSRC), while television is mainly seen as an entertainment medium, it is growing as a medium of information on current events. Radio is viewed as a source for current events, particularly local news. Radio has a personalized role in the marketing of ideas and information. Hence, the broadcast media must be used properly to fight criminality (Escaner, Jr., Crime Prevention, Broadcaster's Manual).

History and experience show that the key to success of any criminal justice system is public participation. Thus, the Philippines has decided to add the community pillar to its own concept of the criminal justice system.

We have given this dignity to the community because the wholesome and highly effective work of non-governmental organizations (NGOs) in our country has evolved into a veritable science and art, a virtual discipline in itself. This evolution in our country reached its climax with the staging of the greatest public participation ever recorded in the annals of history, that is the phenomenon of People Power, wherein, in the twinkling of an eye, so to speak, a government perceived by the public as totalitarian was changed into a democratic form within a period of only 4 days – and with hardly any bloodshed at that.

U.S. President George Bush has put it on record that the People Power model of the Philippines was the very one followed, first by East Germany, then by the Soviet Union, in dismantling their totalitarian governments. We could therefore, say, modesty aside, that we have contributed to world politics the concept of People Power, which an author from the United States of America (from where we learned democracy) referred to as "The Greatest Democracy Ever Told."

If an entire government perceived as "criminal" could be changed in a matter of days, then we have discovered or invented a virtual shortcut to preventing crime. If a "criminal" world superpower, such as the Soviet Union, could be changed almost overnight by the phenomenon of People Power, we can also conquer, root out and banish crime and criminal syndicates, which cannot even compare with a superpower, through the same awesome and tremendous might of People Power. (Torres, The Effective Administration of Criminal Justice: Public Participation and Corruption Prevention, CJ Journal, 2nd Quarter, 1995)

I can say without fear of contradiction that the key to success in the prosecution and conviction of a criminal lies in the community, specifically, the witnesses, be they eyewitnesses or expert witnesses.

During the preliminary investigation stage, if there is no witness to corroborate the allegations of the complaint and the same is bereft of any documentary evidence, the investigating prosecutor/judge will be constrained to dismiss the complaint.

It is settled that the purpose of a preliminary investigation is to secure the innocent against hasty, malicious and oppressive prosecution, and to protect him from an open and public accusation of crime, from the trouble, expense and anxiety of a public trial, and also to protect the state from useless and expensive trials (Trocio vs. Manta, 118 SCRA 241; citing Hashim vs. Boncan, 71 Phil. 216). It is, therefore, imperative upon the fiscal or the judge as the case may be, to relieve the accused from the pain of going through a trial once it is ascertained that the evidence is not sufficient to sustain a *prima facie* case or that no probable cause exists to form a sufficient belief as to the guilt of the accused (La Chemise Lacoste, S.A. vs. Fernandez, 129 SCRA 391).

Moreover, without the testimony of witnesses during the trial of cases, many guilty parties would escape (People vs. Court of Appeals, et al., G.R. No. 55533, July 31, 1984). Consequently, when the court is satisfied, upon proof or oath, that a material witness will not testify when required, it may upon the motion of either party order the witness to post bail in such sum as may be deemed proper. Upon refusal to post bail, the court shall commit him to prison until he complies or is legally discharged after his testimony has been taken (Sec. 14, Rule 119, The Revised Rules of Criminal Procedure).

We must not forget, therefore, that "(o) ne of the duties which the citizen owes to his government is to support the administration of justice by attending its courts and giving his testimony whenever he is properly summoned. Justice requires the attendance of witnesses cognizant of material facts and no unreasonable obstacle ought to be thrown in the way of their freely coming into court to give oral testimony. (97 CJS, 350) 'The public has a right to every man's evidence', said a great English judge two centuries ago. This maxim is universally conceded. Justice cannot be done without first finding facts; and witnesses who can possibly help to disclose the facts must give that help. Each must contribute when his neighbor needs it, so that he himself may receive like help when the time comes that he needs it. The testimonial duty is one of the fundamental ones that must be recognized in any organized society; otherwise justice becomes impotent." (Wigmore on Evidence)

It is undeniable that one of the many problems which the prosecutors and courts encounter in their investigation and prosecution of criminal offenders is the lack of cooperation of vital witnesses who are usually hesitant to testify out of sheer indifference, or fear of reprisal against themselves and their immediate families, or for economic reasons. Hence, R.A. No. 6981, otherwise known as the "Witness Protection Security and Benefit Act" was enacted and the Witness Protection Security and Benefit Program was formulated to address this problem.

Three kinds of witnesses are covered by the Witness Protection, Security and Benefit Act:

1) those who witnessed or have knowledge of the commission of a crime, but are not participants in the commission thereof;
2) those who participated in the commission of the offense, but whose testimony is necessary for the prosecution of the crime; and
3) witnesses in case of legislative investigation in aid of legislation.

The aforecited law extends its protective mantle over any "person who has witnessed or who has knowledge or information on the commission of a grave felony" and has "testified or is testifying or about to testify before any judicial or quasi-judicial, or before any investigating authority," and to any member of the family of the witness within the second civil degree of consanguinity or affinity whenever such family

member is subjected to threats to his life or bodily injury or to intimidation and harassment to prevent from testifying or to coerce him into giving false testimony.

Whenever a witness to a grave felony is subjected to threat to his life or bodily injury or whenever such threat is directed to any member of his family within the aforesaid degree of relationship, such witness or member of family shall be entitled to the benefits of the act. There is one exception: when the witness is a law enforcement officer. However, the immediate members of his family may still avail of the protection provided under said law.

Subject to the following conditions, the law allows an accused or a participant in the commission of a grave felony to apply for the benefits of the program, viz:

1) There is absolute necessity for the testimony of the accused whose discharge is requested;

2) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;

3) The testimony of said accused can be substantially corroborated in its material points;

4) Said accused does not appear to be the most guilty;

5) Said accused has not at any time been convicted of any offense involving moral turpitude (Nolledo, Handbook On Criminal Procedure, pp. 437-438, citing various cases).

The Supreme Court has laid down the philosophy thereof:

> "The ground underlying the rule is not to let a crime that has been committed go unpunished, so an accused who is not the most guilty is allowed to testify against the most guilty in order to achieve the greater purpose of securing the conviction of the more or most guilty and the greatest number among the accused permitted to be convicted for the offense they have committed. Experience under English and American procedural methods has shown that without the aid of informers testifying against their co-participants in crime, many guilty parties would escape, where the facts which would sustain a conviction are known to the guilty parties themselves.
>
> "The said law likewise extends its protective coverage to those who testify before legislative investigations conducted by Congress or its committees. It can be said then that the law is broad in its application since its coverage is not confined to witnesses in criminal cases but also extends to those who testify before quasi-judicial bodies, including legislative investigations conducted by Congress or its committees."
>
> "The role of non-governmental organizations or what we may call, in a way, the mobilized sector of the community pillar in the criminal justice system cannot be overemphasized *vis-à-vis* their telling impact on the rest of the criminal justice system: law enforcement, prosecution, courts, and corrections. In the absence of a militant public that exerts pressure on prosecutors, judges and all personnel to speedily prosecute and try cases, and treat convicts humanely in preparation for their re-assimilation into the mainstream of society, these central figures in the criminal justice cycle are bound to relax and take their own sweet time as regards the disposition of cases and treatment of offenders. A no-nonsense government leadership backing up public pressure on officials of the criminal justice process is a compelling factor that would make the prosecution and the courts buckle down to work to arrive at the truth" (*id*, pp. 24-26).

With the active participation of the community in the preliminary investigation and trial of cases, local people become both the SERVERS and the SERVED (Cuaderno, Community Involvement in Crime Prevention, CJ Journal, 3rd & 4th Quarters 1984).

Thank you, Ladies and Gentlemen.

COMMUNITY INVOLVEMENT IN THE PROSECUTION OF CRIMES

By
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I. INTRODUCTION

Japan had been strongly influenced by the Chinese legal system since the seventh century. In 1890, Japan enacted the Meiji Constitution under the influence of the civil law countries, especially Germany. After its defeat in World War II, Japan implemented the present Constitution, influenced by United States law, since 1947 without any change. A number of provisions regarding human rights in criminal matters were introduced or strengthened in the Constitution (specifically, Articles 31 to 40). In short, no person shall be arrested, searched or seized without a warrant issued by a competent judge except for a flagrant offence; be compelled to testify against themselves; or be convicted in cases where the only proof against them is their own confession. An accused has the right to retain their own counsel[1].

The Code of Criminal Procedure (hereinafter CCP) was also changed in 1949. The CCP was greatly influenced by the adversary party concept, especially in trial, and adopted the restrictive use of evidence and the need for a warrant for all kinds of compulsory measures.

II. MONOPOLIZATION OF PROSECUTION

A. Principle

Public prosecutors have the exclusive power to decide whether to prosecute (CCP article 247). Japan does not have a system of private prosecution[2] or police prosecution[3]; nor a grand jury[4] or preliminary hearing system conducted by judges. In other words, the court cannot recognize any crime unless the public prosecutor prosecutes. This system is called "monopolization of prosecution," which is supported by the public because of successful efforts by public prosecutors.

B. Exception to the Monopolization of Prosecution

The sole exception is called the system of "Analogical Institution of Prosecution through Judicial Action" or "Quasi-Prosecution" (CCP articles 262 to 269). This system purports to protect the parties injured by crimes involving abuse of authority by public officials (Penal Code articles 193 to 196, The Law concerning Interception of Electronic Communication in Criminal Investigation article 30). A person, who has made a complaint or accusation and is not satisfied with the public prosecutor's decision not to prosecute, may apply to the court to order the case to be tried. The court, after conducting hearings, must

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1 The Constitution provides the right to retain a defense counsel for the accused, meaning a defendant after indictment, and the Code of Criminal Procedure provides the same right for a suspect. However, if he/she cannot hire a defense counsel, the state will assign a defense counsel only for an accused, not for a suspect (CCP articles 30 and 36).

2 In China, Egypt and Thailand, there is a system of private prosecution where a victim who is not satisfied with the decision of non-prosecution may bring criminal action against an offender by him/herself.

3 In the UK and some commonwealth countries, private or police prosecution has been practised. A prosecutor only determines whether the prosecution should be maintained or canceled depending upon the evidence.

4 In the USA, a grand jury comprised of 23 ordinary citizens are selected at random. It is said that the grand jury serves to protect innocent citizens from improper governmental action, by having a panel of ordinary citizens to determine whether there is "probable cause" to believe that a crime has been committed and that the accused committed the crime.

either dismiss the application, or order the case to be tried if well-founded. If the application is granted, then a practicing lawyer is appointed by the court to exercise the functions of the public prosecutor.

III. INITIATION OF PROSECUTION

There are two main forms of prosecution: formal and summary. If the case is serious and the suspect deserves a penalty of imprisonment or death, the prosecutor indicts the suspect for formal trial even if he/she admits higher guilt.

The prosecutor utilizes summary procedure when the suspect deserves a fine not exceeding 500,000 yen, admits higher guilt and accepts a monetary sentence. In general, minor offences, such as traffic violations or bodily injury through professional negligence, are dealt with through this system. However in cases where a suspect accused of assault or bodily injury confesses and compensates the victims' damage, summary procedure is also utilized. Before the institution of prosecution, the public prosecutor shall ascertain whether the suspect has any objections to summary proceedings. After the informal prosecution, the courts will consider and decide these cases summarily on documentary and real evidence submitted by the public prosecutors without opening public hearings. If the parties who are not content with the sentences summarily imposed demand formal trials within 2 weeks of receipt of notice of the sentences, the case is prosecuted in formal trial proceedings. As the order of fine is issued speedily without the trial, the number of unconvicted prisoners awaiting trial is reduced immensely by this process. It is noteworthy that in Japan, among the total 2,198, 003 cases which were disposed of at the public prosecutors office in 1999, 1,025,432 cases (46.7%) were disposed of by summary procedure.[5,6,7]

To indict, a public prosecutor must submit a bill of indictment to the court, identifying the defendant (usually by showing the permanent domicile and present address, their name and date of birth), showing the offence charged and the facts constituting such offence (CCP article 256).

An example bill of indictment (translated into English) is as below;

Bill of Indictment

Prosecute the following case.

May 17, 2000

Tokyo District Public Prosecutors Office
Public Prosecutor, KOUNO, Ichirou (his seal)

To Tokyo District Court

Defendant

Permanent Domicile: Yoshida 823, Mizumaki-cho, Onga-gun, Fukuoka Prefecture
Present Address: Room Number 303 of the Dormitory of the Pachinko Parlor named

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5 White paper on Crime 2000, Ministry of Justice in Japan

6 In the Republic of Korea, out of a total of more than 1 million cases, 85% were disposed of by summary proceedings. (UNAFEI 111th International Seminar Report "The Role of Prosecution in the Changing Society")

7 In addition, there is another style of "Imposition of Fine by Administrative Procedure". This method, whereby the case is settled with fine imposed outside the courtroom, is applied in several countries such as Malaysia, Singapore, Sri Lanka, Thailand and Japan. In Malaysia, Singapore and Sri Lanka, for minor cases such as traffic offences, the police or other administrative agencies will issue a summons to the offender who has committed the offence. The offender is informed that he/she is being ordered to pay a fine. If he/she pays the fine within a certain period, the offence is considered settled. Correspondingly, in Thailand, for trivial offences punishable with only a fine and offences punishable with a maximum of one month imprisonment or a small fine, the police can impose fines immediately on the offenders. In cases where the accused does not agree with the imposed fine, the case will be prosecuted in the court as an ordinary case.
In Japan, many traffic offences are disposed of by an administrative fine called "pecuniary penalty against traffic infractions". The offences subject to this fine include driving beyond the speed limit, overloading of trucks and cars and other minor traffic violations. The administrative fine is imposed by the police officer and, if the fine is paid, the matter is settled. Only if the administrative fine is not paid within the stipulated time, without reasonable cause, the matter will be taken up as a criminal case in the court.

"New Metro", Ebisu 2-4-7, Shibuya-ku, Tokyo

Occupation: None

Under Detention

HIGASHIYAMA, Haruo
April 17, 1957

Fact Constituting the Offence Charged

At around 11 p.m., on April 23, 2001, the defendant stuck a knife (its edge is about 10 centimeters long) into the chest (left side) of Mr. MORITA, Toshikazu (24 years of age) with the intention of murder on a street located in Ebisu 2-4-7, Shibuya-ku, Tokyo. The victim's death resulted from blood loss attributable to the stab wound in the chest at around 11:58 p.m. on the same day at YAMADA Hospital located in Komaba 3-1-23, Meguro-ku, Tokyo

Charge and Applicable Law

Murder — Penal Code Article 199

An arrest warrant, a pre-indictment detention order and a document signed by the suspect identifying his/her defense counsel are attached to a bill of indictment to make dear the past procedure. The submission of documentary or real evidence is prohibited at this stage.[8]

If the suspect had been detained already when indicted, the pre-indictment detention automatically becomes an after-indictment detention limited to two months. After these two months, the detention term may be extended every month, if necessary.

After indictment, the suspect's situation changes due to adopting the adversary concept. The suspect should be detained in a detention house and interrogation regarding the indicted fact is prohibited in principle. He/she may now be bailable.

IV. NON-PROSECUTION

A. Lack or Insufficiency of Evidence

It is natural that public prosecutors should not prosecute a suspect without sufficient evidence. The criterion of whether to prosecute based on "probable cause", "beyond reasonable doubt" or other standards, differs from country to country. Japanese laws do not clearly mention it. However there exists a burden of proof to be met by public prosecutors, and one of the public prosecutors' functions is to request the proper application of the law by the court. To abide by the laws sincerely, the criterion should be the same as that of the court, that is, "beyond reasonable doubt." In practice, public prosecutors decide non-prosecution based on insufficiency of the evidence under this criterion.

B. Suspension of Prosecution

One of the most unique characteristics of Japanese criminal procedure is that public prosecutors can drop cases even when there is enough evidence to secure a conviction. This is called "Suspension of Prosecution." Thus, this wide discretionary power granted to public prosecutors has a significant role in encouraging suspects' rehabilitation.

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[8] The Japanese system before 1947 and the Chinese system model before the 1997 amendment did not prohibit the submission of such evidence at this stage.

The concept of discretionary prosecution contrasts with that of compulsory prosecution. The latter concept requires that prosecution always be instituted if there are some objective grounds for belief that the crime has been committed by the suspect, and if the prerequisites for prosecution exist This prevents arbitrary decisions by public prosecutors and vagaries in the administration of criminal justice. On the other hand, the system of discretionary prosecution is advantageous in disposing of cases flexibly, according to the seriousness of individual offences and the criminal tendency of each suspect, and in giving them the chance to rehabilitate themselves in society.

Application of Suspension of Prosecution

Needless to say, in practicing discretionary prosecution, arbitrariness should be avoided above all. Adhering to CCP Article 248, public prosecutors must consider the following factors concerning the suspect and the crime:

(1) The offender's character, age, situation, etc. Generally, youths or the aged, having no or little previous criminal records, or having had difficult childhoods may be advantageous factors for offenders;
(2) The gravity of the offence;
(3) The circumstances under which the offence was committed. For example, the motivation of the offence, and whether or not, and to what extent, the victim was at fault in provoking the offence; and
(4) Conditions subsequent to the commission of the offence. For example, whether or not, and to what extent, compensation for damages is made; the victim's feelings are remedied; settlements between both parties exist; the influence on society; and whether or not the offender repents the commission of the offence.

The most important factors for suspension of prosecution are compensation and remedy of the victim's feelings. Thus, a suspect's family, employer and private attorney always tries to compensate as much as possible to avoid indictment. In this context, victims' interests can be given serious consideration.

V. NOTIFICATION PROGRAM TO VICTIMS

In CCP, a public prosecutor should promptly notify the complainant, accuser or claimant[9] of the result of the disposition (CCP article 260). In particular, on request of the complainant, accuser or claimant, a public prosecutor should inform the reasons that the case was not prosecuted (CCP article 261), for instance "suspension of prosecution", "insufficiency of evidence" etc.

However, in order for the criminal justice system to gain better understanding and cooperation with the public, and to exercise power more appropriately, other efforts are necessary. Therefore, the Notification Program to Victims was launched on 1 April 1999.

When the victims, a bereaved family or witnesses desire notification, a public prosecutor shall inform in word or writing as follows;

(1) the disposition of the case (e.g. prosecution for the formal trial, prosecution for the summary proceedings, non-prosecution or referral to the family court),
(2) in prosecuted cases, the name of the count and the date of the trial,
(3) the result of the judgement, sentencing, whether to appeal to higher court,
(4) the summary of the prosecuted offences, the heading and the summary of the non-prosecution, whether detained, bailed etc.

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[9] The Penal Code article 92 (Damage or Destruction of Foreign Flag, etc.) requires the request of the foreign government to prosecute the offender.

This program is not legislated but adopted in practice. Nonetheless, this will encourage the public to participate more in criminal justice proceedings.

Additionally, some experts asserted that the victims/bereaved family's right to be present at the criminal trial and testify their cases if they want to, should be endorsed. Thus, this has been legislated in May 2000.

VI. NEW LEGISLATION TO PROTECT THE VICTIMS, ETC

In May 2000, the Diet enacted new legislation for the protection of victims, etc. by the amendment of the existing laws. Those are "The Law making a Partial Amendment of the Code of Criminal Procedure and the Law for Inquest of Prosecution" and "The Law Concerning Measures Accompanying Criminal Procedure to Protect the Victim, etc".

First of all, I would like to explain the former law. To give appropriate consideration to victims and to give further protection in criminal procedure, this law introduces Video-Link in the examination of witnesses; abolition of the time limit for the filing of sex offence complaints; allows statements of opinions including expressions of feelings in trial proceedings; and also expands the range of those who have the right to file claims to the Committee for the Inquest of Prosecution. The provisions are as follows:

(1) Reducing the strain imposed on the witness
   (i) Accompanying the witness.
   To ease serious anxiety or tension, such persons, as deemed proper; may accompany the witness (CCP article 157-2).
   (ii) Blocking the appearance of the witness
   To reduce the strain on a witness who testifies in the presence of the accused or observers, the court may take measures to block the appearance of the witness from the accused or observers or vice versa (CCP article 157-3).
   (iii) Introducing Video-Link in the examination of the witness
   To reduce the strain on the witness who testifies in open court, the court may take measures to examine the witness by means which enable the persons to communicate, each being able to recognize the state of the other by transmission and reception of images and sound (Video-Link) (CCP article 157-4).

(2) Abolishing the time limit for filing of sex offence complaints with regard to sex offences, such as rape, etc., for which the prosecution depends on the victim's filing of a complaint, the time limit for the complaint (a six-month limit from the day on which the offender becomes known) has been abolished (CCP article 235).

(3) Victim's statement of opinions
   Upon request a motion by a victim, etc., the court will allow the requester to state their feelings about the personal injury and other opinions in relation to the criminal case on the trial date (CCP article 292-2).

(4) Expanding the range of those who have the right to file claims with the Committee for Inquests into Prosecution, etc.
   In the event of the death of a victim, the range of those who have the right to file complaints will be expanded to include the bereaved family (Law for the Inquest of Prosecution article 2, 30).

Secondly, I would like to explain the latter law. Taking into account that a person who has suffered damage because of a crime, or a victim's bereaved family will have a deep interest in the proceedings and details of the trial of the criminal case which caused the damage, and that it may be difficult to recover from the damage, this law allows them to observe the trial procedure; the reading and copying of the records of the criminal procedure to protect the victim, etc. The provisions are as follows:

(1) Observing trial procedure

In cases where the victim, etc. requests to observe a pending criminal trial, the presiding judge of the trial shall make efforts to allow the request (article 2).

(2) Reading and copying records of a criminal trial
In cases where the victim, etc. requests to read and copy the records of the criminal trial, the court where the criminal case is pending may let the requester do so (article 3).

(3) Compromise between civil disputes and criminal procedure
In cases where the accused and the victim, etc. agree in a civil dispute between them, they may jointly apply to the court where the criminal case is pending to have the agreement noted in the trial records. In cases where the arrangement has been entered into the trial records, such entry shall have the same effect as the compromise in a civil trial (article 4, etc).

VII. RESTRAINTS ON THE PROSECUTION SYSTEM

Any use of discretion by a prosecutor is accompanied by a risk of abuse. In order to prevent an erroneous or arbitrary exercise of discretion, there are several systems of checks in Japan. The first works as a self-check system. If the prosecutor still makes an arbitrary decision, there are three additional restrictions: (1) inquests into prosecution, (2) analogical (or quasi) institution of prosecution and (3) complaint to High Prosecutors Office.

A. Internal Restrictions

In Japan, each public prosecutor is fully competent to perform the prosecutorial work. It can be said that each prosecutor constitutes a single administrative agency. On the other hand, being subject to the control and supervision of senior public prosecutors, their approval is required in making prosecutorial decisions. It is evident that prosecutors themselves are aware that they may easily fall into self-righteousness, leading to arbitrary dispositions, whether intentionally or unintentionally. It is sometimes very useful, especially for young and inexperienced prosecutors, to consult a senior to discuss the best disposition of a case. Accordingly, the prosecutors office has developed some procedures for making their decisions more objective:

(1) a prosecutor, whenever refraining from instituting a prosecution, must show their reasons in writing; and
(2) a prosecutor must obtain approval from their senior, who in turn is careful to examine whether their decision is well grounded.

B. Inquests into Prosecution

This system's purpose is to maintain the proper exercise of the public prosecutors' power by subjecting it to popular review. There is the Committee for Inquests into Prosecution in each district court. The Committee consists of 11 members selected from among persons eligible to vote for members of the House of Representatives of the Diet. It is empowered to examine the propriety of decisions by public prosecutors not to institute prosecution. The Committee must conduct an investigation whenever it receives an investigation request from an injured party or a person authorized to make a complaint or accusation. In some instances, the Committee can carry out investigations on its own initiative, and is competent to examine witnesses in the course of the investigation.

The Committee for Inquests into Prosecution then notifies the Chief Prosecutor of the District Public Prosecutors Office of its conclusion. If the non-prosecution is concluded to be improper by the Commission, the Chief Prosecutor orders a public prosecutor of the office to further investigate the case and to re-examine the original disposition.

After the re-investigation and re-examination, the public prosecutor in charge must ask for the approval of the Superintendent Prosecutor before making the final disposition.

Although the Committee's verdict is not binding upon the prosecutor, it is highly respected in the re-investigation process. Since Japan does not have a jury system and private prosecution system, "prosecution reviews" allow the public to participate in the criminal justice administration.

Recently, from the view point of expanding participation by the public in the justice system, the Justice System Reform Council suggests that the existing system should be changed and a system should be introduced that grants legally binding effect to certain resolutions of the Inquests into Prosecution in order to further expand the role of those Inquests. Therefore, the Council considers the structure, authority and procedures of the Inquests into Prosecution, as well as who files the indictments and conducts the prosecution at trial.

C. "Analogical Institution of Prosecution through Judicial Action" or "Quasi Prosecution"

See supra. - II. B.

D. Complaints to Higher Prosecutors Office

This system is not stipulated in the legislation. However, in practice, those who are not satisfied with the disposition of non-prosecution may appeal to the Higher Prosecutors Office and urge the exercise of supervisory powers. If necessary, the Higher Prosecutors Office might review the case and sometimes request re-investigation by the original prosecutors office.

VIII. PUBLIC RELATIONS OF PROSECUTORS

Among all criminal justice agencies, public prosecutors are the least understood by the public. Although the name is known, the function and the role of public prosecutors are not known by the public. Some people can hardly distinguish between a police detective (*Kenji* in Japanese) and a public prosecutor (*Kenji* in Japanese). Moreover, among the judicial circles of judges, public prosecutors and private lawyers, the same situation can be seen. Under such circumstances, it may be difficult for the prosecution service to invite the active involvement of the community and victim in its business. If the prosecution service is isolated from the public, there is the possibility that the case dispositions by public prosecutors could be arbitrary, or that the proper fact-finding and law applied by courts could be damaged. To this end, the less confidence in prosecution, the less involvement of the community and victim.

In order to avoid such a situation, public relations activities are recommended. In this connection, some district public prosecutors offices have invited elementary/junior high school students to their offices as part of their social studies. The public prosecutors in charge show his/her individual office, explain the role and function of prosecutors in plain terms and set a question & answer session. In the Q & A sessions, various questions have been presented; e.g. (1) differences between a police officer and a public prosecutor, (2) why juvenile delinquents are dealt with differently than adult offenders, (3) how to become a public prosecutor and so on. If a public prosecutor replies clearly and sincerely not only is a questioner satisfied but also the public prosecutor improves his/her reputation.

In addition, these events have been covered by newspapers and television media. In this regard, such activities are good methods to make citizens interested in public prosecutors' work. Through these activities, public opinion and the reputation of prosecutors and/or the prosecution service can be raised. As a result, public prosecutors can carry on with their work aware of the public's perspective in addition to their professional viewpoint. This means the improvement of the prosecution service and the confidence of the common citizens and victims in public prosecutors. Accumulation of such improvement and confidence leads to fair and effective criminal justice as well as less crime in society.

REACTION

By
Mr. Leonard S. DE VERA,
Attorney, the Philippines

This is my first exposure on the Japanese side and I found it very enlightening. I will only give 2 points. One point on the legal system I have observed in the Philippine system and also one observation on the Japanese system. I am particularly attracted to the system of what they call restraints on prosecution. By that it means that because of the prosecutorial discretion it could easily be abused. Restraints were placed in there by the Japanese legal system, among which will be the right to appeal to the higher authority. The higher prosecutor, there you have a system that we do not have and that is inquest into prosecutions. My understanding of what I have read is that a group of citizens of around 11 who are not satisfied in the decision of the prosecutor not to prosecute - this is all in the negative - so that if the prosecutor decides to prosecute, the inquest will not come in but if there is a case, the prosecutor decides, not I repeat not, to prosecute, that's where the inquest comes in. The inquest is what it really means - it inquires as to why there was not a prosecution so it looks like the inquest was designed to protect the victim rather than the accused because they want to make sure that the victim was not a victim of prosecutorial discretion not to prosecute and the way it works is they have the authority to inquire from the witnesses. They have the right to be present, they have the right to examine the witnesses and if they are not satisfied with the explanation of the prosecutor in deciding not to prosecute then the committee of 11 ordinary citizens could make their own findings and say no this should be prosecuted but theirs is only recommendatory it is not binding.

According to the lecturer, very seldom are the findings of the committee into the inquest of prosecution ever reversed so there is almost always certainty that if there is an adverse finding by the inquest committee there will be an order of re-investigation or re-examination of the case. I think this parallels, more or less, with the not quite grand jury system in the United States which we do not have and which Japan doesn't have. As you know in the United States and the Anglo-Saxon countries where English is the common law, the Grand Jury system is really a prosecutorial system in the sense that it is the grand jury of anywhere between 18 to 25 ordinary citizens of the community who decide whether Mr. X is going to be prosecuted. The only difference is that during the sessions of the grand jury the accused is not present. He will be called, the suspect maybe called but the suspect never has the right to a lawyer in the grand jury room. So in reality, what the prosecutor wants the prosecutor gets because he leaves the jurors to a train of evidence that is never contradicted but there are many instances that despite the presentations of district attorneys in the US, many a times and many a case, the grand jury never refuse to indict and it is as good as the case never being filed

In the Philippines we do not have the semblance of any grand jury for inquests into prosecutions like Japan. In the Philippines, everything is controlled or managed by the public prosecutor at the prosecutory stage. Of course, during the gathering of evidence by the police enforcement authorities that is their domain, they can ask for the help of the public prosecutor. I believe in certain important cases where there is a series of operations conducted by the police where they would have tapped the resources of the state prosecutor from the department of justice so you have a tandem of prosecutor with the police operating together. If they are involved in very sensitive investigations, I understand from the lecturer, based on his paper, that in Japan, unless it is minor crime, the police work in tandem with the public prosecutors who are able to guide in the appreciation of the evidence. This is so that they would have a better chance of securing a conviction even when they decide to prosecute although the paper says that Japanese investigators and police authorities are well trained in the appreciation of evidence. They could, however, never come to the level of efficiency that public prosecutors have because they are trained in the science at all. Well, that may help also in the Philippines. The only problem is we don't have that in place yet but that is something we can consider.

There is also something we can consider - the inquest into prosecutions. I think it ought to be given a trial balloon in the Philippines because when it comes to crimes, when it comes to prosecution of crimes, when it comes to the court system itself, the citizen participation is practically nil. True, we have private prosecutors and cases where there are civil liabilities but there are cases of obstruction for example, of plunder cases where there is no one particular individual who is damaged and therefore no standing to sue in their own right because these are all prosecuted in the general name of the people of the Philippines vs. Juan de la Cruz. The Filipinos have very little say in their judicial system. We have much say in the executive. We elect the President, who controls the entire executive department. We elect all the mayors who are the executives. The local government elects the provincial governors. We have the power to recall them, only at the provincial level – mayors, governors, councilors, vice-governors, provincial board members, but congressmen, senators, vice president, president - no, they cannot be recalled. Congress, we elect them. We cannot recall them but you could see that every 3 years, the Filipinos are able to elect their local representatives who come into the house and their representatives every 3 years but with the judiciary, none. We do not elect judges. We cannot recall our judges. Our judges, especially when they enter the court room with their black robe, impose a very foreboding image, this is something that is very serious, it can't be taken lightly. For an ordinary witness who appears for the first time before the law, they come into a very strange but majestic system where they sometimes find themselves trembling and all.

The topic of today's seminar is community involvement and really we should talk about the ordinary citizen. As a practicing criminal lawyer, my problem is always how to convince the ordinary citizen to testify. Isn't that a problem of the police also? Very often, if they already have executed their affidavits attesting to the truth of what they saw, pressures are brought to bear upon them incessantly especially to very crucial cases, you will find relatives trying to pressure them. You will find classmates, friends, trying to exert their influence especially on people they owe gratitude. So, if the criminal system is to work, it really is true that the citizen should be really involved but let us realize also the predicament of the ordinary citizen. It's so easy to say: "Hey, Mr. Citizen, testify in a court of law, tell the truth!" That's more easily said than done because the reality in the Philippines is and probably this is not a problem in the US, when a person, especially an ordinary citizen, without influence, without financial means, witnesses a crime, murder for example, or a rape, the things that come to the mind of that citizen are will I be protected against retaliation? Will my life be in danger? Will my family's life be in danger? Will my job be present? Who can protect me but the government? Yet, people have very little faith and I say this without particularly insulting any branch of the government in the Philippines. But we suffer from one fundamental effect and that is the police are not able to provide protection at the proper time whenever needed. The police come in when the crime is already consumated. Their presence in the community is hardly seen except in certain communities where citizens demand more presence from the police. Another question that comes to their mind is how long will the trial end because for as long as the trial drags and until they testify and until they have been dismissed by the court and said: "You are free now, you have been cross examined, you will not be recalled, although they have no guarantee you will not be recalled because they might come up with some evidence that needs further testimony in your part, either to clarify or to rebut. But because our judicial system is so slow where cases drag for years, people are intimidated to even volunteer to testify in the courts of law. Until that day comes when we can give the ordinary citizen a sense of security so that even when they have witnessed a crime, they will be protected, not on paper under the witness protection program.

I can show you a flow that happened even in the Kuratong Baleleng Case. The truth is that the Kuratong Baleleng Case did not succeed for the first time because witnesses got tired being under the witness protection program. They claimed that they were the prisoners because the accused were out there free whereas they, the witnesses, were inside not leading normal lives and not earning the kind of income that they should earn had they not been placed in the witness protection program. So, you see what happened? The witnesses were financed to go abroad and they recanted their testimony and that is very fresh in our memory and that multiplies over many a times over many days. Until we can make the citizens feel confident that they will be protected and that the wheels of justice will be speedy but fair, we can talk

for days on citizens' participation but we will never get them into our own. This is an appeal to our police and this is an appeal to our judges and the prosecutors. We all need our citizens, we agree. It is an honor to appear before many judges and justices in our land and many of them are present in this room but I have been insulted many a time to appear before many judges who are really ignorant of the law and I don't know how they become judges. It is a pleasure having been here and I hope I can share more with you during the open forum.

Thank you.

REACTION

By
Ms. Kartrina LEGARDA
Attorney, the Philippines

Let us realize that when people commit crime they will get caught. That once they are caught they cannot bribe themselves out of the police station. That they will be investigated and that they cannot bribe themselves out of the Prosecutor's Office. That they will be convicted and that they cannot bribe themselves out of justice. Justice should not only be done but should manifestly and undoubtedly be seen to be done.

We do not need the death penalty - nobody plans or commits a crime fearful of the death penalty. No punishment has ever possessed enough power of deterrence to prevent the commission of a crime. The average citizen who cares about his community does not really care how many cases are filed in court. What he cares about is whether or not a rich man will face the same prosecutorial system as a poor man who has no access to expensive and therefore, they say, excellent lawyers. We must open up the Department of Justice and its agencies, the police and its agencies to scrutiny and help shed the mystery surrounding the law and the justice system.

Prosecutors should serve the community well, as well as the police, and must be prepared to withstand criticism, communicate the reasons for their resolutions well and must be of public probity and integrity. The huge caseloads do not allow the justice system to solve the underlying problems of the community. It merely treats the symptoms of the ills of the community. Perhaps prosecutors can be constantly aware that the Revised Penal Code was passed in 1935 and that many petty offenses today are penalized in a draconian fashion. Especially, prosecutors perhaps should be more sensitive to the children who are more constantly coming into conflict with the law. I refer to the police, how they treat a child. Prosecutors should also take the role of preventing the abuses of the police officers who are under great pressure to arrest criminals.

To the police, I will say this "as a mother I do not care how many people are arrested. I care about whether my children can still buy drugs after your arrest statistics on drug pushers are publicized. I care about whether my children are safe going to school and coming home. After your publicized reports on the arrest on kidnap syndicates. I care about whether my family will be safe in their home." It maybe difficult, however, if the community are too much involved with the prosecution of crimes. There is a propensity in our culture of familiarity to breed favoritism or contempt. There may arise a susceptibility of the prosecutor in smaller areas to corruption to overlook certain offenses and perhaps even actively participate in some of them.

Prosecutors are also open to the influence of elected officials who need to exercise such influence to maintain their power and positions. Just like Judges, Prosecutors must be seen to be fair, competent and independent minded just as Professor Tachi said in his paper. Every person in the pillars of law enforcement must understand that media can only help as a member of the community if there is a strong showing that all pillars of law enforcement are honest and above suspicion. The report we are now reading in our media does not bode well for the present leadership of our prosecution. While it is not part of the prosecution, but I feel strongly about this, as an advocate for the woman and child. I must ask our police officers, generals and leaders to treat the women desk officers in a better fashion. They are not given a chance for decent and swift promotion despite the fact that they handle the most basic aspects of community life and that is the family and the child. They are protected by the constitution. They need to be trained to rely on intellectual process rather then physical strength, to be compassionate and diplomatic. Many police officers tend to take spousal abuse and child rape complaints as merely private problems. It is the woman officer

who treats these complaints more seriously than their male counterparts. Yet the woman police officer is subjected, just like everywhere in the world, to suffer harassment, lend jokes and sexist remarks.

Finally, on the Japanese paper, we would like to tell Professor Tachi, "we wish that DNA were free here, the cheapest is 15,000.00 and that is at the PGH and our Prosecutors cannot use it precisely because of the cost." I just mentioned to President Mariano that maybe, if a person insists he has not committed a crime and can afford it he can have the DNA done and be reimbursed by the person who accuses him of that offense but again this is only for the rich. We have new rules for the Protection of Child witnesses, perhaps in the Philippines we should have similar rules as the child witness rules for those who are allowed into the Witness Protection Program. Our Supreme Court and our Court of Appeal, both have been very firm on the victims of rape and the statements they make to the court and have given great weight on them. Our courts are particularly stern now and require mediation on all matters except domestic violence and child abuse.