

BUILDING A CRIMINAL CASE IN THE PHILIPPINES: PROBLEMS, INSIGHTS AND PROPOSALS

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I. INTRODUCTION

“At the outset, it cannot be overemphasized that the prosecuting officer is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor — indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.”¹

Criminal prosecutions have always been a very difficult balancing act for the state. While the state, through its representatives, are mandated to ensure that those who have transgressed societal norms are brought to trial and be made to suffer to the fullest extent of the law, it is also important to ensure that the innocent must not be unduly burdened by criminal prosecution. Bearing this in mind, public prosecutors have a heavy burden to ensure that only the guilty are prosecuted and sentenced. One way to ensure a just conviction is to ensure that evidence presented during trial must be credible, reliable and relevant. Further, such conviction must also be made in an efficient and prompt manner as to lessen any possible discomfort and pain to an accused if only to breathe life to the constitutional presumption of innocence.

This paper will map out the current procedure on how to build a criminal case in the Philippines and the problems faced by the prosecutorial arm of the government in case building; the cause of these problems and the current mechanisms established and proposals to combat them.

II. THE CURRENT PROCEDURE: THE PHILIPPINE WAY

A. General

Unlike other countries where law enforcement agencies are integrated with the prosecutorial arm of the government, in the Philippines, the prosecutor relies on other parties to provide evidence to prove a criminal case.² The Revised Rules of Criminal Procedure are quite clear on this matter. A criminal case is instituted either by (a) filing a complaint³ before the proper office for preliminary investigation⁴

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¹ Separate Concurring Opinion of Associate Justice (now Chief Justice) Maria Lourdes P. A. Sereno in *Antonio Lejano v. People of the Philippines*, G.R. No. 176389, December 14, 2010.

² Although there are some instances where coordination between law enforcement agencies and the prosecutorial services were mandated, these instances are limited to particular cases, thus constituting an exception rather than the rule. *See* Joint Department Order No. 003-2012 of the Department of Justice and Department of Interior and Local Government: Operational Guidelines for Prosecutors and Law Enforcement Investigators in Evidence gathering; and case build-up; Inquest and preliminary investigation; and trial of cases of political-activist and media killing, dated November 5, 2012.

³ A Complaint is a sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer, or other public officer charged with the enforcement of the law violated. *See* Rule 110, Section 3, Revised Rules of Criminal Procedure.

⁴ Preliminary Investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial. Rule 112, Section 1, Revised Rules of Criminal Procedure.

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or (b) by filing a complaint or information directly with the Municipal Trial Courts and Municipal Circuit Trial Courts or a complaint before the Office of the public prosecutor.⁵

In cases where preliminary investigation is required,⁶ a complaint is usually filed before the Office of the Public Prosecutor either by the private complainant or any peace officer usually the Philippine National Police and the National Bureau of Investigation. During preliminary investigation, these parties as well as the respondents to the criminal case are to submit to the public prosecutor their respective evidence to establish or negate the existence of probable cause. The Supreme Court in *Ang-Abaya v. Ang*,⁷ defined probable cause as:

“... such facts as are sufficient to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof. It is such a state of facts in mind of the prosecutor as would lead a person of ordinary caution and prudence to believe or entertain an honest or strong suspicion that a thing is so. The term does not mean ‘active or positive cause;’ nor does it import absolute certainty. It is merely based on opinion and reasonable belief...”

It is in the preliminary investigation where the public prosecutor will at first-hand see and scrutinize the evidence presented by all parties concerned. These pieces of evidence may be Object Evidence,⁸ Documentary Evidence⁹ or Testimonial Evidence.¹⁰ All these are taken into consideration to see whether there is probable cause to indict the accused and file an Information in court for the conduct of a full-blown trial.

In cases where the accused was arrested without a warrant of arrest,¹¹ the public prosecutor shall conduct an inquest rather than a preliminary investigation to determine whether to file the case in court. For this purpose, the inquest officer shall receive evidence.

Lastly, in cases when no preliminary investigation is required due to the penalty impossible for the crime charged or the location, the private offended party shall file a complaint before the first level court attaching the evidence necessary to support the charge.

When probable cause exists, it is the duty of the public prosecutor to file the necessary Information in Court and prosecute the case. Subsequently, the authority to determine how the case shall be prosecuted rests solely on the discretion of the public prosecutor who has the sole control of the case.¹² The public prosecutor can dictate what evidence to present and when to present them. However, when an Information is filed in court the dismissal or conviction of the criminal case does not depend on the

⁵Rule 110, Section 1, Revised Rules of Criminal Procedure.

⁶A Preliminary Investigation is required to be conducted where the penalty prescribed by law of the offense is at least four (4) years, two (2) months and one (1) day without regard to fine. *See* Rule 112, Section 1, Revised Rules of Criminal Procedure.

⁷G.R. No. 178511, December 4, 2008.

⁸Objects as evidence are those addressed to the senses of the court. When an object is relevant to the fact in issue, it may be exhibited to, examined or viewed by the court. Rule 130, Section 1, Revised Rules of Evidence.

⁹Documents as evidence consist of writings or any material containing letters, words, numbers, figures, symbols or other modes of written expressions offered as proof of their contents. Rule 130, Section 2, Revised Rules of Evidence.

¹⁰Except as provided in the next succeeding section, all persons who can perceive, and perceiving, can make known their perception to others may be witnesses. Section 20, Rule 130. *See also* Section 36 of Rule 130 that provides that: A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules.

¹¹A peace officer or a private person may, without warrant, arrest a person: (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense; (b) when an offense has just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and (c) when the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another. *See* Rule 113, Section 5, Revised Rules of Criminal Procedure.

¹²Rule 110, Section 5, Revised Rules of Criminal Procedure.

¹³*See* *Mogul v. Crespo* G.R. No. L-53373, 30 June 1987, 151 SCRA 462, 469-470.

public prosecutor, but now, it rests solely on the wise disposition of the court.¹³

B. Specialized Cases

In certain specialized cases, when public policy dictates, some level of coordination between law enforcement agencies and the National Prosecution Service are mandated. These levels of coordination vary on the level of depth and participation of the National Prosecution Service in building a criminal case. In prosecution of drugs cases under Republic Act No. 9165 or the Comprehensive Dangerous Drug Act of 2002, the National Prosecution Service is directed to be in the front lines particularly present during the inventory of the confiscated dangerous drug.¹⁴ Further, the law mandates that all provincial or city prosecutors or their assistants or state prosecutors to prepare the appropriate petition in all proceedings arising from the law.¹⁵

In dealing with children in conflict with the law,¹⁶ Republic Act No. 9344 or the Juvenile Justice and Welfare Act of 2006 requires public prosecutors to have specialized training to deal with minors. Further, the public prosecutor is tasked to coordinate with the *barangay* and the local social worker before proceeding with the prosecution of the case.¹⁷

Lastly, in combating the new crimes committed in the cyber world, Republic Act No. 10125 or the Cybercrime Prevention Act of 2012 mandates close coordination between the Philippine National Police and the National Bureau of Investigation, on one hand and the Department of Justice on the other, especially in the areas of pre-operation, post operation and investigation reports.¹⁸

In all these specialized instances, the National Prosecution Service has an active role in case build up and evidence gathering and evaluation.

III. PROBLEMS ENCOUNTERED

It can be observed from the procedure above that the public prosecutor merely relies on the evidence presented by the private offended party and the peace officers to determine the existence of probable cause. The pieces of evidence presented to them are the same evidence that they will use to prosecute the accused during the trial. This becomes problematic considering the different variables that must be considered. To begin with, the probable cause standard coupled with the fact that the public prosecutor merely receives evidence from different parties leads to congested criminal dockets of the courts and overworked prosecutors.

For a case to be filed in court, there must be probable cause to indict. This quantum of evidence, while it requires more than bare suspicion,¹⁹ is definitely less than what is required for conviction — proof beyond reasonable doubt. Proof beyond reasonable doubt is that quantum of proof sufficient to produce a moral certainty that would convince and satisfy the conscience of those who act in judgment.²⁰ What this means is that public prosecutors may have enough evidence to establish

¹⁴ Republic Act 9165, as amended by Republic Act 10640 signed by President Benigno S. Aquino III provides that: “The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct **a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof:** *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.” [Emphasis Supplied].

¹⁵ Section 65, RA 9165.

¹⁶ A child in conflict with the law refers to a child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine Laws. Section 4 (e), RA 9344.

¹⁷ See Sections 32 and 33 of RA 9344.

¹⁸ See Sections 10 and 11 of RA 10125.

¹⁹ Del Castillo v. People of the Philippines, G.R. No. 185128, January 30, 2012.

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probable cause but the same evidence is insufficient to establish proof beyond reasonable doubt.²¹ Since the prosecutor is duty bound to file an Information in court once probable cause is established, he has to prosecute the case despite the fact that the same evidence is insufficient to convict. The reason behind this possibility is the great disparity of the quantum of evidence required; probable cause is one of the lowest in the hierarchy of evidential values in the Philippine law of evidence while proof beyond reasonable doubt is the highest.

Coupled with this discrepancy on the quantum of evidence required for conviction and the evidence available during preliminary investigation, the issue of coordination also bothers several stakeholders. The public prosecutors are generally not involved in the case build up. For some, this means that several accused will be acquitted because of certain technicalities which include violation of the constitutional rights of the accused, failure to follow legal procedures and improper evidence gathering and preservation. The active participation of the public prosecutors could have prevented these scenarios and strengthen the cases to be brought in court. Further, the active coordination would ensure that only cases backed up with sufficient evidence to convict are filed in court.

Indiscriminate filing of criminal cases in court; cases that cannot be proved in court and evidence at hand that cannot produce a conviction is the direct result of these two concerns. This indiscriminate filing of criminal cases would lead to congestion of courts and a low conviction rate for the National Prosecution Service.

A review of the conviction rate in criminal cases supports this conclusion. In drugs cases, where coordination between law enforcement agencies and the National Prosecution Service is mandated, the conviction rate is a bothersome 7%. This means that for every one hundred (100) drug-related cases filed in court, only seven (7) cases will be proven and the accused will be convicted. The low conviction rate was the effect of poor case build up and poor coordination between the law enforcement agencies and the public prosecutors.²² This surely is a big blow to the anti-illegal drugs efforts of the government. In general, the conviction rates are also not promising. In 2002, the average conviction rate was 17% to 20%.²³ In 2011, the conviction rate further decreased to a measly rate of 14%.²⁴ Surely, something is wrong on how criminal cases are prosecuted.

Also, since evidence presented during the trial were sourced either by the private offended party or the police, the public prosecutor has to turn to them again to fill in the gaps in the evidence in order to get a conviction. This would lead the public prosecutors to ask for postponement of hearing dates in order to scramble for additional evidence. If and when the public prosecutor fails to find and secure his evidence, the case will be dismissed. But the unnecessary incarceration of the accused has been done.

Further, as courts become beleaguered by cases that should not have reached the courts, these cases eat up a lot of the court's time thereby prolonging the trial of all cases. This causes the unnecessary prolonged detention of prisoners.

Lastly, certain institutional problems also contribute to the delay in the prosecution of cases. The lack of public prosecutors continuously hounds the service and is usually pointed out as one of the

²⁰ *Ibid.* See also Rule 133, Section 2: In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such degree of proof as, excluding the possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

²¹ The Supreme Court in *Villanueva v. Planters Bank* (G.R. NO. 138291, March 7, 2000) stated that probable cause does not inquire into the sufficiency of the evidence to obtain a conviction.

²² *PNP Chief wants a higher conviction rate.* Recuenco, J. Manila Bulletin, January 12, 2004. Retrieved last July 25, 2014 at <<http://www.mb.com.ph/pnp-chief-wants-higher-conviction-rate/>>.

²³ *The Other Pillars of Justice through Reforms in the Department of Justice: Diagnostic Report.* June 2003. Center for Public Resource Management, Inc., CPRM Consultants, Inc. Retrieved last July 25, 2014 at <<http://apjr.judiciary.gov.ph/pubreports/DOJ%20Diagnostic%20Report.pdf>>.

²⁴ *Noy seeks higher conviction rate.* Porcalla, D. November 7, 2011, *The Philippine Star*. Retrieved last July 25, 2014 at <<http://www.philstar.com/headlines/744669/noy-seeks-higher-conviction-rates>>.

reasons why there is delay in resolving criminal cases.²⁵ The absences of witnesses vital for the successful prosecution of the case and prolonged trial system are loops the public prosecutors have to handle. With all these problems, where do reform initiatives start?

IV. INSTITUTIONAL AND SYSTEMIC SOLUTIONS

While there are certain realities that are out of the control of the justice system, like budgetary constraints and legislation, there are ingenious solutions implemented to ensure that a just conviction can be achieved and the problems discussed above can be addressed. The adoption of the Speedy Trial Act²⁶ and A.M. No. 12-11-2-SC²⁷ ensure the speedy disposition of criminal cases and ensure that delay is minimized if not eradicated. The Judicial Affidavit Rule²⁸ further reduces trial hearing dates. Mediation, both in the *barangay* level and Philippine Mediation Center, ensures that the civil aspect of criminal cases can be settled and that they would no longer clog the dockets of the courts.

A. The Speedy Trial Act of 1998

With the strengthening of the case build up and coordination efforts of all stakeholders of the criminal justice system, there is also a need to ensure that criminal litigations are handled swiftly. Thus, the Speedy Trial Act of 1998 was passed in order to ensure the speedy conduct of trial in all courts through: (a) making it mandatory for parties to undergo pre-trial proceedings, and (b) providing time frames for the conduct of trials.

Hailed as the most important procedural innovation in Anglo-Saxon justice in the 19th century, pre-trial in criminal cases, just like in civil cases, is a procedural device to clarify and limit the basic issues between the parties and to take the trial of cases out of the realm of surprise and maneuvering. It is an answer to the clarion call for the speedy disposition of cases²⁹, thus paving the way for a less cluttered trial and resolution of the case.³⁰

On the other hand, the Speedy Trial Act imposes a maximum of 180 days for the conduct of trial.³¹ Specific time frames have been established to ensure that criminal cases have been swiftly tried. The date of arraignment is to be set within thirty (30) days from the filing of the Information in court or from the date the accused has appeared before the justice, judge or court in which the charge is pending, whichever date is later.³² Within 30 days from the date the court acquires jurisdiction over the accused, the court shall then set the case for pre-trial.³³ Trial commences within thirty (30) days from the receipt of the pre-trial order.³⁴ The arraignment of an accused shall be held within thirty (30) days from the filing of the information, or from the date the accused has appeared before the justice, judge or court in which the charge is pending, whichever date last occurs. Thereafter, where a plea of not guilty is entered, the accused shall have at least fifteen (15) days to prepare for trial. Trial shall commence within thirty (30) days from arraignment as fixed by the court.

²⁵ *Chief Justice Sereno Laments Lack of Prosecutors A Reason in Delay of Cases*. Public Information Office, Supreme Court of the Philippines. February 18, 2014. Retrieved last July 26, 2014 at <<http://sc.judiciary.gov.ph/pio/news/2014/02/02-18-14.php>>.

²⁶ Republic Act No. 8493.

²⁷ Guidelines for Decongesting Holding Jails by Enforce the Right of Accused Persons to Bail and to Speedy Trial. March 18, 2014.

²⁸ A.M. No. 12-8-8-SC, September 4, 2012.

²⁹ The Speedy Trial Act requires the parties to discuss and deliberate on the following matters: (a) plea bargaining; (2) Stipulation of Facts; (c) Marking for Identification of evidence of parties; (d) waiver of objections to admissibility of evidence, and; (e) such other matters as will promote a far and expeditious trial. See Section 2, RA 8493. The Revised Rules of Criminal Procedure includes another item for deliberation during the pre-trial conference. This item is the discussion on possible modification of the order of trial if the accused admits the charge but interposes a lawful defense. Rule 118, Section 1 (d).

³⁰ See *LCK Industries, Inc., v. Planters Development Bank*, G.R. No. 170606, November 23, 2007.

³¹ Section 6, RA 8493.

³² Section 7, RA 8493.

³³ Rule 118, Section 1, Revised Rules on Criminal Procedure.

³⁴ Rule 119, Section 1, Revised Rules on Criminal Procedure.

³⁵ See Section 10, RA 8493.

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The 180 day limit set by the Speedy Trial Act, however, is not a straitjacket that does not allow some flexibility. There are certain postponements of trial dates that are allowed.³⁵ This is consistent with the term “Speedy Trial”. The Supreme Court, in *Olbes v. Buemio*,³⁶ explained the concept of Speedy trial:

In *Solar Team Entertainment, Inc. v. Judge How*, the Court stressed that the exceptions consisting of the time exclusions provided in the *Speedy Trial Act of 1998* reflect the fundamentally recognized principle that “speedy trial” is a relative term and necessarily involves a degree of flexibility. This was reiterated in *People v. Hernandez*, viz:

The right of the accused to a speedy trial is guaranteed under Sections 14(2) and 16, Article III of the 1987 Constitution. In 1998, Congress enacted R.A. No. 8493, otherwise known as the “Speedy Trial Act of 1998.” The law provided for time limits in order “to ensure a speedy trial of all criminal cases before the Sandiganbayan, [RTC], Metropolitan Trial Court, Municipal Trial Court, and Municipal Circuit Trial Court.” On August 11, 1998, the Supreme Court issued Circular No. 38-98, the Rules Implementing R.A. No. 8493. The provisions of said circular were adopted in the 2000 Revised Rules of Criminal Procedure. As to the time limit within which trial must commence after arraignment, the 2000 Revised Rules of Criminal Procedure states:

Sec. 6, Rule 119. Extended time limit.— Notwithstanding the provisions of section 1(g), Rule 116 and the preceding section 1, for the first twelve-calendar-month period following its effectivity on September 15, 1998, **the time limit with respect to the period from arraignment to trial imposed by said provision shall be one hundred eighty (180) days.** For the second twelve-month period, the time limit shall be one hundred twenty (120) days, and for the third twelve-month period, the time limit shall be **eighty (80) days.**

R.A. No. 8493 and its implementing rules and the Revised Rules of Criminal Procedure enumerate certain reasonable delays as exclusions in the computation of the prescribed time limits. They also provide that “no provision of law on speedy trial and no rule implementing the same shall be interpreted as a bar to any charge of denial of speedy trial as provided by Article III, Section 14(2), of the 1987 Constitution.” **Thus, in spite of the prescribed time limits, jurisprudence continues to adopt the view that the concept of “speedy trial” is a relative term and must necessarily be a flexible concept.** In *Corpuz v. Sandiganbayan*, we held:

The right of the accused to a speedy trial and to a speedy disposition of the case against him was designed to prevent the oppression of the citizen by holding criminal prosecution suspended over him for an indefinite time, and to prevent delays in the administration of justice by mandating the courts to proceed with reasonable dispatch in the trial of criminal cases. *Such right to a speedy trial and a speedy disposition of a case is violated only when the proceeding is attended by vexatious, capricious and oppressive delays. . . .*

While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed. It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends upon circumstances. It secures rights to the accused, but it does not preclude the rights of public justice. Also, it must be borne in mind that the rights given to the accused by the Constitution and the Rules of Court are shields, not weapons; hence, courts are to give meaning to that intent.

A balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an *ad hoc* basis.

In determining whether the accused has been deprived of his right to a speedy disposi-

³⁶ G.R. No. 173319, December 4, 2009.

tion of the case and to a speedy trial, four factors must be considered: (a) length of delay; (b) the reason for the delay; (c) the defendant’s assertion of his right; and (d) prejudice to the defendant. (*citations omitted*) (underscoring supplied)

Thus, despite the noble intentions of the law to speed up trial for criminal cases by fixing time frames, postponements are still prevalent, for as long as they are justified.

B. A.M. No. 12-11-2-SC

A.M. No. 12-11-2-SC or the Guidelines to Decongest Holding Jails by Enforcing the Rights of Accused Persons to Bail and to Speedy Trial (“Guidelines”) is the Supreme Court’s solution to the perennial problem of jail congestion. Jail congestion is obviously an effect of case congestion. The longer the trial of the criminal case drags on, the longer will an accused person be detained.

Through the enforcement of the twin rights of bail and speedy trial, the Supreme Court hopes to alleviate the conditions of all accused persons inside holding jails.³⁷ The guidelines highlights three important changes: (1) the summary nature of bail hearings;³⁸ (2) the right to speedy trial and (3) the creation of localized Task Force: *Kalayaan at Katarungan*.

The guidelines seek to change the system existing in trial courts across the country where instead of a summary hearing to be conducted for purposes of determining whether or not bail should be granted, trial courts tend to ask the public prosecutor to provide all of its evidence at hand, thereby defeating the summary hearing required for petitions for bail.³⁹ Consistent with the summary nature of bail hearings, the Guidelines set certain time frames on when to resolve and what evidence is required for the grant of bail.⁴⁰

The guidelines also strengthens the time frame stated in the speedy trial act with an express declaration that the case against the detained accused may be dismissed on the ground of denial of the right to speedy trial in the event of failure to observe the time limits.⁴¹

Also, to complement the strengthening of the right of accused persons to speedy trial, the Supreme Court allowed the use of phone calls, text messages, facsimile and electronic mails to disseminate notices emanating from the court.⁴² This is in recognition that the postal system adds to the delay in the trial and that there are existing technologies to speed up the process. There is also an express mandate that in case the accused has been detained for a period at least equal to the minimum of the penalty for the offense charged against him, he shall be ordered release on his own recognizance without prejudice to the continuation of the proceedings against him.⁴³

Lastly, the Guidelines also allowed the creation of localized task force: *Kalayaan at Katarungan*. This task force shall record the progress of criminal cases in its jurisdiction and ensure that the rights of accused persons under the Constitution, the law and the guidelines are observed.⁴⁴

³⁷ *Whereas*, there is a need to effectively implement existing policies laid down by the Constitution, the laws, and the rules respecting the accused’s rights to bail and to speedy trial in the context of decongesting our detention jails and humanizing the conditions of detained persons pending the hearing of their case. A.M. No. 12-11-2-SC.

³⁸ Section 6 of A.M. No. 12-11-2-SC.

³⁹ In *Basco v. Rapatalo*, A.M. No. RTJ-96-1335, March 5, 1997, the Supreme Court held that: “A summary hearing means **such brief and speedy method of receiving and considering the evidence of guilt as is practicable and consistent with the purpose of hearing which is merely to determine the weight of evidence for the purposes of bail.** On such hearing, the court does not sit to try the merits or to enter into any nice inquiry as to the weight that ought to be allowed to the evidence for or against the accused, nor will it speculate on the outcome of the trial or on what further evidence may be therein offered and admitted.” [Emphasis Supplied].

⁴⁰ Section 6 (d), A.M. No. 12-11-2-SC.

⁴¹ Section 9, A.M. No. 12-11-2-SC.

⁴² Sections 11 and 12 of A.M. No. 12-11-2-SC.

⁴³ Section 5, A.M. No. 12-11-2-SC.

⁴⁴ Section 17 (b) A.M. No. 12-11-2-SC.

C. Judicial Affidavit Rule

The Judicial Affidavit Rule (JAR) was promulgated by the Supreme Court on September 4, 2012 and became effective on January 1, 2013. Not all criminal cases, however, are under the operation of the JAR. The JAR only applies to the following cases: (a) where the maximum of the imposable penalty does not exceed six years; (b) Where the accused agrees to the use of judicial affidavits, irrespective of the penalty involved; or (c) With respect to the civil aspect of the actions, whatever the penalties involved are.⁴⁵

Theoretically, the JAR shifts the orientation of the Philippine Justice System from a purely adversarial system to a mixed adversarial and inquisitorial system. As such, the best practices of both systems are introduced. The JAR also mandates fairness and full disclosure of all parties' causes of action and evidence. Lastly, the JAR mandates the use of judicial affidavits in lieu of direct examination.

Judicial affidavits should contain⁴⁶ the following:

- (a) The name, age, residence or business address, and occupation of the witness;
- (b) The name and address of the lawyer who conducts or supervises the examination of the witness and the place where the examination is being held;
- (c) A statement that the witness is answering the questions asked of him, fully conscious that he does so under oath, and that he may face criminal liability for false testimony or perjury;
- (d) Questions asked of the witness and his corresponding answers, consecutively numbered, that:
 - (1) Show the circumstances under which the witness acquired the facts upon which he testifies;
 - (2) Elicit from him those facts which are relevant to the issues that the case presents; and
 - (3) Identify the attached documentary and object evidence and establish their authenticity in accordance with the Rules of Court;
- (e) The signature of the witness over his printed name; and
- (f) A *jurat* with the signature of the notary public who administers the oath or an officer who is authorized by law to administer the same.

The judicial affidavits of the private offended party and his witnesses must be given to the accused not later than 5 days before pre-trial. This is to ensure that the accused can evaluate whether the case of the government is sufficient to warrant a conviction. In such case then, the accused will have to submit his counter affidavits, otherwise, exercise his right to remain silent. This procedure flows from the trust of the JAR to force parties to make full disclosure of their cases in order to avoid surprises.

The JAR also empowers the judge to be pro-active and asks relevant questions and not merely wait for lawyers to stray outside what is relevant. This mandate is consistent with the inquisitorial system that the Supreme Court has adopted. Gone were the days when the judge is merely an observer who merely adjudicates at the end of the case.

The implementation of the JAR helps improve the case building efforts of both the public and private prosecutors as it will ensure that before any case will be filed in court, all necessary testimonial and documentary evidence is already prepared and are in order.

⁴⁵ Section 9 (a), A.M. No. 12-8-8-SC.

⁴⁶ Section 3, A.M. No. 12-8-8-SC.

The main criticism, however, of the public prosecutors to the JAR is the fact that the National Prosecution Service is severely undermanned. The JAR forces public prosecutors to provide judicial affidavits of all witnesses in a very short period. This leads to taxing the already overworked public prosecutor. What is more, some stakeholders are wary on a “rehearsed judicial affidavits”. This means that criminal cases are won or lost not in the trial court but in the offices of law firms. It is as if the lawyer is the one testifying and not the witness. Lastly, the concept of demeanor evidence is lost with the use of judicial affidavits. Demeanor evidence is very important in assessing the credibility of witnesses. The Supreme Court in *People v. Tagana*⁴⁷ characterized the importance of demeanor evidence:

In a long line of cases, the Court has pronounced that the credibility of witnesses as assessed by the trial court will generally not be disturbed. This is because the trial court enjoys the unique position of having observed the elusive and incommunicable evidence of the witnesses’ deportment on the stand while testifying, which opportunity is denied appellate courts. As the Court fully explained in *People vs. Lachica*

Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath — all of which are useful aids for an accurate determination of a witness’ honesty and sincerity.

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. . . . [T] he trial judge is able to detect that sometimes thin line between fact and prevarication that will determine the guilt and innocence of the accused. That line may not be discernible from a mere reading of the impersonal record by the reviewing court. The record will not reveal those tell-tale signs that will affirm the truth or expose the contrivance, like the angry flush of an insistent assertion; or the sudden pallor of a discovered lie; or the tremulous mutter of a reluctant answer; or the forthright tone of a ready reply. The record will not show if the eyes have darted in evasion, or looked down in confession, or gazed steadily with a serenity that has nothing to distort or conceal. The record will not show if tears were shed in anger, or in shame, or in remembered pain, or in feigned innocence. Only the judge trying the case can see all these and on the basis of his observations arrive at an informed and reasoned verdict. [Citations omitted]

Proponents, however, counter that demeanor is determined not by virtue of an already rehearsed direct examination. Proponents argue that, generally, direct examinations questions are usually discussed with the witness who will take the stand. The JAR introduces nothing new insofar as this matter is concerned. However, they continue to argue that real demeanor is determined in cross-examination where the witness has no clue as to the questions to be asked by the public defender. The sweats, the tears, the trembles can be argued as more authentic. Further, proponents argue that the JAR does not impose any additional work since the work that the JAR entails, the preparation of judicial affidavits of all witnesses of the prosecution, are just the same work that the prosecutor does in the regular procedure. What the JAR mandates is that the work be done in advance. Lastly, proponents argue that if the problem with the JAR is not the system imposed by it but rather the institution that will carry out the system, then the solution lies not with the JAR but rather, the institution, in this case the National Prosecution Service of the Department of Justice. If there is a lack of public prosecutors, the solution is not to remove the JAR but rather to hire and appoint more public prosecutors.

The merits of the JAR can be debated for years to come, but one thing is for sure, the Justice Sector will think of more innovative ways to shorten the trial process without sacrificing the demands of due process.

⁴⁷ G.R. No. 133027, March 4, 2004.

V. PROPOSALS

Despite these solutions promulgated by the Supreme Court and Congress, there are fundamental problems that still exist. The solutions enumerated above solve the problem as they come but never do they address the indiscriminate filing of criminal cases, which directly cause delay, congestion and the low conviction rate. Below are some of the proposals to address the problem of indiscriminate filing of cases in court.

A. The 'Probable Cause' Problem

Due to the fact of the huge disparity between probable cause and proof beyond reasonable doubt, there are certain sectors who propose to raise the threshold quantum of evidence to file a criminal case from probable cause to clear and convincing evidence.⁴⁸ This change in the threshold at least guarantees that the disparity from proof beyond reasonable doubt will not be that huge, thereby the public prosecutor can only file cases that will stand the strict scrutiny of the trial court.

Historically, the quantum of evidence required in the 1964 Rules of Criminal Procedure to file necessary criminal case in court is only prima facie evidence. The term "prima facie evidence" denotes evidence which, if unexplained or uncontradicted, is sufficient to sustain the proposition it supports or to establish the facts, or to counter-balance the presumption of innocence to warrant a conviction.⁴⁹ The prima facie standard is a higher standard compared to probable cause since it requires more than a reasonable belief. However, the 2000 Revised Rules of Criminal Procedure changed the requirement from prima facie to probable cause, presumably to conform to the Constitutional requirement.⁵⁰

An analysis of the alleged reason for change, however, has no basis. The Constitutional requirement for probable cause clearly refers to whether or not a search warrant or a warrant of arrest is to be issued by the judge. The probable cause standard is not applicable as a standard to determine whether a criminal case should be filed in court. Thus, if ever the proposal to change the quantum of evidence required in filing a criminal case in court from probable cause to clear and convincing evidence, this proposal will not meet any constitutional wall.

B. Strengthen the Coordination between the National Prosecution Service and Other Law Enforcement Agencies to the Effect That the Public Prosecutors Should Be Included in the Case Build Up Stage

So much has been said of the importance of the participation of public prosecutors in case build up. This participation will ensure that proper procedure as to handling, gathering, and preservation of evidence will be followed. While coordination between the National Prosecution Service and Law Enforcement Agencies leaves a lot to be desired, initial efforts to coordinate already exist.

The Justice Sector Coordinating Council, which is composed of the Chief Justice for the Supreme Court, the Secretary of Justice for the Prosecutorial Arm of the Government and the Secretary of the Interior and Local Government for law enforcement units like the Philippine National Police, has come up with a system to combat delay in the trial of criminal cases.

In cases where policemen are called to testify regarding a case, trial courts have a hard time to locate them because at times they are detailed elsewhere. This problem of notification of police witnesses is addressed by the *e-Subpoena* system. The e-Subpoena System is a web-based information system that facilitates the issuance and expedites the transmittal of Subpoena from the court to the Police Officers and monitors its compliance.⁵¹

⁴⁸ "In the hierarchy of evidentiary values, proof beyond reasonable doubt is at the highest level, followed by clear and convincing evidence, then by preponderance of evidence, and lastly by substantial evidence, in that order". See *Aba v. De Guzman, Jr.*, A.C. No. 7649, December 14, 2011.

⁴⁹ *Salonga v. Cruz Pano*, G.R. No. L-59524, February 18, 1985.

⁵⁰ The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized. See Article III, Section 2, 1987 Constitution.

The PNP gave a glimpse on how the system will work, thus:

According to the guidelines of the “e-Subpoena System”, the PNP will use its Database particularly its website identified as subpoena.pnp.org.ph in serving subpoenas to police officers appearing or named as witnesses in criminal cases. The Courts, through its court administrator, will send the various subpoenas to particular PNP units in the PNP identified website or via e-mail. The assigned court personnel shall enter the details regarding a subpoena to be issued to police offices in the Data Base of the PNP using the computer-generated form known as e-Subpoena Form, which was prepared for the purpose. The e-Subpoena Form is sent by the assigned court personnel at least five (5) days before the scheduled hearing of the case, or within one (1) day from the order of the court for the service of subpoena duces tecum or subpoena ad testificandum.

However, it is the primary responsibility of the Chief of Police in every police station to acknowledge the issued subpoena, inform the concerned PNP personnel and ensure his attendance in court. As well, the Court Process Officer (CPO), as the key responsible officer, shall acknowledge the subpoena sent by the court and undertake immediate action to locate the PNP personnel concerned, inform him and cause the personal receipt of the subpoena as final proof of service.

The police stations, through the CPO and/or PNP National Headquarters through the DIDM, will give feedback on the availability or non-availability of the police officer concerned within three (3) working days from receipt thereof. Otherwise, any feedback regarding the concerned police officer will be disclosed during the scheduled hearing of the case as indicated in the Subpoena Form.⁵²

While it is commendable that there are initial steps to ensure coordination between all the stakeholders of the criminal justice system, it must be remembered that any subsequent programs that will be proposed must be sustainable and at the same time directed towards stronger coordination between all of relevant sectors of the system and not merely piecemeal solution to a problem that requires a whole scale systemic approach. Just like treating a gun-shot wound with a band aid.

VI. CONCLUSION

The procedure of criminal trials in the Philippines is not perfect but the dream is to aspire to have a system that is working and prevent the innocent from receiving an unjust conviction. Thus, all sectors are working hard to solve the problems that plague the system. The solutions provided to solve the problems of public prosecutors in building a criminal case in the Philippines has its merits. Also, the proposals given here might be drastic, detractors are inevitable. It is important however, to keep an open mind to the changes being proposed. For at the end of the day, everyone is committed to one particular goal—that goal being, for the public prosecutors to secure a *just* conviction.

“In pronouncing the presumption of innocence of the accused and their right to due process, the Constitution declares that the risk of letting the guilty walk free would be error on the side of justice. This outcome is infinitely better than imprisoning an innocent person.”⁵³

⁵¹ *E-Subpoena launched in Crame*. PNP Public Information Office. April 30, 2014. Retrieved at <<http://pnp.gov.ph/portal/index.php/press-news-releases/latest-news/1631-e-subpoena-system-launched-in-crame>> last July 30, 2014.

⁵² *Ibid*.

⁵³ Separate Concurring Opinion of Associate Justice (now Chief Justice) Maria Lourdes P. A. Sereno in *Antonio Lejano v. People of the Philippines*, G.R. No. 176389, December 14, 2010.