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[G.R. No. L-29274. November 27, 1975]

SEC. QUIRICO P. EVANGELISTA, in his capacity as Secretary of the Presidential Agency on Reforms and Government Operations, and the PRESIDENTIAL AGENCY ON REFORMS AND GOVERNMENT OPERATIONS (PARGO), *petitioners, vs.* **HON. HILARION U. JARENCIO, as Presiding Judge, Court of First Instance of Manila, Branch XXIII, and FERNANDO MANALASTAS, Assistant City Public Service Officer of Manila, and ALL OTHER CITY OFFICIALS AND EMPLOYEES SIMILARLY SITUATED,** *respondents.*

SYLLABUS

1. **ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES, MAY CONDUCT PURELY INVESTIGATORY PROCEEDINGS; WITNESS MAY BE REQUIRED TO ATTEND PROCEEDING.** — It has been essayed that the lifeblood of the administrative process is the flow of fact, the gathering, the organization and the analysis of evidence. Investigations are useful for all administrative functions, not only for rule making, adjudication, and licensing, but also for prosecuting, for supervising and directing, for determining general policy, for recommending, legislation, and for purposes no more specific than illuminating obscure areas to find out what if anything should be done. An administrative agency may be authorized to make investigations, not only in proceedings of a legislative or judicial nature, but also in proceedings whose sole purpose is to obtain information upon which future action of a legislative or judicial nature may be taken and may require the attendance of witnesses in proceedings of a purely investigatory nature. It may conduct general inquiries into evils calling for correction, and to report findings to appropriate bodies and make recommendations for actions.

2. **ID.; PRESIDENTIAL AGENCY ON REFORMS AND GOVERNMENT OPERATIONS (PARGO); SUBPOENA POWER; POWER EXTENDS TO INVESTIGATORY FUNCTIONS.** — The

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Presidential Agency on Reforms and Government Operations (PARGO), created to forestall and erode nefarious activities and anomalies in the civil service, draws its subpoena power from the Executive Order creating it. Such subpoena power operates *in extenso* to all the functions of the agency and is not bordered by nor is it merely exercisable in its quasi-judicial or adjudicatory function. To hold that the subpoena power of the agency is confined to mere quasi-judicial or adjudicatory function would imperil or inactive its investigatory functions. More than that, the enabling authority itself fixes no distinction when and in what function should be subpoena power be exercised. Similarly, there is no reason to depart from the established rule that forbids differentiation when the law itself makes none.

3. **ID.; ID.; ID.; RESTRICTION ON JUDICIAL SUBPOENA NOT APPLICABLE TO ADMINISTRATIVE SUBPOENA.** — The proviso in Section 580 of the Revised Administrative Code that the subpoena power of an administrative agency shall be "subject in all respects to the same restrictions and qualifications as apply in judicial proceedings of a similar character" could refer to restraints against infringement of constitutional rights or when the subpoena is unreasonable or oppressive and when the relevancy of the books, documents or things does not appear. The strictures of a subpoena issued under the Rules of Court, namely, that a specific case must be pending before a court for hearing or trial and that the hearing or trial must be in connection with the exercise of the court's judicial or adjudicatory functions, cannot apply to a non-judicial subpoena issued by an administrative agency. An administrative subpoena differs in essence from a judicial subpoena, one procurable from and issuable by a competent court, and not an administrative subpoena.

4. **ID.; ID.; ID.; SPECIFIC CHARGE OR COMPLAINT OR VIOLATION OF LAW, NOT NECESSARY FOR ISSUANCE OF SUBPOENA.** — Administrative agencies may enforce subpoenas issued in the course of investigations, whether or not adjudication is involved, and whether or not probable cause is shown and even before the issuance of a complaint. It is not necessary, as in the case of a *warrant*, that a specific charge or complaint of violation of law be pending or that the order be made pursuant to one. It is enough that the investigation be for a lawfully authorized purpose.

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5. **ID.; ID.; ID.; PURPOSE OF ADMINISTRATIVE SUBPOENA IS TO DISCOVER EVIDENCE.** — The purpose of an administrative subpoena is to discover evidence, not to prove a pending charge, but upon which to make one if the discovered evidence so justifies. Its obligation cannot rest on a trial of the value of testimony sought; it is enough that the proposed investigation be for a lawfully authorized purpose, and that the proposed witness be claimed to have information that might shed some helpful light.

6. **ID.; ID.; ID.; ID.; REQUIREMENTS FOR ENFORCEMENT OF SUBPOENA.** — An administrative agency has the power of inquisition which is not dependent upon a case or controversy in order to get evidence, but an investigate merely on suspicion that the law is being violated or even just because it wants assurance that it is not. When investigate and accusatory duties are delegated by statute to an administrative body, it, too may take steps to inform itself as to whether there is probable violation of the law. In sum, it may be stated that subpoena meets the requirements for enforcement if the inquiry is (1) within the authority of the agency; (2) the demand is not too indefinite; and (3) the information is reasonably relevant.

7. **ID.; ID.; ID.; EXTENSION OF PRIVILEGE AGAINST SELF-INCRIMINATION TO WITNESS IN FACT-FINDING INVESTIGATION, UNWISE; RATIONALE.** — The privilege against self-incrimination extends in administrative investigations, generally, in scope similar to adversary proceedings. Thus, in an administrative charge of unexplained wealth under the Anti-Graft and Corrupt Practices Act, it was held that since the proceedings is criminal or penal in nature, the complainant cannot call the respondent to the witness stand without encroaching upon his constitutional privilege against self-incrimination. This same approach was later followed in an administrative proceedings against a medical practitioner that could possibly result in the loss of his privilege to practice the medical profession. Nevertheless, where the person cited in the subpoena is not facing any administrative charge, but is merely cited as a witness in connection with the fact-finding investigation of anomalies and irregularities in a government office with the object of submitting the assembled facts to the President of the Philippines or to file the corresponding charges, any unnecessary extension of the privilege would be unwise

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since the only purpose of investigation is to discover facts as a basis of future action. Anyway, by all means, the person so cited may contest any attempt in the investigation that tends to disregard his privilege against self-discrimination.

8. **CONSTITUTIONAL LAW; CONSTITUTIONALITY OF EXECUTIVE ORDER CANNOT BE COLLATERALLY IMPEACHED.** — For reasons of public policy, the constitutionality of executive orders, which are commonly said to have the force and effect of statutes cannot be collaterally impeached. Much more when the issue was not duly pleaded in the lower court as to be acceptable for adjudication in a *certiorari* proceeding before the Supreme Court. The settled rule is that the Supreme Court will not anticipate a question of constitutional law in advance of the necessity of deciding it.

FERNANDO, *J.*, *concurring*:

1. **CONSTITUTIONAL LAW; BILL OF RIGHTS; CONSTITUTIONAL RIGHTS OF A PERSON IN ADMINISTRATIVE INVESTIGATION.** — The constitutional rights of a person who may be involved in an administrative investigation, call for respect. A recognition of the expanded reach of the administrative process in order to assure that the objectives of a regulatory statute be attained cannot obscure the protection that the Constitution affords a person who may find himself cited to appear as a witness in a fact finding investigation conducted by a regulatory or administrative agency.

2. **ID.; ID.; RIGHT AGAINST UNREASONABLE SEARCH AND SEIZURES; RIGHT CANNOT BE RENDERED MEANINGLESS BY ADMINISTRATIVE POWER OF INVESTIGATION.** — The right to be protected against unreasonable search and seizure should not fall by the wayside. The board sweep of the administrative power of investigation cannot, consistently with the Constitution, go so far as to render it meaningless. It is with such a reading that the pronouncement in *US vs. Morton Salt Co.* that "it is sufficient if the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant," on which reliance is placed in the opinion of Justice Martin, should be viewed. Such pronouncement has been given approval in an impressive number of subsequent adjudication. The Morton Salt Co, case,

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however, involves a corporation and it suffices to call attention to the words of Justice Jackson that "corporations can claim no equality with individuals in the enjoyment of a right to privacy" to remove any doubt as to the pronouncement's lending itself to the construction that an inroad into the right of search and seizure is now permissible. The landmark Boyd decision which warned against the use of the subpoena power to trench upon the guarantee against unreasonable search and seizure still speaks authoritatively. The Supreme Court has spoken to the same effect, Boyd having been cited in a number of cases. The opinion of Justice Martin should therefore be read as not departing from but precisely adhering to its command. Whatever relaxation of its compelling force may be allowable in case of corporations should not apply where an individual is concerned.

3. **ID.; RIGHT AGAINST SELF-INCRIMINATION; RIGHT SHOULD EXTEND TO PROSPECTIVE RESPONDENT BEING CITED AS "WITNESS" IN AN ADMINISTRATIVE INVESTIGATION.** — The right not to incriminate oneself is deserving of the utmost deference and respect. What is more, the present Constitution by the adoption of the Miranda doctrine has vitalized it even further. A re-examination of the pronouncement in the instant case involving the calling of a witness in an investigation being conducted by the PARGO, that "Since the only purpose of investigation is to discover facts as a basis of future action, any unnecessary extension of the privilege would thus be unwise" is, therefore, desirable. A distinction between a witness and a respondent may be too tenous if the realities of the situation be fully considered. The force of the Cabal and the Pascual, Jr. decisions upholding the right against self-incrimination of a respondent in an administrative complaint may be eroded if the prospective respondent is first called as a witness and is thus compelled to testify. Concurrence with the opinion of the Court in the instant case is not ruled out, however, in view of the *caveat* that "Anyway, by all means, respondent Fernando Manalastas may contest any attempt in the investigation that tends to disregard his privilege against self-incrimination."

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TEEHANKEE, *J.*, *dissenting*:

1. **CONSTITUTIONAL LAW; BILL OF RIGHTS; PRIVILEGE AGAINST SELF-INCRIMINATION; RESPONDENT BEING SUBPOENAED AS "WITNESS" IN ADMINISTRATIVE INVESTIGATION ENTITLED TO PRIVILEGE.** — Where, contrary to the finding of the main opinion that the person cited in a subpoena issued by an investigating agency "is not facing any administrative charge" and that "he is merely cited as a witness in connection with the fact-finding investigation of anomalies and irregularities in the City Government of Manila . . .," it is a fact shown by the very petition itself and its annexed sworn statements that said person is in fact and for all intents and purposes subpoenaed as *respondent* or one *directly implicated with alleged bribery and graft in the said sworn statements* that concededly as per the petition itself initiated the investigating agency's alleged "fact-finding investigation," said person is justified in invoking the privilege against self-incrimination and in securing the respondent court's injunction against enforcement of the agency's subpoena. The person cited was unquestionably a party respondent, who, under the doctrine of Cabal and Pascual, had the right to remain silent and invoke the privilege against self-incrimination and refuse to take the witness stand. This legal and constitutional right may not be defeated by the transparent expedient of citing respondent as a supposed *witness* in what was avowed to be a general fact-finding investigation but obviously was a fishing expedition to ensnare respondent as a prime suspect.

2. **ID.; ID.; ID.; PRIVILEGE STRENGTHENED BY 1973 CONSTITUTION.** — The 1973 Constitution has recognized the necessity of strengthening (and extending) the privilege against self-incrimination by expressly providing as a constitutional mandate in the Bill of Rights that "Any person under investigation for the commission of an offense shall have the right to *remain silent* and to counsel, and to be informed of such right" (Article IV, Section 20) and outlawing the use of any confession obtained in violation of said section by declaring its *inadmissibility* in evidence.

3. **ID.; ID.; ID.; STATE MUST RESPECT INDIVIDUAL'S CONSTITUTIONAL RIGHTS IN INVESTIGATION OF WRONG DOINGS.** — The State with its overwhelming and

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vast powers and resources can and must ferret out and investigate wrong doing, graft and corruption and at the same time respect the constitutional guarantees of the individual's right to privacy, silence and due process and against self-incrimination and unreasonable search and seizure. This means that leads and charges must be investigated and followed up through the assistance of the corresponding police and law enforcement agencies as provided in the petitioner's executive charter and the evidence secured by proper applications for search warrants, and as conceded in the petition itself, after the corresponding report to the President "to file the corresponding charges against the persons who may appear responsible or merely refer them to other appropriate offices such as the Fiscal's office, like what was done in other cases."

APPEARANCES OF COUNSEL

Solicitor General Antonio P. Barredo and *Solicitor General Felix V. Makasiar and Solicitor Bernardo P. Pardo, Assistant Solicitor General Isidro C. Borromeo & Assistant Solicitor General Pacifico de Castro and 1st. Assistant Solicitor General Esmeraldo Umali* for petitioners.

D E C I S I O N

MARTIN, *J.*:

This is an original action for *certiorari* and prohibition with preliminary injunction, under Rule 65 of the Rules of Court, seeking to annul and set aside the order of respondent Judge, the Honorable Hilarion J. Jarencio, Presiding Judge of the Court of First Instance of Manila, dated July 1, 1968, in Civil Case No. 73305, entitled "*Fernando Manalastas vs. Sec. Ramon D. Bagatsing, etc.,*" which reads as follows:

"IT IS ORDERED that, upon the filing of a bond in the amount of ₱5,000.00, let the writ of preliminary injunction prayed for by the petitioner [private respondent] be issued restraining the respondents [petitioners] their agents, representatives, attorneys and/or other persons acting in their behalf from further issuing subpoenas in connection with the *fact-finding* investigations to the petitioner

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[private respondent] and from instituting contempt proceedings against the petitioner [private respondent] under Section 580 of the Revised Administrative Code." (Stress supplied).

Pursuant to his special powers and duties under Section 64 of the Revised Administrative Code,[1] the President of the Philippines created the Presidential Agency on Reforms and Government Operations (PARGO) under Executive Order No. 4 of January 7, 1966.[2] Purposedly, he charged the Agency with the following functions and responsibilities:[3]

"b. To investigate all activities involving or affecting immoral practices, graft and corruptions, smuggling (physical or technical), lawlessness, subversion, and all other activities which are prejudicial to the government and the public interests, and to submit proper recommendations to the President of the Philippines.

"e. To investigate cases of graft and corruption and violations of Republic Acts Nos. 1379 and 3019, and gather necessary evidence to establish *prima facie*, acts of graft and acquisition of unlawfully amassed wealth . . .

"h. To receive and evaluate, and to conduct fact-finding investigations of sworn complaints against the acts, conduct or behavior of any public official or employee and to file and prosecute the proper charges with the appropriate agency."

For a realistic performance of these functions, the President vested in the Agency all the powers of an investigating committee under Sections 71 and 580 of the Revised Administrative Code, including the power to summon witnesses by subpoena or subpoena

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[1] "Sec. 64 (c). To order, when in his opinion the good of the public service so requires, an investigation of any action or the conduct of any person in the Government service and in connection therewith to designate the official, committee, or person by whom such investigation shall be conducted."

[2] Executive Order No. 208, dated February 9, 1967, converted the Agency into a division under the Executive Office and is now known as "Complaints and Investigating Office."

[3] Executive Order No. 88, dated September 25, 1967, amending in part Executive Order No. 4.

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duces tecum, administer oaths, take testimony or evidence relevant to the investigation.[4]

Whereupon, on June 7, 1968, petitioner Quirico Evangelista, as Undersecretary of the Agency, issued to respondent Fernando Manalastas, then Acting City Public Service Officer of Manila, a subpoena *ad testificandum* commanding him "to be and appear as witness at the Office of the PRESIDENTIAL AGENCY ON REFORMS AND GOVERNMENT OPERATIONS *** then and there to declare and testify in a certain investigation pending therein."

Instead of obeying the subpoena, respondent Fernando Manalastas filed on June 25, 1968 with the Court of First Instance of Manila an Amended Petition for prohibition, *certiorari* and/or injunction with preliminary injunction and/or restraining order docketed as Civil Case No. 73305 and assailed its legality.

On July 1, 1968, respondent Judge issued the aforementioned Order:

"IT IS ORDERED that, upon the filing of a bond in the amount of ₱5,000.00, let the writ of preliminary injunction prayed for by the petitioner [private respondent] be issued restraining the respondents [petitioners], their agents, representatives, attorneys and/or other persons acting in their behalf from further issuing subpoenas in connection with the *fact-finding* investigations to the petitioner [private respondent] and from instituting contempt proceedings against the petitioner [private respondent] under Section 530 of the Revised Administrative Code." (Stress supplied)

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[4] Executive Order No. 4, para. (5). "The Agency is hereby vested with all the powers of an investigating committee under Sections 71 and 580 of the Revised Administrative Code, including the power to summon witnesses by subpoena *duces tecum*, administer oaths, take testimony or evidence relevant to the investigation."

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Because of this, petitioners[5] elevated the matter *direct* to Us without a motion for reconsideration first filed on the fundamental submission that the Order is a patent nullity.[6]

As unfurled, the dominant issue in this case is whether the Agency, acting thru its officials, enjoys the authority to issue subpoenas in its conduct of fact-finding investigations.

It has been essayed that the life blood of the administrative process is the flow of fact, the gathering, the organization and the analysis of evidence.[7] Investigations are useful for all administrative functions, not only for rule making, adjudication, and licensing, but also for prosecuting, for supervising and directing, for determining general policy, for recommending, legislation, and for purposes no more specific than illuminating obscure areas to find out what if anything should be done.[8] An administrative agency may be authorized to make investigations, not only in proceedings of a legislative or judicial nature, but also in proceedings whose sole purpose is to obtain information upon which future action of a legislative or Judicial nature may be taken[9] and may require the attendance of witnesses in proceedings of a purely investigatory nature. It may conduct general inquiries into evils calling for correction and to report findings to appropriate bodies and make recommendations for actions.[10]

We recognize that in the case before Us, petitioner Agency draws its subpoena power from Executive Order No. 4, para. 5

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[5] Resolution of the Court on November 28, 1969 excluded Ramon D. Bagatsing as petitioner in the case.

[6] See *Matute v. Court of Appeals*, 31 Jan. 1969, 26 SCRA 799, 800; *Central Bank v. Cloribel*, L-26971, 11 April 1972, 44 SCRA 314.

[7] *Administrative Law*, Jaffe and Nathanson, 1961 ed., 491.

[8] *Pope & Talbot, Inc. v. Smith*, 340 P. 2d 964, citing 1 Davis Administrative Law Treatise, 160.

[9] See Notes on 27 ALR 2d 1208, 1209, and cases cited.

[10] *Marchitto v. Waterfront Commission of New York Harbor*, 160 A 2d 832.

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which, in an effectuating mood, empowered it to "summon witnesses, administer oaths, and take testimony relevant to the investigation"[11] with the authority "to require the production of documents under a subpoena *duces tecum* or otherwise, subject in all respects to the same restrictions and qualifications as apply in judicial proceedings of a similar character."[12] Such subpoena power operates *in extenso* to all the functions of the Agency as laid out in the aforequoted sub-paragraphs (b), (e), and (h). It is not bordered by nor is it merely exercisable, as respondents would have it, in quasi-judicial or adjudicatory function under sub-paragraph (b). The functions enumerated in all these sub-paragraphs (b), (e), and (h) interlink or intertwine with one another with the principal aim of meeting the very purpose of the creation of the Agency, which is to forestall and erode nefarious activities and anomalies in the civil service. To hold that the subpoena power of the Agency is confined to mere quasijudicial or adjudicatory functions would therefore imperil or inactiviate the Agency in its investigatory functions under sub-paragraphs (e) and (h). More than that, the enabling authority itself (Executive Order No. 4, para. 5) fixes no distinction when and in what function should the subpoena power be exercised. Similarly, We see no reason to depart from the established rule that forbids differentiation when the law itself makes none.

Nor could We impress upon this subpoena power the alleged strictures of a subpoena issued under the Rules of Court[13] to abridge its application. The seeming proviso in Section 580 of the Revised Administrative Code that the right to summon witnesses and the authority to require the production of documents under a subpoena *duces tecum* or otherwise shall be "subject in all respects to the same restrictions and qualifications as apply in judicial proceedings of a similar character" cannot be validly seized upon to require, in respondents' formulation, that, as in a subpoena under the Rules, a specific case must be

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[11] Section 71, Revised Administrative Code.

[12] Section 580, Revised Administrative Code.

[13] See Sections 1 and 3, Rule 23, Rules of Court.

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pending before a court for hearing or trial and that the hearing or trial must be in connection with the exercise of the court's judicial or adjudicatory functions[14] before a non-judicial subpoena can be issued by an administrative agency like petitioner Agency. It must be emphasized, however, that an administrative subpoena *differs in essence* from a judicial subpoena. Clearly, what the Rules speaks of is a judicial subpoena, one procurable from and issuable by a competent court, and not an administrative subpoena. To an extent, therefore, the "restrictions and qualifications" referred to in Section 580 of the Revised Administrative Code could mean the restraints against infringement of constitutional rights or when the subpoena is unreasonable or oppressive and when the relevancy of the books, documents or things does not appear.[15]

Rightly, administrative agencies may enforce subpoenas issued in the course of investigations, whether or not adjudication is involved, and whether or not probable cause is shown[16] and even before the issuance of a complaint.[17] It is not necessary, as in the case of a *warrant*, that a specific charge or complaint of violation of law be pending or that the order be made pursuant to one. It is enough that the investigation be for a lawfully authorized purpose.[18] The purpose of the subpoena is to discover evidence, not to prove a pending charge, but upon which to make one if the discovered evidence so justifies.[19] Its obligation cannot rest on a trial of the value of testimony sought; it is enough that the proposed investigation be for a lawfully authorized purpose, and that the proposed witness be claimed to have information that might shed some helpful light.[20] Because judicial

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[14] Answer, Respondents, at 43, 45 Case Records.

[15] See Section 4, Rule 23, Rules of Court.

[16] 1 Davis, Administrative Law Treatise, 171.

[17] *NLRB v. Anchor Rome Mills, Inc.*, 197 F. 2d 447 (5th Cir. 1952).

[18] *Oklahoma Press Pub. Co. v. Walling*, 327 US 185 (1946).

[19] *SEC v. Vacuum Can Co.*, 157 F. 2d 530, cert den 330 US 820 (1947).

[20] See Marchitto, ante.

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power is reluctant if not unable to summon evidence until it is shown to be relevant to issues on litigations it does not follow that an administrative agency charged with seeing that the laws are enforced may not have and exercise powers of original inquiry. The administrative agency has the power of inquisition which is not dependent upon a case or controversy in order to get evidence, but can investigate merely on suspicion that the law is being violated or even just because it wants assurance that it is not. When investigative and accusatory duties are delegated by statute to an administrative body, it, too may take steps to inform itself as to whether there is probable violation of the law.[21] In sum, it may be stated that a subpoena meets the requirements for enforcement if the inquiry is (1) within the authority of the agency; (2) the demand is not too indefinite; and (3) the information is reasonably relevant.[22]

There is no doubt that the fact-finding investigations being conducted by the Agency upon sworn statements implicating certain public officials of the City Government of Manila in anomalous transactions[23] fall within the Agency's sphere of authority and that the information sought to be elicited from respondent Fernando Manalastas, of which he is claimed to be in possession,[24] is reasonably relevant to the investigations.

We are mindful that the privilege against self-incrimination extends in administrative investigations, generally, in scope similar to adversary proceedings.[25] In *Cabal v. Kapunan, Jr.*,[26] the

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[21] *United States v. Morton Salt Co.*, 338 US 632 (1950), abandoning the *Harriman*, 211 US 407; (1908) and *American Tobacco*, 264 US 298; (1924) doctrine against "fishing expedition."

[22] *Adams v. FTC*, 296 F. 2d 861, cert den 369 US 864 (1962).

[23] Petition, at 6, Case Records; See Annexes B, B-1, Petition; at 17-24, Case Records.

[24] Petition, at 7, Case Records.

[25] Rights of Witnesses in Administrative Investigations, 54 Harv. L. Rev. 1214.

[26] L-19052, 29 Dec. 1962, 6 SCRA 1064, per Concepcion, *J.*

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Court ruled that since the administrative charge of unexplained wealth against the respondent therein may result in the forfeiture of the property under the Anti-Graft and Corrupt Practices Act, a proceeding criminal or penal in nature, the complainant cannot call the respondent to the witness stand without encroaching upon his constitutional privilege against self-incrimination. Later, in *Pascual, Jr. v. Board of Medical Examiners*,[27] the same approach was followed in the administrative proceedings against a medical practitioner that could possibly result in the loss of his privilege to practice the medical profession. Nevertheless, in the present case, We find that respondent Fernando Manalastas is not facing any administrative charge.[28] He is merely cited as a witness in connection with the fact-finding investigation of anomalies and irregularities in the City Government of Manila with the object of submitting the assembled facts to the President of the Philippines or to file the corresponding charges.[29] Since the only purpose of investigation is to discover facts as a basis of future action, any unnecessary extension of the privilege would thus be unwise.[30] Anyway, by all means, respondent Fernando Manalastas may contest any attempt in the investigation that tends to disregard his privilege against self-incrimination.

A question of constitutional dimension is raised by respondents on the inherent power of the President of the Philippines to issue subpoena.[31] More tersely stated, respondents would now challenge, in a collateral way, the validity of the basic authority, Executive Order No. 4, as amended in part by Executive Order No. 88. Unfortunately, for reasons of public policy, the constitutionality of executive orders, which are commonly said

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[27] L-25018, 26 May 1969, 28 SCRA 345, per Fernando, *J.*

[28] Memorandum. Petitioners, at 154, Case Records.

[29] *Idem*: Petition, at 8, Case Records.

[30] Rights of Witnesses in Administrative Investigations, *ante*.

[31] Memorandum, Respondents, at 160, 161, Case Records.

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to have the force and effect of statutes[32] cannot be collaterally impeached.[33] Much more when the issue was not duly pleaded in the court below as to be acceptable for adjudication now.[34] The settled rule is that the Court will not anticipate a question of constitutional law in advance of the necessity of deciding it.[35]

Nothing then appears conclusive than that the disputed subpoena issued by petitioner Quirico Evangelista to respondent Fernando Manalastas is well within the legal competence of the Agency to issue.

WHEREFORE, the aforequoted order of respondent Judge, dated July 1, 1968, is hereby set aside and declared of no force and effect.

Without pronouncement as to costs.

SO ORDERED.

Castro, Antonio, Esguerra, Muñoz Palma, and *Aquino, JJ.,* concur.

Makalintal, C.J., in the result.

Fernando, J., concurs and adds a brief separate opinion.

Teehankee, J., dissents in a separate opinion.

Barredo, Makasiar and *Concepcion Jr., JJ.*, took no part.

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[32] *US v. Borja,* 191 F. Supp. 563, 566; *Farkas vs. Texas Instrument, Inc.*, 375 F. 2d 629, 632, dert den 389 US 977.

[33] *San Miguel Brewery, Inc. vs. Magno,* L-21879, 29 Sept. 1967, 21 SCRA 297.

[34] *Idem*; also *2 Modern Constitutional Law*, Antieau, 1969 ed., 648.

[35] *Petite vs. United States*, 361 US 529 (1960).

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FERNANDO, *J.*, *concurring*:

The opinion of the Court, ably penned by Justice Martin, is both learned and comprehensive. It reflects the current state of doctrinal pronouncements in American Administrative Law, which up to now possesses worth in this jurisdiction. It is in accordance with the views expressed in two authoritative American treatises, that of Davis[1] and that of Jaffe.[2] The compact but highly useful text of Parker yields the same conclusion.[3] A similar approach may be discerned in the casebooks of Katz,[4] and McFarland and Vanderbilt.[5] A concurrence is thus called for. That for me does not conclude matters though. The constitutional rights of a person who may be involved in such administrative investigation, call for respect. A recognition of the expanded reach of the administrative process in order to assure that the objectives of a regulatory statute be attained cannot obscure the protection that the Constitution affords a person who may find himself in the position of a respondent. It is worthwhile to my mind that there be a reference, even if far from detailed, to such an aspect. Hence this separate opinion.

1. The right to be protected against unreasonable search and seizure should not fall by the wayside.[6] The broad sweep

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[1] Cf. 1 Davis, *Administrative Law Treatise*, 159-232 (1958).

[2] Cf. Jaffe, *Judicial Control of Administrative Action*, 115-119 (1965).

[3] Cf. Parker, *Administrative Law*, 135-143 (1952).

[4] Cf. Katz, *Cases and Materials in Administrative Law*, 175-221 (1947).

[5] Cf. McFarland and Vanderbilt, *Administrative Law: Cases and Materials*, 83-86 (1952).

[6] According to Article IV, Section 3 of the present Constitution: "The right of the people to he secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall not be violated, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, 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."

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of the administrative power of investigation cannot, consistently with the Constitution, go so far as to render it meaningless. It is with such a reading in mind that I view the pronouncement in *United States v. Morton Salt Co.*,[7] on which reliance is placed in the opinion of Justice Martin. The doctrine formulated in such American case by Justice Jackson reads thus: "Of course a governmental investigation into corporate matters may be of such a sweeping nature and so unrelated to the matter properly under inquiry as to exceed the investigatory power. *Federal Trade Comm. v. American Tobacco Co.*, . . . But it is sufficient if the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant. 'The gist of the protection is in the requirement, expressed in terms, that the disclosure sought shall not be unreasonable.'"[8] It has been given approval in an impressive number of subsequent adjudications.[9] It suffices, however, to call attention to the words of Justice Jackson in the two paragraphs preceding the excerpts cited to remove any doubt as to its lending itself to the construction that an inroad into the right of search and seizure is now permissible: "The Commission's order is criticized upon grounds that the order transgresses the Fourth

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[7] 338 US 632 (1950).

[8] *Ibid*, p. 652-653.

[9] Cf. *F. T. C. v. Browning*, 435 F2d 96 (1970); *Local No. 104, Sheet Metal Worker's International Association v. Equal Employment Opportunity Commission*, 439 F2d 237 (1971); *United States v. Newman*, 441 F2d 165 (1971); *Securities and Exchange Commission v. First Security Bank of Utah*, 447 F2d 166 (1971); *Modine Manufacturing Company v. National Labor Relations*, 453 F2d 292 (1971); *United States v. Litton Industries, Inc.*, 462 F2d 14 (1972); *Burlington Northern Inc. v. Interstate Commerce Commission*, 462 F2d 280 (1972); *Wilmoth v. Hansel*, 25 A 86 (1892); *Flanagan v. New York L.E. & W.R. Co.*, 32 S. 84 (1895); *Mobil Oil Corporation v. Durkin*, 278 A2d 477 (1971); *Fred Depkin & Son, Inc. v. Director, New Jersey Division of Taxation*, 276 A2d 161 (1971); *Appeal of Ohio Radio, Inc.*, 266 NE 2d 575 (1970); *Mckay v. Stewart & Cecire v. Stewart*, 272 NE 2d 887 (1971); *McKay v. Cecire*, 324 S2d 302 (1971); *Koch v. Kosydar*, 290 NE 2d 847 (1972); *State Real Estate Commission v. Roberts*, 271 A2d 246 (1970).

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Amendment's proscription of unreasonable searches and seizures and the Fifth Amendment's due process of law clause. It is unnecessary here to examine the question of whether a corporation is entitled to the protection of the Fourth Amendment. *** Although the 'right to be let alone — the most comprehensive of rights and the right most valued by civilized men,'*** is not confined literally to searches and seizures as such, but extends as well to the orderly taking under compulsion of process, *** neither incorporated nor unincorporated associations can plead an unqualified right to conduct their affairs in secret. *** While they may and should have protection from unlawful demands made in the name of public investigation, *** corporations can claim no equality with individuals in the enjoyment of a right to privacy . *** They are endowed with public attributes. They have a collective impact upon society, from which they derive the privilege of acting as artificial entities. The Federal Government allows them the privilege of engaging in interstate commerce. Favors from government often carry with them an enhanced measure of regulation. *** Even if one were to regard the request for information in this case as caused by nothing more than official curiosity, nevertheless law-enforcing agencies have a legitimate right to satisfy themselves that corporate behavior is consistent with the law and the public interest."[10] Thus is rendered clear that the landmark Boyd decision which warned against the use of the subpoena power to trench upon this guarantee still speaks authoritatively. This Court has spoken to the same effect, Boyd having been cited in a number of cases.[11] I would, therefore, read the opinion of my brethren as not departing from but precisely adhering to its command. Whatever relaxation of its compelling force may be allowable

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[10] 338 US 632. 651-652 (1950).

[11] Cf. *U.S. v. Navarro*, 3 Phil. 143 (1904); *Ocampo v. Jenkins*, 14 Phil. 681 (1909); *Worcester v. Ocampo*, 22 Phil. 42 (1912); *U.S. v. Ipil*, 27 Phil. 530 (1914); *Uy Kheytin v. Villareal*. 42 Phil. 886 (1920); *People v. Carlos*, 47 Phil. 626 (1925); *Alvarez v. Court of First Instance*, 64 Phil. 33 (1937); *Rodriguez v. Villamiel*, 65 Phil. 230 (1937); *Yee Sue Kay v Almeda*, 70 Phil. 141 (1940); *Moncado v. Peoples Court*, 80 Phil. 1 (1948).

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in case of corporations should not apply where an individual is concerned. That should reassure respondent Manalastas that if he could demonstrate a failure to abide by the constitutional mandate on search and seizure, he is not without a remedy.

2. Nor can I fully reconcile myself to the implications lurking in this observation in the opinion of the Court: "Since the only purpose of investigation is to discover facts as a basis of future action, any unnecessary extension of the privilege would thus be unwise."[12] The right not to incriminate oneself[13] is equally deserving of the utmost deference and respect. What is more, the present Constitution by the adoption of the Miranda doctrine has vitalized it even further.[14] There is, happily, the last sentence of such paragraph: "Anyway, by all means, respondent Fernando Manalastas may contest any attempt in the investigation that tends to disregard his privilege against self-incrimination."[15] When read in connection with the earlier reference to the fact that the respondent is called as a witness not as the party proceeded against, it cannot be said, in the light of the ruling in *Planas v. Gil*,[16] that it offends against this constitutional guarantee. As of now then, with the question of any modification of the Planas doctrine not being properly before us, I can yield my concurrence. Candor compels the statement, however, that for me a reexamination of such a pronouncement is desirable. A distinction between a witness and a respondent may be too tenuous if the realities of the situation be fully considered. I

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[12] At 9.

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

[14] Cf. *Magtoto v. Manguera*, L-37021, March 3, 1975, 63 SCRA 4.

[15] At 9.

[16] 67 Phil. 62 (1939).

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am bothered by the thought that the force of the Cabal[17] and the Pascual, Jr. decisions[18] may be eroded if the prospective respondent is first called as a witness and is thus compelled to testify. For the present, it may suffice if I express my misgivings. At any rate, concurrence is not ruled out in view of the aforementioned caveat in the able opinion of Justice Martin.

TEEHANKEE, *J., dissenting:*

I am constrained to dissent from the main opinion of Mr. Justice Martin which grants the petition and sets aside respondent court's order and writ of preliminary injunction of July 1, 1968 and would therefore require respondent Fernando Manalastas as assistant city public service officer of Manila (and all other city officials similarly situated) to comply with the PARGO subpoena "to testify to matters relevant to the investigation of anomalies and sworn statements involving or implicating certain City officials or other public officers."[1]

While the subpoena commands respondent Manalastas to appear as *witness* before the PARGO,[2] on the basis whereof the main opinion finds that said respondent "is not facing any administrative charge" and that "he is merely cited as witness in connection with the fact-finding investigation of anomalies and irregularities in the City Government of Manila with the object of submitting the assembled facts to the President of the Philippines or *to file the corresponding charges*."[3] it is a fact shown by the very petition at bar itself and its Annexes

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[17] *Cabal v. Kapunan, Jr.*, L-19052, December 29, 1962, 6 SCRA 1064.

[18] *Pascual, Jr. v. Board of Medical Examiners*, L-25018, May 26, 1969, 28 SCRA 345.

[1] Petition, p. 11, prayer (b).

[2] Now known as Complaints and Investigating Office (CIO) under Ex. Order No. 208, dated Feb. 9, 1967.

[3] Main opinion at p. 9 thereof, citing petitioners' Memorandum at p. 154, *Rollo*, italics supplied.

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B and B1 that respondent Manalastas is in fact and for all intents and purposes subpoenaed as a *respondent* or one *directly implicated* with alleged bribery and graft in the said sworn statements that concededly as per the petition itself initiated the PARGO's alleged "fact-finding investigation."[4]

Thus Annex B of the petition which is a sworn statement of one Edilberto Arguelles, investigated by the PARGO on the overpricing of eight steam cleaners sold through him as commission agent to the City of Manila, sets forth the detailed allegations of said declarant that respondent Manalastas and a number of other city officials named and unnamed got the lion's share of the overpricing. Annex B-1 of the petition is the sworn statement of one Carlos Montañez with reference to some overpriced equipment sold by him to the City of Manila wherein he likewise narrated in detail the *modus operandi* and specifically named respondent Manalastas and five other officials to whom he allegedly gave: "due monetary consideration."

All claims of PARGO to the contrary notwithstanding, the very petition and said annexed sworn statements (which were not shown to respondent judge in spite of his expressly asking for them during the course of the hearing[5]) show that respondent Manalastas (and others similarly situated) are indeed *not merely witnesses* but *in reality respondents* (subject to administrative and criminal charges.)

Respondent has therefore correctly invoked *Cabal vs. Kapunan,*[6] wherein the Court through then Chief Justice Roberto Concepcion held that therein petitioner rightfully refused to take the witness stand as against the order of the Presidential Committee investigating the complaint against him for alleged unexplained wealth (since such proceedings were in substance and effect a criminal one and his position was virtually that of

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[4] Petition, p. 3, par. 5.

[5] Answer, *Rollo*, p. 40.

[6] 6 SCRA 1064.

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an accused on trial and he therefore had the right to *remain silent* and invoke the privilege against self-incrimination in support of a *blanket refusal to answer any and all questions*) and ordered the dismissal of the criminal contempt charge against him.

Pascual, Jr. vs. Bd. of Examiners[7] is equally in point, wherein the Court sustained the lower court's writ of injunction against the respondent board's order compelling therein petitioner to take the witness stand in a malpractice case (wherein he was respondent) in view of the penal nature of the proceedings and the right of the accused to refuse "not only to answer incriminatory questions, but also to take the witness stand."[8] The Court therein stressed that "the constitutional guarantee, along with other rights granted an accused, stands for a belief that while crime should not go unpunished and that the truth must be revealed, such *desirable objectives* should *not* be accomplished according to *means or methods offensive to the high sense of respect accorded the human personality*. More and more in line with the democratic creed, the deference accorded an individual even those suspected of the most heinous crimes is given due weight. To quote from Chief Justice Warren, 'the constitutional foundation underlying the privilege is *the respect a government* x x x *must accord to the dignity and integrity of its citizens*.'" and that "while earlier decisions stressed the principle of humanity on which this right is predicated, precluding as it does all resort to force or compulsion, whether physical or mental, current judicial opinion places equal emphasis on its identification with the right to privacy. Thus according to Justice Douglas: 'The Fifth Amendment in its Self Incrimination clause enables the citizen to create a zone of privacy which government may not force to surrender to his detriment."

That petitioner's investigation and subpoena against respondent Manalastas were in substance and effect *criminal in nature*

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[7] 28 SCRA 344, per Fernando, *J.*; italics supplied.

[8] *Idem*, at p. 348; citing *Chavez vs. CA*, 24 SCRA 663.

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against him as a *respondent* (and not merely as witness) as indicated above, is borne out by the fact of record in *Sugay vs. Pumaran*[9] (of which the Court can well take judicial notice) that on July 22, 1971 respondent Manalastas as well as Carlos Montañez the trader (affiant in Annex B-1, petition, *supra*,[10]) and a number of other city officials were charged by the city fiscal in the Circuit Criminal Court of Manila for violations of Republic Act 3019 (Anti-Graft Law) in connection with the alleged gross overpricing of the same equipment (steam cleaners and air compressor) purchased for the City.

The main opinion's justification for upholding the subpoena, *viz*, that "since the only purpose of investigation is to discover facts as a basis of future action, any unnecessary extension of the privilege (against self-incrimination) would thus be unnecessary"[11] thus appears to be flawed in fact and in law: respondent was *in fact* being investigated as respondent-suspect and without submitting to the investigation was actually criminally charged in court; as a pure matter of *legal principle*, the 1973 Constitution has recognized the necessity of strengthening (and extending) the privilege against self-incrimination by expressly providing as a constitutional mandate in the Bill of Rights that "Any person under investigation for the commission of an offense shall have the right to *remain silent* and to counsel, and to be informed of such right" (Article IV, section 20) and outlawing the use of any confession obtained in violation of said section by declaring its *inadmissibility* in evidence.

Respondent Manalastas was therefore justified in invoking the privilege against self-incrimination and in securing the respondent court's injunction against enforcement of petitioner's subpoena. Respondent was unquestionably a party respondent who under the doctrine of *Cabal* and *Pascual, supra*, had the right to remain silent and invoke the privilege against self-

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[9] L-33877-79, 41 SCRA 260 (Sept. 30, 1971).

[10] At page 2 hereof.

[11] At page 9.

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incrimination and refuse to take the witness stand. This legal and constitutional right may not be defeated by the transparent expedient of citing respondent as a supposed *witness* in what was avowed to be a general fact-finding investigation but obviously was a fishing expedition to ensnare respondent as a prime suspect, as borne out by the sworn statements withheld from respondent court and now annexed to the very petition at bar and petitioner's contention that "In effect, the injunction issued by the lower court is one to restrain criminal prosecutions." This contention has of course been proven baseless by the events already cited above that such criminal prosecutions were in fact filed in court against respondent and others *without* the need of petitioner's "fact-finding investigation" and subpoenas.

The thrust of all this is that the State with its overwhelming and vast powers and resources can and must ferret out and investigate wrongdoing, graft and corruption and at the same time respect the constitutional guarantees of the individual's right *to* privacy, silence and due process and *against* self-incrimination and unreasonable search and seizure. This means that leads and charges must be investigated and followed up through the assistance of the corresponding police and law enforcement agencies as provided in the petitioner's executive charter[12] and the evidence secured by proper applications for search warrants, and as conceded in the petition itself, after the corresponding report to the President "to file the corresponding charges against the persons who may appear responsible or merely refer them to other appropriate offices such as the Fiscal's office, like what was done in other cases."[13]

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[12] Ex. Order No. 88, dated Sept. 25, 1967, amending Ex. Order No. 8 which created "as the executive instrumentality in the Office of the President" thus provides that petitioner shall "receive and evaluate, and (to) conduct fact-finding investigations of sworn complaints against the acts, conduct or behavior of any public official or employee and (to) *file and prosecute the proper charges with the appropriate agency*." Petition, Annexes A and A-1. (Italics supplied)

[13] Petition, at page 8.

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There appears to be validity in respondent's contention that the subpoena power granted petitioner in its executive charter does not apply to general fact-finding investigations conducted by it.[14] I find no need, however, of going further into this issue, since this dissent is based directly on the fundamental tenet that respondent Manalastas was unquestionably being investigated by petitioner as respondent and a prime suspect (and not as a mere witness) and accordingly, under settled doctrine, he had every right to remain silent and to invoke his right against self-incrimination and to refuse to take the witness stand.

I therefore vote for upholding respondent court's injunction against enforcement of petitioner's subpoena.

FIRST DIVISION

[A.M. No. 6-MJ. November 28, 1975]

PUAHING PAWAKI, *complainant, vs.* **NABDAR J. MALIK, Municipal Judge of Jolo, Sulu,** *respondent.*

SYLLABUS

ADMINISTRATIVE LAW; ADMINISTRATIVE COMPLAINT; SHALL BE DISMISSED IF NOT SUBSTANTIATED. — In this case where no evidence was submitted by complainant to

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[14] *Vide Harriman vs. Interstate Commerce Commission,* 211 U.S. 407 and *Federal Trade Commission vs. American Tobacco Co.,* 264 U.S. 298, where Justice Holmes in the first case ruled out a federal commission's application to require witnesses to testify before it *except* in connection with *specific complaints* for violation of the Interstate Commerce Act or with its investigation of *specific subjects* that might have been the object of complaint. In the second case, Justice Holmes likewise ruled against a federal commission's *fishing expeditions* into private papers on the mere possibility that they may disclose evidence of crime in view of the Constitutional provision against unreasonable searches and seizures.