# POLITICAL LAW

1. *Distinguish sovereignty from dominion.*

**Held:** *Sovereignty* is the right to exercise the functions of a State to the exclusion of any other State. It is often referred to as the power of *imperium*, which is defined as the government authority possessed by the State*.* On the other hand, *dominion*, or *dominium*, is the capacity of the State to own or acquire property such as lands and natural resources. ***(Separate Opinion, Kapunan, J., in Isagani Cruz v. Secretary of DENR, G.R. No. 135385, Dec. 6, 2000, En Banc, See Footnote 86)***

*2. How did Spain acquire the Philippines?*

**Held:**1. The Philippines passed to Spain by virtue of “discovery” and conquest. Consequently, all lands became the exclusive patrimony and dominion of the Spanish Crown. The Spanish Government took charge of distributing the lands by issuing royal grants and concessions to Spaniards, both military and civilian *(Antonio H. Noblejas, Land Titles and Deeds, p. 5 [1986]; These grants were better known as repartimientos and encomiendas. Repartimientos were handouts to the military as fitting reward for their services to the Spanish crown. The encomiendas were given to Spaniards to administer and develop with the right to receive and enjoy for themselves the tributes of the natives assigned to them. – Ponce, supra, p. 12, citing Benitez, History of the Philippines, pp. 125-126).*Privateland titles could only be acquired from the government either by purchase or by the various modes of land grant from the Crown *(Narciso Pena, Registration of Land Titles and Deeds, p. 2 [1994]).* ***(Separate Opinion, Puno, J., in Cruz v. Secretary of Environment and Natural Resources, 347 SCRA 128, 166, En Banc [Per Curiam])***

2. When Spain acquired sovereignty over the Philippines by virtue of its discovery and occupation thereof in the 16th century and the Treaty of Tordesillas of 1494 which it entered into with Portugal *(Under the Treaty of Tordesillas, the world was divided between Spain and Portugal, with the former having exclusive power to claim all lands and territories west of the Atlantic Ocean demarcation line [Lynch, The Legal Bases of Philippine Colonial Sovereignty, 62 Phil. L J 279, 283 [1987])* the continents of Asia, the Americas and Africa were considered as *terra nullius* although already populated by other peoples *(See Akehurst, a Modern Introduction to International Law, 5th ed., 142-143).* The discovery and occupation by the European States, who were then considered as the only members of the international community of civilized nations, of lands in the said continents were deemed sufficient to create title under international law *(See Cruz, International Law, 1996 ed., pp. 106-107)* ***(Separate Opinion, Kapunan, J., in Isagani Cruz v. Secretary of DENR, G.R. No. 135385, Dec. 6, 2000, 347 SCRA 128, 271, En Banc [Per Curiam])***

3. Discuss the concept of "jura regalia" and how it evolved in the Philippines. Does it negate native title to lands held in private ownership since time immemorial?

**Held:** Generally, under the concept of *jura regalia*, private title to land must be traced to some grant, express or implied, from the Spanish Crown or its successors, the American Colonial government, and thereafter, the Philippine Republic. The belief that the Spanish Crown is the origin of all land titles in the Philippines has persisted because title to land must emanate from some source for it cannot issue forth from nowhere *(Pena, Registration of Land Titles and Deeds, 1994 rev. ed., p. 15).*

In its broad sense, the term *"jura regalia"* refers to royal grants *(1 Bouvier's Law Dictionary, 3rd revision, p. 1759),* or those rights which the King has by virtue of his prerogatives *(Black's Law Dictionary, 6th ed., p. 1282).* In Spanish law, it refers to a right which the sovereign has over anything in which a subject has a right of property or *propriedad (76 Corpus Juris Secundum, citing Hart v. Burnett, 15 Cal. 530, 566).* These were rights enjoyed during feudal times by the king as the sovereign.

The theory of the feudal system was that title to all lands was originally held by the King, and while the use of lands was granted out to others who were permitted to hold them under certain conditions, the King theoretically retained the title *(Washburn, p. 44; see also Williams, Principles Of The Law On Real Property, 6th ed. [1886], p. 2; Bigelow, p. 2).* By fiction of law, the King was regarded as the original proprietor of all lands, and the true and only source of title, and from him all lands were held *(Warvelle, Abstracts and Examination of Title to Real Property [1907], p. 18).* The theory of *jura regalia* was therefore nothing more than a natural fruit of conquest *(1 Dictionary of English Law [Jowitt, ed.] p. 797).*

The Regalian theory, however, does not negate native title to lands held in private ownership since time immemorial. In the landmark case of *Carino v. Insular Government (41 Phil. 935, 212 U.S. 449, 53 L. Ed. 594 [1909]),* the United States Supreme Court, reversing the decision of the pre-war Philippine Supreme Court, made the following pronouncement:

x x x Every presumption is and ought to be taken against the Government in a case like the present. It might, perhaps, be proper and sufficient to say that *when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land. x x x (Carino v. Insular Government, supra note 75, at 941)*

The above ruling institutionalized the recognition of the existence of native title to land, or ownership of land by Filipinos by virtue of possession under a claim of ownership since time immemorial and independent of any grant from the Spanish Crown, as an exception to the theory of *jura regalia.*

x x x

*Carino* was decided by the U.S. Supreme Court in 1909, at a time when decisions of the U.S. Court were binding as precedent in our jurisdiction *(Section 10, Philippine Bill of 1902).* We applied the *Carino* doctrine in the 1946 case of *Oh Cho v. Director of Lands (75 Phil. 890 [1946]),* where we stated that “[a]ll lands that were not acquired from the Government either by purchase or by grant, belong to the public domain, but [a]n exception to the rule would be any land that should have been in the possession of an occupant and of his predecessors in interest since time immemorial, for such possession would justify the presumption that the land had never been part of the public domain or that it had been private property even before the Spanish conquest.” *(Id., at 892).* ***(Separate Opinion, Kapunan, J., in Isagani Cruz v. Secretary of DENR, G.R. No. 135385, Dec. 6, 2000, 347 SCRA 128, 268-270, En Banc [Per Curiam]***

*4. What was the basis for the early Spanish decrees embracing the theory of jura regalia? Is this also the basis of the declaration in Section 2, Article XII of the 1987 Constitution that all lands of the public domain are owned by the State? Consequently, did Spain acquire title over all lands in the Philippines in the 16th century?*

**Held:** *Dominium* was the basis for the early Spanish decrees embracing the theory of *jura regalia.* The declaration in Section 2, Article XII of the 1987 Constitution that all lands of the public domain are owned by the State is likewise founded on *dominium.* If *dominium*, not *imperium*, is the basis of the theory of *jura regalia*, then the lands which Spain acquired in the 16th century were limited to non-private lands, because it could only acquire lands which were not yet privately-owned or occupied by the Filipinos. Hence, Spain acquired title only over lands which were unoccupied and unclaimed, *i.e.*, public lands. ***(Separate Opinion, Kapunan, J., in Isagani Cruz v. Secretary of DENR, G.R. No. 135385, Dec. 6, 2000, En Banc, See Footnote 86)***

*5. What is the Doctrine of Constitutional Supremacy?*

**Held:** Under the *doctrine of constitutional supremacy*, if a law or contract violates any norm of the Constitution, that law or contract, whether promulgated by the legislative or by the executive branch or entered into by private persons for private purposes, is null and void and without any force and effect. Thus, since the Constitution is the fundamental, paramount and supreme law of the nation, it is deemed written in every statute and contract***. (Manila Prince Hotel v. GSIS, 267 SCRA 408 [1997] [Bellosillo])***

*6. What are self-executing and non-self executing provisions of the Constitution?*

**Held:** A provision which lays down a general principle, such as those found in Article II of the 1987 Constitution, is usually not self-executing. But a provision which is complete in itself and becomes operative without the aid of supplementary or enabling legislation, or that which supplies sufficient rule by means of which the right it grants may be enjoyed or protected, is self-executing. Thus a constitutional provision is self-executing if the nature and extent of the right conferred and the liability imposed are fixed by the Constitution itself, so that they can be determined by an examination and construction of its terms, and there is no language indicating that the subject is referred to the legislature for action*.* ***(Manila Prince Hotel v. GSIS, 267 SCRA 408 [1997] [Bellosillo])***

*7. Are provisions of the Constitution self-executing or non-self executing? Why?*

**Held:** Unless it is expressly provided that a legislative act is necessary to enforce a constitutional mandate, the presumption now is that all provisions are self-executing. If the constitutional provisions are treated as requiring legislation instead of self-executing, the legislature would have the power to ignore and practically nullify the mandate of the fundamental law. This can be cataclysmic. ***(Manila Prince Hotel v. GSIS, 267 SCRA 408 [1997] [Bellosillo])***

*8. Is the “Filipino First” Policy expressed in Section 10, Article XII of the Constitution a self-executing provision?*

**Held:** Yes. It is a mandatory, positive command which is complete in itself and which needs no further guidelines or implementing laws or rules for its enforcement. From its very words the provision does not require any legislation to put it in operation. It is *per se* judicially enforceable. When our Constitution mandates that *[i]n the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos,* it means just that – qualified Filipinos must be preferred. ***(Manila Prince Hotel v. GSIS, G.R. No. 118295, May 2, 1997, 267 SCRA 408 [Bellosillo])***

*9. Give examples of non-self executing provisions of the Constitution.*

**Held:**  By its very nature, Article II of the Constitution is a “declaration of principles and state policies.” These principles in Article II are not intended to be self-executing principles ready for enforcement through the courts. They are used by the judiciary as aids or as guides in the exercise of its power of judicial review, and by the legislature in its enactment of laws. As held in the leading case of *Kilosbayan, Incorporated v. Morato (246 SCRA 540, 564, July 17, 1995),* the principles and state policies enumerated in Article II and some sections of Article XII are not “self-executing provisions, the disregard of which can give rise to a cause of action in courts. They do not embody judicially enforceable constitutional rights but guidelines for legislation.” ***(Tanada v. Angara, 272 SCRA 18 [1997], En Banc [Panganiban])***

*10. When are acts of persons considered “State action” covered by the Constitution?*

**Held:**  In constitutional jurisprudence, the act of persons distinct from the government are considered “state action” covered by the Constitution (1) when the activity it engages in is a “public function”; (2) when the government is so significantly involved with the private actor as to make the government responsible for his action; and (3) when the government has approved or authorized the action. ***(Manila Prince Hotel v. GSIS, 267 SCRA 408 [1997] [Bellosillo])***

**The Doctrine of State Immunity from Suit**

*11. Discuss the basis of the doctrine of State immunity from suit.*

**Held:** The basic postulate enshrined in the Constitution that “[t]he State may not be sued without its consent,” reflects nothing less than a recognition of the sovereign character of the State and an express affirmation of the unwritten rule effectively insulating it from the jurisdiction of courts*.* It is based on the very essence of sovereignty. As has been aptly observed by Justice Holmes, a sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends*.* True, the doctrine, not too infrequently, is derisively called “the royal prerogative of dishonesty” because it grants the state the prerogative to defeat any legitimate claim against it by simply invoking its non-suability.We have had occasion to explain in its defense, however, that a continued adherence to the doctrine of non-suability cannot be deplored, for the loss of governmental efficiency and the obstacle to the performance of its multifarious functions would be far greater in severity than the inconvenience that may be caused private parties, if such fundamental principle is to be abandoned and the availability of judicial remedy is not to be accordingly restricted. ***(Department of Agriculture v. NLRC, 227 SCRA 693, Nov. 11, 1993 [Vitug])***

*12. Is the rule absolute, i.e., that the State may not be sued at all? How may consent of the State to be sued given?*

**Held:** The rule, in any case, is not really absolute for it does not say that the state may not be sued under any circumstances. On the contrary, as correctly phrased, the doctrine only conveys, “the state may not be sued without its consent;” its clear import then is that the State may at times be sued*.* The State's consent may be given either expressly or impliedly. Express consent may be made through a general law *(i.e., Commonwealth Act No. 327, as amended by Presidential Decree No. 1445 [Sections 49-50], which requires that all money claims against the government must first be filed with the Commission on Audit which must act upon it within sixty days. Rejection of the claim will authorize the claimant to elevate the matter to the Supreme Court on certiorari and, in effect, sue the State thereby)* or a special law*.* In this jurisdiction, the general law waiving the immunity of the state from suit is found in Act No. 3083, where the Philippine government “consents and submits to be sued upon any money claim involving liability arising from contract, express or implied, which could serve as a basis of civil action between the private parties.” Implied consent, on the other hand, is conceded when the State itself commences litigation, thus opening itself to a counterclaimor when it enters into a contract. In this situation, the government is deemed to have descended to the level of the other contracting party and to have divested itself of its sovereign immunity. This rule x x x is not, however, without qualification. Not all contracts entered into by the government operate as a waiver of its non-suability; distinction must still be made between one which is executed in the exercise of its sovereign function and another which is done in its proprietary capacity.

In *United States of America v. Ruiz (136 SCRA 487),* where the questioned transaction dealt with the improvements on the wharves in the naval installation at Subic Bay, we held:

“The traditional rule of immunity exempts a State from being sued in the courts of another State without its consent or waiver. This rule is a necessary consequence of the principle of independence and equality of States. However, the rules of International Law are not petrified; they are constantly developing and evolving. And because the activities of states have multiplied, it has been necessary to distinguish them - between sovereign and governmental acts *(jure imperii)* and private, commercial and proprietary acts *(jure gestionis).* The result is that State immunity now extends only to acts *jure imperii.* The restrictive application of State immunity is now the rule in the United States, the United Kingdom and other states in Western Europe.

X x x

The restrictive application of State immunity is proper only when the proceedings arise out of commercial transactions of the foreign sovereign, its commercial activities or economic affairs. Stated differently, a State may be said to have descended to the level of an individual and can thus be deemed to have tacitly given its consent to be sued only when it enters into business contracts. It does not apply where the contracts relate to the exercise of its sovereign functions. In this case the projects are an integral part of the naval base which is devoted to the defense of both the United States and the Philippines, indisputably a function of the government of the highest order; they are not utilized for nor dedicated to commercial or business purposes.”

***(Department of Agriculture v. NLRC, 227 SCRA 693, Nov. 11, 1993 [Vitug])***

*13. When is a suit against a public official deemed to be a suit against the State? Discuss.*

**Held:** 1. The doctrine of state immunity from suit applies to complaints filed against public officials for acts done in the performance of their duties. The rule is that the suit must be regarded as one against the State where the satisfaction of the judgment against the public official concerned will require the State itself to perform a positive act, such as appropriation of the amount necessary to pay the damages awarded to the plaintiff.

The rule does not apply where the public official is charged in his official capacity for acts that are unlawful and injurious to the rights of others. Public officials are not exempt, in their personal capacity, from liability arising from acts committed in bad faith.

Neither does it apply where the public official is clearly being sued not in his official capacity but in his personal capacity, although the acts complained of may have been committed while he occupied a public position. ***(Amado J. Lansang v. CA, G.R. No. 102667, Feb. 23, 2000, 2nd Div. [Quisumbing])***

2. As early as 1954, this Court has pronounced that an officer cannot shelter himself by the plea that he is a public agent acting under the color of his office when his acts are wholly without authority. Until recently in 1991 *(Chavez v. Sandiganbayan, 193 SCRA 282 [1991]),* this doctrine still found application, this Court saying that immunity from suit cannot institutionalize irresponsibility and non-accountability nor grant a privileged status not claimed by any other official of the Republic. ***(Republic v. Sandoval, 220 SCRA 124, March 19, 1993, En Banc [Campos, Jr.])***

*14. State instances when a suit against the State is proper.*

**Held:** Some instances when a suit against the State is proper are:

1. When the Republic is sued by name;
2. When the suit is against an unincorporated government agency;
3. When the suit is on its face against a government officer but the case is such that ultimate liability will belong not to the officer but to the government.

***Republic v. Sandoval, 220 SCRA 124, March 19, 1993, En Banc [Campos, Jr.])***

*15. Has the government waived its immunity from suit in the Mendiola massacre, and, therefore, should indemnify the heirs and victims of the Mendiola incident? Consequently, is the suit filed against the Republic by petitioners in said case really a suit against the State?*

**Held:** Petitioners x x x advance the argument that the State has impliedly waived its sovereign immunity from suit. It is their considered view that by the recommendation made by the Commission for the government to indemnify the heirs and victims of the Mendiola incident and by the public addresses made by then President Aquino in the aftermath of the killings, the State has consented to be sued.

X x x

This is not a suit against the State with its consent.

Firstly, the recommendation made by the Commission regarding indemnification of the heirs of the deceased and the victims of the incident by the government does not in any way mean that liability automatically attaches to the State. It is important to note that A.O. 11 expressly states that the purpose of creating the Commission was to have a body that will conduct an “investigation of the disorder, deaths and casualties that took place.” In the exercise of its functions, A.O. 11 provides guidelines, and what is relevant to Our discussion reads:

“1. Its conclusions regarding the existence of probable cause for the commission of any offense and of the persons probably guilty of the same shall be sufficient compliance with the rules on preliminary investigation and the charges arising therefrom may be filed directly with the proper court.”

In effect, whatever may be the findings of the Commission, the same shall only serve as the cause of action in the event that any party decides to litigate his/her claim. Therefore, the Commission is merely a preliminary venue. The Commission is not the end in itself. Whatever recommendation it makes cannot in any way bind the State immediately, such recommendation not having become final and executory. This is precisely the essence of it being a *fact-finding body.*

Secondly, whatever acts or utterances that then President Aquino may have done or said, the same are not tantamount to the State having waived its immunity from suit. The President’s act of joining the marchers, days after the incident, does not mean that there was an admission by the State of any liability. In fact to borrow the words of petitioner x x x, “it was an act of solidarity by the government with the people.” Moreover, petitioners rely on President Aquino’s speech promising that the government would address the grievances of the rallyists. By this alone, it cannot be inferred that the State has admitted any liability, much less can it be inferred that it has consented to the suit.

Although consent to be sued may be given impliedly, still it cannot be maintained that such consent was given considering the circumstances obtaining in the instant case.

Thirdly, the case does not qualify as a suit against the State.

X x x

While the Republic in this case is sued by name, the ultimate liability does not pertain to the government. Although the military officers and personnel, then party defendants, were discharging their official functions when the incident occurred, their functions ceased to be official the moment they exceeded their authority. Based on the Commission findings, there was lack of justification by the government forces in the use of firearms. Moreover, the members of the police and military crowd dispersal units committed a prohibited act under B.P. Blg. 880 as there was unnecessary firing by them in dispersing the marchers.

As early as 1954, this Court has pronounced that an officer cannot shelter himself by the plea that he is a public agent acting under the color of his office when his acts are wholly without authority. Until recently in 1991 *(Chavez v. Sandiganbayan, 193 SCRA 282 [1991])*, this doctrine still found application, this Court saying that immunity from suit cannot institutionalize irresponsibility and non-accountability nor grant a privileged status not claimed by any other official of the Republic. The military and police forces were deployed to ensure that the rally would be peaceful and orderly as well as to guarantee the safety of the very people that they are duty-bound to protect. However, the facts as found by the trial court showed that they fired at the unruly crowd to disperse the latter.

While it is true that nothing is better settled than the general rule that a sovereign state and its political subdivisions cannot be sued in the courts except when it has given its consent, it cannot be invoked by both the military officers to release them from any liability, and by the heirs and victims to demand indemnification from the government. The principle of state immunity from suit does not apply, as in this case, when the relief demanded by the suit requires no affirmative official action on the part of the State nor the affirmative discharge of any obligation which belongs to the State in its political capacity, *even though the officers or agents who are made defendants claim to hold or act only by virtue of a title of the state and as its agents and servants.* This Court has made it quite clear that even a “high position in the government does not confer a license to persecute or recklessly injure another.”

The inescapable conclusion is that the State cannot be held civilly liable for the deaths that followed the incident. Instead, the liability should fall on the named defendants in the lower court. In line with the ruling of this Court in *Shauf v. Court of Appeals (191 SCRA 713 [1990]),* herein public officials, having been found to have acted beyond the scope of their authority, may be held liable for damages. ***(Republic v. Sandoval, 220 SCRA 124, March 19, 1993, En Banc [Campos, Jr.])***

*16. May the Government validly invoke the doctrine of State immunity from suit if its invocation will serve as an instrument for perpetrating an injustice on a citizen?*

**Held:** To our mind, it would be the apex of injustice and highly inequitable for us to defeat petitioners-contractors’ right to be duly compensated for actual work performed and services rendered, where both the government and the public have, for years, received and accepted benefits from said housing project and reaped the fruits of petitioners-contractors’ honest toil and labor.

Incidentally, respondent likewise argues that the State may not be sued in the instant case, invoking the constitutional doctrine *of Non-suability of the State,* otherwise known as the *Royal Prerogative of Dishonesty.*

Respondent’s argument is misplaced inasmuch as the principle of State immunity finds no application in the case before us.

Under these circumstances, respondent may not validly invoke the *Royal Prerogative of Dishonesty* and conveniently hide under the *State’s cloak of invincibility against suit,* considering that this principle yields to certain settled exceptions. True enough, the rule, in any case, is not absolute for it does not say that the state may not be sued under any circumstances. *(Citations omitted)*

Thus, in *Amigable v. Cuenca*, this Court, in effect, shred the protective shroud which shields the state from suit, reiterating our decree in the landmark case of *Ministerio v. CFI of Cebu* that *“the doctrine of governmental immunity from suit cannot serve as an instrument for perpetrating an injustice on a citizen.”* It is just as important, if not more so, that there be fidelity to legal norms on the part of officialdom if the rule of law were to be maintained. *(Citations omitted)*

Although the *Amigable* and *Ministerio* cases generously tackled the issue of the State’s immunity from suit *vis a vis* the payment of just compensation for expropriated property, this Court nonetheless finds the doctrine enunciated in the aforementioned cases applicable to the instant controversy, considering that the ends of justice would be subverted if we were to uphold, in this particular instance, the State’s immunity from suit.

To be sure, this Court – as the staunch guardian of the citizens’ rights and welfare – cannot sanction an injustice so patent on its face, and allow itself to be an instrument in the perpetration thereof. Justice and equity sternly demand that the State’s cloak of invincibility against suit be shred in this particular instance, and that petitioners-contractors be duly compensated – on the basis of *quantum meruit* – for construction done on the public works housing project. ***(EPG Construction Co. v. Vigilar, 354 SCRA 566, Mar.16, 2001, 2nd Div. [Buena])***

**Citizenship**

*17. To what citizenship principle does the Philippines adhere to? Explain, and give illustrative case.*

**Held:** The Philippine law on citizenship adheres to the principle of *jus sanguinis.* Thereunder, a child follows the nationality or citizenship of the parents regardless of the place of his/her birth, as opposed to the doctrine of *jus soli* which determines nationality or citizenship on the basis of place of birth.

Private respondent Rosalind Ybasco Lopez was born on May 16, 1934 in Napier Terrace, Broome, Western Australia, to the spouses, Telesforo Ybasco, a Filipino citizen and native of Daet, Camarines Norte, and Theresa Marquez, an Australian. Historically, this was a year before the 1935 Constitution took into effect and at that time, what served as the Constitution of the Philippines were the principal organic acts by which the United States governed the country. These were the Philippine Bill of July 1, 1902 and the Philippine Autonomy Act of August 29, 1916, also known as the Jones Law.

Among others, these laws defined who were deemed to be citizens of the Philippine Islands. x x x

Under both organic acts, all inhabitants of the Philippines who were Spanish subjects on April 11, 1899 and resided therein including their children are deemed to be Philippine citizens. Private respondent’s father, Telesforo Ybasco, was born on January 5, 1879 in Daet, Camarines Norte, a fact duly evidenced by a certified true copy of an entry in the Registry of Births. Thus, under the Philippine Bill of 1902 and the Jones Law, Telesforo Ybasco was deemed to be a Philippine citizen. By virtue of the same laws, which were the laws in force at the time of her birth, Telesforo’s daughter, herein private respondent Rosalind Ybasco Lopez, is likewise a citizen of the Philippines.

The signing into law of the 1935 Philippine Constitution has established the principle of *jus sanguinis* as basis for the acquisition of Philippine citizenship x x x. So also, the principle of *jus sanguinis,* which confers citizenship by virtue of blood relationship, was subsequently retained under the 1973 and 1987 Constitutions. Thus, the herein private respondent, Rosalind Ybasco Lopez, is a Filipino citizen, having been born to a Filipino father. The fact of her being born in Australia is not tantamount to her losing her Philippine citizenship. If Australia follows the principle of *jus soli,* then at most, private respondent can also claim Australian citizenship resulting to her possession of dual citizenship. ***(Valles v. COMELEC, 337 SCRA 543, Aug. 9, 2000, En Banc [Purisima])***

*18. What are the ways of acquiring citizenship? Discuss.*

**Held:** There are two ways of acquiring citizenship: (1) by birth, and (2) by naturalization. These ways of acquiring citizenship correspond to the two kinds of citizens: the natural-born citizen, and the naturalized citizen. A person who at the time of his birth is a citizen of a particular country, is a natural-born citizen thereof.

As defined in the x x x Constitution, natural-born citizens “are those citizens of the Philippines from birth without having to perform any act to acquire or perfect his Philippine citizenship.”

On the other hand, naturalized citizens are those who have become Filipino citizens through naturalization, generally under Commonwealth Act No. 473, otherwise known as the Revised Naturalization Law, which repealed the former Naturalization Law (Act No. 2927), and by Republic Act No. 530. ***(Antonio Bengson III v. HRET, G.R. No. 142840, May 7, 2001, En Banc [Kapunan])***

*19. To be naturalized, what must an applicant prove? When and what are the conditions before the decision granting Philippine citizenship becomes executory?*

**Held:** To be naturalized, an applicant has to prove that he possesses all the qualifications and none of the disqualifications provided by law to become a Filipino citizen. The decision granting Philippine citizenship becomes executory only after two (2) years from its promulgation when the court is satisfied that during the intervening period, the applicant has (1) not left the Philippines; (2) has dedicated himself to a lawful calling or profession; (3) has not been convicted of any offense or violation of government promulgated rules; or (4) committed any act prejudicial to the interest of the nation or contrary to any government announced policies *(Section 1, R.A. 530).* ***(Antonio Bengson III v. HRET, G.R. No. 142840, May 7, 2001, En Banc [Kapunan])***

*20. What qualifications must be possessed by an applicant for naturalization?*

**Held:** Section 2, Act 473 provides the following qualifications:

1. He must be not less than 21 years of age on the day of the hearing of the petition;
2. He must have resided in the Philippines for a continuous period of not less than ten years;
3. He must be of good moral character and believes in the principles underlying the Philippine Constitution, and must have conducted himself in a proper and irreproachable manner during the entire period of his residence in the Philippines in his relation with the constituted government as well as with the community in which he is living;
4. He must own real estate in the Philippines worth not less than five thousand pesos, Philippine currency, or must have some known lucrative trade, profession, or lawful occupation;
5. He must be able to speak and write English or Spanish and any of the principal languages; and
6. He must have enrolled his minor children of school age, in any of the public schools or private schools recognized by the Bureau of Private Schools of the Philippines where Philippine history, government and civic are taught or prescribed as part of the school curriculum, during the entire period of the residence in the Philippines required of him prior to the hearing of his petition for naturalization as Philippine citizen.

***(Antonio Bengson III v. HRET, G.R. No. 142840, May 7, 2001, En Banc [Kapunan])***

*21. What are the disqualifications under Section 4, Act 473, in an application for naturalization?*

**Held:** Section 4, Act 473, provides the following disqualifications:

1. He must not be opposed to organized government or affiliated with any association or group of persons who uphold and teach doctrines opposing all organized governments;
2. He must not be defending or teaching the necessity or propriety of violence, personal assault, or assassination for the success and predominance of their ideas;
3. He must not be a polygamist or believer in the practice of polygamy;
4. He must not have been convicted of any crime involving moral turpitude;
5. He must not be suffering from mental alienation or incurable contagious diseases;
6. He must have, during the period of his residence in the Philippines (or not less than six months before filing his application), mingled socially with the Filipinos, or who have not evinced a sincere desire to learn and embrace the customs, traditions and ideals of the Filipinos;
7. He must not be a citizen or subject of a nation with whom the Philippines is at war, during the period of such war;
8. He must not be a citizen or subject of a foreign country whose laws do not grant Filipinos the right to become naturalized citizens or subjects thereof.

***(Antonio Bengson III v. HRET, G.R. No. 142840, May 7, 2001, En Banc [Kapunan])***

*22. Can a legitimate child born under the 1935 Constitution of a Filipino mother and an alien father validly elect Philippine citizenship fourteen (14) years after he has reached the age of majority?*

**Held:** Under Article IV, Section 1(3) of the 1935 Constitution, the citizenship of a legitimate child born of a Filipino mother and an alien father followed the citizenship of the father, unless, upon reaching the age of majority, the child elected Philippine citizenship. C.A. No. 625 which was enacted pursuant to Section 1(3), Article IV of the 1935 Constitution, prescribes the procedure that should be followed in order to make a valid election of Philippine citizenship. However, the 1935 Constitution and C.A. No. 625 did not prescribe a time period within which the election of Philippine citizenship should be made. The 1935 Charter only provides that the election should be made “upon reaching the age of majority.” The age of majority then commenced upon reaching twenty-one (21) years. In the opinions of the Secretary of Justice on cases involving the validity of election of Philippine citizenship, this dilemma was resolved by basing the time period on the decisions of this Court prior to the effectivity of the 1935 Constitution. In these decisions, the proper period for electing Philippine citizenship was, in turn, based on the pronouncements of the Department of State of the United States Government to the effect that the election should be made within a “reasonable time” after attaining the age of majority. The phrase “reasonable time” has been interpreted to mean that the election should be made within three (3) years from reaching the age of majority.

The span of fourteen (14) years that lapsed from the time that person reached the age of majority until he finally expressed his intention to elect Philippine citizenship is clearly way beyond the contemplation of the requirement of electing “upon reaching the age of majority.”

Philippine citizenship can never be treated like a commodity that can be claimed when needed and suppressed when convenient*.*  One who is privileged to elect Philippine citizenship has only an inchoate right to such citizenship. As such, he should avail of the right with fervor, enthusiasm and promptitude. ***(Re: Application for Admission to the Philippine Bar, Vicente D. Ching, Bar Matter No. 914, Oct. 1, 1999, En Banc [Kapunan])***

*23. How may Philippine citizenship be renounced? Is the application for an alien certificate of registration, and the possession of foreign passport, tantamount to acts of renunciation of Philippine citizenship?*

**Held:** Petitioner also contends that even on the assumption that the private respondent is a Filipino citizen, she has nonetheless renounced her Philippine citizenship. To buttress this contention, petitioner cited private respondent’s application for an alien Certificate of Registration (ACR) and Immigrant Certificate of Residence (ICR), on September 19, 1988, and the issuance to her of an Australian passport on March 3, 1988.

X x x

In order that citizenship may be lost by renunciation, such renunciation must be express. Petitioner’s contention that the application of private respondent for an alien certificate of registration, and her Australian passport, is bereft of merit. This issue was put to rest in the case of *Aznar v. COMELEC (185 SCRA 703 [1990])* and in the more recent case of *Mercado v. Manzano and COMELEC (G.R. No. 135083, 307 SCRA 630, May 26, 1999).*

In the case of Aznar, the Court ruled that the mere fact that he is an American did not mean that he is no longer a Filipino, and that an application for an alien certificate of registration was not tantamount to renunciation of his Philippine citizenship.

And, in *Mercado v. Manzano and COMELEC,* it was held that the fact that respondent Manzano was registered as an American citizen in the Bureau of Immigration and Deportation and was holding an American passport on April 22, 1997, only a year before he filed a certificate of candidacy for vice-mayor of Makati, were just assertions of his American nationality before the termination of his American citizenship.

Thus, the mere fact that private respondent Rosalind Ybasco Lopez was a holder of an Australian passport and had an alien certificate of registration are not acts constituting an effective renunciation of citizenship and do not militate against her claim of Filipino citizenship. For renunciation to effectively result in the loss of citizenship, the same must be express. As held by this Court in the aforecited case of *Aznar*, an application for an alien certificate of registration does not amount to an express renunciation or repudiation of one’s citizenship. The application of the herein private respondent for an alien certificate of registration, and her holding of an Australian passport, as in the case of *Mercado v. Manzano,* were mere acts of assertion of her Australian citizenship before she effectively renounced the same. Thus, at the most, private respondent had dual citizenship – she was an Australian and a Filipino, as well.

Moreover, under Commonwealth Act 63, the fact that a child of Filipino parent/s was born in another country has not been included as a ground for losing one’s Philippine citizenship. Since private respondent did not lose or renounce her Philippine citizenship, petitioner’s claim that respondent must go through the process of repatriation does not hold water. ***(Valles v. COMELEC, 337 SCRA 543, Aug. 9, 2000, En Banc [Purisima])***

*24. How may Filipino citizens who lost their citizenship reacquire the same?*

**Answer:** Filipino citizens who have lost their citizenship may x x x reacquire the same in the manner provided by law. Commonwealth Act No. 63 enumerates the three modes by which Philippine citizenship may be reacquired by a former citizen: (1) by naturalization, (2) by repatriation, and (3) by direct act of Congress*.* ***(Frivaldo v. COMELEC, 257 SCRA 727, June 28, 1996, En Banc [Panganiban]; Antonio Bengson III v. HRET, G.R. No. 142840, May 7, 2001, En Banc [Kapunan])***

*25. Distinguish naturalization from repatriation.*

**Held:** Naturalization is a mode for both acquisition and reacquisition of Philippine citizenship. As a mode of initially acquiring Philippine citizenship, naturalization is governed by Commonwealth Act No. 473, as amended. On the other hand, naturalization as a mode for reacquiring Philippine citizenship is governed by Commonwealth Act No. 63 *(An Act Providing for the Ways in Which Philippine Citizenship May Be Lost or Reacquired [1936]).* Under this law, a former Filipino citizen who wishes to reacquire Philippine citizenship must possess certain qualifications and none of the disqualifications mentioned in Section 4 of C.A. 473.

Repatriation, on the other hand, may be had under various statutes by those who lost their citizenship due to: (1) desertion of the armed forces *(Section 4, C.A. No. 63);* (2) service in the armed forces of the allied forces in World War II *(Section 1, Republic Act No. 965 [1953]);* (3) service in the Armed Forces of the United States at any other time *(Sec. 1, Republic Act No. 2630 [1960]);* (4) marriage of a Filipino woman to an alien *(Sec. 1, Republic Act No. 8171 [1995]);* and (5) political and economic necessity *(Ibid).*

As distinguished from the lengthy process of naturalization, repatriation simply consists of the taking of an oath of allegiance to the Republic of the Philippines and registering said oath in the Local Civil Registry of the place where the person concerned resides or last resided.

In *Angat v. Republic (314 SCRA 438 [1999]),* we held:

[P]arenthetically, under these statutes (referring to RA Nos. 965 and 2630), the person desiring to reacquire Philippine citizenship would *not* even be required to file a petition in court, and all that he had to do was to take an oath of allegiance to the Republic of the Philippines and to register that fact with the civil registry in the place of his residence or where he had last resided in the Philippines.

Moreover, repatriation results in the *recovery of the original nationality.* This means that a naturalized Filipino who lost his citizenship will be restored to his prior status as a naturalized Filipino citizen. On the other hand, if he was originally a natural-born citizen before he lost his Philippine citizenship, he will be restored to his former status as a natural-born Filipino. ***(Antonio Bengson III v. HRET, G.R. No. 142840, May 7, 2001, En Banc [Kapunan])***

*26. Who may validly avail of repatriation under R.A. No. 8171?*

**Held:** R.A. No. 8171, which has lapsed into law on October 23, 1995, is an act providing for the repatriation (a) of Filipino women who have lost their Philippine citizenship by marriage to aliens and (b) of natural-born Filipinos who have lost their Philippine citizenship on account of political or economic necessity. ***(Gerardo Angat v. Republic, G.R. No. 132244, Sept. 14, 1999 [Vitug])***

*27. Before what agency should application for repatriation under R.A 8171 be filed?*

**Held:** Under Section 1 of P.D. No. 725, dated June 5, 1975, amending C.A. No. 63, an application for repatriation could be filed with the *Special Committee on Naturalization* chaired by the Solicitor General with the Undersecretary of Foreign Affairs and the Director of the National Intelligence Coordinating Agency as the other members. Although the agency was deactivated by virtue of President Corazon C. Aquino’s Memorandum of March 27, 1987, it was not, however, abrogated. The Committee was reactivated on June 8, 1995*.* Hence, the application should be filed with said Agency, not with the Regional Trial Court. ***(Gerardo Angat v. Republic, G.R. No. 132244, Sept. 14, 1999 [Vitug])***

*28. May a natural-born Filipino who became an American citizen still be considered a natural-born Filipino upon his reacquisition of Philippine citizenship and, therefore, qualified to run for Congressman?*

**Held:** Repatriation results in the *recovery of the original nationality.* This means that a naturalized Filipino who lost his citizenship will be restored to his prior status as a naturalized Filipino citizen. On the other hand, if he was originally a natural-born citizen before he lost his Philippine citizenship, he will be restored to his former status as a natural-born Filipino.

In respondent Cruz’s case, he lost his Filipino citizenship when he rendered service in the Armed Forces of the United States. However, he subsequently reacquired Philippine citizenship under R.A. No. 2630, which provides:

Section 1. Any person who had lost his Philippine citizenship by rendering service to, or accepting commission in, the Armed Forces of the United States, or after separation from the Armed Forces of the United States, acquired United States citizenship, may reacquire Philippine citizenship by taking an oath of allegiance to the Republic of the Philippines and registering the same with Local Civil Registry in the place where he resides or last resided in the Philippines. The said oath of allegiance shall contain a renunciation of any other citizenship.

Having thus taken the required oath of allegiance to the Republic and having registered the same in the Civil Registry of Mangatarem, Pangasinan in accordance with the aforecited provision, respondent Cruz is deemed to have recovered his original status as a natural-born citizen, a status which he acquired at birth as the son of a Filipino father*.* It bears stressing that the act of repatriation allows him to *recover, or return to, his original status before he lost his Philippine citizenship.*

Petitioner’s contention that respondent Cruz is no longer a natural-born citizen since he had to perform an act to regain his citizenship is untenable. [T]he term “natural-born citizen” was first defined in Article III, Section 4 of the 1973 Constitution as follows:

Section 4. A natural-born citizen is one who is a citizen of the Philippines from birth without having to perform any act to acquire or perfect his Philippine citizenship.

Two requisites must concur for a person to be considered as such: (1) a person must be a Filipino citizen from birth and (2) he does not have to perform any act to obtain or perfect his Philippine citizenship.

Under the 1973 Constitution definition, there were two categories of Filipino citizens which were not considered natural-born: (1) those who were naturalized and (2) those born before January 17, 1973 *(the date of effectivity of the 1973 Constitution)*, of Filipino mothers who, upon reaching the age of majority, elected Philippine citizenship. Those “naturalized citizens” were not considered natural-born obviously because they were not Filipinos at birth and had to perform an act to acquire Philippine citizenship. Those born of Filipino mothers before the effectivity of the 1973 Constitution were likewise not considered natural-born because they also had to perform an act to perfect their Philippine citizenship.

The present Constitution, however, now considers those born of Filipino mothers before the effectivity of the 1973 Constitution and who elected Philippine citizenship upon reaching the majority age as natural-born. After defining who are natural-born citizens, Section 2 of Article IV adds a sentence: “Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizens.” Consequently, only naturalized Filipinos are considered not natural-born citizens. It is apparent from the enumeration of who are citizens under the present Constitution that there are only two classes of citizens: (1) those who are natural-born and (2) those who are naturalized in accordance with law. A citizen who is not a naturalized Filipino, *i.e.,* did not have to undergo the process of naturalization to obtain Philippine citizenship, necessarily is a natural-born Filipino. Noteworthy is the absence in the said enumeration of a separate category for persons who, after losing Philippine citizenship, subsequently reacquire it. The reason therefore is clear: as to such persons, they would either be natural-born or naturalized depending on the reasons for the loss of their citizenship and the mode prescribed by the applicable law for the reacquisition thereof. As respondent Cruz was not required by law to go through naturalization proceedings in order to reacquire his citizenship, he is perforce a natural-born Filipino. As such, he possessed all the necessary qualifications to be elected as member of the House of Representatives. ***(Antonio Bengson III v. HRET, G.R. No. 142840, May 7, 2001, En Banc [Kapunan])***

*29. Distinguish dual citizenship from dual allegiance.*

**Held:** Dual citizenship arises when, as a result of the concurrent application of the different laws of two or more states, a person is simultaneously considered a national by the said states. For instance, such a situation may arise when a person whose parents are citizens of a state which adheres to the principle of *jus sanguinis* is born in a state which follows the doctrine of *jus soli.* Such a person, *ipso facto* and without any voluntary act on his part, is concurrently considered a citizen of both states.

Dual allegiance, on the other hand, refers to a situation in which a person simultaneously owes, by some positive act, loyalty to two or more states. While dual citizenship is involuntary, dual allegiance is the result of an individual’s volition. ***(Mercado v. Manzano, 307 SCRA 630, May 26, 1999, En Banc [Mendoza])***

*30. What is the main concern of Section 5, Article IV, 1987 Constitution, on citizenship? Consequently, are persons with mere dual citizenship disqualified to run for elective local positions under Section 40(d) of the Local Government Code?*

**Held:** In including Section 5 in Article IV on citizenship, the concern of the Constitutional Commission was not with dual citizens *per se* but with naturalized citizens who maintain their allegiance to their countries of origin even after their naturalization. Hence, the phrase “dual citizenship” in R.A. No. 7160, Section 40(d) (Local Government Code) must be understood as referring to “dual allegiance.” Consequently, persons with mere dual citizenship do not fall under this disqualification. Unlike those with dual allegiance, who must, x x x, be subject to strict process with respect to the termination of their status, for candidates with dual citizenship, it should suffice if, upon the filing of their certificate of candidacy, they elect Philippine citizenship to terminate their status as persons with dual citizenship considering that their condition is the unavoidable consequence of conflicting laws of different states.

By electing Philippine citizenship, such candidates at the same time forswear allegiance to the other country of which they are also citizens and thereby terminate their status as dual citizens. It may be that, from the point of view of the foreign state and of its laws, such an individual has not effectively renounced his foreign citizenship. That is of no moment. ***(Mercado v. Manzano, G.R. No. 135083, 307 SCRA 630, May 26, 1999 [Mendoza])***

*31. Cite instances when a citizen of the Philippines may possess dual citizenship considering the citizenship clause (Article IV) of the Constitution.*

**Held:**

1. Those born of Filipino fathers and/or mothers in foreign countries which follow the principle of *jus soli*;
2. Those born in the Philippines of Filipino mothers and alien fathers if by the laws of their father’s country such children are citizens of that country;
3. Those who marry aliens if by the laws of the latter’s country the former are considered citizens, unless by their act or omission they are deemed to have renounced Philippine citizenship.

***(Mercado v. Manzano, G.R. No. 135083, 307 SCRA 630, May 26, 1999 [Mendoza])***

1. *Does res judicata apply in cases hinging on the issue of citizenship?*

**Held:** Petitioner maintains further that when citizenship is raised as an issue in judicial or administrative proceedings, the resolution or decision thereon is generally not considered res judicata in any subsequent proceeding challenging the same; citing the case of *Moy Ya Lim Yao v. Commissioner of Immigration (41 SCRA 292 [1971]).* He insists that the same issue of citizenship may be threshed out anew.

Petitioner is correct insofar as the general rule is concerned, *i.e.,* the principle of *res judicata* generally does not apply in cases hinging on the issue of citizenship. However, in the case of *Burca v. Republic (51 SCRA 248 [1973]),* an exception to this general rule was recognized. The Court ruled in that case that in order that the doctrine of *res judicata* may be applied in cases of citizenship, the following must be present:

1. a person’s citizenship be raised as a material issue in a controversy where said person is a party;
2. the Solicitor General or his authorized representative took active part in the resolution thereof, and
3. the finding on citizenship is affirmed by this Court.

Although the general rule was set forth in the case of *Moy Ya Lim Yao,* the case did not foreclose the weight of prior rulings on citizenship. It elucidated that reliance may somehow be placed on these antecedent official findings, though not really binding, to make the effort easier or simpler.  ***(Valles v. COMELEC, 337 SCRA 543, Aug. 9, 2000, En Banc [Purisima])***

**Civilian Supremacy Clause**

1. *The President issued Letter of Instruction (LOI) ordering the deployment of members of the Philippine Marines in the metropolis to conduct joint visibility patrols with members of the Philippine National Police in various shopping malls. Will this not violate the civilian supremacy clause under Section 3, Article II of the Constitution? Does this not amount to an "insidious incursion" of the military in the task of law enforcement in violation of Section 5(4), Article XVI of the Constitution?*

**Held:** The deployment of the Marines does not constitute a breach of the civilian supremacy clause. The calling of the marines in this case constitutes permissible use of military assets for civilian law enforcement. x x x The limited participation of the Marines is evident in the provisions of the LOI itself, which sufficiently provides the metes and bounds of the Marines' authority. It is noteworthy that the local police forces are the ones in charge of the visibility patrols at all times, the real authority belonging to the PNP. In fact, the Metro Manila Police Chief is the overall leader of the PNP-Philippine Marines joint visibility patrols. Under the LOI, the police forces are tasked to brief or orient the soldiers on police patrol procedures. It is their responsibility to direct and manage the deployment of the Marines. It is, likewise, their duty to provide the necessary equipment to the Marines and render logistical support to these soldiers. In view of the foregoing, it cannot be properly argued that military authority is supreme over civilian authority.

Moreover, the deployment of the Marines to assist the PNP does not unmake the civilian character of the police force. Neither does it amount to an “insidious incursion” of the military in the task of law enforcement in violation of Section 5[4], Article XVI of the Constitution.

In this regard, it is not correct to say that General Angelo Reyes, Chief of Staff of the AFP, by his alleged involvement in civilian law enforcement, has been virtually appointed to a civilian post in derogation of the aforecited provision. The real authority in these operations, as stated in the LOI, is lodged with the head of a civilian institution, the PNP, and not with the military. Such being the case, it does not matter whether the AFP Chief actually participates in the Task Force *Tulungan* since he does not exercise any authority or control over the same. Since none of the Marines was incorporated or enlisted as members of the PNP, there can be no appointment to a civilian position to speak of. Hence, the deployment of the Marines in the joint visibility patrols does not destroy the civilian character of the PNP.

Considering the above circumstances, the Marines render nothing more than assistance required in conducting the patrols. As such, there can be no “insidious incursion” of the military in civilian affairs nor can there be a violation of the civilian supremacy clause in the Constitution.

It is worth mentioning that military assistance to civilian authorities in various forms persists in Philippine jurisdiction. The Philippine experience reveals that it is not averse to requesting the assistance of the military in the implementation and execution of certain traditionally “civil” functions. x x x [S]ome of the multifarious activities wherein military aid has been rendered, exemplifying the activities that bring both the civilian and the military together in a relationship of cooperation, are:

1. Elections;
2. Administration of the Philippine National Red Cross;
3. Relief and rescue operations during calamities and disasters;
4. Amateur sports promotion and development;
5. Development of the culture and the arts;
6. Conservation of natural resources;
7. Implementation of the agrarian reform program;
8. Enforcement of customs laws;
9. Composite civilian-military law enforcement activities;
10. Conduct of licensure examinations;
11. Conduct of nationwide tests for elementary and high school students;
12. Anti-drug enforcement activities;
13. Sanitary inspections;
14. Conduct of census work;
15. Administration of the Civil Aeronautics Board;
16. Assistance in installation of weather forecasting devices;
17. Peace and order policy formulation in local government units.

This unquestionably constitutes a gloss on executive power resulting from a systematic, unbroken, executive practice, long pursued to the knowledge of Congress and, yet, never before questioned. What we have here is mutual support and cooperation between the military and civilian authorities, not derogation of civilian supremacy.

In the United States, where a long tradition of suspicion and hostility towards the use of military force for domestic purposes has persisted and whose Constitution, unlike ours, does not expressly provide for the power to call, the use of military personnel by civilian law enforcement officers is allowed under circumstances similar to those surrounding the present deployment of the Philippine Marines. ***(IBP v. Hon. Ronaldo B. Zamora, G.R. No. 141284, Aug. 15, 2000, En Banc [Kapunan])***

**The Right to a Balanced and Healthful Ecology**

1. *Is the right to a balanced and healthful ecology any less important than any of the civil and political rights enumerated in the Bill of Rights? Explain.*

**Held:** While the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated in the latter. Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation, the advancement of which may even be said to predate all governments and constitutions. As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind. If they are now explicitly mentioned in the fundamental charter, it is because of the well-founded fear of its framers that unless the rights to a balanced and healthful ecology and to health are mandated as state policies by the Constitution itself, thereby highlighting their continuing importance and imposing upon the state a solemn obligation to preserve the first and protect and advance the second, the day would not be too far when all else would be lost not only for the present generation, but also for those to come – generations which stand to inherit nothing but parched earth incapable of sustaining life. ***(Oposa v. Factoran, Jr., 224 SCRA 792 [1993][Davide])***

1. *The Province of Palawan and the City of Puerto Princesa enacted ordinances prohibiting the catching and/or exportation of live tropical fishes, and imposing penalties for violations thereof, in order to stop the illegal practice of cyanide fishing which destroys the corals and other marine resources. Several fishermen apprehended for violating the ordinances in question challenged their constitutionality contending that the ordinances violated their preferential right as subsistence and marginal fishermen to the use of our communal marine resources guaranteed by the Constitution, under Section 7, Article XIII. Will you sustain the challenge?*

**Held:** The “preferential right” of subsistence or marginal fishermen to the use of marine resources is not absolute. In accordance with the *Regalian Doctrine*, marine resources belong to the State, and, pursuant to the first paragraph of Section 2, Article XII of the Constitution, their “exploration, development and utilization x x x shall be under the full control and supervision of the State.” Moreover, their mandated protection, development and conservation x x x imply certain restrictions on whatever right of enjoyment there may be in favor of anyone. What must be borne in mind is the State policy enshrined in the Constitution regarding the duty of the State to protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature *(Section 16, Article II)*. The ordinances in question are meant precisely to protect and conserve our marine resources to the end that their enjoyment may be guaranteed not only for the present generation, but also for the generations to come. The right to a balanced and healthful ecology carries with it a correlative duty to refrain from impairing the environment. ***(Tano v. Gov. Salvador P. Socrates, G.R. No. 110249, Aug. 21, 1997)***

**Academic Freedom**

36. How should the State’s power to regulate educational institutions be exercised?

**Held:** Section 4[1], Article XIV of the Constitution recognizes the State’s power to regulate educational institutions:

The State recognizes the complementary roles of public and private institutions in the educational system and shall exercise reasonable supervision and regulation of all educational institutions.

As may be gleaned from the above provision, such power to regulate is subject to the requirement of *reasonableness.* Moreover, the Constitution allows merely the *regulation* and *supervision* of educational institutions, not the *deprivation* of their rights. ***(Miriam College Foundation, Inc. v. Court of Appeals, 348 SCRA 265, 288, Dec. 15, 2000, 1st Div. [Kapunan])***

*37. Discuss the academic freedom of institutions of higher learning.*

**Held:** 1. Equally mandated by Article XIV, Section 5[2] of the 1987 Constitution is that academic freedom shall be enjoyed in all institutions of higher learning. Academic freedom of educational institutions has been defined as the right of the school or college to decide for itself, its aims and objectives, and how best to attain them - free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint. It has a wide sphere of autonomy certainly extending to the choice of students. Said constitutional provision is not to be construed in a niggardly manner or in a grudging fashion. That would be to frustrate its purpose and nullify its intent *(Garcia v. The Faculty Admission Committee, et al., supra; Tangonan v. Pano, et al., supra.)*

While it is true that an institution of learning has a contractual obligation to afford its students a fair opportunity to complete the course they seek to pursue *(Licup, et al. v. University of San Carlos [USC], et al., supra.),* since a contract creates reciprocal rights and obligations, the obligation of the school to educate a student would imply a corresponding obligation on the part of the student to study and obey the rules and regulations of the school *(Capitol Medical Center, Inc., et al. v. Court of Appeals, et al., supra.).* When a student commits a serious breach of discipline or failed to maintain the required academic standard, he forfeits his contractual right. In this connection, this Court recognizes the expertise of educational institutions in the various fields of learning. Thus, they are afforded ample discretion to formulate reasonable rules and regulations in the admission of students *(Yap Chin Fah, et al. v. Court of Appeals, et al., G.R. No. 90063, December 12, 1989),* including setting of academic standards. Within the parameters thereof, they are competent to determine who are entitled to admission and re-admission. ***(University of San Agustin, Inc. v. Court of Appeals, 230 SCRA 761, 774-775, March 7, 1994 [Nocon])***

2. Section 5[2], Article XIV of the Constitution guarantees all institutions of higher learning academic freedom. This institutional academic freedom includes the right of the school or college to decide for itself, its aims and objectives, and how best to attain them free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint *(Tangonan v. Pano, 137 SCRA 245, 256-257 [1985]).* The essential freedoms subsumed in the term “academic freedom” encompasses the freedom to determine for itself on academic grounds:

1. Who may teach,
2. What may be taught,
3. How it shall be taught, and
4. Who may be admitted to study. *(Isabelo, Jr. v. Perpetual Help College of Rizal, Inc., 227 SCRA 591, 595 [1993]; Ateneo de Manila University v. Capulong, 222 SCRA 643, 660 [1993]; Garcia v. The Faculty Admission Committee, Loyola School of Theology, 68 SCRA 277, 285 [1975]. The above formulation was made by Justice Felix Frankfurter in his concurring opinion in Sweezy v. New Hampshire, 354 U.S. 234, 263)*

The right of the school to discipline its students is at once apparent in the third freedom, *i.e.,* “how it shall be taught.” A school certainly cannot function in an atmosphere of anarchy.

Thus, there can be no doubt that the establishment of an educational institution requires rules and regulations necessary for the maintenance of an orderly educational program and the creation of an educational environment conducive to learning. Such rules and regulations are equally necessary for the protection of the students, faculty, and property *(Angeles v. Sison, 112 SCRA 26, 37 [1982]).*

Moreover, the school has an interest in teaching the student discipline, a necessary, if not indispensable, value in any field of learning. By instilling discipline, the school teaches discipline. Accordingly, the right to discipline the student likewise finds basis in the freedom “what to teach.”

Incidentally, the school not only has the right but the *duty* to develop discipline in its students. The Constitution no less imposes such duty.

[All educational institutions] shall inculcate patriotism and nationalism, foster love of humanity, respect for human rights, appreciation of the role of national heroes in the historical development of the country, teach the rights and duties of citizenship, strengthen ethical and spiritual values, *develop moral character and personal discipline,* encourage critical and creative thinking, broaden scientific and technological knowledge, and promote vocational efficiency *(Section 3[2], Article XIV, Constitution).*

In *Angeles v. Sison,* we also said that discipline was a means for the school to carry out its responsibility to help its students “grow and develop into mature, responsible, effective and worthy citizens of the community.” *(Supra, at 37)*

Finally, nowhere in the above formulation is the right to discipline more evident than in “who may be admitted to study.” If a school has the freedom to determine whom to admit, logic dictates that it also has the right to determine whom to exclude or expel, as well as upon whom to impose lesser sanctions such as suspension and the withholding of graduation privileges.

Thus, in *Ateneo de Manila v. Capulong (222 SCRA 643 [1993]),* the Court upheld the expulsion of students found guilty of hazing by petitioner therein, holding that:

No one can be so myopic as to doubt that the immediate reinstatement of respondent students who have been investigated and found guilty by the Disciplinary Board to have violated petitioner university’s disciplinary rules and standards will certainly undermine the authority of the administration of the school. This we would be most loathe to do.

More importantly, it will seriously impair petitioner university’s academic freedom which has been enshrined in the 1935, 1973 and the present 1987 Constitution *(Id., at 659-660).*

***(Miriam College Foundation, Inc. v. Court of Appeals, 348 SCRA 265, Dec. 15, 2000, 1st Div. [Kapunan])***

*38.* *May a university validly revoke a degree or honor it has conferred to a student after the graduation of the latter after finding that such degree or honor was obtained through fraud?*

**Held:** In *Garcia v. Faculty Admission Committee, Loyola School of Theology (68 SCRA 277 [1975]),* the SC pointed out that academic freedom of institutions of higher learning is a freedom granted to “institutions of higher learning” which is thus given a “wide sphere of authority certainly extending to the choice of students.” If such institution of higher learning can decide who can and who cannot study in it, it certainly can also determine on whom it can confer the honor and distinction of being its graduates.

Where it is shown that the conferment of an honor or distinction was obtained through fraud, a university has the right to revoke or withdraw the honor or distinction it has thus conferred. This freedom of a university does not terminate upon the “graduation” of a student, for it is precisely the “graduation” of such a student that is in question. ***(UP Board of Regents v. Hon. Court of Appeals and Arokiaswamy William Margaret Celine, G.R. No. 134625, Aug. 31, 1999, 2nd Div. [Mendoza])***

*39. What are the essential freedoms subsumed in the term “academic freedom”?*

**Held:** In *Ateneo de Manila University v. Capulong (G.R. No. 99327, 27 May 1993),* this Court cited with approval the formulation made by Justice Felix Frankfurter of the essential freedoms subsumed in the term “academic freedom”encompassing not only “the freedom to determine x x x on academic grounds who may teach, what may be taught (and) how it shall be taught,” but likewise “who may be admitted to study.” We have thus sanctioned its invocation by a school in rejecting students who are academically delinquent *(Tangonan v. Pano, 137 SCRA 245 [1985]),* or a laywoman seeking admission to a seminary *(Garcia v. Loyola School of Theology, 68 SCRA 277 [1975]),* or students violating “School Rules on Discipline.” *(Ateneo de Manila University v. Capulong, supra.)* ***(Isabelo, Jr. v. Perpetual Help College of Rizal, Inc., 227 SCRA 595-597, Nov. 8, 1993, En Banc [Vitug])***

*40. Between the COA’s findings and conclusions and that of private auditors, which should prevail?*

**Held:** Moreover, as the constitutionally-mandated auditor of all government agencies, the COA’s findings and conclusions necessarily prevail over those of private auditors, at least insofar as government agencies and officials are concerned. The superiority or preponderance of the COA audit over private audit can be gleaned from the records of the Constitutional Commission x x x. The findings and conclusions of the private auditor may guide private investors or creditors who require such private audit. Government agencies and officials, however, remain bound by the findings and conclusions of the COA, whether the matter falls under the first or second paragraph of Section 2, unless of course such findings and conclusions are modified or reversed by the courts.

The power of the COA to examine and audit government agencies, while non-exclusive, cannot be taken away from the COA. Section 3, Article IX-C of the Constitution mandates that:

“Sec. 3. No law shall be passed exempting any entity of the Government or its subsidiary in any guise whatsoever, or any investment of public funds, from the jurisdiction of the Commission on Audit.”

The mere fact that private auditors may audit government agencies does not divest the COA of its power to examine and audit the same government agencies. The COA is neither by-passed nor ignored since even with a private audit the COA will still conduct its usual examination and audit, and its findings and conclusions will still bind government agencies and their officials. A concurrent private audit poses no danger whatsoever of public funds or assets escaping the usual scrutiny of a COA audit. ***(Development Bank of the Philippines v. Commission on Audit, 373 SCRA 356, January 16, 2002, En Banc [Carpio])***

41. Is the constitutional power of the COA to examine and audit government banks and agencies exclusive? Does it preclude a concurrent audit by a private external auditor?

**Held:** The resolution of the primordial issue of whether or not the COA has the sole and exclusive power to examine and audit government banks involves an interpretation of Section 2, Article IX-D of the 1987 Constitution. This Section provides as follows:

“Sec. 2. (1) The Commission on Audit *shall have the power, authority, and duty to examine, audit, and settle* all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned and held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, x x x.

“(2) The Commission *shall have the exclusive authority*, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefore, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties.” (Emphasis supplied)

The COA vigorously asserts that under the first paragraph of Section 2, the COA enjoys the sole and exclusive power to examine and audit all government agencies, including the DBP. The COA contends this is similar to its sole and exclusive authority, under the same paragraph of the same section, to define the scope of its audit, promulgate auditing rules and regulations, including rules on the disallowance of unnecessary expenditures of government agencies. The bare language of Section 2, however, shows that the COA’s power under the first paragraph is not declared exclusive, while its authority under the second paragraph is expressly declared “exclusive.” There is a significant reason for this marked difference in language.

During the deliberations of the Constitutional Commission, Commissioner Serafin Guingona proposed the addition of the word “exclusive” in the first paragraph of Section 2, thereby granting the COA the sole and exclusive power to examine and audit all government agencies. However, the Constitutional Commission rejected the addition of the word “exclusive” in the first paragraph of Section 2 and Guingona was forced to withdraw his proposal. X x x.

X x x

In sharp contrast, the Constitutional Commission placed the word “exclusive” to qualify the authority of the COA under the second paragraph of the same Section 2. This word “exclusive” did not appear in the counterpart provisions of Section 2 in the 1935 and 1973 Constitutions. There is no dispute that the COA’s authority under the second paragraph of Section 2 is exclusive as the language of the Constitution admits of no other meaning. Thus, the COA has the exclusive authority to decide on disallowances of unnecessary government expenditures. Other government agencies and their officials, as well as private auditors engaged by them, cannot in any way intrude into this exclusive function of the COA.

The qualifying word “exclusive” in the second paragraph of Section 2 cannot be applied to the first paragraph which is another sub-section of Section 2. A qualifying word is intended to refer only to the phrase to which it is immediately associated, and not to a phrase distantly located in another paragraph or sub-section *(Felipe v. De la Cruz, 99 Phil. 940 [1956]; Tirona v. Cudiamat, 14 SCRA 264 [1965]).* Thus, the first paragraph of Section 2 must be read the way it appears, without the word “exclusive,” signifying that non-COA auditors can also examine and audit government agencies. Besides, the framers of the Constitution *intentionally* omitted the word “exclusive” in the first paragraph of Section 2 precisely to allow *concurrent audit* by private external auditors.

The clear and unmistakable conclusion from a reading of the entire Section 2 is that the COA’s power to examine and audit is non-exclusive. On the other hand, the COA’s authority to define the scope of its audit, promulgate auditing rules and regulations, and disallow unnecessary expenditures is exclusive.

X x x

Manifestly, the express language of the Constitution, and the clear intent of its framers, point to only one indubitable conclusion – the COA does not have the exclusive power to examine and audit government agencies. The framers of the Constitution were fully aware of the need to allow independent private audit of certain government agencies in addition to the COA audit, as when there is a private investment in a government-controlled corporation, or when a government corporation is privatized or publicly listed, or as in the case at bar when the government borrows money from abroad.

In these instances the government enters the marketplace and competes with the rest of the world in attracting investments or loans. To succeed, the government must abide with the reasonable business practices of the marketplace. Otherwise no investor or creditor will do business with the government, frustrating government efforts to attract investments or secure loans that may be critical to stimulate moribund industries or resuscitate a badly shattered national economy as in the case at bar. By design the Constitution is flexible enough to meet these exigencies. Any attempt to nullify this flexibility in the instances mentioned, or in similar instances, will be *ultra vires*, in the absence of a statute limiting or removing such flexibility.

The deliberations of the Constitutional Commission reveal eloquently the intent of Section 2, Article IX-D of the Constitution. As this Court has ruled repeatedly, the intent of the law is the controlling factor in the interpretation of the law *(People v. Purisima, 86 SCRA 542 [1978]; others omitted).* If a law needs interpretation, the most dominant influence is the intent of the law *(De Jesus v. City of Manila, 29 Phil. 73 [1914]).* The intent of the law is that which is expressed in the words of the law, which should be discovered within its four corners aided, if necessary, by its legislative history *(Manila Lodge No. 761 v. Court of Appeals, 73 SCRA 162 [1976])*. In the case of Section 2, Article IX-D of the Constitution, the intent of the framers of the Constitution is evident from the bare language of Section 2 itself. The deliberations of the Constitutional Commission confirm expressly and even elucidate further this intent beyond any doubt whatsoever.

There is another constitutional barrier to the COA’s insistence of exclusive power to examine and audit all government agencies. The COA’s claim clashes directly with the Central Bank’s constitutional power of “supervision” over banks under Section 20, Article XII of the Constitution. X x x

Historically, the Central Bank has been conducting periodic and special examination and audit of banks to determine the soundness of their operations and the safety of the deposits of the public. Undeniably, the Central Bank’s power of “supervision” includes the power to examine and audit banks, as the banking laws have always recognized this power of the Central Bank. Hence, the COA’s power to examine and audit government banks must be reconciled with the Central Bank’s power to supervise the same banks. The inevitable conclusion is that the COA and the Central Bank have concurrent jurisdiction, under the Constitution, to examine and audit government banks.

However, despite the Central Bank’s concurrent jurisdiction over government banks, the COA’s audit still prevails over that of the Central Bank since the COA is the constitutionally mandated auditor of government banks. And in matters falling under the second paragraph of Section 2, Article IX-D of the Constitution, the COA’s jurisdiction is exclusive. Thus, the Central Bank is devoid of authority to allow or disallow expenditures of government banks since this function belongs exclusively to the COA. ***(Development Bank of the Philippines v. Commission on Audit, 373 SCRA 356, January 16, 2002, En Banc [Carpio])***

#### Economic Policy

*42. Does the Constitutional policy of a “self-reliant and independent national economy” rule out foreign competition?*

**Held:** The constitutional policy of a “self-reliant and independent national economy” does not necessarily rule out the entry of foreign investments, goods and services. It contemplates neither “economic seclusion” nor “mendicancy in the international community.”

Aside from envisioning a trade policy based on “equality and reciprocity,” the fundamental law encourages industries that are “competitive in both domestic and foreign markets,” thereby demonstrating a clear policy against a sheltered domestic trade environment, but one in favor of the gradual development of robust industries that can compete with the best in the foreign markets. ***(Tanada v. Angara, 272 SCRA 18 [1997])***

*43. Is PHILSECO (Philippine Shipyard and Engineering Corporation), as a shipyard, a public utility and, hence, could be operated only by a corporation at least 60% of whose capital is owned by Filipino citizens in accordance with Article XII, Section 10 of the Constitution?*

**Held:**Petitioner asserts that a shipyard is a public utility pursuant to Section 13 (b) of Commonwealth Act No. 146. Respondents, on the other hand, contend that shipyards are no longer public utilities by express provision of Presidential Decree No. 666, which provided incentives to the shipbuilding and ship repair industry.

Indeed, **P.D. No. 666** dated March 5, 1975 explicitly stated that a “shipyard” was not a “public utility.” x x x

However, Section 1 of P.D. No. 666 was expressly repealed by Section 20 of Batas Pambansa Blg. 391, the Investment Incentive Policy Act of 1983. Subsequently, Executive Order No. 226, the Omnibus Investments Code of 1987, was issued and Section 85 thereof expressly repealed B.P. Blg. 391.

The express repeal of B.P. Blg. 391 by E.O. No. 226 did not revive Section 1 of P.D. No. 666, declassifying the shipbuilding and ship repair industry as a public utility, as said executive order did not provide otherwise. When a law which expressly repeals a prior law is itself repealed, the law first repealed shall not be thereby revived unless expressly so provided *(Administrative Code of 1987, Book I, Chapter 5, Section 21).* Consequently, when the APT [Asset Privatization Trust] drafted the ASBR [Asset Specific Bidding Rules] sometime in 1993, P.D. No. 666 no longer existed in our statute books. While it is true that the repeal of a statute does not operate to impair rights that have become vested or accrued while the statute was in force, there are no vested rights of the parties that should be protected in the case at bar. The reason is simple: said decree was already inexistent when the ASBR was issued.

A shipyard such as PHILSECO being a public utility as provided by law, the following provision of the Article XII of the Constitution applies:

“Sec. 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or *associations* organized under the laws of the Philippines *at least sixty per centum of whose capital is owned by such citizens,* nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. *The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association shall be citizens of the Philippines.”*

The progenitor of this constitutional provision, Article XIV, Section 5 of the 1973 Constitution, required the same proportion of 60%-40% capitalization. The JVA [Joint Venture Agreement] between NIDC [National Investment and Development Corporation] and Kawasaki [Kawasaki Heavy Industries, Ltd. of Kobe, Japan] entered into on January 27, 1977 manifests the intention of the parties to abide by the constitutional mandate on capitalization of public utilities. x x x

A joint venture is an association of persons or companies jointly undertaking some commercial enterprise with all of them generally contributing assets and sharing risks. x x x. Considered more of a partnership *(Aurbach v. Sanitary Wares Manufacturing Corporation, G.R. No. 75875, 180 SCRA 130, 147 [1989]),* a joint venture is governed by the laws on contracts and on partnership. The joint venture created between NIDC and Kawasaki falls within the purview of an “association” pursuant to Section 5 of Article XIV of the 1973 Constitution and Section 11 of Article XII of the 1987 Constitution. Consequently, a joint venture that would engage in the business of operating a public utility, such as a shipyard, must observe the proportion of 60%-40% Filipino-foreign capitalization. ***(JG Summit Holdings, Inc. v. Court of Appeals, 345 SCRA 143, Nov. 20, 2000, 1st Div. [Ynares-Santiago])***

**The Rights of Indigenous Cultural Communities/Indigenous Peoples**

44. Does R.A. 8371, otherwise known as “the Indigenous People’s Rights Act” infringe upon the State’s ownership over the natural resources within the ancestral domains?

**Held:** Petitioners posit that IPRA deprives the State of its ownership over mineral lands of the public domain and other natural resources, as well as the State’s full control and supervision over the exploration, development and utilization of natural resources. Specifically, petitioners and the Solicitor General assail Sections 3[a], 5, and 7 of IPRA as violative of Section 2, Article XII of the Constitution which states, in part, that “[a]ll lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State.” *(Section 2, Article XII, Constitution)* They would have the Court declare as unconstitutional Section 3[a] of IPRA because the inclusion of natural resources in the definition of ancestral domains purportedly results in the abdication of State ownership over these resources.

X x x

Section 3[a] merely defines the coverage of ancestral domains, and describes the extent, limit and composition of ancestral domains by setting forth the standards and guidelines in determining whether a particular area is to be considered as part of and within the ancestral domains. In other words, Section 3[a] serves only as a yardstick which points out what properties are within the ancestral domains. It does not confer or recognize any right of ownership over the natural resources to the indigenous peoples. Its purpose is definitional and not declarative of a right or title.

The specification of what areas belong to the ancestral domains is, to our mind, important to ensure that no unnecessary encroachment on private properties outside the ancestral domains will result during the delineation process. The mere fact that Section 3[a] defines ancestral domains to include the natural resources found therein does not *ipso facto* convert the character of such natural resources as private property of the indigenous peoples. Similarly, Section 5 in relation to Section 3[a] cannot be construed as a source of ownership rights of indigenous people over the natural resources simply because it recognizes ancestral domains as their “private but community property.”

The phrase “private but community property” is merely descriptive of the indigenous peoples’ concept of ownership as distinguished from that provided in the Civil Code. x x x. In contrast, the indigenous peoples’ concept of ownership emphasizes the importance of communal or group ownership. By virtue of the communal character of ownership, the property held in common “cannot be sold, disposed or destroyed” because it was meant to benefit the whole indigenous community and not merely the individual member.

That IPRA is not intended to bestow ownership over natural resources to the indigenous peoples is also clear from the deliberations of the bicameral conference committee on Section 7 which recites the rights of indigenous peoples over their ancestral domains x x x.

Further, Section 7 makes no mention of any right of ownership of the indigenous peoples over the natural resources. In fact, Section 7[a] merely recognizes the “right to claim ownership over lands, bodies of water traditionally and actually occupied by indigenous peoples, sacred places, traditional hunting and fishing grounds, and all improvements made by them at any time within the domains.” Neither does Section 7[b], which enumerates certain rights of the indigenous peoples over the natural resources found within their ancestral domains, contain any recognition of ownership *vis-à-vis* the natural resources.

What is evident is that the IPRA protects the indigenous peoples’ rights and welfare in relation to the natural resources found within their ancestral domains, including the preservation of the ecological balance therein and the need to ensure that the indigenous peoples will not be unduly displaced when the State-approved activities involving the natural resources located therein are undertaken. ***(Separate Opinion, Kapunan, J., in Cruz v. Secretary of Environment and Natural Resources, 347 SCRA 128, 284-293, Dec. 6, 2000, En Banc [Per Curiam])***

*45. Has the concept of native title to natural resources, like native title to land, been recognized in the Philippines?*

**Held:** The concept of native title to *natural resources,* unlike native title to *land,* has not been recognized in the Philippines. NCIP and Flavier, *et al.* invoke the case of *Reavies v. Fianza (40 Phil. 1017 [1909], 215 US 16, 54 L Ed 72)* in support of their thesis that native title to natural resources has been upheld in this jurisdiction. They insist that “it is possible for rights over natural resources to vest on a private (as opposed to a public) holder if these were held prior to the 1935 Constitution.” However, a judicious examination of *Reavies* reveals that, contrary to the position of NCIP and Flavier, *et al.,* the Court did not recognize native title to natural resources. Rather, it merely upheld the right of the indigenous peoples to claim ownership of minerals *under the Philippine Bill of 1902.*

While x x x native title to *land* or private ownership by Filipinos of land by virtue of time immemorial possession in the concept of an owner was acknowledged and recognized as far back during the Spanish colonization of the Philippines, there was no similar favorable treatment as regards natural resources. The unique value of natural resources has been acknowledged by the State and is the underlying reason for its consistent assertion of ownership and control over said natural resources from the Spanish regime up to the present. Natural resources, especially minerals, were considered by Spain as an abundant source of revenue to finance its battle in wars against other nations. Hence, Spain, by asserting its ownership over minerals wherever these may be found, whether in public or private lands, recognized the separability of title over lands and that over minerals which may be found therein *(Noblejas, Philippine Law on Natural Resources 1961 Revised Ed., p. 6).*

On the other hand, the United States viewed natural resources as a source of wealth for its nationals. As the owner of natural resources over the Philippines after the latter’s cession from Spain, the United States saw it fit to allow both Filipino and American citizens to explore and exploit minerals in public lands, and to grant patents to private mineral lands. x x x. Although the United States made a distinction between minerals found in public lands and those found in private lands, title in these minerals was in all cases sourced from the State. The framers of the 1935 Constitution found it necessary to maintain the State’s ownership over natural resources to insure their conservation for future generations of Filipinos, to prevent foreign control of the country through economic domination; and to avoid situations whereby the Philippines would become a source of international conflicts, thereby posing danger to its internal security and independence.

The declaration of State ownership and control over minerals and other natural resources in the 1935 Constitution was reiterated in both the 1973 and 1987 Constitutions. ***(Separate Opinion, Kapunan, J., in Cruz v. Secretary of Environment and Natural Resources, 347 SCRA 128, 284-293, Dec. 6, 2000, En Banc [Per Curiam])***

*46. Enumerate the Constitutional provisions recognizing and protecting the rights and interests of the indigenous peoples.*

**Held:** The framers of the 1987 Constitution, looking back to the long destitution of our less fortunate brothers, fittingly saw the historic opportunity to actualize the ideals of people empowerment and social justice, and to reach out particularly to the marginalized sectors of society, including the indigenous peoples. They incorporated in the fundamental law several provisions recognizing and protecting the rights and interests of the indigenous peoples, to wit:

Section 22. The State recognizes and promotes the rights of indigenous peoples within the framework of national unity and development. *(Article II of the Constitution, entitled State Principles and Policies)*

Section 5. The State, subject to the provisions of the Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.

The Congress may provide for the applicability of customary laws governing property rights and relations in determining the ownership and extent of ancestral domains. *(Article XII of the Constitution, entitled National Economy and Patrimony)*

Section 1. The Congress shall give the highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic and political inequalities, and remove cultural inequalities by equitably diffusing wealth and political power for the common good.

To this end, the State shall regulate the acquisition, ownership, use and disposition of property and its increments. *(Article XIII of the Constitution, entitled Social Justice and Human Rights)*

Section 6. The State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition and utilization of other natural resources, including lands of the public domain under lease or concession, subject to prior rights, homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands. *(Ibid.)*

Section 17. The State shall recognize, respect, and protect the rights of cultural communities to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation of national plans and policies. *(Article XIV of the Constitution, entitled Education, Science, Technology, Arts, Culture, and Sports)*

Section 12. The Congress may create a consultative body to advise the President on policies affecting indigenous cultural communities, the majority of the members of which shall come from such communities. *(Article XVI of the Constitution, entitled General Provisions)*

***(Separate Opinion, Kapunan, J., in Isagani Cruz v. Secretary of Environment and Natural Resources, et al., G.R. No. 135385, Dec. 6, 2000, En Banc)***

*47. Discuss the Indigenous Peoples Rights Act (R.A. No. 8371).*

**Held:** Republic Act No. 8371 is entitled "An Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Communities/Indigenous Peoples, Creating a National Commission on Indigenous Peoples, Establishing Implementing Mechanisms, Appropriating Funds Therefor, and for Other Purposes." It is simply known as "The Indigenous Peoples Rights Act of 1997" or the IPRA.

The IPRA recognizes the existence of the indigenous cultural communities or indigenous peoples (ICCs/IPs) as a distinct sector in Philippine society. It grants these people the ownership and possession of their ancestral domains and ancestral lands, and defines the extent of these lands and domains. The ownership given is the indigenous concept of ownership under customary law which traces its origin to native title.

X x x

Within their ancestral domains and ancestral lands, the ICCs/IPs are given the right to self-governance and empowerment (Sections 13 to 20), social justice and human rights (Sections 21 to 28), the right to preserve and protect their culture, traditions, institutions and community intellectual rights, and the right to develop their own sciences and technologies (Sections 29 to 37). ***(Separate Opinion, Puno, J., in Isagani Cruz v. Secretary of DENR, et al., G.R. No. 135385, Dec. 6, 2000, En Banc)***

*48. Define "indigenous peoples/indigenous cultural communities."*

**Held:** 1. Drawing inspiration from both our fundamental law and international law, IPRA now employs the politically-correct conjunctive term "indigenous peoples/indigenous cultural communities" as follows:

Section 3. *Definition of Terms*. - For purposes of this Act, the following terms shall mean:

1. Indigenous peoples/Indigenous cultural communities. - refer to a group of people or homogenous societies identified by self-ascription and ascription by others, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed and utilized such territories, sharing common bonds of language, customs, traditions, and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, became historically differentiated from the majority of Filipinos. Indigenous peoples shall likewise include peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures, or the establishment of present State boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains x x x.

***(Separate Opinion, Kapunan, J., in Isagani Cruz v. Secretary of Environment and Natural Resources, et al., G.R. No. 135385, Dec. 6, 2000, En Banc)***

2. The IPRA is a law dealing with a specific group of people, i.e., the Indigenous Cultural Communities (ICCs) or the Indigenous Peoples (IPs). The term "ICCs" is used in the 1987 Constitution while that of "IPs" is the contemporary international language in the International Labor Organization (ILO) Convention 169 *(Convention Concerning Indigenous and Tribal Peoples in Independent Countries, June 27, 1989)* and the United Nations (UN) Draft Declaration on the Rights of Indigenous Peoples *(Guide to R.A. 8371, published by the Coalition for IPs Rights and Ancestral Domains in cooperation with the ILO and Bilance-Asia Department, p. 4 [1999] - hereinafter referred to as Guide to R.A. 8371).*

*Indigenous Cultural Communities or Indigenous Peoples refer to a group of people or homogeneous societies who have continuously lived as an organized community on communally bounded and defined territory.* These groups of people have actually occupied, possessed and utilized their territories under claim of ownership since time immemorial. They share common bonds of language, customs, traditions and other distinctive cultural traits, or, they, by their resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, became historically differentiated from the Filipino majority. ICCs/IPs also include descendants of ICCs/IPs who inhabited the country at the time of conquest or colonization, who retain some or all of their own social, economic, cultural and political institutions but who may have been displaced from their traditional territories or who may have resettled outside their ancestral domains. ***(Separate Opinion, Puno, J., in Isagani Cruz v. Secretary of DENR, et al., G.R. No. 135385, Dec. 6, 2000, En Banc)***

*49. Define "ancestral domains" and "ancestral lands." Do they constitute part of the land of the public domain?*

**Held:** Ancestral domains and ancestral lands are the private property of indigenous peoples and do not constitute part of the land of the public domain.

The IPRA grants to ICCs/IPs a distinct kind of ownership over ancestral domains and ancestral lands.Ancestral lands are not the same as ancestral domains. These are defined in Section 3(a) and (b) of the Indigenous Peoples Rights Act x x x.

*Ancestral domains* are all areas belonging to ICCs/IPs held under a claim of ownership, occupied or possessed by ICCs/IPs by themselves or through their ancestors, communally or individually since time immemorial, continuously until the present, except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings with government and/or private individuals or corporations. Ancestral domains comprise lands, inland waters, coastal areas, and natural resources therein and includes ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable or not, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources. They also include lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators *(Section 3[a], IPRA).*

*Ancestral lands* are lands held by the ICCs/IPs under the same conditions as ancestral domains except that these are limited to lands and that these lands are not merely occupied and possessed but are also utilized by the ICCs/IPs under claims of individual or traditional group ownership. These lands include but are not limited to residential lots, rice terraces or paddies, private forests, swidden farms and tree lots *(Section 3[b], IPRA).* ***(Separate Opinion, Puno, J., in Isagani Cruz v. Secretary of DENR, et al., G.R. No. 135385, Dec. 6, 2000, En Banc)***

*50. How may ICCs/IPs acquire rights to their ancestral domains and ancestral lands?*

**Held:** The rights of the ICCs/IPs to their ancestral domains and ancestral lands may be acquired in two modes: (1) by *native title* over both ancestral lands and domains; or (2) by *torrens title* under the Public Land Act and the Land Registration Act with respect to ancestral lands only. ***(Separate Opinion, Puno, J., in Isagani Cruz v. Secretary of DENR, et al., G.R. No. 135385, Dec. 6, 2000, En Banc)***

*51. What is the concept of "native title"? What is a Certificate of Ancestral Domain Title (CADT)?*

**Held:** *Native title*refers to ICCs/IPs preconquest rights to lands and domains held under a claim of private ownership as far back as memory reaches. These lands are deemed never to have been public lands and are indisputably presumed to have been held that way since before the Spanish Conquest. The rights of ICCs/IPs to their ancestral *domains* (which also include ancestral *lands*) by virtue of native title shall be recognized and respected *(Section 11, IPRA).* Formal recognition, when solicited by ICCs/IPs concerned, shall be embodied in a Certificate of Ancestral Domain Title (CADT), which shall recognize the title of the concerned ICCs/IPs over the territories identified and delineated*.*

Like a torrens title, a CADT is evidence of private ownership of land by native title. *Native title,* however, is a right of private ownership peculiarly granted to ICCs/IPs over their ancestral lands and domains. The IPRA categorically declares ancestral lands and domains held by native title as *never to have been*public land. Domains and lands held under native title are, therefore, indisputably presumed to have never been public lands and are private.

The concept of native title in the IPRA was taken from the 1909 case of *Carino v. Insular Government (41 Phil. 935 [1909], 212 U.S. 449, 53 L. Ed. 594). Carino* firmly established a concept of private land title that existed irrespective of any royal grant from the State. ***(Separate Opinion, Puno, J., in Isagani Cruz v. Secretary of DENR, et al., G.R. No. 135385, Dec. 6, 2000, En Banc)***

*53. Distinguish ownership of land under native title and ownership by acquisitive prescription against the State.*

**Held:** Ownership by virtue of native title presupposes that the land has been held by its possessor and his predecessor-in-interest in the concept of an owner since time immemorial. The land is not acquired from the State, that is, Spain or its successor-in-interest, the United States and the Philippine Government. There has been no transfer of title from the State as the land has been regarded as private in character as far back as memory goes. In contrast, ownership of land by acquisitive prescription against the State involves a conversion of the character of the property from alienable public land to private land, which presupposes a transfer of title from the State to a private person.  ***(Separate Opinion, Kapunan, J., in Isagani Cruz v. Secretary of DENR, G.R. No. 135385, Dec. 6, 2000, En Banc)***

**The Right of the State to Recover Properties Unlawfully Acquired by Public Officials or Employees**

*54. Does the right of the State to recover properties unlawfully acquired by public officials or employees which may not be barred by prescription, laches, or estoppel under Section 15, Article XI of the Constitution apply to criminal cases for the recovery of ill-gotten wealth?*

**Held:**  Section 15, Article XI, 1987 Constitution provides that “[T]he right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees as transferees, shall not be barred by prescription, laches, or estoppel.” From the proceedings of the Constitutional Commission of 1986, however, it was clear that this provision applies only to civil actions for recovery of ill-gotten wealth, and not to criminal cases. Thus, the prosecution of offenses arising from, relating or incident to, or involving ill-gotten wealth contemplated in Section 15, Article XI of the Constitution may be barred by prescription. ***(Presidential Ad Hoc Fact-Finding Committee on Behest Loans, et al. v. Hon. Aniano A. Desierto, et al., G.R. No. 130140, Oct. 25, 1999, En Banc [Davide, C.J.])***

# STRUCTURE OF GOVERNMENT

**The Doctrine of Separation of Powers**

*55. May the Government, through the PCGG, validly bind itself to cause the dismissal of all cases against the Marcos heirs pending before the Sandiganbayan and other courts in a Compromise Agreement entered into between the former and the latter?*

**Held:** This is a direct encroachment on judicial power, particularly in regard to criminal jurisdiction. Well-settled is the doctrine that once a case has been filed before a court of competent jurisdiction, the matter of its dismissal or pursuance lies within the full discretion and control of the judge. In a criminal case, the manner in which the prosecution is handled, including the matter of whom to present as witnesses, may lie within the sound discretion of the government prosecutor; but the court decides, based on the evidence proffered, in what manner it will dispose of the case. Jurisdiction, once acquired by the trial court, is not lost despite a resolution, even by the justice secretary, to withdraw the information or to dismiss the complaint. The prosecution’s motion to withdraw or to dismiss is not the least binding upon the court. On the contrary, decisional rules require the trial court to make its own evaluation of the merits of the case, because granting such motion is equivalent to effecting a disposition of the case itself.

Thus, the PCGG, as the government prosecutor of ill-gotten wealth cases, cannot guarantee the dismissal of all such criminal cases against the Marcoses pending in the courts, for said dismissal is not within its sole power and discretion. ***(Chavez v. PCGG, 299 SCRA 744, Dec. 9, 1998 [Panganiban])***

## Delegation of Powers

*56. What are the tests of a valid delegation of power?*

**Held:** Empowering the COMELEC, an administrative body exercising quasi-judicial functions, to promulgate rules and regulations is a form of delegation of legislative authority x x x. However, in every case of permissible delegation, there must be a showing that the delegation itself is valid. It is valid only if the law (a) is complete in itself, setting forth therein the policy to be executed, carried out, or implemented by the delegate; and (b) fixes a standard – the limits of which are sufficiently determinate and determinable – to which the delegate must conform in the performance of his functions*.* A sufficient standard is one which defines legislative policy, marks its limits, maps out its boundaries and specifies the public agency to apply it. It indicates the circumstances under which the legislative command is to be effected*.* ***(Santiago v. COMELEC, 270 SCRA 106, March 19, 1997)***

**The Legislative Department**

*57. May the Supreme Court properly inquire into the motives of the lawmakers in conducting legislative investigations? Can it enjoin the Congress or any of its regular and special committees from making inquiries in aid of legislation?*

**Held:** In its comment, respondent Committee claims that this Court cannot properly inquire into the motives of the lawmakers in conducting legislative investigations, much less can it enjoin the Congress or any of its regular and special committees x x x from making inquiries in aid of legislation, under the doctrine of separation of powers, which obtains in our present system of government.

The contention is untenable. X x x

The “allocation of constitutional boundaries” is a task that this Court must perform under the Constitution. Moreover, as held in a recent case *(Neptali A. Gonzales, et al. v. Hon. Catalino Macaraig, Jr., et al., G.R. No. 87636, 19 November 1990, 191 SCRA 452, 463)*, “[t]he political question doctrine neither interposes an obstacle to judicial determination of the rival claims. The jurisdiction to delimit constitutional boundaries has been given to this Court. It cannot abdicate that obligation mandated by the 1987 Constitution, although said provision by no means does away with the applicability of the principle in appropriate cases.” *(Section 1, Article VIII of the 1987 Constitution)*

## The Court is thus of the considered view that it has jurisdiction over the present controversy for the purpose of determining the scope and extent of the power of the Senate Blue Ribbon Committee to conduct inquires into private affairs in purported aid of legislation. *(Bengzon, Jr. v. Senate Blue Ribbon Committee, 203 SCRA 767, Nov. 20, 1991, En Banc [Padilla])*

*58. Is the power of both houses of Congress to conduct inquiries in aid of legislation absolute or unlimited?*

**Held:** The 1987 Constitution expressly recognizes the power of both houses of Congress to conduct inquiries in aid of legislation *(In Arnault v. Nazareno, 87 Phil. 29, this Court held that although there was no express provision in the 1935 Constitution giving such power to both houses of Congress, it was so incidental to the legislative function as to be implied.).* Thus, Section 21, Article VI provides x x x.

The power of both houses of Congress to conduct inquiries in aid of legislation is not, therefore, absolute or unlimited. Its exercise is circumscribed by the afore-quoted provision of the Constitution. Thus, as provided therein, the investigation must be “in aid of legislation in accordance with its duly published rules of procedure” and that “the rights of persons appearing in or affected by such inquiries shall be respected.” It follows then that the rights of persons under the Bill of Rights must be respected, including the right to due process and the right not to be compelled to testify against one’s self.

The power to conduct formal inquiries or investigations is specifically provided for in Sec. 1 of the *Senate Rules of Procedure Governing Inquiries in Aid of Legislation.* Such inquiries may refer to the implementation or re-examination of any law or in connection with any proposed legislation or the formulation of future legislation. They may also extend to any and all matters vested by the Constitution in Congress and/or in the Senate alone.

As held in *Jean L. Arnault v. Leon Nazareno, et al, (No. L-3820, July 18, 1950, 87 Phil. 29),* the inquiry, to be within the jurisdiction of the legislative body making it, must be material or necessary to the exercise of a power in it vested by the Constitution, such as to legislate or to expel a member.

## Under Sec. 4 of the aforementioned Rules, the Senate may refer to any committee or committees any speech or resolution filed by any Senator which in its judgment requires an appropriate inquiry in aid of legislation. In order therefore to ascertain the character or nature of an inquiry, resort must be had to the speech or resolution under which such an inquiry is proposed to be made.*(Bengzon, Jr. v. Senate Blue Ribbon Committee, 203 SCRA 767, Nov. 20, 1991, En Banc [Padilla])*

*59. On 13 September 1988, the Senate Minority Floor Leader, Hon. Juan Ponce Enrile delivered a speech “on a matter of personal privilege” before the Senate on the alleged “take-over of SOLOIL Incorporated, the flagship on the First Manila Management of Companies (FMMC) by Ricardo Lopa” and called upon “the Senate to look into the possible violation of the law in the case, particularly with regard to Republic Act No. 3019, the Anti-Graft and Corrupt Practices Act.”*

*On motion of Senator Orlando Mercado, the matter was referred by the Senate to the Committee on Accountability of Public Officers (Blue Ribbon Committee). Thereafter, the Senate Blue Ribbon Committee started its investigation on the matter. Petitioners and Ricardo Lopa were subpoenaed by the Committee to appear before it and testify on “what they know” regarding the “sale of the thirty-six (36) corporations belonging to Benjamin ‘Kokoy’ Romualdez.”*

*At the hearing held on 23 May 1989, Ricardo Lopa declined to testify on the ground that his testimony may “unduly prejudice” the defendants in Civil Case No. 0035 before the Sandiganbayan. Petitioner Jose F.S. Bengzon, Jr. likewise refused to testify invoking his constitutional right to due process, and averring that the publicity generated by respondent Committee’s inquiry could adversely affect his rights as well as those of the other petitioners who are his co-defendants in Civil Case No. 0035 before the Sandiganbayan.*

*The Senate Blue Ribbon Committee, thereupon, suspended its inquiry and directed the petitioners to file their memorandum on the constitutional issues raised, after which, it issued a resolution dated 5 June 1989 rejecting the petitioners’ plea to be excused from testifying, and the Committee voted to pursue and continue its investigation of the matter. X x x*

*Claiming that the Senate Blue Ribbon Committee is poised to subpoena and require their attendance and testimony in proceedings before the Committee, in excess of its jurisdiction and legislative rights, and that there is no appeal nor any other plain, speedy and adequate remedy in the ordinary course of law, the petitioners filed the present petition for prohibition with a prayer for temporary restraining order and/or injunctive relief.*

**Held:** A perusal of the speech of Senator Enrile reveals that he (Senator Enrile) made a statement which was published in various newspapers on 2 September 1988 accusing Mr. Ricardo “Baby” Lopa of “having taken over the FMMC Group of Companies.” X x x

Verily, the speech of Senator Enrile contained no suggestion of contemplated legislation; he merely called upon the Senate to look into a possible violation of Sec. 5 of RA No. 3019, otherwise known as “The Anti-Graft and Corrupt Practices Act.” In other words, the purpose of the inquiry to be conducted by respondent Blue Ribbon Committee was to find out whether or not the relatives of President Aquino, particularly Mr. Ricardo Lopa, had violated the law in connection with the alleged sale of the 36 or 39 corporations belonging to Benjamin “Kokoy” Romualdez to the Lopa Group. There appears to be, therefore, no intended legislation involved.

X x x

It appears, therefore, that the contemplated inquiry by respondent Committee is not really “in aid of legislation” because it is not related to a purpose within the jurisdiction of Congress, since the aim of the investigation is to find out whether or not the relatives of the President or Mr. Ricardo Lopa had violated Section 5 of RA No. 3019, the “Anti-Graft and Corrupt Practices Act”, a matter that appears more within the province of the courts rather than of the legislature. Besides, the Court may take judicial notice that Mr. Ricardo Lopa died during the pendency of this case. In *John T. Watkins v. United States (354 U.S. 178, 1 L. ed. 2D 1273 [1957]),* it was held:

“x x x. The power of Congress to conduct inquiries in aid of legislation is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic, or political system for the purpose of enabling Congress to remedy them. It comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste. *But broad as is this power of* inquiry, it is not unlimited. *There is no general authority to expose the private affairs of individuals without justification in terms of the functions of Congress. This was freely conceded by the Solicitor General in his arguments in this case. Nor is the Congress a law enforcement or trial agency. These are functions of the executive and judicial departments of government. No inquiry is an end in itself; it must be related to and in furtherance of a legislative task of Congress. Investigations conducted solely for the personal aggrandizement of the investigators or to ‘punish’ those investigated are indefensible.”* (italics supplied)

It cannot be overlooked that when respondent Committee decided to conduct its investigation of the petitioners, the complaint in Civil Case No. 0035 had already been filed with the Sandiganbayan. A perusal of that complaint shows that one of its principal causes of action against herein petitioners, as defendants therein, is the alleged sale of the 36 (or 39) corporations belonging to Benjamin “Kokoy” Romualdez. Since the issues in said complaint had long been joined by the filing of petitioners’ respective answers thereto, the issue sought to be investigated by the respondent Committee is one over which jurisdiction had been acquired by the Sandiganbayan. In short, the issue has been pre-empted by that court. To allow the respondent Committee to conduct its own investigation of an issue already before the Sandiganbayan would not only pose the possibility of conflicting judgments between a legislative committee and a judicial tribunal, but if the Committee’s judgment were to be reached before that of the Sandiganbayan, the possibility of its influence being made to bear on the ultimate judgment of the Sandiganbayan can not be discounted.

In fine, for the respondent Committee to probe and inquire into the same justiciable controversy already before the Sandiganbayan, would be an encroachment into the exclusive domain of judicial jurisdiction that had much earlier set in. ***(Bengzon, Jr. v. Senate Blue Ribbon Committee, 203 SCRA 767, Nov. 20, 1991, En Banc [Padilla])***

*60. Petitioners’ contention is that Republic Act No. 7716 (The Expanded-VAT Law) did not “originate exclusively” in the House of Representatives as required by Art. VI, Sec. 24 of the Constitution, because it is in fact the result of the consolidation of two distinct bills, H. No. 11197 and S. No. 1630. In this connection, petitioners point out that although Art. VI, Sec. 24 was adopted from the American Federal Constitution, it is notable in two respects: the verb “shall originate” is qualified in the Philippine Constitution by the word “exclusively” and the phrase “as on other bills” in the American version is omitted. This means, according to them, that to be considered as having originated in the House, Republic Act No. 7716 must retain the essence of H. No. 11197.*

**Held:** This argument will not bear analysis. To begin with, it is not the law - but the revenue bill - which is required by the Constitution to “originate exclusively” in the House of Representatives. It is important to emphasize this, because a bill originating in the House may undergo such extensive changes in the Senate that the result may be a rewriting of the whole. The possibility of a third version by the conference committee will be discussed later. At this point, what is important to note is that, as a result of the Senate action, a distinct bill may be produced. To insist that a revenue statute - and not only the bill which initiated the legislative process culminating in the enactment of the law - must substantially be the same as the House bill would be to deny the Senate's power not only to *“concur with amendments”* but also to “*propose amendments.”* It would be to violate the coequality of legislative power of the two houses of Congress and in fact make the House superior to the Senate.

The contention that the constitutional design is to limit the Senate's power in respect of revenue bills in order to compensate for the grant to the Senate of the treaty-ratifying power *(Art. VII, Sec. 21)* and thereby equalize its powers and those of the House overlooks the fact that the powers being compared are different. We are dealing here with the legislative power which under the Constitution is vested not only in any particular chamber but in the Congress of the Philippines, consisting of “a Senate and a House of Representatives.” *(Art. VI, Sec. 1)* The exercise of the treaty-ratifying power is not the exercise of legislative power. It is the exercise of a check on the executive power. There is, therefore, no justification for comparing the legislative powers of the House and of the Senate on the basis of the possession of a similar non-legislative power by the Senate. The possession of a similar power by the U.S. Senate has never been thought of as giving it more legislative powers than the House of Representatives.

X x x Given, then, the power of the Senate to propose amendments, the Senate can propose its own version even with respect to bills which are required by the Constitution to originate in the House.

It is insisted, however, that S. No. 1630 was passed not in substitution of H. No. 11197 but of another Senate bill (S. No. 1129) earlier filed and that what the Senate did was merely to “take (H. No. 11197) into consideration” in enacting S. No. 1630. There is really no difference between the Senate preserving H. No. 11197 up to the enacting clause and then writing its own version following the enacting clause (which, it would seem, petitioners admit is an amendment by substitution), and, on the other hand, separately presenting a bill of its own on the same subject matter. In either case the result are two bills on the same subject.

Indeed, what the Constitution simply means is that the *initiative* for filing revenue, tariff, or tax bills, bills authorizing an increase of the public debt, private bills and bills of local application must come from the House of Representatives on the theory that, elected as they are from the districts, the members of the House can be expected to be more sensitive to the local needs and problems. On the other hand, the senators, who are elected at large, are expected to approach the same problems from the national perspective. Both views are thereby made to bear on the enactment of such laws.

Nor does the Constitution prohibit the filing in the Senate of a substitute bill in anticipation of its receipt of the bill from the House, so long as action by the Senate as a body is withheld pending receipt of the House bill. The Court cannot, therefore, understand the alarm expressed over the fact that on March 1, 1993, eight months before the House passed H. No. 11197, S. No. 1129 had been filed in the Senate. After all it does not appear that the Senate ever considered it. It was only after the Senate had received H. No. 11197 on November 23, 1993 that the process of legislation in respect of it began with the referral to the Senate Committee on Ways and Means of H. No. 11197 and the submission by the Committee on February 7, 1994 of S. No. 1630. For that matter, if the question were simply the priority in the time of filing of bills, the fact is that it was in the House that a bill (H. No. 253) to amend the VAT law was first filed on July 22, 1992. Several other bills had been filed in the House before S. No. 1129 was filed in the Senate, and H. No. 11197 was only a substitute of those earlier bills. ***(Tolentino v. Secretary of Finance, 235 SCRA 630, 661-663, Aug. 25, 1994, En Banc [Mendoza])***

*61. Discuss the nature of the Party-List system. Is it, without any qualification, open to all?*

**Held:** 1. The party-list system is a social justice tool designed not only to give more law to the great masses of our people who have less in life, but also to enable them to become veritable lawmakers themselves, empowered to participate directly in the enactment of laws designed to benefit them. It intends to make the marginalized and the underrepresented not merely passive recipients of the State’s benevolence, but active participants in the mainstream of representative democracy. Thus, allowing all individuals and groups, including those which now dominate district elections, to have the same opportunity to participate in party-list elections would desecrate this lofty objective and mongrelize the social justice mechanism into an atrocious veneer for traditional politics. ***(Ang Bagong Bayani – OFW Labor Party v. COMELEC, G.R. No. 147589, June 26, 2001, En Banc [Panganiban])***

2. Crucial to the resolution of this case is the fundamental social justice principle that those who have less in life should have more in law. The party-list system is one such tool intended to benefit those who have less in life. It gives the great masses of our people genuine hope and genuine power. It is a message to the destitute and the prejudiced, and even to those in the underground, that change is possible. It is an invitation for them to come out of their limbo and seize the opportunity.

Clearly, therefore, the Court cannot accept the submissions x x x that the party-list system is, without any qualification, open to all. Such position does not only weaken the electoral chances of the marginalized and underrepresented; it also prejudices them. It would gut the substance of the party-list system. Instead of generating hope, it would create a mirage. Instead of enabling the marginalized, it would further weaken them and aggravate their marginalization. ***(Ang Bagong Bayani – OFW Labor Party v. COMELEC, G.R. No. 147589, June 26, 2001, En Banc [Panganiban])***

*62. Are political parties – even the major ones – prohibited from participating in the party-list elections?*

**Held:** Under the Constitution and RA 7941, private respondents cannot be disqualified from the party-list elections, merely on the ground that they are political parties. Section 5, Article VI of the Constitution, provides that members of the House of Representatives may “be elected through a party-list system of registered *national, regional,* and sectoral *parties* or organizations.

Furthermore, under Sections 7 and 8, Article IX [C] of the Constitution, political parties may be registered under the party-list system. X x x

During the deliberations in the Constitutional Commission, Comm. Christian S. Monsod pointed out that the participants in the party-list system may “be a regional party, a sectoral party, a national party, UNIDO, Magsasaka, or a regional party in Mindanao.” x x x.

Indeed, Commissioner Monsod stated that the purpose of the party-list provision was to open up the system, in order to give a chance to parties that consistently place third or fourth in congressional district elections to win a seat in Congress*.* He explained: “The purpose of this is to open the system. In the past elections, we found out that there were certain groups or parties that, if we count their votes nationwide, have about 1,000,000 or 1,500,000 votes. But they were always third or fourth place in each of the districts. So, they have no voice in the Assembly. But this way, they would have five or six representatives in the assembly even if they would not win individually in legislative districts. So, that is essentially the mechanics, the purpose and objective of the party-list system.”

For its part, Section 2 of RA 7941 also provides for “a party-list system of registered national, regional and sectoral *parties* or organizations or coalitions thereof, x x x.” Section 3 expressly states that a “party” is “either a political party or a sectoral party or a coalition of parties.” More to the point, the law defines “political party” as “an organized group of citizens advocating an ideology or platform, principles and policies for the general conduct of government and which, as the most immediate means of securing their adoption, regularly nominates and supports certain of its leaders and members as candidates for public office.”

Furthermore, Section 11 of RA 7941 leaves no doubt as to the participation of political parties in the party-list system. X x x

Indubitably, therefore, political parties – even the major ones – may participate in the party-list elections.

That political parties may participate in the party-list elections does not mean, however, that *any* political party – or any organization or group for that matter – may do so. The requisite character of these parties or organizations must be consistent with the purpose of the party-list system, as laid down in the Constitution and RA 7941. X x x ***(Ang Bagong Bayani – OFW Labor Party v. COMELEC, G.R. No. 147589, June 26, 2001, En Banc [Panganiban])***

*63. Who are the marginalized and underrepresented sectors to be represented under the party-list system?*

**Held:** The marginalized and underrepresented sectors to be represented under the party-list system are enumerated in Section 5 of RA 7941 x x x.

While the enumeration of marginalized and underrepresented sectors is not exclusive, it demonstrates the clear intent of the law that not all sectors can be represented under the party-list system. X x x

[W]e stress that the party-list system seeks to enable certain Filipino citizens – specifically those belonging to marginalized and underrepresented sectors, organizations and parties – to be elected to the House of Representatives. The assertion x x x that the party-list system is not exclusive to the marginalized and underrepresented disregards the clear statutory policy. Its claim that even the super-rich and overrepresented can participate desecrates the spirit of the party-list system.

Indeed, the law crafted to address the peculiar disadvantage of Payatas hovel dwellers cannot be appropriated by the mansion owners of Forbes Park. The interests of these two sectors are manifestly disparate; hence, the x x x position to treat them similarly defies reason and common sense. X x x

While the business moguls and the mega-rich are, numerically speaking, a tiny minority, they are neither marginalized nor underrepresented, for the stark reality is that their economic clout engenders political power more awesome than their numerical limitation. Traditionally, political power does not necessarily emanate from the size of one’s constituency; indeed, it is likely to arise more directly from the number and amount of one’s bank accounts.

It is ironic, therefore, that the marginalized and underrepresented in our midst are the majority who wallow in poverty, destitution and infirmity. It was for them that the party-list system was enacted – to give them not only genuine hope, but genuine power; to give them opportunity to be elected and to represent the specific concerns of their constituencies; and simply to give them a direct vote in Congress and in the larger affairs of the State. In its noblest sense, the party-list system truly empowers the masses and ushers a new hope for genuine change. Verily, it invites those marginalized and underrepresented in the past – the farm hands, the fisher folk, the urban poor, even those in the underground movement – to come out and participate, as indeed many of them came out and participated during the last elections. The State cannot now disappoint and frustrate them by disabling the desecrating this social justice vehicle.

Because the marginalized and underrepresented had not been able to win in the congressional district elections normally dominated by traditional politicians and vested groups, 20 percent of the seats in the House of Representatives were set aside for the party-list system. In arguing that even those sectors who normally controlled 80 percent of the seats in the House could participate in the party-list elections for the remaining 20 percent, the OSG and the Comelec disregard the fundamental difference between the congressional district elections and the party-list elections.

As earlier noted, the purpose of the party-list provision was to open up the system, in order to enhance the chance of sectoral groups and organizations to gain representation in the House of Representatives through the simplest scheme possible. Logic shows that the system has been opened to those who have never gotten a foothold within it – those who cannot otherwise win in regular elections and who therefore need the “simplest scheme possible” to do so. Conversely, it would be illogical to open the system to those who have long been within it – those privileged sectors that have long dominated the congressional district elections.

X x x

Verily, allowing the non-marginalized and overrepresented to vie for the remaining seats under the party-list system would not only *dilute,* but also *prejudice* the chance of the marginalized and underrepresented, contrary to the intention of the law to *enhance* it. The party-list system is a tool for the benefit of the underprivileged; the law could not have given the same tool to others, to the prejudice of the intended beneficiaries. ***(Ang Bagong Bayani – OFW Labor Party v. COMELEC, G.R. No. 147589, June 26, 2001, En Banc [Panganiban])***

*64. Section 5(2), Article VI of the Constitution provides that "[t]he party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party-list." Does the Constitution require all such allocated seats to be filled up all the time and under all circumstances?*

**Held:** The Constitution simply states that "[t]he party-list representatives shall constitute twenty *per centum* of the total number of representatives including those under the party-list."

X x x

We rule that a simple reading of Section 5, Article VI of the Constitution, easily conveys the equally simple message that Congress was vested with the broad power to define and prescribe the mechanics of the party-list system of representation. The Constitution explicitly sets down only the percentage of the total membership in the House of Representatives reserved for party-list representatives.

In the exercise of its constitutional prerogative, Congress enacted RA 7941. As said earlier, Congress declared therein a policy to promote "proportional representation" in the election of party-list representatives in order to enable Filipinos belonging to the marginalized and underrepresented sectors to contribute legislation that would benefit them. It however deemed it necessary to require parties, organizations and coalitions participating in the system to obtain at least two percent of the total votes cast for the party-list system in order to be entitled to a party-list seat. Those garnering more than this percentage could have "additional seats in proportion to their total number of votes." Furthermore, no winning party, organization or coalition can have more than three seats in the House of Representatives. X x x

Considering the foregoing statutory requirements, it will be shown x x x that Section 5(2), Article VI of the Constitution is not mandatory. It merely provides a ceiling for party-list seats in Congress. ***(Veterans Federation Party v. COMELEC, G.R. No. 136781, Oct. 6, 2000, En Banc [Panganiban])***

*65. What are the inviolable parameters to determine the winners in a Philippine-style party-list election?*

**Held:** To determine the winners in a Philippine-style party-list election, the Constitution and Republic Act No. 7941 mandate at least four inviolable parameters. These are:

*First,***the twenty percent allocation** - the combined number of *all* party-list congressmen shall not exceed twenty percent of the total membership of the House of Representatives, including those elected under the party list.

*Second,* **the two percent threshold** - only those garnering a minimum of two percent of the total valid votes cast for the party-list system are "qualified" to have a seat in the House of Representatives.

*Third,* **the three seat limit** - each qualified party, regardless of the number of votes it actually obtained, is entitled to a maximum of three seats; that is, one "qualifying" and two additional seats.

*Fourth,***proportional representation** - the additional seats which a qualified party is entitled to shall be computed "in proportion to their total number of votes." ***(Veterans Federation Party v. COMELEC, G.R. No. 136781 and Companion Cases, Oct. 6, 2000, En Banc [Panganiban])***

*66. State the guidelines for screening Party-List Participants.*

**Held:** In this light, the Court finds it appropriate to lay down the following guidelines, culled from the law and the Constitution, to assist the Comelec in its work.

*First,* the political party, sector, organization or coalition must represent the marginalized and underrepresented groups identified in Section 5 of RA 7941. In other words, it must show – through its constitution, articles of incorporation, bylaws, history, platform of government and track record – that it represents and seeks to uplift marginalized and underrepresented sectors. Verily, majority of its membership should belong to the marginalized and underrepresented. And it must demonstrate that in a conflict of interest, it has chosen or is likely to choose the interest of such sectors.

*Second,* while even major political parties are expressly allowed by RA 7941 and the Constitution to participate in the party-list system, they must comply with the declared statutory policy of enabling “Filipino citizens belonging to marginalized and underrepresented sectors x x x to be elected to the House of Representatives.” In other words, while they are not disqualified merely on the ground that they are political parties, they must show, however, that they represent the interests of the marginalized and underrepresented. X x x.

*Third,* in view of the objections directed against the registration of Ang Buhay Hayaang Yumabong, which is allegedly a religious group, the Court notes the express constitutional provision that the religious sector may not be represented in the party-list system. x x x

Furthermore, the Constitution provides that “religious denominations and sects shall not be registered.” *(Sec. 2 [5], Article IX [C])*  The prohibition was explained by a member of the Constitutional Commission in this wise: “[T]he prohibition is on any religious organization registering as a political party. I do not see any prohibition here against a priest running as a candidate. That is not prohibited here; it is the registration of a religious sect as a political party.”

*Fourth,* a party or an organization must not be disqualified under Section 6 of RA 7941, which enumerates the grounds for disqualification as follows:

1. It is a religious sect or denomination, organization or association organized for religious purposes;
2. It advocates violence or unlawful means to seek its goal;
3. It is a foreign party or organization;
4. It is receiving support from any foreign government, foreign political party, foundation, organization, whether directly or through any of its officers or members or indirectly through third parties for partisan election purposes;
5. It violates or fails to comply with laws, rules or regulations relating to elections;
6. It declares untruthful statements in its petition;
7. It has ceased to exist for at least one (1) year; or
8. It fails to participate in the last two (2) preceding elections or fails to obtain at least two *per centum* (2%) of the votes cast under the party-list system in the two (2) preceding elections for the constituency in which it had registered.”

Note should be taken of paragraph 5, which disqualifies a party or group for violation of or failure to comply with election laws and regulations. These laws include Section 2 of RA 7941, which states that the party-list system seeks to “enable Filipino citizens belonging to marginalized and underrepresented sectors, organizations and parties x x x to become members of the House of Representatives.” A party or organization, therefore, that does not comply with this policy must be disqualified.

*Fifth,* the party or organization must not be an adjunct of, or a project organized or an entity funded or assisted by, the government. By the very nature of the party-list system, the party or organization must be a group of citizens, organized by citizens and operated by citizens. It must be independent of the government. The participation of the government or its officials in the affairs of a party-list candidate is not only illegal and unfair to other parties, but also deleterious to the objective of the law: to enable citizens belonging to marginalized and underrepresented sectors and organization to be elected to the House of Representatives.

*Sixth,* the party must not only comply with the requirements of the law; its nominees must likewise do so. x x x

*Seventh,* not only the candidate party or organization must represent marginalized and underrepresented sectors; so also must its nominees. To repeat, under Section 2 of RA 7941, the nominees must be Filipino citizens “who belong to marginalized and underrepresented sectors, organizations and parties.” Surely, the interests of the youth cannot be fully represented by a retiree; neither can those of the urban poor or the working class, by an industrialist. To allow otherwise is to betray the State policy to give genuine representation to the marginalized and underrepresented.

*Eighth,* x x x while lacking a well-defined political constituency, the nominee must likewise be able to contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole. x x x ***(Ang Bagong Bayani – OFW Labor Party v. COMELEC, G.R. No. 147589, June 26, 2001, En Banc [Panganiban])***

*67. Accused-appellant Congressman Romeo G. Jalosjos filed a motion before the Court asking that he be allowed to fully discharge the duties of a Congressman, including attendance at legislative sessions and committee meetings despite his having been convicted in the first instance of a non-bailable offense. He contended that his reelection being an expression of popular will cannot be rendered inutile by any ruling, giving priority to any right or interest – not even the police power of the State. Resolve.*

**Held:**The immunity from arrest or detention of Senators and members of the House of Representatives x x x arises from a provision of the Constitution. The history of the provision shows that the privilege has always been granted in a restrictive sense. The provision granting an exemption as a special privilege cannot be extended beyond the ordinary meaning of its terms. It may not be extended by intendment, implication or equitable considerations.

The 1935 Constitution provided in its Article VI on the Legislative Department:

Sec. 15. The Senators and Members of the House of Representatives shall in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the sessions of Congress, and in going to and returning from the same; x x x.

Because of the broad coverage of felony and breach of the peace, the exemption applied only to civil arrests. A congressman like the accused-appellant, convicted under Title Eleven of the Revised Penal Code could not claim parliamentary immunity from arrest. He was subject to the same general laws governing all persons still to be tried or whose convictions were pending appeal.

The 1973 Constitution broadened the privilege of immunity as follows:

Article VIII, Sec. 9. A Member of the Batasang Pambansa shall, in all offenses punishable by not more than six years imprisonment, be privileged from arrest during his attendance at its sessions and in going to and returning from the same.

For offenses punishable by more than six years imprisonment, there was no immunity from arrest. The restrictive interpretation of immunity and the intent to confine it within carefully defined parameters is illustrated by the concluding portion of the provision, to wit:

X x x but the Batasang Pambansa shall surrender the member involved to the custody of the law within twenty four hours after its adjournment for a recess or for its next session, otherwise such privilege shall cease upon its failure to do so.

The present Constitution adheres to the same restrictive rule minus the obligation of Congress to surrender the subject Congressman to the custody of the law. The requirement that he should be attending sessions or committee meetings has also been removed. For relatively minor offenses, it is enough that Congress is in session.

The accused-appellant argues that a member of Congress’ function to attend sessions is underscored by Section 16(2), Article VI of the Constitution which states that –

(2) A majority of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day and may compel the attendance of absent Members in such manner, and under such penalties, as such House may provide.

However, the accused-appellant has not given any reason why he should be exempted from the operation of Section 11, Article VI of the Constitution. The members of Congress cannot compel absent members to attend sessions if the reason for the absence is a legitimate one. The confinement of a Congressman charged with a crime punishable by imprisonment of more than six years is not merely authorized by law, it has constitutional foundations.

Accused-appellant’s reliance on the ruling in *Aguinaldo v. Santos (212 SCRA 768, at 773 [1992]),* which states, *inter alia,* that –

The Court should never remove a public officer for acts done prior to his present term of office. To do otherwise would be to deprive the people of their right to elect their officers. When the people have elected a man to office, it must be assumed that they did this with the knowledge of his life and character, and that they disregarded or forgave his fault or misconduct, if he had been guilty of any. It is not for the Court, by reason of such fault or misconduct, to practically overrule the will of the people.

will not extricate him from his predicament. It can be readily seen x x x that the *Aguinaldo* case involves the administrative removal of a public officer for acts done *prior* to his present term of office. It does not apply to imprisonment arising from the enforcement of criminal law. Moreover, in the same way that preventive suspension is not removal, confinement pending appeal is not removal. He remains a Congressman unless expelled by Congress or, otherwise, disqualified.

One rationale behind confinement, whether pending appeal or after final conviction, is public self-defense. Society must protect itself. It also serves as an example and warning to others.

A person charged with crime is taken into custody for purposes of the administration of justice. As stated in *United States v. Gustilo (19 Phil. 208, 212),* it is the injury to the public which State action in criminal law seeks to redress. It is not the injury to the complainant. After conviction in the Regional Trial Court, the accused may be denied bail and thus subjected to incarceration if there is risk of his absconding*.*

The accused-appellant states that the plea of the electorate which voted him into office cannot be supplanted by unfounded fears that he might escape eventual punishment if permitted to perform congressional duties outside his regular place of confinement.

It will be recalled that when a warrant for accused-appellant’s arrest was issued, he fled and evaded capture despite a call from his colleagues in the House of Representatives for him to attend the sessions ands to surrender voluntarily to the authorities. Ironically, it is now the same body whose call he initially spurned which accused-appellant is invoking to justify his present motion. This can not be countenanced because, x x x aside from its being contrary to well-defined Constitutional restrains, it would be a mockery of the aims of the State’s penal system.

Accused-appellant argues that on several occasions, the Regional Trial Court of Makati granted several motions to temporarily leave his cell at the Makati City Jail, for official or medical reasons x x x.

He also calls attention to various instances, after his transfer at the New Bilibid Prison in Muntinlupa City, when he was likewise allowed/permitted to leave the prison premises x x x.

There is no showing that the above privileges are peculiar to him or to a member of Congress. Emergency or compelling temporary leaves from imprisonment are allowed to all prisoners, at the discretion of the authorities or upon court orders.

What the accused-appellant seeks is not of an emergency nature. Allowing accused-appellant to attend congressional sessions and committee meetings for five (5) days or more in a week will virtually make him a free man with all the privileges appurtenant to his position. Such an aberrant situation not only elevates accused-appellant’s status to that of a special class, it also would be a mockery of the purposes of the correction system. X x x

The accused-appellant avers that his constituents in the First District of Zamboanga del Norte want their voices to be heard and that since he is treated as *bona fide* member of the House of Representatives, the latter urges a co-equal branch of government to respect his mandate. He also claims that the concept of temporary detention does not necessarily curtail his duty to discharge his mandate and that he has always complied with the conditions/restrictions when he is allowed to leave jail.

We remain unpersuaded.

X x x

When the voters of his district elected the accused-appellant to Congress, they did so with full awareness of the limitations on his freedom of action. They did so with the knowledge that he could achieve only such legislative results which he could accomplish within the confines of prison. To give a more drastic illustration, if voters elect a person with full knowledge that he is suffering from a terminal illness, they do so knowing that at any time, he may no longer serve his full term in office. ***(People v. Jalosjos, 324 SCRA 689, Feb. 3, 2000, En Banc [Ynares-Santiago])***

*68. Discuss the objectives of Section 26(1), Article VI of the 1987 Constitution, that "[e]very bill passed by the Congress shall embrace only one subject which shall be expressed in the title thereof."*

**Held:** The objectives of Section 26(1), Article VI of the 1987 Constitution are:

1. To prevent hodge-podge or log-rolling legislation;
2. To prevent surprise or fraud upon the legislature by means of provisions in bills of which the titles gave no information, and which might therefore be overlooked and carelessly and unintentionally adopted; and
3. To fairly apprise the people, through such publication of legislative proceedings as is usually made, of the subjects of legislation that are being considered, in order that they may have opportunity of being heard thereon by petition or otherwise if they shall so desire.

Section 26(1) of Article VI of the 1987 Constitution is sufficiently complied with where x x x the title is comprehensive enough to embrace the general objective it seeks to achieve, and if all the parts of the statute are related and germane to the subject matter embodied in the title or so long as the same are not inconsistent with or foreign to the general subject and title.  ***(Agripino A. De Guzman, Jr., et al. v. COMELEC, G.R. No. 129118, July 19, 2000, en Banc [Purisima])***

*69. Section 44 of R.A. No. 8189 (The Voter's Registration Act of 1996) which provides for automatic transfer to a new station of any Election Officer who has already served for more than four years in a particular city or municipality was assailed for being violative of Section 26(1) of Article VI of the Constitution allegedly because it has an isolated and different subject from that of RA 8189 and that the same is not expressed in the title of the law. Should the challenge be sustained?*

**Held:** Section 44 of RA 8189 is not isolated considering that it is related and germane to the subject matter stated in the title of the law. The title of RA 8189 is "The Voter's Registration Act of 1996" with a subject matter enunciated in the explanatory note as "AN ACT PROVIDING FOR A GENERAL REGISTRATION OF VOTERS, ADOPTING A SYSTEM OF CONTINUING REGISTRATION, PRESCRIBING THE PROCEDURES THEREOF AND AUTHORIZING THE APPROPRIATION OF FUNDS THEREFOR." Section 44, which provides for the reassignment of election officers, is relevant to the subject matter of registration as it seeks to ensure the integrity of the registration process by providing guideline for the COMELEC to follow in the reassignment of election officers. It is not an alien provision but one which is related to the conduct and procedure of continuing registration of voters. In this regard, it bears stressing that the Constitution does not require Congress to employ in the title of an enactment, language of such precision as to mirror, fully index or catalogue, all the contents and the minute details therein.***(Agripino A. De Guzman, Jr., et al. v. COMELEC, G.R. No. 129118, July 19, 2000, En Banc [Purisima])***

*70. Do courts have the power to inquire into allegations that, in enacting a law, a House of Congress failed to comply with its own rules?*

**Held:** The cases, both here and abroad, in varying forms of expression, all deny to the courts the power to inquire into allegations that, in enacting a law, a House of Congress failed to comply with its own rules, in the absence of showing that there was a violation of a constitutional provision or the right of private individuals. In *Osmena v. Pendatun (109 Phil. At 870-871),* it was held: “At any rate, courts have declared that ‘the rules adopted by deliberative bodies are subject to revocation, modification or waiver at the pleasure of the body adopting them.’ And it has been said that ‘Parliamentary rules are merely procedural, and with their observance, the courts have no concern. They may be waived or disregarded by the legislative body.’ Consequently, ‘mere failure to conform to parliamentary usage will not invalidate that action (taken by a deliberative body) when the requisite number of members have agreed to a particular measure.’”

It must be realized that each of the three departments of our government has its separate sphere which the others may not invade without upsetting the delicate balance on which our constitutional order rests. Due regard for the working of our system of government, more than mere comity, compels reluctance on the part of the courts to enter upon an inquiry into an alleged violation of the rules of the House. Courts must accordingly decline the invitation to exercise their power. ***(Arroyo v. De Venecia, 277 SCRA 268, Aug. 14, 1997 [Mendoza])***

*71. What is the Bicameral Conference Committee? Discuss the nature of its function and its jurisdiction.*

**Held:** While it is true that a conference committee is the mechanism for compromising differences between the Senate and the House, it is not limited in its jurisdiction to this question. Its broader function is described thus:

A conference committee may deal generally with the subject matter or it may be limited to resolving the precise differences between the two houses. Even where the conference committee is not by rule limited in its jurisdiction, legislative custom severely limits the freedom with which new subject matter can be inserted into the conference bill. But occasionally a conference committee produces unexpected results, results beyond its mandate. These excursions occur even where the rules impose strict limitations on conference committee jurisdiction. This is symptomatic of the authoritarian power of conference committee*.****(Philippine Judges Association v. Prado, 227 SCRA 703, Nov. 11, 1993, En Banc [Cruz])***

*72. Discuss the Enrolled Bill Doctrine.*

**Held:** Under the enrolled bill doctrine, the signing of H. Bill No. 7189 by the Speaker of the House and the President of the Senate and the certification by the secretaries of both Houses of Congress that it was passed on November 21, 1996 are conclusive of its due enactment. x x x To be sure, there is no claim either here or in the decision in the EVAT cases *(Tolentino v. Secretary of Finance)* that the enrolled bill embodies a conclusive presumption. In one case *(Astorga v. Villegas, 56 SCRA 714 [1974])* we “went behind” an enrolled bill and consulted the Journal to determine whether certain provisions of a statute had been approved by the Senate.

But, where as here there is no evidence to the contrary, this Court will respect the certification of the presiding officers of both Houses that a bill has been duly passed. Under this rule, this Court has refused to determine claims that the three-fourths vote needed to pass a proposed amendment to the Constitution had not been obtained, because “a duly authenticated bill or resolution imports absolute verity and is binding on the courts.” x x x

This Court has refused to even look into allegations that the enrolled bill sent to the President contained provisions which had been “surreptitiously” inserted in the conference committee x x x. *(Tolentino v. Secretary of Finance)*

It has refused to look into charges that an amendment was made upon the last reading of a bill in violation of Art. VI, Sec. 26(2) of the Constitution that “upon the last reading of a bill, no amendment shall be allowed.” *(Philippine Judges Ass’n v. Prado, 227 SCRA 703, 710 [1993])*

In other cases, this Court has denied claims that the tenor of a bill was otherwise than as certified by the presiding officers of both Houses of Congress.

The enrolled bill doctrine, as a rule of evidence, is well-established. It is cited with approval by text writers here and abroad. The enrolled bill rule rests on the following considerations:

X x x. As the President has no authority to approve a bill not passed by Congress, an enrolled Act in the custody of the Secretary of State, and having the official attestations of the Speaker of the House of Representatives, of the President of the Senate, and of the President of the United States, carries, on its face, a solemn assurance by the legislative and executive departments of the government, charged, respectively, with the duty of enacting and executing the laws, that it was passed by Congress. The respect due to coequal and independent departments requires the judicial department to act upon that assurance, and to accept, as having passed Congress, all bills authenticated in the manner stated; leaving the court to determine, when the question properly arises, whether the Act, so authenticated, is in conformity with the Constitution. *(Marshall Field & Co. v. Clark, 143 U.S. 649, 672, 36 L. Ed. 294, 303 [1891])*

To overrule the doctrine now, x x x is to repudiate the massive teaching of our cases and overthrow an established rule of evidence. ***(Arroyo v. De Venecia, 277 SCRA 268, Aug. 14, 1997 [Mendoza])***

*73. When should the Legislative Journal be regarded as conclusive upon the courts, and why?*

**Held:** The Journal is regarded as conclusive with respect to matters that are required by the Constitution to be recorded therein. With respect to other matters, in the absence of evidence to the contrary, the Journals have also been accorded conclusive effects. Thus, in *United States v. Pons (34 Phil. 729, 735 [1916]], quoting ex rel. Herron v. Smith, 44 Ohio 348 [1886]),* this Court spoke of the imperatives of public policy for regarding the Journals as “public memorials of the most permanent character,” thus: “They should be public, because all are required to conform to them; they should be permanent, that rights acquired today upon the faith of what has been declared to be law shall not be destroyed tomorrow, or at some remote period of time, by facts resting only in the memory of individuals.” X x x. ***(Arroyo v. De Venecia, 277 SCRA 268, 298-299, Aug. 14, 1997 [Mendoza])***

*74. What matters are required to be entered on the Journal?*

**Held:**

1. The yeas and nays on the third and final reading of a bill *(Art. VI, Sec. 26[2])*;
2. The yeas and nays on any question, at the request of one-fifth of the members present *(Id., Sec. 16[4]);*
3. The yeas and nays upon repassing a bill over the President’s veto *(Id., Sec. 27[1])*; and
4. The President’s objection to a bill he had vetoed *(Id.)*.

***(Arroyo v. De Venecia, 277 SCRA 268, 298, Aug. 14, 1997 [Mendoza])***

*75. A disqualification case was filed against a candidate for Congressman before the election with the COMELEC. The latter failed to resolve that disqualification case before the election and that candidate won, although he was not yet proclaimed because of that pending disqualification case. Is the COMELEC now ousted of jurisdiction to resolve the pending disqualification case and, therefore, should dismiss the case, considering that jurisdiction is now vested with the House of Representatives Electoral Tribunal (HRET)?*

**Held:** 1. In his first assignments of error, petitioner vigorously contends that after the May 8, 1995 elections, the COMELEC lost its jurisdiction over the question of petitioner’s qualifications to run for member of the House of Representatives. He claims that jurisdiction over the petition for disqualification is exclusively lodged with the House of Representatives Electoral Tribunal (HRET). Given the yet-unresolved question of jurisdiction, petitioner avers that the COMELEC committed serious error and grave abuse of discretion in directing the suspension of his proclamation as the winning candidate in the Second Congressional District of Makati City. We disagree.

Petitioner conveniently confuses the distinction between an unproclaimed candidate to the House of Representatives and a member of the same. Obtaining the highest number of votes in an election does not automatically vest the position in the winning candidate. Section 17 of Article VI of the 1987 Constitution reads:

The Senate and the House of Representatives shall have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns and qualifications of their respective Members.

Under the above-stated provision, the electoral tribunal clearly assumes jurisdiction over all contests relative to the election, returns and qualifications of candidates for either the Senate or the House only when the latter become *members* of either the Senate or the House of Representatives. A candidate who has not been proclaimed and who has not taken his oath of office cannot be said to be a member of the House of Representatives subject to Section 17 of Article VI of the Constitution. While the proclamation of a winning candidate in an election is ministerial, B.P. Blg. 881 in conjunction with Sec. 6 of R.A. 6646 allows suspension of proclamation under circumstances mentioned therein. Thus, petitioner’s contention that “after the conduct of the election and (petitioner) has been established the winner of the electoral exercise from the moment of election, the COMELEC is automatically divested of authority to pass upon the question of qualification” finds no basis in law, because even *after* the elections the COMELEC is empowered by Section 6 (in relation to Section 7) of R.A. 6646 to continue to hear and decide questions relating to qualifications of candidates. X x x.

Under the above-quoted provision, not only is a disqualification case against a candidate allowed to continue after the election (and does not oust the COMELEC of its jurisdiction), but his obtaining the highest number of votes will not result in the suspension or termination of the proceedings against him when the evidence of guilt is strong. While the phrase “when the evidence of guilt is strong” seems to suggest that the provisions of Section 6 ought to be applicable only to disqualification cases under Section 68 of the Omnibus Election Code, Section 7 of R.A. 6646 allows the application of the provisions of Section 6 to cases involving disqualification based on ineligibility under Section 78 of BP. Blg. 881. X x x. ***(Aquino v. COMELEC, 248 SCRA 400, 417-419, Sept. 18, 1995, En Banc [Kapunan, J.])***

2.As to the House of Representatives Electoral Tribunal’s supposed assumption of jurisdiction over the issue of petitioner’s qualifications after the May 8, 1995 elections, suffice it to say that HRET’s jurisdiction as the sole judge of all contests relating to the elections, returns and qualifications of members of Congress begins only after a candidate has become a member of the House of Representatives *(Art. VI, Sec. 17, 1987 Constitution).* Petitioner not being a member of the House of Representatives, it is obvious that the HRET at this point has no jurisdiction over the question. ***(Romualdez-Marcos v. COMELEC, 248 SCRA 300, 340-341, Sept. 18, 1995, En Banc [Kapunan, J.])***

*76. Will the rule be the same if that candidate wins and was proclaimed winner and already assumed office as Congressman?*

**Held:** While the COMELEC is vested with the power to declare valid or invalid a certificate of candidacy, its refusal to exercise that power following the proclamation and assumption of the position by Farinas is a recognition of the jurisdictional boundaries separating the COMELEC and the Electoral Tribunal of the House of Representatives (HRET). Under Article VI, Section 17 of the Constitution, the HRET has sole and exclusive jurisdiction over all contests relative to the election, returns, and qualifications of members of the House of Representatives. Thus, once a winning candidate has been proclaimed, taken his oath, and assumed office as a member of the House of Representatives, COMELEC’s jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET’s own jurisdiction begins*.* Thus, the COMELEC’s decision to discontinue exercising jurisdiction over the case is justifiable, in deference to the HRET’s own jurisdiction and functions.

X x x

Petitioner further argues that the HRET assumes jurisdiction only if there is a valid proclamation of the winning candidate. He contends that if a candidate fails to satisfy the statutory requirements to qualify him as a candidate, his subsequent proclamation is void *ab initio.* Where the proclamation is null and void, there is no proclamation at all and the mere assumption of office by the proclaimed candidate does not deprive the COMELEC at all of its power to declare such nullity, according to petitioner. But x x x, in an electoral contest where the validity of the proclamation of a winning candidate who has taken his oath of office and assumed his post as congressman is raised, that issue is best addressed to the HRET*.* The reason for this ruling is self-evident, for it avoids duplicity of proceedings and a clash of jurisdiction between constitutional bodies, with due regard to the people’s mandate. ***(Guerrero v. COMELEC, 336 SCRA 458, July 26, 2000, En Banc [Quisumbing])***

*77. Is there an appeal from a decision of the Senate or House of Representatives Electoral Tribunal? What then is the remedy, if any?*

**Held:**The Constitution mandates that the House of Representatives Electoral Tribunal and the Senate Electoral Tribunal shall each, respectively, be the *sole* judge of all contests relating to the election, returns and qualifications of their respective members.

The Court has stressed that “x x x so long as the Constitution grants the HRET the power to be the sole judge of all contests relating to the election, returns and qualifications of members of the House of Representatives, any final action taken by the HRET on a matter within its jurisdiction shall, as a rule, not be reviewed by this Court. The power granted to the Electoral Tribunal x x x excludes the exercise of any authority on the part of this Court that would in any wise restrict it or curtail it or even affect the same.”

The Court did recognize, of course, its power of judicial review in exceptional cases. In *Robles v. HRET (181 SCRA 780),* the Court has explained that while the judgments of the Tribunal are beyond judicial interference, the Court may do so, however, but only “in the exercise of this Court’s so-called extraordinary jurisdiction x x x upon a determination that the Tribunal’s decision or resolution was rendered without or in excess of its jurisdiction, or with grave abuse of discretion or paraphrasing *Morrero (Morrero v. Bocar [66 Phil. 429]),* upon a clear showing of such arbitrary and improvident use by the Tribunal of its power as constitutes a denial of due process of law, or upon a demonstration of a very clear unmitigated error, manifestly constituting such grave abuse of discretion that there has to be a remedy for such abuse.”

The Court does not x x x venture into the perilous area of correcting perceived errors of independent branches of the Government; it comes in only when it has to vindicate a denial of due process or correct an abuse of discretion so grave or glaring that no less than the Constitution itself calls for remedial action. ***(Libanan v. HRET, 283 SCRA 520, Dec. 22, 1997 [Vitug])***

**The Executive Department**

*78. What are the limitations on the veto power of the President?*

**Held:** The act of the Executive in vetoing the particular provisions is an exercise of a constitutionally vested power. But even as the Constitution grants the power, it also provides limitations to its exercise. The veto power is not absolute.

X x x

The OSG is correct when it states that the Executive must veto a bill in its entirety or not at all. He or she cannot act like an editor crossing out specific lines, provisions, or paragraphs in a bill that he or she dislikes. In the exercise of the veto power, it is generally all or nothing. However, when it comes to appropriation, revenue or tariff bills, the Administration needs the money to run the machinery of government and it can not veto the entire bill even if it may contain objectionable features. The President is, therefore, compelled to approve into law the entire bill, including its undesirable parts. It is for this reason that the Constitution has wisely provided the “item veto power” to avoid inexpedient riders being attached to an indispensable appropriation or revenue measure.

The Constitution provides that only a particular item or items may be vetoed. The power to disapprove any item or items in an appropriate bill does not grant the authority to veto a part of an item and to approve the remaining portion of the same item. *(Gonzales v. Macaraig, Jr., 191 SCRA 452, 464 [1990])* ***(Bengzon v. Drilon, 208 SCRA 133, 143-145, April 15, 1992, En Banc [Gutierrez])***

*79.* *Distinguish an “item” from a “provision” in relation to the veto power of the President.*

**Held:** The terms *item* and *provision* in budgetary legislation and practice are concededly different. An *item* in a bill refers to the particulars, the details, the distinct and severable parts x x x of the bill *(Bengzon, supra, at 916).* It is an indivisible sum of money dedicated to a stated purpose *(Commonwealth v. Dodson, 11 S.E., 2d 120, 124, 125, etc., 176 Va. 281).* The United States Supreme Court, in the case of *Bengzon v. Secretary of Justice (299 U.S. 410, 414, 57 Ct 252, 81 L. Ed., 312) declared “that an item” of an appropriation bill obviously means an item* which in itself is a specific appropriation of money, not some *general provision of law,* which happens to be put into an appropriation bill. ***(Bengzon v. Drilon, 208 SCRA 133, 143-145, April 15, 1992, En Banc [Gutierrez])***

*80.* *May the President veto a law? May she veto a decision of the SC which has long become final and executory?*

**Held:** We need no lengthy justifications or citations of authorities to declare that no President may veto the provisions of a law enacted thirty-five (35) years before his or her term of office. Neither may the President set aside or reverse a final and executory judgment of this Court through the exercise of the veto power.***(Bengzon v. Drilon, 208 SCRA 133, 143-145, April 15, 1992, En Banc [Gutierrez])***

*81. Did former President Estrada resign as President or should be considered resigned as of January 20, 2001 when President Gloria Macapagal Arroyo took her oath as the 14th President of the Republic?*

**Held:**Resignation x x x is a factual question and its *elements* are beyond quibble: *there must be an intent to resign and the intent must be coupled by acts of relinquishment.*The validity of a resignation is not governed by any formal requirement as to form. It can be oral. It can be written. It can be express. It can be implied. As long as the resignation is clear, it must be given legal effect.

In the cases at bar, the facts show that petitioner did not write any formal letter of resignation before he evacuated Malacanang Palace in the afternoon of January 20, 2001 after the oath-taking of respondent Arroyo. Consequently, whether or not petitioner resigned has to be determined from his acts and omissions before, during and after January 20, 2001 or by the *totality of prior, contemporaneous and posterior facts and circumstantial evidence bearing a material relevance on the issue.*

Using this totality test, *we hold that petitioner resigned as President.*

X x x

In sum, we hold that the resignation of the petitioner cannot be doubted. It was confirmed by his leaving Malacanang. In the press release containing his final statement, (1) *he acknowledged the oath-taking of the respondent as President* of the Republic albeit with reservation about its legality; (2) he emphasized he was leaving the Palace, the seat of the presidency, for the sake of peace and in order to begin the healing process of our nation. *He did not say he was leaving the Palace due to any kind of inability and that he was going to re-assume the presidency as soon as the disability disappears*; (3) he expressed his gratitude to the people for the opportunity to serve them. Without doubt, he was referring to the *pastopportunity* given him to serve the people as President; (4) he assured that he will not shirk from any *future challenge* that may come ahead on the same service of our country. Petitioner’s reference is to a *future challenge after occupying the office of the president* which he has given up; and (5) he called on his supporters to join him in the promotion of a constructive national spirit of reconciliation and solidarity. *Certainly, the national spirit of reconciliation and solidarity could not be attained if he did not give up the presidency.*  The press release was petitioner’s valedictory, his final act of farewell.*His presidency is now in the past tense.* ***(Estrada v. Desierto, G.R. Nos. 146710-15, March 2, 2001, en Banc [Puno])***

*82. Discuss our legal history on executive immunity.*

**Held:** The doctrine of executive immunity in this jurisdiction emerged *as a case law*. In the *1910* case *of Forbes, etc. v. Chuoco Tiaco and Crossfield (16 Phil. 534 [1910])*, the respondent Tiaco, a Chinese citizen, sued petitioner W. Cameron Forbes, Governor-General of the Philippine Islands, J.E. Harding and C.R. Trowbridge, Chief of Police and Chief of the Secret Service of the City of Manila, respectively, for damages for allegedly conspiring to deport him to China. In granting a writ of prohibition, this Court, speaking thru Mr. Justice Johnson, held:

“The principle of nonliability x x x does not mean that the judiciary has no authority to touch the acts of the Governor-General; that he may, under cover of his office, do what he will, unimpeded and unrestrained. Such a construction would mean that tyranny, under the guise of the execution of the law, could walk defiantly abroad, destroying rights of person and of property, wholly free from interference of courts or legislatures. This does not mean, either, that a person injured by the executive authority by an act unjustifiable under the law has no remedy, but must submit in silence. On the contrary, it means, simply, that the Governor-General, like the judges of the courts and the members of the Legislature, may not be personally mulcted in civil damages for the consequences of an act executed in the performance of his official duties. The judiciary has full power to, and will, when the matter is properly presented to it and the occasion justly warrants it, declare an act of the Governor-General illegal and void and place as nearly as possible in *status quo* any person who has been deprived his liberty or his property by such act. This remedy is assured to every person, however humble or of whatever country, when his personal or property rights have been invaded, even by the highest authority of the state. The thing which the judiciary can not do is mulct the Governor-General personally in damages which result from the performance of his official duty, any more than it can a member of the Philippine Commission or the Philippine Assembly. Public policy forbids it.

Neither does this principle of nonliability mean that the chief executive may not be personally sued at all in relation to acts which he claims to perform as such official. On the contrary, it clearly appears from the discussion heretofore had, particularly that portion which touched the liability of judges and drew an analogy between such liability and that of the Governor-General, that the latter is liable when he acts in a case so plainly outside of his power and authority that he can not be said to have exercised discretion in determining whether or not he had the right to act. What is held here is that he will be protected from personal liability for damages not only when he acts within his authority, but also when he is without authority, provided he actually used discretion and judgment, that is, the judicial faculty, in determining whether he had authority to act or not. In other words, he is entitled to protection *in determining the question of his authority.* If he decide wrongly, he is still protected provided the question of his authority was one over which two men, reasonably qualified for that position, might honestly differ; but he is not protected if the lack of authority to act is so plain that two such men could not honestly differ over its determination. In such case, he acts, not as Governor-General but as a private individual, and, as such, must answer for the consequences of his act.”

Mr. Justice Johnson underscored the consequences if the Chief Executive was not granted immunity from suit, *viz:* “x x x. Action upon important matters of state delayed; the time and substance of the chief executive spent in wrangling litigation; disrespect engendered for the person of one of the highest officials of the State and for the office he occupies; a tendency to unrest and disorder; resulting in a way, in a distrust as to the integrity of government itself.”

Our *1935 Constitution* took effect but it *did not contain any specific provision on executive immunity.* Then came the tumult of the martial law years under the late President Ferdinand E. Marcos and the 1973 Constitution was born. In 1981, it was amended and *one of the amendments involved executive immunity*. Section 17, Article VII stated:

“The President shall be immune from suit during his tenure. Thereafter, no suit whatsoever shall lie for official acts done by him or by others pursuant to his specific orders during his tenure.

The immunities herein provided shall apply to the incumbent President referred to in Article XVII of this Constitution.”

In his second Vicente G. Sinco Professorial Chair Lecture entitled, “Presidential Immunity And All The King’s Men: The Law Of Privilege As A Defense To Actions For Damages,” (62 Phil. L.J. 113 [1987]) petitioner’s learned counsel, former Dean of the UP College of Law, Atty. Pacifico Agabin, brightened the modifications effected by this constitutional amendment on the existing law on executive privilege. To quote his disquisition:

“In the Philippines though, we sought to do the American one better by enlarging and fortifying the absolute immunity concept. First, we extended it to shield the President not only from civil claims but also from criminal cases and other claims. Second, we enlarged its scope so that it would cover even acts of the President outside the scope of official duties. And third, we broadened its coverage so as to include not only the President but also other persons, be they government officials or private individuals, who acted upon orders of the President. It can be said that at that point most of us were suffering from AIDS (or absolute immunity defense syndrome).”

*The Opposition in the then Batasang Pambansa sought the repeal of this Marcosian concept of executive immunity in the 1973 Constitution*. The move was led by then Member of Parliament, now Secretary of Finance, Alberto Romulo, who argued that the *after incumbency immunity* granted to President Marcos violated the principle that a public office is a public trust. He denounced the immunity as a return to the anachronism “the king can do no wrong.” The effort failed.

The 1973 Constitution ceased to exist when President Marcos was ousted from office by the People Power revolution in 1986. When the *1987 Constitution* was crafted, *its framers did not reenact* the executive immunity provision of the 1973 Constitution. X x x ***(Estrada v. Desierto, G.R. Nos. 146710-15, March 2, 2001, en Banc [Puno])***

*83. Can former President Estrada still be prosecuted criminally considering that he was not convicted in the impeachment proceedings against him?*

**Held:** We reject his argument that he cannot be prosecuted for the reason that he must first be convicted in the impeachment proceedings. The impeachment trial of petitioner Estrada was aborted by the walkout of the prosecutors and by the events that led to his loss of the presidency. Indeed, on February 7, 2001, the Senate passed Senate Resolution No. 83 “Recognizing that the Impeachment Court is *Functus Officio.”* Since the Impeachment Court is now *functus officio,* it is untenable for petitioner to demand that he should first be impeached and then convicted before he can be prosecuted. The plea if granted, would put a perpetual bar against his prosecution. Such a submission has nothing to commend itself for it will place him in a better situation than a non-sitting President who has not been subjected to impeachment proceedings and yet can be the object of a criminal prosecution. To be sure, the debates in the Constitutional Commission make it clear that when impeachment proceedings have become moot due to the resignation of the President, the proper criminal and civil cases may already be filed against him x x x.

This is in accord with our ruling in *In Re: Saturnino Bermudez (145 SCRA 160 [1986])* that “incumbent Presidents are immune from suit or from being brought to court during the period of their incumbency and tenure” *but not beyond***.** Considering the peculiar circumstance that the impeachment process against the petitioner has been aborted and thereafter he lost the presidency, petitioner Estrada cannot demand as a condition *sine qua non* to his criminal prosecution before the Ombudsman that he be convicted in the impeachment proceedings. ***(Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001, en Banc [Puno])***

*84. State the reason why not all appointments made by the President under the 1987 Constitution will no longer require confirmation by the Commission on Appointments.*

**Held:** The aforecited provision *(Section 16, Article VII)* of the Constitution has been the subject of several cases on the issue of the restrictive function of the Commission on Appointments with respect to the appointing power of the President. This Court touched upon the historical antecedent of the said provision in the case of *Sarmiento III v. Mison (156 SCRA 549)* in which it was ratiocinated upon that Section 16 of Article VII of the 1987 Constitution requiring confirmation by the Commission on Appointments of certain appointments issued by the President contemplates a system of checks and balances between the executive and legislative branches of government. Experience showed that when almost all presidential appointments required the consent of the Commission on Appointments, as was the case under the 1935 Constitution, the commission became a venue of "horse trading" and similar malpractices*.* On the other hand, placing absolute power to make appointments in the President with hardly any check by the legislature, as what happened under the 1973 Constitution, leads to abuse of such power. Thus was perceived the need to establish a "middle ground" between the 1935 and 1973 Constitutions. The framers of the 1987 Constitution deemed it imperative to subject certain high positions in the government to the power of confirmation of the Commission on Appointments and to allow other positions within the exclusive appointing power of the President. ***(Manalo v. Sistoza, 312 SCRA 239, Aug. 11, 1999, En Banc [Purisima])***

*85. Enumerate the groups of officers who are to be appointed by the President under Section 16, Article VII of the 1987 Constitution, and identify those officers whose appointments shall require confirmation by the Commission on Appointments.*

**Held:** Conformably, as consistently interpreted and ruled in the leading case of *Sarmiento III v. Mison (Ibid.),* and in the subsequent cases of *Bautista v. Salonga (172 SCRA 160), Quintos-Deles v. Constitutional Commission (177 SCRA 259),* and *Calderon v. Carale (208 SCRA 254),* under Section 16, Article VII, of the Constitution, there are four groups of officers of the government to be appointed by the President:

First, the heads of the executive departments, ambassadors, other public ministers and consuls, officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him in this Constitution;

Second, all other officers of the Government whose appointments are not otherwise provided for by law;

Third, those whom the President may be authorized by law to appoint;

Fourth, officers lower in rank whose appointments the Congress may by law vest in the President alone.

It is well-settled that only presidential appointees belonging to the first group require the confirmation by the Commission on Appointments. ***(Manalo v. Sistoza, 312 SCRA 239, Aug. 11, 1999, En Banc [Purisima])***

*86. Under Republic Act 6975 (the DILG Act of 1990), the Director General, Deputy Director General, and other top officials of the Philippine National Police (PNP) shall be appointed by the President and their appointments shall require confirmation by the Commission on Appointments. Respondent Sistoza was appointed Director General of the PNP but he refused to submit his appointment papers to the Commission on Appointments for confirmation contending that his appointment shall no longer require confirmation despite the express provision of the law requiring such confirmation. Should his contention be upheld?*

**Held:** It is well-settled that only presidential appointees belonging to the first group (enumerated under the first sentence of Section 16, Article VII of the 1987 Constitution) require the confirmation by the Commission on Appointments. The appointments of respondent officers who are not within the first category, need not be confirmed by the Commission on Appointments. As held in the case of *Tarrosa v. Singson (232 SCRA 553),* Congress cannot by law expand the power of confirmation of the Commission on Appointments and require confirmation of appointments of other government officials not mentioned in the first sentence of Section 16 of Article VII of the 1987 Constitution.

Consequently, unconstitutional are Sections 26 and 31 of Republic Act 6975 which empower the Commission on Appointments to confirm the appointments of public officials whose appointments are not required by the Constitution to be confirmed. x x x. ***(Manalo v. Sistoza, 312 SCRA 239, Aug. 11, 1999, En Banc [Purisima])***

*87. Will it be correct to argue that since the Philippine National Police is akin to the Armed Forces of the Philippines, therefore, the appointments of police officers whose rank is equal to that of colonel or naval captain will require confirmation by the Commission on Appointments?*

**Held:** This contention is x x x untenable. The Philippine National Police is separate and distinct from the Armed Forces of the Philippines. The Constitution, no less, sets forth the distinction. Under Section 4 of Article XVI of the 1987 Constitution,

"The Armed Forces of the Philippines shall be composed of a citizen armed force which shall undergo military training and service, as may be provided by law. It shall keep a regular force necessary for the security of the State."

On the other hand, Section 6 of the same Article of the Constitution ordains that:

"The State shall establish and maintain one police force, which shall be national in scope and civilian in character to be administered and controlled by a national police commission. The authority of local executives over the police units in their jurisdiction shall be provided by law."

To so distinguish the police force from the armed forces, Congress enacted Republic Act 6975 x x x.

Thereunder, the police force is different from and independent of the armed forces and the ranks in the military are not similar to those in the Philippine National Police. Thus, directors and chief superintendents of the PNP x x x do not fall under the first category of presidential appointees requiring confirmation by the Commission on Appointments. ***(Manalo v. Sistoza, 312 SCRA 239, Aug. 11, 1999, En Banc [Purisima])***

*88. To what types of appointments is Section 15, Article VII of the 1987 Constitution (prohibiting the President from making appointments two months before the next presidential elections and up to the end of his term) directed against?*

**Held:**  Section 15, Article VII is directed against two types of appointments: (1) those made for buying votes and (2) those made for partisan considerations. The first refers to those appointments made within two months preceding the Presidential election and are similar to those which are declared election offenses in the Omnibus Election Code; while the second consists of the so-called “midnight” appointments. The SC in ***In Re: Hon. Mateo A. Valenzuela and Hon. Placido B. Vallarta, (298 SCRA 408, Nov. 9, 1998, En Banc [Narvasa C.J.])*** clarified this when it held:

“Section 15, Article VII has a broader scope than the *Aytona* ruling. It may not unreasonably be deemed to contemplate not only “midnight” appointments – those made obviously for partisan reasons as shown by their number and the time of their making – but also appointments presumed made for the purpose of influencing the outcome of the Presidential election.”

*89. Discuss the nature of an ad-interim appointment. Is it temporary and, therefore, can be can be withdrawn or revoked by the President at her pleasure?*

Held: An ad interim appointment is a permanent appointment because it takes effect immediately and can no longer be withdrawn by the President once the appointee has qualified into office. The fact that it is subject to confirmation by the Commission on Appointments does not alter its permanent character. The Constitution itself makes an ad interim appointment permanent in character by making it effective until disapproved by the Commission on Appointments or until the next adjournment of congress. The second paragraph of Section 16, Article VII of the Constitution provides as follows:

“The President shall have the power to make appointments during the recess of the Congress, whether voluntary or compulsory, but such appointments shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of the Congress.”

Thus, the ad interim appointment remains effective until such disapproval or next adjournment, signifying that it can no longer be withdrawn or revoked by the President. The fear that the President can withdraw or revoke at any time and for any reason an ad interim appointment is utterly without basis.

More than half a century ago, this Court had already ruled that an ad interim appointment is permanent in character. In Summers v. Ozaeta (81 Phil. 754 [1948]), decided on October 25, 1948, we held that:

“x x x an ad interim appointment is one made in pursuance of paragraph (4), Section 10, Article VII of the Constitution, which provides that the ‘President shall have the power to make appointments during the recess of the Congress, but such appointments shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of the Congress.’ It is an appointment permanent in nature, and the circumstance that it is subject to confirmation by the Commission on Appointments does not alter its permanent character. An ad interim appointment is disapproved certainly for a reason other than that its provisional period has expired. Said appointment is of course distinguishable from an ‘acting’ appointment which is merely temporary, good until another permanent appointment is issued.”

The Constitution imposes no condition on the effectivity of an ad interim appointment, and thus an ad interim appointment takes effect immediately. The appointee can at once assume office and exercise, as a de jure officer, all the powers pertaining to the office. In Pacete v. Secretary of the Commission on Appointments (40 SCRA 58 [1971]), this Court elaborated on the nature of an ad interim appointment as follows:

“A distinction is thus made between the exercise of such presidential prerogative requiring confirmation by the Commission on Appointments when Congress is in session and when it is in recess. In the former, the President nominates, and only upon the consent of the Commission on Appointments may the person thus named assume office. It is not so with reference to ad interim appointments. It takes effect at once. The individual chosen may thus qualify and perform his function without loss of time. His title to such office is complete. In the language of the Constitution, the appointment is effective ‘until disapproval by the Commission on Appointments or until the next adjournment of the Congress.’”

Petitioner cites Black’s Law Dictionary which defines the term “ad interim” to mean “in the meantime” or “for the time being.” Hence, petitioner argues that an ad interim appointment is undoubtedly temporary in character. This argument is not new and was answered by this Court in Pamantasan ng Lungsod ng Maynila v. Intermediate Appellate Court (140 SCRA 22 [1985]), where we explained that:

“x x x From the arguments, it is easy to see why the petitioner should experience difficulty in understanding the situation. Private respondent had been extended several ‘ad interim’ appointments which petitioner mistakenly understands as appointments temporary in nature. Perhaps, it is the literal translation of the word ‘ad interim’ which creates such belief. The term is defined by Black to mean ‘in the meantime’ or ‘for the time being’. Thus, an officer ad interim is one appointed to fill a vacancy, or to discharge the duties of the office during the absence or temporary incapacity of its regular incumbent (Black’s Law Dictionary, Revised Fourth Edition, 1978). But such is not the meaning nor the use intended in the context of Philippine law. In referring to Dr. Esteban’s appointments, the term is not descriptive of the nature of the appointments given to him. Rather, it is used to denote the manner in which said appointments were made, that is, done by the President of the Pamantasan in the meantime, while the Board of Regents, which is originally vested by the University Charter with the power of appointment, is unable to act. X x x.”

Thus, the term “ad interim appointment”, as used in letters of appointment signed by the President, means a permanent appointment made by the President in the meantime that Congress is in recess. It does not mean a temporary appointment that can be withdrawn or revoked at any time. The term, although not found in the text of the Constitution, has acquired a definite legal meaning under Philippine jurisprudence. The Court had again occasion to explain the nature of an ad interim appointment in the more recent case of Marohombsar v. Court of Appeals (326 SCRA 62 [2000]), where the Court stated:

“We have already mentioned that an ad interim appointment is not descriptive of the nature of the appointment, that is, it is not indicative of whether the appointment is temporary or in an acting capacity, rather it denotes the manner in which the appointment was made. In the instant case, the appointment extended to private respondent by then MSU President Alonto, Jr. was issued without condition nor limitation as to tenure. The permanent status of private respondent’s appointment as Executive Assistant II was recognized and attested to by the Civil Service Commission Regional Office No. 12. Petitioner’s submission that private respondent’s ad interim appointment is synonymous with a temporary appointment which could be validly terminated at any time is clearly untenable. Ad interim appointments are permanent appointment but their terms are only until the Board disapproves them.”

An ad interim appointee who has qualified and assumed office becomes at that moment a government employee and therefore part of the civil service. He enjoys the constitutional protection that “[n]o officer or employee in the civil service shall be removed or suspended except for cause provided by law.” (Section 2[3], Article IX-B of the Constitution) Thus, an ad interim appointment becomes complete and irrevocable once the appointee has qualified into office. The withdrawal or revocation of an ad interim appointment is possible only if it is communicated to the appointee before the moment he qualifies, and any withdrawal or revocation thereafter is tantamount to removal from office (See concurring opinion of Justice Cesar Bengzon in Erana v. Vergel de Dios, 85 Phil. 17 [1949]). Once an appointee has qualified, he acquires a legal right to the office which is protected not only by statute but also by the Constitution. He can only be removed for cause, after notice and hearing, consistent with the requirements of due process.

An ad interim appointment can be terminated for two causes specified in the Constitution. The first cause is the disapproval of his ad interim appointment by the Commission on Appointments. The second cause is the adjournment of Congress without the Commission on Appointments acting on his appointment. These two causes are resolutory conditions expressly imposed by the Constitution on all ad interim appointments. These resolutory conditions constitute, in effect, a Sword of Damocles over the heads of ad interim appointees. No one, however, can complain because it is the Constitution itself that places the Sword of Damocles over the heads of the ad interim appointees.

While an ad interim appointment is permanent and irrevocable except as provided by law, an appointment or designation in a temporary or acting capacity can be withdrawn or revoked at the pleasure of the appointing power (Binamira v. Garrucho, 188 SCRA 154 [1990]; Santiago v. Commission on Audit, 199 SCRA 125 [1991]; Sevilla v. Court of Appeals, 209 SCRA 637 [1992]). A temporary or acting appointee does not enjoy any security of tenure, no matter how briefly. This is the kind of appointment that the Constitution prohibits the President from making to the three independent constitutional commissions, including the COMELEC. Thus, in Brillantes v. Yorac (192 SCRA 358 [1990]), this Court struck down as unconstitutional the designation by then President Corazon Aquino of Associate Commissioner Haydee Yorac as Acting Chairperson of the COMELEC. This Court ruled that:

“A designation as Acting Chairman is by its very terms essentially temporary and therefore revocable at will. No cause need be established to justify its revocation. Assuming its validity, the designation of the respondent as Acting Chairman of the Commission on Elections may be withdrawn by the President of the Philippines at any time and for whatever reason she sees fit. It is doubtful if the respondent, having accepted such designation, will not be estopped from challenging its withdrawal.

The Constitution provides for many safeguards to the independence of the Commission on Elections, foremost among which is the security of tenure of its members. That guarantee is not available to the respondent as Acting Chairman of the Commission on Elections by designation of the President of the Philippines.”

Earlier, in Nacionalista Party v. Bautista (85 Phil. 101 [1949]), a case decided under the 1935 Constitution, which did not have a provision prohibiting temporary or acting appointments to the COMELEC, this Court nevertheless declared unconstitutional the designation of the Solicitor General as acting member of the COMELEC. This Court ruled that the designation of an acting Commissioner would undermine the independence of the COMELEC and hence violate the Constitution. We declared then: “It would be more in keeping with the intent, purpose and aim of the framers of the Constitution to appoint a permanent Commissioner than to designate one to act temporarily.”

In the instant case, the President did in fact appoint permanent Commissioners to fill the vacancies in the COMELEC, subject only to confirmation by the Commission on Appointments. Benipayo, Borra and Tuason were extended permanent appointments during the recess of Congress. They were not appointed or designated in a temporary or acting capacity, unlike Commissioner Haydee Yorac in Brillantes v. Yorac and Solicitor General Felix Bautista in Nacionalista Party v. Bautista. The ad interim appointments of Benipayo, Borra and Tuason are expressly allowed by the Constitution which authorizes the President, during the recess of Congress, to make appointments that take effect immediately.

While the Constitution mandates that the COMELEC “shall be independent,” this provision should be harmonized with the President’s power to extend ad interim appointments. To hold that the independence of the COMELEC requires the Commission on Appointments to first confirm ad interim appointees before the appointees can assume office will negate the President’s power to make ad interim appointments. This is contrary to the rule on statutory construction to give meaning and effect to every provision of the law. It will also run counter to the clear intent of the framers of the Constitution.

The original draft of Section 16, Article VII of the Constitution – on the nomination of officers subject to confirmation by the Commission on Appointments – did not provide for ad interim appointments. The original intention of the framers of the Constitution was to do away with ad interim appointments because the plan was for Congress to remain in session throughout the year except for a brief 30-day compulsory recess. However, because of the need to avoid disruptions in essential government services, the framers of the Constitution thought it wise to reinstate the provisions of the 1935 Constitution on ad interim appointments. X x x.

X x x

Clearly, the reinstatement in the present Constitution of the ad interim appointing power of the President was for the purpose of avoiding interruptions in vital government services that otherwise would result from prolonged vacancies in government offices, including the three constitutional commissions. In his concurring opinion in Guevarra v. Inocentes (16 SCRA 379 [1966]), decided under the 1935 Constitution, Justice Roberto Concepcion, Jr. explained the rationale behind ad interim appointments in this manner:

“Now, why is the lifetime of ad interim appointments so limited? Because, if they expired before the session of Congress, the evil sought to be avoided – interruption in the discharge of essential functions – may take place. Because the same evil would result if the appointments ceased to be effective during the session of Congress and before its adjournment. Upon the other hand, once Congress has adjourned, the evil aforementioned may easily be conjured by the issuance of other ad interim appointments or reappointments.”

Indeed, the timely application of the last sentence of Section 16, Article VII of the Constitution barely avoided the interruption of essential government services in the May 2001 national elections. Following the decision of this Court in Gaminde v. Commission on Appointments (347 SCRA 655 [2000]), promulgated on December 13, 2000, the terms of office of constitutional officers first appointed under the Constitution would have to be counted starting February 2, 1987, the date of ratification of the Constitution, regardless of the date of their actual appointment. By this reckoning, the terms of office of three Commissioners of the COMELEC, including the Chairman, would end on February 2, 2001 (See Section 1[2], Article IX-C of the Constitution).

X x x

During an election year, Congress normally goes on voluntary recess between February and June considering that many of the members of the House of Representatives and the Senate run for re-election. In 2001, the Eleventh Congress adjourned from January 9, 2001 to June 3, 2001. Concededly, there was no more time for Benipayo, Borra and Tuason, who were originally extended ad interim appointments only on March 22, 2001, to be confirmed by the Commission on Appointments before the May 14, 2001 elections.

If Benipayo, Borra and Tuason were not extended ad interim appointments to fill up the three vacancies in the COMELEC, there would only have been one division functioning in the COMELEC instead of two during the May 2001 elections. Considering that the Constitution requires that “all x x x election cases shall be heard and decided in division,” the remaining one division would have been swamped with election cases. Moreover, since under the Constitution motions for reconsideration “shall be decided by the Commission en banc”, the mere absence of one of the four remaining members would have prevented a quorum, a less than ideal situation considering that the Commissioners are expected to travel around the country before, during and after the elections. There was a great probability that disruptions in the conduct of the May 2001 elections could occur because of the three vacancies in the COMELEC. The successful conduct of the May 2001 national elections, right after the tumultuous EDSA II and EDSA III events, was certainly essential in safeguarding and strengthening our democracy.

Evidently, the exercise by the President in the instant case of her constitutional power to make ad interim appointments prevented the occurrence of the very evil sought to be avoided by the second paragraph of Section 16, Article VII of the Constitution. This power to make ad interim appointments is lodged in the President to be exercised by her in her sound judgment. Under the second paragraph of Section 16, Article VII of the Constitution, the President can choose either of two modes in appointing officials who are subject to confirmation by the Commission on Appointments. First, while Congress is in session, the President may nominate the prospective appointee, and pending consent of the Commission on Appointments, the nominee cannot qualify and assume office. Second, during the recess of Congress, the President may extend an ad interim appointment which allows the appointee to immediately qualify and assume office.

Whether the President chooses to nominate the prospective appointee or extend an ad interim appointment is a matter within the prerogative of the President because the Constitution grants her that power. This Court cannot inquire into the propriety of the choice made by the President in the exercise of her constitutional power, absent grave abuse of discretion amounting to lack or excess of jurisdiction on her part, which has not been shown in the instant case.

The issuance by Presidents of ad interim appointments to the COMELEC is a long-standing practice. X x x

The President’s power to extend ad interim appointments may indeed briefly put the appointee at the mercy of both the appointing and confirming powers. This situation, however, in only for a short period – from the time of issuance of the ad interim appointment until the Commission on Appointments gives or withholds its consent. The Constitution itself sanctions this situation, as a trade-off against the evil of disruptions in vital government services. This is also part of the check-and-balance under the separation of powers, as a trade-off against the evil of granting the President absolute and sole power to appoint. The Constitution has wisely subjected the President’s appointing power to the checking power of the legislature.

This situation, however, does not compromise the independence of the COMELEC as a constitutional body. The vacancies in the COMELEC are precisely staggered to insure that the majority of its members hold confirmed appointments, and no one President will appoint all the COMELEC members. X x x. The special constitutional safeguards that insure the independence of the COMELEC remain in place (See Sections, 3, 4, 5 and 6, Article IX-A of the Constitution).

In fine, we rule that the ad interim appointments extended by the President to Benipayo, Borra and Tuason, as COMELEC Chairman and Commissioners, respectively, do not constitute temporary or acting appointments prohibited by Section 1 (2), Article IX-C of the Constitution.***(Matibag v. Benipayo, 380 SCRA 49, April 2, 2002, En Banc [Carpio])***

*90. Does the renewal of ad interim appointments violate the prohibition on reappointment under Section 1(2), Article IX-C of the 1987 Constitution?*

**Held:** Petitioner also argues that assuming the first *ad interim* appointment and the first assumption of office of Benipayo, Borra and Tuason are constitutional, the renewal of their *ad interim* appointments and their subsequent assumption of office to the same positions violate the prohibition on reappointment under Section 1 (2), Article IX-C of the Constitution, which provides as follows:

“The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years *without reappointment.* Of those first appointed, three Members shall hold office for seven years, two Members for five years, and the last Members for three years, *without reappointment.”*

Petitioner theorizes that once an *ad interim* appointee is by-passed by the Commission on Appointments, his *ad interim* appointment can no longer be renewed because this will violate Section 1 (2), Article IX-C of the Constitution which prohibits reappointments. Petitioner asserts that this is particularly true to permanent appointees who have assumed office, which is the situation of Benipayo, Borra and Tuason if their *ad interim* appointments are deemed permanent in character.

There is no dispute that an *ad interim* appointee disapproved by the Commission on Appointments can no longer be extended a new appointment. The disapproval is a final decision of the Commission on Appointments in the exercise of its checking power on the appointing authority of the President. The disapproval is a decision on the merits, being a refusal by the Commission on Appointments to give its consent after deliberating on the qualifications of the appointee. Since the Constitution does not provide for any appeal from such decision, the disapproval is final and binding on the appointee as well as on the appointing power. In this instance, the President can no longer renew the appointment not because of the constitutional prohibition on appointment, but because of a final decision by the Commission on Appointments to withhold its consent to the appointment.

An *ad interim* appointment that is by-passed because of lack of time or failure of the Commission on Appointments to organize is another matter. A by-passed appointment is one that has not been finally acted upon on the merits by the Commission on Appointments at the close of the session of Congress. There is no final decision by the Commission on Appointments to give or withhold its consent to the appointment as required by the Constitution. Absent such decision, the President is free to renew the *ad interim* appointment of a by-passed appointee. This is recognized in Section 17 of the Rules of the Commission on Appointments x x x. Hence, under the Rules of the Commission on Appointments, a by-passed appointment can be considered again if the President renew the appointment.

It is well-settled in this jurisdiction that the President can renew the *ad interim* appointments of by-passed appointees. Justice Roberto Concepcion, Jr. lucidly explained in his concurring opinion in *Guevarra v. Inocentes (Supra, note 34)* why by-passed *ad interim* appointees could be extended new appointments, thus:

“In short, an *ad interim* appointment ceases to be effective upon disapproval by the Commission, because the incumbent can not continue holding office over the positive objection of the Commission. It ceases, also, upon “the next adjournment of the Congress”, simply because the President may then issue new appointments – not because of implied disapproval of the Commission deduced from its intention during the session of Congress, for, under the Constitution, the Commission may affect adversely the interim appointments only by action, never by omission. If the adjournment of Congress were an implied disapproval of *ad interim* appointments made prior thereto, then the President could no longer appoint those so by-passed by the Commission. But, *the fact is that the President may reappoint them,* thus clearly indicating that the reason for said termination of the *ad interim* appointments is not the disapproval thereof allegedly inferred from said omission of the Commission, but the circumstance that *upon said adjournment of the Congress, the President is free to make ad interim appointments or reappointments.”*

*Guevarra* was decided under the 1935 Constitution from where the second paragraph of Section 16, Article VII of the present Constitution on *ad interim* appointments was lifted *verbatim.* The jurisprudence under the 1935 Constitution governing *ad interim* appointments by the President is doubtless applicable to the present Constitution. The established practice under the present Constitution is that the President can renew the appointments of by-passed *ad interim* appointees. This is a continuation of the well-recognized practice under the 1935 Constitution, interrupted only by the 1973 Constitution which did not provide for a Commission on Appointments but vested sole appointing power in the President.

The prohibition on reappointment in Section 1 (2), Article IX-C of the Constitution applies neither to disapproval nor by-passed *ad interim* appointments. A disapproved *ad interim* appointment cannot be revived by another *ad interim* appointment because the disapproval is final under Section 16, Article VII of the Constitution, and not because a reappointment is prohibited under Section 1 (2), Article IX-C of the Constitution. A by-passed *ad interim* appointment cannot be revived by a new *ad interim* appointment because there is no final disapproval under Section 16, Article VII of the Constitution, and such new appointment will not result in the appointee serving beyond the fixed term of seven years.

Section 1 (2), Article IX-C of the Constitution provides that “[t]he Chairman and the Commissioners shall be appointed x x x *for a term of seven years without reappointment.*” There are four situations where this provision will apply. The first situation is where an *ad interim* appointee to the COMELEC, after confirmation by the Commission on Appointments, serves his full seven-year term. Such person cannot be reappointed to the COMELEC, whether as a member or as a chairman, because he will then be actually serving more than seven years. The second situation is where the appointee, after confirmation, serves a part of his term and then resigns before his seven-year term of office ends. Such person cannot be reappointed, whether as a member or as a chair, to a vacancy arising from retirement because a reappointment will result in the appointee also serving more than seven years. The third situation is where the appointee is confirmed to serve the unexpired term of someone who died or resigned, and the appointee completes the unexpired term. Such person cannot be reappointed, whether as a member or chair, to a vacancy arising from retirement because a reappointment will result in the appointee also serving more than seven years.

The fourth situation is where the appointee has previously served a term of less than seven years, and a vacancy arises from death or resignation. Even if it will not result in his serving more than seven years, a reappointment of such person to serve an unexpired term is also prohibited because his situation will be similar to those appointed under the second sentence of Section 1 (2), Article IX-C of the Constitution. This provision refers to the first appointees under the Constitution whose terms of office are less than seven years, but are barred from ever being reappointed under any situation. *Not one of these four situations applies to the case of Benipayo, Borra and Tuason.*

The framers of the Constitution made it quite clear that any person who has served any term of office as COMELEC member – whether for a full term of seven years, a truncated term of five or three years, or even an unexpired term for any length of time – can no longer be reappointed to the COMELEC. X x x

X x x

In *Visarra v. Miraflor (8 SCRA 1 [1963])*, Justice Angelo Bautista, in his concurring opinion, quoted *Nacionalista v. De Vera (85 Phil. 126 [1949])* that a [r]eappointment is not prohibited when a Commissioner has held, office only for, say, three or six years, provided his term will not exceed nine years in all.” This was the interpretation despite the express provision in the 1935 Constitution that a COMELEC member “shall hold office for a term of nine years and may not be reappointed.”

To foreclose this interpretation, the phrase “without reappointment” appears twice in Section 1 (2), Article IX-C of the present Constitution. The first phrase prohibits reappointment of any person previously appointed for a term of seven years. The second phrase prohibits reappointment of any person previously appointed for a term of five or three years pursuant to the first set of appointees under the Constitution. In either case, it does not matter if the person previously appointed completes his term of office for the intention is to prohibit any reappointment of any kind.

However, an *ad interim* appointment that has lapsed by inaction of the Commission on Appointments does not constitute a term of office. The period from the time the *ad interim* appointment is made to the time it lapses is neither a fixed term nor an unexpired term. To hold otherwise would mean that the President by his unilateral action could start and complete the running of a term of office in the COMELEC without the consent of the Commission on Appointments. This interpretation renders inutile the confirming power of the Commission on Appointments.

The phrase “without reappointment” applies only to one who has been appointed by the President and confirmed by the Commission on Appointments, whether or not such person completes his term of office. There must be a confirmation by the Commission on Appointments of the previous appointment before the prohibition on reappointment can apply. To hold otherwise will lead to absurdities and negate the President’s power to make *ad interim* appointments.

In the great majority of cases, the Commission on Appointments usually fails to act, for lack of time, on the *ad interim* appointments first issued to appointees. If such *ad interim* appointments can no longer be renewed, the President will certainly hesitate to make *ad interim* appointments because most of her appointees will effectively be disapproved by mere inaction of the Commission on Appointments. This will nullify the constitutional power of the President to make *ad interim* appointments, a power intended to avoid disruptions in vital government services. This Court cannot subscribe to a proposition that will wreak havoc on vital government services.

The prohibition on reappointment is common to the three constitutional commissions. The framers of the present Constitution prohibited reappointments for two reasons. The first is to prevent a second appointment for those who have been previously appointed and confirmed even if they served for less than seven years. The second is to insure that the members of the three constitutional commissions do not serve beyond the fixed term of seven years. X x x.

X x x

Plainly, the prohibition on reappointment is intended to insure that there will be no reappointment of any kind. On the other hand, the prohibition on temporary or acting appointments is intended to prevent any circumvention of the prohibition on reappointment that may result in an appointee’s total term of office exceeding seven years. The evils sought to be avoided by the twin prohibitions are very specific – reappointment of any kind and exceeding one’s term in office beyond the maximum period of seven years.

Not contented with these ironclad twin prohibitions, the framers of the Constitution tightened even further the screws on those who might wish to extend their terms of office. Thus, the word “designated” was inserted to plug any loophole that might be exploited by violators of the Constitution x x x.

The *ad interim* appointments and subsequent renewals of appointments of Benipayo, Borra and Tuason do not violate the prohibition on reappointments because there were no previous appointments that were confirmed by the Commission on Appointments. A reappointment presupposes a previous confirmed appointment. The same *ad interim* appointments and renewal of appointments will also not breach the seven-year term limit because *all the appointments and renewals of appointments of Benipayo, Borra and Tuason are for a fixed term expiring on February 2, 2008.* Any delay in their confirmation will not extend the expiry date of their terms of office. Consequently, there is no danger whatsoever that the renewal of the *ad interim* appointments of these three respondents will result in any of the evils intended to be exorcised by the twin prohibitions in the Constitution. The continuing renewal of the *ad interim* appointment of these three respondents, for so long as their terms of office expire on February 2, 2008, does not violate the prohibition on reappointments in Section 1 (2), Article IX-C of the Constitution. ***(Matibag v. Benipayo, 380 SCRA 49, April 2, 2002, En Banc [Carpio])***

91. Ma. Evelyn S. Abeja was a municipal mayor. She ran for reelection but lost. Before she vacated her office, though, she extended permanent appointments to fourteen new employees of the municipal government. The incoming mayor, upon assuming office, recalled said appointments contending that these were “midnight appointments” and, therefore, prohibited under Sec. 15, Art. VII of the 1987 Constitution. Should the act of the new mayor of recalling said appointments on the aforestated ground be sustained?

**Held:** The records reveal that when the petitioner brought the matter of recalling the appointments of the fourteen (14) private respondents before the CSC, the only reason he cited to justify his action was that these were “midnight appointments” that are forbidden under Article VII, Section 15 of the Constitution. However, the CSC ruled, and correctly so, that the said prohibition applies only to presidential appointments. In truth and in fact, there is no law that prohibits local elective officials from making appointments during the last days of his or her tenure. ***(De Rama v. Court of Appeals (353 SCRA 94, Feb. 28, 2001, En Banc [Ynares-Santiago])***

*92. Distinguish the President’s power to call out the armed forces as their Commander-in-Chief in order to prevent or suppress lawless violence, invasion or rebellion, from his power to proclaim martial and suspend the privilege of the writ of habeas corpus. Explain why the former is not subject to judicial review while the latter two are.*

**Held:** There is a clear textual commitment under the Constitution to bestowon the President full discretionary power to call out the armed forces and to determine the necessity for the exercise of such power. Section 18, Article VII of the Constitution, which embodies the powers of the President as Commander-in-Chief, provides in part:

The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus,* or place the Philippines or any part thereof under martial law.

The full discretionary power of the President to determine the factual basis for the exercise of the calling out power is also implied and further reinforced in the rest of Section 18, Article VII x x x.

Under the foregoing provisions, Congress may revoke such proclamations (of martial law) or suspension (of the privilege of the writ of *habeas corpus*) and the Court may review the sufficiency of the factual basis thereof. However, there is no such equivalent provision dealing with the revocation or review of the President's action to call out the armed forces. The distinction places the calling out power in a different category from the power to declare martial law and the power to suspend the privilege of the writ of *habeas corpus,* otherwise, the framers of the Constitution would have simply lumped together the three powers and provided for their revocation and review without any qualification. *Expressio unios est exclusio alterius.*  X x x. That the intent of the Constitution is exactly what its letter says, *i.e.*, that the power to call is fully discretionary to the President, is extant in the deliberation of the Constitutional Commission x x x.

The reason for the difference in the treatment of the aforementioned powers highlights the intent to grant the President the widest leeway and broadest discretion in using the power to call out because it is considered as the lesser and more benign power compared to the power to suspend the privilege of the writ of *habeas corpus* and the power to impose martial law, both of which involve the curtailment and suppression of certain basic civil rights and individual freedoms, and thus necessitating safeguards by Congress and review by this Court.

Moreover, under Section 18, Article VII of the Constitution, in the exercise of the power to suspend the privilege of the writ of *habeas corpus* or to impose martial law, two conditions must concur: (1) there must be an actual invasion or rebellion and, (2) public safety must require it. These conditions are not required in the case of the power to call out the armed forces. The only criterion is that "whenever it becomes necessary," the President may call the armed forces "to prevent or suppress lawless violence, invasion or rebellion." The implication is that the President is given full discretion and wide latitude in the exercise of the power to call as compared to the two other powers.

If the petitioner fails, by way of proof, to support the assertion that the President acted without factual basis, then this Court cannot undertake an independent investigation beyond the pleadings. The factual necessity of calling out the armed forces is not easily quantifiable and cannot be objectively established since matters considered for satisfying the same is a combination of several factors which are not always accessible to the courts. Besides the absence of textual standards that the court may use to judge necessity, information necessary to arrive at such judgment might also prove unmanageable for the courts. Certain pertinent information might be difficult to verify, or wholly unavailable to the courts. In many instances, the evidence upon which the President might decide that there is a need to call out the armed forces may be of a nature not constituting technical proof.

On the other hand, the President as Commander-in-Chief has a vast intelligence network to gather information, some of which may be classified as highly confidential or affecting the security of the state. In the exercise of the power to call, on-the-spot decisions may be imperatively necessary in emergency situations to avert great loss of human lives and mass destruction of property. Indeed, the decision to call out the military to prevent or suppress lawless violence must be done swiftly and decisively if it were to have any effect at all. Such a scenario is not farfetched when we consider the present situation in Mindanao, where the insurgency problem could spill over the other parts of the country. The determination of the necessity for the calling out power if subjected to unfettered judicial scrutiny could be a veritable prescription for disaster, as such power may be unduly straitjacketed by an injunction or a temporary restraining order every time it is exercised.

Thus, it is the unclouded intent of the Constitution to vest upon the President, as Commander-in-Chief of the Armed Forces, full discretion to call forth the military when in his judgment it is necessary to do so in order to prevent or suppress lawless violence, invasion or rebellion. Unless the petitioner can show that the exercise of such discretion was gravely abused, the President's exercise of judgment deserves to be accorded respect from this Court.***(Integrated Bar of the Philippines v. Hon. Ronaldo B. Zamora, G.R. No. 141284, Aug. 15, 2000, En Banc [Kapunan])***

*93. By issuing a TRO on the date convicted rapist Leo Echegaray is to be executed by lethal injection, the Supreme Court was criticized on the ground, among others, that it encroached on the power of the President to grant reprieve under Section 19, Article VII, 1987 Constitution. Justify the SC's act.*

**Held:** Section 19, Article VII of the 1987 Constitution is *simply the source of power* of the President to grant reprieves, commutations, and pardons and remit fines and forfeitures after conviction by final judgment. This provision, however, cannot be interpreted as denying the power of courts to control the enforcement of their decisions after the finality. In truth, an accused who has been convicted by final judgment still possesses collateral rights and these rights can be claimed in the appropriate courts. For instance, a death convict who becomes insane after his final conviction cannot be executed while in a state of insanity *(See Article 79 of the Revised Penal Code).* The suspension of such a death sentence is undisputably an exercise of judicial power. It is not usurpation of the presidential power of reprieve though its effect is the same – the temporary suspension of the execution of the death convict. In the same vein, it cannot be denied that Congress can at any time amend R.A. No. 7659 by reducing the penalty of death to life imprisonment. The effect of such an amendment is like that of commutation of sentence. But by no stretch of the imagination can the exercise by Congress of its plenary power to amend laws be considered as a violation of the President’s power to commute final sentences of conviction. *The powers of the Executive, the Legislative and the Judiciary to save the life of a death convict do not exclude each other for the simple reason that there is no higher right than the right to life.* ***(Echegaray v. Secretary of Justice, 301 SCRA 96, Jan. 19, 1999, En Banc [Puno])***

*94. Discuss the nature of a conditional pardon. Is its grant or revocation by the President subject to judicial review?*

**Held:** A conditional pardon is in the nature of a contract between the sovereign power or the Chief Executive and the convicted criminal to the effect that the former will release the latter subject to the condition that if he does not comply with the terms of the pardon, he will be recommitted to prison to serve the unexpired portion of the sentence or an additional one *(Alvarez v. Director of Prisons, 80 Phil. 50).* By the pardonee’s consent to the terms stipulated in this contract, the pardonee has thereby placed himself under the supervision of the Chief Executive or his delegate who is duty-bound to see to it that the pardonee complies with the terms and conditions of the pardon. Under Section 64(i) of the Revised Administrative Code, the Chief Executive is authorized to order “the arrest and re-incarceration of any such person who, in his judgment, shall fail to comply with the condition, or conditions of his pardon, parole, or suspension of sentence.” It is now a well-entrenched rule in this jurisdiction that this exercise of presidential judgment is beyond judicial scrutiny. The determination of the violation of the conditional pardon rests exclusively in the sound judgment of the Chief Executive, and the pardonee, having consented to place his liberty on conditional pardon upon the judgment of the power that has granted it, cannot invoke the aid of the courts, however erroneous the findings may be upon which his recommitment was ordered.

It matters not that the pardonee has allegedly been acquitted in two of the three criminal cases filed against him subsequent to his conditional pardon, and that the third remains pending for thirteen (13) years in apparent violation of his right to a speedy trial.

Ultimately, solely vested in the Chief Executive, who in the first place was the exclusive author of the conditional pardon and of its revocation, is the corollary prerogative to reinstate the pardon if in his own judgment, the acquittal of the pardonee from the subsequent charges filed against him, warrants the same. Courts have no authority to interfere with the grant by the President of a pardon to a convicted criminal. It has been our fortified ruling that a final judicial pronouncement as to the guilt of a pardonee is not a requirement for the President to determine whether or not there has been a breach of the terms of a conditional pardon. There is likewise nil a basis for the courts to effectuate the reinstatement of a conditional pardon revoked by the President in the exercise of powers undisputably solely and absolutely in his office. ***(In Re: Wilfredo Sumulong Torres, 251 SCRA 709, Dec. 29, 1995 [Hermosisima])***

*95. Who has the power to ratify a treaty?*

**Held:** In our jurisdiction, the power to ratify is vested in the President and not, as commonly believed, in the legislature. The role of the Senate is limited only to giving or withholding its consent, or concurrence, to the ratification*.* ***(BAYAN [Bagong Alyansang Makabayan] v. Executive Secretary Ronaldo Zamora, G.R. No. 138570, Oct. 10, 2000, En Banc [Buena])***

*96. What is the power of impoundment of the President? What are its principal sources?*

**Held:** Impoundment refers to the refusal of the President, for whatever reason, to spend funds made available by Congress. It is the failure to spend or obligate budget authority of any type.

Proponents of impoundment have invoked at least three principal sources of the authority of the President. Foremost is the authority to impound given to him either expressly or impliedly by Congress. Second is the executive power drawn from the President’s role as Commander-in-Chief. Third is the Faithful Execution Clause.

The proponents insist that a faithful execution of the laws requires that the President desist from implementing the law if doing so would prejudice public interest. An example given is when through efficient and prudent management of a project, substantial savings are made. In such a case, it is sheer folly to expect the President to spend the entire amount budgeted in the law. ***(PHILCONSA v. Enriquez, 235 SCRA 506, Aug. 9, 1994 [Quiason])***

*97. Distinguish the President’s power of general supervision over local governments from his control power.*

**Held:** On many occasions in the past, this Court has had the opportunity to distinguish the power of supervision from the power of control. In *Taule v. Santos (200 SCRA 512 [1991])*, we held that the Chief Executive wielded no more authority than that of checking whether a local government or the officers thereof perform their duties as provided by statutory enactments. He cannot interfere with local governments provided that the same or its officers act within the scope of their authority. Supervisory power, when contrasted with control, is the power of mere oversight over an inferior body; it does not include any restraining authority over such body (Ibid.). Officers in control lay down the rules in the doing of an act. If they are not followed, it is discretionary on his part to order the act undone or redone by his subordinate or he may even decide to do it himself. Supervision does not cover such authority. Supervising officers merely see to it that the rules are followed, but he himself does not lay down such rules, nor does he have the discretion to modify or replace them. If the rules are not observed, he may order the work done or re-done to conform to the prescribed rules. He cannot prescribe his own manner for the doing of the act *(Drilon v. Lim, supra, 142)*.***(Bito-Onon v. Fernandez, 350 SCRA 732, Jan. 31, 2001, 3rd Div. [Gonzaga-Reyes])***

*98. Is the absence of a recommendation of the Secretary of Justice to the President fatal to the appointment of respondent as prosecutor?*

**Held:** This question would x x x pivot on the proper understanding of the provision of the Revised Administrative Code of 1987 *(Book IV, Title III, Chapter II, Section 9)* to the effect that –

“All provincial and city prosecutors and their assistants shall be appointed by the President upon the recommendation of the Secretary.”

Petitioners contend that an appointment of a provincial prosecutor mandatorily requires a prior recommendation of the Secretary of Justice endorsing the intended appointment citing, by analogy, the case of *San Juan v. CSC (196 SCRA 69)* x x x.

When the Constitution or the law clothes the President with the power to appoint a subordinate officer, such conferment must be understood as necessarily carrying with it an ample discretion of whom to appoint. It should be here pertinent to state that the President is the head of government whose authority includes the power of control over all “executive departments, bureaus and offices.” Control means the authority of an empowered officer to alter or modify, or even nullify or set aside, what a subordinate officer has done in the performance of his duties, as well as to substitute the judgment of the latter, as and when the former deems it to be appropriate. Expressed in another way, the President has the power to assume directly the functions of an executive department, bureau and office. It can accordingly be inferred therefrom that the President can interfere in the exercise of discretion of officials under him or altogether ignore their recommendations.

It is the considered view of the Court, given the above disquisition, that the phrase *“upon recommendation of the Secretary,”* found in Section 9, Chapter II, Title III, Book IV, of the Revised Administrative Code, should be interpreted, as it is normally so understood, to be a mere advise, exhortation or indorsement, which is essentially persuasive in character and not binding or obligatory upon the party to whom it is made. The recommendation is here nothing really more than advisory in nature. The President, being the head of the Executive Department, could very well disregard or do away with the action of the departments, bureaus or offices even in the exercise of discretionary authority, and in so opting, he cannot be said as having acted beyond the scope of his authority.

The doctrine in *San Juan,* relied upon by petitioners, is tangential. While the tenor of the legal provision in Executive Order No. 112 has some similarity with the provision in the 1987 Administrative Code in question, it is to be pointed out, however, that *San Juan (196 SCRA 69),* in construing the law, has distinctively given stress to the constitutional mandate on local autonomy; x x x. The Court there has explained that the President merely exercises general supervision over local government units and local officials *(Section 4, Article X, Constitution);* hence, in the appointment of a Provincial Budget Officer, the executive department, through the Secretary of Budget and Management, indeed had to share the questioned power with the local government.

In the instant case, the recommendation of the Secretary of Justice and the appointment of the President are acts of the Executive Department itself, and there is no sharing of power to speak of, the latter being deemed for all intents and purposes as being merely an extension of the personality of the President. ***(Bermudez v. Executive Secretary Ruben Torres, G.R. No. 131429, Aug. 4, 1999, 3rd Div. [Vitug])***

*99. Discuss the three distinct powers of the President under Section 18, Art. VII of the 1987 Constitution. Are they subject to judicial review, or are they political questions?*

**Ans.:** There are three distinct powers of the President under Sec. 18, Art. VII of the Constitution, to wit: 1) her calling out power, as Commander-in-Chief of the Armed Forces; 2) her martial law power; and 3) her power to suspend the privilege of the writ of habeas corpus.

Her martial law power and her power to suspend the privilege of the writ of habeas corpus are subject to judicial review as expressly provided under Sec. 18, Art. VII of the 1987 Constitution because these two are the greater powers, compared with her calling out power, as they involve the curtailment and suppression of certain basic civil rights and individual freedoms *(IBP v. Zamora, G.R. No. 141284, Aug. 15, 2000, En Banc [Kapunan]).*

Her calling out power is a political question and not subject to judicial power as this is the lesser and more benign of the three powers under Sec. 18, Art. VII of the 1987 Constitution *(IBP v. Zamora, G.R. No. 141284, Aug. 15, 2000, En Banc [Kapunan]).*It is a question in regard to which full discretionary authority has been delegated by the Constitution to the President, as their Commander-in-Chief, to call out the armed forces whenever she deems it necessary in order to prevent or suppress lawless violence, invasion, or rebellion. To subject such calling out power to unfettered judicial scrutiny could be a veritable prescription for disaster as such power may be unduly straitjacketed by an injunction or a TRO every time it is exercised.

Unless it can be shown that the exercise of such discretion to call out the armed forces was gravely abused, the President’s exercise of judgment deserves to be accorded respect from the Court. And the burden to show that the President gravely abused her discretion in calling out the armed forces to prevent or suppress lawless violence, invasion, or rebellion, lies

**The Judicial Department**

*100. What are the requisites before the Court can exercise the power of judicial review?*

**Held:** 1.The time-tested standards for the exercise of judicial review are: (1) the existence of an appropriate case; (2) an interest personal and substantial by the party raising the constitutional question; (3) the plea that the function be exercised at the earliest opportunity; and (4) the necessity that the constitutional question be passed upon in order to decide the case ***(Separate Opinion, Kapunan, J., in Isagani Cruz v. Secretary of Environment and Natural Resources, et al., G.R. No. 135385, Dec. 6, 2000, En Banc).***

2. When questions of constitutional significance are raised, the Court can exercise its power of judicial review only if the following requisites are complied with, namely: (1) the existence of an actual and appropriate case; (2) a personal and substantial interest of the party raising the constitutional question; (3) the exercise of judicial review is pleaded at the earliest opportunity; and (4) the constitutional question is the *lis mota* of the case*.* ***(Integrated Bar of the Philippines v. Hon. Ronaldo B. Zamora, G.R. No. 141284, Aug. 15, 2000, En Banc [Kapunan])***

*101. What is an "actual case or controversy"?*

**Held:** An "actual case or controversy" means an existing case or controversy which is both ripe for resolution and susceptible of judicial determination, and that which is not conjectural or anticipatory, or that which seeks to resolve hypothetical or feigned constitutional problems. A petition raising a constitutional question does not present an "actual controversy," unless it alleges a legal right or power. Moreover, it must show that a conflict of rights exists, for inherent in the term "controversy" is the presence of opposing views or contentions*.* Otherwise, the Court will be forced to resolve issues which remain unfocused because they lack such concreteness provided when a question emerges precisely framed from a clash of adversary arguments exploring every aspect of a multi-faceted situation embracing conflicting and demanding interests. The controversy must also be justiciable; that is, it must be susceptible of judicial determination*.* ***(Integrated Bar of the Philippines v. Hon. Ronaldo B. Zamora, G.R. No. 141284, Aug. 15, 2000, En Banc [Kapunan])***

*102. Petitioners Isagani Cruz and Cesar Europa brought a suit for prohibition and mandamus as citizens and taxpayers, assailing the constitutionality of certain provisions of Republic Act No. 8371, otherwise known as the Indigenous Peoples Rights Act of 1997 (IPRA), and its Implementing Rules and Regulations. A preliminary issue resolved by the SC was whether the petition presents an actual controversy.*

**Held:** Courts can only decide actual controversies, not hypothetical questions or cases*.* The threshold issue, therefore, is whether an "appropriate case" exists for the exercise of judicial review in the present case.

X x x

In the case at bar, there exists a live controversy involving a clash of legal rights. A law has been enacted, and the Implementing Rules and Regulations approved. Money has been appropriated and the government agencies concerned have been directed to implement the statute. It cannot be successfully maintained that we should await the adverse consequences of the law in order to consider the controversy actual and ripe for judicial resolution. It is precisely the contention of the petitioners that the law, on its face, constitutes an unconstitutional abdication of State ownership over lands of the public domain and other natural resources. Moreover, when the State machinery is set into motion to implement an alleged unconstitutional statute, this Court possesses sufficient authority to resolve and prevent imminent injury and violation of the constitutional process. ***(Separate Opinion, Kapunan, J., in Isagani Cruz v. Secretary of Environment and Natural Resources, et al., G.R. No. 135385, Dec. 6, 2000, En Banc)***

*103. What is the meaning of "legal standing" or locus standi?*

**Held:** "Legal standing" or *locus standi* has been defined as a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged*.* The term "interest" means a material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest*.*  The gist of the question of standing is whether a party alleges "such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions." ***(Integrated Bar of the Philippines v. Hon. Ronaldo B. Zamora, G.R. No. 141284, Aug. 15, 2000)***

In addition to the existence of an actual case or controversy, a person who assails the validity of a statute must have a personal and substantial interest in the case, such that, he has sustained, or will sustain, a direct injury as a result of its enforcement*.*  Evidently, the rights asserted by petitioners as citizens and taxpayers are held in common by all the citizens, the violation of which may result only in a "generalized grievance"*.* Yet, in a sense, all citizen's and taxpayer's suits are efforts to air generalized grievances about the conduct of government and the allocation of power. ***(Separate Opinion, Kapunan, J., in Isagani Cruz v. Secretary of Environment and Natural Resources, et al., G.R. No. 135385, Dec. 6, 2000, En Banc)***

*104. Asserting itself as the official organization of Filipino lawyers tasked with the bounden duty to uphold the rule of law and the Constitution, the Integrated Bar of the Philippines (IBP) filed a petition before the SC questioning the validity of the order of the President commanding the deployment and utilization of the Philippine Marines to assist the Philippine National Police (PNP) in law enforcement by joining the latter in visibility patrols around the metropolis. The Solicitor General questioned the legal standing of the IBP to file the petition? Resolve.*

**Held:** In the case at bar, the IBP primarily anchors its standing on its alleged responsibility to uphold the rule of law and the Constitution. Apart from this declaration, however, the IBP asserts no other basis in support of its *locus standi.* The mere invocation by the IBP of its duty to preserve the rule of law and nothing more, while undoubtedly true, is not sufficient to clothe it with standing in this case. This is too general an interest which is shared by other groups and the whole citizenry. Based on the standards above-stated, the IBP has failed to present a specific and substantial interest in the resolution of the case. Its fundamental purpose which, under Section 2, Rule 139-A of the Rules of Court, is to elevate the standards of the law profession and to improve the administration of justice is alien to, and cannot be affected by the deployment of the Marines. x x x Moreover, the IBP x x x has not shown any specific injury which it has suffered or may suffer by virtue of the questioned governmental act. Indeed, none of its members, whom the IBP purportedly represents, has sustained any form of injury as a result of the operation of the joint visibility patrols. Neither is it alleged that any of its members has been arrested or that their civil liberties have been violated by the deployment of the Marines. What the IBP projects as injurious is the supposed "militarization" of law enforcement which might threaten Philippine democratic institutions and may cause more harm than good in the long run. Not only is the presumed "injury" not personal in character, it is likewise too vague, highly speculative and uncertain to satisfy the requirement of standing. Since petitioner has not successfully established a direct and personal injury as a consequence of the questioned act, it does not possess the personality to assail the validity of the deployment of the Marines. This Court, however, does not categorically rule that the IBP has absolutely no standing to raise constitutional issues now or in the future. The IBP must, by way of allegations and proof, satisfy this Court that it has sufficient stake to obtain judicial resolution of the controversy. ***(Integrated Bar of the Philippines v. Hon. Ronaldo B. Zamora, G.R. No. 141284, Aug. 15, 2000, En Banc [Kapunan])***

*105. Considering the lack of requisite standing of the IBP to file the petition questioning the validity of the order of the President to deploy and utilize the Philippine Marines to assist the PNP in law enforcement, may the Court still properly take cognizance of the case?*

**Held:** Having stated the foregoing, it must be emphasized that this Court has the discretion to take cognizance of a suit which does not satisfy the requirement of legal standing when paramount interest is involved*.* In not a few cases, the Court has adopted a liberal attitude on the *locus standi* of a petitioner where the petitioner is able to craft an issue of transcendental significance to the people*.*  Thus, when the issues raised are of paramount importance to the public, the Court may brush aside technicalities of procedure*.* In this case, a reading of the petition shows that the IBP has advanced constitutional issues which deserve the attention of this Court in view of their seriousness, novelty and weight as precedents. Moreover, because peace and order are under constant threat and lawless violence occurs in increasing tempo, undoubtedly aggravated by the Mindanao insurgency problem, the legal controversy raised in the petition almost certainly will not go away. It will stare us in the face again. It, therefore, behooves the Court to relax the rules on standing and to resolve the issue now, rather than later. ***(Integrated Bar of the Philippines v. Hon. Ronaldo B. Zamora, G.R. No. 141284, Aug. 15, 2000)***

*106. What are the requisites for the proper exercise of the power of judicial review? Illustrative case.*

**Held:** Respondents assert that the petition fails to satisfy all the four requisites before this Court may exercise its power of judicial review in constitutional cases. Out of respect for the acts of the Executive department, which is co-equal with this Court, respondents urge this Court to refrain from reviewing the constitutionality of the *ad interim* appointments issued by the President to Benipayo, Borra and Tuason unless all the four requisites are present. X x x

Respondents argue that the second, third and fourth requisites are absent in this case. Respondents maintain that petitioner does not have a personal and substantial interest in the case because she has not sustained a direct injury as a result of the *ad interim* appointments of Benipayo, Borra and Tuason and their assumption of office. Respondents point out that petitioner does not claim to be lawfully entitled to any of the positions assumed by Benipayo, Borra or Tuason. Neither does petitioner claim to be directly injured by the appointments of these three respondents.

Respondents also contend that petitioner failed to question the constitutionality of the *ad interim* appointments at the earliest opportunity. Petitioner filed the petition only on August 3, 2001 despite the fact that the *ad interim* appointments of Benipayo, Borra and Tuason were issued as early as March 22, 2001. Moreover, the petition was filed after the third time that these three respondents were issued *ad interim* appointments.

Respondents insist that the real issue in this case is the legality of petitioner’s reassignment from the EID to the Law Department. Consequently, the constitutionality of the *ad interim* appointments is not the *lis mota* of this case.

We are not persuaded.

Benipayo reassigned petitioner from the EID, where she was Acting Director, to the Law Department, where she was placed on detail. Respondents claim that the reassignment was *“pursuant to x x x Benipayo’s authority as Chairman of the Commission on Elections, and as the Commission’s Chief Executive Officer.”* Evidently, respondents’ anchor the legality of petitioner’s reassignment on Benipayo’s authority as Chairman of the COMELEC. The real issue then turns on whether or not Benipayo is the lawful Chairman of the COMELEC. Even if petitioner is only an Acting director of the EID, her reassignment is without legal basis if Benipayo is not the lawful COMELEC Chairman, an office created by the Constitution.

On the other hand, if Benipayo is the lawful COMELEC Chairman because he assumed office in accordance with the Constitution, then petitioner’s reassignment is legal and she has no cause to complain provided the reassignment is in accordance with the Civil Service Law. Clearly, petitioner has a personal and material stake in the resolution of the constitutionality of Benipayo’s assumption of office. Petitioner’s personal and substantial injury, if Benipayo is not the lawful COMELEC Chairman, clothes her with the requisite *locus standi* to raise the constitutional issue in this petition.

Respondents harp on petitioner’s belated act of questioning the constitutionality of the *ad interim* appointments of Benipayo, Borra and Tuason. Petitioner filed the instant petition only on August 3, 2001, when the first *ad interim* appointments were issued as early as March 22, 2001. However, it is not the date of filing of the petition that determines whether the constitutional issue was raised at the earliest opportunity. The earliest opportunity to raise a constitutional issue is to raise it in the pleadings before a competent court that can resolve the same, such that, “if it is not raised in the pleadings, it cannot be considered on appeal.” *(Joaquin G. Bernas, The 1987 Constitution of the Republic of the Philippines: A Commentary, p. 858 [1996], citing People v. Vera, 65 Phil. 56 [1937]).* Petitioner questioned the constitutionality of the *ad interim* appointments of Benipayo, Borra and Tuason when she filed her petition before this Court, which is the earliest opportunity for pleading the constitutional issue before a competent body. Furthermore, this Court may determine, in the exercise of sound discretion, the time when a constitutional issue may be passed upon *(Ibid., citing Sotto v. Commission on Elections, 76 Phil. 516 [1946]).* There is no doubt petitioner raised the constitutional issue on time.

Moreover, the legality of petitioner’s reassignment hinges on the constitutionality of Benipayo’s *ad interim* appointment and assumption of office. Unless the constitutionality of Benipayo’s *ad interim* appointment and assumption of office is resolved, the legality of petitioner’s reassignment from the EID to the Law Department cannot be determined. Clearly, the *lis mota* of this case is the very constitutional issue raised by petitioner.

In any event, the issue raised by petitioner is of paramount importance to the public. The legality of the directives and decisions made by the COMELEC in the conduct of the May 14, 2001 national elections may be put in doubt if the constitutional issue raised by petitioner is left unresolved. In keeping with this Court’s duty to determine whether other agencies of government have remained within the limits of the Constitution and have not abused the discretion given them, this Court may even brush aside technicalities of procedure and resolve any constitutional issue raised *(Ople v. Torres, 293 SCRA 1412 [1998]; others omitted).* Here the petitioner has complied with all the requisite technicalities. Moreover, public interest requires the resolution of the constitutional issue raised by petitioner. ***(Matibag v. Benipayo, 380 SCRA 49, April 2, 2002, En Banc [Carpio])***

*107. What is the meaning of “justiciable controversy” as requisite for the proper exercise of the power of judicial review? Illustrative case.*

**Held:** From a reading of the records it appears to us that the petition was prematurely filed. Under the undisputed facts there is as yet no justiciable controversy for the court to resolve and the petition should have been dismissed by the appellate court on this ground.

We gather from the allegations of the petition and that of the petitioner’s memorandum that the alleged application for certificate of ancestral land claim (CALC) filed by the heirs of Carantes under the assailed DENR special orders has not been granted nor the CALC applied for, issued. The DENR is still processing the application of the heirs of Carantes for a certificate of ancestral land claim, which the DENR may or may not grant. It is evident that the adverse legal interests involved in this case are the competing claims of the petitioners and that of the heirs of Carantes to possess a common portion of a piece of land. As the undisputed facts stand there is no justiciable controversy between the petitioners and the respondents as there is no actual or imminent violation of the petitioners’ asserted right to possess the land by reason of the implementation of the questioned administrative issuance.

A justiciable controversy has been defined as, “a definite and concrete dispute touching on the legal relations of parties having adverse legal interests” *(Sinco, Philippine Political Law, 1962 ed., quoting from the U.S. Declaratory Judgment Act of 1934, p. 360)* which may be resolved by a court of law through the application of a law *(Macasiano v. National Housing Authority, 224 SCRA 238 [1993]; Bernas, The Constitution of the Republic of the Philippines: A Commentary, Vol. II, 1988 ed., pp. 274-275).* Courts have no judicial power to review cases involving political questions and as a rule, will desist from taking cognizance of speculative or hypothetical cases, advisory opinions and in cases that has become moot *(Cruz, Philippine Political Law, 1998 ed., p. 257-259).*  Subject to certain well-defined exceptions *(Solicitor-General v. MMA, December 11, 1991, 204 SCRA 837; Dumlao v. Comelec, 95 SCRA 392 [1980])* courts will not touch an issue involving the validity of a law unless there has been a governmental act accomplished or performed that has a direct adverse effect on the legal right of the person contesting its validity *(Tan v. Macapagal, 43 SCRA 678 [1972]).* In the case of *PACU v. Secretary of Education (97 Phil. 806 [1955])* the petition contesting the validity of a regulation issued by the Secretary of Education requiring private schools to secure a permit to operate was dismissed on the ground that all the petitioners have permits and are actually operating under the same. The petitioners questioned the regulation because of the possibility that the permit might be denied them in the future. This Court held that there was no justiciable controversy because the petitioners suffered no wrong by the implementation of the questioned regulation and therefore, they are not entitled to relief. A mere apprehension that the Secretary of Education will withdraw the permit does not amount to justiciable controversy. The questioned regulation in the PACU case may be questioned by a private school whose permit to operate has been revoked or one whose application therefore has been denied *(Bernas, supra.).*

This Court cannot rule on the basis of petitioners’ speculation that the DENR will approve the application of the heirs of Carantes. There must be an actual governmental act which directly causes or will imminently cause injury to the alleged legal right of the petitioner to possess the land before the jurisdiction of this Court may be invoked. There is no showing that the petitioners were being evicted from the land by the heirs of Carantes under orders from the DENR. The petitioners’ allegation that certain documents from the DENR were shown to them by the heirs of Carantes to justify eviction is vague, and it would appear that the petitioners did not verify if indeed the respondent DENR or its officers authorized the attempted eviction. Suffice it to say that by the petitioners’ own admission that the respondents are still processing and have not approved the application of the heirs of Carantes, the petitioners alleged right to possess the land is not violated nor is in imminent danger of being violated, as the DENR may or may not approve Carantes’ application. Until such time, the petitioners are simply speculating that they might be evicted from the premises at some future time. Borrowing from the pronouncements of this Court in the PACU case, “They (the petitioners) have suffered no wrong under the terms of the law – and, naturally need no relief in the form they now seek to obtain.” *(PACU, supra, at p. 810)* If indeed the heirs of Carantes are trying to enter the land and disturbing the petitioners’ possession thereof even without prior approval by the DENR of the claim of the heirs of Carantes, the case is simply one of forcible entry. ***(Cutaran v. DENR, 350 SCRA 697, Jan. 31, 2001, 3rd Div. [Gonzaga-Reyes])***

*108. Should the Court still resolve the case despite that the issue has already become moot and academic? Exception.*

**Held:** Neither do we agree that merely because a plebiscite had already been held in the case of the proposed Barangay Napico, the petition of the Municipality of Cainta has already been rendered moot and academic. The issue raised by the Municipality of Cainta in its petition before the COMELEC against the holding of the plebiscite for the creation of Barangay Napico are still pending determination before the Antipolo Regional Trial Court.

In *Tan v. Commission on Elections (G.R. No. 73155, 142 SCRA 727, 741-742 [1986]),* we struck down the moot and academic argument as follows –

“Considering that the legality of the plebiscite itself is challenged for non-compliance with constitutional requisites, the fact that such plebiscite had been held and a new province proclaimed and its officials appointed, the case before Us cannot truly be viewed as already moot and academic. Continuation of the existence of this newly proclaimed province which petitioners strongly profess to have been illegally born, deserves to be inquired into by this Tribunal so that, if indeed, illegality attaches to its creation, the commission of that error should not provide the very excuse for perpetration of such wrong. For this Court to yield to the respondents’ urging that, as there has been *fait accompli*, then this Court should passively accept and accede to the prevailing situation is an unacceptable suggestion. Dismissal of the instant petition, as respondents so propose is a proposition fraught with mischief. Respondents’ submission will create a dangerous precedent. Should this Court decline now to perform its duty of interpreting and indicating what the law is and should be, this might tempt again those who strut about in the corridors of power to recklessly and with ulterior motives, create, merge, divide and/or alter the boundaries of political subdivisions, either brazenly or stealthily, confident that this Court will abstain from entertaining future challenges to their acts if they manage to bring about a *fait accompli.*”

***(City of Pasig v. COMELEC, 314 SCRA 179, Sept. 10, 1999, En Banc [Ynares-Santiago])***

109. *On May 1, 2001, President Macapagal-Arroyo, faced by an “angry and violent mob armed with explosives, firearms, bladed weapons, clubs, stones and other deadly weapons” assaulting and attempting to break into Malacanang, issued Proclamation No. 38 declaring that there was a state of rebellion in the National Capital Region. She likewise issued General Order No. 1 directing the Armed Forces of the Philippines and the Philippine National Police to suppress the rebellion in the National Capital Region. Warrantless arrests of several alleged leaders and promoters of the “rebellion” were thereafter effected. Hence, several petitions were filed before the SC assailing the declaration of State of Rebellion by President Gloria Macapagal-Arroyo and the warrantless arrests allegedly effected by virtue thereof.*

**Held:** All the foregoing petitions assail the declaration of state of rebellion by President Gloria Macapagal-Arroyo and the warrantless arrests allegedly effected by virtue thereof, as having no basis both in fact and in law. Significantly, on May 6, 2001, President Macapagal-Arroyo ordered the lifting of the declaration of a “state of rebellion” in Metro Manila. Accordingly, the instant petitions have been rendered moot and academic. As to petitioners’ claim that the proclamation of a “state of rebellion” is being used by the authorities to justify warrantless arrests, the Secretary of Justice denies that it has issued a particular order to arrest specific persons in connection with the “rebellion.” He states that what is extant are general instructions to law enforcement officers and military agencies to implement Proclamation No. 38. x x x With this declaration, petitioners’ apprehensions as to warrantless arrests should be laid to rest. ***(Lacson v. Perez, 357 SCRA 756, May 10, 2001, En Banc [Melo])***

*110. When is an action considered “moot”? May the court still resolve the case once it has become moot and academic?*

**Held:** 1. It is alleged by respondent that, with respect to the PCCR [Preparatory Commission on Constitutional Reform], this case has become moot and academic. We agree.

An action is considered “moot” when it no longer presents a justiciable controversy because the issues involved have become academic or dead. Under E.O. No. 43, the PCCR was instructed to complete its task on or before June 30, 1999. However, on February 19, 1999, the President issued Executive Order No. 70 (E.O. No. 70), which extended the time frame for the completion of the commission’s work x x x. The PCCR submitted its recommendations to the President on December 20, 1999 and was dissolved by the President on the same day. It had likewise spent the funds allocated to it. Thus, the PCCR has ceased to exist, having lost its *raison d’être*. Subsequent events have overtaken the petition and the Court has nothing left to resolve.

The staleness of the issue before us is made more manifest by the impossibility of granting the relief prayed for by petitioner. Basically, petitioner asks this Court to enjoin the PCCR from acting as such. Clearly, prohibition is an inappropriate remedy since the body sought to be enjoined no longer exists. It is well-established that prohibition is a preventive remedy and does not lie to restrain an act that is already *fait accompli.* At this point, any ruling regarding the PCCR would simply be in the nature of an advisory opinion, which is definitely beyond the permissible scope of judicial power. ***(Gonzales v. Narvasa, 337 SCRA 733, Aug. 14, 2000, En Banc [Gonzaga-Reyes])***

2. The petition which was filed by private respondents before the trial court sought the issuance of a writ of mandamus, to command petitioners to admit them for enrolment. Taking into account the admission of private respondents that they have finished their Nursing course at the Lanting College of Nursing even before the promulgation of the questioned decision, this case has clearly been overtaken by events and should therefore be dismissed. However, the case of *Eastern Broadcasting Corporation (DYRE) v. Dans, etc., et al., G.R. No. 59329, July 19, 1985, 137 SCRA 628* is the authority for the view that "even if a case were moot and academic, a statement of the governing principle is appropriate in the resolution of dismissal for the guidance not only of the parties but of others similarly situated*.*” We shall adhere to this view and proceed to dwell on the merits of this petition. ***(University of San Agustin, Inc. v. Court of Appeals, 230 SCRA 761, 770, March 7, 1994 [Nocon])***

*111. In connection with the May 11, 1998 elections, the COMELEC issued a resolution prohibiting the conduct of exit polls on the ground, among others, that it might cause disorder and confusion considering the randomness of selecting interviewees, which further makes the exit polls unreliable. The constitutionality of this resolution was challenged by ABS-CBN Broadcasting Corporation as violative of freedom of expression. The Solicitor General contends that the petition has been rendered moot and academic because the May 11, 1998 election has already been held and done with and, therefore, there is no longer any actual controversy to be resolved. Resolve.*

**Held:** While the assailed Resolution referred specifically to the May 11, 1998 election, its implications on the people’s fundamental freedom of expression transcend the past election. The holding of periodic elections is a basic feature of our democratic government. By its very nature, exit polling is tied up with elections. To set aside the resolution of the issue now will only postpone a task that could well crop up again in future elections.

In any event, in *Salonga v. Cruz Pano (134 SCRA 438, 463, Feb. 18, 1985),* the Court had occasion to reiterate that it “also has the duty to formulate guiding and controlling constitutional principles, precepts, doctrines, or rules. It has the symbolic function of educating bench and bar on the extent of protection given by constitutional guarantees.” Since the fundamental freedoms of speech and of the press are being invoked here, we have resolved to settle, for the guidance of posterity, whether they likewise protect the holding of exit polls and the dissemination of data derived therefrom. ***(ABS-CBN Broadcasting Corporation v. COMELEC, G.R. No. 133486, Jan. 28, 2000, En Banc [Panganiban])***

*112. Discuss the nature of a taxpayer’s suit. When may it be allowed?*

**Held:** 1. Petitioner and respondents agree that to constitute a taxpayer's suit, two requisites must be met, namely, that public funds are disbursed by a political subdivision or instrumentality and in doing so, a law is violated or some irregularity is committed, and that the petitioner is directly affected by the alleged ultra vires act*.* The same pronouncement was made in *Kilosbayan, Inc. v. Guingona, Jr., (232 SCRA 110 [1994],* where the Court also reiterated its liberal stance in entertaining so-called taxpayer's suits, especially when important issues are involved. A closer examination of the facts of this case would readily demonstrate that petitioner's standing should not even be made an issue here, "since standing is a concept in constitutional law and here no constitutional question is actually involved."

In the case at bar, disbursement of public funds was only made in 1975 when the Province bought the lands from Ortigas at P110.00 per square meter in line with the objectives of P.D. 674. Petitioner never referred to such purchase as an illegal disbursement of public funds but focused on the alleged fraudulent reconveyance of said property to Ortigas because the price paid was lower than the prevailing market value of neighboring lots. The first requirement, therefore, which would make this petition a taxpayer's suit is absent. The only remaining justification for petitioner to be allowed to pursue this action is whether it is, or would be, directly affected by the act complained of. As we stated in *Kilosbayan, Inc. v. Morato (supra.),*

"Standing is a special concern in constitutional law because in some cases suits are brought not by parties who have been personally injured by the operation of a law or by official action taken, but by concerned citizens, taxpayers or voters who actually sue in the public interest. Hence the question in standing is whether such parties have 'alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.' *(Citing Baker v. Carr, 369 U.S. 186, 7l. Ed. 2d 633 [1962])"*

Undeniably, as a taxpayer, petitioner would somehow be adversely affected by an illegal use of public money. When, however, no such unlawful spending has been shown, as in the case at bar, petitioner, even as a taxpayer, cannot question the transaction validly executed by and between the Province and Ortigas for the simple reason that it is not privy to said contract. In other words, petitioner has absolutely no cause of action, and consequently no *locus standi,* in the instant case. ***(The Anti-Graft League of the Philippines, Inc. v. San Juan, 260 SCRA 250, 253-255, Aug. 1, 1996, En Banc [Romero])***

2. A taxpayer is deemed to have the standing to raise a constitutional issue when it is established that public funds have been disbursed in alleged contravention of the law or the Constitution*.* Thus, a taxpayer’s action is properly brought only when there is an exercise by Congress of its taxing or spending power *(Flast v. Cohen, 392 US 83, 20 L Ed 2d 947, 88 S Ct 1942).* This was our ruling in a recent case wherein petitioners Telecommunications and Broadcast Attorneys of the Philippines (TELEBAP) and GMA Network, Inc. questioned the validity of Section 92 of B.P. Blg. 881 (otherwise known as the “Omnibus Election Code”) requiring radio and television stations to give free air time to the Commission on Elections during the campaign period *(Telecommunications and Broadcast Attorneys of the Philippines, Inc. v. Commission on Elections, 289 SCRA 337 [1998]).* The Court held that petitioner TELEBAP did not have any interest as a taxpayer since the assailed law did not involve the taxing or spending power of Congress.

Many other rulings have premised the grant or denial of standing to taxpayers upon whether or not the case involved a disbursement of public funds by the legislature. In *Sanidad v. Commission on Elections (73 SCRA 333 [1976]),* the petitioners therein were allowed to bring a taxpayer’s suit to question several presidential decrees promulgated by then President Marcos in his legislative capacity calling for a national referendum, with the Court explaining that –

X x x [i]t is now an ancient rule that the valid source of a statute – Presidential Decrees are of such nature – may be contested by one who will sustain a direct injury as a result of its enforcement. At the instance of taxpayers, laws providing for the disbursement of public funds may be enjoined, upon the theory that the expenditure of public funds by an officer of the State for the purpose of executing an unconstitutional act constitutes a misapplication of such funds. The breadth of Presidential Decree No. 991 carries an appropriation of Five Million Pesos for the effective implementation of its purposes. Presidential Decree No. 1031 appropriates the sum of Eight Million Pesos to carry out its provisions. The interest of the aforenamed petitioners as taxpayers in the lawful expenditure of these amounts of public money sufficiently clothes them with that personality to litigate the validity of the Decrees appropriating said funds x x x.

In still another case, the Court held that petitioners – the Philippine Constitution Association, Inc., a non-profit civic organization – had standing as taxpayers to question the constitutionality of Republic Act No. 3836 insofar as it provides for retirement gratuity and commutation of vacation and sick leaves to Senators and Representatives and to the elective officials of both houses of Congress *(Philippine Constitution Association, Inc. v. Gimenez, 15 SCRA 479 [1965]).* And in *Pascual v. Secretary of Public Works (110 Phil. 331 [1960]),* the Court allowed petitioner to maintain a taxpayer’s suit assailing the constitutional soundness of Republic Act No. 920 appropriating P85,000 for the construction, repair and improvement of feeder roads within private property. All these cases involved the disbursement of public funds by means of a law.

Meanwhile, in *Bugnay Construction and Development Corporation v. Laron (176 SCRA 251 [1989]),* the Court declared that the trial court was wrong in allowing respondent Ravanzo to bring an action for injunction in his capacity as a taxpayer in order to question the legality of the contract of lease covering the public market entered into between the City of Dagupan and petitioner. The Court declared that Ravanzo did not possess the requisite standing to bring such taxpayer’s suit since “[o]n its face, and there is no evidence to the contrary, the lease contract entered into between petitioner and the City shows that no public funds have been or will be used in the construction of the market building.”

Coming now to the instant case, it is readily apparent that there is no exercise by Congress of its taxing or spending power. The PCCR was created by the President by virtue of E.O. No. 43, as amended by E.O. No. 70. Under Section 7 of E.O. No. 43, the amount of P3 million is "appropriated" for its operational expenses "to be sourced from the funds of the Office of the President.” x x x. The appropriations for the PCCR were authorized by the President, not by Congress. In fact, there was no appropriation at all. “In a strict sense, *appropriation* has been defied ‘as nothing more than the legislative authorization prescribed by the Constitution that money may be paid out of the Treasury,’ while *appropriation made by law* refers to ‘the act of the legislature setting apart or assigning to a particular use a certain sum to be used in the payment of debt or dues from the State to its creditors.’” The funds used for the PCCR were taken from funds intended for the Office of the President, in the exercise of the Chief Executive’s power to transfer funds pursuant to Section 25 (5) of Article VI of the Constitution.

In the final analysis, it must be stressed that the Court retains the power to decide whether or not it will entertain a taxpayer’s suit*.*  In the case at bar, there being no exercise by Congress of its taxing or spending power, petitioner cannot be allowed to question the creation of the PCCR in his capacity as a taxpayer, but rather, he must establish that he has a “personal and substantial interest in the case and that he has sustained or will sustain direct injury as a result of its enforcement.” In other words, petitioner must show that he is a real party in interest – that he will stand to be benefited or injured by the judgment or that he will be entitled to the avails of the suit. Nowhere in his pleadings does petitioner presume to make such a representation. ***(Gonzales v. Narvasa, 337 SCRA 733, Aug. 14, 2000, En Banc [Gonzaga-Reyes])***

*113. What is a justiciable controversy? What are political questions?*

**Held:** As a general proposition, a controversy is justiciable if it refers to a matter which is appropriate for court review*.* It pertains to issues which are inherently susceptible of being decided on grounds recognized by law. Nevertheless, the Court does not automatically assume jurisdiction over actual constitutional cases brought before it even in instances that are ripe for resolution. One class of cases wherein the Court hesitates to rule on are "political questions." The reason is that political questions are concerned with issues dependent upon the wisdom, not the legality, of a particular act or measure being assailed. Moreover, the political question being a function of the separation of powers, the courts will not normally interfere with the workings of another co-equal branch unless the case shows a clear need for the courts to step in to uphold the law and the Constitution.

As *Tanada v. Angara (103 Phil. 1051 [1957])* puts it, political questions refer "to those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive branch of government." Thus, if an issue is clearly identified by the text of the Constitution as matters for discretionary action by a particular branch of government or to the people themselves then it is held to be a political question. In the classic formulation of Justice Brennan in *Baker v. Carr (369 U.S. 186, 82 S Ct. 691, 7 L. Ed. 663, 678 [1962]),* "[p]rominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on the one question."

The 1987 Constitution expands the concept of judicial review by providing that "(T)he Judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." *(Article VIII, Sec. 1 of the 1987 Constitution)* Under this definition, the Court cannot agree x x x that the issue involved is a political question beyond the jurisdiction of this Court to review. When the grant of power is qualified, conditional or subject to limitations, the issue of whether the prescribed qualifications or conditions have been met or the limitations respected, is justiciable - the problem being one of legality or validity, not its wisdom*.* Moreover, the jurisdiction to delimit constitutional boundaries has been given to this Court*.*  When political questions are involved, the Constitution limits the determination as to whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the official whose action is being questioned.

By grave abuse of discretion is meant simply capricious or whimsical exercise of judgment that is patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility. Under this definition, a court is without power to directly decide matters over which full discretionary authority has been delegated. But while this Court has no power to substitute its judgment for that of Congress or of the President, it may look into the question of whether such exercise has been made in grave abuse of discretion. A showing that plenary power is granted either department of government may not be an obstacle to judicial inquiry, for the improvident exercise or abuse thereof may give rise to justiciable controversy*.* ***(Integrated Bar of the Philippines v. Hon. Ronaldo B. Zamora, G.R. No. 141284, Aug. 15, 2000, En Banc [Kapunan])***

*114. Is the legitimacy of the assumption to the Presidency of President Gloria Macapagal Arroyo a political question and, therefore, not subject to judicial review? Distinguish EDSA People Power I from EDSA People Power II.*

**Held:**Respondents rely on the case of *Lawyers League for a Better Philippines and/or Oliver A. Lozano v. President Corazon C. Aquino, et al.* and related cases to support their thesis that since the cases at bar involve the legitimacy of the government of respondent Arroyo, ergo, they present a political question. A more cerebral reading of the cited cases will show that they are inapplicable. In the cited cases, we held that the government of former President Aquino was the result of a successful revolution by the sovereign people, albeit a peaceful one. No less than the Freedom Constitution declared that the Aquino government was installed through a direct exercise of the power of the Filipino people “in defiance of the provisions of the 1973 Constitution, as amended.” It is familiar learning that the legitimacy of a government sired by a successful revolution by people power is beyond judicial scrutiny for that government automatically orbits out of the constitutional loop. In checkered contrast, the government of respondent Arroyo is not revolutionary in character. The oath that she took at the EDSA Shrine is the oath under the 1987 Constitution. In her oath, she categorically swore to preserve and defend the 1987 Constitution. Indeed, she has stressed that she is discharging the powers of the presidency under the authority of the 1987 Constitution.

In fine, the legal distinction between EDSA People Power I and EDSA People Power II is clear. EDSA I involves the exercise of the people power of revolution which overthrows the whole government. EDSA II is an exercise of people power of freedom of speech and freedom of assembly to petition the government for redress of grievances which only affected the office of the President. EDSA I is extra constitutional and the legitimacy of the new government that resulted from it cannot be the subject of judicial review, but EDSA II is intra constitutional and the resignation of the sitting President that it caused and the succession of the Vice President as President are subject to judicial review. EDSA I presented a political question; EDSA II involves legal questions. X x x

Needless to state, the cases at bar pose legal and not political questions. The principal issues for resolution require the proper interpretation of certain provisions in the 1987 Constitution, notably Section 1 of Article II, and Section 8 of Article VII, and the allocation of governmental powers under Section 11 of Article VII. The issues likewise call for a ruling on the scope of presidential immunity from suit. They also involve the correct calibration of the right of petitioner against prejudicial publicity. As early as the 1803 case of *Marbury v. Madison(1 Cranch [5 US] 137, L Ed 60 [1803])***,** the doctrine has been laid down that *“it is emphatically the province and duty of the judicial department to say what the law is x x x.”*Thus, respondent’s invocation of the doctrine of political question is but a foray in the dark. ***(Joseph E. Estrada v. Aniano Desierto, G.R. Nos. 146710-15, March 2, 2001, En Banc [Puno])***

*115. Is the President’s power to call out the armed forces as their Commander-in-Chief in order to prevent or suppress lawless violence, invasion or rebellion subject to judicial review, or is it a political question? Clarify.*

**Held:** When the President calls the armed forces to prevent or suppress lawless violence, invasion or rebellion, he necessarily exercises a discretionary power solely vested in his wisdom. This is clear from the intent of the framers and from the text of the Constitution itself. The Court, thus, cannot be called upon to overrule the President's wisdom or substitute its own. However, this does not prevent an examination of whether such power was exercised within permissible constitutional limits or whether it was exercised in a manner constituting grave abuse of discretion. In view of the constitutional intent to give the President full discretionary power to determine the necessity of calling out the armed forces, it is incumbent upon the petitioner to show that the President's decision is totally bereft of factual basis. The present petition fails to discharge such heavy burden as there is no evidence to support the assertion that there exists no justification for calling out the armed forces. There is, likewise, no evidence to support the proposition that grave abuse was committed because the power to call was exercised in such a manner as to violate the constitutional provision on civilian supremacy over the military. In the performance of this Court's duty of "purposeful hesitation" before declaring an act of another branch as unconstitutional, only where such grave abuse of discretion is clearly shown shall the Court interfere with the President's judgment. To doubt is to sustain. ***(Integrated Bar of the Philippines v. Hon. Ronaldo B. Zamora, G.R. No. 141284, Aug. 15, 2000, En Banc [Kapunan])***

*116. Do lower courts have jurisdiction to consider the constitutionality of a law? If so, how should they act in the exercise of this jurisdiction?*

**Held:** We stress at the outset that the lower court had jurisdiction to consider the constitutionality of Section 187, this authority being embraced in the general definition of the judicial power to determine what are the valid and binding laws by the criterion of their conformity to the fundamental law. Specifically, BP 129 vests in the regional trial courts jurisdiction over all civil cases in which the subject of the litigation is incapable of pecuniary estimation *(Sec. 19[1])*, even as the accused in a criminal action has the right to question in his defense the constitutionality of a law he is charged with violating and of the proceedings taken against him, particularly as they contravene the Bill of Rights. Moreover, Article VIII, Section 5(2), of the Constitution vests in the Supreme Court appellate jurisdiction over final judgments and orders of lower courts in all cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

In the exercise of this jurisdiction, lower courts are advised to act with the utmost circumspection, bearing in mind the consequences of a declaration of unconstitutionality upon the stability of laws, no less than on the doctrine of separation of powers. As the questioned act is usually the handiwork of the legislative or the executive departments, or both, it will be prudent for such courts, if only out of a becoming modesty, to defer to the higher judgment of this Court in the consideration of its validity, which is better determined after a thorough deliberation by a collegiate body and with the concurrence of the majority of those who participated in its discussion *(Art. VIII, Sec. 4[2], Constitution)* ***(Drilon v. Lim, 235 SCRA 135, 139-140, Aug. 4, 1994, En Banc [Cruz])***

*117. What cases are to be heard by the Supreme Court en banc?*

**Held:** Under Supreme Court Circular No. 2-89, dated February 7, 1989, as amended by the Resolution of November 18, 1993:

X x x, the following are considered en banc cases:

1. Cases in which the constitutionality or validity of any treaty, international or executive agreement, law, executive order, or presidential decree, proclamation, order, instruction, ordinance, or regulation is in question;
2. Criminal cases in which the appealed decision imposes the death penalty;
3. Cases raising novel questions of law;
4. Cases affecting ambassadors, other public ministers and consuls;
5. Cases involving decisions, resolutions or orders of the Civil Service Commission, Commission on Elections, and Commission on Audit;
6. Cases where the penalty to be imposed is the dismissal of a judge, officer or employee of the judiciary, disbarment of a lawyer, or either the suspension of any of them for a period of more than one (1) year or a fine exceeding P10,000.00 or both;
7. Cases where a doctrine or principle laid down by the court en banc or in division may be modified or reversed;
8. Cases assigned to a division which in the opinion of at least three (3) members thereof merit the attention of the court en banc and are acceptable to a majority of the actual membership of the court en banc; and
9. All other cases as the court en banc by a majority of its actual membership may deem of sufficient importance to merit its attention.

***(Firestone Ceramics, Inc. v. Court of Appeals, 334 SCRA 465, 471-472, June 28, 2000, En Banc [Purisima])***

*118. What is fiscal autonomy? The fiscal autonomy clause?*

**Held:** As envisioned in the Constitution, the fiscal autonomy enjoyed by the Judiciary, the Civil Service Commission, the Commission on Audit, the Commission on Elections, and the Office of the Ombudsman contemplates a guarantee of full flexibility to allocate and utilize their resources with the wisdom and dispatch that their needs require. It recognizes the power and authority to levy, assess and collect fees, fix rates of compensation not exceeding the highest rates authorized by law for compensation and pay plans of the government and allocate and disburse such sums as may be provided by law or prescribed by them in the course of the discharge of their functions.

Fiscal autonomy means freedom from outside control. The Judiciary, the Constitutional Commissions, and the Ombudsman must have the independence and flexibility needed in the discharge of their constitutional duties. The imposition of restrictions and constraints on the manner the independent constitutional offices allocate and utilize the funds appropriated for their operations is anathema to fiscal autonomy and violative not only of the express mandate of the Constitution but especially as regards the Supreme Court, of the independence and separation of powers upon which the entire fabric of our constitutional system is based. ***(Bengzon v. Drilon, 208 SCRA 133, April 15, 1992, En Banc [Gutierrez])***

*119. May the Ombudsman validly entertain criminal charges against a judge of the regional trial court in connection with his handling of cases before the court.*

**Held:** Petitioner criticizes the jurisprudence *(Maceda v. Vasquez, 221 SCRA 464 [1993] and Dolalas v. Office of the Ombudsman-Mindanao, 265 SCRA 818 [1996])* cited by the Office of the Ombudsman as erroneous and not applicable to his complaint. He insists that since his complaint involved a criminal charge against a judge, it was within the authority of the Ombudsman not the Supreme Court to resolve whether a crime was committed and the judge prosecuted therefor.

The petition can not succeed.

X x x

We agree with the Solicitor General that the Ombudsman committed no grave abuse of discretion warranting the writs prayed for. The issues have been settled in the case of *In Re: Joaquin Borromeo (241 SCRA 408, 460 [1995]).* There, we laid down the rule that before a civil or criminal action against a judge for a violation of Arts. 204 and 205 (knowingly rendering an unjust judgment or order) can be entertained, there must first be “a final and authoritative judicial declaration” that the decision or order in question is indeed “unjust.” The pronouncement may result from either:

1. an action of certiorari or prohibition in a higher court impugning the validity of the judgment; or
2. an administrative proceeding in the Supreme Court against the judge precisely for promulgating an unjust judgment or order.

Likewise, the determination of whether a judge has maliciously delayed the disposition of the case is also an exclusive judicial function *(In Re: Borromeo, supra, at 461).*

“To repeat, no other entity or official of the government, *not the prosecution or investigation service of any other branch*, not any functionary thereof, has competence to review a judicial order or decision – whether final and executory or not – and pronounce it erroneous so as to lay the basis for a criminal or administrative complaint for rendering an unjust judgment or order. That prerogative *belongs to the courts alone.*

This having been said, we find that the Ombudsman acted in accordance with law and jurisprudence when he referred the cases against Judge Pelayo to the Supreme Court for appropriate action. ***(De Vera v. Pelayo, 335 SCRA 281, July 6, 2000, 1st Div. [Pardo])***

*120. Discuss the validity of “Memorandum Decisions.”*

**Held:**1. The constitutional mandate that no decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based does not preclude the validity of "memorandum decisions" which adopt by reference the findings of fact and conclusions of law contained in the decisions of inferior tribunals. X x x

Hence, even in this jurisdiction, incorporation by reference is allowed if only to avoid the cumbersome reproduction of the decision of the lower courts, or portions thereof, in the decisions of the higher court *(Francisco v. Permskul, 173SCRA 324, 333).* This is particularly true when the decision sought to be incorporated is a lengthy and thorough discussion of the facts and conclusions arrived at x x x. ***(Oil and Natural Gas Commission v. Court of Appeals, 293 SCRA 26, July 23, 1998 [Martinez])***

2. We have sustained decisions of lower courts as having substantially or sufficiently complied with the constitutional injunction notwithstanding the laconic and terse manner in which they were written and even if “there [was left] much to be desired in terms of [their] clarity, coherence and comprehensibility” provided that they eventually set out the facts and the law on which they were based,as when they stated the legal qualifications of the offense constituted by the facts proved, the modifying circumstances, the participation of the accused, the penalty imposed and the civil liability;or discussed the facts comprising the elements of the offense that was charged in the information, and accordingly rendered a verdict and imposed the corresponding penalty;or quoted the facts narrated in the prosecution’s memorandum but made their own findings and assessment of evidence, before finally agreeing with the prosecution’s evaluation of the case*.*

We have also sanctioned the use of memorandum decisions *(In Francisco v. Permskul, 173 SCRA 324, 333 [1989], the Court described “[t]he distinctive features of a memorandum decision are, first, it is rendered by an appellate court, second, it incorporates by reference the findings of fact or the conclusions of law contained in the decision, order, or ruling under review. Most likely, the purpose is to affirm the decision, although it is not impossible that the approval of the findings of facts by the lower court may lead to a different conclusion of law by the higher court. At any rate, the reason for allowing the incorporation by reference is evidently to avoid the cumbersome reproduction of the decision of the lower court, or portions thereof, in the decision of the higher court. The idea is to avoid having to repeat in the body of the latter decision the findings or conclusions of the lower court since they are being approved or adopted anyway.)*, a specie of succinctly written decisions by appellate courts in accordance with the provisions of Section 40, B.P. Blg. 129 on the grounds of expediency, practicality, convenience and docket status of our courts. We have also declared that memorandum decisions comply with the constitutional mandate.

In *Francisco v. Permskul,* however, we laid the conditions for the validity of memorandum decisions, thus:

The memorandum decision, to be valid, cannot incorporate the findings of fact and the conclusions of law of the lower court only by remote reference, which is to say that the challenged decision is not easily and immediately available to the person reading the memorandum decision. For the incorporation by reference to be allowed, it must provide for direct access to the facts and the law being adopted, which must be contained in a statement *attached* to the said decision. In other words, the memorandum decision authorized under Section 40 of B.P. Blg. 129 should actually embody the findings of fact and conclusions of law of the lower court in an annex attached to and made an indispensable part of the decision.

It is expected that this requirement will allay the suspicion that no study was made of the decision of the lower court and that its decision was merely affirmed without a prior examination of the facts and the law on which it is based. The *proximity* at least of the annexed statement should suggest that such examination has been undertaken. It is, of course, also understood that the decision being adopted should, to begin with, comply with Article VIII, Section 14 as no amount of incorporation or adoption will rectify its violation.

The Court finds necessary to emphasize that the memorandum decision should be sparingly used lest it become an additive excuse for judicial sloth. It is an additional condition for the validity of this kind of decision may be resorted to only in cases where the facts are in the main accepted by both parties and easily determinable by the judge and there are no doctrinal complications involved that will require an extended discussion of the laws involved. The memorandum decision may be employed in simple litigations only, such as ordinary collection cases, where the appeal is obviously groundless and deserves no more than the time needed to dismiss it.

X x x

Henceforth, all memorandum decisions shall comply with the requirements herein set forth as to the form prescribed and the occasions when they may be rendered. Any deviation will summon the strict enforcement of Article VIII, Section 14 of the Constitution and strike down the flawed judgment as a lawless disobedience.

Tested against these standards, we find that the RTC decision at bar miserably failed to meet them and, therefore, fell short of the constitutional injunction. The RTC decision is brief indeed, but it is starkly hallow, otiosely written, vacuous in its content and trite in its form. It achieved nothing and attempted at nothing, not even at a simple summation of facts which could easily be done. Its inadequacy speaks for itself.

We cannot even consider or affirm said RTC decision as a memorandum decision because it failed to comply with the measures of validity laid down in *Francisco v. Permskul.* It merely affirmed *in toto* the MeTC decision without saying more. A decision or resolution, especially one resolving an appeal, should directly meet the issues for resolution; otherwise, the appeal would be pointless *(See ABD Overseas Manpower Corporation v. NLRC, 286 SCRA 454, 464 [1998]).*

We therefore reiterate our admonition in *Nicos Industrial Corporation v. Court of Appeals (206 SCRA 127, 134 [1992]),* in that while we conceded that brevity in the writing of decisions is an admirable trait, it should not and cannot be substituted for substance; and again in *Francisco v. Permskul,* where we cautioned that expediency alone, no matter how compelling, cannot excuse non-compliance with the constitutional requirements.

This is not to discourage the lower courts to write abbreviated and concise decisions, but never at the expense of scholarly analysis, and more significantly, of justice and fair play, lest the fears expressed by Justice Feria as the *ponente* in *Romero v. Court of Appeals* come true, *i.e.,* if an appellate court failed to provide the appeal the attention it rightfully deserved, said court deprived the appellant of due process since he was accorded a fair opportunity to be heard by a fair and responsible magistrate. This situation becomes more ominous in criminal cases, as in this case, where not only property rights are at stake but also the liberty if not the life of a human being.

Faithful adherence to the requirements of Section 14, Article VIII of the Constitution is indisputably a paramount component of due process and fair play.It is likewise demanded by the due process clause of the Constitution*.* The parties to a litigation should be informed of how it was decided, with an explanation of the factual and legal reasons that led to the conclusions of the court. The court cannot simply say that judgment is rendered in favor of X and against Y and just leave it at that without any justification whatsoever for its action. The losing party is entitled to know why he lost, so he may appeal to the higher court, if permitted, should he believe that the decision should be reversed. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached and is precisely prejudicial to the losing party, who is unable to pinpoint the possible errors of the court for review by a higher tribunal*.* More than that, the requirement is an assurance to the parties that, in reaching judgment, the judge did so through the processes of legal reasoning. It is, thus, a safeguard against the impetuosity of the judge, preventing him from deciding *ipse dixit*. Vouchsafed neither the sword nor the purse by the Constitution but nonetheless vested with the sovereign prerogative of passing judgment on the life, liberty or property of his fellowmen, the judge must ultimately depend on the power of reason for sustained public confidence in the justness of his decision*.*

Thus the Court has struck down as void, decisions of lower courts and even of the Court of Appeals whose careless disregard of the constitutional behest exposed their sometimes cavalier attitude not only to their magisterial responsibilities but likewise to their avowed fealty to the Constitution.

Thus, we nullified or deemed to have failed to comply with Section 14, Article VIII of the Constitution, a decision, resolution or order which: contained no analysis of the evidence of the parties nor reference to any legal basis in reaching its conclusions; contained nothing more than a summary of the testimonies of the witnesses of both parties; convicted the accused of libel but failed to cite any legal authority or principle to support conclusions that the letter in question was libelous; consisted merely of one (1) paragraph with mostly sweeping generalizations and failed to support its conclusion of parricide; consisted of five (5) pages, three (3) pages of which were quotations from the labor arbiter’s decision including the dispositive portion and barely a page (two [2] short paragraphs of two [2] sentences each) of its own discussion or reasonings; was merely based on the findings of another court *sans* transcript of stenographic notes, or failed to explain the factual and legal bases for the award of moral damages.

In the same vein do we strike down as a nullity the RTC decision in question. ***(Yao v. Court of Appeals, 344 SCRA 202, Oct. 24, 2000, 1st Div. [Davide])***

*121. Does the period for decision making under Section 15, Article VIII, 1987 Constitution, apply to the Sandiganbayan? Explain.*

**Held:** The above provision does not apply to the Sandiganbayan. The provision refers to regular courts of lower collegiate level that in the present hierarchy applies only to the Court of Appeals*.*

The Sandiganbayan is a special court of the same level as the Court of Appeals and possessing all the inherent powers of a court of justice, with functions of a trial court.

Thus, the Sandiganbayan is not a regular court but a special one*.*  The Sandiganbayan was originally empowered to promulgate its own rules of procedure*.* However, on March 30, 1995, Congress repealed the Sandiganbayan’s power to promulgate its own rules of procedure and instead prescribed that the Rules of Court promulgated by the Supreme Court shall apply to all cases and proceedings filed with the Sandiganbayan.

“Special courts are judicial tribunals exercising limited jurisdiction over particular or specialized categories of actions. They are the Court of Tax Appeals, the Sandiganbayan, and the Shari’a Courts.” *(Supra, Note 23, at p. 8)*

Under Article VIII, Section 5[5] of the Constitution “Rules of procedure of *special courts* and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.”

In his report, the Court Administrator would distinguish between cases which the Sandiganbayan has cognizance of in its original jurisdiction, and cases which fall within the appellate jurisdiction of the Sandiganbayan. The Court Administrator posits that since in the first class of cases, the Sandiganbayan acts more as a trial court, then for that classification of cases, the three [3] month reglementary period applies. For the second class of cases, the Sandiganbayan has the twelve-month reglementary period for collegiate courts. We do not agree.

The law creating the Sandiganbayan, P.D. No. 1606is clear on this issue. It provides:

“Sec. 6. Maximum period for termination of cases – As far as practicable, the trial of cases before the Sandiganbayan once commenced shall be continuous until terminated and the judgment shall be rendered within three [3] months from the date the case was submitted for decision.”

On September 18, 1984, the Sandiganbayan promulgated its own rules, thus:

“Sec. 3. *Maximum Period to Decide Cases –* The judgment or final order of a division of the Sandiganbayan shall be rendered *within three [3] months from the date the case was submitted for decision.”*

Given the clarity of the rule that does not distinguish, we hold that the three [3] month period, not the twelve [12] month period, to decide cases applies to the Sandiganbayan. Furthermore, the Sandiganbayan presently sitting in five [5] divisions, functions as a trial court. The term “trial” is used in its broad sense, meaning, it allows introduction of evidence by the parties in the cases before it*.* The Sandiganbayan, in original cases within its jurisdiction, conducts trials, has the discretion to weigh the evidence of the parties, admit the evidence it regards as credible and reject that which they consider perjurious or fabricated*.* ***(Re: Problem of Delays in Cases Before the Sandiganbayan, A.M. No. 00-8-05-SC, Nov. 28, 2001, En Banc [Pardo])***

**CONSTITUTIONAL LAW**

### 122. What is the effect of declaration of unconstitutionality of a law? Illustrative case.

**Held:** Respondents are seeking a reconsideration of the Court’s 25 January 2000 decision, wherein we declared section 8 of Republic Act No. 8551 (RA 8551) to be violative of petitioners’ constitutionally mandated right to security of tenure. As a consequence of our ruling, we held that petitioners’ removal as commissioners of the National Police Commission (NAPOLCOM) and the appointment of new Commissioners in their stead were nullities and ordered the reinstatement of petitioners and the payment of full backwages to be computed from the date they were removed from office.

X x x

An unconstitutional act is not a law; it confers no rights, imposes no duties, and affords no protection *(Fernandez v. Cuerva, 21 SCRA 1095 [1967]).* Therefore, the unavoidable consequence of the Court’s declaration that section 8 of RA 8551 violates the fundamental law is that all acts done pursuant to such provision shall be null and void, including the removal of petitioners and Adiong from their positions in the NAPOLCOM and the appointment of new commissioners in their stead. When a regular government employee is illegally dismissed, his position does not become vacant and the new appointment made in order to replace him is null and void *ab initio (Aquino v. Civil Service Commission, 208 SCRA 240 [1992])*. Rudimentary is the precept that there can be no valid appointment to a non-vacant position *(Garces v. Court of Appeals, 259 SCRA 99 [1996]).* Accordingly, Adiong’s appointment on 11 March 1998 for a term of two years, pursuant to section 8 of RA 8551, is null and void. However, he should now be permitted to enjoy the remainder of his term under RA 6975. Therefore, based on our foregoing disquisition, there should no longer be any doubt as to the proper execution of our 25 January 2000 decision – all the Commissioners appointed under RA 8551 should be removed from office, in order to give way to the reinstatement of petitioners and respondent Adiong. ***(Canonizado v. Aguirre, 351 SCRA 659, Feb. 15, 2001, En Banc [Gonzaga-Reyes])***

*123. Discuss the “Void for Vagueness” Doctrine, and why is it repugnant to the Constitution. Distinguish a “perfectly vague act” from “legislation couched in imprecise language.”*

**Held:** 1. Due process requires that the terms of a penal statute must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties *(Connally v. General Construction Co., 269 US 385, 70 L Ed 322 46 S Ct 126 [1926])*. A criminal statute that “fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute,” or is so indefinite that “it encourages arbitrary and erratic arrests and convictions,” is void for vagueness *(Colautti v. Franklin, 439 US 379, 58 L Ed 2d 596, 99 S Ct 675 [1979]).* The constitutional vice in a vague or indefinite statute is the injustice to the accused in placing him on trial for an offense, the nature of which he is given no fair warning *(American Communications Asso. v. Douds, 339 US 382, 94 L Ed 925, 70 S Ct 674 [1950])*

We reiterated these principles in *People v. Nazario (165 SCRA 186 [1988])*:

As a rule, a statute or act may be said to be vague when it lacks comprehensible standards that men “of common intelligence must necessarily guess at its meaning and differ as to its application.” It is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and become an arbitrary flexing of the Government muscle.

We added, however, that:

X x x the act must be utterly vague on its face, that is to say, it cannot be clarified by either a saving clause or by construction. Thus, in *Coates v. City of Cincinnati*, the U.S. Supreme Court struck down an ordinance that had made it illegal for “three or more persons to assemble on any sidewalk and there conduct themselves in a manner annoying to persons passing by.” Clearly, the ordinance imposed no standard at all “because one may never know in advance what annoys some people but does not annoy others.”

*Coates* highlights what has been referred to as a “perfectly vague” act whose obscurity is evident on its face. It is to be distinguished, however, from legislation coached in imprecise language – but which nonetheless specifies a standard though defectively phrased – in which case, it may be “saved” by proper construction. X x x ***(People v. Dela Piedra, 350 SCRA 163, Jan. 24, 2001, 1st Div. [Kapunan])***

2. The doctrine has been formulated in various ways, but is commonly stated to the effect that a statute establishing a criminal offense must define the offense with sufficient definiteness that persons of ordinary intelligence can understand what conduct is prohibited by the statute. It can only be invoked against that specie of legislation that is utterly vague on its face, *i.e.*, that which cannot be clarified either by a saving clause or by construction.

A statute or act may be said to be vague when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ in its application. In such instance, the statute is repugnant to the Constitution in two (2) respects – it violated due process for failure to accord persons, especially the parties targeted by it, fair notice of what conduct to avoid; and, it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle *(See People v. Nazario, No. L-44143, 31 August 1988, 165 SCRA 186, 195-196).* But the doctrine does not apply as against legislations that are merely couched in imprecise language but which nonetheless specify a standard though defectively phrased; or to those that are apparently ambiguous yet fairly applicable to certain types of activities. The first may be “saved” by proper construction, while no challenge may be mounted as against the second whenever directed against such activities *(Ibid.)* With more reason, the doctrine cannot be invoked where the assailed statute is clear and free from ambiguity, as in this case.

The test in determining whether a criminal statute is void for uncertainty is whether the language conveys a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practice *(State v. Hill, 189 Kan 403, 369 P2d 365, 91 ALR 2d 750).* It must be stressed, however, that the “vagueness” doctrine merely requires a reasonable degree of certainty for the statute to be upheld – not absolute precision or mathematical exactitude, as petitioner seems to suggest. Flexibility, rather than meticulous specificity, is permissible as long as the metes and bounds of the statute are clearly delineated. An act will not be held invalid merely because it might have been more explicit in its wordings or detailed in its provisions, especially where, because of the nature of the act, it would be impossible to provide all the details in advance as in all other statutes. ***(Joseph Ejercito Estrada v. Sandiganbayan [Third Division], G.R. No. 148560, Nov. 19, 2001, En Banc [Bellosillo])***

*124. Does Article 13 (b) of the Labor Code defining “recruitment and placement” violate the due process clause?*

**Held:** In support of her submission that Article 13 (b) is void for vagueness, appellant invokes *People v. Panis (142 SCRA 664 [1986]),* where this Court x x x “criticized” the definition of “recruitment and placement” x x x.

Appellant further argues that the acts that constitute “recruitment and placement” suffer from overbreadth since by merely “referring” a person for employment, a person may be convicted of illegal recruitment.

These contentions cannot be sustained.

Appellant’s reliance on *People v. Panis* is misplaced. The issue in *Panis* was whether, under the proviso of Article 13(b), the crime of illegal recruitment could be committed only “whenever two or more persons are in any manner promised or offered any employment for a fee.” The Court held in the negative x x x.

X x x The Court, in *Panis*, merely bemoaned the lack of records that would help shed light on the meaning of the proviso. The absence of such records notwithstanding, the Court was able to arrive at a reasonable interpretation of the proviso by applying principles in criminal law and drawing from the language and intent of the law itself. Section 13(b), therefore, is not a “perfectly vague act” whose obscurity is evident on its face. If at all, the proviso therein is merely couched in imprecise language that was salvaged by proper construction. It is not void for vagueness.

X x x

That Section 13(b) encompasses what appellant apparently considers as customary and harmless acts such as “labor or employment referral” (“referring” an applicant, for employment to a prospective employer) does not render the law overbroad. Evidently, appellant misapprehends concept of overbreadth.

A statute may be said to be overbroad where it operates to inhibit the exercise of individual freedoms affirmatively guaranteed by the Constitution, such as the freedom of speech or religion. A generally worded statute, when construed to punish conduct which cannot be constitutionally punished is unconstitutionally vague to the extent that it fails to give adequate warning of the boundary between the constitutionally permissible and the constitutionally impermissible applications of the statute *(Wright v. Georgia, 373 US 284, 10 L Ed 2d 349, 83 S Ct 1240 [1963]).*

In *Blo Umpar Adiong v. Commission on Elections (207 SCRA 712 [1992])*, for instance, we struck down as void for overbreadth provisions prohibiting the posting of election propaganda in any place – including private vehicles – other than in the common poster areas sanctioned by the COMELEC. We held that the challenged provisions not only deprived the owner of the vehicle the use of his property but also deprived the citizen of his right to free speech and information. The prohibition in *Adiong*, therefore, was so broad that it covered even constitutionally guaranteed rights and, hence, void for overbreadth. In the present case, however, appellant did not even specify what constitutionally protected freedoms are embraced by the definition of “recruitment and placement” that would render the same constitutionally overbroad. ***(People v. Dela Piedra, 350 SCRA 163, Jan. 24, 2001, 1st Div. [Kapunan])***

*125. Is the Plunder Law unconstitutional for being vague?*

**Held:** As it is written, the Plunder Law contains ascertainable standards and well-defined parameters which would enable the accused to determine the nature of his violation. Section 2 is sufficiently explicit in its description of the acts, conduct and conditions required or forbidden, and prescribes the elements of the crime with reasonable certainty and particularity. X x x

As long as the law affords some comprehensible guide or rule that would inform those who are subject to it what conduct would render them liable to its penalties, its validity would be sustained. It must sufficiently guide the judge in its application; the counsel, in defending one charged with its violation; and more importantly, the accused, in identifying the realm of the proscribed conduct. Indeed, it can be understood with little difficulty that what the assailed statute punishes is the act of a public officer in amassing or accumulating ill-gotten wealth of at least P50,000,000.00 through a series or combination of acts enumerated in Sec. 1, par. (d), of the Plunder Law.

In fact, the amended Information itself closely tracks the language of the law, indicating with reasonable certainty the various elements of the offense which petitioner is alleged to have committed x x x.

We discern nothing in the foregoing that is vague or ambiguous – as there is obviously none – that will confuse petitioner in his defense. Although subject to proof, these factual assertions clearly show that the elements of the crime are easily understood and provide adequate contrast between the innocent and the prohibited acts. Upon such unequivocal assertions, petitioner is completely informed of the accusations against him as to enable him to prepare for an intelligent defense.

Petitioner, however, bewails the failure of the law to provide for the statutory definition of the terms “combination” and “series” in the key phrase “a combination or series of overt or criminal acts” found in Sec. 1, par. (d), and Sec. 2, and the word “pattern” in Sec. 4. These omissions, according to petitioner, render the Plunder Law unconstitutional for being impermissibly vague and overbroad and deny him the right to be informed of the nature and cause of the accusation against him, hence, violative of his fundamental right to due process.

The rationalization seems to us to be pure sophistry. A statute is not rendered uncertain and void merely because general terms are used therein, or because of the employment of terms without defining them *(82 C.J.S. 68, P. 113; People v. Ring, 70 P.2d 281, 26 Cal. App. 2d Supp. 768)*; much less do we have to define every word we use. Besides, there is no positive constitutional or statutory command requiring the legislature to define each and every word in an enactment. Congress is not restricted in the form of expression of its will, and its inability to so define the words employed in a statute will not necessarily result in the vagueness or ambiguity of the law so long as the legislative will is clear, or at least, can be gathered from the whole act, which is distinctly expressed in the Plunder Law.

Moreover, it is a well-settled principle of legal hermeneutics that words of a statute will be interpreted in their natural, plain and ordinary acceptation and signification *(Mustang Lumber, Inc. v. Court of Appeals, G.R. No. 104988, 18 June 1965, 257 SCRA 430, 448)*, unless it is evident that the legislature intended a technical or special legal meaning to those words *(PLDT v. Eastern Telecommunications Phil., Inc., G.R. No. 943774, 27 August 1992, 213 SCRA 16, 26)*. The intention of the lawmakers – who are, ordinarily, untrained philologists and lexicographers – to use statutory phraseology in such a manner is always presumed. Thus, Webster’s New Collegiate Dictionary contains the following commonly accepted definition of the words “combination” and “series.”

*Combination* – the result or product of combining; the act or process of combining. To *combine* is to bring into such close relationship as to obscure individual characters.

*Series* – a number of things or events of the same class coming one after another in spatial and temporal succession.

That Congress intended the words “combination” and “series” to be understood in their popular meanings is pristinely evident from the legislative deliberations on the bill which eventually became RA 7080 or the Plunder Law x x x.

X x x

Thus when the Plunder Law speaks of “combination,” it is referring to at least two (2) acts falling under different categories or enumeration provided in Sec. 1, par. (d), *e.g.*, raids on the public treasury in Sec. 1, par. (d), subpar. (1), and fraudulent conveyance of assets belonging to the National Government under Sec. 1, par. (d), subpar. (3).

On the other hand, to constitute a “series” there must be two (2) or more overt or criminal acts falling under the same category of enumeration found in Sec. 1, par. (d), say, misappropriation, malversation and raids on the public treasury, all of which fall under Sec. 1, par. (d), subpar. (1). Verily, had the legislature intended a technical or distinctive meaning for “combination” and “series,” it would have taken greater pains in specifically providing for it in the law.

As for “pattern,” we agree with the observations of the Sandiganbayan that this term is sufficiently defined in Sec. 4, in relation to Sec. 1, par. (d), and Sec. 2 –

*x x x under Sec. 1 (d) of the law, a ‘pattern’* ***consists of at least a combination or series of overt or criminal acts enumerated in subsections (1) to (6) of Sec. 1 (d).*** *Secondly, pursuant to Sec. 2 of the law, the pattern of overt or criminal acts is* ***directed towards a common purpose or goal which is to enable the public officer to amass, accumulate or acquire ill-gotten wealth.*** *And thirdly, there must either be an* ***‘overall unlawful scheme’ or ‘conspiracy’*** *to achieve said common goal. As commonly understood, the term ‘overall unlawful scheme’ indicates a ‘general plan of action or method’ which the principal accused and public officer and others conniving with him follow to achieve the aforesaid common goal. In the alternative, if there is no such overall scheme or where the schemes or methods used by multiple accused vary, the overt or criminal acts must form part of a conspiracy to attain a common goal.*

X x x

Hence, it cannot plausibly be contended that the law does not give a fair warning and sufficient notice of what it seeks to penalize. Under the circumstances, petitioner’s reliance on the “void-for-vagueness” doctrine is manifestly misplaced.

X x x

Moreover, we agree with, hence we adopt, the observations of Mr. Justice Vicente V. Mendoza during the deliberations of the Court that the allegations that the Plunder Law is vague and overbroad do not justify a facial review of its validity –

The void-for-vagueness doctrine states that “a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law.” *(Connally v. General Constr. Co., 269 U.S. 385, 391, 70 L. Ed. 328 [1926] cited in Ermita-Malate Hotel and Motel Operators Ass’n. v. City Mayor, 20 SCRA 849, 867 [1967])*  The overbreadth doctrine, on the other hand, decrees that “a governmental purpose may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.” *(NAACP v. Alabama, 377 U.S. 288, 307, 12, 2 L. Ed 325, 338 [1958]; Shelton v. Tucker, 364 U.S. 479, 5 L. Ed. 2d 231 [1960])*

A facial challenge is allowed to be made to a vague statute and to one which is overbroad because of possible “chilling effect” upon protected speech. The theory is that “[w]hen statutes regulate or proscribe speech and no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, the transcendent value to all society of constitutionally protected expression is deemed to justify allowing attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with narrow specificity.” *(Gooding v. Wilson, 405 U.S. 518, 521, 31 L. Ed. 2d 408, 413 [1972] [internal quotation marks omitted])* The possible harm to society in permitting some unprotected speed to go unpunished is outweighed by the possibility that the protected speech of others may be deterred and perceived grievances left to fester because of possible inhibitory effects of overly broad statutes.

This rationale does not apply to penal statutes. Criminal statutes have general *in terrorem* effect resulting from their very existence, and, if facial challenge is allowed for this reason alone, the State may well be prevented from enacting laws against socially harmful conduct. In the area of criminal law, the law cannot take chances as in the area of free speech.

The overbreadth and vagueness doctrine then have special application only to free speech cases. They are inapt for testing the validity of penal statutes. As the U.S. Supreme Court put it, in an opinion by Chief Justice Rehnquist, “we have not recognized an ‘overbreadth’ doctrine outside the limited context of the First Amendment.” In *Broadwick v. Oklahoma (413 U.S. 601, 612-613, 37 L Ed. 2d 830, 840-841 [1973]),* the Court ruled that “claims of facial overbreadth have been entertained in cases involving statutes which, by their terms, seek to regulate only spoken words” and, again, that “overbreadth claims, if entertained at all, have been curtailed when invoked against ordinary criminal laws that are sought to be applied to protected conduct.” For this reason, it has been held that “a facial challenge to a legislative act is the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid.” *(United States v. Salerno, supra.)* As for the vagueness doctrine, it is said that a litigant may challenge a statute on its face only if it is vague in all its possible applications. “A plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others.” *(Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 494-95, 71 L Ed. 2d 362, 369 [1982])*

In sum, the doctrines of strict scrutiny, overbreadth, and vagueness are analytical tools developed for testing “on their faces” statutes in free speech cases or, as they are called in American law, First Amendment cases. They cannot be made to do service when what is involved is a criminal statute. With respect to such statute, the established rule is that “one to whom application of a statute is constitutional will not be heard to attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations in which its application might be unconstitutional.” *(United States v. Raines, 362 U.S. 17, 21, 4 L. Ed. 2d 524, 529 [1960]. The paradigmatic case is Yazoo &Mississippi Valley RR. v. Jackson Vinegar Co., 226 U.S. 217, 57 l. Ed. 193 [1912])* As has been pointed out, “vagueness challenges in the First Amendment context, like overbreadth challenges typically produce facial invalidation, while statutes found to be vague as a matter of due process typically are invalidated [only] ‘as applied’ to a particular defendant.” *(G. Gunther & K. Sullivan, Constitutional Law 1299 [2001])* Consequently, there is no basis for petitioner’s claim that this Court review the Anti-Plunder Law on its face and in its entirety.

Indeed, “on its face” invalidation of statutes results in striking them down entirely on the ground that they might be applied to parties not before the Court whose activities are constitutionally protected *(Id. at 1328).* It constitutes a departure from the case and controversy requirement of the Constitution and permits decisions to be made without concrete factual settings and in sterile abstract contexts *(Constitution, Art. VIII, Sections 1 and 5. Compare Angara v. Electoral Commission, 63 Phil. 139, 158 [1936])*. But, as the U.S. Supreme Court pointed out in *Younger v. Harris (401 U.S. 37, 52-53, 27 L. Ed. 2d 669, 680 [1971]; others omitted.)*

[T]he task of analyzing a proposed statute, pinpointing its deficiencies, and requiring correction of these deficiencies before the statute is put into effect, is rarely if ever an appropriate task for the judiciary. The combination of the relative remoteness of the controversy, the impact on the legislative process of the relief sought, and above all the speculative and amorphous nature of the required line-by-line analysis of detailed statutes, x x x ordinarily results in a kind of case that is wholly unsatisfactory for deciding constitutional questions, whichever way they might be decided.

For these reasons, “on its face” invalidation of statutes has been described as “manifestly strong medicine,” to be employed “sparingly and only as a last resort,” *(Broadwick v. Oklahoma, 413 U.S. at 613, 37 L.Ed.2d at 841; National Endowment for the Arts v. Finley, 524 U.S. 569, 580 [1998])* and is generally disfavored *(FW/PBS, Inc. v. City of Dallas, 493 U.S. 223, 107 L.Ed.2d 603 [1990]; Cruz v. Secretary of Environment and Natural Resources, G.R. No. 135385, 6 December 2000 [Mendoza, J., Separate Opinion]).* In determining the constitutionality of a statute, therefore, its provisions which are alleged to have been violated in a case must be examined in the light of the conduct with which the defendant is charged *(United States v. National Dairy Prod. Corp., 372 U.S. 29, 32-33, 9 L.Ed.2d 561, 565-6 [1963])*

In light of the foregoing disquisition, it is evident that the purported ambiguity of the Plunder Law, so tenaciously claimed and argued at length by petitioner, is more imagined than real. Ambiguity, where none exists, cannot be created by dissecting parts and words in the statute to furnish support to critics who cavil at the want of scientific precision in the law. Every provision of the law should be construed in relation and with reference to every other part. To be sure, it will take more than nitpicking to overturn the well-entrenched presumption of constitutionality and validity of the Plunder Law. A *fortiori*, petitioner cannot feign ignorance of what the Plunder Law is all about. Being one of the Senators who voted for its passage, petitioner must be aware that the law was extensively deliberated upon by the Senate and its appropriate committees by reason of which he even registered his affirmative vote with full knowledge of its legal implications and sound constitutional anchorage. ***(Joseph Ejercito Estrada v. Sandiganbayan [Third Division], G.R. No. 148560, Nov. 19, 2001, En Banc [Bellosillo])***

# A. THE INHERENT POWERS OF THE STATE

**Police Power**

*126. Define Police Power and clarify its scope.*

**Held:**  1. Police power is an inherent attribute of sovereignty. It has been defined as the power vested by the Constitution in the legislature to make, ordain, and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the commonwealth, and for the subjects of the same*.* The power is plenary and its scope is vast and pervasive, reaching and justifying measures for public health, public safety, public morals, and the general welfare.

It bears stressing that police power is lodged primarily in the National Legislature*.* It cannot be exercised by any group or body of individuals not possessing legislative power*.* The National Legislature, however, may delegate this power to the President and administrative boards as well as the lawmaking bodies of municipal corporations or local government units*.* Once delegated, the agents can exercise only such legislative powers as are conferred on them by the national lawmaking body*.* ***(Metropolitan Manila Development Authority v. Bel-Air Village Association, Inc., 328 SCRA 836, 843-844, March 27, 2000, 1st Div. [Puno])***

2. The scope of police power has been held to be so comprehensive as to encompass almost all matters affecting the health, safety, peace, order, morals, comfort and convenience of the community. Police power is essentially regulatory in nature and the power to issue licenses or grant business permits, if exercised for a regulatory and not revenue-raising purpose, is within the ambit of this power.

X x x

[T]he issuance of business licenses and permits by a municipality or city is essentially regulatory in nature. The authority, which devolved upon local government units to issue or grant such licenses or permits, is essentially in the exercise of the police power of the State within the contemplation of the general welfare clause of the Local Government Code. ***(Acebedo Optical Company, Inc. v. Court of Appeals, 329 SCRA 314, March 31, 2000, En Banc [Purisima])***

*127. Discuss the nature of the authority of local government units to issue or grant licenses or permits.*

**Held:** The issuance of business licenses and permits by a municipality or city is essentially regulatory in nature. The authority, which devolved upon local government units to issue or grant such licenses or permits, is essentially in the exercise of the police power of the State within the contemplation of the general welfare clause of the Local Government Code. ***(Acebedo Optical Company, Inc. v. Court of Appeals, 329 SCRA 314, March 31, 2000, En Banc [Purisima])***

*128. How should laws that grant the right to exercise a part of the police power of the State be construed?*

**Held:** Lest the idea gets lost in the shoals of our subconsciousness, let us not forget that PAGCOR is engaged in business affected with public interest. The phrase “affected with public interest” means that an industry is subject to control for the public good *(Nebbia v. New York, 291 U.S. 502);* it has been considered as the equivalent of “subject to the exercise of the police power.” *(Bernas, The 1987 Constitution of the Republic of the Philippines, A Commentary, 1996 ed., p. 1053)* Perforce, *a legislative franchise to operate jai-alai is imbued with public interest and involves an exercise of police power. The familiar rule is that laws which grant the right to exercise a part of the police power of the state are to be construed strictly and any doubt must be resolved against the grant (People v. Chicago, 103 N.E. 609; Slaughter v. O’Berry, 35 S.E. 241, 48 L.R.A. 442). The legislature is regarded as the guardian of society, and therefore is not presumed to disable itself or abandon the discharge of its duty. Thus, courts do not assume that the legislature intended to part away with its power to regulate public morals (Stone v. Mississippi, 101 U.S. 814).*  The presumption is influenced by constitutional considerations. Constitutions are widely understood to withhold from legislatures any authority to bargain away their police power *(Sutherland Statutory Construction, Vol. 3, 5th ed., p. 244)* for the power to protect the public interest is beyond abnegation.

It is stressed that the case at bar does not involve a franchise to operate a public utility (such as water, transportation, communication or electricity) – the operation of which undoubtedly redounds to the benefit of the general public. What is claimed is an alleged legislative grant of a gambling franchise – a franchise to operate jai-alai. A statute which legalizes a gambling activity or business should be strictly construed and every reasonable doubt must be resolved to limit the powers and rights claimed under its authority *(Aicardi v. Alabama, 22 L.Ed. 215; West Indies, Inc. v. First National Bank, 214 P.2d 144).* ***(Del Mar v. Philippine Amusement and Gaming Corporation, 346 SCRA 485, Nov. 29, 2000, En Banc [Puno])***

129. Discuss why rates to be charged by public utilities like MERALCO are subject to State regulation.

**Held:** The regulation of rates to be charged by public utilities is founded upon the police power of the State and statutes prescribing rules for the control and regulations of public utilities are a valid exercise thereof. When private property is used for a public purpose and is affected with public interest, it ceases to be *juris privati* only and becomes subject to regulation. The regulation is to promote the common good. Submission to regulation may be withdrawn by the owner by discontinuing use; but as long as the use of the property is continued, the same is subject to public regulation *(Munn v. People of the State of Illinois, 94 U.S. 113, 126 [1877]).*

In regulating rates charged by public utilities, the State protects the public against arbitrary and excessive rates while maintaining the efficiency and quality of services rendered. However, the power to regulate rates does not give the State the right to prescribe rates which are so low as to deprive the public utility of a reasonable return on investment. **Thus, the rates prescribed by the State must be one that yields a fair return on the public utility upon the value of the property performing the service and one that is reasonable to the public for the service rendered** *(IV A.F. Agbayani, Commentaries and Jurisprudence on the Commercial Laws of the Philippines 500 [1993]).* The fixing of just and reasonable rates involves a **balancing** of the investor and the consumer interests *(Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591).* ***(Republic of the Philippines v. Manila Electric Company, G.R. No. 141314, Nov. 15, 2002, 3rd Div. [Puno])***

*130. What powers of the State are involved in the implementation of the Comprehensive Agrarian Reform Law (CARL)? Discuss.*

**Held:** The implementation of the CARL is an exercise of the State’s police power and the power of eminent domain. To the extent that the CARL prescribes retention limits to the landowners, there is an exercise of police power for the regulation of private property in accordance with the Constitution *(Association of Small Landowners in the Philippines v. Secretary of Agrarian Reform, 175 SCRA 343, 373-374 [1989]).* But where, to carry out such regulation, the owners are deprived of lands they own in excess of the maximum area allowed, there is also a taking under the power of eminent domain. The taking contemplated is not a mere limitation of the use of the land. What is required is the surrender of the title to and physical possession of the said excess and all beneficial rights accruing to the owner in favor of the farmer beneficiary *(Id.).* The Bill of Rights provides that “[n]o person shall be deprived of life, liberty or property without due process of law.” *(Section 1, Article III, 1987 Constitution)* The CARL was not intended to take away property without due process of law *(Development Bank of the Philippines v. Court of Appeals, 262 SCRA 245, 253 [1996]).* The exercise of the power of eminent domain requires that due process be observed in the taking of private property. ***(Roxas & Co., Inc. v. Court of Appeals, 321 SCRA 106, Dec. 17, 1999, En Banc [Puno])***

*131. Does Article 263(g) of the Labor Code (vesting upon the Secretary of Labor the discretion to determine what industries are indispensable to the national interest and thereafter, assume jurisdiction over disputes in said industries) violate the workers’ constitutional right to strike?*

**Held:** Said article does not interfere with the workers’ right to strike but merely regulates it, when in the exercise of such right, national interests will be affected. The rights granted by the Constitution are not absolute. They are still subject to control and limitation to ensure that they are not exercised arbitrarily. The interests of both the employers and the employees are intended to be protected and not one of them is given undue preference.

The Labor Code vests upon the Secretary of Labor the discretion to determine what industries are indispensable to national interest. Thus, upon the determination of the Secretary of Labor that such industry is indispensable to the national interest, it will assume jurisdiction over the labor dispute of said industry. The assumption of jurisdiction is in the nature of police power measure. This is done for the promotion of the common good considering that a prolonged strike or lockout can be inimical to the national economy. The Secretary of Labor acts to maintain industrial peace. Thus, his certification for compulsory arbitration is not intended to impede the workers’ right to strike but to obtain a speedy settlement of the dispute. ***(Philtread Workers Union [PTWU] v. Confesor, 269 SCRA 393, March 12, 1997)***

*132. May solicitation for religious purposes be subject to proper regulation by the State in the exercise of police power?*

**Held:** The constitutional inhibition of legislation on the subject of religion has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus, the Constitution embraces two concepts, that is, freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society. The freedom to act must have appropriate definitions to preserve the enforcement of that protection. In every case, the power to regulate must be so exercised, in attaining a permissible end, as not to unduly infringe on the protected freedom.

Whence, even the exercise of religion may be regulated, at some slight inconvenience, in order that the State may protect its citizens from injury. Without doubt, a State may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent. The State is likewise free to regulate the time and manner of solicitation generally, in the interest of public safety, peace, comfort, or convenience.

It does not follow, therefore, from the constitutional guarantees of the free exercise of religion that everything which may be so called can be tolerated*.* It has been said that a law advancing a legitimate governmental interest is not necessarily invalid as one interfering with the “free exercise” of religion merely because it also incidentally has a detrimental effect on the adherents of one or more religion*.* Thus, the general regulation, in the public interest, of solicitation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose. Such regulation would not constitute a prohibited previous restraint on the free exercise of religion or interpose an inadmissible obstacle to its exercise*.*

Even with numerous regulative laws in existence, it is surprising how many operations are carried on by persons and associations who, secreting their activities under the guise of benevolent purposes, succeed in cheating and defrauding a generous public. It is in fact amazing how profitable the fraudulent schemes and practices are to people who manipulate them. The State has authority under the exercise of its police power to determine whether or not there shall be restrictions on soliciting by unscrupulous persons or for unworthy causes or for fraudulent purposes. That solicitation of contributions under the guise of charitable and benevolent purposes is grossly abused is a matter of common knowledge. Certainly the solicitation of contributions in good faith for worthy purposes should not be denied, but somewhere should be lodged the power to determine within reasonable limits the worthy from the unworthy*.* The objectionable practices of unscrupulous persons are prejudicial to worthy and proper charities which naturally suffer when the confidence of the public in campaigns for the raising of moneyfor charity is lessened or destroyed*.* Someregulation of public solicitation is, therefore, in the public interest*.*

To conclude, solicitation for religious purposes may be subject to proper regulation by the State in the exercise of police power. ***(Centeno v. Villalon-Pornillos, 236 SCRA 197, Sept. 1, 1994 [Regalado])***

**The Power of Eminent Domain**

*132. What is Eminent Domain?*

**Held:** 1. Eminent domain is the right or power of a sovereign state to appropriate private property to particular uses to promote public welfare*.* It is an indispensable attribute of sovereignty; a power grounded in the primary duty of government to serve the common need and advance the general welfare*.* Thus, the right of eminent domain appertains to every independent government without the necessity for constitutional recognition*.* The provisions found in modern constitutions of civilized countries relating to the taking of property for the public use do not by implication grant the power to the government, but limit a power which would otherwise be without limit*.* Thus, our own Constitution provides that “[p]rivate property shall not be taken for public use without just compensation.” *(Art. III, Sec. 9).* Furthermore, the due process and equal protection clauses *(1987 Constitution, Art. III, Sec. 1)* act as additional safeguards against the arbitrary exercise of this governmental power.

Since the exercise of the power of eminent domain affects an individual’s right to private property, a constitutionally-protected right necessary for the preservation and enhancement of personal dignity and intimately connected with the rights to life and liberty*,* the need for its circumspect operation cannot be overemphasized. In *City of Manila v. Chinese Community of Manila* we said *(40 Phil. 349 [1919)*:

The exercise of the right of eminent domain, whether directly by the State, or by its authorized agents, is necessarily in derogation of private rights, and the rule in that case is that the authority must be strictly construed. No species of property is held by individuals with greater tenacity, and none is guarded by the Constitution and the laws more sedulously, than the right to the freehold of inhabitants. When the legislature interferes with that right, and, for greater public purposes, appropriates the land of ah individual without his consent, the plain meaning of the law should not be enlarged by doubt[ful] interpretation. *(Bensley v. Mountainlake Water Co., 13 Cal., 306 and cases cited [73 Am. Dec., 576])*

The statutory power of taking property from the owner without his consent is one of the most delicate exercise of governmental authority. It is to be watched with jealous scrutiny. Important as the power may be to the government, the inviolable sanctity which all free constitutions attach to the right of property of the citizens, constrains the strict observance of the substantial provisions of the law which are *prescribed* as modes of the exercise of the power, and to protect it from abuse x x x*.*

The power of eminent domain is essentially legislative in nature. It is firmly settled, however, that such power may be validly delegated to local government units, other public entities and public utilities, although the scope of this delegated legislative power is necessarily narrower than that of the delegating authority and may only be exercised in strict compliance with the terms of the delegating law*.* ***(Heirs of Alberto Suguitan v. City of Mandaluyong, 328 SCRA 137, 144-146, March 14, 2000, 3rd Div. [Gonzaga-Reyes])***

2. Eminent domain is a fundamental State power that is inseparable from sovereignty. It is government’s right to appropriate, in the nature of a compulsory sale to the State, private property for public use or purpose. Inherently possessed by the national legislature, the power of eminent domain may be validly delegated to local governments, other public entities and public utilities. For the taking of private property by the government to be valid, the taking must be for public purpose and there must be just compensation. ***(Moday v. Court of Appeals, 268 SCRA 586, February 20, 1997)***

*133. State some limitations on the exercise of the power of Eminent Domain.*

**Held:** The limitations on the power of eminent domain are that the use must be public, compensation must be made and due process of law must be observed. The Supreme Court, taking cognizance of such issues as the adequacy of compensation, necessity of the taking and the public use character or the purpose of the taking, has ruled that the necessity of exercising eminent domain must be genuine and of a public character. Government may not capriciously choose what private property should be taken. ***(Moday v. Court of Appeals, 268 SCRA 586, February 20, 1997)***

*134. Discuss the expanded notion of public use in eminent domain proceedings.*

**Held:**The City of Manila, acting through its legislative branch, has the express power to acquire private lands in the city and subdivide these lands into home lots for sale to *bona fide* tenants or occupants thereof, and to laborers and low-salaried employees of the city.

That only a few could actually benefit from the expropriation of the property does not diminish its public character. It is simply not possible to provide all at once land and shelter for all who need them.

Corollary to the expanded notion of public use, expropriation is not anymore confined to vast tracts of land and landed estates*.* It is therefore of no moment that the land sought to be expropriated in this case is less than half a hectare only.

Through the years, the public use requirement in eminent domain has evolved into a flexible concept, influenced by changing conditions*.* Public use now includes the broader notion of indirect public benefit or advantage, including in particular, urban land reform and housing. ***(Filstream International Incorporated v. CA, 284 SCRA 716, Jan.23, 1998 [Francisco])***

*135. The constitutionality of Sec. 92 of B.P. Blg. 881 (requiring radio and television station owners and operators to give to the Comelec radio and television time free of charge) was challenged on the ground, among others, that it violated the due process clause and the eminent domain provision of the Constitution by taking airtime from radio and television broadcasting stations without payment of just compensation. Petitioners claim that the primary source of revenue of radio and television stations is the sale of airtime to advertisers and that to require these stations to provide free airtime is to authorize a taking which is not “a de minimis temporary limitation or restraint upon the use of private property.” Will you sustain the challenge?*

**Held:** All broadcasting, whether by radio or by television stations, is licensed by the government. Airwave frequencies have to be allocated as there are more individuals who want to broadcast than there are frequencies to assign. A franchise is thus a privilege subject, among other things, to amendment by Congress in accordance with the constitutional provision that “any such franchise or right granted x x x shall be subject to amendment, alteration or repeal by the Congress when the common good so requires.” *(Art. XII, Sec. 11)*

Indeed, provisions for Comelec Time have been made by amendment of the franchises of radio and television broadcast stations and such provisions have not been thought of as taking property without just compensation. Art. XII, Sec. 11 of the Constitution authorizes the amendment of franchises for “the common good.” What better measure can be conceived for the common good than one for free airtime for the benefit not only of candidates but even more of the public, particularly the voters, so that they will be fully informed of the issues in an election? “[I]t is the right of the viewers and listeners, not the right of the broadcasters, which is paramount.”

Nor indeed can there be any constitutional objection to the requirement that broadcast stations give free airtime. Even in the United States, there are responsible scholars who believe that government controls on broadcast media can constitutionally be instituted to ensure diversity of views and attention to public affairs to further the system of free expression. For this purpose, broadcast stations may be required to give free airtime to candidates in an election.

In truth, radio and television broadcasting companies, which are given franchises, do not own the airwaves and frequencies through which they transmit broadcast signals and images. They are merely given the temporary privilege of using them. Since a franchise is a mere privilege, the exercise of the privilege may reasonably be burdened with the performance by the grantee of some form of public service.

In the granting of the privilege to operate broadcast stations and thereafter supervising radio and television stations, the State spends considerable public funds in licensing and supervising such stations. It would be strange if it cannot even require the licensees to render public service by giving free airtime.

The claim that petitioner would be losing P52,380,000.00 in unrealized revenue from advertising is based on the assumption that airtime is “finished product” which, it is said, become the property of the company, like oil produced from refining or similar natural resources after undergoing a process for their production. As held in *Red Lion Broadcasting Co. v. F.C.C. (395 U.S. at 394, 23 L. Ed. 2d at 391, quoting 47 U.S.C. Sec. 301),* which upheld the right of a party personally attacked to reply, “licenses to broadcast do not confer ownership of designated frequencies, but only the temporary privilege of using them.” Consequently, “a license permits broadcasting, but the licensee has no constitutional right to be the one who holds the license or to monopolize a radio frequency to the exclusion of his fellow citizens. There is nothing in the First Amendment which prevents the government from requiring a licensee to share his frequency with others and to conduct himself as a proxy or fiduciary with obligations to present those views and voices which are representative of his community and which would otherwise, by necessity, be barred from the airwaves.” As radio and television broadcast stations do not own the airwaves, no private property is taken by the requirement that they provide airtime to the Comelec. ***(TELEBAP, Inc. v. COMELEC, 289 SCRA 337, April 21, 1998 [Mendoza])***

*136. May eminent domain be barred by "res judicata" or "law of the case"?*

**Held:** The principle of *res judicata,* which finds application in generally all cases and proceedings, cannot bar the *right* of the State or its agents to expropriate private property. The very nature of eminent domain, as an inherent power of the State, dictates that the *right* to exercise the power be absolute and unfettered even by a prior judgment or *res judicata.* The scope of eminent domain is plenary and, like police power, can “reach every form of property which the State might need for public use.” All separate interests of individuals in property are held of the government under this tacit agreement or implied reservation. Notwithstanding the grant to individuals, the *eminent domain,* the highest and most exact idea of property, remains in the government, or in the aggregate body of the people in their sovereign capacity; and they have the right to resume the possession of the property whenever the public interest requires it.” Thus, the State or its authorized agent cannot be forever barred from exercising said *right* by reason alone of previous non-compliance with any legal requirement.

While the principle of *res judicata* does not denigrate the right of the State to exercise eminent domain, it does apply to specific issues decided in a previous case. For example, a final judgment dismissing an expropriation suit on the ground that there was no prior offer precludes another suit raising the same issue; it cannot, however, bar the State or its agent from thereafter complying with this requirement, as prescribed by law, and subsequently exercising its power of eminent domain over the same property. ***(Municipality of Paranaque v. V.M. Realty Corporation, 292 SCRA 678, July 20, 1998 [Panganiban])***

*137. Discuss how expropriation may be initiated, and the two stages in expropriation.*

**Held:**Expropriation may be initiated by court action or by legislation*.* In both instances, just compensation is determined by the courts *(EPZA v. Dulay, 149 SCRA 305 [1987]).*

The expropriation of lands consists of two stages. As explained in *Municipality of Binan v. Garcia (180 SCRA 576, 583-584 [1989], reiterated in National Power Corp. v. Jocson, 206 SCRA 520 [1992]):*

The first is concerned with the determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit. It ends with an order, if not dismissal of the action, "of condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned, for the public use or purpose declared in the complaint, upon the payment of just compensation to be determined as of the date of the filing of the complaint" x x x.

The second phase of the eminent domain action is concerned with the determination by the court of "the just compensation for the property sought to be taken." This is done by the court with the assistance of not more than three (3) commissioners x x x.

It is only upon the completion of these two stages that expropriation is said to have been completed. Moreover, it is only upon payment of just compensation that title over the property passes to the government*.* Therefore, until the action for expropriation has been completed and terminated, ownership over the property being expropriated remains with the registered owner. Consequently, the latter can exercise all rights pertaining to an owner, including the right to dispose of his property, subject to the power of the State ultimately to acquire it through expropriation. ***(Republic v. Salem Investment Corporation, et. al., G.R. No. 137569, June 23, 2000, 2nd Div. [Mendoza])***

*138. Does the two (2) stages in expropriation apply only to judicial, and not to legislative, expropriation?*

**Held:** The De la Ramas are mistaken in arguing that the two stages of expropriation x x x only apply to judicial, and not to legislative, expropriation. Although Congress has the power to determine what land to take, it can not do so arbitrarily. Judicial determination of the propriety of the exercise of the power, for instance, in view of allegations of partiality and prejudice by those adversely affected*,* and the just compensation for the subject property is provided in our constitutional system.

We see no point in distinguishing between judicial and legislative expropriation as far as the two stages mentioned above are concerned. Both involve these stages and in both the process is not completed until payment of just compensation is made. The Court of Appeals was correct in saying that B.P. Blg. 340 did not effectively expropriate the land of the De la Ramas. As a matter of fact, it merely commenced the expropriation of the subject property.

X x x

The De la Ramas make much of the fact that ownership of the land was transferred to the government because the equitable and the beneficial title was already acquired by it in 1983, leaving them with only the naked title. However, as this Court held in *Association of Small Landowners in the Phil., Inc. v. Secretary of Agrarian Reform (175 SCRA 343, 389 [1989]):*

The recognized rule, indeed, is that title to the property expropriated shall pass from the owner to the expropriator only upon full payment of the just compensation. Jurisprudence on this settled principle is consistent both here and in other democratic jurisdictions. X x x

***(Republic v. Salem Investment Corporation, et. al., G.R. No. 137569, June 23, 2000, 2nd Div. [Mendoza])***

*139. Is prior unsuccessful negotiation a condition precedent for the exercise of eminent domain?*

**Held:** Citing *Iron and Steel Authority v. Court of Appeals (249 SCRA 538, October 25, 1995),* petitioner insists that before eminent domain may be exercised by the state, there must be a showing of prior unsuccessful negotiation with the owner of the property to be expropriated.

This contention is not correct. As pointed out by the Solicitor General the current effective law on delegated authority to exercise the power of eminent domain is found in Section 12, Book III of the Revised Administrative Code, which provides:

“SEC. 12. *Power of Eminent Domain* – The President shall determine when it is necessary or advantageous to exercise the power of eminent domain in behalf of the National Government, and direct the Solicitor General, whenever he deems the action advisable, to institute expropriation proceedings in the proper court.”

The foregoing provision does not require prior unsuccessful negotiation as a condition precedent for the exercise of eminent domain. In *Iron and Steel Authority v. Court of Appeals,* the President chose to prescribe this condition as an additional requirement instead. In the instant case, however, no such voluntary restriction was imposed. ***(SMI Development Corporation v. Republic, 323 SCRA 862, Jan. 28, 2000, 3rd Div. [Panganiban])***

*140. Discuss the nature of the right of eminent domain and the limitations thereof.*

**Held:** The right of eminent domain is usually understood to be an ultimate right of the sovereign power to appropriate any property within its territorial sovereignty for a public purpose *(Bernas, 1987 Edition, p. 276, quoting Justice Story in Charles River Bridge v. Warren Bridge).* Fundamental to the independent existence of a State, it requires no recognition by the Constitution, whose provisions are taken as being merely confirmatory of its presence and as being regulatory, at most, in the due exercise of the power. In the hands of the legislature, the power is inherent, its scope matching that of taxation, even that of police power itself, in many respects. It reaches to every form of property the State needs for public use and, as an old case so puts it, all separate interests of individuals in property are held under a tacit agreement or implied reservation vesting upon the sovereign the right to resume the possession of the property whenever the public interest so requires it *(US v. Certain Lands in Highlands [DY NY] 48 F Supp 306).*

The ubiquitous character of eminent domain is manifest in the nature of the expropriation proceedings. Expropriation proceedings are not adversarial in the conventional sense, for the condemning authority is not required to assert any conflicting interest in the property. Thus, by filing the action, the condemnor in effect merely serves notice that it is taking title and possession of the property, and the defendant asserts title or interest in the property, not to prove a right to possession, but to prove a right to compensation for the taking *(US v. Certain Lands in Highlands [DY NY] 48 F Supp 306; San Bernardino Valley Municipal Water District v. Gage Canal Co. [4th Dist] Cal App 2d 206, 37 Cal Rptr 856).*

Obviously, however, the power is not without its limits: *first,* the taking must be for public use, and *second,* that just compensation must be given to the private owner of the property *(Sena v. Manila Railroad Co., 42 Phil. 102).* These twin proscriptions have their origin in the recognition of the necessity for achieving balance between the State interests, on the one hand, and private rights, upon the other hand, by effectively restraining the former and affording protection to the latter *(Visayan Refining Co. v. Camus, 40 Phil. 550).* In determining “public use,” two approaches are utilized – the *first* is public employment or the actual use by the public, and the *second* is public advantage or benefit *(Thornton Development authority v. Upah [DC Colo] 640 F Supp 1071).*  It is also useful to view the matter as being subject to constant growth, which is to say that as society advances, its demands upon the individual so increases, and each demand is a new use to which the resources of the individual may be devoted *(Visayan Refining, supra).* ***(Republic of the Philippines v. The Hon. Court of Appeals, G.R. No. 146587, July 2, 2002, 1st Div. [Vitug])***

141. What is the meaning of “public use” in eminent domain proceedings? Illustrative case.

**Held:** This Court holds that respondent (Philippine Export Processing Zone) has the legal authority to expropriate the subject Lot 1406-B and that the same was for a valid public purpose. In *Sumulong v. Guerrero (154 SCRA 461, 467-468 [1987])*, this Court has ruled that,

The “public use” requirement for a valid exercise of the power of eminent domain is a flexible and evolving concept influenced by changing conditions. In this jurisdiction, the statutory and judicial trend has been summarized as follows:

This Court has ruled that the taking to be valid must be for public use. There was a time when it was felt that a literal meaning should be attached to such a requirement. Whatever project is undertaken must be for the public to enjoy, as in the case of streets or parks. Otherwise, expropriation is not allowable. It is not anymore. As long as the purpose of the taking is public, then the power of eminent domain comes into play . . . It is accurate to state then that at present whatever may be beneficially employed for the general welfare satisfies the requirement of public use. (Heirs of Juancho Ardona v. Reyes, 125 SCRA 220 [1983] at 234-235 quoting E. Fernando, the Constitution of the Philippines 523-4 [2nd Ed. 1977])

The term “public use” has acquired a more comprehensive coverage. To the literal import of the term signifying strict use or employment by the public has been added the broader notion of indirect public benefit or advantage.

In *Manosca v. Court of Appeals*, this Court has also held that what ultimately emerged is a concept of public use which is just as broad as “public welfare.” *(252 SCRA 412, 422 [1996], quoting Joaquin Bernas, The Constitution of the Republic of the Philippines, Vol. 1, 1987 ed., p. 282)*

Respondent PEZA expropriated the subject parcel of land pursuant to Proclamation No. 1980 x x x issued by former President Ferdinand Marcos. Meanwhile, the power of eminent domain of respondent is contained in its original charter, Presidential Decree No. 66 x x x.

Accordingly, subject Lot 1406-B was expropriated “for the construction . . . of terminal facilities, structures and approaches thereto.” The authority is broad enough to give the respondent substantial leeway in deciding for what public use the expropriated property would be utilized. Pursuant to this broad authority, respondent leased a portion of the lot to commercial banks while the rest was made a transportation terminal. Said public purposes were even reaffirmed by Republic Act No. 7916, a law amending respondent PEZA’s original charter x x x.

In *Manila Railroad Co. v. Mitchel (50 Phil. 832, 837-838 [1927])*, this Court has ruled that in the exercise of eminent domain, only as much land can be taken as is necessary for the legitimate purpose of the condemnation. The term “necessary,” in this connection, does not mean absolutely indispensable but requires only a reasonable necessity of the taking for the stated purpose, growth and future needs of the enterprise. The respondent cannot attain a self-sustaining and viable ECOZONE if inevitable needs in the expansion in the surrounding areas are hampered by the mere refusal of the private landowners to part with their properties. The purpose of creating an ECOZONE and other facilities is better served if respondent directly owns the areas subject of the expansion program.

X x x. The expropriation of Lot 1406-B for the purpose of being leased to banks and for the construction of a terminal has the purpose of making banking and transportation facilities easily accessible to the persons working at the industries located in PEZA. The expropriation of adjacent areas therefore comes as a matter of necessity to bring life to the purpose of the law. In such a manner, PEZA’s goal of being a major force in the economic development of the country would be realized. Furthermore, this Court has already ruled that:

X x x [T]he Legislature may directly determine the necessity for appropriating private property for a particular improvement for public use, and it may select the exact location of the improvement. In such a case, it is well-settled that the utility of the proposed improvement, the existence of the public necessity for its construction, the expediency of constructing it, the suitableness of the location selected, are all questions exclusively for the legislature to determine, and the courts have no power to interfere or to substitute their own views for those of the representatives of the people.

In the absence of some constitutional or statutory provisions to the contrary, the necessity and expediency of exercising the right of eminent domain are questions essentially political and not judicial in their character. *(City of Manila v. Chinese Community of Manila, 40 Phil. 349 [1919])*

Inasmuch as both Presidential Decree No. 66 and Republic Act No. 7916, bestow respondent with authority to develop terminal facilities and banking centers, this Court will not question the respondent’s lease of certain portions of the expropriated lot to banks, as well as the construction of terminal facilities.

Petitioner contends that respondent is bound by the representations of its Chief Civil Engineer when the latter testified before the trial court that the lot was to be devoted for the construction of government offices. Anent this issue, suffice it to say that PEZA can vary the purpose for which a condemned lot will be devoted to, provided that the same is for public use. Petitioner cannot impose or dictate on the respondent what facilities to establish for as long as the same are for public purpose. ***(Estate of Salud Jimenez v. PEZA, 349 SCRA 240, Jan. 16, 2001, 2nd Div. [De Leon])***

*142. Discuss the meaning of “just compensation” in eminent domain proceedings. Does it include the payment of “interest” and, if so, how is it to be computed?*

**Held:** 1. The constitutional limitation of “just compensation” is considered to be the sum equivalent to the market value of the property, broadly described to be the price fixed by the seller in open market in the usual and ordinary course of legal action and competition or the fair value of the property as between one who receives, and one who desires to sell, it fixed at the time of the actual taking by the government *(Manila Railway Co. v. Fabie, 17 Phil. 206).*  Thus, if property is taken for public use before compensation is deposited with the court having jurisdiction over the case, the final compensation must include interests on its just value to be computed from the time the property is taken to the time when compensation is actually paid or deposited with the court *(Philippine Railway Co. v. Solon, 13 Phil. 34).* In fine, between the taking of the property and the actual payment, legal interests accrue in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred *(Commissioner of Public Highways v. Burgos, 96 SCRA 831).* ***(Republic of the Philippines v. The Hon. Court of Appeals, G.R. No. 146587, July 2, 2002, 1st Div. [Vitug])***

2. We have ruled that the concept of just compensation embraces not only the correct determination of the amount to be paid to the owners of the land, but also the payment of the land within a reasonable time from its taking. Without prompt payment, compensation cannot be considered “just” inasmuch as the property owner is made to suffer the consequences of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss *(Land Bank of the Philippines v. Court of Appeals, 258 SCRA 404, 408-409 [1996] quoting Municipality of Makati v. Court of Appeals, 190 SCRA 207, 213 [1990]).* Payment of just compensation should follow as a matter of right immediately after the order of expropriation is issued. Any delay in payment must be counted from said order. However, the delay to constitute a violation of due process must be unreasonable and inexcusable; it must be deliberately done by a party in order to defeat the ends of justice.

We find that respondent capriciously evaded its duty of giving what is due to petitioner. In the case at bar, the expropriation order was issued by the trial court in 1991. The compromise agreement between the parties was approved by the trial court in 1993. However, from 1993 up to the present, respondent has failed in its obligation to pay petitioner to the prejudice of the latter. Respondent cause damage to petitioner in making the latter to expect that it had a good title to the property to be swapped with Lot 1406-B; and meanwhile, respondent has been reaping benefits from the lease or rental income of the said expropriated lot. We cannot tolerate this oppressive exercise of the power of eminent domain by respondent. As we have ruled in *Cosculluela v. Court of Appeals (164 SCRA 393, 401 [1988])*:

In the present case, the irrigation project was completed and has been in operation since 1976. The project is benefiting the farmers specifically and the community in general. Obviously, petitioner’s land cannot be returned to him. However, it is high time that the petitioner be paid what has been due him eleven years ago. It is arbitrary and capricious for a government agency to initiate expropriation proceedings, seize a person’s property, allow the judgment of the court to become final and executory and then refuse to pay on the ground that there was no appropriations for the property earlier taken and profitably used. We condemn in the strongest possible terms the cavalier attitude of government officials who adopt such a despotic and irresponsible stance.

***(Estate of Salud Jimenez v. PEZA, 349 SCRA 240, Jan. 16, 2001, 2nd Div. [De Leon])***

*143. When may the property owner be entitled to the return of the expropriated property in eminent domain cases?*

**Held:** 1. In insisting on the return of the expropriated property, respondents would exhort on the pronouncement in *Provincial Government of Sorsogon v. Vda. De Villaroya (153 SCRA 291)* where the unpaid landowners were allowed the alternative remedy of recovery of the property there in question. It might be borne in mind that the case involved the municipal government of Sorsogon, to which the power of eminent domain is not inherent, but merely delegated and of limited application. The grant of the power of eminent domain to local governments under Republic Act No. 7160 *(See Local Government Code of 1991)* cannot be understood as being the pervasive and all-encompassing power vested in the legislative branch of government. For local governments to be able to wield the power, it must, by enabling law, be delegated to it by the national legislature, but even then, this delegated power of eminent domain is not, strictly speaking, a power of eminent, but only of inferior, domain or only as broad or confined as the real authority would want it to be *(City of Manila v. Chinese Cemetery of Manila, 40 Phil. 349).*

Thus, in *Valdehueza v. Republic (17 SCRA 107)* where the private landowners had remained unpaid ten years after the termination of the expropriation proceedings, this Court ruled –

“The points in dispute are whether such payment can still be made and, if so, in what amount. Said lots have been the subject of expropriation proceedings. By final and executory judgment in said proceedings, they were condemned for public use, as part of an airport, and ordered sold to the government. X x x It follows that both by virtue of the judgment, long final, in the expropriation suit, as well as the annotations upon their title certificates, plaintiffs are not entitled to recover possession of their expropriated lots – which are still devoted to the public use for which they were expropriated – but only to demand the fair market value of the same.

Said relief may be granted under plaintiffs’ prayer for: ‘such other remedies, which may be deemed just and equitable under the premises’.” *(At p. 112)*

The Court proceeded to reiterate its pronouncement in *Alfonso v. Pasay City (106 Phil. 1017)* where the recovery of possession of property taken for public use prayed for by the unpaid landowner was denied even while no requisite expropriation proceedings were first instituted. The landowner was merely given the relief of recovering compensation for his property computed at its market value at the time it was taken and appropriated by the State.

The judgment rendered by the Bulacan RTC in 1979 on the expropriation proceedings provides not only for the payment of just compensation to herein respondents but likewise adjudges the property condemned in favor of petitioner over which parties, as well as their privies, are bound *(Mines v. Canal Authority of the State [Fla] 467 So2d 989, 10 FLW 230)*. Petitioner has occupied, utilized and, for all intents and purposes, exercised dominion over the property pursuant to the judgment. The exercise of such rights vested to it as the condemnee indeed has amounted to at least a partial compliance or satisfaction of the 1979 judgment, thereby preempting any claim of bar by prescription on grounds of non-execution. In arguing for the return of their property on the basis of non-payment, respondents ignore the fact that the right of the expropriatory authority is far from that of an unpaid seller in ordinary sales, to which the remedy of rescission might perhaps apply. An *in rem* proceeding, condemnation acts upon the property *(Cadorette v. US CCA [Mass] 988 F2d 215)*. After condemnation, the paramount title is in the public under a new and independent title *(Ibid.)*; thus, by giving notice to all claimants to a disputed title, condemnation proceedings provide a judicial process for securing better title against all the world than may be obtained by voluntary conveyance *(Ibid.).* ***(Republic of the Philippines v. The Hon. Court of Appeals, G.R. No. 146587, July 2, 2002, 1st Div. [Vitug])***

2. Though the respondent has committed a misdeed to petitioner, we cannot, however, grant the petitioner’s prayer for the return of the expropriated Lot No. 1406-B. The Order of expropriation dated July 11, 1991, has long become final and executory. Petitioner cited *Provincial Government of Sorsogon v. Rosa E. Vda. De Villaroya (153 SCRA 291, 302 [1987])* to support its contention that it is entitled to a return of the lot where this Court ruled that “under ordinary circumstances, immediate return to the owners of the unpaid property is the obvious remedy.” However, the said statement was not the ruling in that case. As in other cases where there was no prompt payment by the government, this Court declared in *Sorsogon* that “the Provincial Government of Sorsogon is expected to immediately pay as directed. Should any further delay be encountered, the trial court is directed to seize any patrimonial property or cash savings of the province in the amount necessary to implement this decision.” However, this Court also stressed and declared in that case that “in cases where land is taken for public use, public interest, however, must be considered.”  ***(Estate of Salud Jimenez v. PEZA, 349 SCRA 240, Jan. 16, 2001, 2nd Div. [De Leon])***

**The Power of Taxation**

*144. Can taxes be subject to off-setting or compensation?*

**Held:** Taxes cannot be subject to compensation for the simple reason that the government and the taxpayer are not creditors and debtors of each other*.* There is a material distinction between a tax and debt. Debts are due to the Government in its corporate capacity, while taxes are due to the Government in its sovereign capacity*.* It must be noted that a distinguishing feature of a tax is that it is compulsory rather than a matter of bargain. Hence, a tax does not depend upon the consent of the taxpayer. If any taxpayer can defer the payment of taxes by raising the defense that it still has a pending claim for refund or credit, this would adversely affect the government revenue system. A taxpayer cannot refuse to pay his taxes when they fall due simply because he has a claim against the government or that the collection of a tax is contingent on the result of the lawsuit it filed against the government. ***(Philex Mining Corporation v. Commissioner of Internal Revenue, 294 SCRA 687, Aug. 28, 1998 [Romero])***

*145. Under Article VI, Section 28, paragraph 3 of the 1987 Constitution, "[C]haritable institutions, churches and parsonages or convents appurtenant thereto, mosques, non-profit cemeteries, and all lands, buildings, and improvements, actually, directly and exclusively used for religious, charitable or educational purposes shall be exempt from taxation." YMCA claims that the income earned by its building leased to private entities and that of its parking space is likewise covered by said exemption. Resolve.*

**Held:** The debates, interpellations and expressions of opinion of the framers of the Constitution reveal their intent that which, in turn, may have guided the people in ratifying the Charter. Such intent must be effectuated.

Accordingly, Justice Hilario G. Davide, Jr., a former constitutional commissioner, who is now a member of this Court, stressed during the Concom debates that "x x x what is exempted is not the institution itself x x x; those exempted from real estate taxes are lands, buildings and improvements actually, directly and exclusively used for religious, charitable or educational purposes. Father Joaquin G. Bernas, an eminent authority on the Constitution and also a member of the Concom, adhered to the same view that the exemption created by said provision pertained only to property taxes.

In his treatise on taxation, Mr. Justice Jose C. Vitug concurs, stating that "[t]he tax exemption covers *property*taxes only." ***(Commissioner of Internal Revenue v. CA, 298 SCRA 83, Oct. 14, 1998 [Panganiban])***

*146. Under Article XIV, Section 4, paragraph 3 of the 1987 Constitution, "[A]ll revenues and assets of non-stock, non-profit educational institutions used actually, directly, and exclusively for educational purposes shall be exempt from taxes and duties." YMCA alleged that it "is a non-profit educational institution whose revenues and assets are used actually, directly and exclusively for educational purposes so it is exempt from taxes on its properties and income."*

**Held:**  We reiterate that private respondent is exempt from the payment of property tax, but not income tax on the rentals from its property. The bare allegation alone that it is a non-stock, non-profit educational institution is insufficient to justify its exemption from the payment of income tax.

[L]aws allowing tax exemption are construed *strictissimi juris.* Hence, for the YMCA to be granted the exemption it claims under the abovecited provision, it must prove with substantial evidence that (1) it falls under the classification *non-stock, non-profit educational institution;* and (2) the income it seeks to be exempted from taxation is *used actually, directly, and exclusively for educational purposes.*  However, the Court notes that not a scintilla of evidence was submitted by private respondent to prove that it met the said requisites. ***(Commissioner of Internal Revenue v. CA, 298 SCRA 83, Oct. 14, 1998 [Panganiban])***

*147. Is the YMCA an educational institution within the purview of Article XIV, Section 4, par. 3 of the Constitution?*

**Held:** We rule that it is not. The term "educational institution" or "institution of learning" has acquired a well-known technical meaning, of which the members of the Constitutional Commission are deemed cognizant*.* Under the Education Act of 1982, such term refers to schools. The school system is synonymous with formal education, which "refers to the hierarchically structured and chronologically graded learnings organized and provided by the formal school system and for which certification is required in order for the learner to progress through the grades or move to the higher levels." The Court has examined the "Amended Articles of Incorporation" and "By-Laws" of the YMCA, but found nothing in them that even hints that it is a school or an educational institution.

Furthermore, under the Education Act of 1982, even non-formal education is understood to be school-based and "private auspices such as foundations and civic-spirited organizations" are ruled out. It is settled that the term "educational institution," when used in laws granting tax exemptions, refers to a "x x x school seminary, college or educational establishment x x x." *(84 CJS 566)* Therefore, the private respondent cannot be deemed one of the educational institutions covered by the constitutional provision under consideration. ***(Commissioner of Internal Revenue v. CA, 298 SCRA 83, Oct. 14, 1998 [Panganiban])***

*148. May the PCGG validly commit to exempt from all forms of taxes the properties to be retained by the Marcos heirs in a Compromise Agreement between the former and the latter?*

**Held:** The power to tax and to grant exemptions is vested in the Congress and, to a certain extent, in the local legislative bodies. Section 28(4), Article VI of the Constitution, specifically provides: “No law granting any tax exemption shall be passed without the concurrence of a majority of all the members of the Congress.” The PCGG has absolutely no power to grant tax exemptions, even under the cover of its authority to compromise ill-gotten wealth cases.

Even granting that Congress enacts a law exempting the Marcoses from paying taxes on their properties, such law will definitely not pass the test of the equal protection clause under the Bill of Rights. Any special grant of tax exemption in favor only of the Marcos heirs will constitute class legislation. It will also violate the constitutional rule that “taxation shall be uniform and equitable***.” (Chavez v. PCGG, 299 SCRA 744, Dec. 9, 1998 [Panganiban])***

*149. Discuss the purpose of tax treaties?*

**Held:** The RP-US Tax Treaty is just one of a number of bilateral treaties which the Philippines has entered into for the avoidance of double taxation. The purpose of these international agreements is to reconcile the national fiscal legislations of the contracting parties in order to help the taxpayer avoid simultaneous taxation in two different jurisdictions*.*  More precisely, the tax conventions are drafted with a view towards the elimination of *international juridical double taxation* x x x. ***(Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc., 309 SCRA 87, 101-102, June 25, 1999, 3rd Div. [Gonzaga-Reyes])***

*150. What is "international juridical double taxation"?*

**Held:** It is defined as the imposition of comparable taxes in two or more states on the same taxpayer in respect of the same subject matter and for identical periods. ***(Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc., 309 SCRA 87, 102, June 25, 1999)***

*151. What is the rationale for doing away with international juridical double taxation? What are the methods resorted to by tax treaties to eliminate double taxation?*

**Held:** The apparent rationale for doing away with double taxation is to encourage the free flow of goods and services and the movement of capital, technology and persons between countries, conditions deemed vital in creating robust and dynamic economies. Foreign investments will only thrive in a fairly predictable and reasonable international investment climate and the protection against double taxation is crucial in creating such a climate.

Double taxation usually takes place when a person is resident of a contracting state and derives income from, or owns capital in, the other contracting state and both states impose tax on that income or capital. In order to eliminate double taxation, a tax treaty resorts to several methods. First, it sets out the respective rights to tax of the state of source or situs and of the state of residence with regard to certain classes of income or capital. In some cases, an exclusive right to tax is conferred on one of the contracting states; however, for other items of income or capital, both states are given the right to tax, although the amount of tax that may be imposed by the state of source is limited.

The second method for the elimination of double taxation applies whenever the state of source is given a full or limited right to tax together with the state of residence. In this case, the treaties make it incumbent upon the state of residence to allow relief in order to avoid double taxation. There are two methods of relief - the exemption method and the credit method. In the exemption method, the income or capital which is taxable in the state of source or situs is exempted in the state of residence, although in some instances it may be taken into account in determining the rate of tax applicable to the taxpayer's remaining income or capital. On the other hand, in the credit method, although the income or capital which is taxed in the state of source is still taxable in the state of residence, the tax paid in the former is credited against the tax levied in the latter. The basic difference between the two methods is that in the exemption method, the focus is on the income or capital itself, whereas the credit method focuses upon the tax. ***(Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc., 309 SCRA 87, 102-103, June 25, 1999)***

*152. What is the rationale for reducing the tax rate in negotiating tax treaties?*

**Held:** In negotiating tax treaties, the underlying rationale for reducing the tax rate is that the Philippines will give up a part of the tax in the expectation that the tax given up for this particular investment is not taxed by the other country. ***(Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc., 309 SCRA 87, 103, June 25, 1999)***

# B. THE BILL OF RIGHTS

**The Due Process Clause**

*153. Discuss the Due Process Clause. Distinguish substantive due process from procedural due process.*

**Held:** Section 1 of the Bill of Rights lays down what is known as the "due process clause" of the Constitution.

In order to fall within the aegis of this provision, two conditions must concur, namely, that there is a deprivation and that such deprivation is done without proper observance of due process. When one speaks of due process of law, however, a distinction must be made between matters of procedure and matters of substance. In essence, procedural due process "refers to the method or manner by which the law is enforced," while substantive due process "requires that the law itself, not merely the procedures by which the law would be enforced, is fair, reasonable, and just." ***(Corona v. United Harbor Pilots Association of the Phils., 283 SCRA 31, Dec. 12, 1997 [Romero])***

*154. Respondents United Harbor Pilots Association of the Philippines argue that due process was not observed in the adoption of PPA-AO No. 04-92 which provides that: “(a)ll existing regular appointments which have been previously issued by the Bureau of Customs or the PPA shall remain valid up to 31 December 1992 only,” and “(a)ll appointments to harbor pilot positions in all pilotage districts shall, henceforth, be only for a term of one (1) year from date of effectivity subject to renewal or cancellation by the Philippine Ports Authority after conduct of a rigid evaluation of performance,” allegedly because no hearing was conducted whereby “relevant government agencies” and the harbor pilots themselves could ventilate their views.They also contended that the sole and exclusive right to the exercise of harbor pilotage by pilots has become vested and can only be “withdrawn or shortened” by observing the constitutional mandate of due process of law.*

**Held:** They are obviously referring to the procedural aspect of the enactment. Fortunately, the Court has maintained a clear position in this regard, a stance it has stressed in the recent case of *Lumiqued v. Hon. Exevea (G.R. No. 117565, November 18, 1997),* where it declared that “(a)s long as a party was given the opportunity to defend his interests in due course, he cannot be said to have been denied due process of law, for this opportunity to be heard is the very essence of due process. Moreover, this constitutional mandate is deemed satisfied if a person is granted an opportunity to seek reconsideration of the action or ruling complained of.”

In the case at bar, respondents questioned PPA-AO No. 04-92 no less than four times before the matter was finally elevated to this Tribunal. Their arguments on this score, however, failed to persuade. X x x

Neither does the fact that the pilots themselves were not consulted in any way taint the validity of the administrative order. As a general rule, notice and hearing, as the fundamental requirements of procedural due process, are essential only when an administrative body exercises its quasi-judicial function. In the performance of its executive or legislative functions, such as issuing rules and regulations, an administrative body need not comply with the requirements of notice and hearing.

Upon the other hand, it is also contended that the sole and exclusive right to the exercise of harbor pilotage by pilots is a settled issue. Respondents aver that said right has become vested and can only be “withdrawn or shortened” by observing the constitutional mandate of due process of law. Their argument has thus shifted from the procedural to one of substance. It is here where PPA-AO No. 04-92 fails to meet the condition set by the organic law.

Pilotage, just like other professions, may be practiced only by duly licensed individuals. Licensure is “the granting of license especially to practice a profession.” It is also “the system of granting licenses (as for professional practice) in accordance with established standards.” A license is a right or permission granted by some competent authority to carry on a business or do an act which, without such license, would be illegal.

Before harbor pilots can earn a license to practice their profession, they literally have to pass through the proverbial eye of a needle by taking, not one but *five* examinations, each followed by actual training and practice. X x x

Their license is granted in the form of an appointment which allows them to engage in pilotage until they retire at the age of 70 years. This is a vested right. Under the terms of PPA-AO No. 04-92, “[a]ll existing regular appointments which have been previously issued by the Bureau of Customs or the PPA shall remain valid up to 31 December 1992 only,” and “(a)ll appointments to harbor pilot positions in all pilotage districts shall, henceforth, be only for a term of one (1) year from date of effectivity subject to renewal or cancellation by the Authority after conduct of a rigid evaluation of performance.”

It is readily apparent that PPA-AO No. 04-92 unduly restricts the right of harbor pilots to enjoy their profession before their compulsory retirement. In the past, they enjoyed a measure of security knowing that after passing five examinations and undergoing years of on-the-job training, they would have a license which they could use until their retirement, unless sooner revoked by the PPA for mental or physical unfitness. Under the new issuance, they have to contend with an annual cancellation of their license which can be temporary or permanent depending on the outcome of their performance evaluation. Veteran pilots and neophytes alike are suddenly confronted with one-year terms which *ipso facto* expire at the end of that period. Renewal of their license is now dependent on a “rigid evaluation of performance” which is conducted only after the license has already been cancelled. Hence, the use of the term “renewal.” It is this pre-evaluation cancellation which primarily makes PPA-AO No. 04-92 unreasonable and constitutionally infirm. In a real sense, it is a deprivation of property without due process of law.***(Corona v. United Harbor Pilots Association of the Phils., 283 SCRA 31, December 12, 1997 [Romero])***

*155. Does the due process clause encompass the right to be assisted by counsel during an administrative inquiry?*

**Held:** The right to counsel, which cannot be waived unless the waiver is in writing and in the presence of counsel, is a right afforded a suspect or an accused during custodial investigation. It is not an absolute right and may, thus, be invoked or rejected in a criminal proceeding and, with more reason, in an administrative inquiry. In the case at bar, petitioners invoke the *right of an accused* in criminal proceedings to have competent and independent counsel of his own choice. Lumiqued, however, was not accused of any crime in the proceedings below. The investigation conducted by the committee x x x was for the sole purpose of determining if he could be held *administratively liable* under the law for the complaints filed against him. x x x As such, the hearing conducted by the investigating committee was not part of a criminal prosecution. X x x

While investigations conducted by an administrative body may at times be akin to a criminal proceeding, the fact remains that under existing laws, a party in an administrative inquiry *may or may not be assisted by counsel,* irrespective of the nature of the charges and of the respondent's capacity to represent himself, and no duty rests on such a body to furnish the person being investigated with counsel. In an administrative proceeding x x x a respondent x x x has the *option* of engaging the services of counsel or not. x x x Thus, the right to counsel is not imperative in administrative investigations because such inquiries are conducted merely to determine whether there are facts that merit disciplinary measures against erring public officers and employees, with the purpose of maintaining the dignity of government service.

The right to counsel is not indispensable to due process unless required by the Constitution or the law. X x x. ***(Lumiqued v. Exevea, 282 SCRA 125, Nov. 18, 1997 [Romero])***

*156. Does an extraditee have the right to notice and hearing during the evaluation stage of an extradition proceeding?*

**Held:** Considering that in the case at bar, the extradition proceeding is only at its evaluation stage, the nature of the right being claimed by the private respondent is nebulous and the degree of prejudice he will allegedly suffer is weak, we accord greater weight to the interests espoused by the government thru the petitioner Secretary of Justice. X x x

*In tilting the balance in favor of the interests of the State, the Court stresses that it is not ruling that the private respondent has no right to due process at all throughout the length and breadth of the extradition proceedings.* Procedural due process requires a determination of what process is due, when it is due, and the degree of what is due. Stated otherwise, *a prior determination should be made as to whether procedural protections are at all due and when they are due, which in turn depends on the extent to which an individual will be "condemned to suffer grievous loss."* We have explained why an extraditee has no right to notice and hearing during the evaluation stage of the extradition process. As aforesaid, P.D. No. 1069 which implements the RP-US Extradition Treaty affords an extraditee *sufficient opportunity* to meet the evidence against him *once the petition is filed in court.*The *time* for the extraditee to know the basis of the request for his extradition *is merely moved* to the filing in court of the formal petition for extradition. The extraditee's right to know is *momentarily withheld during the evaluation stage*of the extradition process to accommodate the more compelling interest of the State to prevent escape of potential extraditees which can be precipitated by premature information of the basis of the request for his extradition. No less compelling *at that stage* of the extradition proceedings is the need to be more deferential to the judgment of a co-equal branch of the government, the Executive, which has been endowed by our Constitution with greater power over matters involving our foreign relations. Needless to state, this balance of interests is *not a static but a moving balance* which can be adjusted as the extradition process moves from the administrative stage to the judicial stage and to the execution stage depending on factors that will come into play. In sum, we rule that the *temporary hold* on private respondent's privilege of notice and hearing is a *soft restraint* on his right to due process which will not deprive him of *fundamental fairness* should he decide to resist the request for his extradition to the United States. *There is no denial of due process as long as fundamental fairness is assured a party.* ***(Secretary of Justice v. Hon. Ralph C. Lantion, G.R. No. 139465, Oct. 17, 2000, En Banc [Puno])***

157. Will Mark Jimenez’s detention prior to the conclusion of the extradition proceedings not amount to a violation of his right to due process?

**Held:** Contrary to his contention, his detention prior to the conclusion of the extradition proceedings does not amount to a violation of his right to due process. We iterate the familiar doctrine that the essence of due process is the opportunity to be heard *(Garcia v. NLRC, GR No. 110494, November 18, 1996; Paat v. Court of Appeals, January 10, 1997)* but, at the same time, point out that the doctrine does not always call for a *prior* opportunity to be heard *(See Central Bank of the Philippines v. Court of Appeals, 220 SCRA 536, March 20, 1993).*  Where the circumstances – such as those present in an extradition case – call for it, a *subsequent* opportunity to be heard is enough *(Ibid. See also Busuego v. Court of Appeals, 304 SCRA 473, March 11, 1999).* In the present case, respondent will be given full opportunity to be heard subsequently, when the extradition court hears the Petition for Extradition. Hence, there is no violation of his right to due process and fundamental fairness.

Contrary to the contention of Jimenez, we find no arbitrariness, either, in the immediate deprivation of his liberty prior to his being heard. That his arrest and detention will not be arbitrary is sufficiently ensured by (1) the DOJ’s filing in court the Petition with its supporting documents after a determination that the extradition request meets the requirements of the law and the relevant treaty; (2) the extradition judge’s independent prima facie determination that his arrest will best serve the ends of justice before the issuance of a warrant for his arrest; and (3) his opportunity, once he is under the court’s custody, to apply for bail as an exception to the no-initial-bail rule.

It is also worth noting that before the US government requested the extradition of respondent, proceedings had already been conducted in that country. But because he left the jurisdiction of the requesting state before those proceedings could be completed, it was hindered from continuing with the due processes prescribed under its laws. His invocation of due process now had thus become hollow. He already had that opportunity in the requesting state; yet, instead of taking it, he ran away.

In this light, would it be proper and just for the government to increase the risk of violating its treaty obligations in order to accord Respondent Jimenez his personal liberty in the span of time that it takes to resolve the Petition for Extradition? His supposed immediate deprivation of liberty without due process that he had previously shunned pales against the government’s interest in fulfilling its Extradition Treaty obligations and in cooperating with the world community in the suppression of crime. Indeed, “[c]onstitutional liberties do not exist in a vacuum; the due process rights accorded to individuals must be carefully balanced against exigent and palpable government interest.” *(Coquia, “On the Implementation of the US-RP Extradition Treaty,” supra; citing Kelso v. US Department of State, 13 F Supp. 291 [DDC 1998])*

Too, we cannot allow our country to be a haven for fugitives, cowards and weaklings who, instead of facing the consequences of their actions, choose to run and hide. Hence, it would not be good policy to increase the risk of violating our treaty obligations if, through overprotection or excessively liberal treatment, persons sought to be extradited are able to evade arrest or escape from our custody. In the absence of any provision – in the Constitution, the law or the treaty – expressly guaranteeing the right to bail in extradition proceedings, adopting the practice of not granting them bail, as a general rule, would be a step towards deterring fugitives from coming to the Philippines to hide from or evade their prosecutors.

The denial of bail as a matter of course in extradition cases falls into place with and gives life to Article 14 (It states: “If the person sought consents in writing to surrender to the Requesting State, the Requested State may surrender the person as expeditiously as possible without further proceedings.”) of the Treaty, since this practice would encourage the accused to voluntarily surrender to the requesting state to cut short their detention here. Likewise, their detention pending the resolution of extradition proceedings would fall into place with the emphasis of the Extradition Law on the summary nature of extradition cases and the need for their speedy disposition. ***(Government of the United States of America v. Hon. Guillermo Purganan, G.R. No. 148571, Sept. 24, 2002, En Banc [Panganiban])***

*158. Is respondent in an Extradition Proceeding entitled to notice and hearing before the issuance of a warrant of arrest?*

**Held:** Both parties cite Section 6 of PD 1069 in support of their arguments. X x x

Does this provision sanction RTC Judge Purganan’s act of immediately setting for hearing the issuance of a warrant of arrest? We rule in the negative.

1. On the Basis of the Extradition Law

It is significant to note that Section 6 of PD 1069, our Extradition Law, uses the word “immediate” to qualify the arrest of the accused. This qualification would be rendered nugatory by setting for hearing the issuance of the arrest warrant. Hearing entails sending notices to the opposing parties, receiving facts and arguments from them, and giving them time to prepare and present such facts and arguments. Arrest subsequent to a hearing can no longer be considered “immediate.” The law could not have intended the word as a mere superfluity but, on the whole, as a means of impairing a sense of urgency and swiftness in the determination of whether a warrant of arrest should be issued.

By using the phrase “if it appears,” the law further conveys that accuracy is not as important as speed at such early stage. The trial court is not expected to make an *exhaustive* determination to ferret out the true and actual situation, immediately upon the filing of the petition. From the knowledge and the material then available to it, the court is expected merely to get a good first impression – a *prima facie finding* – sufficient to make a speedy initial determination as regards the arrest and detention of the accused.

X x x

We stress that the prima facie existence of probable cause for hearing the petition and, *a priori,* for issuing an arrest warrant was already evident from the Petition itself and its supporting documents. Hence, after having already determined therefrom that a *prima facie finding* did exist, respondent judge gravely abused his discretion when he set the matter for hearing upon motion of Jimenez.

Moreover, the law specifies that the court sets a hearing upon receipt of the answer or upon failure of the accused to answer after receiving the summons. In connection with the matter of immediate arrest, however, the word “hearing” is notably absent from the provision. Evidently, had the holding of a hearing at that stage been intended, the law could have easily so provided. It also bears emphasizing at this point that extradition proceedings are summary (See Sec. 9, PD 1069) in nature. Hence, the silence of the Law and the Treaty leans to the more reasonable interpretation that there is no intention to punctuate with a hearing every little step in the entire proceedings.

X x x

Verily x x x sending to persons sought to be extradited a notice of the request for their arrest and setting it for hearing at some future date would give them ample opportunity to prepare and execute an escape. Neither the Treaty nor the Law could have intended that consequence, for the very purpose of both would have been defeated by the escape of the accused from the requested state.

1. On the Basis of the Constitution

Even Section 2 of Article III of our Constitution, which is invoked by Jimenez, does not require a notice or a hearing before the issuance of a warrant of arrest. X x x

To determine probable cause for the issuance of arrest warrants, the Constitution itself requires only the examination – under oath or affirmation – of *complainants* and the *witnesses they may produce.* There is no requirement to notify and hear the *accused* before the issuance of warrants of arrest.

In *Ho v. People (280 SCRA 365, October 9, 1997)* and in all the cases cited therein, never was a judge required to go to the extent of conducting a hearing just for the purpose of personally determining probable cause for the issuance of a warrant of arrest. All we required was that the “judge must have sufficient supporting documents upon which to make his independent judgment, or at the very least, upon which to verify the findings of the prosecutor as to the existence of probable cause.”

In *Webb v. De Leon (247 SCRA 652, 680, per Puno, J.),* the Court categorically stated that a judge was not supposed to conduct a hearing before issuing a warrant of arrest x x x.

At most, in cases of clear insufficiency of evidence on record, judges merely further examine *complainants* and *their* witnesses (Ibid; citing *Allado v. Diokno*, 233 SCRA 192, May 5, 1994). In the present case, validating the act of respondent judge and instituting the practice of hearing the accused and his witnesses at this early stage would be discordant with the rationale for the entire system. If the accused were allowed to be heard and necessarily to present evidence during the *prima facie* determination for the issuance of a warrant of arrest, what would stop him from presenting his entire plethora of defenses at this stage – if he so desires – in his effort to negate a *prima facie finding?* Such a procedure could convert the determination of a prima facie case into a full-blown trial of the entire proceedings and possibly make trial of the main case superfluous. This scenario is also anathema to the summary nature of extraditions.***(Government of the United States of America v. Hon. Guillermo Purganan, G.R. No. 148571, Sept. 24, 2002, En Banc [Panganiban])***

**The Equal Protection Clause**

*159. Explain and discuss the equal protection of the law clause.*

**Held:** 1. The equal protection of the law is embraced in the concept of due process, as every unfair discrimination offends the requirements of justice and fair play. It has nonetheless been embodied in a separate clause in Article III, Sec. 1, of the Constitution to provide for a more specific guaranty against any form of undue favoritism or hostility from the government. Arbitrariness in general may be challenged on the basis of the due process clause. But if the particular act assailed partakes of an unwarranted partiality or prejudice, the sharper weapon to cut it down is the equal protection clause.

According to a long line of decisions, equal protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed*.* Similar subjects, in other words, should not be treated differently, so as to give undue favor to some and unjustly discriminate against others.

The equal protection clause does not require the universal application of the laws on all persons or things without distinction. This might in fact sometimes result in unequal protection, as where, for example, a law prohibiting mature books to all persons, regardless of age, would benefit the morals of the youth but violate the liberty of adults. What the clause requires is equality among equals as determined according to a valid classification. By classification is meant the grouping of persons or things similar to each other in certain particulars and different from all others in these same particulars*.* ***(Philippine Judges Association v. Prado, 227 SCRA 703, 711-712, Nov. 11, 1993, En Banc [Cruz])***

2. The equal protection clause exists to prevent undue favor or privilege. It is intended to eliminate discrimination and oppression based on inequality. Recognizing the existence of real difference among men, the equal protection clause does not demand absolute equality. It merely requires that all persons shall be treated alike, under like circumstances and conditions both as to the privileges conferred and liabilities enforced*.*  Thus, the equal protection clause does not absolutely forbid classifications x x x. If the classification is based on real and substantial differences; is germane to the purpose of the law; applies to all members of the same class; and applies to current as well as future conditions, the classification may not be impugned as violating the Constitution's equal protection guarantee. A distinction based on real and reasonable considerations related to a proper legislative purpose x x x is neither unreasonable, capricious nor unfounded. ***(Himagan v. People, 237 SCRA 538, Oct. 7, 1994, En Banc [Kapunan])***

*160. Congress enacted R.A. No. 8189 which provides, in Section 44 thereof, that "No Election Officer shall hold office in a particular city or municipality for more than four (4) years. Any election officer who, either at the time of the approval of this Act or subsequent thereto, has served for at least four (4) years in a particular city ormunicipality shall automatically be reassigned by the Commission to a new station outside the original congressional district." Petitioners, who are City and Municipal Election Officers, theorize that Section 44 of RA 8189 is violative of the "equal protection clause" of the 1987 Constitution because it singles out the City and Municipal Election Officers of the COMELEC as prohibited from holding office in the same city or municipality for more than four (4) years. They maintain that there is no substantial distinction between them and other COMELEC officials, and therefore, there is no valid classification to justify the objective of the provision of law under attack. Resolve.*

**Held:** The Court is not persuaded by petitioners' arguments. The "equal protection clause" of the 1987 Constitution permits a valid classification under the following conditions:

1. The classification must rest on substantial distinction;
2. The classification must be germane to the purpose of the law;
3. The classification must not be limited to existing conditions only; and
4. The classification must apply equally to all members of the same class.

After a careful study, the ineluctable conclusion is that the classification under Section 44 of RA 8189 satisfies the aforestated requirements.

The singling out of election officers in order to "ensure the impartiality of election officials by preventing them from developing familiarity with the people of their place of assignment" does not violate the equal protection clause of the Constitution.

In *Lutz v. Araneta (98 Phil. 148, 153 [1955]),* it was held that "the legislature is not required by the Constitution to adhere to a policy of 'all or none'". This is so for underinclusiveness is not an argument against a valid classification. It may be true that all other officers of COMELEC referred to by petitioners are exposed to the same evils sought to be addressed by the statute. However, in this case, it can be discerned that the legislature thought the noble purpose of the law would be sufficiently served by breaking an important link in the chain of corruption than by breaking up each and every link thereof. Verily, under Section 3(n) of RA 8189, election officers are the highest officials or authorized representatives of the COMELEC in a city or municipality. It is safe to say that without the complicity of such officials, large-scale anomalies in the registration of voters can hardly be carried out. ***(Agripino A. De Guzman, Jr., et al. v. COMELEC (G.R. No. 129118, July 19, 2000, en Banc [Purisima])***

*161. Appellant, who was charged with Illegal Recruitment in the RTC of Zamboanga City, invokes the equal protection clause in her defense. She points out that although the evidence purportedly shows that Jasmine Alejandro handed out application forms and even received Lourdes Modesto’s payment, appellant was the only one criminally charged. Alejandro, on the other hand, remained scot-free. From this, appellant concludes that the prosecution discriminated against her on grounds of regional origins. Appellant is a Cebuana while Alejandro is a Zamboanguena, and the alleged crime took place in Zamboanga City.*

**Held:**The argument has no merit.

The prosecution of one guilty while others equally guilty are not prosecuted, however, is not, by itself, a denial of the equal protection of the laws *(Application of Finn, 356 P.2d 685 [1960])*. Where the official action purports to be in conformity to the statutory classification, an erroneous or mistaken performance of the statutory duty, although a violation of the statute, is not *without more* a denial of the equal protection of the laws *(Snowden v. Hughes, 321 US 1, 88 L Ed 497, 64 S Ct 397 [1943])*. The unlawful administration by officers of a statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection, unless there is shown to be present in it an element of *intentional* or *purposeful* discrimination. This may appear on the face of the action taken with respect to a particular class or person, or it may only be shown by extrinsic evidence showing a discriminatory *design* over another not to be inferred from the action itself. But a discriminatory purpose is not presumed, there must be a showing of “clear and intentional discrimination.” *(Ibid.)* Appellant has failed to show that, in charging appellant in court, that there was a “clear and intentional discrimination” on the part of the prosecuting officials.

The discretion of who to prosecute depends on the prosecution’s sound assessment whether the evidence before it can justify a reasonable belief that a person has committed an offense *(Tan, Jr. v. Sandiganbayan [Third Division], 292 SCRA 452 [1998]).* The presumption is that the prosecuting officers regularly performed their duties *(Rules of Court, Rule 131, Sec. 5 [m])*, and this presumption can be overcome only by proof to the contrary, not by mere speculation. Indeed, appellant has not presented any evidence to overcome this presumption. The mere allegation that appellant, a Cebuana, was charged with the commission of a crime, while a Zamboanguena, the guilty party in appellant’s eyes, was not, is insufficient to support a conclusion that the prosecution officers denied appellant equal protection of the laws.

There is also common sense practicality in sustaining appellant’s prosecution.

While all persons accused of crime are to be treated on a basis of equality before the law, it does not follow that they are to be protected in the commission of crime. It would be unconscionable, for instance, to excuse a defendant guilty of murder because others have murdered with impunity. The remedy for unequal enforcement of the law in such instances does not lie in the exoneration of the guilty at the expense of society x x x. Protection of the law will be extended to all persons equally in the pursuit of their lawful occupations, but no person has the right to demand protection of the law in the commission of a crime *(People v. Montgomery, 117 P.2d 437 [1941]).*

Likewise,

[i]f the failure of prosecutors to enforce the criminal laws as to some persons should be converted into a defense for others charged with crime, the result would be that the trial of the district attorney for nonfeasance would become an issue in the trial of many persons charged with heinous crimes and the enforcement of law would suffer a complete breakdown *(State v. Hicks, 325 P.2d 794 [1958]).*

***(People v. Dela Piedra, 350 SCRA 163, Jan. 24, 2001, 1st Div. [Kapunan])***

*162. Are there substantial distinctions between print media and broadcast media to justify the requirement for the latter to give free airtime to be used by the Comelec to inform the public of qualifications and program of government of candidates and political parties during the campaign period? Discuss.*

**Held:** There are important differences in the characteristics of the two media which justify their differential treatment for free speech purposes. Because of the physical limitations of the broadcast spectrum, the government must, of necessity, allocate broadcast frequencies to those wishing to use them. There is no similar justification for government allocation and regulation of the print media.

In the allocation of limited resources, relevant conditions may validly be imposed on the grantees or licensees. The reason for this is that the government spends public funds for the allocation and regulation of the broadcast industry, which it does not do in the case of print media. To require radio and television broadcast industry to provide free airtime for the Comelec Time is a fair exchange for what the industry gets.

From another point of view, the SC has also held that because of the unique and pervasive influence of the broadcast media, “[n]ecessarily x x x the freedom of television and radio broadcasting is somewhat lesser in scope than the freedom accorded to newspaper and print media.” ***(TELEBAP, Inc. v. COMELEC, 289 SCRA 337, April 21, 1998 [Mendoza])***

*163. Does the death penalty law (R.A. No. 7659) violate the equal protection clause considering that, in effect, it punishes only people who are poor, uneducated, and jobless?*

**Held:** R.A. No. 7659 specifically provides that “[T]he death penalty shall be imposed if the crime of rape is committed x x x when the victim is a religious or a child below seven (7) years old.” Apparently, the death penalty law makes no distinction. It applies to all persons and to all classes of persons – rich or poor, educated or uneducated, religious or non-religious. No particular person or classes of persons are identified by the law against whom the death penalty shall be exclusively imposed. The law punishes with death a person who shall commit rape against a child below seven years of age. Thus, the perpetration of rape against a 5-year old girl does not absolve or exempt an accused from the imposition of the death penalty by the fact that he is poor, uneducated, jobless, and lacks catechetical instruction. To hold otherwise will not eliminate but promote inequalities.

In *Cecilleville Realty and Service Corporation v. CA, 278 SCRA 819 [1997]),* the SC clarified that compassion for the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege. ***(People v. Jimmy Mijano y Tamora, G.R. No. 129112, July 23, 1999, En Banc [Per Curiam])***

*164. The International School Alliance of Educators (ISAE) questioned the point-of-hire classification employed by International School, Inc. to justify distinction in salary rates between foreign-hires and local-hires, i.e., salary rates of foreign-hires are higher by 25% than their local counterparts, as discriminatory and, therefore, violates the equal protection clause. The International School contended that this is necessary in order to entice foreign-hires to leave their domicile and work here. Resolve.*

**Held:** That public policy abhors inequality and discrimination is beyond contention. Our Constitution and laws reflect the policy against these evils. X x x

International law, which springs from general principles of law*,* likewise proscribes discrimination x x x. The Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Discrimination in Education, the Convention (No. 111) Concerning Discrimination in Respect of Employment and Occupation - all embody the general principle against discrimination, the very antithesis of fairness and justice. The Philippines, through its Constitution, has incorporated this principle as part of its national laws.

[I]t would be an affront to both the spirit and letter of these provisions if the State, in spite of its primordial obligation to promote and ensure equal employment opportunities, closes its eyes to unequal and discriminatory terms and conditions of employment x x x.

Discrimination, particularly in terms of wages, is frowned upon by the Labor Code. Article 135, for example, prohibits and penalizes the payment of lesser compensation to a female employee as against a male employee for work of equal value. Article 248 declares it an unfair labor practice for an employer to discriminate in regards to wages in order to encourage or discourage membership in any labor organization. X x x

The foregoing provisions impregnably institutionalize in this jurisdiction the long honored legal truism of "Equal pay for equal work." Persons who work with substantially equal qualifications, skill, effort and responsibility, under similar conditions, should be paid similar salaries. This rule applies to the School (International School, Inc.), its "international character" notwithstanding.

The School contends that petitioner has not adduced evidence that local-hires perform work equal to that of foreign-hires. The Court finds this argument a little cavalier. If an employer accords employees the same position and rank, the presumption is that these employees perform equal work. This presumption is borne by logic and human experience. If the employer pays one employee less than the rest, it is not for that employee to explain why he receives less or why the others receive more. That would be adding insult to injury. The employer has discriminated against that employee; it is for the employer to explain why the employee is treated unfairly.

The employer in this case failed to discharge this burden. There is no evidence here that foreign-hires perform 25% more efficiently or effectively than the local-hires. Both groups have similar functions and responsibilities, which they perform under similar working conditions.

The School cannot invoke the need to entice foreign-hires to leave their domicile to rationalize the distinction in salary rates without violating the principle of equal work for equal pay.

X x x

While we recognize the need of the School to attract foreign-hires, salaries should not be used as an enticement to the prejudice of local-hires. The local-hires perform the same services as foreign-hires and they ought to be paid the same salaries as the latter. For the same reason, the "dislocation factor" and the foreign-hires' limited tenure also cannot serve as valid bases for the distinction in salary rates. The dislocation factor and limited tenure affecting foreign-hires are adequately compensated by certain benefits accorded them which are not enjoyed by local-hires, such as housing, transportation, shipping costs, taxes and home leave travel allowances.

The Constitution enjoins the State to "protect the rights of workers and promote their welfare", "to afford labor full protection." The State, therefore, has the right and duty to regulate the relations between labor and capital*.* These relations are not merely contractual but are so impressed with public interest that labor contracts, collective bargaining agreements included, must yield to the common good*.* Should such contracts contain stipulations that are contrary to public policy, courts will not hesitate to strike down these stipulations.

In this case, we find the point-of-hire classification employed by respondent School to justify the distinction in the salary rates of foreign-hires and local-hires to be an invalid classification. There is no reasonable distinction between the services rendered by foreign-hires and local-hires. The practice of the School of according higher salaries to foreign-hires contravenes public policy and, certainly, does not deserve the sympathy of this Court. ***(International School Alliance of Educators (ISAE) v. Hon. Leonardo A. Quisumbing, G.R. No. 128845, June 1, 2000, 1st Div. [Kapunan])***

*165. Accused-appellant Romeo G. Jalosjos filed a motion before the Court asking that he be allowed to fully discharge the duties of a Congressman, including attendance at legislative sessions and committee meetings despite his having been convicted in the first instance of a non-bailable offense. Does being an elective official result in a substantial distinction that allows different treatment? Is being a Congressman a substantial differentiation which removes the accused-appellant as a prisoner from the same class as all persons validly confined under law?*

**Held:** In the ultimate analysis, the issue before us boils down to a question of constitutional equal protection.

X x x

The performance of legitimate and even essential duties by public officers has never been an excuse to free a person validly in prison. The duties imposed by the “mandate of the people” are multifarious. The accused-appellant asserts that the duty to legislate ranks highest in the hierarchy of government. The accused-appellant is only one of 250 members of the House of Representatives, not to mention the 24 members of the Senate, charged with the duties of legislation. Congress continues to function well in the physical absence of one or a few of its members. Depending on the exigency of Government that has to be addressed, the President or the Supreme Court can also be deemed the highest for that particular duty. The importance of a function depends on the need for its exercise. The duty of a mother to nurse her infant is most compelling under the law of nature. A doctor with unique skills has the duty to save the lives of those with a particular affliction. An elective governor has to serve provincial constituents. A police officer must maintain peace and order. Never had the call of a particular duty lifted a prisoner into a different classification from those others who are validly restrained by law.

A strict scrutiny of classifications is essential lest wittingly or otherwise, insidious discriminations are made in favor of or against groups or types of individuals*.*

The Court cannot validate badges of inequality. The necessities imposed by public welfare may justify exercise of government authority to regulate even if thereby certain groups may plausibly assert that their interests are disregarded*.*

We, therefore, find that election to the position of Congressman is not a reasonable classification in criminal law enforcement. The functions and duties of the office are not substantial distinctions which lift him from the class of prisoners interrupted in their freedom and restricted in liberty of movement. Lawful arrest and confinement are germane to the purposes of the law and apply to all those belonging to the same class.

X x x

It can be seen from the foregoing that incarceration, by its nature, changes an individual’s status in society*.* Prison officials have the difficult and often thankless job of preserving the security in a potentially explosive setting, as well as of attempting to provide rehabilitation that prepare inmates for re-entry into the social mainstream. Necessarily, both these demands require the curtailment and elimination of certain rights*.*

Premises considered, we are constrained to rule against the accused-appellant’s claim that re-election to public office gives priority to any other right or interest, including the police power of the State. ***(People v. Jalosjos, 324 SCRA 689, Feb. 3, 2000, En Banc [Ynares-Santiago])***

**The Right against Unreasonable Searches and Seizures**

*166. Discuss the constitutional requirement that a judge, in issuing a warrant of arrest, must determine probable cause “personally.” Distinguish determination of probable cause by the prosecutor and determination of probable cause by the judge.*

**Held:** It must be stressed that the 1987 Constitution requires the judge to determine probable cause “personally,” a requirement which does not appear in the corresponding provisions of our previous constitutions. This emphasis evinces the intent of the framers to place a greater degree of responsibility upon trial judges than that imposed under previous Constitutions*.*

In *Soliven v. Makasiar,* this Court pronounced:

“What the Constitution underscores is the exclusive and personal responsibility of the issuing judge to satisfy himself of the existence of probable cause. In satisfying himself of the existence of probable cause for the issuance of a warrant of arrest, the judge is not required to personally examine the complainant and his witnesses. Following established doctrine and procedure, he shall: (1) personally evaluate the report and the supporting documents submitted by the fiscal regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or (2) if in the basis thereof he finds no probable cause, he may disregard the fiscal’s report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause.”

*Ho v. People (Ibid.)* summarizes existing jurisprudence on the matter as follows:

“Lest we be too repetitive, we only wish to emphasize three vital matters once more: *First,* as held in *Inting,* the determination of probable cause by the prosecutor is for a purpose different from that which is to be made by the judge. Whether there is reasonable ground to believe that the accused is guilty of the offense charged and should be held for trial is what the prosecutor passes upon. The judge, on the other hand, determines whether a warrant of arrest should be issued against the accused, *i.e.,* whether there is a necessity for placing him under immediate custody in order not to frustrate the ends of justice. Thus, even if both should base their findings on one and the same proceeding or evidence, there should be no confusion as to their distinct objectives.

*Second,* since their objectives are different, the judge cannot rely solely on the report of the prosecutor in finding probable cause to justify the issuance of a warrant of arrest. Obviously and understandably, the contents of the prosecutor’s report will support his own conclusion that there is reason to charge the accused for an offense and hold him for trial. However, the judge must decide *independently.* Hence, he must have supporting evidence, *other than* the prosecutor’s *bare* report, upon which to legally sustain his own findings on the existence (or nonexistence) of probable cause to issue an arrest order. This responsibility of determining personally and independently the existence or nonexistence of probable cause is lodged in him by no less than the most basic law of the land. Parenthetically, the prosecutor could ease the burden of the judge and speed up the litigation process by forwarding to the latter not only the information and his bare resolution finding probable cause, but also so much of the records and the evidence on hand as to enable the His Honor to make his personal and separate judicial finding on whether to issue a warrant of arrest.

*Lastly,* it is not required that the *complete or entire* records of the case during the preliminary investigation be submitted to and examined by the judge. We do not intend to unduly burden trial courts by obliging them to examine the complete records of every case all the time simply for the purpose of ordering the arrest of an accused. What is required, rather, is that the judge must have *sufficient* supporting documents (such as the complaint, affidavits, counter-affidavits, sworn statements of witnesses or transcript of stenographic notes, if any) upon which to make his independent judgment or, at the very least, upon which to verify the findings of the prosecutor as to the existence of probable cause. The point is: he cannot rely solely and entirely on the prosecutor’s recommendation, as Respondent Court did in this case. Although the prosecutor enjoys the legal presumption of regularity in the performance of his official duties and functions, which in turn gives his report the presumption of accuracy, the Constitution, we repeat, commands the judge to *personally* determine probable cause in the issuance of warrants of arrest. This Court has consistently held that a judge fails in his bounden duty if he relies merely on the certification or the report of the investigating officer.” *(Citations omitted)*

In the case at bench, respondent admits that he issued the questioned warrant as there was “no reason for (him) to doubt the validity of the certification made by the Assistant Prosecutor that a preliminary investigation was conducted and that probable cause was found to exist as against those charged in the information filed.” The statement is an admission that respondent relied solely and completely on the certification made by the fiscal that probable cause exists as against those charged in the information and issued the challenged warrant of arrest on the sole basis of the prosecutor’s findings and recommendations. He adopted the judgment of the prosecutor regarding the existence of probable cause as his own. ***(Abdula v. Guiani, 326 SCRA 1, Feb. 18, 2000, 3rd Div. [Gonzaga-Reyes])***

*167. Accused-appellant assails the validity of his arrest and his subsequent convictions for the two crimes. Both the trial court and the Court of Appeals found that the arrest and subsequent seizure were legal.*

**Held:** A review of the records at bar shows no reason to depart therefrom.

The constitutional proscription, that no person shall be arrested without any warrant of arrest having been issued prior thereto, is not a hard-and-fast rule. X x x *(Citations omitted)*

In the cases at bar, the police saw the gun tucked in appellant’s waist when he stood up. The gun was plainly visible. No search was conducted as none was necessary. Accused-appellant could not show any license for the firearm, whether at the time of his arrest or thereafter. Thus, he was in effect committing a crime in the presence of the police officers. No warrant of arrest was necessary in such a situation, it being one of the recognized exceptions under the Rules.

As a consequence of appellant’s valid warrantless arrest, he may be lawfully searched for dangerous weapons or anything which may be used as proof of the commission of an offense, without a search warrant, as provided in Rule 126, Section 12. This is a valid search incidental to a lawful arrest. The subsequent discovery in his car of drug paraphernalia and the crystalline substance, which, was later identified as shabu, though in a distant place from where the illegal possession of firearm was committed, cannot be said to have been made during an illegal search. As such, the seized items do not fall within the exclusionary clause x x x. Hence, not being fruits of the poisonous tree x x x the objects found at the scene of the crime, such as the firearm, the shabu and the drug paraphernalia, can be used as evidence against appellant. Besides, it has been held that drugs discovered as a result of a consented search is admissible in evidence. *(Citations omitted.)* ***(People v. Go, 354 SCRA 338, Mar. 14, 2001, 1st Div. [Ynares-Santiago])***

*168. In an application for search warrant, the application was accompanied by a sketch of the compound at 516 San Jose de la Montana St., Mabolo, Cebu City, indicating the 2-storey residential house of private respondent with a large “X” enclosed in a square. Within the same compound are residences of other people, workshops, offices, factories and warehouse. The search warrant issued, however, merely indicated the address of the compound which is 516 San Jose de la Montana St., Mabolo, Cebu City. Did this satisfy the constitutional requirement under Section 2, Article III that the place to be searched must be particularly described?*

**Held:** This Court has held that the applicant should particularly describe the place to be searched and the person or things to be seized, *wherever and whenever it is feasible.* In the present case, it must be noted that the application for a search warrant was accompanied by a sketch of the compound at 516 San Jose de la Montana St., Mabolo, Cebu City. The sketch indicated the 2-storey residential house of private respondent with a large "X" enclosed in a square. Within the same compound are residences of other people, workshops, offices, factories and warehouse. With this sketch as the guide, it could have been very easy to describe the residential house of private respondent *with sufficient particularity so as to segregate it from the other buildings or structures inside the same compound.* But the search warrant merely indicated the address of the compound which is 516 San Jose de la Montana St., Mabolo, Cebu City. This description of the place to be searched is too general and does not pinpoint the specific house of private respondent. Thus, the inadequacy of the description of the residence of private respondent sought to be searched has characterized the questioned search warrant as a *general* warrant, which is violative of the constitutional requirement. ***(People v. Estrada, 296 SCRA 383, 400, [Martinez])***

*169. Can the place to be searched, as set out in the warrant, be amplified or modified by the officers’ own personal knowledge of the premises, or the evidence they adduce in support of their application for the warrant?*

**Held:** Such a change is proscribed by the Constitution which requires *inter alia* the search warrant to particularly describe the place to be searched as well as the persons or things to be seized. It would concede to police officers the power of choosing the place to be searched, even if it not be that delineated in the warrant. It would open wide the door to abuse of the search process, and grant to officers executing a search warrant that discretion which the Constitution has precisely removed from them. The particularization of the description of the place to be searched may properly be done only by the Judge, and only in the warrant itself; it cannot be left to the discretion of the police officers conducting the search.

It is neither fair nor licit to allow police officers to search a place different from that stated in the warrant on the claim that the place actually searched – although not that specified in the warrant – is exactly what they had in view when they applied for the warrant and had demarcated in their supporting evidence. What is material in determining the validity of a search is the place stated in the warrant itself, not what applicants had in their thoughts, or had represented in the proofs they submitted to the court issuing the warrant. ***(People v. Court of Appeals, 291 SCRA 400, June 26, 1998 [Narvasa])***

*170. What is “search incidental to a lawful arrest”? Discuss.*

**Held:** While a contemporaneous search of a person arrested may be effected to discover dangerous weapons or proofs or implements used in the commission of the crime and which search may extend to the area within his immediate control where he might gain possession of a weapon or evidence he can destroy, a valid arrest must precede the search. The process cannot be reversed.

In a search incidental to a lawful arrest, as the precedent arrest determines the validity of the incidental search, the legality of the arrest is questioned in a large majority of these cases, *e.g.*, whether an arrest was merely used as a pretext for conducting a search. In this instance, the law requires that there be first a lawful arrest before a search can be made – the process cannot be reversed. *(Malacat v. Court of Appeals, 283 SCRA 159, 175 [1997])*

***(People v. Chua Ho San, 308 SCRA 432, June 17, 1999, En Banc [Davide, Jr., C.J.])***

*171. What is the “plain view” doctrine? What are its requisites? Discuss.*

**Held:** 1. Objects falling in plain view of an officer who has a right to be in the position to have that view are subject to seizure even without a search warrant and may be introduced in evidence*.* The “plain view” doctrine applies when the following requisites concur: (a) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of the evidence in plain view is inadvertent; (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband or otherwise subject to seizure. The law enforcement officer must lawfully make an initial intrusion or properly be in a position from which he can particularly view the area*.* In the course of such lawful intrusion, he came inadvertently across a piece of evidence incriminating the accused*.*  The object must be open to eye and hand and its discovery inadvertent.

It is clear that an object is in plain view if the object itself is plainly exposed to sight. The difficulty arises when the object is inside a closed container. Where the object seized was inside a closed package, the object itself is not in plain view and therefore cannot be seized without a warrant. However, if the package proclaims its contents, whether by its distinctive configuration, its transparency, or if its contents are obvious to an observer, then the contents are in plain view and may be seized*.* In other words, if the package is such that an experienced observer could infer from its appearance that it contains the prohibited article, then the article is deemed in plain view. It must be immediately apparent to the police that the items that they observe may be evidence of a crime, contraband or otherwise subject to seizure. ***(People v. Doria, 301 SCRA 668, Jan. 22, 1999, En Banc [Puno, J.])***

2. For the doctrine to apply, the following elements must be present:

1. a prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties;
2. the evidence was inadvertently discovered by the police who have the right to be where they are; and
3. the evidence must be immediately apparent; and
4. plain view justified mere seizure of evidence without further search.

In the instant case, recall that PO2 Balut testified that they first located the marijuana plants before appellant was arrested without a warrant. Hence, there was no valid warrantless arrest which preceded the search of appellant’s premises. Note further that the police team was dispatched to appellant’s *kaingin* precisely to search for and uproot the prohibited flora. The seizure of evidence in “plain view” applies only where the police officer is *not* searching for evidence against the accused, but inadvertently comes across an incriminating object*.* Clearly, their discovery of the cannabis plants was not inadvertent. We also note the testimony of SPO2 Tipay that upon arriving at the area, they first had to “look around the area” before they could spot the illegal plants. Patently, the seized marijuana plants were not “immediately apparent” and “further search” was needed. In sum, the marijuana plants in question were not in “plain view” or “open to eye and hand.” The “plain view” doctrine, thus, cannot be made to apply.

Nor can we sustain the trial court’s conclusion that just because the marijuana plants were found in an unfenced lot, appellant could not invoke the protection afforded by the Charter against unreasonable searches by agents of the State. The right against unreasonable searches and seizures is the immunity of one’s person, which includes his residence, his papers, and other possessions. The guarantee refers to “the right of personal security” of the individual. X x x, what is sought to be protected against the State’s unlawful intrusion are persons, not places*.* To conclude otherwise would not only mean swimming against the stream, it would also lead to the absurd logic that for a person to be immune against unreasonable searches and seizures, he must be in his home or office, within a fenced yard or a private place. The Bill of Rights belongs as much to the person in the street as to the individual in the sanctuary of his bedroom. ***(People v. Abe Valdez, G.R. No. 129296, Sept. 25, 2000, En Banc [Quisumbing])***

3. Considering its factual milieu, this case falls squarely under the *plain view doctrine.* X x x.

When Spencer wrenched himself free from the grasp of PO2 Gaviola, he instinctively ran towards the house of appellant. The members of the buy-bust team were justified in running after him and entering the house without a search warrant for they were hot in the heels of a fleeing criminal. Once inside the house, the police officers cornered Spencer and recovered the buy-bust money from him. They also caught appellant in *flagrante delicto* repacking the marijuana bricks which were in full view on top of a table. X x x.

Hence, appellant’s subsequent arrest was likewise lawful, coming as it is within the purview of Section 5(a) of Rule 113 of the 1985 Rules on Criminal Procedure x x x.

Section 5(a) is commonly referred to as the rule on *in flagrante delicto* arrests*.* Here two elements must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done *in the presence or within the view* of the arresting officer*.* Thus, when appellant was seen repacking the marijuana, the police officers were not only authorized but also duty-bound to arrest him even without a warrant. ***(People v. Elamparo, 329 SCRA 404, 414-415, March 31, 2000, 2nd Div. [Quisumbing])***

*172. What is a “stop-and-frisk” search?*

**Held:** 1.In the landmark case of *Terry v. Ohio (20 L Ed 2d 889; 88 S Ct 1868, 392 US 1, 900, June 10, 1968),* a stop-and-frisk was defined as the vernacular designation of the right of a police officer to stop a citizen on the street, interrogate him, and pat him for weapon(s):

“x x x (W)here a police officer observes an unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identified himself as a policeman and make reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others’ safety, he is entitled for the protection of himself or others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him. Such a search is a reasonable search under the Fourth Amendment, and any weapon seized may properly be introduced in evidence against the person from whom they were taken.” *(Herrera, A Handbook on Arrest, Search and Seizure and Custodial Investigation, 1995 ed., p. 185; and Terry v. Ohio, supra, p. 911)*

In allowing such a search, the United States Supreme Court held that the interest of effective crime prevention and detection allows a police officer to approach a person, in appropriate circumstances and manner, for purposes of investigating possible criminal behavior even though there is insufficient probable cause to make an actual arrest.

In admitting in evidence two guns seized during the stop-and-frisk, the US Supreme Court held that what justified the limited search was the more immediate interest of the police officer in taking steps to assure himself that the person with whom he was dealing was not armed with a weapon that could unexpectedly and fatally be used against him.

It did not, however, abandon the rule that the police must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure, excused only by exigent circumstances. ***(Manalili v. CA, 280 SCRA 400, Oct. 9, 1997 [Panganiban])***

2. We now proceed to the justification for and allowable scope of a “stop-and-frisk” as a “limited protective search of outer clothing for weapons,” as laid down in *Terry,* thus:

We merely hold today that where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others’ safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him. Such a search is a reasonable search under the Fourth Amendment *(Terry, at 911. In fact, the Court noted that the ‘sole justification’ for a stop-and-frisk was the ‘protection of the police officer and others nearby’; while the scope of the search conducted in the case was limited to patting down the outer clothing of petitioner and his companions, the police officer did not place his hands in their pockets nor under the outer surface of their garments until he had felt weapons, and then he merely reached for and removed the guns. This did not constitute a general exploratory search, Id.)*

Other notable points of *Terry* are that while probable cause is not required to conduct a “stop-and-frisk,” it nevertheless holds that mere suspicion or a hunch will not validate a “stop-and-frisk.” A genuine reason must exist, in light of the police officer’s experience and surrounding conditions, to warrant the belief that the person detained has weapons concealed about him*.* Finally, a “stop-and-frisk” serves a two-fold interest: (1) the general interest of effective crime prevention and detection, which underlies the recognition that a police officer may, under appropriate circumstances and in an appropriate manner, approach a person for purposes of investigating possible criminal behavior even without probable cause; and (2) the more pressing interest of safety and self-preservation which permit the police officer to take steps to assure himself that the person with whom he deals is not armed with a deadly weapon that could unexpectedly and fatally be used against the police officer. ***(Malacat v. Court of Appeals, 283 SCRA 159, Dec. 12, 1997 [Davide])***

*173. Are searches at checkpoints valid? Discuss.*

**Held:** Accused-appellants assail the manner by which the checkpoint in question was conducted. They contend that the checkpoint manned by elements of the Makati Police should have been announced. They also complain of its having been conducted in an arbitrary and discriminatory manner.

We take judicial notice of the existence of the COMELEC resolution imposing a gun ban during the election period issued pursuant to Section 52(c) in relation to Section 26(q) of the Omnibus Election Code (Batas Pambansa Blg. 881). The national and local elections in 1995 were held on 8 May, the second Monday of the month. The incident, which happened on 5 April 1995, was well within the election period.

This Court has ruled that not all checkpoints are illegal. Those which are warranted by the exigencies of public order and are conducted in a way least intrusive to motorists are allowed*.* For, admittedly, routine checkpoints do intrude, to a certain extent, on motorists’ right to “free passage without interruption,” but it cannot be denied that, as a rule, it involves only a brief detention of travelers during which the vehicle’s occupants are required to answer a brief question or two. For as long as the vehicle is neither searched nor its occupants subjected to a body search, and the inspection of the vehicle is limited to a visual search, said routine checks cannot be regarded as violative of an individual’s right against unreasonable search. In fact, these routine checks, when conducted in a fixed area, are even less intrusive.

The checkpoint herein conducted was in pursuance of the gun ban enforced by the COMELEC. The COMELEC would be hard put to implement the ban if its deputized agents were limited to a visual search of pedestrians. It would also defeat the purpose for which such ban was instituted. Those who intend to bring a gun during said period would know that they only need a car to be able to easily perpetrate their malicious designs.

The facts adduced do not constitute a ground for a violation of the constitutional rights of the accused against illegal search and seizure. PO3 Suba admitted that they were merely stopping cars they deemed suspicious, such as those whose windows are heavily tinted just to see if the passengers thereof were carrying guns. At best they would merely direct their flashlights inside the cars they would stop, without opening the car’s doors or subjecting its passengers to a body search. There is nothing discriminatory in this as this is what the situation demands.

We see no need for checkpoints to be announced x x x. Not only would it be impractical, it would also forewarn those who intend to violate the ban. Even so, badges of legitimacy of checkpoints may still be inferred from their fixed location and the regularized manner in which they are operated*.* ***(People v. Usana, 323 SCRA 754, Jan. 28, 2000, 1st Div. [Davide, CJ])***

*174. Do the ordinary rights against unreasonable searches and seizures apply to searches conducted at the airport pursuant to routine airport security procedures?*

**Held:** Persons may lose the protection of the search and seizure clause by exposure of their persons or property to the public in a manner reflecting a lack of subjective expectation of privacy, which expectation society is prepared to recognize as reasonable. Such recognition is implicit in airport security procedures. With increased concern over airplane hijacking and terrorism has come increased security at the nation’s airports. Passengers attempting to board an aircraft routinely pass through metal detectors; their carry-on baggage as well as checked luggage are routinely subjected to x-ray scans. Should these procedures suggest the presence of suspicious objects, physical searches are conducted to determine what the objects are. There is little question that such searches are reasonable, given their minimal intrusiveness, the gravity of the safety interests involved, and the reduced privacy expectations associated with airline travel*.* Indeed, travelers are often notified through airport public address systems, signs, and notices in their airline tickets that they are subject to search and, if any prohibited materials or substances are found, such would be subject to seizure. These announcements place passengers on notice that ordinary constitutional protections against warrantless searches and seizures do not apply to routine airport procedures.

The packs of methamphetamine hydrochloride having thus been obtained through a valid warrantless search, they are admissible in evidence against the accused-appellant herein. Corollarily, her subsequent arrest, although likewise without warrant, was justified since it was effected upon the discovery and recovery of “shabu” in her person *in flagrante delicto.****(People v. Leila Johnson, G.R. No. 138881, Dec. 18, 2000, 2nd Div. [Mendoza])***

*175. May the constitutional protection against unreasonable searches and seizures be extended to acts committed by private individuals?*

**Held:** As held in *People v. Marti (193 SCRA 57 [1991]),* the constitutional protection against unreasonable searches and seizures refers to the immunity of one's person from interference by government and it cannot be extended to acts committed by private individuals so as to bring it within the ambit of alleged unlawful intrusion. ***(People v. Mendoza, 301 SCRA 66, Jan. 18, 1999, 1st Div. [Melo])***

*176. Should the seized drugs which are pharmaceutically correct but not properly documented subject of an illegal search because the applicant “failed to allege in the application for search warrant that the subject drugs for which she was applying for search warrant were either fake, misbranded, adulterated, or unregistered,” be returned to the owner?*

**Held:** With the State's obligation to protect and promote the right to health of the people and instill health consciousness among them *(Article II, Section 15, 1987 Constitution),* in order to develop a healthy and alert citizenry *(Article XIV, Section 19[1]),* it became mandatory for the government to supervise and control the proliferation of drugs in the market. The constitutional mandate that "the State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all people at affordable cost" *(Article XIII, Section 11)* cannot be neglected. This is why "the State shall establish and maintain an effective food and drug regulatory system." *(Article XIII, Section 12)* The BFAD is the government agency vested by law to make a mandatory and authoritative determination of the true therapeutic effect of drugs because it involves technical skill which is within its special competence. The health of the citizenry should never be compromised. To the layman, medicine is a cure that may lead to better health.

If the seized 52 boxes of drugs are pharmaceutically correct but not properly documented, they should be promptly disposed of in the manner provided by law in order to ensure that the same do not fall into the wrong hands who might use the drugs underground. Private respondent cannot rely on the statement of the trial court that the applicant "failed to allege in the application for search warrant that the subject drugs for which she was applying for search warrant were either fake, misbranded, adulterated, or unregistered" in order to obtain the return of the drugs. The policy of the law enunciated in R.A. No. 8203 is to protect the consumers as well as the licensed businessmen. Foremost among these consumers is the government itself which procures medicines and distributes them to the local communities through direct assistance to the local health centers or through outreach and charity programs. Only with the proper government sanctions can medicines and drugs circulate the market. We cannot afford to take any risk, for the life and health of the citizenry are as precious as the existence of the State. ***(People v. Judge Estrella T. Estrada, G.R No. 124461, June 26, 2000, Spcl. 2nd Div. [Ynares-Santiago])***

*177. Do Regional Trial Courts have competence to pass upon the validity or regularity of seizure and forfeiture proceedings conducted by the Bureau of Customs and to enjoin or otherwise interfere with these proceedings?*

**Held:** In *Jao v. Court of Appeals (249 SCRA 35, 42-43 [1995]),* this Court, reiterating its rulings x x x said:

There is no question that Regional Trial Courts are devoid of any competence to pass upon the validity or regularity of seizure and forfeiture proceedings conducted by the Bureau of Customs and to enjoin or otherwise interfere with these proceedings. The Collector of Customs sitting in seizure and forfeiture proceedings has *exclusive jurisdiction* to hear and determine all questions touching on the seizure and forfeiture of dutiable goods. The Regional Trial Courts are precluded from assuming cognizance over such matters even through petitions of certiorari, prohibition or mandamus.

It is likewise well-settled that the provisions of the Tariff and Customs Code and that of Republic Act No. 1125, as amended, otherwise known as “An Act Creating the Court of Tax Appeals,” specify the proper fora and procedure for the ventilation of any legal objections or issues raised concerning these proceedings. Thus, actions of the Collector of Customs are appealable to the Commissioner of Customs, whose decision, in turn, is subject to the exclusive appellate jurisdiction of the Court of Tax Appeals and from there to the Court of Appeals.

The rule that Regional Trial Courts have no review powers over such proceedings is anchored upon the policy of placing no unnecessary hindrance on the government’s drive, not only to prevent smuggling and other frauds upon Customs, but more importantly, to render effective and efficient the collection of import and export duties due the State, which enables the government to carry out the functions it has been instituted to perform.

Even if the seizure by the Collector of Customs were illegal, x x x we have said that such act does not deprive the Bureau of Customs of jurisdiction thereon.

Respondents cite the statement of the Court of Appeals that regular courts still retain jurisdiction “where, as in this case, for lack of probable cause, there is serious doubt as to the propriety of placing the articles under Customs jurisdiction through seizure/forfeiture proceedings.” They overlook the fact, however, that under the law, the question of whether probable cause exists for the seizure of the subject sacks of rice is not for the Regional Trial Court to determine. The customs authorities do not have to prove to the satisfaction of the court that the articles on board a vessel were imported from abroad or are intended to be shipped abroad before they may exercise the power to effect customs’ searches, seizures, or arrests provided by law and continue with the administrative hearings*.* As the Court held in *Ponce Enrile v. Vinuya (37 SCRA 381, 388-389 [1971], reiterated in Jao v. Court of Appeals, supra and Mison v. Natividad, 213 SCRA 734 [1992])*:

The governmental agency concerned, the Bureau of Customs, is vested with exclusive authority. Even if it be assumed that in the exercise of such exclusive competence a taint of illegality may be correctly imputed, the most that can be said is that under certain circumstances the grave abuse of discretion conferred may oust it of such jurisdiction. It does not mean however that correspondingly a court of first instance is vested with competence when clearly in the light of the above decisions the law has not seen fit to do so. The proceeding before the Collector of Customs is not final. An appeal lies to the Commissioner of Customs and thereafter to the Court of Tax Appeals. It may even reach this Court through the appropriate petition for review. *The proper ventilation of the legal issues raised is thus indicated. Certainly a court of first instance is not therein included. It is devoid of jurisdiction.*

***(Bureau of Customs v. Ogario, 329 SCRA 289, 296-298, March 30, 2000, 2nd Div. [Mendoza])***

*178. Discuss the nature of an in flagrante delicto warrantless arrest. Illustrative case.*

**Held:** In the case at bar, the court *a quo* anchored its judgment of conviction on a finding that the warrantless arrest of accused-appellants, and the subsequent search conducted by the peace officers, are valid because accused-appellants were caught *in flagrante delicto* in possession of prohibited drugs. This brings us to the issue of whether or not the warrantless arrest, search and seizure in the present case fall within the recognized exceptions to the warrant requirement.

In *People v. Chua Ho San*, the Court held that in cases of *in flagrante delicto* arrests, a peace officer or a private person may, without a warrant, arrest a person when, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense. The arresting office, therefore, must have personal knowledge of such fact or, as a recent case law adverts to, personal knowledge of facts or circumstances convincingly indicative or constitutive of probable cause. As discussed in *People v. Doria*, probable cause means an actual belief or reasonable grounds of suspicion. The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense, is based on actual facts, *i.e.*, supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested. A reasonable suspicion therefore must be founded on probable cause, coupled with good faith on the part of the peace officers making the arrest.

As applied to *in flagrante delicto* arrests, it is settled that “reliable information” alone, absent any overt act indicative of a felonious enterprise in the presence and within the view of the arresting officers, are not sufficient to constitute probable cause that would justify an *in flagrante delicto* arrest. Thus, in *People v. Aminnudin (163 SCRA 402, 409-410 [1988])*, it was held that “the accused-appellant was not, at the moment of his arrest, committing a crime nor was it shown that he was about to do so or that he had just done so. What he was doing was descending the gangplank of the M/V Wilcon 9 and there was no outward indication that called for his arrest. To all appearances, he was like any of the other passengers innocently disembarking from the vessel. It was only when the informer pointed to him as the carrier of the marijuana that he suddenly became suspect and so subject to apprehension.”

Likewise, in *People v. Mengote (210 SCRA 174, 179-180 [1992])*, the Court did not consider “eyes . . . darting from side to side . . . [while] holding . . . [one’s] abdomen,” in a crowded street at 11:30 in the morning, as overt acts and circumstances sufficient to arouse suspicion and indicative of probable cause. According to the Court, “[b]y no stretch of the imagination could it have been inferred from these acts that an offense had just been committed, or was actually being committed, or was at least being attempted in [the arresting officers’] presence.” So also, in *People v. Encinada (280 SCRA 72, 86-87 [1997])*, the Court ruled that no probable cause is gleanable from the act of riding a *motorela* while holding two plastic baby chairs.

Then, too, in *Malacat v. Court of Appeals (283 SCRA 159 [1997]),* the trial court concluded that petitioner was attempting to commit a crime as he was “’standing at the corner of Plaza Miranda and Quezon Boulevard’ with his eyes ‘moving very fast’ and ‘looking at every person that come (sic) nearer (sic) to them.’” In declaring the warrantless arrest therein illegal, the Court said:

Here, there could have been no valid *in flagrante delicto* … arrest preceding the search in light of the lack of personal knowledge on the part of Yu, the arresting officer, or an overt physical act, on the part of petitioner, indicating that a crime had just been committed, was being committed or was going to be committed. *(Id., at 175)*

It went on to state that –

Second, there was nothing in petitioner’s behavior or conduct which could have reasonably elicited even mere suspicion other than that his eyes were “moving very fast” – an observation which leaves us incredulous since Yu and his teammates were nowhere near petitioner and it was already 6:60 p.m., thus presumably dusk. Petitioner and his companions were merely standing at the corner and were not creating any commotion or trouble . . .

Third, there was at all no ground, probable or otherwise, to believe that petitioner was armed with a deadly weapon. None was visible to Yu, for as he admitted, the alleged grenade was “discovered” “inside the front waistline” of petitioner, and from all indications as to the distance between Yu and petitioner, any telltale bulge, assuming that petitioner was indeed hiding a grenade, could not have been visible to Yu. *(Id., at 178).*

Clearly, to constitute a valid *in flagrante delicto* arrest, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer *(Concurring Opinion of Justice Artemio V. Panganiban in People v. Doria, 301 SCRA 668, 720 [1999]).*

In the case at bar, accused-appellants manifested no outward indication that would justify their arrest. In holding a bag on board a *trisikad,* accused-appellants could not be said to be committing, attempting to commit or have committed a crime. It matters not that accused-appellant Molina responded “Boss, if possible we will settle this” to the request of SPO1 Pamplona to open the bag. Such response which allegedly reinforced the “suspicion” of the arresting officers that accused-appellants were committing a crime, is an equivocal statement which standing alone will not constitute probable cause to effect an *in flagrante delicto* arrest. Note that were it not for SPO1 Marino Paguidopon (who did not participate in the arrest but merely pointed accused-appellants to the arresting officers), accused-appellants could not be subject of any suspicion, reasonable or otherwise.

While SPO1 Paguidopon claimed that he and his informer conducted a surveillance of accused-appellant Mula, SPO1 Paguidopon, however, admitted that he only learned Mula’s name and address after the arrest. What is more, it is doubtful if SPO1 Paguidopon indeed recognized accused-appellant Mula. It is worthy to note that, before the arrest, he was able to see Mula in person only once, pinpointed to him by his informer while they were on the side of the road. These circumstances could not have afforded SPO1 Paguidopon a closer look at accused-appellant Mula, considering that the latter was then driving a motorcycle when SPO1 Paguidopon caught a glimpse of him. With respect to accused-appellant Molina, SPO1 Paguidopon admitted that he had never seen him before the arrest.

This belies the claim of SPO1 Pamplona that he knew the name of accused-appellants even before the arrest x x x.

The aforesaid testimony of SPO1 Pamplona, therefore, is entirely baseless. SPO1 Pamplona could not have learned the name of accused-appellants from SPO1 Paguidopon because Paguidopon himself, who allegedly conducted the surveillance, was not even aware of accused-appellants’ name and address prior to the arrest.

Evidently, SPO1 Paguidopon, who acted as informer of the arresting officers, more so the arresting officers themselves, could not have been certain of accused-appellants’ identity, and were, from all indications, merely fishing for evidence at the time of the arrest.

Compared to *People v. Encinada,* the arresting officer in the said case knew appellant Encinada even before the arrest because of the latter’s illegal gambling activities, thus, lending at least a semblance of validity on the arrest effected by the peace officers. Nevertheless, the Court declared in said case that the warrantless arrest and the consequent search were illegal, holding that “[t]he prosecution’s evidence did not show any suspicious behavior when the appellant disembarked from the ship or while he rode the *motorela.* No act or fact demonstrating a felonious enterprise could be ascribed to appellant under such bare circumstances.” *(People v. Encinada, supra.)*

Moreover, it could not be said that accused-appellants waived their right against unreasonable searches and seizure. Implied acquiescence to the search, if there was any, could not have been more than mere passive conformity given under intimidating or coercive circumstances and is thus considered no consent at all within the purview of the constitutional guarantee *(Id., at 91; citing Aniag v. Commission on Elections, 237 SCRA 424, 436-437 [1994]).*

Withal, the Court holds that the arrest of accused-appellants does not fall under the exceptions allowed by the rules. Hence, the search conducted on their person was likewise illegal. Consequently, the marijuana seized by the peace officers could not be admitted as evidence against accused-appellants, and the Court is thus, left with no choice but to find in favor ofaccused-appellants. ***(People v. Molina, 352 SCRA 174, Feb. 19, 2001, En Banc [Ynares-Santiago])***

## The Privacy of Communications and Correspondence

*179. Private respondent Rafael S. Ortanez filed with the Regional Trial Court of Quezon City a complaint for annulment of marriage with damages against petitioner Teresita Salcedo-Ortanez, on grounds of lack of marriage license and/or psychological incapacity of the petitioner. Among the exhibits offered by private respondent were three (3) cassette tapes of alleged telephone conversations between petitioner and unidentified persons. The trial court issued the assailed order admitting all of the evidence offered by private respondent, including tape recordings of telephone conversations of petitioner with unidentified persons. These tape recordings were made and obtained when private respondent allowed his friends from the military to wire tap his home telephone. Did the trial court act properly when it admitted in evidence said tape recordings?*

**Held:** Republic Act No. 4200 entitled "An Act to Prohibit and Penalize Wire Tapping and Other Related Violations of the Privacy of Communication, and For Other Purposes" expressly makes such tape recordings inadmissible in evidence. x x x.

Clearly, respondent trial court and Court of Appeals failed to consider the afore-quoted provisions of the law in admitting in evidence the cassette tapes in question. Absent a clear showing that both parties to the telephone conversations allowed the recording of the same, the inadmissibility of the subject tapes is mandatory under Rep. Act No. 4200.

Additionally, it should be mentioned that the above-mentioned Republic Act in Section 2 thereof imposes a penalty of imprisonment of not less than six (6) months and up to six (6) years for violation of said Act. ***(Salcedo-Ortanez v. Court of Appeals, 235 SCRA 111, Aug. 4, 1994 [Padilla])***

**The Right to Privacy**

*180. Is there a constitutional right to privacy?*

**Held:** The essence of privacy is the “right to be let alone.” In the 1965 case of *Griswold v. Connecticut (381 U.S. 479, 14 l. ed. 2D 510 [1965]),* the United States Supreme Court gave more substance to the right of privacy when it ruled that the right has a constitutional foundation. It held that there is a right of privacy which can be found within the penumbras of the First, Third, Fourth, Fifth and Ninth Amendments. In the 1968 case of *Morfe v. Mutuc (22 SCRA 424, 444-445),* we adopted the *Griswold* ruling that *there is a constitutional right to privacy.*

The SC clarified that the right of privacy is recognized and enshrined in several provisions of our Constitution. It is expressly recognized in Section 3(1) of the Bill of Rights. Other facets of the right to privacy are protected in various provisions of the Bill of Rights, *i.e.,* Secs. 1, 2, 6, 8, and 17. ***(Ople v. Torres, G.R. No. 127685, July 23, 1998 [Puno])***

1. *Identify the zones of privacy recognized and protected in our laws.*

**Held:** The *Civil Code* provides that “[e]very person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons” and punishes as actionable torts several acts by a person of meddling and prying into the privacy of another. It also holds a public officer or employee or any private individual liable for damages for any violation of the rights and liberties of another person, and recognizes the privacy of letters and other private communications. The *Revised Penal Code* makes a crime the violation of secrets by an officer, the revelation of trade and industrial secrets, and trespass to dwelling. Invasion of privacy is an offense in *special laws* like the Anti-Wiretapping Law (R.A. 4200), the Secrecy of Bank Deposits (R.A. 1405) and the Intellectual Property Code (R.A. 8293). The *Rules of Court* on privileged communication likewise recognize the privacy of certain information *(Section 24, Rule 130[c], Revised Rules on Evidence).* ***(Ople v. Torres, G.R. No. 127685, July 23, 1998 [Puno])***

*180. Discuss why Administrative Order No. 308 (issued by the President prescribing for a National ID system for all citizens to facilitate business transactions with government agencies engaged in the delivery of basic services and social security provisions) should be declared unconstitutional.*

**Held:** We prescind from the premise that the right to privacy is a fundamental right guaranteed by the Constitution, hence, it is the burden of government to show that A.O. No. 308 is justified by some compelling state interest and that it is narrowly drawn. A.O. No. 308 is predicated on two considerations: (1) the need to provide our citizens and foreigners with the facility to conveniently transact business with basic service and social security providers and other government instrumentalities and (2) the need to reduce, if not totally eradicate, fraudulent transactions and misrepresentations by persons seeking basic services. It is debatable whether these interests are compelling enough to warrant the issuance of A.O. No. 308. *But what is not arguable is the broadness, the vagueness, the overbreadth of A.O. No. 308 which if implemented will put our people’s right to privacy in clear and present danger.*

The *heart of A.O. No. 308* lies in its Section 4 which provides for a Population Reference Number (PRN) as a “common reference number to establish a linkage among concerned agencies” through the use of “Biometrics Technology” and “computer application designs.”

*It is noteworthy that A.O. No. 308 does not state what specific biological characteristics and what particular biometrics technology shall be used to identify people who will seek its coverage. Considering the banquet of options available to the implementors of A.O. No. 308, the fear that it threatens the right to privacy of our people is not groundless.*

*A.O. No. 308 should also raise our antennas for a further look will show that it does not state whether encoding of data is limited to biological information alone for identification purposes. X x x. Clearly, the indefiniteness of A.O. No. 308 can give the government the roving authority to store and retrieve information for a purpose other than the identification of the individual through his PRN.*

*The potential for misuse of the data to be gathered under A.O. No. 308 cannot be underplayed x x x. The more frequent the use of the PRN, the better the chance of building a huge and formidable information base through the electronic linkage of the files. The data may be gathered for gainful and useful government purposes; but the existence of this vast reservoir of personal information constitutes a covert invitation to misuse, a temptation that may be too great for some of our authorities to resist.*

It is plain and we hold that A.O. No. 308 falls short of assuring that personal information which will be gathered about our people will only be processed for unequivocally *specified purposes*. The lack of proper safeguards in this regard of A.O. No. 308 may interfere with the individual’s liberty of abode and travel by enabling authorities to track down his movement; it may also enable unscrupulous persons to access confidential information and circumvent the right against self-incrimination; it may pave the way for “fishing expeditions” by government authorities and evade the right against unreasonable searches and seizures. *The possibilities of abuse and misuse of the PRN, biometrics and computer technology are accentuated when we consider that the individual lacks control over what can be read or placed on his ID, much less verify the correctness of the data encoded. They threaten the very abuses that the Bill of Rights seeks to prevent.*

The ability of a sophisticated data center to generate a comprehensive *cradle-to-grave dossier* on an individual and transmit it over a national network is one of the most graphic threats of the computer revolution. The computer is capable of producing a comprehensive dossier on individuals out of information given at different times and for varied purposes. X x x. Retrieval of stored data is simple. When information of a privileged character finds its way into the computer, it can be extracted together with other data on the subject. Once extracted, the information is putty in the hands of any person. The end of privacy begins.

[T]he Court will not be true to its role as the ultimate guardian of the people’s liberty if it would not immediately smother the sparks that endanger their rights but would rather wait for the fire that could consume them.

*[A]nd we now hold that when the integrity of a fundamental right is at stake, this Court will give the challenged law, administrative order, rule or regulation a stricter scrutiny. It will not do for the authorities to invoke the presumption of regularity in the performance of official duties. Nor is it enough for the authorities to prove that their act is not irrational for a basic right can be diminished, if not defeated, even when the government does not act irrationally. They must satisfactorily show the presence of compelling state interest and that the law, rule, or regulation is narrowly drawn to preclude abuses.* This approach is demanded by the 1987 Constitution whose entire matrix is designed to protect human rights and to prevent authoritarianism. In case of doubt, the least we can do is to lean towards the stance that will not put in danger the rights protected by the Constitution.

*The right to privacy is one of the most threatened rights of man living in a masssociety.*  The threats emanate from various sources – governments, journalists, employers, social scientists, etc. In the case at bar, the threat comes from the executive branch of government which by issuing A.O. No. 308 pressures the people to surrender their privacy by giving information about themselves on the pretext that it will facilitate delivery of basic services. *Given the record-keeping power of the computer, only the indifferent will fail to perceive the danger that A.O. No. 308 gives the government the power to compile a devastating dossier against unsuspecting citizens.* X x x [W]e close with the statement that the right to privacy was not engraved in our Constitution for flattery. ***(Ople v. Torres, G.R. No. 127685, July 23, 1998 [Puno])***

*181. Should in camera inspection of bank accounts be allowed? If in the affirmative, under what circumstances should it be allowed?*

**Held:** The issue is whether petitioner may be cited for indirect contempt for her failure to produce the documents requested by the Ombudsman. And whether the order of the Ombudsman to have an *in camera* inspection of the questioned account is allowed as an exception to the law on secrecy of bank deposits (R.A. No. 1405).

An examination of the secrecy of bank deposits law (R.A. No. 1405) would reveal the following exceptions:

1. Where the depositor consents in writing;
2. Impeachment cases;
3. By court order in bribery or dereliction of duty cases against public officials;
4. Deposit is subject of litigation;
5. Sec. 8, R.A. No. 3019, in cases of unexplained wealth as held in the case of *PNB v. Gancayco (122 Phil. 503, 508 [1965]).*

The order of the Ombudsman to produce for *in camera* inspection the subject accounts with the Union Bank of the Philippines, Julia Vargas Branch, is based on a pending investigation at the Office of the Ombudsman against Amado Lagdameo, *et. al.* for violation of R.A. No. 3019, Sec. 3 (e) and (g) relative to the Joint Venture Agreement between the Public Estates Authority and AMARI.

We rule that before an in camera inspection may be allowed, there must be a pending case before a court of competent jurisdiction. Further, the account must be clearly identified, the inspection limited to the subject matter of the pending case before the court of competent jurisdiction. The bank personnel and the account holder must be notified to be present during the inspection, and such inspection may cover only the account identified in the pending case.

In *Union Bank of the Philippines v. Court of Appeals*, we held that “Section 2 of the Law on Secrecy of Bank Deposits, as amended, declares bank deposits to be ‘absolutely confidential’ except:

1. In an examination made in the course of a special or general examination of a bank that is specifically authorized by the Monetary Board after being satisfied that there is reasonable ground to believe that a bank fraud or serious irregularity has been or is being committed and that it is necessary to look into the deposit to establish such fraud or irregularity,
2. In an examination made by an independent auditor hired by the bank to conduct its regular audit provided that the examination is for audit purposes only and the results thereof shall be for the exclusive use of the bank,
3. Upon written permission of the depositor,
4. In cases of impeachment,
5. Upon order of a competent court in cases of bribery or dereliction of duty of public officials, or
6. In cases where the money deposited or invested is the subject matter of the litigation”.

In the case at bar, there is yet no pending litigation before any court of competent authority. What is existing is an investigation by the Office of the Ombudsman. In short, what the Office of the Ombudsman would wish to do is to fish for additional evidence to formally charge Amado Lagdameo, *et. al.,* with the Sandiganbayan. Clearly, there was no pending case in court which would warrant the opening of the bank account for inspection.

#### Zones of privacy are recognized and protected in our laws. The Civil Code provides that “[e]very person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons” and punishes as actionable torts several acts for meddling and prying into the privacy of another. It also holds public officer or employee or any private individual liable for damages for any violation of the rights and liberties of another person, and recognizes the privacy of letters and other private communications. The Revised Penal Code makes a crime of the violation of secrets by an officer, revelation of trade and industrial secrets, and trespass to dwelling. Invasion of privacy is an offense in special laws like the anti-Wiretapping Law*, the Secrecy of Bank Deposits Act*, and the Intellectual Property Code*. (Lourdes T. Marquez v. Hon. Aniano A. Desierto, G.R. No. 135882, June 27, 2001, En Banc [Pardo])*

**Freedom of Expression**

*182. Distinguish “content-based restrictions” on free speech from “content-neutral restrictions,” and give example of each.*

**Held:** *Content-based restrictions* are imposed because of the content of the speech and are, therefore, subject to the clear-and-present danger test. For example, a rule such as that involved in *Sanidad v. Comelec (181 SCRA 529 [1990]),* prohibiting columnists, commentators, and announcers from campaigning either for or against an issue in a plebiscite must have compelling reason to support it, or it will not pass muster under strict scrutiny. These restrictions are censorial and therefore they bear a heavy presumption of constitutional invalidity. In addition, they will be tested for possible overbreadth and vagueness.

*Content-neutral restrictions*, on the other hand, like Sec. 11(b) of R.A. No. 6646, which prohibits the sale or donation of print space and air time to political candidates during the campaign period, are not concerned with the content of the speech. These regulations need only a substantial governmental interest to support them. A deferential standard of review will suffice to test their validity. The clear-and-present danger rule is inappropriate as a test for determining the constitutional validity of laws, like Sec. 11(b) of R.A. No. 6646, which are not concerned with the content of political ads but only with their incidents. To apply the clear-and-present danger test to such regulatory measures would be like using a sledgehammer to drive a nail when a regular hammer is all that is needed.

The test for this difference in the level of justification for the restriction of speech is that content-based restrictions distort public debate, have improper motivation, and are usually imposed because of fear of how people will react to a particular speech. No such reasons underlie content-neutral regulations, like regulation of time, place and manner of holding public assemblies under B.P. Blg. 880, the Public Assembly Act of 1985. ***(Osmena v. COMELEC, 288 SCRA 447, March 31, 1998 [Mendoza])***

*183. Does the conduct of exit poll by ABS CBN present a clear and present danger of destroying the credibility and integrity of the electoral process as it has the tendency to sow confusion considering the randomness of selecting interviewees, which further makes the exit poll highly unreliable, to justify the promulgation of a Comelec resolution prohibiting the same?*

**Held:** Such arguments are purely speculative and clearly untenable. *First,* by the very nature of a survey, the interviewees or participants are selected at random, so that the results will as much as possible be representative or reflective of the general sentiment or view of the community or group polled. *Second,* the survey result is not meant to replace or be at par with the official Comelec count. It consists merely of the opinion of the polling group as to who the electorate in general has probably voted for, based on the limited data gathered from polled individuals. *Finally,* not at stake are the credibility and the integrity of the elections, which are exercises that are separate and independent from the exit polls. The holding and the reporting of the results of exit polls cannot undermine those of the elections, since the former is only part of the latter. If at all, the outcome of one can only be indicative of the other.

The COMELEC’s concern with the possible noncommunicative effect of exit polls – disorder and confusion in the voting centers – does not justify a total ban on them. Undoubtedly, the assailed Comelec Resolution is too broad, since its application is without qualification as to whether the polling is disruptive or not. There is no showing, however, that exit polls or the means to interview voters cause chaos in voting centers. Neither has any evidence been presented proving that the presence of exit poll reporters near an election precinct tends to create disorder or confuse the voters.

Moreover, the prohibition incidentally prevents the collection of exit poll data and their use for any purpose. The valuable information and ideas that could be derived from them, based on the voters’ answers to the survey questions will forever remain unknown and unexplored. Unless the ban is restrained, candidates, researchers, social scientists and the electorate in general would be deprived of studies on the impact of current events and of election-day and other factors on voters’ choices.

The absolute ban imposed by the Comelec cannot, therefore, be justified. It does not leave open any alternative channel of communication to gather the type of information obtained through exit polling. On the other hand, there are other valid and reasonable ways and means to achieve the Comelec end of avoiding or minimizing disorder and confusion that may be brought about by exit surveys.

With foregoing premises, it is concluded that the interest of the state in reducing disruption is outweighed by the drastic abridgment of the constitutionally guaranteed rights of the media and the electorate. Quite the contrary, instead of disrupting elections, exit polls – properly conducted and publicized – can be vital tools for the holding of honest, orderly, peaceful and credible elections; and for the elimination of election-fixing, fraud and other electoral ills. ***(ABS-CBN Broadcasting Corporation v. COMELEC, G.R. No. 133486, Jan. 28, 2000, En Banc [Panganiban])***

*184. Section 5.4 of R.A. No. 9006 (Fair Election Act) which provides: “Surveys affecting national candidates shall not be published fifteen (15) days before an election and surveys affecting local candidates shall not be published seven (7) days before an election.” The Social Weather Stations, Inc. (SWS), a private non-stock, non-profit social research institution conducting surveys in various fields; and Kamahalan Publishing Corporation, publisher of the Manila Standard, a newspaper of general circulation, which features newsworthy items of information including election surveys, challenged the constitutionality of aforesaid provision as it constitutes a prior restraint on the exercise of freedom of speech without any clear and present danger to justify such restraint. Should the challenge be sustained?*

**Held:** For reason hereunder given, we hold that Section 5.4 of R.A. No. 9006 constitutes an unconstitutional abridgment of freedom of speech, expression, and the press.

To be sure, Section 5.4 lays a prior restraint on freedom of speech, expression, and the press by prohibiting the publication of election survey results affecting candidates within the prescribed periods of fifteen (15) days immediately preceding a national election and seven (7) days before a local election. Because of the preferred status of the constitutional rights of speech, expression, and the press, such a measure is vitiated by a weighty presumption of invalidity*.* Indeed, “any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity x x x. The Government ‘thus carries a heavy burden of showing justification for the enforcement of such restraint.’” There is thus a reversal of the normal presumption of validity that inheres in every legislation.

Nor may it be argued that because of Art. IX-C, Sec. 4 of the Constitution, which gives the Comelec supervisory power to regulate the enjoyment or utilization of franchise for the operation of media of communication, no presumption of invalidity attaches to a measure like Sec. 5.4. For as we have pointed out in sustaining the ban on media political advertisements, the grant of power to the Comelec under Art. IX-C, Sec. 4 is limited to ensuring “equal opportunity, time, space, and the right to reply” as well as uniform and reasonable rates of charges for the use of such media facilities for “public information campaigns and forums among candidates.”

X x x

Nor can the ban on election surveys be justified on the ground that there are other countries x x x which similarly impose restrictions on the publication of election surveys. At best this survey is inconclusive. It is noteworthy that in the United States no restriction on the publication of election survey results exists. It cannot be argued that this is because the United States is a mature democracy. Neither are there laws imposing an embargo on survey results, even for a limited period, in other countries. X x x.

What test should then be employed to determine the constitutional validity of Section 5.4? The United States Supreme Court x x x held in *United States v. O’ Brien:*

[A] government regulation is sufficiently justified (1) if it is within the constitutional power of the government; (2) if it furthers an important or substantial governmental interest; (3) if the governmental interest is unrelated to the suppression of free expression; and (4) if the incidental restriction on alleged First Amendment freedoms (of speech, expression and press) is no greater than is essential to the furtherance of that interest *(391 U.S. 367, 20 L. Ed. 2d 692, 680 [1968] [bracketed numbers added]).*

This is so far the most influential test for distinguishing content-based from content-neutral regulations and is said to have “become canonical in the review of such laws.” It is noteworthy that the *O’ Brien* test has been applied by this Court in at least two cases *(Adiong v. Comelec, 207 SCRA 712 [1992]; Osmena v. Comelec, supra.).*

Under this test, even if a law furthers an important or substantial governmental interest, it should be invalidated if such governmental interest is “not unrelated to the suppression of free expression.” Moreover, even if the purpose is unrelated to the suppression of free speech, the law should nevertheless be invalidated if the restriction on freedom of expression is greater than is necessary to achieve the governmental purpose in question.

Our inquiry should accordingly focus on these two considerations as applied to Sec. 5.4.

*First.* Sec. 5.4 fails to meet criterion (3) of the *O’ Brien* test because the causal connection of expression to the asserted governmental interest makes such interest “not unrelated to the suppression of free expression.” By prohibiting the publication of election survey results because of the possibility that such publication might undermine the integrity of the election, Sec. 5.4 actually suppresses a whole class of expression, while allowing the expression of opinion concerning the same subject matter by newspaper columnists, radio and TV commentators, armchair theorists, and other opinion makers. In effect, Sec. 5.4 shows a bias for a particular subject matter, if not viewpoint, by preferring personal opinion to statistical results. The constitutional guarantee of freedom of expression means that “the government has no power to restrict expression because of its message, its ideas, its subject matter, or its contents.” The inhibition of speech should be upheld only if the expression falls within one of the few unprotected categories dealt with in *Chaplinsky v. New Hampshire (315 U.S. 568, 571-572, 86 L. Ed. 1031, 1035 [1942]),* thus:

There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or ‘fighting’ words – those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. [S]uch utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.

Nor is there justification for the prior restraint which Sec. 5.4 lays on protected speech. In *Near v. Minnesota (283 U.S. 697, 715-716, 75 l. Ed. 1357, 1367 [1931]),* it was held:

[T]he protection even as to previous restraint is not absolutely unlimited. But the limitation has been recognized only in exceptional cases x x x. No one would question but that a government might prevent actual obstruction to its recruiting service or the publication of the sailing dates of transports or the number and location of troops. On similar grounds, the primary requirements of decency may be enforced against obscene publications. The security of the community life may be protected against incitements to acts of violence and the overthrow by force of orderly government x x x.

Thus, x x x the prohibition imposed by Sec. 5.4 cannot be justified on the ground that it is only for a limited period and is only incidental. The prohibition may be for a limited time, but the curtailment of the right of expression is direct, absolute, and substantial. It constitutes a total suppression of a category of speech and is not made less so because it is only for a period of fifteen (15) days immediately before a national election and seven (7) days immediately before a local election.

This sufficiently distinguishes Sec. 5.4 from R.A. No. 6646, Sec. 11(b), which this Court found to be valid in *National Press Club v. Comelec (supra.),* and *Osmena v. Comelec (supra.)*. For the ban imposed by R.A. No. 6646, Sec. 11(b) is not only authorized by a specific constitutional provision *(Art. IX-C, Sec. 4),* but it also provided an alternative so that, as this Court pointed out in *Osmena,* there was actually no ban but only a substitution of media advertisements by the Comelec space, and Comelec hour.

*Second.* Even if the governmental interest sought to be promoted is unrelated to the suppression of speech and the resulting restriction of free expression is only incidental, Sec. 5.4 nonetheless fails to meet criterion (4) of the *O’ Brien* test, namely, that the restriction be not greater than is necessary to further the governmental interest. As already stated, Sec. 5.4. aims at the prevention of last-minute pressure on voters, the creation of bandwagon effect, “junking” of weak or “losing” candidates, and resort to the form of election cheating called “dagdag-bawas.” Praiseworthy as these aims of the regulation might be, they cannot be attained at the sacrifice of the fundamental right of expression, when such aim can be more narrowly pursued by punishing unlawful *acts,* rather than *speech* because of apprehension that such speech creates the danger of such evils. Thus, under the Administrative Code of 1987 *(Bk. V, Tit. I, Subtit. C, Ch 1, Sec. 3[1]),* the Comelec is given the power:

To stop any illegal activity, or confiscate, tear down, and stop any *unlawful,* libelous, *misleading or false election propaganda,* after due notice and hearing.

This is surely a less restrictive means than the prohibition contained in Sec. 5.4. Pursuant to this power of the Comelec, it can confiscate bogus survey results calculated to mislead voters. Candidates can have their own surveys conducted. No right of reply can be invoked by others. No principle of equality is involved. It is a free market to which each candidate brings his ideas. As for the purpose of the law to prevent bandwagon effects, it is doubtful whether the Government can deal with this natural-enough tendency of some voters. Some voters want to be identified with the “winners.” Some are susceptible to the herd mentality. Can these be legitimately prohibited by suppressing the publication of survey results which are a form of expression? It has been held that “[mere] legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions.”

To summarize then, we hold that Sec. 5.4. is invalid because (1) it imposes a prior restraint on the freedom of expression, (2) it is a direct and total suppression of a category of expression even though such suppression is only for a limited period, and (3) the governmental interest sought to be promoted can be achieved by means other than the suppression of freedom of expression. ***(Social Weather Stations, Inc., v. COMELEC, G.R. No. 147571, May 5, 2001, En Banc [Mendoza])***

*185.* *Discuss the "doctrine of fair comment" as a valid defense in an action for libel or slander.*

**Held:** Fair commentaries on matters of public interest are privileged and constitute a valid defense in an action for libel or slander. The doctrine of fair comment means that while in general every discreditable imputation publicly made is deemed false, because every man is presumed innocent until his guilt is judicially proved, and every false imputation is deemed malicious, nevertheless, when the discreditable imputation is directed against a public person in his public capacity, it is not necessarily actionable. In order that such discreditable imputation to a public official may be actionable, it must either be a false allegation of fact or a comment based on a false supposition. If the comment is an expression of opinion, based on established facts, then it is immaterial that the opinion happens to be mistaken, as long as it might reasonably be inferred from the facts. ***(Borjal v. CA, 301 SCRA 1, Jan. 14, 1999, 2nd Div. [Bellosillo])***

*186. What is the “raison d’etre” for the New York Times v. Sullivan (376 US 254) holding that honest criticisms on the conduct of public officials and public figures are insulated from libel judgments?*

**Held:** The guarantees of freedom of speech and press prohibit a public official or public figure from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with actual malice, *i.e.,* with knowledge that it was false or with reckless disregard of whether it was false or not.

The *raison d’etre* for the *New York Times* doctrine was that to require critics of official conduct to guarantee the truth of all their factual assertions on pain of libel judgments would lead to self-censorship, since would-be critics would be deterred from voicing out their criticisms even if such were believed to be true, or were in fact true, because of doubt whether it could be proved or because of fear of the expense of having to prove it*.* ***(Borjal v. CA, 301 SCRA 1, Jan. 14, 1999, 2nd Div. [Bellosillo])***

*187. Who is a “public figure,” and therefore subject to public comment?*

**Held:** [W]e deem private respondent a public figure within the purview of the *New York Times* ruling. At any rate, we have also defined “public figure” in *Ayers Production Pty., Ltd. v. Capulong (G.R. Nos. 82380 and 82398, 29 April 1988, 160 SCRA 861)* as –

X x x a person who, by his accomplishments, fame, mode of living, or by adopting a profession or calling which gives the public a legitimate interest in his doings, his affairs and his character, has become a ‘public personage.’ He is, in other words, a celebrity. Obviously, to be included in this category are those who have achieved some degree of reputation by appearing before the public, as in the case of an actor, a professional baseball player, a pugilist, or any other entertainer. The list is, however, broader than this. It includes public officers, famous inventors and explorers, war heroes and even ordinary soldiers, infant prodigy, and no less a personage than the Great Exalted Ruler of the lodge. It includes, in short, anyone who has arrived at a position where the public attention is focused upon him as a person.

The FNCLT (First National Conference on Land Transportation) was an undertaking infused with public interest. It was promoted as a joint project of the government and the private sector, and organized by top government officials and prominent businessmen. For this reason, it attracted media mileage and drew public attention not only to the conference itself but to the personalities behind as well. As its Executive Director and spokesman, private respondent consequently assumed the status of a public figure.

But even assuming *ex-gratia argumenti* that private respondent, despite the position he occupied in the FNCLT, would not qualify as a public figure, it does not necessarily follow that he could not validly be the subject of a public comment even if he was not a public official or at least a public figure, for he could be, as long as he was involved in a public issue. If a matter is a subject of public or general interest, it cannot suddenly become less so merely because a private individual is involved or because in some sense the individual did not voluntarily choose to become involved. The public’s primary interest is in the event; the public focus is on the conduct of the participant and the content, effect and significance of the conduct, not the participant’s prior anonymity or notoriety*.* ***(Borjal v. CA, 301 SCRA 1, Jan. 14, 1999, 2nd Div. [Bellosillo])***

*188. The question for determination in this case is the liability for libel of a citizen who denounces a barangay official for misconduct in office. The Regional Trial Court of Manila x x x found petitioner guilty x x x on the ground that petitioner failed to prove the truth of the charges and that he was “motivated by vengeance in uttering the defamatory statement.”*

**Held:** The decision appealed from should be reversed.

In denouncing the barangay chairman in this case, petitioner and the other residents of the Tondo Foreshore Area were not only acting in their self-interest but engaging in the performance of a civic duty to see to it that public duty is discharged faithfully and well by those on whom such duty is incumbent. The recognition of this right and duty of every citizen in a democracy is inconsistent with any requirement placing on him the burden of proving that he acted with good motives and for justifiable ends.

For that matter, even if the defamatory statement is false, no liability can attach if it relates to official conduct, unless the public official concerned proves that the statement was made with actual malice – that is, with knowledge that it was false or with reckless disregard of whether it was false or not. This is the gist of the ruling in the landmark case of *New York Times v. Sullivan (376 U.S. 254, 11 L. Ed. 2d [1964]. For a fascinating account of this case, see Anthony Lewis, Make No Law – The Sullivan Case and the First Amendment [1991]),* which this Court has cited with approval in several of its own decisions *(Lopez v. Court of Appeals, 145 Phil. 219 [1970], others omitted)*. This is the rule of “actual malice.” In this case, the prosecution failed to prove not only that the charges made by petitioner were false but also that petitioner made them with knowledge of their falsity or with reckless disregard of whether they were false or not.

A rule placing on the accused the burden of showing the truth of allegations of official misconduct and/or good motives and justifiable ends for making such allegations would not only be contrary to Art. 361 of the Revised Penal Code. It would, above all, infringe on the constitutionally guaranteed freedom of expression. Such a rule would deter citizens from performing their duties as members of a self-governing community. Without free speech and assembly, discussions of our most abiding concerns as a nation would be stifled. As Justice Brandies has said, “public discussion is a political duty” and the “greatest menace to freedom is an inert people.” *(Whitney v. California, 247 U.S. 357, 375, 71 L. Ed. 1095, 1105 [1927] [concurring])* ***(Vasquez v. Court of Appeals, 314 SCRA 460, Sept. 15, 1999, En Banc [Mendoza])***

*189. The Office of the Mayor of Las Pinas refused to issue permit to petitioners to hold rally a rally in front of the Justice Hall of Las Pinas on the ground that it was prohibited under Supreme Court En Banc Resolution dated July 7,1998 in A.M. No. 98-7-02-SC, entitled, "Re: Guidelines on the Conduct of Demonstrations, Pickets, Rallies and Other Similar Gatherings in the Vicinity of the Supreme Court and All Other Courts." Petitioners thus initiated the instant proceedings. They submit that the Supreme Court gravely abused its discretion and/or acted without or in excess of jurisdiction in promulgating those guidelines.*

**Held:** We shall first dwell on the critical argument made by petitioners that the rules constitute an abridgment of the people's aggregate rights of free speech, free expression, peaceful assembly and petitioning government for redress of grievances citing Sec. 4, Article III of the 1987 Constitution that "no law shall be passed abridging" them.

It is true that the safeguarding of the people's freedom of expression to the end that individuals may speak as they think on matters vital to them and that falsehoods may be exposed through the processes of education and discussion, is essential to free government*.* But freedom of speech and expression despite its indispensability has its limitations. It has never been understood as the absolute right to speak whenever, however, and wherever one pleases, for the manner, place, and time of public discussion can be constitutionally controlled*.* [T]he better policy is not liberty untamed but liberty regulated by law where every freedom is exercised in accordance with law and with due regard for the rights of others*.*

Conventional wisdom tells us that the realities of life in a complex society preclude an absolutist interpretation of freedom of expression where it does not involve pure speech but speech plus physical actions like picketing. There are other significant societal values that must be accommodated and when they clash, they must all be weighed with the promotion of the general welfare of the people as the ultimate objective. In balancing these values, this Court has accorded freedom of expression a preferred position in light of its more comparative importance. Hence, our rulings now musty in years hold that only the narrowest time, place and manner regulations that are specifically tailored to serve an important governmental interest may justify the application of the balancing of interests test in derogation of the people's right of free speech and expression*.* Where said regulations do not aim particularly at the evils within the allowable areas of state control but, on the contrary, sweep within their ambit other activities as to operate as an overhanging threat to free discussion, or where upon their face they are so vague, indefinite, or inexact as to permit punishment of the fair use of the right of free speech, such regulations are void.

Prescinding from this premise, the Court reiterates that judicial independence and the fair and orderly administration of justice constitute paramount governmental interests that can justify the regulation of the public's right of free speech and peaceful assembly in the vicinity of courthouses. In the case of *In Re: Emil P. Jurado*, the Court pronounced in no uncertain terms that:

"x x x freedom of expression needs on occasion to be adjusted to and accommodated with the requirements of equally important public interests. One of these fundamental public interests is the maintenance of the integrity and orderly functioning of the administration of justice. There is no antinomy between free expression and the integrity of the system of administering justice. For the protection and maintenance of freedom of expression itself can be secured only within the context of a functioning and orderly system of dispensing justice, within the context, in other words, of viable independent institutions for delivery of justice which are accepted by the general community. x x x" *(In Re: Emil P. Jurado, 243 SCRA 299, 323-324 [1995])*

It is sadly observed that judicial independence and the orderly administration of justice have been threatened not only by contemptuous acts inside, but also by irascible demonstrations outside, the courthouses. They wittingly or unwittingly, spoil the ideal of sober, non-partisan proceedings before a cold and neutral judge. Even in the United States, a prohibition against picketing and demonstrating in or near courthouses, has been ruled as valid and constitutional notwithstanding its limiting effect on the exercise by the public of their liberties. X x x

The administration of justice must not only be fair but must also appear to be fair and it is the duty of this Court to eliminate everything that will diminish if not destroy this judicial desideratum. To be sure, there will be grievances against our justice system for there can be no perfect system of justice but these grievances must be ventilated through appropriate petitions, motions or other pleadings. Such a mode is in keeping with the respect due to the courts as vessels of justice and is necessary if judges are to dispose their business in a fair fashion. It is the traditional conviction of every civilized society that courts must be insulated from every extraneous influence in their decisions*.* The facts of a case should be determined upon evidence produced in court, and should be uninfluenced by bias, prejudice or sympathies. ***(In Re: Petition to Annul En Banc Resolution A.M. 98-7-02-SC - Ricardo C. Valmonte and Union of Lawyers and Advocates for Transparency in Government [ULAT], G.R. No. 134621, Sept. 29, 1998)***

*190. Did the Supreme Court commit an act of judicial legislation in promulgating En Banc Resolution A.M. 98-7-02-SC, entitled, "Re: Guidelines on the Conduct of Demonstrations, Pickets, Rallies and Other Similar Gatherings in the Vicinity of the Supreme Court and All Other Courts?"*

**Held:** Petitioners also claim that this Court committed an act of judicial legislation in promulgating the assailed resolution. They charge that this Court amended provisions of Batas Pambansa (B.P.) Blg. 880, otherwise known as "the Public Assembly Act," by converting the sidewalks and streets within a radius of two hundred (200) meters from every courthouse from a public forum place into a "no rally" zone. Thus, they accuse this Court of x x x violating the principle of separation of powers.

We reject these low watts arguments. Public places *historically associated* with the free exercise of expressive activities, such as streets, sidewalks, and parks, are considered, *without more*, to be public fora*.* In other words, it is not any law that can imbue such places with the public nature inherent in them. But even in such public fora, it is settled jurisprudence that the government may restrict speech plus activities and enforce reasonable time, place, and manner regulations as long as the restrictions are content-neutral, are narrowly tailored to serve a significant governmental interest, and leave open ample alternative channels of communication.

Contrary therefore to petitioners’ impression, B.P. Blg. 880 did not establish streets and sidewalks, among other places, as public fora. A close look at the law will reveal that it in fact prescribes reasonable time, place, and manner regulations. Thus, it requires a written permit for the holding of public assemblies in public places subject, even, to the right of the mayor to modify the place and time of the public assembly, to impose a rerouting of the parade or street march, to limit the volume of loud speakers or sound system and to prescribe other appropriate restrictions on the conduct of the public assembly.

The existence of B.P. Blg. 880, however, does not preclude this Court from promulgating rules regulating conduct of demonstrations in the vicinity of courts to assure our people of an impartial and orderly administration of justice as mandated by the Constitution. To insulate the judiciary from mob pressure, friendly or otherwise, and isolate it from public hysteria, this Court merely moved away the situs of mass actions within a 200-meter radius from every courthouse. In fine, B.P. Blg. 880 imposes general restrictions to the time, place and manner of conducting concerted actions. On the other hand, the resolution of this Court regulating demonstrations adds specific restrictions as they involve judicial independence and the orderly administration of justice. There is thus no discrepancy between the two sets of regulatory measures. Simply put, B.P. Blg. 880 and the assailed resolution complement each other. We so hold following the rule in legal hermeneutics that an apparent conflict between a court rule and a statutory provision should be harmonized and both should be given effect if possible*.* ***(In Re: Petition to Annul En Banc Resolution A.M. 98-7-02-SC - Ricardo C. Valmonte and Union of Lawyers and Advocates for Transparency in Government [ULAT], G.R. No. 134621, Sept. 29, 1998)***

*191. Should live media coverage of court proceedings be allowed?*

**Held:** The propriety of granting or denying permission to the media to broadcast, record, or photograph court proceedings involves weighing the constitutional guarantees of freedom of the press, the right of the public to information and the right to public trial, on the one hand, and on the other hand, the due process rights of the defendant and the inherent and constitutional power of the courts to control their proceedings in order to permit the fair and impartial administration of justice. Collaterally, it also raises issues on the nature of the media, particularly television and its role in society, and of the impact of new technologies on law.

The records of the Constitutional Commission are bereft of discussion regarding the subject of cameras in the courtroom. Similarly, Philippine courts have not had the opportunity to rule on the question squarely.

While we take notice of the September 1990 report of the United States Judicial Conference Ad Hoc Committee on Cameras in the Courtroom, still the current rule obtaining in the Federal Courts of the United States prohibits the presence of television cameras in criminal trials. Rule 53 of the Federal Rules of Criminal Procedure forbids the taking of photographs during the progress of judicial proceedings or radio broadcasting of such proceedings from the courtroom. A trial of any kind or in any court is a matter of serious importance to all concerned and should not be treated as a means of entertainment. To so treat it deprives the court of the dignity which pertains to it and departs from the orderly and serious quest for truth for which our judicial proceedings are formulated.

Courts do not discriminate against radio and television media by forbidding the broadcasting or televising of a trial while permitting the newspaper reporter access to the courtroom, since a television or news reporter has the same privilege, as the news reporter is not permitted to bring his typewriter or printing press into the courtroom*.*

In *Estes v. Texas (381 U.S. 532),* the United States Supreme Court held that television coverage of judicial proceedings involves an inherent denial of due process rights of a criminal defendant. Voting 5-4, the Court through Mr. Justice Clark, identified four (4) areas of potential prejudice which might arise from the impact of the cameras on the jury, witnesses, the trial judge and the defendant. The decision in part pertinently stated:

"Experience likewise has established the prejudicial effect of telecasting on witnesses. Witnesses might be frightened, play to the camera, or become nervous. They are subject to extraordinary out-of-court influences which might affect their testimony. Also, telecasting not only increases the trial judge's responsibility to avoid actual prejudice to the defendant; it may as well affect his own performance. Judges are human beings also and are subject to the same psychological reactions as laymen. For the defendant, telecasting is a form of mental harassment and subjects him to excessive public exposure and distracts him from the effective presentation of his defense.

"The television camera is a powerful weapon which intentionally or inadvertently can destroy an accused and his case in the eyes of the public."

Representatives of the press have no special standing to apply for a writ of mandate to compel a court to permit them to attend a trial, since within the courtroom a reporter's constitutional rights are no greater than those of any other member of the public. Massive intrusion of representatives of the news media into the trial itself can so alter or destroy the constitutionally necessary judicial atmosphere and decorum that the requirements of impartiality imposed by due process of law are denied the defendant and a defendant in a criminal proceeding should not be forced to run a gauntlet of reporters and photographers each time he enters or leaves the courtroom*.*

Considering the prejudice it poses to the defendant's right to due process as well as to the fair and orderly administration of justice, and considering further that the freedom of the press and the right of the people to information may be served and satisfied by less distracting, degrading and prejudicial means, live radio and television coverage of court proceedings shall not be allowed. Video footages of court hearings for news purposes shall be restricted and limited to shots of the courtroom, the judicial officers, the parties and their counsel taken prior to the commencement of official proceedings. No video shots or photographs shall be permitted during the trial proper. ***(Supreme Court En Banc Resolution Re: Live TV and Radio Coverage of the Hearing of President Corazon C. Aquino's Libel Case, dated Oct. 22, 1991)***

*192. Should the Court allow live media coverage of the anticipated trial of the plunder and other criminal cases filed against former President Joseph E. Estrada before the Sandiganbayan in order “to assure the public of full transparency in the proceedings of an unprecedented case in our history” as requested by the Kapisanan ng mga Brodkaster ng Pilipinas?*

**Held:** The propriety of granting or denying the instant petition involve the weighing out of the constitutional guarantees of freedom of the press and the right to public information, on the one hand, and the fundamental rights of the accused, on the other hand, along with the constitutional power of a court to control its proceedings in ensuring a fair and impartial trial.

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

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

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

Witnesses and judges may very well be men and women of fortitude, able to thrive in hardy climate, with every reason to presume firmness of mind and resolute endurance, but it must also be conceded that “television can work profound changes in the behavior of the people it focuses on.” Even while it may be difficult to quantify the influence, or pressure that media can bring to bear on them directly and through the shaping of public opinion, it is a fact, nonetheless, that, indeed, it does so in so many ways and in varying degrees. The conscious or unconscious effect that such a coverage may have on the testimony of witnesses and the decision of judges cannot be evaluated but, it can likewise be said, it is not at all unlikely for a vote of guilt or innocence to yield to it*.* It might be farcical to build around them an impregnable armor against the influence of the most powerful media of public opinion.

To say that actual prejudice should first be present would leave to near nirvana the subtle threats to justice that a disturbance of the mind so indispensable to the calm and deliberate dispensation of justice can create*.* The effect of television may escape the ordinary means of proof, but it is not far-fetched for it to gradually erode our basal conception of a trial such as we know it now*.*

An accused has a right to a public trial but it is a right that belongs to him, more than anyone else, where his life or liberty can be held critically in balance. A public trial aims to ensure that he is fairly dealt with and would not be unjustly condemned and that his rights are not compromised in secret conclaves of long ago. A public trial is not synonymous with publicized trial; it only implies that the court doors must be open to those who wish to come, sit in the available seats, conduct themselves with decorum and observe the trial process. In the constitutional sense, a courtroom should have enough facilities for a reasonable number of the public to observe the proceedings, not too small as to render the openness negligible and not too large as to distract the trial participants from their proper functions, who shall then be totally free to report what they have observed during the proceedings*.*

The courts recognize the constitutionally embodied freedom of the press and the right to public information. It also approves of media’s exalted power to provide the most accurate and comprehensive means of conveying the proceedings to the public and in acquainting the public with the judicial process in action; nevertheless, within the courthouse, the overriding consideration is still the paramount right of the accused to due process which must never be allowed to suffer diminution in its constitutional proportions. Justice Clark thusly pronounced, “while a maximum freedom must be allowed the press in carrying out the important function of informing the public in a democratic society, its exercise must necessarily be subject to the maintenance of *absolute* fairness in the judicial process.”

X x x

The Integrated Bar of the Philippines x x x expressed its own concern on the live television and radio coverage of the criminal trials of Mr. Estrada; to paraphrase: Live television and radio coverage can negate the rule on exclusion of witnesses during the hearings intended to assure a fair trial; at stake in the criminal trial is not only the life and liberty of the accused but the very credibility of the Philippine criminal justice system, and live television and radio coverage of the trial could allow the “hooting throng” to arrogate unto themselves the task of judging the guilt of the accused, such that the verdict of the court will be acceptable only if popular; and live television and radio coverage of the trial will not subserve the ends of justice but will only pander to the desire for publicity of a few grandstanding lawyers.

X x x

Unlike other government offices, courts do not express the popular will of the people in any sense which, instead, are tasked to only adjudicate controversies on the basis of what alone is submitted before them. A trial is not a free trade of ideas. Nor is a competing market of thoughts the known test of truth in a courtroom. ***(Re: Request Radio-TV coverage of the Trial in the Sandiganbayan of the Plunder Cases against the former President Joseph E. Estrada, A.M. No. 01-4-03-SC, June 29, 2001, En Banc [Vitug])***

**Freedom of Religion**

*193. Discuss why the* ***Gerona*** *ruling (justifying the expulsion from public schools of children of Jehovah’s Witnesses who refuse to salute the flag and sing the national anthem during flag ceremony as prescribed by the Flag Salute Law) should be abandoned.*

**Held:** Our task here is extremely difficult, for the 30-year old decision of this court in *Gerona* upholding the flag salute law and approving the expulsion of students who refuse to obey it, is not lightly to be trifled with.

It is somewhat ironic however, that after the *Gerona* ruling had received legislative cachet by its incorporation in the Administrative Code of 1987, the present Court believes that the time has come to reexamine it. The idea that one may be compelled to salute the flag, sing the national anthem, and recite the patriotic pledge, during a flag ceremony on pain of being dismissed from one’s job or of being expelled from school, is alien to the conscience of the present generation of Filipinos who cut their teeth on the Bill of Rights which guarantees their rights to free speech *(The flag salute, singing the national anthem and reciting the patriotic pledge are all forms of utterances.)* and the free exercise of religious profession and worship*.*

Religious freedom is a fundamental right which is entitled to the highest priority and the amplest protection among human rights, for it involves the relationship of man to his Creator *(Chief Justice Enrique M. Fernando’s separate opinion in German v. Barangan, 135 SCRA 514, 530-531).*

“The right to religious profession and worship has a two-fold aspect, viz., freedom to believe and freedom to act on one’s belief. The first is absolute as long as the belief is confined within the realm of thought. The second is subject to regulation where the belief is translated into external acts that affect the public welfare” *(J. Cruz, Constitutional Law, 1991 Ed., pp. 176-177).*

Petitioners stress x x x that while they do not take part in the compulsory flag ceremony, they do not engage in “external acts” or behavior that would offend their countrymen who believe in expressing their love of country through the observance of the flag ceremony. They quietly stand at attention during the flag ceremony to show their respect for the rights of those who choose to participate in the solemn proceedings. Since they do not engage in disruptive behavior, there is no warrant for their expulsion.

“The sole justification for a prior restraint or limitation on the exercise of religious freedom *(according to the late Chief Justice Claudio Teehankee in his dissenting opinion in German v. Barangan, 135 SCRA 514, 517)* is the existence of a grave and present danger of a character both grave and imminent, of a serious evil to public safety, public morals, public health or any other legitimate public interest, that the State has a right (and duty) to prevent.” Absent such a threat to public safety, the expulsion of the petitioners from the schools is not justified.

The situation that the Court directly predicted in *Gerona* that:

“[T]he flag ceremony will become a thing of the past or perhaps conducted with very few participants, and the time will come when we would have citizens untaught and uninculcated in and not imbued with reverence for the flag and love of country, admiration for national heroes, and patriotism – a pathetic, even tragic situation, and all because a small portion of the school population imposed its will, demanded and was granted an exemption.”

has not come to pass. We are not persuaded that by exempting the Jehovah’s Witnesses from saluting the flag, singing the national anthem and reciting the patriotic pledge, this religious group which admittedly comprises a “small portion of the school population” will shake up our part of the globe and suddenly produce a nation “untaught and uninculcated in and unimbued with reverence for the flag, patriotism, love of country and admiration for national heroes*.* After all, what the petitioners seek only is exemption from the flag ceremony, not exclusion from the public schools where they may study the Constitution, the democratic way of life and form of government, and learn not only the arts, sciences, Philippine history and culture but also receive training for a vocation or profession and be taught the virtues of “patriotism, respect for human rights, appreciation for national heroes, the rights and duties of citizenship, and moral and spiritual values *(Sec. 3[2], Art. XIV, 1987 Constitution)* as part of the curricula. Expelling or banning the petitioners from Philippine schools will bring about the very situation that this Court had feared in *Gerona.* Forcing a small religious group, through the iron hand of the law, to participate in a ceremony that violates their religious beliefs, will hardly be conducive to love of country or respect for duly constituted authorities.

As Mr. Justice Jackson remarked in *West Virginia v. Barnette, 319 U.S. 624 (1943):*

“x x x To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering statement of the appeal of our institutions to free minds. x x x When they (diversity) are so harmless to others or to the State as those we deal with here, the price is not too great. But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.”

“Furthermore, let it be noted that coerced unity and loyalty even to the country, x x x – assuming that such unity and loyalty can be attained through coercion – is not a goal that is constitutionally obtainable at the expense of religious liberty. A desirable end cannot be promoted by prohibited means.” *(Meyer v. Nebraska, 262 U.S. 390, 67 L. ed. 1042, 1046)*

Moreover, the expulsion of members of Jehovah’s Witnesses from the schools where they are enrolled will violate their right as Philippine citizens, under the 1987 Constitution, to receive free education, for it is the duty of the State to “protect and promote the right of all citizens to quality education x x x and to make such education accessible to all” *(Sec. 1, Art. XIV).*

In *Victoriano v. Elizalde Rope Workers’ Union, 59 SCRA 54, 72-75,* we upheld the exemption of members of the Iglesia Ni Cristo, from the coverage of a closed shop agreement between their employer and a union because it would violate the teaching of their church not to join any labor group:

“x x x It is certain that not every conscience can be accommodated by all the laws of the land; but when general laws conflict with scruples of conscience, exemptions ought to be granted unless some ‘compelling state interests’ intervenes. *(Sherbert v. Berner, 374 U.S. 398, 10 L. Ed. 2d 965, 970, 83 S. Ct. 1790).”*

We hold that a similar exemption may be accorded to the Jehovah’s Witnesses with regard to the observance of the flag ceremony out of respect for their religious beliefs, however “bizarre” those beliefs may seem to others. Nevertheless, their right not to participate in the flag ceremony does not give them a right to disrupt such patriotic exercises. Paraphrasing the warning cited by this Court in *Non v. Dames II, 185 SCRA 523, 535,* while the highest regard must be afforded their right to the free exercise of their religion, “this should not be taken to mean that school authorities are powerless to discipline them” if they should commit breaches of the peace by actions that offend the sensibilities, both religious and patriotic, of other persons. If they quietly stand at attention during the flag ceremony while their classmates and teachers salute the flag, sing the national anthem and recite the patriotic pledge, we do not see how such conduct may possibly disturb the peace, or pose “a grave and present danger of a serious evil to public safety, public morals, public health or any other legitimate public interest that the State has a right (and duty) to prevent*.”* ***(Ebralinag v. The Division Superintendent of Schools of Cebu, 219 SCRA 256, 269-273, March 1, 1993, En Banc [Grino-Aquino])***

*194. A pre-taped TV program of the Iglesia Ni Cristo (INC) was submitted to the MTRCB for review. The latter classified it as “rated X” because it was shown to be attacking another religion. The INC protested by claiming that its religious freedom is per se beyond review by the MTRCB. Should this contention be upheld?*

**Held:** The right to religious profession and worship has a two-fold aspect, *viz.,* freedom to believe and freedom to act on one's belief. The first is absolute as long as the belief is confined within the realm of thought. The second is subject to regulation where the belief is translated into external acts that affect the public welfare.

The Iglesia Ni Cristo's postulate that its religious freedom is *per se* beyond review by the MTRCB should be rejected. Its public broadcast on TV of its religious programs brings it out of the bosom of internal belief. Television is a medium that reaches even the eyes and ears of children. The exercise of religious freedom can be regulated by the State when it will bring about the clear and present danger of a substantive evil which the State is duty-bound to prevent, *i.e.,* serious detriment to the more overriding interest of public health, public morals, or public welfare. A *laissez faire* policy on the exercise of religion can be seductive to the liberal mind but history counsels the Court against its blind adoption as religion is and continues to be a volatile area of concern in our society today. "For sure, we shall continue to subject any act pinching the space for the free exercise of religion to a heightened scrutiny but we shall not leave its rational exercise to the irrationality of man. For when religion divides and its exercise destroys, the State should not stand still." ***(Iglesia Ni Cristo v. CA, 259 SCRA 529, July 26, 1996 [Puno])***

*195. Did the MTRCB act correctly when it rated “X” the Iglesia Ni Cristo's pre-taped TV program simply because it was found to be "attacking" another religion?*

**Held:** The MTRCB may disagree with the criticisms of other religions by the Iglesia Ni Cristo but that gives it no excuse to interdict such criticisms, however unclean they may be. Under our constitutional scheme, it is not the task of the State to favor any religion by protecting it against an attack by another religion. Religious dogma and beliefs are often at war and to preserve peace among their followers, especially the fanatics, the establishment clause of freedom of religion prohibits the State from leaning towards any religion. *Vis-à-vis* religious differences, the State enjoys no banquet of options. Neutrality alone is its fixed and immovable stance. In fine, the MTRCB cannot squelch the speech of the INC simply because it attacks another religion. In a State where there ought to be no difference between the appearance and the reality of freedom of religion, the remedy against bad theology is better theology. The bedrock of freedom of religion is freedom of thought and it is best served by encouraging the marketplace of dueling ideas. When the luxury of time permits, the marketplace of ideas demands that speech should be met by more speech for it is the spark of opposite speech, the heat of colliding ideas, that can fan the embers of truth. ***(Iglesia Ni Cristo v. CA, 259 SCRA 529, July 26, 1996 [Puno])***

*196. Is solicitation for the construction of a church covered by P.D. No. 1564 and, therefore, punishable if done without the necessary permit for solicitation from the DSWD?*

**Held:** *First.* Solicitation of contributions for the construction of a church is not solicitation for "charitable or public welfare purpose" but for a religious purpose, and a religious purpose is not necessarily a charitable or public welfare purpose. A fund campaign for the construction or repair of a church is not like fund drives for needy families or victims of calamity or for the construction of a civic center and the like. Like solicitation of subscription to religious magazines, it is part of the propagation of religious faith or evangelization. Such solicitation calls upon the virtue of faith, not of charity, save as those solicited for money or aid may not belong to the same religion as the solicitor. Such solicitation does not engage the philanthropic as much as the religious fervor of the person who is solicited for contribution.

*Second.* The purpose of the Decree is to protect the public against fraud in view of the proliferation of fund campaigns for charity and other civic projects. On the other hand, since religious fund drives are usually conducted among those belonging to the same religion, the need for public protection against fraudulent solicitations does not exist in as great a degree as does the need for protection with respect to solicitations for charity or civic projects as to justify state regulation.

*Third.* To require a government permit before solicitation for religious purpose may be allowed is to lay a prior restraint on the free exercise of religion. Such restraint, if allowed, may well justify requiring a permit before a church can make Sunday collections or enforce tithing. But in *American Bible Society v. City of Manila (101 Phil. 386 [1957]),* we precisely held that an ordinance requiring payment of a license fee before one may engage in business could not be applied to the appellant's sale of bibles because that would impose a condition on the exercise of a constitutional right. It is for the same reason that religious rallies are exempted from the requirement of prior permit for public assemblies and other uses of public parks and streets (B.P. Blg. 880, Sec. 3[a]). To read the Decree, therefore, as including within its reach solicitations for religious purposes would be to construe it in a manner that it violates the Free Exercise of Religion Clause of the Constitution x x x. ***(Concurring Opinion, Mendoza, V.V., J., in Centeno v. Villalon-Pornillos, 236 SCRA 197, Sept. 1, 1994)***

*197. What is a purely ecclesiastical affair to which the State can not meddle?*

**Held:** An ecclesiastical affair is “one that concerns doctrine, creed, or form of worship of the church, or the adoption and enforcement within a religious association of needful laws and regulations for the government of the membership, and the power of excluding from such associations those deemed not worthy of membership.” Based on this definition, an ecclesiastical affair involves the relationship between the church and its members and relate to matters of faith, religious doctrines, worship and governance of the congregation. To be concrete, examples of this so-called ecclesiastical affairs to which the State cannot meddle are proceedings for excommunication, ordinations of religious ministers, administration of sacraments and other activities with attached religious significance. ***(Pastor Dionisio V. Austria v. NLRC, G.R. No. 124382, Aug. 16, 1999, 1st Div. [Kapunan])***

*198. Petitioner is a religious minister of the Seventh Day Adventist (SDA). He was dismissed because of alleged misappropriation of denominational funds, willful breach of trust, serious misconduct, gross and habitual neglect of duties and commission of an offense against the person of his employer’s duly authorized representative. He filed an illegal termination case against the SDA before the labor arbiter. The SDA filed a motion to dismiss invoking the doctrine of separation of Church and State. Should the motion be granted?*

**Held:** Where what is involved is the relationship of the church as an employer and the minister as an employee and has no relation whatsoever with the practice of faith, worship or doctrines of the church, *i.e.,* the minister was not excommunicated or expelled from the membership of the congregation but was terminated from employment, it is a purely secular affair. Consequently, the suit may not be dismissed invoking the doctrine of separation of church and the state. ***(Pastor Dionisio V. Austria v. NLRC, G.R. No. 124382, Aug. 16, 1999, 1st Div. [Kapunan])***

**The Right of the People to Information on Matters of Public Concern**

*199. Discuss the scope of the right to information on matters of public concern.*

**Held:** In *Valmonte v. Belmonte, Jr.,* the Court emphasized that the information sought must be “matters of public concern,” access to which may be limited by law. Similarly, the state policy of full public disclosure extends only to “transactions involving public interest” and may also be “subject to reasonable conditions prescribed by law.” As to the meanings of the terms “public interest” and “public concern,” the Court, in *Legaspi v. Civil Service Commission,* elucidated:

“In determining whether or not a particular information is of public concern there is no rigid test which can be applied. ‘Public concern’ like ‘public interest’ is a term that eludes exact definition. Both terms embrace a broad spectrum of subjects which the public may want to know, either because these directly affect their lives, or simply because such matters naturally arouse the interest of an ordinary citizen. In the final analysis, it is for the courts to determine on a case by case basis whether the matter at issue is of interest or importance, as it relates to or affects the public.”

Considered a public concern in the above-mentioned case was the “legitimate concern of citizens to ensure that government positions requiring civil service eligibility are occupied only by persons who are eligibles.” So was the need to give the general public adequate notification of various laws that regulate and affect the actions and conduct of citizens, as held in *Tanada.* Likewise did the “public nature of the loanable funds of the GSIS and the public office held by the alleged borrowers (members of the defunct Batasang Pambansa)” qualify the information sought in *Valmonte* as matters of public interest and concern. In *Aquino-Sarmiento v. Morato (203 SCRA 515, 522-23, November 13, 1991),* the Court also held that official acts of public officers done in pursuit of their official functions are public in character; hence, the records pertaining to such official acts and decisions are within the ambit of the constitutional right of *access to public records.*

Under Republic Act No. 6713, public officials and employees are mandated to “provide information on their policies and procedures in clear and understandable language, [and] ensure openness of information, public consultations and hearing whenever appropriate x x x,” except when “otherwise provided by law or when required by the public interest.” In particular, the law mandates free public access, at reasonable hours, to the annual performance reports of offices and agencies of government and government-owned or controlled corporations; and the statements of assets, liabilities and financial disclosures of all public officials and employees.

In general, writings coming into the hands of public officers in connection with their official functions must be accessible to the public, consistent with the policy of transparency of governmental affairs. This principle is aimed at affording the people an opportunity to determine whether those to whom they have entrusted the affairs of the government are honestly, faithfully and competently performing their functions as public servants*.* Undeniably, the essence of democracy lies in the free-flow of thought; but thoughts and ideas must be well-informed so that the public would gain a better perspective of vital issues confronting them and, thus, be able to criticize as well as participate in the affairs of the government in a responsible, reasonable and effective manner. Certainly, it is by ensuring an unfettered and uninhibited exchange of ideas among a well-informed public that a government remains responsive to the changes desired by the people*.* ***(Chavez v. PCGG, 299 SCRA 744, Dec. 9, 1998, [Panganiban])***