Ladlad v. Velasco: Reaffirming Judicial Review as a Mechanism for Protecting Constitutional Rights

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I. INTRODUCTION

One month after members of the Magdalo Group, indicted for the Oakwood mutiny, escaped detention, authorities discovered detailed plans for the assassination of the President and some cabinet members as part of a plan to oust the Arroyo government on the 20th anniversary of the EDSA Revolution.[1] On the day of the anniversary, President Gloria Macapagal-Arroyo issued Presidential Proclamation (P.P.) No. 1017[2] declaring a state of national emergency. All programs and activities related to the anniversary were cancelled and all permits to hold rallies were revoked. An announcement was made by Presidential Chief of Staff Michael Defensor that warrantless arrests could be made and a take-over of media facilities could be effected. Violent dispersals of rallyists were made, citing P.P. 1017 as their basis. Some rallyists — including University of the Philippines professor and columnist, Randolf S. David, and the president of the party-list Akbayan, Ronald Llamas — were arrested without warrants. Congressman Crispin B. Beltran, who represented the Anakpawis Party and was Chairman of the Kilusang Mayo Uno (KMU), and Bayan Muna Representative Josel G. Virador were also arrested. Attempts to arrest Anakpawis Representative Rafael V. Mariano, Bayan Muna Representatives Teodoro A. Casiño and Saturnino C. Ocampo, and Gabriela Representative Liza L. Maza were unsuccessful as they were under the custody of the House of Representatives.[3] Apart from the arrests, the offices of the *Daily Tribune*, *Malaya*, and *Abante* were also raided. On 3 March 2006, P.P. No. 1021[4] was issued, declaring that the state of national emergency had ceased to exist.[5] These events lay down the backdrop of the instant case.

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Cite as 52 ATENEO L.J. 240 (2007).

1. David v. Macapagal-Arroyo, 489 SCRA 160 (2006).
2. Proclamation No. 1017, Declaring a State of National Emergency (2006).
3. *David*, 489 SCRA at 208 (2006).
4. Proclamation No. 1021, Declaring that the State of National Emergency Has Ceased to Exist (2006).
5. *David*, 489 SCRA at 202 (2006).

II. FACTS OF THE CASE

Ladlad v. Velasco[6] is a consolidation of G.R. No. 172070-72 (the Ladlad Petition),[7] G.R. No. 172074-76 (the Maza Petition),[8] and G.R. No. 175013 (the Beltran Petition).[9] All of the petitioners faced rebellion charges.

A. The Beltran Petition

On 25 February 2006, following the issuance of P.P. No. 1017, police officers arrested Beltran without a warrant and without informing him of the crime for which he was arrested. He was detained and was later subjected to an inquest for inciting to sedition, for allegedly giving a speech during an EDSA Revolution anniversary rally, based on the joint affidavits of arresting officers claiming to have been present at the said rally. Beltran was indicted and an information was filed with the Metropolitan Trial Court. On the

6. Ladlad, *et al.* v. Velasco, *et al.*, G.R. No. 172070-72, June 1, 2007.
7. The petitioners here are private individuals which include Vicente P. Ladlad, Executive Director of Bayan Muna.
8. The petitioners here are Representatives Maza, Virador, Ocampo, Casiño, and Mariano.
9. The petitioner here is Representative Beltran.

27th of February, he was subjected, jointly with 1st Lt. Lawrence San Juan, to a second inquest for rebellion, based on two letters, dated on the same day, by Yolanda Tanigue and Rodolfo Mendoza, both of the Criminal Investigation and Detection Group (CIDG) of the Philippine National Police (PNP). The letters implicated Beltran, San Juan, and the petitioners in the Maza Petition as leaders and promoters of a failed plot to oust the Arroyo government, having formed a "tactical alliance" with the Communist Party of the Philippines (CPP) and the Makabayang Kawal ng Pilipinas (MKP). The Department of Justice (DOJ) panel of prosecutors found probable cause to indict Beltran and San Juan as leaders and promoters of rebellion and filed an information with the Regional Trial Court (RTC) alleging that Beltran, *et al.*, "conspiring and confederating with each other, ... form[ed] a tactical alliance ... [to] thereby rise publicly and take up arms against the duly constituted government, ..."[10]

Beltran filed a motion for judicial determination of probable cause against him but the finding of probable cause was sustained by the RTC and his motion for reconsideration was denied. The instant case is a petition to set aside these orders and to enjoin further prosecution.[11]

B. The Maza and Ladlad Petitions

The petitioners were under the custody of the House of Representatives, avoiding their warrantless arrests, when the DOJ issued subpoenas requiring them to appear at the former's office based on the Tanigue and Mendoza letters. On 13 March 2006, an eyewitness, Jaime Fuentes, was presented at the preliminary investigation and his affidavit was distributed to the media by prosecutor Emmanuel Velasco after it was subscribed to. The petitioners were then given 10 days within which to file their counter-affidavits but the petitioners received the supporting documents only on 17 March 2006.[12] Petitioners moved to inhibit the panel of prosecutors "for lack of impartiality and independence, considering the political milieu under which petitioners were investigated, the statements that the President and the Secretary of Justice made to the media regarding petitioners' case, and the manner in which the prosecution panel conducted the preliminary investigation."[13] This motion and the subsequent motion for reconsideration were denied. Thus, the instant petition seeks to nullify these DOJ Orders.[14] In the meantime, the panel of prosecutors found probable cause to charge the petitioners and 46 others as "'principals, masterminds, [or] heads' of a

10. *Ladlad*, G.R. No. 172070-72.

11. *Id.*

12. Ladlad, *et al.* v. Velasco, *et al.*, G.R. No. 172070-72, June 1, 2007.

13. *Id.* at n. 11.

14. *Id.*

Rebellion."[15] Thereafter, the Court issued a status quo order and the petitioners filed a supplemental petition to enjoin further prosecution.[16]

III. LEGAL HISTORY: A SURVEY OF LAWS AND JURISPRUDENCE

The issues of *Ladlad* revolve around the validity of the Beltran's warrantless arrest and inquest proceedings as well as the proper conduct of the preliminary investigation in the Maza and Ladlad petitions. Although the specific rights involved are statutory, and not constitutional, the question of due process takes prominence. As will be shown in the discussion of the decision, the question of enjoining the prosecution of offenses also arises especially in cases where the rights of the accused are contravened.

A. Due Process and the Right to a Preliminary Investigation

As the Constitution mandates that "the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures ... be inviolable,"[17] a warrant of arrest only issues upon a personal determination of probable cause by the judge after examining under oath or affirmation the complainant and his witnesses.[18] Valid warrantless arrests are, however, recognized by the Rules of Court under special circumstances:

> a) [w]hen, in [the peace officer's] presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
>
> b) [w]hen an offense has just been committed and [the peace officer] has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
>
> c) [w]hen the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.[19]

In the first two cases, the person arrested will be delivered to the nearest police station or jail and an inquest will be conducted in lieu of a preliminary

15. *Id.*

16. *Id.*

17. PHIL. CONST. art III, § 2.

18. PHIL. CONST. art III, § 2.

19. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 113, § 5.

investigation.[20] A valid inquest pursuant to a valid lawful arrest is the only exception to the requirement of a preliminary investigation.[21]

That the conditions and procedures laid down for warrantless arrests, inquests, and preliminary investigations are mandatory are illustrated in the two cases cited by *Ladlad*.

In *Go v. Court of Appeals*,[22] police were investigating reports that Rolito Go allegedly shot Eldon Maguan following the near collision of their vehicles. To verify news reports that he was being sought by the police, Go presented himself in the San Juan Police Station and he was detained thereafter. After an eyewitness positively identified Go as the gunman, a complaint for frustrated homicide was immediately filed with the Office of the Provincial Prosecutor. Go was told that, in order to avail himself of the right to a preliminary investigation, he must first waive his rights under article 125 of the Revised Penal Code.[23] Go refused to execute the waiver. Maguan died and the prosecutor filed an information for murder before the RTC. The RTC granted the motion to conduct a preliminary investigation, but such order was later recalled and cancelled. Go filed a petition for *certiorari*, prohibition, and *mandamus* which the Supreme Court granted.[24]

In *Larranaga v. Court of Appeals*,[25] the Supreme Court set aside the inquest investigation of Francisco Juan Larranaga as it was conducted without a legal warrantless arrest. Police authorities had attempted to arrest Larranaga for kidnapping and serious illegal detention without a warrant. Larranaga's counsel moved for a regular preliminary investigation, which was

20. *Id.*

21. *See*, 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 112, § 7.

22. Go v. Court of Appeals, 206 SCRA 138 (1992).

23. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815, art. 125 (1930).

> Art. 125. *Delay in the delivery of detained persons to the proper judicial authorities.* — The penalties provided in the next preceding articles shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of: twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent; and thirty-six (36) hours, for crimes, or offenses punishable by afflictive or capital penalties, or their equivalent.
>
> In every case, the person detained shall be informed of the cause of the detention and shall be allowed, upon his request, to communicate and confer at any time with his attorney or counsel.

24. *Go*, 206 SCRA at 163.

25. Larranaga v. Court of Appeals, 281 SCRA 254 (1997).

denied on the ground that, being a detention prisoner, Larranaga is only entitled to an inquest investigation. The city prosecutor ordered that Larranaga be produced, otherwise, the latter's right to a preliminary investigation would be deemed waived and an inquest will be conducted. While Larranaga was assailing such actions by the prosecutor through a petition for *certiorari*, prohibition, and *mandamus* filed with the Court of Appeals, prosecutors filed an information charging Larranaga and he was subsequently arrested with a warrant of arrest. The Court of Appeals dismissed the petition and Larranaga elevated the case to the Supreme Court.[26]

Both cases ruled that arrested persons were entitled to a regular preliminary investigation, not an inquest investigation, as an inquest should be conducted only pursuant to a valid warrantless arrest. The two cases did not fall under any of the instances of lawful warrantless arrests: the arresting officers were not present when the crimes occurred; the crimes could not have just been committed as these had occurred some time ago prior to the arrest (in *Go*, six days prior to the arrest; in *Larranaga*, two months before such); and none of the arresting officers had personal knowledge of facts indicating that these persons had committed the said crimes. The prosecutors in both cases should have scheduled a preliminary investigation to determine the existence of probable cause to charge Go and Larranaga.[27] The Court said that, although merely statutory, the right to a preliminary investigation is an element of due process:

> The right to have a preliminary investigation conducted before being bound over to trial for a criminal offense and hence formally at risk of incarceration or some other penalty, is *not* a mere formal or technical right; it is a *substantive* right. The accused in a criminal trial is inevitably exposed to prolonged anxiety, aggravation, humiliation, not to speak of expense ....[28]

A preliminary investigation is "an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial."[29] It is required where the offense is prescribed a

26. *Id.* at 255-57.

27. *Go*, 206 SCRA at 151; *Larranaga*, 281 SCRA at 258. In *Go*, there was no arrest at all as he freely placed himself at the disposal of the police, without surrendering himself, when the police filed the complaint.

28. Go v. Court of Appeals, 206 SCRA 138, 153 (1992) (citing Doromal v. Sandiganbayan, 177 SCRA 354 (1989); San Diego v. Hernandez, 24 SCRA 110 (1968); People v. Monton, 23 SCRA 1024 (1968); People v. Oandasan, 25 SCRA 277 (1968); Lozada v. Hernandez, 92 Phil. 1051 (1953); U.S. v. Banzuela, 31 Phil. 564 (1915)); *Larranaga*, 281 SCRA at 261.

29. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 112, § 1.

penalty of at least four years, two months, and one day, regardless of fine.[30] The procedure in preliminary investigations is governed by rule 112 of the Revised Rules of Criminal Procedure.

When the complaint is filed with the investigating officer, it should state the respondent's address and it must be accompanied by the affidavits of the complainant and his witnesses and other supporting documents. These should be in as many copies as there are respondents with two additional copies for the official file.[31] "The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath."[32] If they are absent or unavailable, this may be accomplished before a notary public.[33] The prosecutor, government official, or notary public "must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits."[34] "Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents."[35]

In the latter case, the respondent must submit his counter-affidavit, including those of his witnesses and other supporting documents within 10 days from the receipt of the subpoena and its attachments. The counter-affidavits should likewise be subscribed and sworn to and certified in the same manner as those of the complainant's.[36] "The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit."[37] Should the subpoena of the respondent prove impossible, or should he not file a counter-affidavit within the period, the complaint shall be resolved based on the complainant's evidence.[38]

"The investigating officer may set a hearing if there are facts and issues to be clarified from a party or a witness."[39] This hearing is to be held within 10 days from the submission of the counter-affidavits or from the expiration of the period for such and is to be terminated within five days. Although parties can be present, they have no right to examine or cross-examine, but they

30. *Id.*
31. *Id.* § 3 (a).
32. *Id.*
33. *Id.*
34. *Id.*
35. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 112, § 3 (b).
36. *Id.* § 3 (c).
37. *Id.* § 3 (b).
38. *Id.* § 3 (d).
39. *Id.* § 3 (e).

may submit questions to the investigating officer directed to the party or witness.[40]

"Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial."[41] "If the investigating prosecutor finds cause to hold the respondent for trial, he shall prepare the resolution and information. He shall certify under oath in the information that:"[42] 1) he (or an authorized officer, as shown in the record) has personally examined the complainant and his witnesses;[43] 2) "there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof;"[44] and 3) "that the accused was informed of the complaint and of the evidence submitted against him; and that he was given an opportunity to submit controverting evidence."[45] If he does not find such cause, he must recommend the dismissal of said complaint.[46]

In the former, he will then forward the record of the case to the provincial or city or chief state prosecutor, who will thereafter act on such within 10 days from receipt and immediately inform the parties of such.[47] "No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor ...."[48] In the latter case, should the provincial or city or chief state prosecutor disapprove of the recommendation of dismissal on the ground of probable cause, he may, himself, file the information or direct another to file such, without the need for another preliminary investigation.[49] "If ... the Secretary of Justice reverses or modifies the resolution ..., he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties."[50]

40. *Id.*
41. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 112, § 3 (f).
42. *Id.* § 4.
43. *Id.*
44. *Id.*
45. *Id.*
46. *Id.*
47. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 112, § 4.
48. *Id.*
49. *Id.*
50. *Id.* (rules likewise apply to preliminary investigations under the Office of the Ombudsman).

Due process includes both procedural and substantive due process. Procedural due process relates "to the mode of procedure which government agencies must follow, [and is] a guarantee of procedural fairness. ... '[A] law which hears before it condemns.'"[51] Due process is also required in preliminary investigations. In *Webb v. De Leon*,[52] Hubert Webb, *et al.* claimed that they were denied due process during the preliminary investigation as the presentation of the original sworn statement of Maria Jessica M. Alfaro, state witness, and a Federal Bureau of Investigation Report were both suppressed. The Court stated that, although discovery procedure is not provided for in preliminary investigations, it may be used when necessary for the protection of the constitutional rights of the person being investigated. As established in *Go*, the right to a preliminary investigation is a substantive right, as there is a risk of incarceration or other penalty.[53] Due process is operational even at the level of preliminary investigation.[54] This is also implied in rule 112, section 3 (a), which requires "the filing of a sworn complaint, which shall '... state the known address of the respondent and *be accompanied by affidavits of the complainant and his witnesses as well as other supporting documents* ....'"[55]

Preliminary investigations serve both the interests of the state and of the individual, especially with regard to freedom and fair play.[56] The prosecutor or the judge, as the case may be, has the duty to unburden the accused from undergoing trial when there is no sufficient evidence to sustain a finding of probable cause against the latter.[57]

> The primary objective of a preliminary investigation is to free respondent from the inconvenience, expense, ignominy and stress of defending himself/herself in the course of a formal trial, until the reasonable probability of his or her guilt in a more or less summary proceeding by a competent office designated by law for that purpose. Secondarily, such summary proceeding also protects the state from the burden of the unnecessary expense an effort in prosecuting alleged offenses and in holding trials arising from false, frivolous or groundless charges.[58]

51. JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 112-13 (2003 ed.) [hereinafter BERNAS].
52. Webb v. De Leon, 247 SCRA 652 (1995).
53. *Id.* at 687.
54. *Id.* at 688.
55. *Id.* at 666 (citing 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 112, § 3 (a)) (emphasis supplied).
56. Yupangco Cotton Mills, Inc. v. Mendoza, 454 SCRA 386, 414 (2005) (citing Salonga v. Cruz Paño, 134 SCRA 438, 462 (1985)).
57. *Yupangco*, 454 SCRA at 414.

B. Enjoining the Prosecution of Offenses

> *"On balance at the fulcrum once again are the intrinsic right of the State to prosecute perceived transgressors of the law, which can be regulated, and the innate value of human liberty, which can hardly be weighed."*[59]

The prosecution of crimes is an executive function. As it is the power of the Executive to faithfully execute our laws, the right to prosecute violators of the law is necessarily included in this power. The prosecutor enjoys a wide range of discretion on whether, what, and whom to charge.[60] The fiscal exercising such discretion may dismiss a complaint should he find it insufficient in form and substance, or may investigate should he find it in proper form and substance.[61] The Court cannot interfere with such investigatory and prosecutory powers unless good and compelling reasons warrant the interference[62] and as long as substantial evidence supports the prosecutor's ruling.[63] "Courts must respect the exercise of such discretion when the information filed against the accused is valid on its face, and no manifest error, grave abuse of discretion or prejudice can be imputed to the public prosecutor."[64]

Acuña v. Deputy Ombudsman for Luzon,[65] cites *Ocampo, IV v. Ombudsman*,[66] stating that,

> The rule is based not only upon respect for the investigatory and prosecutory powers granted [to fiscals] .... [T]he courts would be

58. People v. Court of Appeals and Cerbo, 301 SCRA 475, 485 (1999) (citing Ledesma v. Court of Appeals, 278 SCRA 657, 673-74 (1997)); *see also*, Salonga v. Cruz Paño, 134 SCRA 438, 461-62 (1985)) (citing Trocio v. Manta, 118 SCRA 241 (1982); People v. Oandasan, 25 SCRA 277 (1968)).
59. Allado v. Diokno, 232 SCRA 192, 193 (1994).
60. Webb v. De Leon, 247 SCRA 652, 685 (1995).
61. Salvador v. Desierto, 420 SCRA 76, 82 (2004) (citing Presidential Commission on Good Government v. Desierto, 349 SCRA 160 (2000)); *see also*, Enemecio v. Office of the Ombudsman, 419 SCRA 82 (2004); Ocampo, IV v. Ombudsman, 255 SCRA 725 (1993) (also refers to fiscals).
62. *Salvador*, 420 SCRA at 82 (citing Knecht v. Desierto, 291 SCRA 292, 302 (1998)).
63. *Salvador*, 420 SCRA at 83 (citing Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, 317 SCRA 272 (1999)).
64. People v. Court of Appeals and Cerbo, 301 SCRA 475, 478 (1999).
65. Acuña v. Deputy Ombudsman for Luzon, 450 SCRA 232 (2005).
66. Ocampo, IV v. Ombudsman, 255 SCRA 725 (1993).

> extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court, or dismiss a complaint by a private complainant.[67]

People v. Court of Appeals and Cerbo,[68] further elucidated by citing *Roberts, Jr. v. Court of Appeals*.[69] "Whether or not that function has been correctly discharged by the public prosecutor – i.e., whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon."[70]

Nevertheless, this broad discretion is not without exceptions. *Crespo v. Mogul*,[71] states that,

> Prosecuting officers under the power vested in them by law, not only have the authority but also the duty of prosecuting persons who, according to the evidence received from the complainant, are shown to be guilty of a crime committed within the jurisdiction of their office. They have equally the duty not to prosecute when the evidence adduced is not sufficient to establish a *prima facie* case.[72]

Where there is abuse of discretion by the prosecutor, such as when the latter ignores the dearth of evidence to support a finding of probable cause and such results in a denial of substantive and procedural due process, the Court may overturn the prosecutor's findings.[73] The existence of probable cause is necessary for the accused to be held for trial.[74] "It is mandatory therefore that there be probable cause before an information is filed and a warrant of arrest issued."[75] As much as the prosecutor is seemingly granted unlimited latitude in determining probable cause, such is not a grant of arbitrary powers. "[T]he determination of the existence of probable cause [is] a delicate legal question which can result in the harassment and deprivation of liberty of the person sought to be charged or arrested."[76] The "standard in

67. *Acuña*, 450 SCRA at 242-43 (citing Ocampo, IV v. Ombudsman, 255 SCRA 725 (1993)).

68. People v. Court of Appeals and Cerbo, 301 SCRA 475 (1999).

69. Roberts, Jr. v. Court of Appeals, 254 SCRA 307 (1996).

70. *Cerbo*, 301 SCRA at 484 (citing Roberts, Jr. v. Court of Appeals, 254 SCRA 307, 349 (1996)).

71. Crespo v. Mogul, 151 SCRA 462 (1987).

72. *Cerbo*, 301 SCRA at 485 (1999) (citing Crespo v. Mogul, 151 SCRA 462 (1987)).

73. Ladlad, *et al.* v. Velasco, *et al.*, G.R. No. 172070-72, June 1, 2007.

74. Allado v. Diokno, 232 SCRA 192, 194 (1994).

75. *Id.*

76. *Id.* at 200.

the determination of the existence of probable cause [is that] there should be facts and circumstances sufficiently strong in themselves to warrant a prudent and cautious man to believe that the accused is guilty of the crime with which he is charged."[77]

Ladlad cites *Salonga v. Cruz Paño*,[78] where former Senator Jovito R. Salonga was implicated in a series of terrorist bombings based on the testimony of a suspect, Victor Burns Lovely, Jr. — who appeared in several pictures with the senator in a birthday party celebrated in California — and on Salonga's statement that "violent struggle in the Philippines [would be] most likely should reforms be not instituted by President Marcos immediately."[79] When Salonga was arrested, the arrest, search, and seizure order (ASSO) presented did not specify the charges against him. He was neither informed of the reasons for his detention nor questioned or investigated. He did not even receive the charge sheet and supporting evidence of the fiscal, only the Notice of Preliminary Investigation in one of the cases where he was a co-accused. The fiscal filed a complaint against him for subversion. After the preliminary investigation, Salonga filed a motion to dismiss for failure to establish a *prima facie* case against him but this was denied by the lower court judge. Thereafter, an information for subversion was filed against him and 40 others.[80] The Supreme Court, however, held that the prosecution's evidence was utterly insufficient to establish a *prima facie* case against Salonga.[81]

Only the testimonies of Col. Balbino Diego and Lovely mentioned Salonga as being involved with subversive organizations. Diego's conclusion of a conspiracy was based purely on hearsay while there were several material inconsistencies in the statements made by Lovely. The latter admitted that, during the party he and Salonga attended, no destabilization plan was formulated and there was no political *action* but only some political *discussion*. His testimony only tended to show that Salonga's house was used as a contact point. The pictures, the contact point theory, and Salonga's statement did not establish a *prima facie* case against him. The Court stated that to indict one because plotters have met in one's residence was to establish a dangerous precedent. Furthermore, people having their picture taken with or visiting the home of prominent political figures are

77. *Id.* at 208.

78. Salonga v. Cruz Paño, 134 SCRA 438 (1985).

79. *Id.* at 457.

80. *Id.* at 443-46.

81. *Id.* at 448.

commonplace. Even his opinion on the likelihood of violence in the absence of reforms was a valid exercise of freedom of thought and expression.[82]

Salonga's remark did not even advocate violence, much less advocate violence to carry out subversive ends, and did not even rise to the level of threatening the government.[83] "Political discussion even among those opposed to the present administration is within the protective clause of freedom of speech and expression. The same cannot be construed as subversive activities per se or as evidence of membership in a subversive organization."[84]

> It is, therefore, imperative upon the fiscal ... to relieve the accused from the pain of going through a trial once it is ascertained that the evidence is insufficient to sustain a prima facie case or that no probable cause exists to form a sufficient belief as to the guilt of the accused. Although ... the determination of probable cause ... depends to a large degree upon the finding or opinion of the [prosecutor] conducting the examination, such a finding should not disregard the facts before the judge nor run counter to the clear dictates of reasons ....[85]

In *Allado v. Diokno*,[86] likewise cited by *Ladlad*, Attys. Diosdado Jose Allado and Roberto L. Mendoza were accused of the kidnapping and murder of a foreign national on the basis of an extrajudicial confession of co-accused Escolastico Umbal and the counter-affidavit of co-accused SPO2 Roger Bato. The sworn statement alleged that Umbal and others were paid by Allado and Mendoza to kidnap and kill Eugene Alexander Van Twest. The latter was made to sign several documents transferring ownership of his properties and causing the withdrawal of five million pesos from his account and was killed thereafter — his cadaver burned into fine ashes with the use of gasoline and rubber tires. The other co-accused were found in possession of firearms and ammunition as well as items owned by Van Twest. The Presidential Anti-Crime Commission (PACC) referred the case to the DOJ. Mendoza moved for the production of certain documents: 1) the documents transferring ownership of Van Twest's properties and showing the withdrawal, and 2) the complete records of the investigation. These documents, however, were not produced. When the case was submitted for resolution, Bato filed a counter-affidavit confessing participation and implicating Allado and Mendoza. Before any action could be taken,

82. *Id.* at 449-58.

83. *Id.* at 459 (citing Watts v. United States, 394 U.S. 705 (1969)). *See also, Salonga*, 134 SCRA at 459-60 (citing Brandenburg v. Ohio, 395 U.S. 444 (1969)) (free speech protects even advocacy of the use of force).

84. Salonga v. Cruz Paño, 134 SCRA 438, 460 (1985).

85. *Id.* at 462 (citing La Chemise Lacoste, S.A. v. Fernandez, 129 SCRA 391 (1984)).

86. Allado v. Diokno, 232 SCRA 192 (1994).

IV. THE INSTANT CASE

A. The Beltran Petition

The Court ruled that the inquest proceeding against Beltran for rebellion was void for not being in accordance with the Rules of Court. As inquest proceedings may only be resorted to in the event of a valid warrantless arrest, and while rebellion is a continuing crime, the inquest for rebellion was improper as there was no valid warrantless arrest *for rebellion*. Beltran had been arrested without a warrant for the charge of inciting to sedition[100] and, thus, underwent inquest proceedings therefor.[101] The second inquest proceeding for rebellion was void as "[n]one of the arresting officers saw Beltran commit, in their presence, the crime of Rebellion. Nor did they have personal knowledge of facts and circumstances that Beltran had just committed Rebellion, sufficient to form probable cause to believe that he had committed Rebellion."[102] The affidavit of the officers attested to their being present when Beltran allegedly made a seditious speech. Had he not asked for a judicial determination of probable cause, he would have been entitled to a preliminary investigation.[103]

The Court ruled that, although, "as a rule, [it] does not interfere with the prosecutor's determination of probable cause,"[104] where the accused is denied due process due to the prosecutor's finding of probable cause despite

100. REVISED PENAL CODE, art. 142.

> Art. 142. *Inciting to sedition.* — The penalty of *prision correccional* in its maximum period and a fine not exceeding 2,000 pesos shall be imposed upon any person who, without taking any direct part in the crime of sedition, should incite others to the accomplishment of any of the acts which constitute sedition, by means of speeches, proclamations, writings, emblems, cartoons, banners, or other representations tending to the same end, or upon any person or persons who shall utter seditious words or speeches, write, publish, or circulate scurrilous libels against the Government (of the United States or the Government of the Commonwealth) of the Philippines, or any of the duly constituted authorities thereof, or which tend to disturb or obstruct any lawful officer in executing the functions of his office, or which tend to instigate others to cabal and meet together for unlawful purposes, or which suggest or incite rebellious conspiracies or riots, or which lead or tend to stir up the people against the lawful authorities or to disturb the peace of the community, the safety and order of the Government, or who shall knowingly conceal such evil practices.

101. Ladlad, *et al.* v. Velasco, *et al.*, G.R. No. 172070-72, June 1, 2007.

102. *Id.*

103. *Id.*

104. *Id.*

the clear insufficiency of evidence, it will review such finding of the prosecutor. The Court found that probable cause to indict Beltran for rebellion did not exist as only two of the affidavits (by Ruel Escala and Raul Cachuela) mentioned Beltran and these affidavits did not show Beltran's participation in a rebellion. Escala's merely stated that Beltran and the other petitioners were riding a vehicle and that they were met by an individual who resembled San Juan, while Cachuela's only recounted seeing Beltran, as Chairman of KMU, in a CPP Plenum in 1992. Cachuela also claimed that criminal activities were undertaken by the CPP and that some of their arms were financed by members of Congress representing party-list groups affiliated with the CPP. No specific acts of rebellion were alleged and no affidavit alleged that Beltran was a leader of a rebellion.[105] Even the minutes of the alleged MKP and CPP meeting found in the confiscated flash drive did not implicate Beltran, as it only referred to one named "Cris," without proof that "Cris" was, in fact, Beltran. Even San Juan denied knowing Beltran.[106]

The Fuentes affidavit of the Ladlad and Maza petitions — which recounted details of meetings allegedly attended by Beltran, Ladlad, *et al.*, and Maza, *et al.*, where plans to violently overthrow the current government were allegedly discussed — had not been included in the inquest of Beltran but was presented during the preliminary investigation of the Ladlad and Maza petitioners. Even assuming it could be taken against Beltran, it would only show conspiracy to commit rebellion,[107] not rebellion *per se*. "Attendance in meetings to discuss, among others, plans to bring down a government is a mere preparatory step to commit the acts constituting Rebellion under Article 134."[108] Even the felony charged in the information

105. *Id.*

106. *Id.*

107. REVISED PENAL CODE, art. 136.

> Art. 136. *Conspiracy and proposal to commit coup d'etat, rebellion or insurrection.* — ...
>
> The conspiracy and proposal to commit rebellion or insurrection shall be punished respectively, by *prision correctional* in its maximum period and a fine which shall not exceed five thousand pesos (P5,000.00), and by *prision correccional* in its medium period and a fine not exceeding two thousand pesos (P2,000.00).

108. Ladlad, *et al.* v. Velasco, *et al.*, G.R. No. 172070-72, June 1, 2007. *See,* REVISED PENAL CODE, arts. 134 & 135. Article 135 provides the penalties for rebellion depending on degree of participation. Leaders are sentenced to *reclusion perpetua.*

> Art. 134. *Rebellion or insurrection; How committed.* — The crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Republic

merely alleges that "Beltran, San Juan, and others conspired to form a "tactical alliance" to commit Rebellion."[109] The lower court, thus, erred in finding probable cause in trying Beltran for rebellion.[110]

B. The Maza and Ladlad Petitions

In resolving the Maza and Ladlad petitions, the Court once again found that an exception to the rule of the Court's non-intervention in the prosecution of offenses existed. The Court found the preliminary investigation conducted as being tainted with irregularities. Although section 3 (a) of rule 112 of the Revised Rules of Criminal Procedure requires that the complaint be accompanied by affidavits subscribed and sworn to before a prosecutor or government official authorized to administer oath, the prosecutors treated the unsubscribed letters of Tanigue and Mendoza as complaints and accepted affidavits that were notarized by a notary public. The rules only allow subscription before a notary public if it is shown that a prosecutor or qualified government official was unavailable. This unavailability was not shown in the case.[111]

Furthermore, the mandate of section 3 (b) of rule 112 is that the prosecutor must determine if there are grounds to continue with the investigation and must dismiss the case if he does not find any ground to continue; otherwise, he must issue a subpoena to the respondents.[112] Nevertheless, "upon receiving the CIDG letters, respondent prosecutors peremptorily issued subpoenas to petitioners"[113] and, "[d]uring the investigation, ... allowed the CIDG to present a masked Fuentes who subscribed to an affidavit before respondent prosecutor Velasco."[114] The prosecutor then distributed the Fuentes affidavit to members of the media, instead of distributing it to petitioners or their counsels.[115] The petitioners were then required to submit their counter-affidavits within 10 days despite

> of the Philippines or any part thereof, of any body of land, naval or other armed forces, depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.

109. *Ladlad*, G.R. No. 172070-72.

110. *Id.*

111. *Id.*; *see,* 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 112, § 3 (a).

112. *Ladlad*, G.R. No. 172070-72; *see,* 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 112, § 3 (b).

113. *Ladlad*, G.R. No. 172070-72.

114. Ladlad, *et al.* v. Velasco, *et al.*, G.R. No. 172070-72, June 1, 2007.

115. *Id.*

the fact that, "[i]t was *only* four days later, ... that petitioners received the complete copy of the attachments to the CIDG letters."[116]

> Indeed, by peremptorily issuing the subpoenas to petitioners, tolerating the complainant's antics during the investigation, and distributing copies of a witness' affidavit to members of the media knowing that petitioners have not had the opportunity to examine the charges against them, respondent prosecutors not only trivialized the investigation but also lent credence to petitioners' claim that the entire proceeding was a sham.[117]

As a preliminary investigation "spells for an individual the difference between months if not years of agonizing trial and possibly jail term, on the one hand, and peace of mind and liberty, on the other hand,"[118] it is a substantive right forming part of due process in criminal proceedings.[119] The Court called on prosecutors not to allow

> the impression that their noble office is being used or prostituted, wittingly or unwittingly, for political ends, or other purposes alien to, or subversive of, the basic and fundamental objective of observing the interest of justice evenhandedly .... Only by strict adherence to the established procedure may be public's perception of the impartiality of the prosecutor be enhanced.[120]

V. ANALYSIS: JUDICIAL REVIEW AND THE PROTECTION OF CONSTITUTIONAL RIGHTS

It is the author's analysis that the Court's ruling in *Ladlad* — holding invalid the warrantless arrest and subsequent inquest as well as enjoining prosecution for failure of the prosecution to conduct a valid preliminary investigation and for the lack of evidence to support a finding of probable cause — supports the current trend of reaffirming judicial review as a mechanism to protect constitutionally-guaranteed rights. It is the author's observation that, given the widespread political unrest and dissatisfaction under the present administration, several actions of the Executive in quelling attacks against it seem to mirror those from the former dictatorial regime. "During emergency, governmental action may vary in breadth and intensity from normal times, yet they should not be arbitrary as to unduly restrain our people's liberty."[121] Unlike the Court of the dictatorial regime, however, the current Court has been strong in exercising its power to check a co-equal

116. *Id.* (emphasis supplied).

117. *Id.*

118. *Id.*

119. *Id.*

120. Ladlad, *et al.* v. Velasco, *et al.*, G.R. No. 172070-72, June 1, 2007 (citing Tatad v. Sandiganbayan, 159 SCRA 70, 81 (1988)).

121. David v. Macapagal-Arroyo, 489 SCRA 160, 274 (2006).

branch especially to protect constitutionally-guaranteed rights. This analysis also examines two other recent cases related to the circumstances and issues in *Ladlad*.

A. Brief Background on Judicial Review

The Supreme Court guards the Constitution through the power of judicial review,[122] which is said to be its power to declare certain acts of the other co-equal branches of government unconstitutional.[123] This is especially relevant during turbulent times, as "[i]n times of social disquietude or political excitement, the great landmarks of the Constitution are apt to be forgotten or marred, if not entirely obliterated."[124] In such times, it is the judiciary which adjudicates on the proper allocation of powers between the branches of government and its agencies.[125]

The Constitution clearly delimits the powers of government and enforces such through the "moderating power" of the courts.[126] The judiciary is called upon to determine the nature, scope, and extent of such governmental powers.[127] This does not negate, however, the co-equal status of the branches of government.[128]

Judicial review originates from the case of *Marbury v. Madison*,[129] involving one who was appointed justice of the peace for five years by the Executive but whose commission was withheld.[130] Although the case lays down the parameters of declaring void acts of Congress, it was actually a

122. ENRIQUE M. FERNANDO, THE POWER OF JUDICIAL REVIEW 54 (1968) [hereinafter FERNANDO].

123. BERNAS, *supra* note 51, at 935; *see,* PHIL. CONST. art VII, § 1.

124. FERNANDO, *supra* note 122, at 56 (citing Angara v. Electoral Commission, 63 Phil. 139, 157 (1936)).

125. FERNANDO, *supra* note 122, at 56 (citing Angara v. Electoral Commission, 63 Phil. 139, 157 (1936)).

126. FERNANDO, *supra* note 122, at 54 (citing Angara v. Electoral Commission, 63 Phil. 139, 157-58 (1936)).

127. FERNANDO, *supra* note 122, at 54 (citing Angara v. Electoral Commission, 63 Phil. 139, 158-59 (1936)).

128. FERNANDO, *supra* note 122, at 54 (citing Angara v. Electoral Commission, 63 Phil. 139, 158-59 (1936)); *see,* FERNANDO, *supra* note 122, at 54 (citing Angara v. Electoral Commission, 63 Phil. 139, 182 (1936)).

129. Marbury v. Madison, 1 Cranch (5 U.S.) 137 (1803).

130. VICENTE V. MENDOZA, JUDICIAL REVIEW OF CONSTITUTIONAL QUESTIONS: CASES AND MATERIALS 2, 298 (2004).

decision upholding the rights of appointees appointed by the Executive against impairment by the latter.[131]

In the Philippines, judicial review had been in place since before the 1935 Constitution, during colonial rule.[132] "All the effective constitutions of the Philippines have established a structurally separate and independent judiciary with full formal powers of judicial review."[133] Throughout this time, the judiciary was independent, powerful, and respected. This changed under the Marcos regime, during which the courts' powers and functions were rendered inutile. Martial law decrees were declared to be beyond challenge in the courts, the jurisdiction of military courts was expanded to subsume those within the jurisdiction of the civil courts, and "cronies" of the dictator were regularly appointed to the judiciary. Its impotence was clearly illustrated in *Javellana v. Executive Secretary*,[134] when despite finding the new Constitution giving Marcos unlimited power as invalidly adopted, it still upheld its effectivity. The Aquino government sought to rectify the situation by restaffing the judiciary and adopting a policy of non-interference with the latter's jurisdiction.[135] With the installation of a new constitution expanding judicial power, the Court was made "a stronger bulwark against the possibility of new abuses by a would-be authoritarian ruler,"[136] with the clear intent to remove the possibility of reverting to the ineffectiveness of the Bill of Rights against government abuses during martial rule.[137] With the experience of martial law hanging over its head, the 1986 Constitutional Commission included in article VIII, section 1, the statement that judicial power includes the duty "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."[138]

Despite much criticism against judicial review and despite fears of judicial activism and the politicization of the judiciary, the endurance of judicial review in democracies worldwide remains strong, attesting to the importance of such judicial power.[139] Standards set for judicial review do,

131. *Id.* at 15-16.

132. *Id.* at 20.

133. C. Neal Tate, *The Philippines and Southeast Asia, in* THE GLOBAL EXPANSION OF JUDICIAL POWER 467 (C. Neal Tate & Torbjörn Vallinder, eds., 1995). [hereinafter C. Neal Tate].

134. Javellana v. Executive Secretary, 50 SCRA 30 (1973).

135. C. Neal Tate, *supra* note 133, at 465-67.

136. *Id.* at 467.

137. *Id.* at 470.

138. PHIL. CONST. art VIII, § 1; *see,* BERNAS, *supra* note 51, at 209.

139. Vicente V. Mendoza, *The Protection of Liberties and Citizen's Rights: The Role of the Philippine Supreme Court, in* JUDICIAL REVIEW OF CONSTITUTIONAL

after all, address "the underlying concern that the judiciary ... not stray into the domain of the other departments of the government more than it should."[140] The limits of judicial review have been emphasized by *Marbury*:

> the province of the court is solely to decide on the rights of individuals, not to inquire into how the executive or executive officers perform duties in which they have discretion. Questions in their nature political, or which are by the constitution and law submitted to the executive, can never be made in court.[141]

B. Protecting Constitutionally-Guaranteed Rights: Bayan v. Ermita and David v. Macapagal-Arroyo

> *"The perfection of humanity is not possible without freedom for the individual. Thus, the existence of social institutions and all political organizations and relationships are justified insofar as they have for their primary aim the defense and protection of freedom."*
>
> — *Marcelo H. del Pilar*[142]

1. The Right to Peaceably Assemble and Petition for Redress of Grievances

In *Bayan v. Ermita*,[143] several organizations, such as Bayan, Karapatan, Kilusang Magbubukid ng Pilipinas (KMP), COURAGE, Gabriela, and National Federation of Labor Unions — Kilusang Mayo Uno (NAFLU-KMU), and several individuals filed petitions against members of the Executive alleging that their rallies and peaceful mass actions were preempted and violently dispersed by the police and that the *mêlée* resulted in several injuries and arrests. They assailed the constitutionality of Batas

QUESTIONS: CASES AND MATERIALS 293 (2004) (citing THE ECONOMIST, Aug. 7, 1999 at 47) (also cited as 21 HUM. RTS. L.J. 129 (1999)) [hereinafter Mendoza].

> Established and emerging democracies ... have handed increasing amounts of power to unelected judges .... Despite continued attacks on the legitimacy of judicial review, it has flourished in the past 50 years. All established democracies now have it in some form, and the standing of constitutional courts has grown almost everywhere in an age when all political authority is supposed to be derived from voters, and every passing mood of the electorate is measured by pollsters, the growing power of judges is a startling development.

140. Mendoza, *supra* note 139, at 296.

141. *Id.* at 298.

142. BERNAS, *supra* note 51, at 101 (citing CESAR MAJUL, THE POLITICAL AND CONSTITUTIONAL IDEAS OF THE PHILIPPINES REVOLUTION 40 (1957)).

143. Bayan v. Ermita, 488 SCRA 226 (2006).

Pambansa (B.P.) Blg. 880,[144] or the Public Assembly Act of 1985, (which was upheld by the Supreme Court) and the policy of Calibrated Preemptive Response stated in a press release by the Malacañang (which was struck down).[145] The rule of calibrated preemptive response was established, in lieu of the maximum tolerance, in dealing with rallyists. The "no permit, no rally" policy was strictly enforced and dispersals were conducted.[146]

The main focus of the case was on the right to peaceably assemble and petition for redress of grievances,[147] which, together with the freedom of speech, expression, and the press, is fundamental[148] and has primacy over other rights,[149] especially when it comes to constitutional protection.[150] "[T]hese rights constitute the very basis of a functional democratic polity, without which all the other rights would be meaningless and unprotected."[151] Being cognate rights, the stringent standards for permissible impairment are the same in freedom of speech, freedom of the press, and the right to assembly and petition.[152] This being so, laws restricting fundamental rights bear a heavy presumption against their validity and are subject to "*heightened* scrutiny."[153]

2. Freedom of Assembly, and the Press and the Right against Unreasonable Searches and Seizures

David v. Macapagal-Arroyo[154] intersects with *Ladlad* in terms of factual milieu. These petitions assail the constitutionality of P.P. 1017, which declared a state of national emergency. By virtue of such proclamation, EDSA Revolution anniversary programs and activities were cancelled and all permits to hold rallies were revoked. In addition, the Executive announced

144. An Act Ensuring the Free Exercise by the People of their Right Peaceably to Assemble and Petition the Government for Other Purposes, Batas Pambansa Blg. 880 (1985).

145. *Bayan*, 488 SCRA at 233-35.

146. *Id.* at 242-43.

147. PHIL. CONST. art III, § 4; *see*, Jacinto v. Court of Appeals, 281 SCRA 657, 666-67 (1997); U.S. v. Apurado, 7 Phil. 422 (1907).

148. BERNAS, *supra* note 51, at 302 (citing De Jonge v. Oregon, 299 U.S. 353, 364 (1937)).

149. Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co., Inc., 51 SCRA 189, 205 (1973)).

150. Bayan v. Ermita, 488 SCRA 226, 249 (2006).

151. *Id.* at 249.

152. BERNAS, *supra* note 51, at 302 (citing De Jonge v. Oregon, 299 U.S. 353, 364 (1937)).

153. *Bayan*, 488 SCRA at 268.

154. David v. Macapagal-Arroyo, 489 SCRA 160 (2006).

that warrantless arrests could be made and a take-over of media facilities could be effected. Rallies were violently dispersed and some rallyists — including professor and columnist David, and Akbayan president Llamas — were arrested without warrants. Offices of newspaper establishments were raided. A number of warrantless arrests were made. The police also sought to arrest some members of Congress representing the party-list groups Anakpawis, KMU, Bayan Muna, and Gabriela.[155]

The Court upon passing upon the intrusions into the constitutional rights in this case commented that, "[o]ne of the misfortunes of an emergency, particularly, that which pertains to security, is that military necessity and the guaranteed rights of the individual are often not compatible. Our history reveals that in the crucible of conflict, many rights are curtailed and trampled upon."[156]

The Constitution recognizes the inviolability of the right of persons against unreasonable searches and seizures and ensures such by mandating that a search warrant or a warrant of arrest may only issue upon finding probable cause.[157] In *David*, petitioner David recounted that he was arrested without a warrant pursuant to P.P. 1017 and was charged with violating B.P. Blg. 880 and inciting to sedition, for which he was detained for seven hours but was thereafter released as the evidence was insufficient. As mentioned, the Revised Rules of Criminal Procedure[158] only allow warrantless arrests under stringent conditions, none of which were present in this case. During the inquest, it was found that the reason for his arrest was that some rallyists wore shirts which bore the message "*Oust Gloria Now*" (however, David himself was not wearing such a shirt) and that he was mistakenly assumed to be the leader of the rally.[159]

Not only were the petitioners invalidly arrested without warrants, such arrests were made while they were exercising their right to peaceably assemble.[160] As mentioned, the right to peaceably assemble is subject only to limitation upon showing of a clear and present danger, which was absent in this case. Furthermore, the Court quoted *De Jonge v. Oregon*,[161] which stated that peaceable assembly could not be made a crime.[162]

155. *Id.* at 208.

156. *Id.* at 257.

157. PHIL. CONST. art III, § 2.

158. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 113, § 5.

159. *David*, 489 SCRA at 263-65.

160. PHIL. CONST. art III, § 4.

161. De Jonge v. Oregon, 299 U.S. 353 (1937).

162. David v. Macapagal-Arroyo, 489 SCRA 160, 265-66 (2006).

> Peaceable assembly for lawful discussion cannot be made a crime. The holding of meetings for peaceable political action cannot be proscribed. Those who assist in the conduct of such meetings cannot be branded as criminals on that score. . . . If the persons assembling have committed crimes elsewhere, if they have formed or are engaged in a conspiracy against the public peace and order, they may be prosecuted for their conspiracy or other violations of valid laws. *But it is a different matter when the State, instead of prosecuting them for such offenses, seizes upon mere participation in a peaceable assembly and a lawful public discussion as the basis for a criminal charge.*[163]

David also discussed the freedom of the press. A warrantless search and seizure of the *Daily Tribune's* offices were conducted at one a.m. in the absence of any *Daily Tribune* official, after which, policemen were stationed in the area. Members of the Executive branch, thereafter, gave statements warning members of the media of possible takeover or closure should they not follow standards set by P.P. 1017. The Court found the search and seizure illegal and violative of the freedom of the press.[164]

Under the Revised Rules on Criminal Procedure, a search warrant may only issue "upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witness he may produce, and particularly describing the place to be searched and the things to be seized ...."[165] In addition, the search should be made "in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality."[166] Such warrant "must direct that it be served in the day time, unless the affidavit asserts that the property is on the person or in the place ordered to be searched, in which case a direction may be inserted that it be served at any time of the day or night."[167] The Court found the search conducted in violation of these rules.

Worse is that such search and seizure violated the freedom of the press as it was in the nature of a prior restraint and censorship, which is "patently anathematic to a democratic framework where a free, alert and even militant press is essential for the political enlightenment and growth of the citizenry."[168] That the materials for publication were searched and seized,

163. *Id.* at 266 (2006) (citing De Jonge v. Oregon, 299 U.S. 353 (1937)) (emphasis supplied).

164. *David*, 489 SCRA at 268.

165. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 126, § 4.

166. *Id.* § 8.

167. *Id.* § 9.

168. *See,* David v. Macapagal-Arroyo, 489 SCRA 160, 269 (2006) (citing Burgos v. Chief of Staff, 133 SCRA 816 (1984)).

that policemen were stationed in the area, and that members of the Executive branch warned of takeovers and closures were all badges of censorship prompted by the *Daily Tribune's* anti-government stance.[169] "It is that officious functionary of the repressive government who tells the citizen that he may speak only if allowed to do so, and no more and no less than what he is permitted to say on pain of punishment should he be so rash as to disobey."[170]

C. The Judiciary and the Protection of Constitutional Rights

To alleviate the fear of an unchecked, and thus, tyrannical and oppressive, government power, the Constitution demarcates sanctioned state actions, particularly through the Bill of Rights.[171] Where the state goes beyond the threshold and impairs individual liberty,[172] "the Bill of Rights takes precedence over the right of the State to prosecute."[173] Relief can, thus, be obtained against "the purported enforcement of criminal law ... to prevent the use of the strong arm of the law in an oppressive and vindictive manner, and to afford adequate protection to constitutional rights."[174]

It is the duty of the courts to curb such excesses in government power. Judicial review determines "the constitutional validity of the acts of other departments of government, as a means of protecting individual rights.[175] Even when the granting of rights to an individual becomes merely ceremonial, "it would not be *idle* ceremony; rather it would be a celebration by the State of the rights and liberties of its own people and a re-affirmation of its obligation and determination to respect those rights and liberties."[176]

169. *David*, 489 SCRA at 269-70.

170. *Id.* at 270 (citing National Press Club v. Commission on Elections, 207 SCRA 1 (1992) (Cruz, J., dissenting)).

171. Allado v. Diokno, 232 SCRA 192, 209 (1994).

172. *Id.*

173. *Id.* at 209.

> The sovereign power has the inherent right to protect itself and its people from vicious acts which endanger the proper administration of justice; hence, the State has every right to prosecute and punish violators of the law .... But ... [t]he right of the State to prosecute is not a *carte blanche* for government agents to defy and disregard the rights of its citizens under the Constitution. Confinement, regardless of duration, is too high a price to pay for reckless and impulsive prosecution.

174. *Id.* at 210 (citing Hernandez v. Albano 19 SCRA 95 (1967)).

175. Mendoza, *supra* note 139, at 293.

176. Go v. Court of Appeals, 206 SCRA 138, 162 (1992) (emphasis supplied).

"All powers need some restraint .... Superior strength — the use of force — cannot make wrongs into rights."[177] Judicial review is a constant reminder to agents of the government to act with circumspection in carrying out their functions. While convicting felons is a laudable purpose, prudence must be exercised in the prosecution of offenses and care must always be taken not to trample on human rights guaranteed by the Constitution.[178] This is especially so in the realm of public discourse. "Freedom to comment on public affairs is essential to the vitality of a representative democracy. It is the duty of the courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon."[179]

V. CONCLUSION

Fairly recently, a week prior to the *Ladlad* ruling, Transparency International[180] "lauded the Supreme Court for standing up against 'executive encroachments on the judiciary' under the administration of President Macapagal-Arroyo." In its Global Corruption Report 2007, the Court was said to have guarded the Constitution when it struck down Executive Order (E.O.) 464,[181] the Calibrated Preemptive Response Policy,[182] and Proclamation 1017.[183] E.O. 464 had forbidden executive officials from testifying before a Senate Committee investigating the "Hello Garci" scandal, wherein a wiretapped phone conversation allegedly showed that President Gloria Macapagal-Arroyo instructed former Election Commissioner Virgilio Garcillano to ensure her victory in the elections. The Calibrated Preemptive Response Policy and Proclamation 1017, on the other hand, limited the freedom of speech, expression, assembly, and the

177. David v. Macapagal-Arroyo, 489 SCRA 160, 198 (2006) (citing Tom C. Clark, *Law and Disorder, in* The XIX Franklin Memorial Lectures 29 (1971)).

178. Allado v. Diokno, 232 SCRA 192, 210 (1994).

179. *David*, 489 SCRA at 270 (citing Boyd v. United States, 116 U.S. 616 (1886)).

180 Transparency International is a global civil society organisation whose goal is effecting change through the elimination of corruption. *See,* Transparency International: The Global Coalition Against Corruption, *at* http://www.transparency.org (last accessed Aug. 17, 2007).

181. Ensuring Observance of the Principle of Separation of Powers, Adherence to the Rule on Executive Privilege and Respect for the Rights of Public Officials Appearing in Legislative Inquiries in Aid of Legislation under the Constitution, and for Other Purposes, Executive Order 464 (2005); *see,* Senate v. Ermita, 495 SCRA 170 (2006).

182. *See,* Bayan v. Ermita, 488 SCRA 226 (2006).

183. *See,* David v. Macapagal-Arroyo, 489 SCRA 160 (2006).

Schmaltz Anew: *Pinoy*-Style Community-Based Limited Partnership as a Socio-Legal Technique for Agricultural Development

*Eugenio H. Villareal**

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I. LOTS OF LAND, BUT NO CURRENCY

The scene is familiar in present-day rural Philippines: a farmer and his family preside over a small piece of agricultural land planted with rice or corn; and while still managing to survive the day on garden-produced root crops, they

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Cite as 52 ATENEO L.J. 269 (2007).