their judicial responsibility to write decisions faithful to the law, and to their own pronouncements in the past unless a reversal is warranted by the circumstances. For if in the future, for instance, another legislator who has voted for a law comes to the Court to invalidate an allegedly unconstitutional statute, their *dictum* in *Estrada* regarding estoppel may just put them in a precarious situation of identifying whether such pronouncement is controlling or not.

Nothing, really, is more objectionable than erroneous *obiter dicta*.

Judicial Policy in the Law on Public Officers

*Allan Verman Y. Ong**

I. INTRODUCTION

The relation of law to the three separate bodies of government is a settled principle. It has been held that, "the Constitution has blocked but with deft strokes and in bold lines, allotment of power to the executive, the legislative

* Mr. Ong wishes to thank Atty. Albert Vincent Yu Chang for his invaluable comments, and Ms. Aimee Bernadette Dabu for her research assistance.

Cite as 47 ATENEO L.J. 71 (2002).

and the judicial departments of the government."[1] Thus, the power to make and repeal laws lie with the Legislative, the power to enforce these laws lie with the Executive and the power to settle controversies arising from the application of these laws lie with the Judiciary. But an unsettled concept is the relation of *policy* to the functions of these three bodies of government. When policy is indeed understood as the making of important decisions that affect the distribution of social values,[2] then it may be posited that it is in the courts where public policy is formulated and enforced. In fact, it has been opined that the public policy role is an actual duty of the Court.[3]

To be sure, this is not a concept entirely alien nor novel to Philippine jurisprudence. The Supreme Court has, in *Ichong v. Hernandez*,[4] enunciated a protectionist policy against alien retailers when it recognized the validity of the Retail Trade Nationalization Law. The Court made a 180° turn in *Tañada v. Angara*[5] when the Court recognized that the WTO would be a viable structure for multilateral trading and a veritable forum for the development of international trade law. The Court has recognized its role in the formulation of policy in fields other than commercial law — it reflected society's solicitous attitude towards labor,[6] condemned prosecution and judgment with the use of fruit from the poisonous tree,[7] and construed penal[8] law strictly in favor of citizens.

Recent years have seen the Court perform its role of policy formulation in the field of the Law on Public Officers. In his treatise, Law Professor Carlo Cruz writes:

1. Marcos v. Manglapus, 177 SCRA 668 (1989) (*citing* Angara v. Electoral Commission, 63 Phil. 139 (1936)).
2. Jose Victor Chan-Gonzaga, *The Province and Duty of the Courts: Law and Policy*, 46 Ateneo L.J. 174 (2001) (*citing* Harold D. Laswell and Myres C. McDougal, *Legal Education and Public Policy: Professional Training in the Public Interest*, 52 YALE L.J. 203-95 (1943)) [hereinafter Chan-Gonzaga].
3. Jose Victor Chan-Gonzaga, *The Province and Duty of the Courts: Law and Policy*, 46 ATENEO L.J. 174 (2001).
4. 105 Phil. 1155 (1957).
5. 272 SCRA 18 (1997).
6. Abella v. NLRC, 152 SCRA 140 (1987), Euro-Linea, Phils., Inc. v. NLRC, 156 SCRA 78 (1987), Manila Electric Company v. NLRC, 183 SCRA 51 (1989).
7. Alih v. Castro, 151 SCRA 279 (1987), People v. Aminnudin, 163 SCRA 78 (1988), People v. De La Cruz, 244 SCRA 306 (1993), Nolasco v. Paño, 147 SCRA 509 (1987), People v. Burgos, 144 SCRA 1 (1986).
8. *See* Alejandro Ras v. Estela Sua, 25 SCRA 153 (1968), where it was held that when "the interest of the individual outweighs the interest of the public, strict construction of a penal provision is justified."

> The recent scams and scandals in government have, strangely, served to lend more meaning to the concept of accountability of public functionaries, if only because the people have grown to be more demanding in terms of public service and effectivity in government. Indeed, the people's consistent clamor for better government has led the present administration to respond more quickly to their criticisms and complaints.[9]

Estrada v. Arroyo,[10] *Estrada v. Sandiganbayan*,[11] *Lacson v. Perez*,[12] *People v. Jalosjos*,[13] and *Lopez v. Ombudsman*[14] tell us of the role of the courts in the quest to make public officers accountable for their acts in demanding the highest standard of morality in their performance. By not hesitating to review official action where grave abuse of discretion was alleged, the Supreme Court has declared that it would not hesitate to exercise the duty that it is being called upon to perform.

This essay is a review of three important cases decided by the Supreme Court in the judicial year of 2001. These cases have important implications on important doctrines concerning the law on public officers — executive immunity, bureaucratic delay, and official proclamations. And it reflects the policy that the Court has taken in the settlement of disputes of law concerning public officers. Part I is a review of *Estrada v. Arroyo* when it disposed of petitioner Joseph Estrada's claim for immunity. Part II is a review of *In re Laoagan*[15] on the Court's position as to delay in the disposition of cases submitted to courts for resolution. Part III is a review of *Lacson v. Perez* which is a case concerning the *habeas corpus* petitions of Senators Miriam Defensor-Santiago and Juan Ponce Enrile, among others, during the period declared by President Arroyo as a state of rebellion. Part IV will weave these three threads into a fabric that shows the Court's policy in holding the public officers to their mandate and their responsibility.

II. EXECUTIVE IMMUNITY IN *Estrada v. Arroyo*

Estrada v. Arroyo is a much celebrated case. The Court, through Mr. Justice Puno, shrugged off the argument of the petitioner, the ousted President Estrada, that the case concerned a political question, and it proceeded to take on the issues on the validity of the People Power revolution and the

9. CARLO L. CRUZ, THE LAW OF PUBLIC OFFICERS, iv (1996) [hereinafter CRUZ, THE LAW OF PUBLIC OFFICERS].
10. G.R. No. 146710-15; G.R. No. 146738 (Mar. 2, 2001).
11. G.R. No. 148560 (Nov. 19, 2001).
12. G.R. No. 147780 (May 10, 2001).
13. G.R. Nos. 121039-45 (Oct. 18, 2001).
14. G.R. No. 140529. (Sept. 6, 2001).
15. A.M. No. 01-3-64-MTC (Dec. 5, 2001).

resignation of the President. These issues will not be reviewed in this essay. Rather, the issue on the ousted President's immunity from suit will be discussed here.

A. The Case

After his fall from power, the cases previously filed against the ousted President were set in motion. These were criminal cases filed by various citizen's groups, all in anticipation of President's eventual impeachment.[16] A special panel of investigators was created by the Ombudsman to investigate the charges. On January 22, 2001, two days after petitioner left the Malacañang Palace, the panel issued an Order directing the petitioner to file his counter-affidavit. Petitioner then filed a petition for prohibition to enjoin the Ombudsman from conducting any further proceedings *until after the term of petitioner as President is over* and only if duly warranted. To bolster this position, the petitioner filed a petition for *quo warranto* seeking a declaration that he was the lawful and incumbent President who was unable to discharge his duties of office, and declaring President Gloria Macapagal Arroyo to have taken her oath as the President only in an acting capacity.

B. The Issue and the Court's Decision

The Court formulated the issue on the petitioner's immunity from suit, thus:

> Whether conviction in the impeachment proceedings is a condition precedent for the criminal prosecution of petitioner Estrada in the negative

16. (1)OMB Case No. 0-00-1629 filed by Ramon A. Gonzales on Oct. 23, 2000 for bribery and graft and corruption;

(2)OMB Case No. 0-00-1754 filed by the Volunteers Against Crime and Corruption on Nov. 17, 2000 for plunder, forfeiture, graft and corruption, bribery, perjury, serious misconduct, violation of the code of Conduct for Government Employees, etc;

(3)OMB Case No. 0-00-1755 filed by the Graft Free Philippines Foundation, Inc. on Nov. 24, 2000 for plunder, forfeiture, graft and corruption, bribery, perjury, serious misconduct;

(4)OMB Case No. 0-00-1756 filed by Romeo Capulong, et al., on Nov. 28, 2000 for malversation of public funds, illegal use of public funds and property, plunder, etc.,

(5)OMB Case No. 0-00-1757 filed by Leonardo de Vera, et al., on Nov. 28, 2000 for bribery, plunder, indirect bribery, violation of PD 1602, PD 1829, PD 46, and RA 7080; and

(6)OMB Case No. 0-00-1758 filed by Ernesto B. Francisco, Jr. on Dec. 4, 2000 for plunder, graft and corruption.

> and on the assumption that petitioner is still President, whether he is immune from criminal prosecution.

To the issue on prior conviction in impeachment proceedings, the Court ruled:

> We reject his argument that he cannot be prosecuted for the reason that he must first be convicted in the impeachment proceedings.

And as to the immunity he claims, the Court ruled:

> Petitioner cannot cite any decision of this Court licensing the President to commit criminal acts and wrapping him with post-tenure immunity from liability.

C. The Court's Ratio

Before ultimately deciding on the issue of prior conviction in the impeachment proceedings, the Court revisited the cases on official immunity. It laid down its position first by citing *Forbes, etc. v. Chuoco Tiaco and Crossfield*,[17] where it was ruled that

> The principle of nonliability...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.... 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.

Further whittling down the acts that fall under this immunity:

> 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.... If he decide (sic) wrongly, he is still protected...but he is not protected if the lack of authority to act is so plain.... 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.

With this, the Court dismissed petitioner's argument that prior conviction under the impeachment proceedings was a condition precedent to prosecution in the Sandiganbayan. To acknowledge this defense "would put a perpetual bar against his prosecution" since the impeachment trial had already been aborted and declared *functus oficio*.[18]

Further in its decision, the Court observed that there was a judicial disinclination to expand the privilege especially when it impeded the search

17. 16 Phil. 534 (1910). Mr. Justice Puno cites the quoted portion as part of the decision, but it is actually part of the separate opinion of Mr. Justice Moreland.

18. S.R. 83, 12th Congress (2001).

for truth or impairs the vindication of a right. Lastly, it enumerated the constitutional provisions illustrating the growing militancy of the people against official abuse[19] and declared that "[t]hese constitutional policies will be devalued if we sustain petitioner's claim that a non-sitting president enjoys immunity from suit for criminal acts committed during his incumbency."

D. Survey of Cases

Executive Immunity is of English ancestry, where monarchs claimed the prerogative that "[t]he King can do no wrong."[20] But this was rejected early on — although the related doctrine of sovereign immunity survived, the common law fiction that "[t]he king . . . is not only incapable of doing wrong, but even of thinking wrong," was abrogated at the birth of the American Republic.[21]

One of the first cases decided on the issue of the immunity of the Executive from suit was one where the head of the Executive was still a Governor General.

In that case, W. Cameron Forbes, the Governor-General of the Philippine Islands, acting in his official capacity and at the request of the proper representative of the Imperial Government of China, ordered twelve (12) Chinese nationals to be deported from the Philippines. When the one of the Chinese nationals returned to the Philippine Islands, Forbes, acting through the chief of police, threatened again to deport the said Chuoco Tiaco from the Philippine Islands. Chuoco then commenced an action against the Governor General in the Court of First Instance of the city of

19. One of the great themes of the 1987 Constitution is that a public office is a public trust. It declared as a state policy that *"(t)he State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption."* It ordained that *"(p)ublic officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives."* It set the rule that *"(t)he right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches or estoppel."* It maintained the Sandiganbayan as an anti-graft court. It created the office of the Ombudsman and endowed it with enormous powers, among which is to *"(i)nvestigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient."* The Office of the Ombudsman was also given fiscal autonomy.

20. Clinton v. Jones, No. 95-1853 (May 27, 1997).

21. *See, e.g.*, Nevada v. Hall, 440 U.S. 410, 415 (1970); Langford v. United States, 101 U.S. 341, 342-43 (1880), *cited in Clinton*, No. 95-1853.

Manila to recover damages and to obtain an injunction against further deportation.

Judge Crossfield issued a preliminary injunction against the defendants, forbidding them from expelling or deporting the Chinese nationals. But Crossfield's jurisdiction was challenged by the Governor General, alleging that the judge did not have jurisdiction to resolve the questions presented. When Crossfield claimed jurisdiction, a petition was filed in the Supreme Court seeking to prohibit him from taking jurisdiction of said action and to dismiss the same. In essense, it was alleged that Forbes acted in his official capacity as Governor-General and that the act was an act of the Government itself.

The Court ruled that the petition should fail because no one could be held legally responsible for damages or otherwise for doing in a legal manner what he had authority, under the law, to do. The Governor-General had authority, under the law, to deport or expel the defendants, and the circumstances justifying the deportation and the method of carrying it out are left to him. He could not be held liable in damages for the exercise of this power.

But *Forbes* is primarily a case concerning the interference of the Judiciary over Executive action. Here, the Court refused such interference and control because "to allow such an action would, in the most effective way possible, subject the [E]xecutive and political departments of the Government to the absolute control of the [J]udiciary."

The next major Philippine case concerning executive immunity is *Soliven v. Makasiar*.[22] What was strange about this case was that it was not the President who asserted executive immunity. President Corazon Aquino filed criminal complaints of libel against Luis Beltran. As part of his defense, Beltran argued that if criminal proceedings ensued by virtue of the President's filing of her complaint-affidavit, she could subsequently have to be a witness for the prosecution, bringing her under the trial court's jurisdiction. This would, in an indirect way, defeat her privilege of immunity from suit. Beltran asseverates that by testifying on the witness stand, the President would be exposing herself to possible contempt or perjury.

The Court rejected this argument. The grant to the President of the privilege of immunity from suit is to assure the exercise of presidential duties and functions free from any hindrance or distraction, considering that being the Chief Executive of the Government is a job that demands undivided attention.

22. 167 SCRA 393 (1988).

> But this privilege of immunity from suit, pertains to the President by virtue of the office and may be invoked only by the holder of the office; not by any other person in the President's behalf. Thus, an accused in a criminal case in which the President is complainant cannot raise the presidential privilege as a defense to prevent the case from proceeding against such accused.

The Court ruled that there was nothing in Philippine law that would prevent the President from waiving the privilege. Thus, the President could shed the protection afforded by the privilege and submit to the court's jurisdiction. *The choice of whether to exercise the privilege or to waive it is solely the President's prerogative. It is a decision that cannot be assumed and imposed by any other person.*

E. Judicial Policy on Executive Immunity

There appears, at present, to be a general disinclination by the Judiciary to grant the defense of executive immunity. As earlier observed, the logical basis for executive immunity from suit was originally founded upon the idea that the "King can do no wrong." The concept thrived during the period of absolute monarchies when it was generally accepted that the seat of sovereignty and governmental power resided in the throne.[23]

Even in American jurisprudence, the disinclination to grant executive immunity is apparent. The U.S. Supreme Court would not even grant suspension of the temporary immunity from civil damages litigation arising out of events that occurred before a President took his office, saying "[t]he principal rationale for affording Presidents immunity from damages actions based on their official acts — i.e., to enable them to perform their designated functions effectively without fear that a particular decision may give rise to personal liability," and that there is no support for an immunity for unofficial conduct. Moreover, immunities for acts clearly within official capacity are grounded in the nature of the function performed, not the identity of the actor who performed it.[24]

Note the words, however, of Mr. Justice Powell, when he stated the remedies of the citizenry against any Presidential abuse, after ruling that "the President's absolute immunity extends to all acts within the 'outer perimeter' of his duties of office:"

> A rule of absolute immunity for the President will not leave the Nation without sufficient protection against misconduct on the part of the Chief Executive. There remains the constitutional remedy of impeachment. In addition, there are formal and informal checks on Presidential action that do not apply with equal force to other executive officials. The President is subjected to constant scrutiny by the press. Vigilant oversight by Congress also may serve to deter Presidential abuses of office, as well as to make credible the threat of impeachment. Other incentives to avoid misconduct may include a desire to earn reelection, the need to maintain prestige as an element of Presidential influence, and a President's traditional concern for his historical stature.[25]

23. R.J. Gray, *Private Writings of Public Servants*, 47 CAL. L. REV. 303 (1959), *cited* in footnote 105 of Estrada v. Arroyo.

24. Clinton v. Jones, *supra*.

In spite of this pronouncement, it would not be far off to observe that executive immunity has been emasculated in its application. It must first be emphasized, however, that executive immunity still exits. Indeed, there is basis for its existence. The first is that due to the concept of the separation of powers, the acts of the Executive is independent from Judicial review.[26] The second is to free up the discharge of presidential duties and functions from any hindrance or distraction,[27] to avoid a scenario where the time of the chief executive will be spent on wrangling litigation. It was feared that disrespect upon his person would be generated, and distrust in the government will soon follow.[28] And lastly, it was recognized that without such immunity, the President would be hesitant to exercise his decision-making functions in a manner that might detrimentally affect an individual or group of individuals.[29] How has this evolved in recent jurisprudence?

As to the proscription against interference of the Judiciary over the Executive, even the Commonwealth Constitution had already recognized the power of the Judiciary to review all cases in which the constitutionality or validity of any executive order or regulation was in question.[30] The latest incarnation of the Constitution left no stone unturned when it defined not

25. Nixon v. Fitzgerald, 457 U.S. 731 (1982).

26. *Id.*

27. Soliven v. Makasiar, 167 SCRA 393 (1988).

28. Forbes v. Chouco Tiaco, 16 Phil. 534 (1910).

29. H. Schnechter, *Immunity of Presidential Aids from Criminal Prosecution*, 57 GEO. WASH. L. REV. 779 (1989), *cited in* Estrada v. Arroyo, G.R. NOS. 146710-15 & G.R. No . 146738.

30. The 1935 Philippine Constitution provides, in art. VIII, § 2:

> "The Congress shall have the power to define, prescribe and apportion the jurisdiction of various courts, but may not deprive the Supreme Court of its original jurisdiction over cases affecting ambassadors, other public ministers, and consuls, nor of its jurisdiction to review, revise, reverse, modify, or affirm on appeal, certiorari, or writ of error, as the law or the rules of court may provide, final judgments and decrees of inferior courts in —
>
> (1) All cases in which the constitutionality or validity of any treaty, law, ordinance, or executive order or regulation is in question. x x x x."

only judicial review, but also likewise defined judicial power.[31] Where before, the previous Constitutions merely provided the power of the Supreme Court to review executive orders or regulations, the present Constitution now provides that the courts[32] have the power to determine when there has been grave abuse of discretion amounting to lack or excess of jurisdiction, on the part of *any branch or instrumentality of the Government.*

Indeed, the Court has not been shy in the exercise of its power to review executive action. The Court did not hesitated in reviewing the President's act in prohibiting the return of the deposed President Marcos,[33] and in the President's manner of ratifying the Visiting Forces Agreement.[34]

The second reason posited for the existence of executive immunity is to free the discharge of presidential duties and functions from any hindrance or distraction. But this can also apply to any ordinary public official. The rules governing the liability of public officers in general are laid down in Book I, Chapter 9 of the Administrative Code of 1987 which provides:

> Sec. 38. Liability of Superior Officers –
>
> (1) A public officer shall not be civilly liable for acts done in the performance of his official duties, unless there is a clear showing of bad faith, malice or gross negligence.

The third reason for executive immunity is to remove hesitation from the exercise of the decision-making functions of the President. In fine, the rule seeks to guarantee the independence of the public official who might be unwilling to make the right decisions for fear that he might be called to account for them in court by disgruntled individuals adversely affected by his act.[35] But this is a privilege that is enjoyed by legislators,[36] judges,[37] quasi-

31. PHIL. CONST. art. VIII, § 1, in part, provides, "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."

32. *Id.*

33. Marcos v. Manglapus, 177 SCRA 668 (1989).

34. Bayan v. Zamora, G.R. 138570 (Oct. 10, 2000).

35. CRUZ, THE LAW OF PUBLIC OFFICERS, *supra* note 9, at 138.

36. *Id.* at 139, "As a rule, (legislators) may not be held liable, individually or collectively, for the performance or non-performance of their duties."

37. *Id.* at 140, "The general rule is that judges shall not be liable for their acts except only when they act without jurisdiction as the law will not protect them for exercising powers that do not belong to them."

judicial officers,[38] local officials,[39] and ministerial officers,[40] among others. It appears that although immunity is granted to the President, this immunity does not give him greater protection than that which is enjoyed by other public officers.

Of course, despite the observation on the decreased "protection" afforded by the doctrine of executive immunity, there has been no case filed in court where the President has been made defendant or respondent in a claim for damages.[41] The benefits of having a President who is unhampered by private lawsuits is not in doubt. As American jurisprudence provides, "[b]ecause of the singular importance of the President's duties, diversion of his energies by concern with private lawsuits would raise unique risks to the effective functioning of government."[42]

Yet, where executive immunity is raised as a last resort by a President who had already separated from his office, the Court will not hesitate to strike down such defense of executive immunity. Philippine law recognizes this defense only to the extent of official acts, performed within one's authority.[43]

III. DISPOSITION OF CASES IN *In re Laoagan*

Laoagan was disposed of by the Court by dwelling on the issues regarding the Code of Judicial Conduct. The decision of the Court will be contextualized, in view of the constitutional mandate, as to the period for rendering decisions.

A. The Case

Judge Agapito Laoagan, Jr. was a judge in the Metropolitan Trial Court of Benguet. He received an Appointment as Regional Hearing Officer of the National Commission on Indigenous Peoples (NCIP) from the Chairman of

38. *Id.* at 144, "These officers may not themselves be held liable for such decisions as long as it is shown that they were acting within the scope of their authority and without bad faith, malice or corruption."

39. *Id.* at 146, "The rules governing the liability of official in the national government are applicable to local officials in the discharge of their discretionary and ministerial functions."

40. *Id.* at 147, "Where an act is performed by the officer under these conditions (of a ministerial duty), and with due care and diligence, he incurs no liability to any person prejudiced by it."

41. But *see* Defensor Santiago v. Ramos, *reprinted in* 10 LAW. REV., Feb. 13, 1996, at 47; Estrada, G.R. Nos. 146710-15 & 146738.

42. *Nixon*, 457 U.S. 731.

43. *See Forbes*, 16 Phil. 534 and *Estrada*, G.R. Nos. 146710-15 & 146738.

NCIP-CAR. In preparation for his assumption of office, he wrote the Chief Justice a request for the issuance of a "Permission to Transfer," and concurrently, issued a unilateral notice suspending the hearing of cases in his court. The Office of the Court Administrator (OCA) recommended that Judge Laoagan be required to explain why he should not be held administratively liable for his unauthorized suspension of the trials and hearings of cases pending before his court.

Judge Laoagan explained he assumed that he could easily obtain the requested transfer from the Chief Justice. So he unilaterally suspended trials and hearings except those of provisional remedies, criminal cases involving detention prisoners and promulgation of judgments, because he wished to dispose of the cases due for judgment before his transfer. The OCA found Judge Laoagan administratively liable and recommended a fine of PhP2,000.00.

B. *The Court's Decision the Ratio*

The Court adopted the recommendation of the OCA. It cited the Code of Judicial Conduct, particularly:

> Rule 1.02. A judge should administer justice impartially and without delay.
>
> Rule 3.05. A judge should dispose of the court's business promptly and decide cases *within the required periods*.[44]

The Court, once again, speaking through Mr. Justice Puno, emphasized the sworn duty of judges to administer justice without delay for "delay in the disposition of cases erodes the faith and confidence of our people in the judiciary; lowers its standards and brings it into disrepute." The suspension of trials and hearings in Laoagan's *sala* prior to his request for permission from the Chief Justice for an authority to transfer to the NCIP unduly delayed the dispensation of justice in his court. The court noted that Laoagan had already learned that his transfer to the NCIP was covered by the election ban and therefore be postponed until after the May 2001 elections. Notwithstanding his awareness, he resumed full court sessions immediately after March 1, 2001.

The Judge was therefore held administratively liable for delay and neglect of duty.

C. *The Right to Speedy Trial*

The Constitution recognizes the need for "speed" in the disposition of cases. The Bill of Rights almost hammers this policy upon the Courts. All persons

44. Emphasis supplied.

have the right to the speedy disposition of cases before all judicial, quasi-judicial, or administrative bodies,[45] and a special recognition of the right to a quick disposition of cases is granted to persons accused of a crime.[46] Various other provisions in the Constitution recognize the right of persons to a speedy disposition of their cases. The following provisions are in point:

> The Supreme Court shall have the following powers:
>
> (5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practices and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. *Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases....*[47]
>
> (1) All cases or matters filed ... must be decided or resolved within twenty four months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts and three months for all other lower courts.
>
> (3) Upon the expiration of the corresponding period, a certification to this effect signed by the Chief Justice or the presiding judge shall forthwith be issued and a copy thereof attached to the record of the case or matter, and served upon the parties. The certification shall state why a decision or resolution has not been rendered or issued within said period.
>
> (4) Despite the expiration of the applicable mandatory period, the court...shall decide...the case...without further delay.[48]

These provisions are, of course, directed to the courts. They do not constitute a direct grant of right to citizens.

Furthermore, it is submitted that the right of parties to a speedy disposition of their case is already part of the rights recognized under the due process clause. The due process clause states that no person shall be deprived of life, liberty, or property without due process of law. The due process clause actually protects the *defendant* in a civil case -- the court may not summarily order the defendant to turn over the property being claimed without preponderance of evidence. Indeed, this is the due process

45. PHIL. CONST. art. III, § 16.

46. *Id.* art. III, § 14 provides:

> (2) In all criminal proceedings, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial and public trial...."

47. PHIL. CONST. art. VIII, § 5 (emphasis supplied).

48. *Id.* art. VIII, § 15.

requirement as interpreted by the courts.[49] However, the protection must work both ways. Parties must not be able to hide behind judicial delay in evading a claim. Thus, when a labor case for the collection of separation pay drags on for fifteen years, as it did in *Flora v. Pajarillaga,*[50] the parties are deprived of property and even their lives.

There is constructive deprivation of property on the side of the plaintiff when what is truly his is deprived from him. This occurs when the court holds procedure to be the highest value. In such a case, where the disposition of a case is delayed because of judicial procedure, the letter of the law is given effect, but not its spirit. And jurisprudence is rich in the discernment of the spirit of the due process clause. It has been understood as a "guaranty of procedural fairness,"[51] "law which hears before it condemns,"[52] and "law which shall be reasonable in its operation, enforced according to the regular methods of procedure prescribed."[53] Procedural fairness, which renders justice only to one party, is not procedural fairness at all.

The Judiciary recognizes this shortcoming of the courts. The Rules of Court provides for execution pending appeal,[54] provisional remedies,[55] and immediate execution in forcible entry and unlawful detainer cases.[56] In addition, it also holds lower courts to the prescribed periods for deciding a case in the Constitution.[57] Thus, for having decided a criminal case beyond the 90-day period required by the 1973 Constitution, a judge was

49. JOAQUIN BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 106-7 (1996) [*hereinafter* BERNAS, COMMENTARY], (*citing* Banco Español Filipino v. Palanca, 37 Phil. 921, 934 (1918)) *which says,* "[a]s applied to judicial proceedings...it may be laid down with certainty that the requirement of due process is satisfied if the following conditions are present, namely: (1) There must be a court or tribunal clothed with judicial power to hear and determine the matter before it; (2) jurisdiction must be lawfully acquired over the person of the defendant or over the property which is the subject of the proceedings; (3) the defendant must be given an opportunity to be heard; and (4) judgment must be rendered upon a lawful hearing."

50. 95 SCRA 100, 105 (1980).

51. BERNAS, COMMENTARY, *supra* note 49, at 105.

52. *Id.* (*citing* Lopez v. Director of Lands, 47 Phil. 23, 32 (1924)).

53. *Id.* (*citing* U.S. v. Ling Su Fan, 10 Phil. 104, 111-12 (1908)).

54. Revised Rules of Court, Rule 39, § 2.

55. *Id.* Rules 57-60.

56. *Id.* Rule 70.

57. BERNAS, COMMENTARY, *supra* note 49, at 896.

reprimanded and admonished that a repetition of the same offense would be dealt with dismissal from the service.[58]

In a criminal case where a prosecuting officer who, without good cause, secured postponements of the trial against his protest beyond a reasonable period, the accused was entitled to relief in the form of the dismissal of the information.[59] Does the right of the speedy trial of the accused grant him a similar right for a speedy decision? The Supreme Court has decided that the right to a speedy trial is not equivalent to the right to a prompt rendition of judgment.[60] Furthermore, the 1987 amendments explicitly lends support to the Court's decision.

Chief Justice Teehankee's reminder is however noted:

> [A]lthough a speedy determination of an action implies a speedy trial, speed is not the chief objective of a trial. Careful and deliberate consideration for the administration of justice, a genuine respect for the rights of all parties and the requirements of procedural due process...are more important than a race to end the trial.[61]

In civil cases, the speedy disposition of a case may not be as urgent as in criminal cases — there is no accused whose innocence is presumed. But where claims of laborers, for instance, are involved, and the case is not quickly disposed of, the courts may be depriving him of the means by which he makes his living. Hence, the Constitution recognizes the need for speedy disposition by making the periods for the disposition of both criminal and civil cases mandatory. Note, however, that there is a difference between the grant of a speedy trial in criminal and civil cases. In criminal cases, the accused is entitled to the relief of dismissal of the information with prejudice. In civil cases, the failure to arrive at the decision within the required period will not divest the court of jurisdiction.[62] The court must still resolve the case, unlike in the old rule where the decision appealed was deemed automatically affirmed and the petition was deemed automatically dismissed as a result of the inaction of the court.[63]

58. Lawan v. Moleta, 90 SCRA 579 (1979).

59. Conde v. Rivera, 45 Phil. 650 (1924).

60. BERNAS, COMMENTARY, *supra* note 49, at 460 (*citing* Talabon v. Iloilo Provincial Warden, 78 Phil 599 (1947), Acosta v. People, 98 Phil. 642 (1962); Cabarroguis v. San Diego, 6 SCRA 866 (1962)).

61. Amberti v. Court of Appeals, 89 SCRA 240 (1979).

62. ISAGANI CRUZ, CONSTITUTIONAL LAW 268 (1991) [*hereinafter* CRUZ, CONSTITUTIONAL LAW].

63. *Id.* (*citing* the 1973 PHIL. CONST. art. X, § 11, par. 2).

D. *Making Sense of Laoagan*

Judge Laoagan was not sanctioned because he failed to decide cases within the prescribed period of the Constitution. He was sanctioned because he suspended the hearing of some cases in his court since he wanted to resolve the cases involving special proceedings and criminal cases only. A cursory reading of the case will bring one to the conclusion that the judge was sanctioned because he anticipated the taking of an action by the Supreme Court. In Laoagan's impatience, he unwittingly overstepped the Supreme Court which exercises administrative supervision over all courts.[64] When the Supreme Court sanctioned this act, it made an implied recognition that the undefined rights of the parties in the suspended civil cases were being trampled upon.

Note that there was no specific finding of a violation of the required periods for the disposition of cases. But in exercising its administrative supervision, the Supreme Court was likewise concerned that the judge was already in delay. And the Court recognized that "delay in the disposition of cases erodes the faith and confidence of our people in the judiciary; lowers its standards and brings it into disrepute."

Laoagan is then consistent with the long line of cases holding inferior courts to the prescribed period for the disposition of cases.[65] But what is novel in *Laoagan* is the fact that even while there was yet no allegation of the judge having exceeded the mandatory periods of rendering the decision, the Court did not hesitate to find the judge administratively liable for anticipating the action to be taken by the Supreme Court.

Three reasons have been posited for the delay in the disposition of cases — the enormous number of actions filed in court for decision, the lack of dedication and industry on the part of the judges, and the difficulties inherent in the procedural laws.[66] Being the branch of the government which is mandated to settle disputes arising from laws, and being the branch which can do so most quickly — as legislation requires a lengthy process and execution requires the enactment of rules and regulations — the courts must acknowledge its unique position to be able to respond most quickly to social ills.

64. PHIL. CONST. art. VI, § 6 provides, "The Supreme Court shall have administrative supervision over all courts and the personnel thereof."

65. BERNAS, COMMENTARY, supra note 49, at 896. *See also* Bentulan v. Dumatol, 233 SCRA 168 (1994); Bongcaron v. Eisma, 237 SCRA 793 (1994); BPI v. Generoso, A.M. No. MTJ-94-907, October 25, 1995; Galvez v. Eduardo, 252 SCRA 570 (1996).

66. CRUZ, CONSTITUTIONAL LAW, *supra* note 62, at 283.

IV. OFFICIAL DECLARATIONS IN *Lacson v. Perez*

Lacson is the expected sequel to *Estrada v. Arroyo* after supporters of the ousted President refused the outcome of the political events. The case is hardly as popular as the Supreme Court's earlier affirmation of Arroyo's presidency, since it takes on a doctrine whose conception was in itself highly contested, that of the *doctrine of the continuing crime*, which first arose in *Umil v. Ramos*.[67] This part of the essay will evaluate the Court's treatment of the Declaration of a State of Rebellion of President Arroyo.

A. *The Case*

In view of the attack on Malacañang, President Arroyo, issued Proclamation No. 38 declaring 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. This case resolved four petitions filed which questions these arrests:

> (1) A petition for prohibition, injunction, *mandamus*, and *habeas corpus* filed by Panfilo M. Lacson, Michael Ray B. Aquino, and Cezar O. Mancao;
>
> (2) A petition for *mandamus* and/or review of the factual basis for the suspension of the privilege of the writ of *habeas corpus*, filed by Miriam Defensor-Santiago;
>
> (3) A petition for prohibition and injunction filed by Ronaldo A. Lumbao; and
>
> (4) A petition for *certiorari* and prohibition filed by the political party *Laban ng Demokratikong Pilipino*.

B. *Declaration of State of Rebellion Lifted*

It was unfortunate that on May 6, 2001, President Macapagal-Arroyo ordered the lifting of the declaration of a "state of rebellion" in Metro Manila. Accordingly, the petitions which alleged that the Declaration became a mechanism to justify the warrantless arrests were rendered moot and academic.

C. *The Court's Disposition of the Case*

There being no more justiciable issue in the case, one would question the applicability of *stare decicis* to the following declarations of the court since it

67. 187 SCRA 310 (1990).

was not the *obiter* but the *ratio* of the Court's rulings which "form part of the law of the land."

Still, the disposition of the case, penned by Mr. Justice Melo, is presented.

D. Validity of the Warrantless Arrests

Was there a valid warrantless arrest? In answering this, the Court agreed with the Secretary of Justice, Hernando Perez, that there was no particular order to arrest specific persons in connection with the "rebellion," and that the arrests were in compliance with general instructions to law enforcement officers and military agencies to implement Proclamation No. 38. Further,

> [I]t is already the declared intention of the Justice Department and police authorities to obtain regular warrants of arrests from the courts for all acts committed prior to and until May 1, 2001 which means that preliminary investigations will henceforth be conducted.[68]

The Court concluded that the warrantless arrest feared by petitioners is, thus, not based on the declaration of a "state of rebellion."

E. Premature Actions

The Court denied Senator Santiago and Mr. Lumbao's petitions where they claimed that they are under imminent danger of being arrested without warrant, holding that an individual subjected to warrantless arrest is not without adequate remedies in the ordinary course of law.[69] This militates against the nature of petitions for prohibition and *mandamus* since these special civil actions envision a situation where there is no more adequate remedy in law.

Likewise, the prayer of petitioners Lacson, Aquino, and Mancao to seek the courts to desist from arraigning and proceeding with the trial of the case,

68. *Lacson*, G.R. No. 147780.

69. "Such an individual may ask for a preliminary investigation under Rule 112 of the Rules of Court, where he may adduce evidence in his defense, or he may submit himself to inquest proceedings to determine whether or not he should remain under custody and correspondingly be charged in court. Further, a person subject of a warrantless arrest must be delivered to the proper judicial authorities within the periods provided in Article 125 of the Revised Penal Code; otherwise the arresting officer could be held liable for delay in the delivery of detained persons. Should the detention be without legal ground, the person arrested can charge the arresting officer with arbitrary detention. All this is without prejudice to his filing an action for damages against the arresting officer under Article 32 of the Civil Code."

considering that as of this date, no complaints or charges had been filed against any of the petitioners for any crime. In their prayer that the hold departure orders issued against them be declared null and void *ab initio*, the Court noted that the petitioners were not directly assailing the validity of the subject hold departure orders in their petition. They were not even expressing intention to leave the country in the near future.

Lastly, the Court ruled that petitioner Laban ng Demokratikong Pilipino was not a real party-in-interest. Not having been able to demonstrate any injury to itself which would justify resort to the Court, and being a juridical person which is not subject to arrest, it could not claim to be threatened by a warrantless arrest.

F. The President's Military Power

Petitioner Lumbao, leader of the People's Movement against Poverty (PMAP), argued that the declaration of a "state of rebellion" was not a valid Executive act, arguing that it was:

> ...violative of the doctrine of separation of powers, being an encroachment on the domain of the Judiciary which has the constitutional prerogative to "determine or interpret" what took place on May 1, 2001, and that the declaration of a state of rebellion cannot be an exception to the general rule on the allocation of the governmental powers.[70]

The Court refused to take cognizance of this argument. The Court recognized the military power of the President laid down in the Constitution which says that "[t]he 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...."[71] It quoted its own pronouncements in *IBP v. Zamora:*

> 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-

70. *Id.*

71. PHIL. CONST. art. VII, § 18.

> the-spot decisions may be imperatively necessary in emergency situations to avert great loss of human lives and mass destruction of property....

It continued, once again, pointing out the premature nature of the action:

> The Court, in a proper case, may look into the sufficiency of the factual basis of the exercise of this power. However, this is no longer feasible at this time, Proclamation No. 38 having been lifted.[72]

G. *The Court's Directive*

The Court then dismissed the petitions. But the Court had this to say:

> [R]espondents, consistent and congruent with their undertaking earlier adverted to, together with their agents, representatives, and all persons acting for and in their behalf, are hereby *enjoined from arresting petitioners therein without the required judicial warrant for all acts committed in relation to or in connection with the May 1, 2001 siege of Malacañang.*[73]

H. *Proclamation No. 38*

A well-orchestrated plan of still unknown masterminds was able to marshal a crowd numbering hundreds of thousands to storm Malacañang Palace and oust President Gloria Macapagal Arroyo by force. Hordes of protesters, burned cars and destroyed infrastructure became a reality a mere stone throw from Malacañang, the seat of government. It was this predicament that faced the President when she declared that the Philippines was in a state of rebellion.

What a state of rebellion precisely is, has been subject to much speculation and debate. It sounds like martial law, another technical term which brought with it several atrocities, in its last proclamation. It also sounds like the state of emergency, a situation which gives the President extraordinary powers. Foreign press described it as a means by which the President can order the warrantless arrests of certain individuals, and a time when the President can wield her commander-in-chief powers.[74] Militant groups proclaimed that this proclamation would bring about the much-feared martial law. Although the debate may be moot and academic at this point, since the state of rebellion had long been lifted, it is important first, to determine what the state of rebellion is not; second, to discern what is actually meant by the state of rebellion; third, to define the role of official proclamations in the Philippine legal system.

72. *Lacson*, G.R. No. 147780.

73. *Id.*

74. CNN, *Arroyo Declares State of Rebellion* www.cnn.com/2001/WORLD/asiapcf/southeast/05/01/philippines.estrada.01/ (last modified, May 1, 2001).

I. *Rebellion, Warrantless Arrests, Extraordinary Powers*

CNN described the state of rebellion, saying:

> The...state of rebellion gives the government greater power to end the violent protests. It allows officials, without an arrest warrant, to pick up people suspected of inciting or taking part in on-going anti-government activities. It's the first of three steps that the constitution says a president can take to maintain law and order. Subsequent steps are the suspension of *habeas corpus* (sic) rights for up to 60 days, and martial law.[75]

The description thus says that the state of rebellion (1) gives the President special powers, (2) authorizes the warrantless arrest of people suspected of participating or inciting anti-government activities, and (3) is a preliminary measure to maintain law and order, the succeeding steps being the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus*. This description bears further scrutiny.

First point, does the President indeed acquire additional powers by the sole act of declaring a state of rebellion? The Constitution provides that the President is the Commander-in-Chief of all the armed forces of the Philippines, and whenever necessary, he may call out the armed forces to prevent or suppress lawless violence, invasion or rebellion.[76] The exercise of commander-in-chief powers of the President is not subject to any condition. The President has control over the armed forces, whether war be declared or undeclared. And when he calls out the armed forces for the purposes provided for, his action is not even subject to judicial review.[77] Thus, it appears that the state of rebellion does not add anything to the President's powers.

The state of emergency is an entirely different concept, where Congress may authorize the President to exercise powers necessary to carry out a declared national policy.[78] The power, which Congress may grant, is actually a delegation of law-making authority — something jealously guarded by Congress as part of our system of separation of powers. The circumstances under which the state of emergency can be declared, and the corresponding emergency powers granted, are limited to war and other national emergency.

If the state of rebellion does not add anything to the President's powers, does it then allow officials to pick up people suspected of inciting or taking part in on-going anti-government activities without a warrant?

75. *Id.*

76. PHIL. CONST. art. VII, § 18.

77. BERNAS, COMMENTARY, *supra* note 49, at 783.

78. PHIL. CONST. art. VI, § 23 (2).

Regarding the second point, the law is unequivocal when it says that the right of the people against unreasonable searches and seizures shall be inviolable, and that arrests and searches are valid only in the presence of a valid warrant.[79] The rules on criminal procedure[80] provides instances when such arrests may be affected without warrants: where a person commits an *offense in flagrante delicto*, arrests in hot pursuit, and during escape from penal institutions. But to say that officials may pick up people *suspected* of crimes trifles with the right against arbitrary arrests. No one, whether private person or officer, has any right to make an arrest without warrant in the absence of actual belief, based on actual facts creating *probable cause* of guilt. Suspicion without cause can never justify an arrest.[81]

Can such arrests be made only in select occasions? Is any declaration required for such warrantless arrests? No. Warrantless arrests are everyday occurrences, and this is a tool used by the police in its fight against crime. Were the warrantless arrests of Senator Juan Ponce Enrile and Ambassador Ernesto Maceda then valid? It seemed that even the expansive media coverage failed to catch them committing a crime of any sort.

Except for the fact that when they stood on the podium in the so-called EDSA 3, *they made speeches which incited the crowd to attack Malacanang*. Such an attack would have the nature of an armed public uprising, for the purpose of depriving the Chief Executive of her powers — elements constituting the crime of rebellion,[82] the inciting of which constitutes the crime of inciting to rebellion.[83] And the much-criticized case *In re Umil vs. Ramos* declared that rebellion, subversion, conspiracy or proposal to commit such crimes, and crimes or offenses committed in furtherance thereof, or in connection therewith constituted direct assaults against the State and were in the nature of *continuing crimes*.[84] To paraphrase *Umil*, Enrile and Maceda did not become less rebellious simply because they were in their homes. So long as the arresting officers had probable cause to believe, based on personal knowledge, of facts or circumstances that they had committed the offenses, then they could be arrested, whether it was a state of rebellion or not.

Finally, is the proclamation of the state of rebellion indeed a preliminary step for the subsequent declaration of martial rule, or the suspension of the privilege of the writ of *habeas corpus*? It appears that the state of rebellion is

79. PHIL. CONST. art III, § 2.

80. Revised Rules of Criminal Procedure, Rule 113, § 5.

81. RICARDO J. FRANCISCO, CRIMINAL PROCEDURE: RULES OF COURT IN THE PHILIPPINES, RULES 110-127 198 (1996).

82. REVISED PENAL CODE. art. 134.

83. REVISED PENAL CODE. art. 138.

84. *In re* Roberto Umil, et al. vs. Fidel V. Ramos, et al., 187 SCRA 310 (1990).

not a prerequisite to either. Both are steps which the President may take in cases of either invasion or rebellion,[85] when for the time being, certain governmental agencies are unable to cope with existing conditions in a locality and civilian rule can no longer suffice.[86] And from the strict check and balance mechanisms which go along with the exercise of martial law and the suspension of the privilege of the writ of *habeas corpus*, it can even be argued that both are no longer a sole affair of the Executive.[87]

J. A Legal Superfluity?

At this point, the description submitted to analysis has been all but stripped of any usefulness. It appears that the state of rebellion is, as several commentators have described it, a mere legal superfluity which must, as soon as possible, be lifted and to never again be proclaimed. It gives the President no special powers, it is not needed to make valid warrantless arrests and it is not a preliminary step to martial law or the suspension of the privilege of the writ of *habeas corpus*. Thus far, we have defined the state of rebellion by saying what it is not. What is it then?

Perhaps, an analysis of the state of rebellion should start with the most simple. The state of rebellion is primarily a statement of fact. "Legally it simply means that in her judgment there is sufficient ground for suspending the privilege of the writ or imposing martial law," says Fr. Joaquin Bernas.[88] Does this contradict the earlier conclusion that the state of rebellion is not a preliminary step for martial law?

No. The state of rebellion is simply a declaration that in the President's opinion, rebellion has transpired in the nation. The proclamation is not a requisite for the imposition of martial law — it is *actual* rebellion which is required. Thus, it is to be noted that no such proclamation preceded Proclamation No. 1081 of President Ferdinand E. Marcos.

Given that the proclamation of the state of rebellion is for all intents and purposes, an innocuous act where a situation was merely baptized with a name,[89] it seems strange that the proclamation was faced with harsh opposition. Even the diplomatic community voiced concerns that the

85. PHIL. CONST. art. VII, §18.

86. BERNAS, COMMENTARY, *supra* note 49, at 786.

87. *Id.* at 803.

88. Joaquin G. Bernas, *President GMA's Emergency Powers*, *at* <http://www.cybertambayan.com/issue/gobyerno/archives/emergency.html> (last modified July 6, 2001) [hereinafter Bernas, Article].

89. *Id.*

declaration is "only a step or two away from martial law,"[90] according to a top official of the Department of Foreign Affairs. Thus, they demanded the lifting of the declaration to convince the international community of stability in the country.[91] A legal superfluity which "scared away investors and other nervous types or messianic types"[92] — but was it a rash and indecisive move on the part of the President? A look into the extralegal and legal background of the President Arroyo's proclamation is worth taking.

The attack on Malacañang on May 1, 2001 was the culmination of a five day long protest movement against the arrest of ousted President Estrada. President Estrada's supporters staged their own People Power movement, visited by various personalities from the opposition's senatorial candidates, local show business personalities, and supporters. But this was a People Power movement that lacked the sobriety of its earlier incarnations. "*Sugod*" was the battle cry of the crowd and it was their ultimate aim. Still, the government promised "ultra-maximum tolerance" in the handling of this affair.

But when it seemed that "ultra-maximum tolerance" had been misinterpreted as weakness when the EDSA forces stormed the Presidential residence, something more had to be done. It was necessary for the government to give a statement that while it recognized the concerns of the protesters as legitimate, attacking the Palace armed with weapons was not a legitimate means of making the government aware of their concerns. Thus, the purpose then behind President Arroyo's proclamation — is to give notice to everyone that her government meant business. Does this extralegal solution to the problem have a legal basis? In other words, was the proclamation constitutional?

Jurisprudence gives us the answer. Although the Constitution gives an enumeration of certain executive powers, it is by no means an exclusive and exhaustive enumeration. The broad sweep of executive power has been laid out generously by the Supreme Court in *Marcos vs. Manglapus*.[93] The power that the Constitution and legal tradition gives the President is not merely the authority to execute the laws; the power to determine foreign relations policy is another. If the chief executive deemed that national peace and order outweighed keeping the foreign investors, then she was merely exercising her mandate.

90. *Id.*

91. Rocky Nazareno and Andrea T. Echavez, *'State of rebellion' worries diplomats* (last modified May 3, 2001), *at* <http://www.inq7.net/nat/2001/may/04/nat_31.htm> [hereinafter Nazareno].

92. Bernas, Article, *supra* note 88.

93. Marcos vs. Manglapus, 177 SCRA 668 (1989)

But was the government entirely blameless in the confusion that ensued upon the proclamation of the state of rebellion? When the proclamation was first made, there was no attempt to explain just what the state of rebellion precisely is. Even government officials vary in their interpretation. In a meeting with diplomats, Vice President Teofisto Guingona said that the proclamation empowered the President to deal with would-be power grabbers.[94] On the other hand, Senator Raul Roco had this to say: "The problem is that they are confusing the public. First, the state of rebellion is not a legal term; it is merely descriptive. Then they mixed rebellion with warrantless arrests when they know that warrantless arrest is in the Rules of Court."[95]

It seems that as with all government policy, transparency and integrity have become the primary standards that the citizenry has set. Even a legitimate exercise of executive power by the President may become arbitrary and unscrupulous when it is hidden beneath layers of subterfuge.

K. The Court's Treatment of the Executive Proclamation

The Court did not rule on the validity of Proclamation No. 38, simply noting that it had already been lifted, rendering the petitions moot. But by ruling that the petitions were rendered moot *because of the lifting of the Proclamation*, does it implicitly grant validity to the proclamation?

Official actions, such as the decision of a judge or the actions of a law enforcement officer, are granted great weight by the courts — such that abuse of discretion will not justify the overruling of such act.[96] Although there may be abuse of discretion in issuing an order, it does not necessarily follow that there is bad faith or that said abuse of discretion signifies ignorance of the law,[97] and mere error of judgment cannot serve as basis for a charge of knowingly rendering an unjust judgment, where there is no proof or even allegation of bad faith, or ill motive, or improper consideration.[98]

Thus, it appears that if there were a direct attack against the validity of the proclamation, the Court would not have ruled against the validity of the proclamation.

94. Nazareno, *supra* note 91.

95. *Id.*

96. LUIS B. REYES, II THE REVISED PENAL CODE: CRIMINAL LAW 359 (1998 ed.).

97. *Id.*

98. *Id.*

L. Future Executive Proclamations

Knowing the stance of the courts in the issue on the validity of official proclamations is important since proclamations usually make the actions of certain government institutions imperative. Proclamations, then, appear to be a good sign in a society where bureaucratic action, more often than not, proceeds at the pace of a turtle stuck in molasses. Despite this recognition, proclamations must be given with the public perception thereof in mind. What then are the guidelines that may serve to guide such a proclamation?

First, the state of rebellion is a mere statement of a fact, and this is something which must be made explicit, should such proclamation again be made. It gives the President no additional powers and it does not authorize the arrests of people on mere suspicion — simply put, the laws of the land still govern.

Second, the state of rebellion is not tantamount to either martial law or the suspension of the privilege of the writ of *habeas corpus*. They are not preliminary steps of any sort to any action. But it is to be noted that the President can just as easily institute the two measures, subject to the legal considerations.

And lastly, judging from the confusion that the last proclamation caused, the government should exercise this power with greater discretion. The possible reaction of the public, who at that time would already be panic-stricken, should be weighed against the gains for national security.

V. CONCLUSION

Mr. Justice Cruz comments, in the preface to his treatise on Philippine Political Law, that the rulings incorporated are reflective of a "Judiciary grown increasingly activist in the definition of government authority and the restriction of the seats of power."[99] The same observation may be made of the three rulings under the focus of our analysis.

In implementing the Law on Public Officers, the Court still holds public officers strictly to their sworn duty. Mr. Justice Cruz explains:

> Article XI of the new Constitution begins with a platitude, to wit: "Public office is a public trust." While perhaps belonging more appropriately to a political speech rather than the fundamental law, this hackneyed statement nonetheless does not lose any validity because of its triteness. The framers of the Constitution probably believed...that there was a necessity to perpetuate this reminder of the nature of the mandate reposed in all public officers by the sovereign people.... This is perhaps why the provision goes on to say that "public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives."[100]

99. ISAGANI CRUZ, PHILIPPINE POLITICAL LAW 321 (1991) [hereinafter CRUZ, POLITICAL LAW].

Thus, while the Court acknowledges the benefits brought to social stability by executive immunity,[101] and implicitly stated that it would extend immunity to a non-sitting President,[102] it is indignant when it proclaims that the cases filed against the petitioner Estrada were criminal in nature, involving plunder, bribery, and graft and corruption. "By no stretch of the imagination can these crimes, especially plunder which carries the death penalty, be covered by the allege (sic) mantle of immunity of a non-sitting President."[103]

In the same way, when a judge proceeds to suspend all cases in his court in order to dispose of the cases pending in his court before his transfer, the courts will sanction him even if he is in good faith, as Judge Laoagan was. Even those of provisional remedies, criminal cases involving detention prisoners and promulgation of judgments were permitted to proceed, the Constitution does not guaranty only the rights of the accused — the right to speedy trial is granted to all.

However, if an executive proclamation is made which causes confusion as to its effects and implications, the court will turn a blind eye towards its effects and grant it validity in status. The courts will not sanction abuse of discretion where there is no evident bad faith, ill motive, or improper consideration.

The policy of the Supreme Court with regard to cases involving public officers is thus discernible. The Court will not countenance any malfeasance on the part of the public officers. When the error is not in the official character of the public officer's duties, the Court will not hesitate to hold the public officer liable as an ordinary citizen. When the error is one which violates basic laws of citizens, the court will not hesitate to sanction the public officer. The Court, as with all citizens, is imploring public officers to perform their duties. It will then hold those public officers who fall below the minimum requirements to task. But when the public officer should perform his duty, the courts will hesitate to strike down their actions as

100. CRUZ, POLITICAL LAW, *supra* note 99, at 324.

101. *Estrada*, G.R. No. 146738.

102. *Id.* For indeed, executive immunity that is limited to the tenure of the President would not be effective, since disgruntled individuals can very well bring the action after the term of the President.

103. *Id.*

invalid, even though there may be abuse of discretion. The Court will put their trust on the public officer who errs while performing their duties.

When the courts "countenance" the abuse of discretion by public officers, it is not a concept novel to the Law on Public Officers. The Business Judgment Rule in Corporate Law is a similar concept. Directors who willfully and knowingly vote for or assent to *patently* unlawful acts or those who are guilty of *gross* negligence or bad faith shall be jointly and severally liable for damages.[104] Thus, it appears that when directors are merely negligent, they cannot be made personally liable. The negligence has to be to a *gross* extent before there can be liability.[105] Another example that can be drawn from Corporate Law is Atty. Cesar Villanueva's interpretation of the penal provisions of the Corporation Code. Although the provision,[106] seems to penalize the violation of any of the provisions of the Code, Atty. Villanueva writes that only the violation of Sec. 74 of the Code by the corporation's officers shall be punishable by fine and imprisonment, when they refuse to allow any director, trustee, stockholder, or member to examine or copy excerpts from its records.[107] Note that both the Business Judgment Rule and the interpretation of Sec. 74 apply only in the dealings of the corporate officer and the stockholder. It does not apply in the dealings of a corporation with another entity.

These examples are in stark contrast to the concepts found in the Civil Code, where an individual is immediately called upon to pay damages when his acts or omissions cause injury to another, there being fault or negligence on his part.[108] Can a similar analogy be made with regard to the actions of public officers? The personalities involved in the three cases discussed above are all public officers. Would the Supreme Court have decided differently if the interests of private citizens were involved? Stated differently, when public officers violate the constitutional rights of private citizens, will their action enjoy the same benefit of the doubt?

This question does not appear to require in-depth investigation — the immediate *and proper* response should be that the actions of public officers

104. Batas Pambansa Blg. 68, § 31 (1980).

105. CESAR L. VILLANUEVA, PHILIPPINE CORPORATE LAW 322 (2001) [hereinafter VILLANUEVA].

106. Corporation Code, § 144, which states, "Violations of the Code. — Violations of any of the provisions of this Code or its amendments not otherwise specifically penalized therein shall be punished by a fine of not less than one thousand pesos but not more than ten thousand pesos or by imprisonment for not less than thirty days but not more than five years, or both, in the discretion of the court...."

107. VILLANUEVA, *supra* note 105, at 872.

108. CIVIL CODE. art. 2176.

should not be countenanced in the face of a violation of the constitutional rights of private citizens. All citizens should be cautioned by the ruling of *People v. Lacson*,[109] where the Supreme Court dismissed the criminal information against Senator Lacson in the *Kuratong Baleleng* "rub-out" in accordance with Section 8, Rule 117 of the Rules on Criminal Procedure, if two years had already elapsed.[110] Were there other policy considerations involved in this decision?

In a time when society is demanding official action, where any kind of official action enjoys public acceptance, and citizens demand greater visibility of their chosen leaders, the policy of the Supreme Court is thus appropriate. But this policy might make the court remiss in its duty as the final arbiter of all disputes — while the courts must contribute in governance, its primary duty is not governance, but the interpretation of law. It is the last bastion of justice and democracy, having been vested with the power to strike down law and executive action as invalid. The darkest era of Philippine history was when the Judiciary was remiss in this duty.[111] Thus, the policy of the courts concerning public officers must be constantly evaluated, bearing in mind the needs of the society at large.

109. G.R. No. 149453, May 28, 2002.

110. The reckoning date of the two year period is first to be determined: "The reckoning date of the 2-year bar has to be first determined — whether it is from the date of the Order of then Judge Agnir dismissing the cases or from the dates the Order were received by the various offended parties or from the date of the effectivity of the new rule," so the case was remanded to the Regional Trial Court for the determination thereof.

111. *See* Chan-Gonzaga, *supra* note 2, at 226.