

ROQUE GUMAUA, PETITIONER, VS. MAJOR GENERAL ROMEO ESPINO, IN HIS CAPACITY AS CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIPPINES AND MILITARY COMMISSION NO. 2, RESPONDENTS.*G.R. Nos. L-36188-37586. February 29, 1980*

Ponente: MAKASIAR, J.

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G.R. No. L-36188

Petitioner Roque Gumaua filed on January 26, 1973 this petition for prohibition and mandamus with restraining order and preliminary injunction against Major General Romeo Espino as Chief of Staff of the Armed Forces of the Philippines and Military Commission No. 2, challenging the validity of the creation and jurisdiction over him as a civilian of respondent Military Commission No. 2. He avers in his petition that on October 23, 1972, he was arrested in his house in Tarlac for alleged complicity in the kidnapping of Ty Ben Seng by NBI agents who allegedly forcibly extracted from him a confession; that he was not assisted by counsel during the preliminary investigation; that on November 21, 1972, Lt. Col. Mariano Manlangit, JAGO prosecutor, formally filed the charge against him together with Sgt. Aguinaldo Cordova, Sgt. Barbelonio Casipi, Raymundo Adarme Co, Antonio Fernandez, Rodrigo Halasan, Rudy Sierra, Rene Segovia, Pedring Arceo, for kidnapping Ty Ben Seng for ransom, which was docketed as Criminal Case No. MC-2-4 before respondent Military Commission No. 2; that respondent military commission set the case for continuous hearing from January 30, 1973 after having published on January 4, 11 and 18, 1973 the notice of hearing in the Evening Express -- a daily newspaper of general circulation -- in order to acquire jurisdiction over Sgt. Barbelonio Casipi, Rudy Sierra, Rene Segovia and Pedring Arceo; that the respondents be prohibited from proceeding with the trial of Criminal Case No. MC-2-4 insofar as he is concerned and directed to exclude him as defendant in said criminal case as he is a civilian on the grounds that (a) military tribunals cannot try civilians if civil courts are open; (b) the President cannot deprive the civil courts of their jurisdiction to try criminal cases involving civilians; (c) as a civilian, he is entitled even during Martial Law to his constitutional right to counsel during the preliminary investigation, to be subject to the jurisdiction of the courts only upon his arrest or voluntary submission, to bail except in capital offenses when the evidence of guilt is strong, to be tried by a Judge trained in the law, to examine the evidence in the possession of the prosecution, to be tried according to the rules of court on evidence, to automatic review of his case by the Supreme Court if sentenced to death; (d) General Order No. 12-A defining the jurisdiction of the military commissions has not been validated by the New Constitution which has not been ratified by a plebiscite, as the referendum held pursuant to Presidential Decree No. 86 was not sufficient compliance with the amending process prescribed by the 1935 Constitution, which process is binding on the people; and (e) Section 8 of Article II of the 1973 Constitution expressly affirming civilian supremacy over the military should prevail over Section 3(2) of Article XVII on Transitory Provisions of the 1973 Constitution, because a specific provision controls a general one which incorporates general orders and decrees by reference, in case of conflict between two

provisions, constitutional rights should prevail, and the preamble of the New Constitution negates the power of military tribunals to try civilians.

Neither a restraining order nor a preliminary injunction was issued.

In their comment, filed on February 23, 1973, respondents affirm (1) the authority of the President pursuant to his Martial Law powers to promulgate General Orders Nos. 8, 12 and 12-A as well as Presidential Decree No. 39; (2) that the validity of General Orders Nos. 8, 12 and 12-A cannot be questioned in court; (3) that the New Constitution was validly ratified; (4) that the validity of the said orders and all other orders and decrees has become moot and academic as the New Constitution is now in force and effect; and (5) that trial of civilians by military commissions is not a violation of the principle of civilian supremacy over the military.

The said comment likewise recounted that:

"The investigation of the case was initiated by Felicitas Ty, daughter of victim Ty Ben Seng, who complained to the authorities that her father was kidnapped by unknown persons. Based on information by confidential informants, NBI agents conducted surveillance in the vicinity of Republic Super Market where a group of suspicious looking persons was making telephone calls in a bakery located at 739 Florentino Torres. On October 23, 1972, the same persons went to the same bakery and made telephone calls at the precise time they promised to call up Felicitas Ty.

"After leaving the place, the NBI agents conducting the surveillance apprehended them and invited them for interview. During the interview, they gave their names as T/Sgt. Aguinaldo Cordova y Ducayan of the Philippine Constabulary and Raymundo Co y Adarme. After admitting their participation in the kidnapping, they were forthwith placed under arrest.

"During the investigation, Sgt. Cordova and Mr. Co told the investigators that the victim is in a house in a barrio in San Clemente, Tarlac. The above accused, accompanied by the NBI agents, pointed to the house where the victim was being kept. Said house is owned by herein petitioner, Roque Gumaua, who used to be a co-soldier of Sgt. Aguinaldo Cordova in Camp Olivas. Upon entering the house, the NBI agents found the victim inside a big cage in the ground floor of the house. Guarding him was accused Rodrigo Halasan, a long-time friend of petitioner Gumaua.

"All the accused and the victim were brought to Manila where they gave sworn written statements. The petitioner gave his at the Office of the National Bureau of Investigation on Taft Avenue." (pp. 78-79, rec.).

On March 7, 1973, petitioner filed his reply to the comment of the respondents, who in turn filed on April 17, 1973 their rejoinder, to which petitioner filed on May 8, 1973 his sur-rejoinder.

Because respondents were not enjoined by this Court from proceeding with the trial of the said criminal case, respondents continued with the hearing at which all the accused were assisted by military and civilian counsel. After trial, the respondent Military Commission No. 2 on March 16, 1973 pronounced as guilty Roque Gumaua y Lanario, Rodrigo Halasan y Altoveros, T/Sgt. Aguinaldo Cordova y Ducayin, Sgt. Barbelonio Casipi, Rudy Sierra and Rene Segovia and sentenced them to death by musketry. The said order was approved by the President of the Philippines, who issued the order of execution dated September 28, 1973 (Annex 1, p. 34, Rec. of L-37586).

G. R. No. L-37586

On October 5, 1973, petitioners Roque Gumaua and Rodrigo Halasan filed this petition for habeas corpus, certiorari, prohibition and mandamus with restraining order and preliminary injunction against respondents Brig. General Rafael Zagala as Military Commander of Fort Bonifacio, General Romeo Espino as Chief of Staff of the Armed Forces of the Philippines, Hon. Juan Ponce Enrile as Secretary of National Defense, and Military

Commission No. 2, restating the grounds in L-36188 and adding that the proceedings in Criminal Case No. MC-2-4 are void; because (1) the alleged confessions of the petitioners were admitted in evidence in violation of their constitutional rights and (2) petitioners were deprived of their constitutional right to confront the witnesses against them.

In their return to the writ filed on October 17, 1973, respondents through the Solicitor General likewise incorporated by reference their arguments in their comment in L-36188 and added that: (1) Proclamation No. 1081 declaring Martial Law expressly includes the suspension of the privileges of the writ of habeas corpus especially concerning the crimes specified in said proclamation including kidnapping, although the proclamation of Martial Law necessarily implies such suspension; (2) the Supreme Court has no jurisdiction to review the affirmance by the President of the decision of conviction rendered by the respondent military tribunal; (3) petitioners were afforded a fair trial before the military commission - procedural safeguards protecting their rights were obeyed and a full, thorough and adequate review of the sentence of conviction was made by the proper reviewing authorities; and (4) all proclamations, orders, decrees, instructions and acts promulgated, issued or done by the incumbent President are now part of the law of the land and shall remain valid, binding and effective even after the lifting of martial law or after the ratification of the 1973 Constitution pursuant to Section 3(2) of Article XVII thereof, which took effect and became in force and operative since January 17, 1973 (*Javellana vs. Executive Secretary*, L-36142, March 31, 1973).

The parties expanded their arguments in their respective memoranda.

I

There is need of re-stating the established doctrines decisive of the issues raised in these two cases.

WE ruled:

- That the 1973 Constitution has been validly ratified by the sovereign people and is now in full force and effect (*Aquino, Jr., et al. vs. Comelec*, L-40004, January 31, 1975, 62 SCRA 275, 295; *Aquino vs. Enrile, et al.*, 59 SCRA 183, 240-242; *In re Diokno and other cases*, G.R. Nos. L-35546, 35538, 35539, 35540, 35547, 35556, 35567, 35571, 35573, Sept. 17, 1974, 59 SCRA 183; *Javellana vs. Executive Secretary*, G.R. No. L-36142, March 31, 1973, 50 SCRA 30);
- That Proclamation No. 1081 placing the entire country under martial law is valid (*Aquino, Jr. vs. Comelec*, supra; *Aquino vs. Enrile, et al.*, and other cases, supra; *Javellana vs. Executive Secretary*, supra);
- That the proclamation of martial law automatically suspends the privileges of the writ of habeas corpus (*Aquino vs. Enrile*, supra, and other cases, supra, 242-243);
- That the President of the Philippines, "as Commander-in-Chief and as enforcer or administrator of martial law, x x x can promulgate proclamations, orders and decrees during the period of martial law essential to the security and preservation of the Republic, to the defense of the political and social liberties of the people, and to the institution of reforms to prevent the resurgence of rebellion or insurrection or secession or the threat thereof as well as to meet the impact of a world wide recession, inflation or economic crisis which presently threatens all nations including highly developed countries x x x" (*Aquino, Jr. vs. Comelec*, supra 298);
- That the President of the Philippines, as legislator during the period of martial law, can legally create military commissions or courts martial to try, not only members of the armed forces, but also civilian offenders, for specified offenses including kidnapping (*Go vs. Olivas*, 74 SCRA 230, 234; *Aquino vs. Enrile, et al.*, 59 SCRA 183, 240); and

- That Section 20, Article IV of the 1973 Constitution, which grants for the first time to a person under investigation for the commission of an offense the right to remain silent and to counsel and to be informed of such right and renders inadmissible as evidence any confession obtained in violation of such right, is prospective in effect and does not apply to a confession obtained before the ratification of the New Constitution on January 17, 1973, even if such confession is presented as evidence at the trial held after such ratification of the New Constitution (Magtoto vs. Hon. Miguel Manguera, et al., G.R. Nos. L-37301-02; Simeon, et al. vs. Hon. Onofre Villaluz, G.R. No. L-37424; People vs. Hon. Asaali S. Isnani, et al., G.R. No. L-38929, March 3, 1975, 63 SCRA 4, 17-21; Cudiamat vs. People, L-47753, July 25, 1978; People vs. Molleda, L-34248, December 12, 1978).

Thus, in *Aquino, Jr. versus Comelec, supra*, We enunciated:

"x x x (T)hat there is no further judicial obstacle to the new Constitution being considered in force and effect.' As Chief Justice Makalintal stressed in the Habeas Corpus cases, the issue as to its effectivity 'has been laid to rest by Our decision in Javellana versus Executive Secretary (L-36142, March 31, 1973, 50 SCRA, 30, 141), and of course by the existing political realities both in the conduct of national affairs and in our relations with other countries' (Aquino, Jr. vs. Enrile and 8 companion cases, L-35546, L-35538-40, L-35547, L-35556, L-35571 and L-35573, Sept. 17, 1974, 59 SCRA 183, 241).

"In the aforesaid Habeas Corpus cases, We affirmed the validity of Martial Law Proclamation No. 1081 issued on September 22, 1972 by President Marcos because there was no arbitrariness in the issuance of said proclamation pursuant to the 1935 Constitution; that the factual bases had not disappeared but had even been exacerbated; that the question as to the validity of the Martial Law proclamation has been foreclosed by Section 3(2) of Article XVII of the 1973 Constitution, which provides that 'all proclamations, orders, decrees, instructions and acts pro-mulgated, issued or done by the incumbent President shall be part of the law of the land and shall remain valid, legal, binding and effective even after the lifting of Martial Law or the ratification of this Constitution x x x'; and that 'any inquiry by this Court in the present cases into the constitutional sufficiency of the factual bases for the proclamation of Martial Law, has become moot and purposeless as a consequence of the general referendum of July 27-28, 1973. The question propounded to the voters was: "Under the (1973) Consti-tution, the President, if he so desires can continue in office beyond 1973. Do you want President Marcos to continue beyond 1973 and finish the reforms he initiated under Martial Law?" The overwhelming majority of those who cast their ballots, including citizens beyond 15 and 18 years, voted affirmatively on the proposal. The question was thereby removed from the area of pre-sidential power under the Constitution and transferred to the seat of sovereignty itself. Whatever may be the nature of the exercise of that power by the President in the beginning - whether or not purely political and therefore non-justiciable - this Court is precluded from applying its judicial yardstick to the act of the sovereign' (Aquino, Jr. vs. Enrile, supra, 59 SCRA 183, 240-242)" [62 SCRA 295-296, under-scoring supplied].

Chief Justice Makalintal stressed:

"x x x. The factual bases for the suspension of the privilege of the writ of habeas corpus, particularly in regard to the existence of a state of rebellion in the country, had not disappeared, indeed had been exacerbated, as events shortly before said proclamation clearly demonstrated. On this point the Court is practically unanimous; Justice Teehankee merely refrained from discussing it.

"XXXXXXXXXXXXX.

"In the first place I am convinced (as are the other Justices), without need of receiving evidence as in an ordinary adversary court proceeding, that a state of rebellion existed in the country when Proclamation No. 1081 was issued. It was a matter of contemporary history within the cognizance not only of the courts but of all observant people residing here at the time. Many of the facts and events recited in detail in the different 'Whereases' of the proclamation are of common knowledge. The state of rebellion continues up to the present. The argument that while armed hostilities go on in several provinces in Mindanao there are none in other

regions except in isolated pockets in Luzon, and that therefore there is no need to maintain martial law all over the country, ignores the sophisticated nature and ramifications of rebellion in a modern setting. It does not consist simply of armed clashes between organized and identifiable groups on fields of their own choosing. It includes sub-version of the most subtle kind, necessarily clandestine and operating precisely where there is no actual fighting. Underground propaganda, through printed newssheets or rumors disseminated in whispers; recruit-ment of armed and ideological adherents, raising of funds, procurement of arms and material, fifth-column activities including sabotage and intelligence - all these are part of the rebellion which by their nature are usually conducted far from the battle fronts. They cannot be counteracted effectively unless recognized and dealt with in that context.

"Secondly, my view, which coincides with that of other members of the Court as stated in their opinions, is that the question of validity of Proclamation No. 1081 has been foreclosed by the transitory provisions of the 1973 Constitution [Art. XVII, sec. 3(2)] that 'all proclamations, orders, decrees, instructions, and acts promulgated, issued, or done by the incumbent President shall be part of the law of the land and shall remain valid, legal, binding and effective even after the ratification of this Constitution' To be sure, there is an attempt in these cases to resuscitate the issue of the effectivity of the new Constitution. All that, however, is behind us now. The question has been laid to rest by our decision in *Javellana vs. Executive Secretary* (L-36142, 50 SCRA 30, March 31, 1973), and of course by the existing political realities both in the conduct of national affairs and in our relations with other countries.

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"Finally, the political-or-justiciable question controversy - indeed, any inquiry by this Court in the present cases into the constitutional sufficiency of the factual bases for the proclamation of martial law - has become moot and purpose-less as a consequence of the general referendum of July 27-28, 1973. The question propounded to the voters was: 'Under the (1973) Constitution, the President, if he so desires, can continue in office beyond 1973. Do you want President Marcos to continue beyond 1973 and finish the reforms he initiated under Martial Law?' The overwhelming majority of those who cast their ballots, including citizens between 15 and 18 years, voted affirmatively on the proposal. The question was thereby removed from the area of presidential power under the Constitution and transferred to the seat of sovereignty itself. Whatever may be the nature of the exercise of that power by the President in the beginning - whether or not purely political and therefore non-justiciable - this Court is precluded from applying its judicial yardstick to the act of the sovereign.

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"It need only be added that, to my mind, implicit in a state of martial law is the suspension of the said privilege with respect to persons arrested or detained for acts related to the basic objective of the proclamation, which is to suppress invasion, insurrection, or rebellion, or to safeguard public safety against imminent danger thereof. The preservation of society and national survival take precedence. On this particular point, that is, that the proclamation of martial law automatically suspends the privilege of the writ as to the persons referred to, the Court is practically unanimous. Justice Fernando, however, says that to him that is still an open question; and Justice Muñoz Palma qualifiedly dissents from the majority in her separate opinion, but for the reasons she discusses therein votes for the dismissal of the petition" (*Aquino, Jr. vs. Enrile*, 59 SCRA 183, 240, 241, 242, 243, underscoring supplied; see also the concurring opinions of then Justice, now Chief Justice, Castro, Justice Antonio and Justice Esguerra).

In the *Magtoto*, *Simeon* and *Isnani* cases, *supra*, WE held:

". . . . (T)hat this specific portion of this constitutional mandate has and should be given a prospective and not a retrospective effect. Consequently, a confession obtained from a person under investigation for the commission of an offense, who has not been informed of his right (to silence and) to counsel, is inadmissible in evidence if the same had been obtained after the effect-ivity of the new Constitution on January 17, 1973.

Conversely, such confession is admissible in evidence against the accused, if the same had been obtained before the effectivity of the New Constitution, even if presented after January 17, 1973, and even if he had not been informed of his right to counsel, since no law gave the accused the right to be so informed before that date.

"When invoked in this jurisdiction, however, the Miranda rule was rejected by this Court. In the cases of *People vs. Jose* (37 SCRA 450, February 6, 1971) and *People vs. Paras* (56 SCRA 248, March 29, 1974), We rejected the rule that an extrajudicial confession given without the assistance of counsel is inadmissible in evidence. This Court in the *Jose* case (as in the *Paras* case), held:

"The inadmissibility of his extrajudicial statements is likewise being questioned by *Jose* on the other ground that he was not assisted by counsel during the custodial interrogations. He cites the decisions of the Supreme Court of the United States in *Massiah vs. U.S.* (377 U.S. 201), *Escobedo vs. Illinois* (37 U.S. 478) and *Miranda vs. Arizona* (384 U.S. 436)."

"That provision of the Constitution of the Philippines in point is Article III (Bill of Rights), Section 1, par. 17 of which provides: 'In all criminal prosecutions the accused shall x x x enjoy the right to be heard by himself and counsel x x x.' While the said provision is identical to that in the Constitution of the United States, in this jurisdiction the term criminal prosecutions was interpreted by this Court in *U.S. vs. Beechman*, 23 Phil. 258 (1912), in connection with a similar provision in the Philippine Bill of Rights (Section 5 of Act of Congress of July 1, 1902), to mean proceedings before the trial court from arraignment to rendition of the judgment. Implementing the said Constitutional provision, We have provided in Section 1, Rule 115 of the Rules of Court that 'In all criminal prosecutions the defendant shall be entitled x x x (b) to be present and defend in person and by attorney at every stage of the proceedings, that is, from the arraignment to the promulgation of the judgment.' The only instances where an accused is entitled to counsel before arraignment, if he so requests, are during the second stage of the preliminary investigation (Rule 112, Section 11) and after the arrest (Rule 113, Section 18). The Rule in the United States need not be unquestioningly adhered to in this jurisdiction, not only because it has no binding effect here, but also because in interpreting a provision of the Constitution the meaning attached thereto at the time of the adoption thereof should be considered. And even there the said rule is not yet quite settled, as can be deduced from the absence of unanimity in the voting by the members of the United States Supreme Court in all the three above-cited cases' (*People vs. Jose*, supra, 472)."

"The Constitutional Convention at the time it deliberated on Section 20, Article IV of the New Constitution was aware of the *Escobedo* and *Miranda* rule which had been rejected in the case of *Jose*. That is the reason why the *Miranda-Escobedo* rule was expressly included as a new right granted to a detained person in the present provision of Section 20, Article IV of the New Constitution.

"When Delegate de Guzman (A) submitted the draft of this Section 20, Article IV to the October 26, 1972 meeting of the 17-man committee of the Steering Council, Delegate Leviste (O) expressly made of record that 'we are adopting here the rulings of US Supreme Court in the *Miranda-Escobedo* cases.' And We cannot agree with the insinuation in the dissenting opinion of Justice Castro that the delegates did not know of the existence of the second paragraph of Art. 125 of the Revised Penal Code.

"Hence, We repeat, this historical background of Section 20, Article IV of the New Constitution, in Our considered opinion, clearly shows that the new right granted therein to a detained person to counsel and to be informed of such right under pain of his confession being declared inadmissible in evidence, has and should be given a prospective and not a retroactive effect. It did not exist before its incorporation in our New Constitution, as We held in the *Jose* and *Paras* cases, supra.

"The authors of the dissenting opinions ignore the historical fact that the constitutional and legal guarantees as well as the legal precedents that insure that the confession be voluntary, underwent a slow and tedious development. The constitutional guarantee in question might indeed have come late in the progress of the law on

the matter. But it is only now that it had come under Section 20 of Article IV of the 1973 Constitution. That is all that our duty and power ordain Us to proclaim; We cannot properly do more.

"Furthermore, to give a retroactive effect to this constitutional guarantee to counsel would have a great unsettling effect on the administration of justice in this country. It may lead to the acquittal of guilty individuals and thus cause injustice to the People and the offended parties in many criminal cases where confessions were obtained before the effectivity of the New Constitution and in accordance with the rules then in force although without assistance of counsel. The Constitutional Convention could not have intended such a disastrous consequence in the administration of justice. For if the cause of justice suffers when an innocent person is convicted, it equally suffers when a guilty one is acquitted.

"Even in the United States, the trend is now towards prospectivity. As noted in the memorandum of the Solicitor General:

"x x x That survey indicates that in the early decisions rejecting retroactivity, the United States Supreme Court did not require 'pure prospectivity'; the new constitutional requirements there were applied to all cases still pending on direct review at the time they were announced (See *Linkletter vs. Walker*, 381 U.S. 618 [1965] (on admissibility of illegally-seized evidence); *Tehan vs. Shott*, 382 U.S. 406 (1966) [on the self-incrimination rule of *Griffin vs. California*, 380 U.S. 609 (1965)]. But the Court began a new course with *Johnson vs. New Jersey*, 384 U.S. 719 (1966). It departed from *Linkletter* and *Tehan* and came closer to 'pure prospectivity' by refusing to permit cases still pending on direct review to benefit from the new in-custody interrogation requirements of *Miranda vs. Arizona*. As Chief Justice Warren observed in *Jenkins vs. Delaware*, 395 U.S. 213 (1969), 'With *Johnson* we began increasing emphasis upon the point at which law enforcement officials relied upon practices not yet prescribed.' 'More recently,' he continued, 'we have selected the point of initial reliance.' That development began with *Stovall vs. Denno*, 388 U.S. 293 (1967) (on the line-up requirements of *United States vs. Wade*, 388 U.S. 218 (1967) and *Gilbert vs. California*, 388 U.S. 263 (1967)). These new rulings were held applicable only in the immediate cases 'and all future cases which involve confrontation for identification purposes conducted in the absence of counsel after the dates of *Wade* and *Gilbert*.' The fact that *Wade* and *Gilbert* were thus the only beneficiaries of the new rules was described as an 'unavoidable consequence of the necessity that constitutional adjudications not stand as mere dictum.' In *Jenkins vs. Delaware* itself, the Court held that the *Miranda* requirement did not apply to a re-trial after June 13, 1966 - the cut-off point set for the *Miranda* requirement by *Johnson vs. New Jersey* - because *Jenkin's* original trial had begun before the cut-off point.

"Thus, the remarkable thing about this development in judge-made law is not that it is given limited retroactive effect. That is to be expected in the case of judicial decision as distinguished from legislation. The notable thing is that the limited retroactivity given to judge-made law in the beginning by *Linkletter vs. Walker* has been abandoned as the Supreme Court in *Johnson vs. New Jersey* and in *Jenkins vs. Delaware* moved toward 'pure prospectivity' (pp. 26-28) [Respondents' memorandum, Feb. 16, 1974].

"The provision of Article 22 of the Revised Penal Code that:

"Retroactive effect of penal laws. - Penal laws shall have a retroactive effect insofar as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same,"

is not applicable to the present cases: First, because of the conclusion We have arrived at that the constitutional provision in question has a prospective and not a retrospective effect, based on the reasons We have given; second, because the 'penal laws' mentioned in Article 22 of the Revised Penal Code refer to substantive penal laws, while the constitutional provision in question is basically a procedural rule of evidence involving the

incompetency and inadmissibility of confessions and therefore cannot be included in the term 'penal laws'; and third, because constitutional provisions as a rule should be given a prospective effect.

"Even as We rule that the new constitutional right of a detained person to counsel and to be informed of such right under pain of any confession given by him in violation thereof declared inadmissible in evidence, to be prospective, and that confessions obtained before the effectivity of the New Constitution are admissible in evidence against the accused, his fundamental right to prove that his confession was involuntary still stands. Our present ruling does not in any way diminish any of his rights before the effectivity of the New Constitution" (63 SCRA 12, 17-21, underscoring supplied).

On May 31, 1976, WE reaffirmed and applied the Magtoto, Simeon and Isnani cases in *People vs. Jimenez and Hernando* (L-40677), wherein WE stated:

"In *Magtoto v. Manguerra*, We ruled that the proscription against the admissibility of confession obtained from an accused during the period of custodial interrogation, in violation of the aforementioned procedural safeguards, applies to confessions obtained after the effectivity of the new charter on January 17, 1973." (71 SCRA 195-196).

II

Sufficient evidence independent of the voluntary confessions of petitioners, exists to justify their conviction.

As recounted in the decision of the respondent military commission, herein petitioners Gumaua and Halasan were identified positively by the victim, Ty Ben Seng himself, who was cross-examined by defense counsel.

And the victim in the case at bar was able to positively identify these two petitioners, as among those who kidnapped and brought him to Tarlac, because the kidnapping was committed in broad daylight -- about 9 o'clock in the morning -- and he was not blindfolded from the very beginning nor while detained in Tarlac. The victim Ty Ben Seng, was forcibly taken without being blindfolded all the way from the establishment where he works in Binondo, Manila, to Tarlac -- about 125 kilometers away -- where he was guarded by petitioner Halasan for several days until the victim was rescued by NBI agents. From the story of the victim himself, there was no attempt either on the part of petitioners and their cohorts to conceal their identities by wearing masks or utilizing other disguises.

There is likewise ample proof that Sgt. Aguinaldo Cordova and Sgt. Barbelonio Casipi, co-accused of petitioners in the kidnapping charge, belonged to the armed forces at the time of the commission of the crime, in much the same way that the evidence demonstrates that petitioner Gumaua himself is a retired PC non-commissioned officer. Consequently, the trial of petitioners Gumaua and Halasan before the respondent Military Commission No. 2, along with the two other accused who are members of the Armed Forces is valid under General Orders Nos. 8, 12, 12-A and 12-B (*Go vs. Olivas*, supra; *Aquino, Jr. vs. Comelec*, supra).

Finally, there is no convincing proof that the confessions of petitioners Gumaua and Halasan were forcibly extracted.

On the contrary, the voluntariness of their confessions is indicated, not only by the fact that said confessions contained numerous details which only they can furnish, but also by their attempt therein to mitigate their respective participation in the commission of the crime.

Thus, petitioner Gumaua stated in his confession that he was originally told that the victim was apprehended as a Chinese smuggler, and that petitioner Halasan, not he, was left to guard the victim while confined in the ground floor of his house. Similarly, petitioner Halasan stated in his confession that he was made to understand by Cordova and Rudy, whom he knew as PC soldiers, that they were going to arrest a Chinese smuggler; and that he

was not promised any reward for joining them, although he expected to receive something for performing his assigned task.

In his confession executed in Tagalog on October 23, 1972 before NBI agents Leopoldo Cotaco and Gregorio Pagdonsolan, Jr., petitioner Roque Gumaua y Lanario stated:

That he consented to give a free and voluntary statement, after he was informed of his constitutional rights to give or not to give any statement and to counsel, as well as warned that his statement may be used against him in a criminal, civil or administrative case;

That he swore to tell the truth, the whole truth and nothing but the truth;

That his full name is Roque Gumaua y Lanario, born on August 8, 1922, in Patnongan, Antique, married to Lidwina Manuel, owner of a sari-sari store in San Clemente, Tarlac, and presently residing in Barrio Pit-ao, San Clemente, Tarlac;

That he finished third year high school;

That he was a soldier from 1947 to 1969 when he retired;

That he is now in the NBI office because he was arrested by NBI and PC agents in his house at barrio Pit-ao, San Clemente, Tarlac, about five o'clock in the afternoon (October 23, 1972);

That he was arrested because of the Chinaman who was left in his house by Rody and his two companions about 3 o'clock in the afternoon of Thursday, October 19;

That after more than two weeks Rody arrived in a jeep, owner type, in his house in San Clemente, telling him that he was going to bring to his house a protege or friend (bata) who was going to escape (magtatanan);

That he consented because he knew Rody already for a long time and he trusted him;

That at that time (about three o'clock in the afternoon) Rody then was accompanied by a fat Chinaman and two Filipinos, one of whom was Rodrigo;

That Rody woke him up and told him that he was leaving his Chinese companion because the latter committed a crime (smuggling "daw");

That when he asked Rody why, Rody replied that he was going to pick up the Chinaman on Sunday (which should have been after October 22, 1972);

That he told Rody that he cannot attend to the Chinaman because he was occupied with his small children and his wife was attending to their sari-sari store in the town, to which Rody replied "It's all right because I am leaving Rodrigo to guard the Chinaman";

That Rody gave him twenty pesos for the food of the Chinaman;

That Rody left with one of his companions, after assuring him that he will return for the Chinaman on Sunday, when he told Rody that he will put the Chinaman on a bus for Manila if he will not return;

That he came to know Rody when he was on active duty at Camp Olivas where he used to see him at the snack bar;

That Rody then was also on active duty and a CIS agent;

That Rody even showed him his I.D. as a CIS agent;

That Rody knew his house in San Clemente because he had gone there twice before;

That he identified and pointed to the Chinaman who was then in the NBI office;

That he likewise identified and pointed to petitioner Rodrigo Halasan y Altoveros of Meycauayan, Bulacan, as the Rodrigo who was with Rody and whom the latter designated to guard the Chinaman;

That that was the first time he came to know Rodrigo Halasan;

That he did not know the name of the other companion of Rody but he (Roque Gumaua) can identify him when he sees him again;

That he provided a bed for the Chinaman on the ground floor of his house, their former store, where he brought food to the Chinaman during mealtime;

That at night they close with a hook the door of the room in the ground floor where the Chinaman was detained;

That he was only giving food to the Chinaman who was being guarded by Rodrigo;

That at about 2 o'clock in the after-noon of Saturday, one Pedring, also a friend of Rody, together with Tony, also a Chinaman, came to his house and stayed there for about five to ten minutes;

That Tony and the Chinaman (who was detained) talked in Chinese and they were forcing the Chinaman to sign a certain piece of paper, which, according to them, is the only thing needed by the child (anak) of the Chinaman;

That he could not understand what was written on the piece of paper because it was in Chinese;

That he also heard Pedring telling the Chinaman to copy some writing in Tagalog which the Chinaman will translate into Chinese;

That the Chinaman actually copied what Pedring told him to copy and he wrote in Chinese when he was forced by Tony and Pedring;

That Tony and Pedring did not employ force or intimidation on the Chinaman; however, they told the Chinaman he can go home if he copies what they wrote in Tagalog which will be signed;

That the full name of Rody is Rody Sierra Fabular, the full name of Tony is Antonio Fernandez, but he does not know the full name of Pedring;

That no other person visited the Chinaman except Tony and Pedring;

That when Rody did not return for the Chinaman on Sunday, he did not send the Chinaman home because he thought that Rody had no available transportation for which reason he waited for another day with the intention of sending the Chinaman home the following day;

That Rody did not tell him that he will give him something before he will take the Chinaman from his place;

That he did not report to the PC or the police that Rody left the Chinaman with him because he believed then that Rody was still in active duty and that he was in charge and responsible for picking up the Chinaman;

That he did not ask the Chinaman whether he liked to remain in his house or return home;

That he knows that it is against the law to detain a person without just cause;

That he has never had a case with the police or in the service or in the court;

That he does not know Raymundo Co or Raymundo Adarme, but he knows for a long time already PC Sgt. Aguinaldo Cordova since he was a soldier in Camp Olivas; and

That he was willing to sign under oath his statement (pp. 75-78, rec. of L-37586).

In his confession also executed in Tagalog on October 23, 1972 before Senior NBI Agent Oscar Oida and NBI Agent Esteban M. Libit, at the NBI Office at Taft Avenue, Manila, petitioner Rodrigo Halasan y Altoveros stated:

That he was ready to state the truth, the whole truth and only the truth and that he does not need the assistance of any lawyer because all that he was going to state will be the truth because he is guilty (nagkakasala), after he was informed of his rights to remain silent and to the assistance of counsel, and after he was duly warned that this state-ment will be used against him in court;

That his full name is Rodrigo Halasan y Altoveros, he was born in Camalig, Meycauayan, Bulacan, on September 19, 1935, and he is married to Milagros Brillo, Catholic;

That he finished second grade, he is a driver of Eastern Textile Mills, Inc. situated in Malhacan, Meycauayan, and he is residing at No. 62 Malhacan, Meycauayan, Bulacan;

That he can read and write Tagalog;

That he happened to be with the group when they said that they were going to pick up a Chinese smuggler;

That there were five persons whom he thought were going to pick up a Chinese smuggler but he only knows two of them; namely, Aguinaldo Cordova and Rudy, a fat man from Baliuag, Bulacan;

That the NBI agents arrested him in the house of Roque Gumaua in San Clemente, Tarlac;

That he was left there by Rudy together with another companion whom he does not know;

That at about 8 o'clock in the morning of October 19, 1972, he was in the poblacion of Meycauayan and planning to go to the barbershop when he met Cordova and Rudy with another man whom he does not know;

That, because he knows Rudy and Cordova are with the PC, he told them that he knows somebody with a gun;

That they told him that the gun can wait and that he go with them first to Rosario where they were going to pick up a Chinese smuggler;

That he went with them and rode with them in their jeep, owner type, which was driven by Rudy;

That they stopped at Grace Park for two men who joined them up to Rosario;

That they reached Rosario near the bank and the church, the jeep was parked near the bank, and Cordova, Rudy and their companion from Meycauayan alighted;

That he was left (in the jeep) together with the two men whom they picked up at Grace Park, Caloocan City;

That when they returned the Chinese smuggler was with them held by Rudy and the other man from Meycauayan;

That they placed the Chinese smuggler on the jeep after which he was handcuffed;

That thereafter, they left in the same jeep and proceeded to San Clemente;

That they left Rosario, Binondo, before lunchtime and reached San Clemente, Tarlac, at about 3 o'clock in the afternoon of that day, Thursday, October 19, 1972;

That they reached Rosario St. coming from Meycauayan before 10 o'clock in the morning;

That they were already 7 when they left Rosario, Binondo, bound for San Clemente, Tarlac, including the

Chinese smuggler whom they picked up at Rosario Street;

That he, Rudy, their companion from Meycauayan whom he does not know, and the Chinaman whom they picked up at Rosario, proceeded to San Clemente, Tarlac;

That Cordova and the two men whom they picked up at Grace Park, Caloocan City, got off near the Bonifacio Monument;

That Rudy was the one driving the jeep;

That when they arrived at the house of Roque Gumaua, Rudy alighted with their companion whom he does not know and talked to Roque, while he and the Chinaman were left in the jeep;

That after Rudy talked to Roque, Rudy told them to get down the jeep and enter the ground floor of the house of Roque where he and the Chinaman remained until they were found by the NBI agents;

That Rudy and his other companions left after telling them to stay there in the meanwhile and they will return;

That Rudy told him that he was responsible for the Chinaman in the meanwhile and they will return;

That what he understood was that he was going to detain and guard the Chinaman;

That he obeyed by guarding the Chinaman whom he and Roque Gumaua fed and bathed;

That the Chinaman never asked him why he was detained but the Chinaman asked him why money was demanded from him when he was poor;

That the Chinaman told him that the amount of P300,000.00 was asked of him and that he can only give P5,000.00;

That when he asked the Chinaman why is that so when he was arrested as a smuggler, the Chinaman replied that he is not a smuggler and that he is poor for which reason he pitied the Chinaman;

That although he pitied him, he was not able to help the Chinaman except to offer to wash his clothes which he (the Chinaman) refused;

That while they were in the house of Roque Gumaua, the Chinaman was not able to leave the house because he was detained (nakakulong);

That what he knew was that the participation of Roque Gumaua in the detention of the Chinaman in his house was that he was entrusted to feed them;

That Roque Gumaua was conversing with the Chinaman;

That while they were conversing, the Chinaman was not free to move around the house, only in his place of detention;

That while he and Roque Gumaua conversed with the Chinaman, the door was left open, but before they leave, they close the door with a chain;

That the wife and 3 or 4 children of Roque Gumaua also lived in the house, aside from him and the Chinaman;

That one of the children of Roque Gumaua was a high school student and another was in the elementary school;

That he believed that the wife and children of Roque Gumaua knew that the Chinaman was being detained in their house;

That the handcuffs of the Chinaman were removed when they arrived in the house of Roque Gumaua in San Clemente, Tarlac, that afternoon of Thursday, October 19, 1972;

That he knew Cordova and Rudy as PC (soldiers) because they were assigned to Meycauayan and that Cordova introduced Rudy to him as a PC soldier;

That Cordova and Rudy were not wearing uniforms nor holding any gun nor armed when they met at Meycauayan, Bulacan, that morning of October 19, 1972;

That one of the two men whom they picked up at Grace Park, Caloocan City, had an armalite and was wearing a fatigue uniform with a name plate made of a piece of white cloth but whose name could not be read because it was covered by an envelope inside his pocket, and without patches;

That Cordova got off at E. delos Santos Avenue just after the Monument, while the two men, one of whom had an armalite and wore a fatigue uniform, got off at the Diversion Road before entering the toll gate;

That it is more probable that he can recognize the other companions if he sees them again;

That he had been with Cordova for about three times but that was the only time he was with the other companions;

That he heard that the name of the Chinaman to be Ty Ben Seng;

That he can give the distinguishing features of their companion from Meycauayan and the two men whom they picked up at Grace Park;

That the one from Meycauayan had a dark complexion, neither thin nor fat, about 5'5", long-haired, with skin finer than his;

That one of the two men who joined them at Grace Park and who was wearing a fatigue uniform was bigger than he, could not be taller than he and with the same skin as his, the other one had beautiful hair, regular haircut but could be longer than his, fairer skin than his, and that in his estimation both of them are younger than he;

That Cordova did not promise him any reward for joining them, but he expected to receive something from them after his assigned task;

That he only learned later that he was going to receive something from them for performing his duty, but he knew that he can be punished and he was willing to stand by his story;

That he was not intimidated beaten up, threatened nor promised a reward for making a confession;

That he made his confession in order to mitigate his guilt; and

That he was willing to sign under oath his statement or confession (pp. 55-59, rec. of L-37586).

It is patent from the foregoing sworn statements of the petitioners that the specific details contained therein can only be supplied by them, and could not emanate from the imagination of the NBI interrogators.

WHEREFORE, FOR LACK OF MERIT, THE PETITIONS IN BOTH CASES ARE HEREBY DISMISSED. NO COSTS.

Barredo, Antonio, Aquino, Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur. Fernando, C.J., concurred in a separate opinion. Certified that Justice Concepcion Jr. voted in favor of the opinion of the Court. Teehankee, J., dissented in a separate opinion. Abad Santos, J., took no part.

CONCURRING OPINION

FERNANDO, C.J.:

The lucid and comprehensive opinion of the Court, penned by Justice Makasiar, reaches a result with which I am in full agreement. The compulsion exerted by the cases relied upon does not warrant any other conclusion. Nonetheless, I feel the need for a reiteration of my views in those previous decisions where I could not fully subscribe to the reasoning that the Court found persuasive.

1. First as to *Javellana v. The Executive Secretary*.^[1] It is to be admitted that the vote for the ratification of the 1973 Constitution was over-whelming. Nonetheless, I felt I had to dissent. It was my view that the procedure followed failed to conform with certain provisions of the 1935 Constitution. There was, however, this qualification: "If the origins of the democratic polity enshrined in the 1935 Consti-tution with the declaration that the Philippines is a republican state could be traced back to Athens and to Rome, it is no doubt true, as McIver pointed out, that only with the recognition of the nation as the separate political unit in public law was there a juridical recog-nition of the people composing it 'as the source of political authority.' From them, as Corwin did stress, emanate 'the highest possible embodiment of human will,' which is supreme and must be obeyed. To avoid any confusion and in the interest of clarity, it should be expressed in the manner ordained by law. Even if such were not the case, however, once it is manifested, it is to be accepted as final and authoritative. The government which is merely an agency to register its commands has no choice but to submit. Its officials must act accordingly. No agency is exempt frown such a duty, not even this Court. In that sense, the lack of regularity in the method employed to register its wishes is not fatal in its conse-quences. Once the fact of acceptance by the people of a new fundamental law is made evident, the judiciary is left with no choice but to accord its recognition. The obligation to render its obeisance falls on the courts as well."^[2] The effectivity of the Consti-tution could thus be made dependent not solely on the regularity with which ratification was obtained but likewise on acquiescence. As of the time that *Javellana* was decided in 1973, I had occasion to state: "The thought persists, however, that as yet sufficient time has not elapsed to be really certain [of the fact of acquiescence]."^[3]

2. Thus we come to *Aquino, Jr. v. Commission on Elections*.^[4] It was decided on January 31, 1975. Once again, I felt obeisance to the fundamental doctrine that the national will once ascertained on matters of great significance, should be controlling. By then, it was clear to me that the evidence was unmistakable as to such acceptance by the Filipino people. Thus: "Parenthetically, it may be observed that in 1973 when the *Javellana* decision was promul-gated, I could not detect sufficient evidence as to the fact of acquiescence to the present Constitution. * * * Since then, with well-nigh two years having gone by, it is quite evident that the matter is no longer open to doubt. Under the standard set forth in the leading case of *Taylor v. Commonwealth*, decided at the beginning of the century, no other conclusion is allowable. The present Constitution 'having been thus acknowledged and accepted by the officers administering the government and by the people * * * and being, as a matter of fact, in force throughout * * *, and there being no government in existence * * * opposing or denying its validity, [it] is the only rightful, valid, and existing Constitution * * * and that to it all the citizens * * * owe their obedience and loyal allegiance.'"^[5]

3. It also bears repeating that while *Aquino, Jr. v. Commission on Elections* affirmed the power of the President to promulgate decrees having the force of law during the emergency period, I was able to vote for the dismissal of the petition without ruling on the question of whether the President could exercise such legislative power, precisely on the ground that the judiciary should pose no obstacle to the holding of a plebiscite, the crucial issue of such contro-versy. For that, for me, is to accord deference to the cardinal postulate that sovereignty resides in

the people. So I explained in my concurring opinion: "The success of petitioners would signify that the referendum scheduled for February 27 of this year will not take place. Believing as I do that the opportunity of the people to give expression to their views is implicit in the fundamental principle that sovereignty resides in them, I am unable to find sufficient merit in this petition. For all its logical and plausible aspect, it still does not admit of doubt, in my mind at least, that a conclusion different from that reached by this Court would be attended by deplorable consequences. For one thing, it would impress with the stigma of illegality the viable procedure that under the stern realities of the present is the only one in the horizon of ascertaining the desires of the people. Moreover, under a republican regime, even under normal times, their role is limited to the choice of public officials, thereafter to be held to accountability through their informed, even immoderate, criticism. Now with this proposed referendum, they will be sounded out on what they think and how they feel on matters of significance. Even assuming its consultative character, it remains at the very least a step in the right direction. It may not go far enough, but there is progress of sorts that hopefully may eventually lead to the goal of complete civilian rule. It stands to reason, at least from my standpoint, that when people are thus allowed to express their wishes and voice their opinions, the concept of popular sovereignty, more so under crisis conditions, becomes impressed with a meaning beyond that of lyric liturgy or acrimonious debate devoid of illumination. Nor is this to discern new waves of hope that may ultimately dissolve in the sands of actuality. It is merely to manifest fidelity to the fundamental principle of the Constitution. It dates back to the American Declaration of Independence of 1776. The government it sets up derives its powers from the consent of the governed. The basis of republicanism, to paraphrase Lerner, is that the majority will shall prevail, the premise being that an ordinary citizen, the common man, can be trusted to determine his political destiny. Thereby, as Bryn-Jones pointed out, the controlling power, the governmental authority in the language of the Constitution, is vested in the entire aggregate of the community. It is in that sense, as Justice Laurel stressed in *Moya v. del Fierro*, that an 'enfranchised citizen [is] a particle of popular sovereignty and [is] the ultimate source of established authority.' There is reliance likewise to this excerpt from the eloquent opinion of Justice Jackson in *West Virginia State Board of Education v. Barnette*: 'There is no mysticism in the American concept of the State or of the nature or origin of its authority. We set up government by consent of the governed, and the Bill of Rights denies those in power any legal opportunity to coerce that consent. Authority here is to be controlled by public opinion, not public opinion by authority.' If that is true of the United States, so should it be in our land. It caters to man's fundamental yearning for some degree of participation in the process of reaching fateful decisions. While courts have to deal with the necessities of their time, the ideal should remain untarnished." [6]

4. As a member of the collegiate court, I must defer to the collective judgment of my peers. *Aquino, Jr. v. Commission on Elections* is not susceptible of any other interpretation. It may not be amiss to invite attention though to my citation of three American constitutionalists, Burdick; [7] Willis; [8] and Willoughby, [9] all of whom were of the opinion that even during the period of martial law as provided for in some State Constitutions, the executive cannot exercise legislative power. There is this citation from Willoughby appearing in my concurrence in the first *Aquino* case, *Aquino, Jr. v. Enrile*: [10] "There is, then, strictly speaking, no such thing in American law as a declaration of martial law whereby military law is substituted for civil law. So-called declarations of martial law are, indeed, often made, but their legal effect goes no further than to warn citizens that the military powers have been called upon by the executive to assist him in the maintenance of law and order and that, while the emergency lasts they must, upon pain of arrest and punishment not commit any acts which will in any way render more difficult the restoration of order and the enforcement of law." [11] While, therefore, the leading case of *Duncan v. Kahanamoku* [12] stressed that even during the period of martial law, the lawmaking power is left to the legislative body and the judicial power to the judiciary, the prevailing doctrine in this jurisdiction is that the Executive could exercise legislative power during this period of martial law. So the pertinent section of the Transitory Provisions of the 1973 Constitution was interpreted. [13] There was a reaffirmation of such competence

in the 1976 Amend-ments.[14]

5. True it is that the holding of the Court that the President can create military tribunals to try civilians finds support in the third Aquino case, *Aquino, Jr. v. Military Commission No. 2*.^[15] For me, though, only its compelling force precludes continued adherence to my belief that, as stated in my concurring and dissenting opinion in such case, "were it not for the above mandate of the Transitory Provisions, the submission of petitioner as to a military commission being devoid of jurisdiction over civilians elicits approval. The controlling principle, to my mind, is that supplied in the opinion of the United States Supreme Court in *Duncan v. Kahanamoku*, a decision impressed with the greatest relevance inasmuch as it interpreted the specific section found in the Hawaiian Organic Act, which was also a feature of the Philippine Autonomy Act, the source of the martial law provision in the 1935 Constitution."^[16] As was pointed out in the *Duncan* opinion penned by Justice Black: "Courts and their procedural safeguards are indispensable to our system of government. They were set up by our founders to protect the liberties they valued. *Ex parte Quirin*, supra, 317 U.S. at page 19, 63 S. Ct. at page 6, 87 L. Ed. 3. Our system of government clearly is the antithesis of total military rule and the founders of this country are not likely to have contemplated complete military dominance within the limits of a Territory made part of this country and not recently taken from an enemy. They were opposed to governments that placed in the hands of one man the power to make, interpret and enforce the laws. Their philosophy has been the people's throughout the history. For that reason we have maintained legislatures chosen by citizens or their representatives and courts and juries to try those who violate legislative enactments. We have always been especially concerned about the potential evils of summary criminal trials and have guarded against them by provisions embodied in the constitution itself."^[17] Its concluding portion follows: "We believe that when Congress passed the Hawaiian Organic Act and authorized the establishment of 'martial law' it had in mind and did not wish to exceed the boundaries between military and civilian power, in which our people have always believed, which responsible military and executive officers had heeded, and which had become part of our political philosophy and institutions prior to the time Congress passed the Organic Act. The phrase 'martial law' as employed in that Act, therefore, while intended to authorize the military to act vigorously for the maintenance of an orderly civil government and for the defense of the island against actual or threatened rebellion or invasion, [it] was not intended to authorize the supplanting of courts by military tribunals. Yet the government seeks to justify the punishment of both *White* and *Duncan* on the ground of such supposed Congressional authorization. We hold that both petitioners are now entitled to be released from custody."^[18]

6. Clearly then, it was only with the utmost reluctance that I was able to yield my concurrence to the ruling that during this period of martial law, military tribunals is vested with the competence to try civilians for certain specified offenses, likely to foster continuance of the rebellion. There was reassurance, however, in the thought that the opinion of the Court, penned by Justice Antonio, paid due heed to the basic principle that in the conduct of cases triable by them, such military commissions would respect all the constitutional rights of an accused person. Such was the assumption in my concurring and dissenting opinion: "It is from that perspective that at a discussion of the due process guarantee gains significance. It has a connotation both substantive and procedural. As to the latter aspect, it is true that it has at its core, to follow the classic formulation of Webster, the requirement of a hearing before condemnation and a process of rational inquiry, but it has a much wider radiation extending to all the legal safeguards enjoyed by a person indicted for an offense. So it has come to be in the United States, where it is deemed to include the right to be free from unreasonable searches and seizures and to have excluded from criminal trials any evidence illegally seized; the right to be free of compelled self-incrimination, the right to counsel, the right to a speedy and public trial, to confrontation of opposing witnesses, to compulsory process for obtaining witnesses, the right to a jury trial, and the right against double jeopardy. Such an approach is not uncongenial in our jurisdiction."^[19]

7. There is added reassurance in the step taken by President Ferdinand E. Marcos on September 10, 1979 which would minimize even more whatever untoward consequences may follow from the departure from the traditional, and to my mind, the more desirable principle that military tribunals should be devoid of jurisdiction where civilians are concerned.[20] More specifically, he categorically declared that as of that date, no arrest, search and seizure order "shall be issued by anyone without the approval of the President" except in cases of flagrante delicto; that "all detention prisoners against whom no cases have been filed or who were arrested without warrant," would be immediately released; that military tribunals would be "phased out as soon as they finish the trial" of pending cases, with those having been set for trial being referred back to the civilian courts unless there be supervening reasons for their continuance therein; that "detention prisoners of ordinary crimes shall be immediately transferred to the custody of civil officers" either the Integrated National Police or the prosecuting fiscals; and that he had signed "the amnesty of 1,500 prisoners who have been charged for various offenses." [21]

8. It is true, as stated in the opinion of the Court, that in *Magtoto v. Manguera*, [22] this Tribunal, with the late Chief Justice Castro, Justice Teehankee and the writer of this concurrence dissenting, held that the explicit adoption in the Philippines of the *Miranda* decision [23] expanding the scope of the self-incrimination clause by granting to a person under custodial interrogation for the commission of an offense the right to remain silent and to counsel and to be informed of such right, a confession obtained in violation thereof being inadmissible in evidence, [24] was held as not applicable to confessions obtained before the effectivity of the present Constitution. I could not agree with such a ruling as the language of the Constitution is quite categorical. As I set forth in my dissent: "My starting point is the recognition of the power of the Constitutional Convention to impose conditions that must be fulfilled before a duty is cast on a court to allow a confession to form part of the records of the case and that such power was in fact exercised. So I read the last sentence of the provision in question: 'Any confession obtained in violation of this section shall be inadmissible in evidence.' The words cannot be any clearer. A judge is bereft of the competence, even if he were so minded, to impress with admissibility any confession unless the person under investigation was informed of his right to remain silent and his right to counsel. Absent such a showing, whatever statement or admission was obtained during such stage of custodial interrogation is a worthless piece of paper. So the Constitution commands. It speaks in no uncertain terms from and after January 17, 1973 when it became effective. The crucial date is not when the confession was obtained, but when it was sought to be offered in evidence. Parenthetically, such a mode of viewing the issue would indicate the irrelevancy of the question of prospectivity. To repeat, there is no imprecision in the terminology of the fundamental law. It is quite emphatic in its choice of the phrase, 'inadmissible in evidence.' This then is, for me at least, one of those cases where, to paraphrase Justice Moreland, the judicial task is definitely indicated, its first and fundamental duty being to apply the law with the Constitution at the top rung in the hierarchy of legal norms. Interpretation therefore comes in only after it has been demonstrated that application is impossible or inadequate without its aid." [25] Nonetheless, as was pointed out in Justice Makasari's opinion, the *Manguera* doctrine is now the settled law on the matter. In the later case of *Cudiamat v. People*, [26] there is this relevant excerpt: "The invocation of the expanded constitutional right against self-incrimination does not avail petitioner, who seeks a reversal of the Court of Appeals decision convicting him of homicide, the sentence imposed being six years and one day of prison mayor as minimum to twelve years and one day of reclusion temporal as maximum. It is true that as now worded, the *Miranda* doctrine as to the inadmissibility of a confession during custodial interrogations has been incorporated in the Constitution. Counsel for petitioner failed to take into account, however, that as held in *Magtoto v. Manguera*, the inadmissibility of such confessions attaches only to such as are obtained after the present fundamental law took effect on January 17, 1973. The statement of petitioner as a suspect in the killing of one Benjamin Angangan was subscribed before a municipal judge as far back as December 16, 1963. The brief for petitioner is quite insistent on interpreting the Constitution to make it cover such confessions. Such an approach shows partiality for the stand taken by the dissenters, one of whom is the writer of this opinion.

Unfortunately for petitioner, a majority of the Court en banc was of a different mind, and their view must be followed. So the rule of law commands."^[27] As I was the ponente, I have no other choice but to submit anew to the collective judgment of my brethren. At any rate, I am comforted by the thought that after the lapse of seven years, it is not likely that there are still many confessions made before January 17, 1973 and not yet offered in evidence. Petitioner's stand on this point is thus bereft of support in authoritative precedent. To continue dissenting would, for me, be an exercise in futility.

9. One last point. In the second petition for habeas corpus now dismissed,^[28] it was alleged that respondent Military Commission No. 2, on March 16, 1973, "pronounced petitioners guilty and sentenced them to be shot to death by firing squad."^[29] The next paragraph reads: "On September 29, 1973, President Ferdinand E. Marcos affirmed the decision of respondent Military Commission No. 2 and directed respondent Hon. Juan Ponce Enrile to carry out the order for the execution of petitioners."^[30] Thus for me the question of whether or not this Court is empowered to pass on a death sentence by military tribunals where as in this case petitioner Gumaua is a civilian, calls for determination. More specifically, the crucial issue to me is whether the procedure for automatic review of a death sentence must be followed. My answer is in the affirmative. So I would conclude in the light of what in my opinion is the plain and explicit command of the Constitution.^[31] I must admit that *Ruffy v. Chief of Staff*^[32] yields a different conclusion. Thus: "Courts martial are agencies of executive character, and one of the authorities 'for the ordering of courts martial has been held to be attached to the constitutional functions of the President as Commander in Chief, independently of legislation.' (Winthrop's Military Law and Precedents, 2d Edition, p. 49.) Unlike courts of law, they are not a portion of the judiciary. '* * * Not belonging to the judicial branch of the govern-ment, it follows that courts-martial must pertain to the executive department; and they are in fact simply instrumentalities of the executive power, provided by Congress for the President as Commander in Chief, to aid him in properly commanding the army and navy and enforcing discipline therein, and utilized under his orders or those of his authorized military representatives.'"^[33] Such a ruling continues with unabated force where an accused belongs to the armed forces. I cannot subscribe to the view that it calls for application where a civilian is involved. After the holding of this Court in the third Aquino decision, referred to earlier, that military tribunals have jurisdiction over civilians in certain specified offenses, it would follow, to my way of thinking, that thereby judicial rather than executive power is being exercised and, therefore, the law on automatic review calls for respect and deference. Inasmuch as the ponencia of Justice Makasiar did not go that far, I cannot concur in full.

Hence this separate opinion.

[1] L-36142, March 31, 1973, 50 SCRA 30.

[2] *Ibid.*, 327-328. The citation from McIver comes from his *The Web of Government* at 84 (1947), and from Corwin from *The Higher Law Back-ground of American Constitutional Law*, in 1 *Selected Essays on Constitutional Law* 3 (1938).

[3] *Ibid.*, 329.

[4] L-40004, January 31, 1975, 62 SCRA 275.

[5] *Ibid.*, 312-313.

[6] *Ibid.*, 309-310. The quotation from Lerner is found in *Ideas are Weapons*, 470 (1939) and that of Bryn-Jones from his *Toward a Democratic New Order* 23 (1945). *Moya v. Del Fierro* is reported in 69 Phil. 199 (1939) and *West Virginia State Board of Education v. Barnette* in 319 US 624 (1943).

[7] Cf. Burdick, *The Law of the American Constitution*, 261 (1922).

[8] Cf. Willis on the Constitutional Law, 449 (1936).

[9] Cf. Willoughby on the Constitution of the United States, 2nd ed., 1591 (1929).

[10] L-35546, September 17, 1974, 59 SCRA 183.

[11] *Ibid.*, 303. The citation is found in Willoughby, *op. cit.* 1591.

[12] 327 US 304 (1946).

[13] According to Article XVII, Section 3, par. (2) of the Constitution: "All proclamations, orders, decrees, instructions, and acts promulgated, issued, or done by the incumbent President shall be part of the law of the land, and shall remain valid, legal, binding, and effective even after lifting of martial law or ratification of this Constitution, unless modified, revoked, or superseded by subsequent proclamations, orders, decrees, instructions, or other acts of the incumbent President, or unless expressly and explicitly modified or repealed by the regular National Assembly."

[14] According to par. 5 of the 1976 Amendments to the Constitution: "The incumbent President shall continue to exercise legislative powers until martial law shall have been lifted."

[15] L-37364, May 9, 1975, 63 SCRA 546.

[16] *Ibid.*, 605.

[17] *Duncan v. Kahanamoku*, 327 US 304, 322 (1946).

[18] *Ibid.*, 324.

[19] 19 SCRA 546, 607-608.

[20] President Ferdinand E. Marcos, Address entitled Pledge of Loyalty of Armed Forces of the Philippines, September 10, 1979.

[21] *Ibid.*, 17.

[22] L-37201-02, March 3, 1974, 63 SCRA 4.

[23] *Miranda v. Arizona*, 384 US 436 (1966).

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

[25] 63 SCRA 4, 30-31.

[26] L-47753, July 25, 1978, 48 SCRA 247.

[27] *Ibid.*, 249-250.

[28] *Gumaua v. Zagala*, L-37586.

[29] Petition, Statement of Facts, par. 12.

[30] Ibid., par. 13.

[31] According to Article X, Section 5, par. (2) of the Constitution: "The Supreme Court shall have the following powers: * * * (2) Review and revised, reverse, modify, or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and decrees of inferior courts in—* * * (d) All criminal cases in which the penalty imposed is death or life imprisonment." Where it is life imprisonment, appeal must be automatic but where the penalty is one of death, the review is automatic.

[32] 75 Phil. 875 (1946).

[33] Ibid., 884.

SEPARATE OPINION

TEEHANKEE, J.:

1. On the basic issue herein presented of the legality of trials of civilians (like petitioners) by military tribunals or commissions, I am constrained to reiterate my dissent in *Aquino vs. Military Commission No. 2, et al.*^[1] that civilians are entitled to trial by the regular civil courts which have remained open and have been regularly functioning all this time, notwithstanding the imposition since September 21, 1972 of martial law.

I hold, as I did in *Aquino*, that under both the 1935 and 1973 Constitutions and the expressly avowed supremacy of civilian authority over the military, "(C)ivilians like petitioner placed on trial for civil offenses under general law are entitled to trial by judicial process, not by executive or military process.

"Judicial power is vested by the Constitution exclusively in the Supreme Court and in such inferior courts as are duly established by law.^[2] Judicial power exists only in the courts, which have 'exclusive power to hear and determine those matters which affect the life or liberty or property of a citizen.'^[3]

"Military commissions or tribunals are admittedly not courts and do not form part of the judicial system. As further admitted by the Solicitor General in his answer,^[4] 'military commissions are authorized to exercise jurisdiction over two classes of offenses, whether committed by civilians or by military personnel either (a) in the enemy's country during its occupation by an army and while it remains under military government or (b) in the locality, not within the enemy's country, in which martial law has been established by competent authority. The classes of offenses are (a) violation of the laws and customs of war and (b) civil crimes, which because the civil courts are closed or their functions suspended or limited, cannot be taken cognizance of by the ordinary tribunals.'

"Since we are not enemy-occupied territory nor are we under a military government and even on the premise that martial law continues in force, the military tribunals cannot try and exercise jurisdiction over civilians for civil offenses committed by them which are properly cognizable by the civil courts that have remained open and have been regularly functioning.^[5] In the leading case of *Duncan vs. Kahanamoku*,^[6] the U. S. Supreme Court held in setting aside the prison sentences imposed on two civilians by military tribunals that the placing of Hawaii under martial law (after the Japanese Pearl Harbor attack on December 7, 1941) under the Hawaiian Organic Act^[7] did not include the power on the part of the military governor to supplant civilian laws by military orders and to supplant civil courts by military tribunals, where conditions were not such as to prevent the enforcement of the laws by the courts.

"The late Justice Frank Murphy in his concurring opinion therein repudiated the government's appeal to abandon the 'open courts' rule on the alleged ground of its unsuitability to 'modern warfare conditions where all the

territories of a warring nation may be in combat zones or imminently threatened with long range attack even while civil courts are operating' as seeking 'to justify military usurpation of civilian authority to punish crime without regard to the potency of the Bill of Rights,' and observing that 'Constitutional rights are rooted deeper than the wishes and desires of the military.'

"And in *Toth vs. Quarles*[8] the U. S. Supreme Court further stressed that 'the assertion of military authority over civilians cannot rest on the President's power as Commander-in-Chief or on any theory of martial law.'"

Civilians placed on trial before military commissions are unduly deprived of the right to be tried by judicial process, by the regular, independent courts of justice, with all the specific constitutional, statutory and procedural safeguards embodied in the judicial process and presided over not by military officers "trained and oriented along strict rules of discipline and rigid countenance (although) they are human beings with human hearts"[9] who are not lawyers (except the law member), but by judges of at least ten years experience in the practice of law whose objectivity and independence are protected by tenure guaranteed by the Constitution and are nurtured by the judicial tradition.

Thus, petitioners have complained that they were held incommunicado for one week before they were turned over to Camp Crame, that their confessions were obtained through "third-degree" methods and in violation of their constitutional rights to counsel and to silence and were admitted by the respondent military commission together with the sworn statements of three of their co-accused (Aguinaldo Cordova, Antonio Fernandez and Raymundo Adarme Co) who were never presented on the witness stand and whom they and their counsel never had the opportunity to confront and cross-examine. Such deprivation of the right to judicial process by the regular civil courts denies petitioners as civilians due process of law as guaranteed under section 1 of the Bill of Rights and under section 17 which specifically ordains that "No person shall be held to answer for a criminal offense without due process of law....."

II. As already indicated above, the trial of civilians by military commissions cannot be justified by the continuing imposition of martial law.

As I wrote in my dissent in the 1976 Referendum-Plebiscite cases,[10] "(M)artial law concededly does not abrogate the Constitution nor obliterate its constitutional boundaries and allocation of powers among the Executive, Legislative and Judicial Departments.[11]

"It has thus been aptly observed that 'Martial law is an emergency regime, authorized by and subject to the Constitution. Its basic premise is to preserve and to maintain the Republic against the dangers that threaten it. Such premise imposes constraints and limitations. For the martial law regime fulfills the constitutional purpose only if, by reason of martial law measures, the Republic is preserved. If by reason of such measures the Republic is so transformed that it is changed in its nature and becomes a State other than republican, then martial law is a failure; worse, martial law would have become the enemy of the Republic rather than its defender and preserver.'"[12]

And I had stressed in the earlier 1975 Referendum Cases[13] that "the concept of martial law may not be expanded, as the main opinion does, to cover the lesser threats of 'worldwide recession, inflation or economic crisis which presently threatens all nations' in derogation of the Constitution." Petitioners have correctly submitted, in my view, that the resultant suspension of the privilege of the writ of habeas corpus as a consequence of martial law (as held by the majority of the Court in *Aquino vs. Enrilee*[13-a]) "cannot be all-embracing but must be restricted to those who are connected with the invasion, insurrection or rebellion. A contrary rule will result in absurdities. x x x The President can order that persons charged with reckless driving, jay-walking, and littering be arrested and detained indefinitely without any charges being filed against them." [13-b])

It need only be added that the President does not need a state of martial law to exercise his unprecedented special powers in order to run the government and meet any contingency. The majority decisions of the Court have ruled in effect that under section 3 (2) of the Transitory Provisions of the 1973 Constitution,[14] he has full powers of legislation and even the constituent power to propose and submit constitutional amendments and to proclaim their ratification by the people. Under the October 27, 1976 constitutional amendments thus adopted, his power of legislation by decree (notwithstanding the existence and function-ing of the Interim Batasang Pambansa or the regular National Assembly) has been restated in Amendment No. 6.[15]

III. I hold to the minority view in the Magtoto case,[16] shared by the late Chief Justice Fred Ruiz Castro, the now Chief Justice and myself that a confession of a person under investigation for the commission of an offense given without the assistance of counsel and without his having been duly informed of his right to remain silent and to assistance of counsel renders the confession void and inadmissible, even if such confession were taken before the effectivity of the 1973 Constitution and only its admission sought thereafter.

The late Chief Justice Castro did enjoin us in his separate dissent that "(I) hold no brief against custodial interrogation per se. But I do entertain mortal fear that when a detained person is subjected, without the assistance of counsel, to custodial interrogation by peace officers, official lawlessness could be the rule and not the exception. Witness the innumerable cases in the annals of adjudication where this Court has set at naught and declared inadmissible confessions obtained from detained persons thru official lawlessness. It is a verity in the life of our nation that people without influence and without stature in society have, more often than not, been subjected to brutal and brutalizing third-degree methods, if not actually framed, by many police agencies in this country. Instead of blinking our eyes shut to this reality, we must recognize it for what it is," and concluded thus: "(P)erhaps, my brethren may not begrudge this paraphrase of Justice William Douglas as a conclusion to this dissent: the rights of none are safe unless the rights of all are protected; even if we should sense no danger to our own rights because we belong to a group that is informed, important and respected, we must always recognize that any code of fair play is also a code for the less fortunate."

The now Chief Justice, quoting the eloquent language of Justice Hugo Black stressed in turn in his separate dissent that "'No higher duty, no more solemn responsibility, rests upon this Court, than that of translating into living law and maintaining this constitutional shield deliberately planned and inscribed for the benefit of every human being subject to our Constitution - of whatever race, creed or persuasion.'[17] So it will be in due time, even with this decision. Soon, hopefully, the lower courts will no longer be confronted with confessions obtained before the effectivity of the Constitution but offered in evidence thereafter. So with more reason, I am led to conclude, if eventually it has to be thus, why not now?"

I reaffirm my stand that the Constitution[18] now expressly protects "a person under investigation for the commission of an offense" from the overwhelming power of the State and from official abuse and lawlessness and guarantees that he "shall have the right to remain silent and to counsel and to be informed of such right." In order to give force and meaning to the constitutional guarantee, it flatly outlaws the admission of any confession obtained from a person under investigation who has not been afforded his right to silence and counsel and to be informed of such right. There is no room for interpretation and the plain mandate of the Constitution expressly adopting the exclusionary rule as the only practical means of enforcing the constitutional injunction against such confessions obtained in violation of one's constitutional rights by outlawing their admission and thereby removing the incentive on the part of state and police officers to disregard such rights (in the same manner that the exclusionary rule bars admission of illegally seized evidence),[19] should be strictly enforced. What the plain language of the Constitution says is beyond the power of the courts to change or modify.

IV. The reflections cast in respondents' memorandum on the competence and integrity of the civil courts[20] have

long been set at rest. As I pointed out in my dissent almost five years ago in *Aquino vs. Military Commission No. 2*, supra, "General Order No. 49 issued by the President on October 4, 1974 restored to the civil courts a large number of criminal cases that were transferred to military tribunals upon the proclamation of martial law on the express premises that 'positive steps have been taken to revitalize the administration of justice and the New Constitution authorizes the reorganization of the courts' and 'although there still exist areas of active rebellion in the country, on the whole there has been such an improvement in the general conditions obtaining in the country and in the administration of justice as to warrant the return of some of the criminal cases to the jurisdiction of civil courts and

"These premises of G. O. No. 49 are borne out by the data and published reports. The twenty (20) military commissions (14 ambulatory and 6 regional commissions)[21] hearing cases from time to time in marathon hearings as the pressures of the military service allow the military commissions to convene could not conceivably match the work and cases disposition of around three hundred and twenty (320) courts of first instance and circuit criminal courts all over the country working continuously and regularly throughout the year.

"The argument of procedural delays in the civil courts and need of prompt and certain punishment has been long cut down by the late Justice Frank Murphy in his concurring opinion in *Duncan*[22] when he stressed that 'civil liberties and military expediency are often irreconcilable' and that 'the swift trial and punishment which the military desires is precisely what the Bill of Rights outlaws. We would be false to our trust if we allowed the time it takes to give effect to constitutional rights to be used as the very reason for taking away those constitutional rights.'"

These observations received the final confirmation from the President's own military commissions phaseout order when he issued Letter of Instruction No. 772 over a year ago under date of November 27, 1978, whereby he directed that all criminal cases to be filed by the Judge Advocate General or the military establishment "shall be referred in the first instance to the civil courts and no longer to the military commissions."

ACCORDINGLY, I vote to grant the petitions at bar for certiorari, prohibition and mandamus to annul the proceedings against petitioners as civilians before respondent military commissions and to direct that the charges against them be duly endorsed to the regular civil courts for proper trial and determination.

[1] 63 SCRA 546 (1975).

[2] Art. X, section 1, 1973 Constitution.

[3] Words and Phrases, Perm. Ed. Vol. 23, p. 317-318. See *Lopez vs. Roxas*, 17 SCRA 756 (1966); *Scoty's Dept. Store vs. Micaller*, 99 Phil. 762 (1956).

[4] At pages 14-16, Answer to Supplemental Petition; italics supplied.

[5] *Ex parte Milligan*, 4 Wallace (U.S.) 127, 18 L. ed. 297.

[6] 327 U.S. 304 (1946).

[7] Its Organic Act prior to Hawaii's incorporation as a state of the American Union contained a provision similar to that in our Constitution for the declaration of martial law in case of invasion, insurrection or rebellion or imminent danger thereof, when the public safety requires it.

[8] 350 U.S. 5, 14 (1955).

[9] Brig. Gen. G. S. Santos, AFP JAGO Chief, Phil. Daily Express, April 26, 1975, p. 10.

[10] Sanidad vs. Comelec and other cases, 73 SCRA 333 (1976).

[11] Articles VIII, IX and X, 1973 Constitution.

[12] U. P. Professor Perfecto V. Fernandez: Civil Liberties under Martial Law.

[13] Aquino vs. Comelec, 62 SCRA 275 (1975).

[13-a] 59 SCRA 183.

[13-b] Petitioners' Reply in L-37586, Rollo, pp. 39-40.

[14] The text reads: "All proclamations, orders, decrees, instructions, and acts promulgated, issued or done by the incumbent President shall be part of the law of the land, and shall remain valid, legal, binding, and effective even after lifting of martial law or the ratification of this Constitution, unless modified, revoked, or superseded by subsequent proclamations, orders, decrees, instructions, or other acts of the incumbent President, or unless expressly and explicitly modified or repealed by the regular National Assembly."

[15] The text reads: "(W)henever in the judgment of the President (Prime Minister), there exists a grave emergency or a threat or imminence thereof, or whenever the interim Batasang Pambansa on the regular National Assembly fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action, he may, in order to meet the exigency, issue the necessary decrees, orders, or letters of instructions, which shall form part of the law of the land."

[16] 63 SCRA 4 (1975).

[17] Chambers vs. Florida, 309 US 227, 241 (1940).

[18] Section 20 of the Bill of Rights (Art. IV), 1973 Constitution.

[19] Cf. Stonehill vs. Diokno, 20 SCRA 383 (1967).

[20] "Doubtless there are in our judiciary learned, conscientious and selfless men and women imbued with a high sense of justice. Nevertheless, there was an impression among many of our people before martial law that some judges could be bought, that others were incompetent, and that still others were simply bereft of enthusiasm and compassion to see that justice was done to their fellowmen. The fact was that the judicial system had lost much of its vigor and effectiveness and the people's faith x x x." Rollo of L-37586, pp. 119, et seq.

[21] Supra, footnote 9.

[22] Supra, footnote 6.

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