

IN THE MATTER OF THE PETITION FOR HABEAS CORPUS OF TEODOSIO LANSANG, RODOLFO DEL ROSARIO, AND BAYANI ALCALA, PETITIONERS, VS. BRIGADIER-GENERAL EDUARDO M. GARCIA, CHIEF, PHILIPP...

G.R. No. L-33964. December 11, 1971

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

In the evening of August 21, 1971, at about 9 p.m., while the Liberal Party of the Philippines was holding a public meeting at Plaza Miranda, Manila, for the presentation of its candidates in the general elections scheduled for November 8, 1971, two (2) hand grenades were thrown, one after the other, at the platform where said candidates and other persons were. As a consequence, eight (8) persons were killed and many more injured, including practically all of the aforementioned candidates, some of whom sustained extensive, as well as serious, injuries which could have been fatal had it not been for the timely medical assistance given to them.

On August 23, soon after noontime, the President of the Philippines announced the issuance of Proclamation No. 889, dated August 21, 1971, reading as follows:

"WHEREAS, on the basis of carefully evaluated information, it is definitely established that lawless elements in the country, which are moved by common or similar ideological conviction, design and goal and enjoying the active moral and material support of a foreign power and being guided and directed by a well trained, determined and ruthless group of men and taking advantage of our constitutional liberties to promote and attain their ends, have entered into a conspiracy and have in fact joined and banded their forces together for the avowed purpose of actually staging, undertaking and waging an armed insurrection and rebellion in order to forcibly seize political power in this country, overthrow the duly constituted government, and supplant our existing political, social, economic and legal order with an entirely new one whose form of government, whose system of laws, whose conception of God and religion, whose notion of individual rights and family relations, and whose political, social and economic precepts are based on the Marxist-Leninist-Maoist teachings and beliefs;

"WHEREAS, these lawless elements, acting in concert through front organizations that are seemingly innocent and harmless, have continuously and systematically strengthened and broadened their memberships through sustained and careful recruiting and enlistment of new adherents from among our peasantry, laborers, professionals, intellectuals, students, and mass media personnel, and through such sustained and careful recruitment and enlistment have succeeded in infiltrating almost every segment of our society in their ceaseless determination to erode and weaken the political, social, economic and moral foundations of our existing government and to influence many peasant, labor, professional, intellectual, student and mass media organizations to commit acts of violence and depredations against our duly constituted authorities, against the members of our law enforcement agencies, and worst of all, against the peaceful members of our society;

"WHEREAS, these lawless elements have created a state of lawlessness and disorder affecting public safety and the security of the State, the latest manifestation of which has been the dastardly attack on the Liberal

Party rally in Manila on August 21, 1971, which has resulted in the death and serious injury of scores of persons;

"WHEREAS, public safety requires that immediate and effective action be taken in order to maintain peace and order, secure the safety of the people and preserve the authority of the State;

"NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested upon me by Article VII, Section 10, Paragraph (2) of the Constitution, do hereby suspend the privilege of the writ of habeas corpus for the persons presently detained, as well as all others who may be hereafter similarly detained for the crimes of insurrection or rebellion, and all other crimes and offenses committed by them in furtherance or on the occasion thereof, or incident thereto, or in connection therewith."

Presently, petitions for writs of habeas corpus were filed, in the above-entitled cases, by the following persons, who, having been arrested without a warrant therefor and then detained, upon the authority of said proclamation, assail its validity, as well as that of their detention, namely:

1. TEODOSIO LANSANG, RODOLFO DEL ROSARIO and BAYANI ALCALA, the petitioners in Case No. L-33964 - filed on August 24, 1971 who, on August 22, 1971, between 8 a.m. and 6 p.m., were "invited" by agents of the Philippine Constabulary - which is under the command of respondent Brig. Gen. Eduardo M. Garcia to go and did go to the headquarters of the Philippine Constabulary, at Camp Crame, Quezon City, for interrogation, and, thereafter, detained;
2. ROGELIO V. ARIENDA, the petitioner in Case No. L-33965 - filed, also, on August 24, 1971 - who was picked up in his residence, at No. 5 Road 3, Urduja Village, Quezon City, by members of the Metrocom and then detained;
3. Soon after the filing of the petition in Case No. L-33965 - or on August 28, 1971 - the same was amended to include VICENTE ILAO and JUAN CARANDANG, as petitioners therein, although, apart from stating that these additional petitioners are temporarily residing with the original petitioner, Rogelio V. Arienda, the amended petition alleges nothing whatsoever as regards the circumstances under which said Vicente Ilao and Juan Carandang are said to be illegally deprived of their liberty;
4. LUZVIMINDO DAVID, petitioner in Case No. L-33973 - filed on August 25, 1971 - who was similarly arrested in his residence, at No. 131-B Kamias Road, Quezon City, and detained by the Constabulary
5. Felicidad G. Prudente, who filed the petition in Case No. L-33982 - on August 27, 1971 - upon the ground that her father, Dr. NEMESIO E. PRUDENTE, had, on August 22, 1971, at about 8 p.m., been apprehended by Constabulary agents in his house, at St. Ignatius Village, Quezon City, and then detained at the Camp Crame stockade, Quezon City;
6. ANGELO DE LOS REYES, who was allowed - on August 30, 1971 - to intervene as one of the petitioners in Cases Nos. L-3364, L-33965 and L-33973, he having been arrested by members of the Constabulary on August 22, 1971, between 6:30 and 7:30 p.m., in his residence, at 86 Don Manuel Street, Sta. Mesa Heights, Quezon City, and brought to Camp Crame, Quezon City, where he is detained and restrained of liberty;
7. VICTOR FELIPE, who was similarly allowed to intervene as one of the petitioners in said three (3) cases, upon the ground that, on August 23, 1971, at about 8 a.m., he was, likewise, apprehended at Sta. Rosa, Laguna, by members of the Philippine Constabulary and brought, first to the Constabulary headquarters at Canlubang, Laguna, and, then, to Camp Crame, Quezon City, where he is detained and restrained of liberty;
8. TERESITO SISON, who was, also, allowed to intervene as one of the petitioners in the same three (3) cases, he having been arrested in his residence, at 318 Lakandula St., Angeles City, on August 22, 1971, between 6 and 7

p.m., and taken to the PC offices at Sto. Domingo, Angeles City, then to Camp Olivas, San Fernando, Pampanga, and eventually to Camp Crame, Quezon City, where he is restrained and deprived of liberty;

9. GERARDO TOMAS, alias Gerry Tomas, a 17-year old second year college student of St. Louis University, Baguio City, on whose behalf, Domingo E. de Lara - in his capacity as Chairman, Committee on Legal Assistance, Philippine Bar Association - filed on September 3, 1971, the petition in Case No. L-34004, upon the ground that said Gerardo Tomas had, on August 23, 1971, at about 6 a.m., been arrested by Constabulary agents, while on his way to school in the City of Baguio, then brought to the Constabulary pre-mises therein at Camp Holmes, and, thereafter, taken, on August 24, 1971, to Camp Olivas, Pampanga, and thence, on August 25, 1971, to the Constabulary headquarters at Camp Crame, Quezon City, where he is detained;

10. REYNALDO RIMANDO, petitioner in Case No. L-34013 - filed on September 7, 1971 - a 19-year old student of the U.P. College in Baguio City - who, while allegedly on his way home, at Lukban Road, Baguio, on August 23, 1971, at about 1 a.m., was joined by three (3) men who brought him to the Burnham Park, thence, to Camp Olivas at San Fernando, Pampanga, and, thereafter, to Camp Crame, Quezon City, where he is detained;

11. Sgt. FILOMENO M. DE CASTRO and his wife, Mrs. BAR-CELISA C. DE CASTRO, on whose behalf Carlos C. Rabago - as President of the Conference Delegates Association of the Philippines (CONDA) - filed the petition in Case No. L-34039 - on September 14, 1971 - against Gen. Eduardo M. Garcia, alleging that, on August 27, 1971, at about 3 p.m., Mrs. De Castro was arrested, while at Liamzon Subdivision, Rosario, Pasig, Rizal, by agents of the Constabulary, and taken to the PC headquarters at Camp Crame, where, later, that same afternoon, her husband was brought, also, by PC agents and both are detained;

12. ANTOLIN ORETA, JR., who filed the petition in Case No. L-34265 - on October 26, 1971 - against said Gen. Garcia, as Chief of the Constabulary, and Col. Prospero Olivas, Chief of the Central Intelligence Service (CIS), Philippine Constabulary, alleging that, upon invitation from said CIS, he went, on October 20, 1971, to Camp Aguinaldo, Quezon City, to see Gen. Manuel Yan, Chief of Staff of the Armed Forces of the Philippines, who referred petitioner to Col. Laroya of the CIS; that the latter, in turn, referred him to CIS Investigator Atty. Berlin Castillo and another CIS agent, whose name is unknown to the petitioner; and that, after being interrogated by the two (2), petitioner was detained illegally; and

13. GARY OLIVAR, petitioner in Case No. L-34339 - filed on November 10, 1971 - who was apprehended, by agents of the Constabulary, in the evening of November 8, 1971, in Quezon City, and then detained at Camp Crame, in the same City.

Upon the filing of the aforementioned cases, the respondents were forthwith required to answer the petitions therein, which they did. The return and answer in L-33964 - which was, *mutatis mutandis*, reproduced substantially or by reference in the other cases, except L-34265 - alleges, *inter alia*, that the petitioners had been apprehended and detained "on reasonable belief" that they had "participated in the crime of insurrection or rebellion"; that "their continued detention is justified due to the suspension of the privilege of the writ of habeas corpus pursuant to Proclamation No. 889 of the President of the Philippines"; that there is "a state of insurrection or rebellion" in this country, and that "public safety and the security of the State required the suspension of the privilege of the writ of habeas corpus," as "declared by the President of the Philippines in Proclamation No. 889"; that in making said declaration, the "President of the Philippines acted on relevant facts gathered thru the coordinated efforts of the various intelligence agents of our government but (of) which the Chief Executive could not at the moment give a full account and disclosure without risking revelation of highly classified state secrets vital to its safety and security"; that the determination thus made by the President is "final and conclusive upon the courts and upon all other persons" and "partake(s) of the nature of political question(s) which cannot be the

subject of judicial inquiry," pursuant to *Barcelon v. Baker*, 5 Phil. 87, and *Montenegro v. Castañeda*, 91 Phil. 882; that petitioners "are under detention pending investigation and evaluation of culpabilities on the reasonable belief" that they "have committed, and are still committing, individually or in conspiracy with others, engaged in armed struggle, insurgency and other subversive activities for the overthrow of the Government"; that petitioners cannot raise, in these proceedings for habeas corpus, "the question of their guilt or innocence"; that the "Chief of Constabulary had petitioners taken into custody on the basis of the existence of evidence sufficient to afford a reasonable ground to believe that petitioners come within the coverage of persons to whom the privilege of the writ of habeas corpus has been suspended"; that the "continuing detention of the petitioners is an urgent bona fide precautionary and preventive measure demanded by the necessities of public safety, public welfare and public interest"; that the President of the Philippines has "undertaken concrete and abundant steps to insure that the constitutional rights and privileges of the petitioners as well as of the other persons in current confinement pursuant to Proclamation 889 remain unimpaired and unhampered"; and that "opportunities or occasions for abuses by peace officers in the implementation of the proclamation have been greatly minimized, if not completely curtailed, by various safeguards contained in directives issued by proper authority."

These safeguards are set forth in:

1. A letter of the President to the Secretary of National Defense, dated August 21, 1971, directing, inter alia, in connection with the arrest or detention of suspects pursuant to Proclamation No. 889, that, except when caught in flagrante delicto, no arrest shall be made without warrant authorized in writing by the Secretary of National Defense; that such authority shall not be granted unless, "on the basis of records and other evidences," it appears satisfactorily, in accordance with Rule 113; section 6(b), of the Rules of Court, that the person to be arrested is probably guilty of the acts mentioned in the proclamation; that, if such person will be charged with a crime subject to an afflictive penalty under the Anti-Subversion Act," the authorization for his arrest shall not be issued unless supported by signed intelligence reports citing at least one reliable witness to the same overt act; that no unnecessary or unreasonable force shall be used in effecting arrests; and that arrested persons shall not be subject to greater restraint than is necessary for their detention;
2. Communications of the Chief of the Constabulary, dated August 23, 27 and 30, 1971, to all units of his command, stating that the privilege of the writ is suspended for no other persons than those specified in the proclamation; that the same does not involve martial law; that precautionary measures should be taken to forestall violence that may be precipitated by improper behavior of military personnel; that authority to cause arrest under the proclamation will be exercised only by the Metrocom, CMA, CIS, and "officers occupying positions in the provinces down to provincial commanders"; that there shall be no indiscriminate or mass arrests; that arrested persons shall not be harmed and shall be accorded fair and humane treatment; and that members of the detainee's immediate family shall be allowed to visit him twice a week;
3. A memorandum of the Department of National Defense, dated September 2, 1971, directing the Chief of the Constabulary to establish appropriate Complaints and Action Bodies/Groups to prevent and/or check any abuses in connection with the suspension of the privilege of the writ; and
4. Executive Order No. 333, dated August 26, 1971, creating a Presidential Administrative Assistance Committee to hear complaints regarding abuses committed in connection with the implementation of Proclamation No. 889.

Respondents in L-33965 further alleged that therein petitioners Vicente Ilao and Juan Carandang had been released from custody on August 31, 1971, "after it had been found that the evidence against them was insufficient."

In L-34265, the "Answer and Return" filed by respondents therein traversed some allegations of fact and

conclusions of law made in the petition therein and averred that Antolin Oreta, Jr., the petitioner therein, had been and is detained "on the basis of a reasonable ground to believe that he has committed overt acts in furtherance of rebellion or insurrection against the government" and, accordingly, "comes within the class of persons as to whom the privilege of the writ of habeas corpus has been suspended by Proclamation No. 889, as amended," the validity of which is not contested by him.

On August 30, 1971, the President issued Proclamation No. 889-A, amending Proclamation No. 889, so as to read as follows:

"WHEREAS, on the basis of carefully evaluated information, it is definitely established that lawless elements in the country, which are moved by common or similar ideological conviction, design and goal and enjoying the active moral and material support of a foreign power and being guided and directed by a well-trained, determined and ruthless group of men and taking advantage of our constitutional liberties to promote and attain their ends, have entered into a conspiracy and have in fact joined and banded their forces together for the avowed purpose of [actually] staging; undertaking, [and] waging and are actually engaged in an armed insurrection and rebellion in order to forcibly seize political power in this country, overthrow the duly constituted government, and supplant our existing political, social, economic and legal order with an entirely new one whose form of government, whose system of laws, whose conception of God and religion, whose notion of individual rights and family relations, and whose political, social and economic precepts are based on the Marxist-Leninist-Maoist teachings and beliefs;

"WHEREAS, these lawless elements, acting in concert through front organizations that are seemingly innocent and harmless, have continuously and systematically strengthened and broadened their memberships through sustained and careful recruiting and enlistment of new adherents from among our peasantry, laborers, professionals, intellectuals, students, and mass media personnel, and through such sustained and careful recruitment and enlistment have succeeded in infiltrating almost every segment of our society in their ceaseless determination to erode and weaken the political, social, economic and moral foundations of our existing government and to influence many peasant, labor, professional, intellectual, student and mass media organizations to commit acts of violence and depredations against our duly constituted authorities, against the members of our law enforcement agencies, and worst of all, against the peaceful members of our society;

"WHEREAS, these lawless elements, by their acts of rebellion and insurrection, have created a state of lawlessness and disorder affecting public safety and the security of the State, the latest manifestation of which has been the disastrous attack on the Liberal Party rally in Manila on August 21, 1971, which has resulted in the death and serious injury of scores of persons;

"WHEREAS, public safety requires that immediate and effective action be taken in order to maintain peace and order, secure the safety of the people and preserve the authority of the State;

"NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested upon me by Article VII, Section 10, Paragraph (2) of the Constitution, do hereby suspend the privilege of the writ of habeas corpus for the persons presently detained, as well as all others who may be hereafter similarly detained for the crimes of insurrection or rebellion[,] and [all] other [crimes and offenses] overt acts committed by them in furtherance [or on the occasion] thereof [.] [or incident thereto, or in connection therewith.]"[1]

On September 1, 1971, Cases Nos. L-33964, L-33965, L-33973 and L-33982 were jointly heard and then the parties therein were allowed to file memoranda, which were submitted from September 3 to September 9, 1971.

Soon thereafter, or on September 18, 1971, Proclamation No. 889 was further amended by Proclamation No. 889-B, lifting the suspension of the privilege of the writ of habeas corpus in the following provinces, sub-provinces and cities of the Philippines, namely:

A. PROVINCES:

1. Batanes
10. Romblon
19. Capiz
2. Ilocos Norte
11. Marinduque
20. Aklan
3. Ilocos Sur
12. Or. Mindoro
21. Antique
4. Abra
13. Occ. Mindoro
22. Iloilo
5. La Union
14. Palawan
23. Leyte
6. Pangasinan
15. Negros Occ.
24. Leyte del Sur
7. Batangas
16. Negros Or.
25. Northern Samar
8. Catanduanes
17. Cebu
26. Eastern Samar
9. Masbate
18. Bohol
27. Western Samar

B. SUB-PROVINCES:

1. Guimaras
2. Biliran

3. Siquijor

C. CITIES:

1. Laoag

4. Batangas

7. San Carlos

2. Dagupan

5. Lipa

(Negros Occ.)

3. San Carlos (Pang.)

6. Puerto Princesa

8. Cadiz

9. Silay

15. Dumaguete

21. Mandaue

10. Bacolod

16. Iloilo

22. Danao

11. Bago

17. Roxas

23. Toledo

12. Canlaon

18. Tagbilaran

24. Tacloban

13. La Carlota

19. Lapu-Lapu

25. Ormoc

14. Bais

20. Cebu

26. Calbayog

On September 25, 1971, the President issued Proclamation No. 889-C, restoring the privilege of the writ in the following provinces and cities:

A. PROVINCES

1. Surigao del Norte
6. Bukidnon
11. Camiguin
2. Surigao del Sur
7. Agusan del Norte
12. Zamb. del Norte
3. Davao del Norte
8. Agusan del Sur
13. Zamb. del Sur
4. Davao del Sur
9. Misamis Or.
14. Sulu
5. Davao Oriental
10. Misamis Occ.

B. CITIES:

1. Surigao
6. Ozamiz
10. Dipolog
2. Davao
7. Oroquieta
11. Zamboanga
3. Butuan
8. Tangub
12. Basilan
4. Cagayan de Oro
9. Dapitan
13. Pagadian
5. Gingoog

On October 4, 1971, the suspension of the privilege was further lifted by Proclamation No. 889-D, in the following places:

A. PROVINCES:

1. Cagayan
4. Kalinga-Apayao
6. Albay
2. Cavite
5. Camarines Norte
7. Sorsogon
3. Mountain Province

B. CITIES:

1. Cavite City
3. Trece Martires
2. Tagaytay
4. Legaspi

As a consequence, the privilege of the writ of habeas corpus still suspended in the following eighteen (18) provinces, two (2) sub-provinces and eighteen (18) cities, to wit:

A. PROVINCES:

1. Bataan
3. Bulacan
5. Ifugao
2. Benguet
4. Camarines Sur
6. Isabela
7. Laguna
11. Nueva Ecija
15. Rizal
8. Lanao del Norte
12. Nueva Vizcaya
16. South Cotabato
- 9 Lanao del Sur
13. Pampanga
17. Tarlac

10. North Cotabato

14. Quezon

18. Zambales

B. SUB-PROVINCES:

1. Aurora

2. Quirino

C. CITIES:

1. Angeles

7. Iligan

13. Olongapo

2. Baguio

8. Iriga

14. Palayan

3. Cabanatuan

9. Lucena

15. Pasay

4. Caloocan

10. Manila

16. Quezon

5. Cotabato

11. Marawi

17. San Jose

6. General Santos

12. Naga

18. San Pablo

The first major question that the Court had to consider was whether it would adhere to the view taken in *Barcelon v. Baker*¹ and reiterated in *Montenegro v. Castañeda*,² pursuant to which, "the authority to decide whether the exigency has arisen requiring suspension (of the privilege of the writ of habeas corpus) belongs to the President and his 'decision is final and conclusive' upon the courts and upon all other persons." Indeed, had said question been decided in the affirmative, the main issue in all of these cases, except L-34339, would have been settled, and, since the other issues were relatively of minor importance, said cases could have been readily disposed of. Upon mature deliberation, a majority of the Members of the Court had, however, reached, although tentatively, a consensus to the contrary, and decided that the Court had authority to and should inquire into the existence of the factual bases required by the Constitution for the suspension of the privilege of the writ; but

before proceeding to do so, the Court deemed it necessary to hear the parties on the nature and extent of the inquiry to be undertaken, none of them having previously expressed their views thereon. Accordingly, on October 5, 1971, the Court issued, in L-33964, L-33965, L-33973 and L-33982, a resolution stating in part that -

"x x x a majority of the Court having tentatively arrived at a consensus that it may inquire in order to satisfy itself of the existence of the factual bases for the issuance of Presidential Proclamations Nos. 889 and 889-A (suspending the privilege of the writ of habeas corpus for all persons detained or to be detained for the crimes of rebellion or insurrection throughout the Philippines, which area has lately been re-duced to some eighteen provinces , two subprovinces and eighteen cities with the partial lifting of the suspension of the privilege effected by Presidential Proclamations Nos. 889-B, 889-C and 889-D) and thus determine the constitutional sufficiency of such bases in the light of the requirements of Article III, sec. 1, par. 14, and Article VII, sec. 10, par. 2, of the Philippine Constitution; and considering that the members of the Court are not agreed on the precise scope and nature of the inquiry to be "made in the premise even as all of them are agreed that the Presidential findings are entitled to great respect, the Court RESOLVED that these cases be set for rehearing on October 8, 1971 at 9:30 A.M.

"xxx xxx xxx xxx."

On October 8, 1971, said four cases were, therefore, heard, once again, but, this time, jointly with cases Nos. L-34004, L-34013, and L-34039, and the parties were then granted a period to file memoranda, in amplification of their respective oral arguments, which memoranda were submitted from October 12 to October 21, 1971.

Respondents having expressed, during the oral arguments, on September 1 and October 8, 1971, their willingness to impart to the Court classified information relevant to these cases, subject to appropriate security measures, the Court met at closed doors, on October 28 and 29, 1971, and, in the presence of three (3) attorneys for the petitioners, chosen by the latter, namely, Senator Jose W. Diokno, Senator Salvador H. Laurel, and Atty. Leopoldo Africa, as well as of the Solicitor General and two (2) members of his staff, was briefed, by Gen. Manuel Yan, Chief of Staff of the Armed Forces of the Philippines, Gen. Fidel Ramos, Deputy Chief of Staff, Gen. Felizardo Tanabe, Col. Tagumpay Nañadiego, Judge Advocate General, JAGS (GSC), and other ranking officers of said Armed Forces, on said classified information, most of which was contained in reports and other documents already attached to the records. During the proceedings, the members of the Court, and, occasionally, counsel for the petitioners, propounded pertinent questions to said officers of the Armed Forces. Both parties were then granted a period of time within which to submit their respective observations, which were filed on November 3, 1971, and complemented by some documents attached to the records on November 6, 1971, and a summary, submitted on November 15, 1971, of the aforesaid classified information.

In the meantime, cases Nos. L-34265 (Oreta) and L-34339 (Olivar) had been filed and the parties therein were heard in oral argument on November 4 and 16, 1971, respectively.

On November 15, 1971, the Solicitor General filed manifestations-motions stating that on November 13, 1971, the following petitioners were:

(a) released from custody:

- (1) Teodosio Lansang - G. R. No. L-33964
- (2) Bayani Alcala - " " L-33964
- (3) Rogelio Arienda - " " L-33965
- (4) Nemesio Prudente - " " L-33982
- (5) Gerardo Tomas - " " L-34004

(6) Reynaldo Rimando - " " L-34013

(7) Filomeno M. de Castro - " " L-34039

(8) Barcelisa de Castro - " " L-34039

(9) Antolin Oreta, Jr. - " " L-34265

(b) charged, together with other persons named in the criminal complaint filed therefor, with a violation of Republic Act No. 1700 (Anti-Subversion Act), in the City Fiscal's Office of Quezon City:

(1) Angelo de los Reyes - G. R. No. L-33982*

(2) Teresito Sison - " " L-33982*

(c) accused, together with many others named in the criminal complaint filed therefor, of a violation of section 4 of Republic Act No. 1700 (Anti-Subversion Act), in the Court of First Instance of Rizal:

(1) Rodolfo del Rosario - G. R. No. L-33969**

(2) Luzvimindo David - " " L-33973

(3) Victor Felipe - " " L-33982*

and continue under detention pursuant to Proclamation No. 889, as amended, and praying that the petitions in G. R. Nos. L-33964, L-33965, L-33982, L-34004, L-34013 and L-34039 be dismissed, without prejudice to the resolution of the remaining cases. Copy of the criminal complaint filed, as above stated, with the Court of First Instance of Rizal and docketed therein as Criminal Case No. Q-1623 of said court - which was appended to said manifestations-motions of the respondents as Annex 2 thereof - shows that Gary Olivar, the petitioner in L-34339, is one of the defendants in said case.

Required to comment on said manifestations-motions, Luzvimindo David, petitioner in L-33973, in his comment dated November 23, 1971, urged the Court to rule on the merits of the petition in all of these cases, particularly on the constitutionality of Presidential Proclamation No. 889, as amended, upon the ground that he is still detained and that the main issue is one of public interest, involving as it does the civil liberties of the people. Angelo de los Reyes, one of the petitioners in L-33964, L-33965 and L-33973, Nemesio E. Prudente and Gerardo Tomas, for whose respective benefit the petitions in L-33982 and L-34004 have been filed, maintained that the issue in these cases is not moot, not even for the detainees who have been released, for, as long as the privilege of the writ remains suspended, they are in danger of being arrested and detained again without just cause or valid reason: In his reply, dated and filed on November 29, 1971, the Solicitor General insisted that the release of the above-named petitioners rendered their respective petitions moot and academic.

I

Petitioners herein, except Antolin Oreta, Jr. in L-34265, question the formal validity of the proclamation suspending the privilege of the writ of habeas corpus. In this connection, it should be noted that, as originally formulated, Proclamation No. 889 was contested upon the ground that it did not comply with the pertinent constitutional provisions, namely, paragraph (14) of section 1, Article III of our Constitution, reading:

"The privilege of the writ of habeas corpus shall not be suspended except in cases of invasion, insurrection, or rebellion, when the public safety requires it, in any of which events the same may be suspended wherever during such period the necessity for such suspension shall exist."

and paragraph (2), section 10, Article VII of the same instrument, which provides that:

"The President shall be 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, insurrection, or rebellion. In case of invasion, insurrection, or rebellion, or imminent danger thereof when the public safety requires it, he may suspend the privileges of the writ of habeas corpus, or place the Philippines or any part thereof under martial law."

Regardless of whether or not the President may suspend the privilege of the writ of habeas corpus in case of "imminent danger" of invasion, insurrection or rebellion - which is one of the grounds stated in said paragraph (2), section 10 of Art. VII of the Constitution, but not mentioned in paragraph (14), section 1 of its Bill of Rights - petitioners maintained that Proclamation No. 889 did not declare the existence of actual "invasion, insurrection or rebellion or imminent danger thereof," and that, consequently, said Proclamation was invalid. This contention was predicated upon the fact that, although the first "whereas" in Proclamation No. 889 stated that "lawless elements" had "entered into a conspiracy and have in fact joined and banded their forces together for the avowed purpose of actually staging, undertaking and waging an armed insurrection and rebellion, "the actuality so alleged refers to the existence, not of an uprising that constitutes the essence of a rebellion or insurrection, but of the conspiracy and the intent to rise in arms.

Whatever may be the merit of this claim, the same has been rendered moot and academic by Proclamation No. 889-A, issued nine (9) days after the promulgation of the original proclamation, or on August 30, 1971. Indeed, said Proclamation No. 889-A amended, inter alia, the first "whereas" of the original proclamation by postulating that said lawless elements "have entered into a conspiracy and have in fact joined and banded their forces together for the avowed purpose of staging, undertaking, waging and are actually engaged in an armed insurrection and rebellion in order to forcibly seize political power in this country, overthrow the duly constituted government, and supplant our existing political, social, economic and legal order with an entirely new one x x x." More-over, the third "whereas" in the original proclamation was, likewise, amended by alleging therein that said lawless elements, "by their acts of rebellion and insurrection," have created a state of lawlessness and disorder affecting public safety and the security of the State. In other words, apart from advertent to the existence of an actual conspiracy and of the intent to rise in arms to overthrow the government, Proclamation No. 889-A asserts that the lawless elements "are actually engaged in an armed insurrection and rebellion" to accomplish their purpose.

It may not be amiss to note, at this juncture, that the very tenor of the original proclamation and, particularly, the circumstances under which it had been issued, clearly suggest the intent to aver that there was and is, actually, a state of rebellion in the Philippines, although the language of said proclamation was hardly a felicitous one, it having, in effect, stressed the actuality of the intent to rise in arms, rather than of the factual existence of the rebellion itself. The pleadings, the oral arguments and the memoranda of respondents herein have consistently and abundantly emphasized - to justify the suspension of the privilege of the writ of habeas corpus - the acts of violence and subversion committed prior to August 21, 1971, by the lawless elements above referred to, and the conditions obtaining at the time of the issuance of the original proclamation. In short, We hold that Proclamation No. 889-A has superseded the original proclamation and that the flaws attributed thereto are purely formal in nature.

II

Let us now consider the substantive validity of the proclamation, as amended. Pursuant to the above-quoted provisions of the Constitution, two (2) conditions must concur for the valid exercise of the authority to suspend the privilege of the writ, to wit: (a) there must be "invasion, insurrection, or rebellion" or - pursuant to paragraph (2), section 10 of Art. VII of the Constitution - "imminent danger thereof," and (b) "public safety" must require

the suspension of the privilege. The Presidential Proclamation under consideration declares that there has been and there is actually a state of rebellion and that¹ "public safety requires that immediate and effective action be taken in order to maintain peace and order, secure the safety of the people and preserve the authority of the State."

Are these findings conclusive upon the Court? Respondents maintain that they are, upon the authority of *Barcelon v. Baker*² and *Montenegro v. Castañeda*.³ Upon the other hand, petitioners press the negative view and urge a re-examination of the position taken in said two (2) cases, as well as a reversal thereof.

The weight of *Barcelon v. Baker*, as a precedent, is diluted by two (2) factors, namely: (a) it relied heavily upon *Martin v. Mott*⁴ involving the U.S. President's power to call out the militia, which - he being the commander-in-chief of all the armed forces - may be exercised to suppress or prevent any lawless violence, even without invasion, insurrection or rebellion, or imminent danger thereof, and is, accordingly, much broader than his authority to suspend the privilege of the writ of habeas corpus, jeopardizing as the latter does individual liberty; and (b) the privilege had been suspended by the American Governor-General, whose act, as representative of the Sovereign, affecting the freedom of its subjects, can hardly be equated with that of, the President of the Philippines dealing with the freedom of the Filipino people, in whom sovereignty resides, and from whom all government authority emanates. The pertinent ruling in the *Montenegro* case was based mainly upon the *Barcelon* case, and, hence, cannot have more weight than the same. Moreover, in the *Barcelon* case, the Court held that it could go into the question: "Did the Governor-General" - acting under the authority vested in him by the Congress of the United States, to suspend the privilege of the writ of habeas corpus under certain conditions - "act in conformance with such authority?" In other words, it did determine whether or not the Chief Executive had acted in accordance with law. Similarly, in the *Montenegro* case, the Court held that petitioner therein had "failed to overcome the presumption of correctness which the judiciary accords to acts of the Executive x x x." In short, the Court considered the question whether or not there ally was a rebellion, as stated in the proclamation therein contested.

Incidentally, even the American jurisprudence is neither explicit nor clear on the point under consideration. Although some cases¹ purport to deny the judicial power to "review" the findings made in the proclamations assailed in said cases, the tenor of the opinions therein given, considered as a whole, strongly suggests the court's conviction that the conditions essential for the validity of said proclamations or orders were, in fact, present therein, just as the opposite view taken in other cases² had a backdrop permeated or characterized by the belief that said conditions were absent. Hence, the dictum of Chief Justice Taney to the effect that "(e)very case must depend on its own circumstances."³ One of the important, if not dominant, factors, in connection therewith, was intimated in *Sterling v. Constantin*,⁴ in which the Supreme Court of the United States, speaking through Chief Justice Hughes, declared that:

"x x x. When there is a substantial showing that the exertion of state power has overridden private rights secured by that Constitution, the subject is necessarily one for judicial inquiry in an appropriate proceeding directed against the individuals charged with the transgression. To such a case the Federal judicial power extends (Art. 3, sec. 2) and, so extending, the court has all the authority appropriate to its exercise. x x x."⁵

In our resolution of October 5, 1971, We stated that "a majority of the Court" had "tentatively arrived at a consensus that it may inquire in order to satisfy itself of the existence of the factual bases for the issuance of Presidential Proclamations Nos. 889 and 889-A x x x and thus determine the constitutional sufficiency of such bases in the light of the requirements of Article III, sec. 1, par. 14, and Article VII, sec. 10, par. 2, of the Philippine Constitution x x x." Upon further deliberation, the members of the Court are now unanimous in the conviction that it has the authority to inquire into the existence of said factual bases in order to determine the

constitutional sufficiency thereof.

Indeed, the grant of power to suspend the privilege is neither absolute nor unqualified. The authority conferred by the constitution, both under the Bill of Rights and under the Executive Department, is limited and conditional. The precept in the Bill of Rights establishes a general rule, as well as an exception thereto. What is more, it postulates the former in the negative, evidently to stress its importance, by providing that "(t)he privilege of the writ of habeas corpus shall not be suspended x x x." It is only by way of exception that it permits the suspension of the privilege "in cases of invasion, insurrection, or rebellion"- or, under Art. VII of the Constitution, "imminent danger thereof" - "when the public safety requires it, in any of which events the same may be suspended wherever during such period the necessity for such suspension shall exist."¹ Far from being full and plenary, the authority to suspend the privilege of the writ is thus circumscribed, confined and restricted, not only by the prescribed setting or the conditions essential to its existence, but, also, as regards the time when and the place where it may be exercised. These factors and the aforementioned setting or conditions mark, establish and define the extent, the confines and the limits of said power, beyond which it does not exist. And, like the limitations and restrictions imposed by the Fundamental Law upon the legislative department, adherence thereto and compliance therewith may, within proper bounds, be inquired into by courts of justice. Otherwise, the explicit constitutional provisions thereon would be meaningless. Surely, the framers of our Constitution could not have intended to engage in such a wasteful exercise in futility.

Much less may the assumption be indulged in when we bear in mind that our political system is essentially democratic and republican in character and that the suspension of the privilege affects the most fundamental element of that system, namely, individual freedom. Indeed, such freedom includes and connotes, as well as demands, the right of every single member of our citizenry to freely discuss and dissent from, as well as criticize and denounce, the views, the policies and the practices of the government and the party in power that he deems unwise, improper or inimical to the commonweal, regardless of whether his own opinion is objectively correct or not. The untrammelled enjoyment and exercise of such right - which, under certain conditions; may be a civic duty of the highest order - is vital to the democratic system and essential to its successful operation and wholesome growth and development.

Manifestly, however, the liberty guaranteed and protected by our Basic Law is one enjoyed and exercised, not in derogation thereof, but consistently therewith, and, hence, within the framework of the social order established by the Constitution and the context of the Rule of Law. Accordingly, when individual freedom is used to destroy that social order, by means of force and violence, in defiance of the Rule of Law - such as by rising publicly and taking arms against the government to overthrow the same, thereby committing the crime of rebellion - there emerges a circumstance that may warrant a limited withdrawal of the aforementioned guarantee or protection, by suspending the privilege of the writ of habeas corpus, when public safety requires it. Although we must be forewarned against mistaking mere dissent - no matter how emphatic or intemperate it may be - for dissidence amounting to rebellion or insurrection, the Court cannot hesitate, much less refuse - when the existence of such rebellion or insurrection has been fairly established or cannot reasonably be denied - to uphold the finding of the Executive thereon, without, in effect, encroaching upon a power vested in him by the Supreme Law of the land and depriving him, to this extent, of such power, and, therefore, without violating the Constitution and jeopardizing the very Rule of Law the Court is called upon to epitomize.

As heretofore adverted to, for the valid suspension of the privilege of the writ: (a) there must be "invasion, insurrection or rebellion" or pursuant to paragraph (2), section 10 of Art. VII of the Constitution - "imminent danger thereof"; and (b) public safety must require the aforementioned suspension. The President declared in Proclamation No. 889, as amended, that both conditions are present.

As regards the first condition, our jurisprudence¹ attests abundantly to the Communist activities in the Philippines, especially in Manila, from the late twenties to the early thirties, then aimed principally at incitement to sedition or rebellion, as the immediate objective. Upon the establishment of the Commonwealth of the Philippines, the movement seemed to have waned notably; but, the out-break of World War II in the Pacific and the miseries, the devastation and havoc, and the proliferation of unlicensed firearms concomitant with the military occupation of the Philippines and its subsequent liberation, brought about, in the late forties, a resurgence of the Communist threat, with such vigor as to be able to organize and operate in Central Luzon an army - called HUKBALAHAP, during the occupation, and renamed Hukbong Mapagpalaya ng Bayan (HMB) after liberation - which clashed several times with the armed forces of the Republic. This prompted then President Quirino to issue Proclamation No. 210, dated October 22, 1950, suspending the privilege of the writ of habeas corpus, the validity of which was upheld in *Montenegro v. Castañeda*.¹ Days before the promulgation of said Proclamation, or on October 18, 1950, members of the Communist Politburo in the Philippines were apprehended in Manila. Subsequently accused and convicted of the crime of rebellion, they served their respective sentences.²

The fifties saw a comparative lull in Communist activities, insofar as peace and order were concerned. Still, on June 20, 1957, Rep. Act No. 1700, otherwise known as the Anti-Subversion Act, was approved, upon the ground - stated in the very preamble of said statute - that

"x x x the Communist Party of the Philippines, although purportedly a political party, is in fact an organized conspiracy to overthrow the Government of the Republic of the Philippines, not only by force and violence but also by deceit, subversion and other illegal means, for the purpose of establishing in the Philippines a totalitarian regime subject to alien domination and control;

"x x x the continued existence and activities of the Communist Party of the Philippines constitutes a clear, present and grave danger to the security of the Philippines³; and

"x x x in the face of the organized, systematic and persistent subversion, national in scope but international in direction, posed by the Communist Party of the Philippines and its activities, there is urgent need for special legislation to cope with this continuing menace to the freedom and security of the country x x x."

In the language of the Report on Central Luzon, submitted, on September 4, 1971, by the Senate Ad Hoc Committee of Seven - copy of which Report was filed in these cases by the petitioners herein -

"The years following 1963 saw the successive emergence in the country of several mass organizations, notably the Lapiang Manggagawa (now the Socialist Party of the Philippines) among the workers; the Malayang Samahan ng Mga Magsasaka (MASAKA) among the peasantry; the Kabataang Makabayan (KM) among the youth/students; and the Movement for the Advancement of Nationalism (MAN) among the intellectuals/professionals. The PKP has exerted all-out effort to infiltrate, influence and utilize these organizations in promoting its radical brand of nationalism."¹

Meanwhile, the Communist leaders in the Philippines had been split into two (2) groups, one of which - composed mainly of young radicals, constituting the Maoist faction - reorganized the Communist Party of the Philippines early in 1969 and established a New People's Army. This faction adheres to the Maoist concept of the "Protracted People's War" or "War of National Liberation." Its "Programme for a People's Democratic Revolution" states, inter alia:

"The Communist Party of the Philippines is determined to implement its general programme for a people's democratic revolution. All Filipino communists are ready to sacrifice their lives for the worthy cause of achieving the new type of democracy, of building a new Philippines that is genuinely and completely independent, democratic, united, just and prosperous ...

“xxx xxx xxx.

"The central task of any revolutionary move-ment is to seize political power. The Communist Party of the Philippines assumes this task at a time that both the international and national situations are favorable to taking the road of armed revolution ..."1

In the year 1969, the NPA had - according to the records of the Department of National Defense - conducted raids, resorted to kidnappings and taken part in other violent incidents numbering over 230, in which it inflicted 404 casualties, and, in turn, suffered 243 losses. In 1970, its record of violent incidents was about the same, but the NPA casualties more than doubled.

At any rate, two (2) facts are undeniable: (a) all Communists, whether they belong to the traditional group or to the Maoist faction, believe that force and violence are indispensable to the attainment of their main and ultimate objective, and act in accordance with such belief, although they may disagree on the means to be used at a given time and in a particular place; and (b) there is a New People's Army, other, of course, than the armed forces of the Republic and antagonistic thereto. Such New People's Army is per se proof of the existence of a rebellion, especially considering that its establishment was announced publicly by the reorganized CPP. Such announcement is in the nature of a public challenge to the duly constituted authorities and may be likened to a declaration of war, sufficient to establish a war status or a condition of belligerency, even before the actual commencement of hostilities.

We, entertain, therefore, no doubts about the existence of a sizeable group of men who have publicly risen in arms to overthrow the government and have thus been and still are engaged in rebellion against the Government of the Philippines.

In fact, the thrust of petitioners' argument is that the New People's Army proper is too small, compared with the size of the armed forces of the Government, that the Communist rebellion or insurrection cannot so endanger public safety as to require the sus-pension of the privilege of the writ of habeas corpus. This argument does not negate, however, the existence of a rebellion, which, from the constitutional and statutory viewpoint, need not be widespread or attain the magnitude of a civil war. This is apparent from the very provision of the Revised Penal Code defining the crime of, re-bellion,¹ which may be limited in its scope to "any part" of the Philippines, and, also, from paragraph (14) of section 1, Article III of the Constitution, authorizing the suspension of the privilege of the writ "wherever" - in case of rebellion - "the necessity for such sus-pension shall exist." In fact, the case of *Barcelon v. Baker* referred to a proclamation suspending the privilege in the provinces of Cavite and Batangas only. The case of *In re Boyle*² involved a valid pro-clamation suspending the privilege in a smaller area - a county of the state of Idaho.

The magnitude of the rebellion has a bearing on the second condition essential to the validity of the suspension of the privilege - namely, that the suspension be required by public safety. Before delving, however, into the factual bases of the presidential findings thereon, let us consider the' precise nature of the Court's function in passing upon the validity of Proclamation No. 889, as amended.

Article VII of the Constitution vests in the Executive the power to suspend the privilege of the writ of habeas corpus under specified conditions. Pursuant to the principle of separation of powers under-lying our system of government, the Executive is supreme within his own sphere. However, the separation of powers, under the Constitution, is not absolute. What is more, it goes hand in hand with the system of checks and balances, under which the Executive is supreme, as regards the suspension of the privilege, but only if and when he acts within the sphere allotted to him by the Basic Law, and the authority to determine whether or not he has so acted is vested in the Judicial Department, which, in this respect, is, in turn, constitutionally su-preme.

In the exercise of such authority, the function of the Court is merely to check - not to supplant³ - the Executive, or to ascertain merely whether he has gone beyond the constitutional limits of his jurisdiction, not to exercise the power vested in him or to determine the wisdom of his act. To be sure, the power of the Court to determine 'the validity of the contested proclamation is far from being identical to, or even comparable with, its power over ordinary civil or criminal cases elevated thereto by ordinary appeal from inferior courts, in which cases the appellate court has all of the powers of the court of origin.

Under the principle of separation of powers and the system of checks and balances, the judicial authority to review decisions of administrative bodies or agencies is much more limited, as regards findings of fact made in said decisions. Under the English law, the reviewing court determines only whether there is some evidentiary basis for the contested administrative finding; no quantitative examination of the supporting evidence is undertaken. The administrative finding can be interfered with only if there is no evidence whatsoever in support thereof, and said finding is, accordingly, arbitrary, capricious and obviously unauthorized. This view has been adopted by some American courts. It has, likewise, been adhered to in a number of Philippine cases. Other cases, in both jurisdictions, have applied the "substantial evidence" rule, which has been construed to mean "more than a mere scintilla" or "relevant evidence as a reasonable mind might accept as adequate to support a conclusion,"¹ even if other minds equally reasonable might conceivably opine otherwise.

Manifestly, however, this approach refers to the review of administrative determinations involving the exercise of quasi-judicial functions calling for or entailing the reception of evidence. It does not and cannot be applied, in its aforesaid form, in testing the validity of an act of Congress or of the Executive, such as the suspension of the privilege of the writ of habeas corpus, for, as a general rule, neither body takes evidence - in the sense in which the term is used in judicial proceedings - before enacting a legislation or suspending the writ. Referring to the test of the validity of a statute, the Supreme Court of the United States, speaking through Mr. Justice Roberts, expressed, in the leading case of *Nebbia v. New York*,² the view that:

"x x x If the laws passed are seen to have a reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory, the requirements of due process are satisfied, and judicial determination to that effect renders a court functus officio... With the wisdom of the policy adopted, with the adequacy or practicability of the law enacted to forward it, the courts are both incompetent and unauthorized to deal ..."

Relying upon this view, it is urged by the Solicitor General -

"x x x that judicial inquiry into the basis of the questioned proclamation can go no further than to satisfy the Court not that the President's decision is correct and that public safety was endangered by the rebellion and justified the suspension of the writ, but that in suspending the writ, the 'President did not act arbitrarily."

No cogent reason has been submitted to warrant the rejection of such test. Indeed, the co-equality of coordinate branches of the Government, under our constitutional system, seems to demand that the test of the validity of acts of Congress and of those of the Executive be, *mutatis mutandis*, fundamentally the same. Hence, counsel for petitioner Rogelio Arienda admits that the proper standard is not correctness, but arbitrariness.

Did public 'safety require the suspension of the privilege of the writ of habeas corpus decreed in Proclamation No. 889, as amended? Petitioners submit a negative answer upon the ground: (a) that there is no rebellion; (b) that, prior to and at the time of the suspension of the privilege, the Government was functioning normally, as were the courts; (c) that no untoward incident, confirmatory of an alleged July August Plan, has actually taken place after August 21, 1971; (d) that the President's alleged apprehension, because of said plan, is non-existent and unjustified; and (e) that the Communist forces in the Philippines are too small and weak to jeopardize public safety to such extent as to require the suspension of the privilege of the writ of habeas corpus.

As above indicated, however, the existence of a rebellion is obvious, so much so that counsel for several petitioners herein have admitted it.

With respect to the normal operation of government, including courts, prior to and at the time of the suspension of the privilege, suffice it to say that, if the conditions were such that courts of justice no longer functioned a suspension of the privilege would have been unnecessary, there being no courts to issue the writ of habeas corpus. Indeed, petitioners' reference to the normal operation of courts as a factor indicative of the illegality of the contested act of the Executive stems, perhaps, from the fact that this circumstance was adverted to in some American cases to justify the invalidation therein decreed of said act of the Executive. Said cases involved, however, the conviction by military courts of members of the civilian population charged with common crimes. It was manifestly, illegal for military courts to assume jurisdiction over civilians so charged, when civil courts were functioning normally.

Then, too, the alleged absence of any untoward incident after August 21, 1971, does not necessarily bear out petitioners' view. What is more, it may have been due precisely to the suspension of the privilege. To be sure, one of its logical effects is to compel those connected with the insurrection or rebellion to go into hiding. In fact, most of them could not be located by the authorities, after August 21, 1971.

The alleged July-August Plan to terrorize Manila is branded as incredible, upon the theory that, according to Professor Egbal Ahmad of Cornell University, "guerrilla use of terror x x x is sociological and psychologically selective," and that the indiscriminate resort to terrorism is bound to boomerang, for it tends to alienate the people's sympathy and to deprive the dissidents of much needed mass support. The fact, however, is that the violence, used in some demonstrations held in Manila in 1970 and 1971 tended to terrorize the bulk of its inhabitants. It would have been highly imprudent, therefore, for the Executive to discard the possibility of a resort to terrorism, on a much bigger scale, under the July-August Plan.

We will now address our attention to petitioners' theory to the effect that the New People's Army of the Communist Party of the Philippines is too small to pose a danger to public safety of such magnitude as to require the suspension of the privilege of the writ of habeas corpus. The flaw in petitioners' stand becomes apparent when we consider that it assumes that the Armed Forces of the Philippines have no other task than to fight the New People's Army, and that the latter is the only threat - and a minor one - to our security. Such assumption is manifestly erroneous.

The records before Us show that, on or before August 21, 1971, the Executive had information and reports - subsequently confirmed, in many respects, by the above-mentioned Report of the Senate Ad-Hoc Committee of Seven¹ - to the effect that the Communist Party of the Philippines does not merely adhere to Lenin's idea of a swift armed uprising; that it has, also, adopted Ho Chi Minh's terrorist tactics and resorted to the assassination of uncooperative local officials; that, in line with this policy, the insurgents have killed 5 mayors, 20 barrio captains and 3 chiefs of police; that there were fourteen (14) meaningful bombing incidents in the Greater Manila Area in 1970; that the Constitutional Convention Hall was bombed on June 12, 1971; that, soon after the Plaza Miranda incident, the MAWASA main pipe, at the Quezon City-San Juan boundary, was bombed; that this was followed closely by the bombing of the Manila City Hall, the COMELEC Building, the Congress Building and the MERALCO substation at Cubao, Quezon City; and that the respective residences of Senator Jose J. Roy and Congressman Eduardo Cojuangco were, likewise, bombed, as were the MERALCO main office premises, along Ortigas Avenue, and the Doctor's Pharmaceuticals, Inc. Building, in Caloocan City.

Petitioners, similarly, fail to take into account that - as per said information and reports - the reorganized Communist Party of the Philippines has, moreover, adopted Mao's concept of protracted people's war, aimed at

the paralyzation of the will to resist of the government, of the political, economic and intellectual leadership, and of the people themselves; that conformably to such concept, the Party has placed special emphasis upon a most extensive and intensive program of subversion by the establishment of front organizations in urban centers, the organization of armed city partisans and the infiltration in student groups, labor unions, and farmer and professional groups; that the CPP has managed to infiltrate or establish and control nine (9) major labor organizations; that it has exploited the youth movement and succeeded in making Communist fronts of eleven (11) major student or youth organizations; that there are, accordingly, about thirty (30) mass organizations actively advancing the CPP interests, among which are the Malayang Samahan ng Magsasaka (MASAKA), the Kabataang Makabayan (KM), the Movement for the Advancement of Nationalism (MAN), the Samahang Demokratiko ng Kabataan (SDK), The Samahang Molave (SM) and the Malayang Pagkakaisa ng Kabataang Pilipino (MPKP); that, as of August, 1971, the KM had two hundred forty-five,(245) operational chapters throughout the Philippines, of which seventy-three (73) were in the Greater Manila Area, sixty (60) in Northern Luzon, forty-nine (49) in Central Luzon, forty-two (42) in the Visayas and twenty-one (21) in Mindanao and Sulu; that in 1970, the Party had recorded two hundred fifty-eight (258) major demonstrations, of which about thirty-three (33) ended in violence, resulting in fifteen (15) killed and over five hundred (500) injured; that most of these actions were organized, coordinated or led by the aforementioned front organizations; that the violent demonstrations were generally instigated by a small, but well-trained group of armed agitators; that the number of demonstrations heretofore staged in 1971 has already exceeded those of 1970; and that twenty-four (24) of these demonstrations were violent, and resulted in the death of fifteen (15) persons and the injury of many more.

Subsequent events - as reported - have also proven that petitioners' counsel have underestimated the threat to public safety posed by the New People's Army. Indeed, it appears that, since August 21, 1971, it had in Northern Luzon six (6) encounters and staged one (1) raid, in consequence of which seven (7) soldiers lost their lives and two (2) others were wounded, whereas the insurgents suffered five (5) casualties; that on August 26, 1971, a well-armed group of NPA, trained by defector Lt. Victor Corpus, attacked the very command post of TF LAWIN in Isabela, destroying two (2) helicopters and one (1) plane, and wounding one (1) soldier; that the NPA had in Central Luzon a total of four (4) encounters, with two (2) killed and three (3) wounded on the side of the Government, one (1) BSDU killed and three (3) NPA casualties; that in an encounter at Botolan, Zambales, one (1) KM-SDK leader, an unidentified dissident, and Commander Panchito, leader of the dissident group, were killed; that on August 26, 1971, there was an encounter in the barrio of San Pedro, Iriga City, Camarines Sur, between the PC and the NPA, in which a PC and two (2) KM members were killed; that the current disturbances in Cotabato and the Lanao provinces/have been rendered more complex by the involvement of the CPP/NPA, for, in mid-1971, a KM group, headed by Jovencio Esparagoza, contacted the Higa-onan tribes, in their settlement in Magsaysay, Misamis Oriental, and offered them books, pamphlets and brochures of Mao Tse Tung, as well as conducted teach-ins in the reservation; that Esparagoza was reportedly killed on September 22, 1971, in an operation of the PC in said reservation; and that there are now two (2) NPA cadres in Mindanao.

It should, also, be noted that adherents of the CPP and its front organizations are, according to intelligence findings, definitely capable of preparing powerful explosives out of locally available materials; that the bomb used in the Constitutional Convention Hall was a "clay-more" mine, a powerful explosive device used by the U. S. Army, believed to have been one of many pilfered from the Subic Naval Base a few days before; that the President had received intelligence information to the effect that there was a July-August Plan involving a wave of assassinations, kidnappings; terrorism and mass destruction of property and that an extraordinary occurrence would signal the beginning of said event; that the rather serious condition of peace and order in Mindanao, particularly in Cotabato and Lanao, demanded the presence therein of forces sufficient to cope with the situation; that a sizeable part of our armed forces discharge other functions; and that the expansion of the CPP activities

from Central Luzon to other parts of the country, particularly Manila and its suburbs, the Cagayan Valley, Ifugao, Zambales, Laguna, Quezon and the Bicol Region, required that the rest of our armed forces be spread thin over a wide area.

Considering that the President was in possession of the above data - except those related to events that happened after August 21, 1971 - when the Plaza Miranda bombing took place, the Court is not prepared to hold that the Executive had acted arbitrarily or gravely abused his discretion when he then concluded that public safety and national security required the suspension of the privilege of the writ, particularly if the NPA were to strike simultaneously with violent demonstrations staged by the two hundred forty-five (245) KM chapters, all over the Philippines, with the assistance and cooperation of the dozens of, CPP front organizations; and the bombing of water mains and conduits, as well as electric power plants and installations - a possibility which, no matter how remote, he was bound to forestall, and a danger he was under obligation to anticipate and arrest.

He had consulted his advisers and sought their views. He had reason to feel that the situation was critical - as, indeed, it was - and demanded immediate action. This he took believing in good faith that public Safety required it. And, in the light of the circumstances adverted to above, he had substantial grounds to entertain such belief.

Petitioners insist that, nevertheless, the President had no authority to suspend the privilege in the entire Philippines, even if he may have been justified in doing so in some provinces or cities thereof. At the time of the issuance of Proclamation No. 889, he could not be reasonably certain, however, about the places to be excluded from the operation of the proclamation. He needed some time to find out how it worked, and as he did So, he caused the suspension to be gradually lifted, first, on September 18, 1971, in twenty-seven (27) provinces, three (3) sub-provinces and twenty-six (26) cities; then, on September 25, 1971, in other fourteen (14) provinces and thirteen (13) cities; and, still later, on October 4, 1971, in seven (7) additional provinces and four (4) cities, or a total of forty-eight (48) provinces, three (3) sub-provinces and forty-three (43) cities, within a period of forty-five (45) days from August 21, 1971.

Neither should We overlook the significance of another fact. The President could have declared a general suspension of the privilege. Instead, Proclamation No. 889 limited the suspension to persons detained "for crimes of insurrection or rebellion, and all other crimes and offenses committed by them in furtherance or on the occasion thereof, or incident thereto, or in connection therewith." Even this was further limited by Proclamation No. 889-A, which withdrew from the coverage of the suspension persons detained for other crimes and offenses committed "on the occasion" of the insurrection or rebellion, or "incident thereto, or in connection therewith." In fact, the petitioners in L-33964, L-33982 and L-34004 concede that the President had acted in good faith.

In case of invasion, insurrection or rebellion or imminent danger thereof, the President has, under the Constitution, three (3) courses of action open to him, namely: (a) to call out the armed forces; (b) to suspend the privilege of the writ of habeas corpus; and (c) to place the Philippines or any part thereof under martial law. He had; already, called out the armed, forces, which measure, however, proved inadequate to attain the desired result. Of the two (2) other alternatives, the suspension of the privileges the least harsh.

In view of the foregoing, it does not appear that the President has acted arbitrarily in issuing Proclamation No. 889, as amended, nor that the same is unconstitutional.

III

The next question for determination is whether petitioners herein are covered by said Proclamation, as amended, In other words, do petitioners herein belong to the class of persons as to whom the privilege of the writ of habeas corpus has been suspended?

In this connection, it appears that Bayani Alcala, one of the petitioners in L-33964, Gerardo Tomas, petitioner in L-34004, and Reynaldo Rimando, petitioner in L-34013, were, on November 13, 1971, released "permanently" - meaning, perhaps, without any intention to prosecute them - upon the ground that, although there was reasonable ground to believe that they had committed an offense related to subversion, the evidence against them is insufficient to warrant their prosecution; that Teodosio Lansang, one of the petitioners in L-33964, Rogelio Arienda, petitioner in L-33965, Nemesio Prudente, petitioner in L-33982, Filomeno de Castro and Barcelisa C. de Castro, for whose benefit the petition in L-34039 was filed, and Antolin Oreta, Jr., petitioner in L-34265, were, on said date, "temporarily released"; that Rodolfo del Rosario, one of the petitioners in L-33964, Victor Felipe, an intervenor in L-33964, L-33965 and L-33973, as well as Luzvimindo David, petitioner in L-33973, and Gary Olivar, petitioner in L-34339, are still under detention and, hence, deprived of their liberty, they - together with over forty (40) other persons, who are at large - having been accused, in the Court of First Instance of Rizal, of a violation of section 4 of Republic Act No. 1700 (Anti-Subversion Act); and that Angelo de los Reyes and Teresito Sison, intervenors in said L-33964, L-33965 and L-33973, are, likewise, still detained and have been charged - together with over fifteen (15) other persons, who are, also, at large - with another violation of said Act, in a criminal complaint filed with the City Fiscal's Office of Quezon City.

With respect to Vicente Ilao and Juan Carandang - petitioners in L-33965 - who were released as early as August 31, 1971, as well as to petitioners Nemesio Prudente, Teodosio Lansang, Rogelio Arienda, Antolin Oreta, Jr., Filomeno de Castro, Barcelisa C. de Castro, Reynaldo Rimando, Gerardo Tomas and Bayani Alcala, who were released on November 13, 1971, and are no longer deprived of their liberty, their respective petitions have, thereby, become moot and academic, as far as their prayer for release is concerned, and should, accordingly, be dismissed, despite the opposition thereto of counsel for Nemesio Prudente and Gerardo Tomas, who maintain that, as long as the privilege of the writ remains suspended, these petitioners might be arrested and detained again, without just cause, and that, accordingly, the issue raised in their respective petitions is not moot. In any event, the common constitutional and legal issues raised, in these cases have, in fact, been decided in this joint decision.

Must we order the release of Rodolfo del Rosario, one of the petitioners in L-33964, Angelo de los Reyes, Victor Felipe and Teresito Sison, intervenors in L-33964, L-33965 and L-33973, Luzvimindo David, petitioner in L-33973, and Gary Olivar, petitioner in L-34339, who are still detained? The suspension of the privilege of the writ was decreed by Proclamation No. 889, as amended, for persons detained "for the crimes of insurrection or rebellion and other overt acts committed by them in furtherance thereof."

The records show that petitioners Luzvimindo David, Rodolfo del Rosario, Victor Felipe, Angelo de los Reyes, Teresito Sison and Gary Olivar are accused in Criminal Case No. Q-1623 of the Court of First Instance of Rizal with a violation of the Anti-Subversion Act and that the similar charge against petitioners Angelo de los Reyes and Teresito Sison in a criminal complaint, originally filed with the City Fiscal of Quezon City, has, also, been filed with said court. Do the offenses so charged constitute one of the crimes or overt acts mentioned in Proclamation No. 889, as amended?

In the Complaint in said Criminal Case No. 1623, it is alleged:

"That in or about the year 1968 and for sometime prior thereto and thereafter up to and including August 21, 1971, in the city of Quezon, Philippines, and elsewhere in the Philippines, within the jurisdiction of this Honorable Court, the above-named accused knowingly, wilfully and by overt acts became officers and/or ranking leaders of the Communist Party of the Philippines, a subversive association as defined by Republic Act No. 1700, which is an organized conspiracy to overthrow the government of the Republic of the Philippines by force, violence, deceit, subversion and other illegal means, for the purpose of establishing in the Philippines a communist totalitarian regime subject to alien domination and control;

"That all the above-named accused, as such officers and/or ranking leaders of the Communist Party of the Philippines conspiring, confederating and mutually helping one another, did then and there knowingly, wilfully, feloniously and by overt acts committed subversive acts all intended to overthrow the government of the Republic of the Philippines, as follows:

1. By rising publicly and taking arms against the government, engaging in war against the forces of the government, destroying property or committing serious violence, exacting contributions or diverting public funds or property from the lawful purpose for which they have been appropriated;
2. By engaging in subversion thru expansion and recruitment activities not only of the Communist Party of the Philippines but also of the united front organizations of the Communist Party of the Philippines as the Kabataang Makabayan (KM), Movement for a Democratic Philippines (MDP), Samahang Demokratikong Kabataan (SDK), Students' Alliance for National Democracy (STAND), MASAKA Olalia-faction, Student Cultural Association of the University of the Philippines (SCAUP), KASAMA, Pagkakaisa ng Magbubukid ng Pilipinas (PMP) and many others; thru agitation promoted by rallies, demonstrations and strikes some of them violent in nature, intended to create social discontent, discredit those in power and weaken the people's confidence in the government; thru consistent propaganda by publications, writing, posters, leaflets or similar means; speeches, teach-ins, messages, lectures or other similar means; and thru the media as the TV, radio or newspapers, all intended to promote the Communist pattern of subversion;
3. Thru urban guerrilla warfare characterized by assassinations, bombings, sabotage, kidnapping and arson, intended to, advertise the movement, build up its morale and prestige, discredit and demoralize the authorities to use harsh and repressive measures, demoralize the people and weaken their confidence in the government and to weaken the will of the government to resist.

"That the following aggravating circumstances, attended the commission of the offense:

- a. That the offense was committed in contempt of and with insult to the public authorities;
- b. That some of the overt acts were committed in the Palace of the Chief Executive;
- c. That craft, fraud, or disguise was employed;
- d. That the offense was committed with the aid of armed men;
- e. That the offense was committed with the aid of persons under fifteen (15) years old."

Identical allegations are made in the complaint filed with the City Fiscal of Quezon City, except that the second paragraph thereof is slightly more elaborate than that of the complaint filed with the CFI, although substantially the same.¹

In both complaints, the acts imputed to the defendants herein constitute rebellion and subversion, or - in the language of the proclamation - "other overt acts committed x x x in furtherance" of said rebellion, both of which are covered by the proclamation suspending the privilege of the writ. It is clear, therefore, that the crimes for which the detained petitioners are held and deprived of their liberty are among those for which the privilege of the writ of habeas corpus has been suspended.

Up to this point, the Members of the Court are unanimous on the legal principles enunciated.

After finding that Proclamation No. 889, as amended, is not invalid and that petitioners Luzvimindo David, Victor Felipe, Gary Olivar, Angelo de los Reyes, Rodolfo del Rosario and Teresito Sison are detained for and actually accused of an offense for which the privilege of the writ has been suspended by said proclamation, our next step would have been the following: The Court, or a commissioner designated by it, would have received evidence on whether - as stated in respondents' "Answer and Return" - said petitioners had been apprehended and detained

"on reasonable belief" that they had "participated in the crime of insurrection or rebellion."

It so happened, however, that on November 13, 1971 - or two (2) days before the proceedings relative to the briefing held on October 28 and 29, 1971, had been completed by the filing¹ of a summary of the matters then taken up the aforementioned criminal complaints were filed against said petitioners. What is more the preliminary examination and/or investigation of the charges contained in said complaints has already begun. The next question, therefore, is: Shall We now order, in the cases at hand, the release of said petitioners herein, despite the formal and substantial validity of the proclamation suspending the privilege, despite the fact that they are actually charged with offenses covered by said proclamation and despite the aforementioned criminal complaints against them and the preliminary examinations and/or investigations being conducted therein?

The Members of the Court, with the exception of Mr. Justice Fernando, are of the opinion, and, so hold, that, instead of this Court or its commissioner taking the evidence adverted to above, it is best to let said preliminary examination and/or investigation be completed, so that petitioners' release could be ordered by the court of first instance, should it find that there is no probable cause against them, or a warrant for their arrest could be issued, should a probable cause be established against them. Such course of action is more favorable to the petitioners, inasmuch as a preliminary examination or investigation requires a greater quantum of proof than that needed to establish that the Executive had not acted arbitrarily in causing the petitioners to be apprehended and detained upon the ground that they had participated in the commission of the crime of insurrection or rebellion. And, it is mainly for this reason that the Court has opted to allow the Court of First Instance of Rizal to proceed with the determination of the existence of probable cause, although ordinarily the Court would have merely determined the existence of substantial evidence of petitioners' connection with the crime of rebellion. Besides, the latter alternative would require the reception of evidence by this Court and thus duplicate the proceedings now taking place in the court of first instance. What is more, since the evidence involved in both proceedings would be substantially the same and the presentation of such evidence cannot be made simultaneously, each proceeding would tend to delay the other.

Mr. Justice Fernando is of the opinion - in line with the view of Mr. Justice Tuason, in *Nava v. Gatmaitan*,² to the effect that "x x x if and when formal complaint is presented, the court steps in and the executive steps out. The detention ceases to be an executive and becomes a judicial concern x x x" - that the filing of the above-mentioned complaints against the six (6) detained petitioners herein, has the effect of the Executive giving up his authority to continue holding them pursuant to Proclamation No. 889, as amended, even if he did not so intend, and to place them fully under the authority of courts of justice, just like any other person, who, as such, cannot be deprived of his liberty without lawful warrant, which has not, as yet, been issued against anyone of them, and that, accordingly, We should order their immediate release. Despite the humanitarian and libertarian spirit, with which this view has been espoused, the other Members of the Court are unable to accept it because:

(a) If the proclamation suspending the privilege of the writ of habeas corpus is valid - and We so hold it to be - and the detainee is covered by the proclamation, the filing of a complaint or information against him does not affect the suspension of said privilege, and, consequently, his release may not be ordered by Us;

(b) Inasmuch as the filing of a formal complaint or information does not detract from the validity and efficacy of the suspension of the privilege, it would be more reasonable to construe the filing of said formal charges with the court of first instance as an expression of the President's belief that there are sufficient evidence to convict the petitioners so charged and that they should not be released, therefore, unless and until said court - after conducting the corresponding preliminary examination and/or investigation - shall find that the prosecution has not established the existence of a probable cause. Otherwise, the Executive would have released said accused, as were the other petitioners herein;

(c) From a long-range viewpoint, this interpretation - of the act of the President in having said formal charges filed - is, We believe, more beneficial to the detainees than that favored by Mr. Justice Fernando. His view - particularly the theory that the detainees should be released immediately, without bail, even before the completion of said preliminary examination and/or investigation - would tend to induce the Executive to refrain from filing formal charges as long as it may be possible. Manifestly, We should encourage the early filing of said charges, so that courts of justice could assume jurisdiction over the detainees and extend to them effective protection.

Although some of the petitioners in these cases pray that the Court decide whether the constitutional right to bail is affected by the suspension of the privilege of the writ of habeas corpus, We do not deem it proper to pass upon such question, the same not having been sufficiently discussed by the parties herein. Besides, there is no point in settling said question with respect to petitioners herein who have been released. Neither is it necessary to express our view thereon, as regards those still detained, inasmuch as their release without bail might still be decreed by the court of first instance, should it hold that there is no probable cause against them. At any rate, should an actual issue on the right to bail arise later, the same may be brought up in appropriate proceedings.

WHEREFORE, judgment is hereby rendered:

1. Declaring that the President did not act arbitrarily in issuing Proclamation No. 889, as amended, and that, accordingly, the same is not unconstitutional;
2. Dismissing the petitions in L-33964, L-33965, L-33982, L-734004, L-34013, L-34039 and L-34265, insofar as petitioners Teodosio Lansang, Bayani Alcala, Rogelio Arienda, Vicente Ilao, Juan Carandang, Nemesio E. Prudente, Gerardo Tomas, Reynaldo Rimando, Filomeno M. de Castro, Barcelisa C. de Castro and Antolin Oreta, Jr. are concerned;
3. The Court of First Instance of Rizal is hereby directed to act with utmost dispatch in conducting the preliminary examination and/or investigation of the charges for violation of the Anti-Subversion Act filed against herein petitioners Luzvimindo David, Victor Felipe, Gary Olivar, Angelo de los Reyes, Rodolfo del Rosario and Teresito Sison, and to issue the corresponding - warrants of arrest, if probable cause is found to exist against them, or otherwise, to order their release; and
4. Should there be undue delay, for any reason whatsoever, either in the completion of the aforementioned preliminary examination, and/or investigation, or in the issuance of the proper orders or resolutions in connection therewith, the parties may by motion seek in these proceedings the proper relief.
5. Without special pronouncement as to costs.

IT IS SO ORDERED.

Reyes, J.B.L., Makalintal, Zaldivar, Teehankee, Villamor, and Makasiar, JJ., concur.

Ruiz Castro and Barredo, JJ., concur fully in a separate opinion.

Fernando, J., concurs and dissents only as to the answer to the fourth question, the effect of which is to preclude the release of the petitioner still retained for reasons explained in his brief separate opinion.

[1] Words in bracket ([]) are those appearing in the original Proclamation No. 889, but which were eliminated in the amended Proclamation No. 889-A; words emphasized () have been added by Proclamation No. 889-A.

1 5 Phil. 87.

2 91 Phil. 882, 887.

* Should be L-33964, L-33965 and L-33973.

** Should be L-33964.

1 As stated in the proclamation involved in *Montenegro v. Castañeda*, 91 Phil. 882.

2 5 Phil. 87.

3 91 Phil. 882.

4 6 L. ed. 537.

1 In *re Boyle*, 57 Pac 706; *Moyer v. Peabody*, 212 US 78; *Ex Parte Field*, 5 Blatchf. 63, cited in *USCA Const. Part. 1*, p. 463; *Luther v. Borden*, 7 How 1, 12 L. ed. 581; In *re Kalanianaʻole*, 10 Hawaii 29, cited in *California Law Review*, May, 1942, fn. 40, pp. 382-383; *Ex Parte MacDonald*, 143 Pac 947.

2 In *re Burrus*, 136 US 500; *Sterling v. Constantin*, 287 US 375; *Patten v. Miller*, 8 S.E. (2d) 757; *Miller v. Rivers*, 31 F. Supp. 540; *Hearon v. Calus*, 183 S.E. 13; In *re Green*, 16 Pac (2d) 582; *Allen v. Oklahoma City*, 52 Pac (2d) 1054; *Joyner v. Browning*, 30 F. Supp. 512; *U.S. v. Phillips*, 33 F. Supp. 261.

3 *Mitchell v. Harmony*, 14 L. ed. 75, 84. See also, *U.S. v. Russell*, 20 L. ed. 474, 475.

4 287 U.S. 375, 385.

5 *Northern P.R. Co. v. North Dakota*, 236 U.S. 585; *Merchants' Nat. Bank v. Richmond*, 256 U.S. 635; *First Nat. Bank v. Hartford*, 273 U.S. 548; *Fiske v. Kansas*, 274 U.S. 380.

1 Which were, seemingly, taken from the seventh paragraph of Section 3, and Section 21 of the Jones Law (Act of Congress of the U.S. of August 29, 1916). The only provision thereon in the U.S. Constitution is found in Section 9(2) of Art. 1 thereof - on the Legislative Power - which provides that "the privilege of the writ of habeas corpus shall not be suspended, unless in cases of rebellion or invasion the public safety may require it."

1 *People v. Evangelista*, 57 Phil. 375; *People v. Evangelista, et al.*, 57 Phil. 354; *People v. Capadocia*, 57 Phil 364; *People v. Feleo*, 57 Phil. 451; *People v. Nabong*, 57 Phil. 455.

1 91 Phil. 882. See also, *Nava v. Gatmaitan*, *Hernandez v. Montesa*, and *Angeles v. Abaya*, 90 Phil. 172.

2 *People v. Nava*, L-4907, June 29, 1963; In *re Jesus Lava v. Gonzales*, L-23048, July 31, 1964; *People v. Nava*, L-5796, August 29, 1966; *People v. Lava*, L-4974, May 16, 1969.

3 Emphasis ours.

1 See page 22 thereof.

1 Emphasis supplied.

1 "ART. 134. Rebellion or insurrection. - How committed. - The crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippine Islands or any part thereof, of any body of land, naval or other armed forces, or of depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives."

2 57 Pac. 706.

3 *Schwartz, An Introduction to American Administrative Law*, 2nd ed., 190-191.

1 Consolidated Edison Co. v. National Labor Relations Board, 305 U.S. 197.

2 291 U.S. 502.

1 Although not by some conclusions therein made.

1 Said paragraph reads:

"That all the above named accused, as such officers and/or ranking leaders of the Communist Party of the Philippines conspiring, confederating and mutually helping one another, did then and there knowingly, wil-fully, feloniously and by overt acts committed subver-sive acts all intended to overthrow the government of the Republic of the Philippines, or the government of any of its political subdivisions by force, violence, deceit, subversive or other illegal means, for the purpose of placing such government or political subdivision under the control and domination of any alien power, as follows:

"x x x x x x x x."

1 On November 15, 1971.

2 90 Phil. 172, 204. Emphasis ours. Justice Tuason was speak-ing for himself only, not for the Court, which was divided.

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CONCURRING AND DISSENTING OPINION

FERNANDO, J.:

The decision of the Court penned by the Chief Justice easily ranks with his many landmark opinions in Constitutional Law and is in the tradition of the great judicial pronouncements from this Tribunal. Skillful in its analysis, impressive as to its learning, comprehensive in its scope, and compelling in its logic, it exerts considerable persuasive force. There is much in it therefore to which concurrence is easily yielded. I find it difficult however to accept the conclusion that the six petitioners still under detention should not be set free. It is for me a source of deep regret that having gone quite far in manifest-ing the utmost sympathy for and conformity with the claims of civil liberties, it did not go farther. Candor induces the admission though that the situation realistically viewed may not justify going all the way. Nonetheless the deeply-rooted conviction as to the undoubted primacy of constitutional rights, even under circumstances the least propitious, precludes me from, joining my brethren in that portion of the decision reached. Nor should I let this opportunity pass without acknowledging the fairness, even the generosity, in the appraisal of my position in the opinion of the Chief Justice.

1. The function of judicial review fitly characterized as both delicate and awesome is never more so than when the judiciary is called upon to pass on the validity of an act of the President arising from the exercise of a power granted admittedly to cope with an emergency or crisis situation. More specifically, with reference to the petitions before us, the question that calls for prior consideration is whether the suspension of the privilege of the writ of

habeas corpus is tainted by constitutional infirmity. What the President did attested to an executive determination of the existence of the conditions that warranted such a move. For one of the mandatory provisions of the Bill of Rights[1] is that no such suspension is allowable, except in cases of invasion, insurrection or rebellion, when the public safety requires, and, even then, only in such places and for such period of time as may be necessary.[2] There is the further provision that the constitutional official so empowered to take such a step is, the President.[3] The exceptional character of the situation is thus underscored. The presumption would seem to be that if such a step were taken, there must have been a conviction on the part of the Executive that he could not, in the fulfillment of the responsibility entrusted to him, avoid doing so. That decision is his to make; it is not for the judiciary. It is therefore-encased in the armor of what must have been a careful study on his part, in the light of relevant information which as Commander-in-Chief he is furnished, ordinarily beyond the ken of the courts. When it is considered further that the Constitution does admit that the sphere of individual freedom contracts and the scope of governmental authority expands during times of emergency, it becomes manifest why an even greater degree of caution and circumspection must be exercised by the judiciary when, on this matter, it is called upon to discharge the function of judicial review.

2. Not that the judiciary has any choice on the matter. That view would indict itself for unorthodoxy if it maintains that the existence of rebellion suffices to call for the disregard of the applicable constitutional guarantees. Its implication would be that the Constitution ceases to be operative in times of danger to national safety and security. Well has the American Supreme Court in the leading case of *Ex-parte Milligan*,[4] stated: "The Constitution is a law for rulers and for people equally in war and in peace and covers with the shield of its protection all classes of men at all times and under all circumstances." This ringing affirmation should at the very least give pause to those troubled by the continuing respect that must be accorded civil liberties under crisis conditions. The fact that the Constitution provides for only one situation where a provision of the Bill of Rights may be suspended, emphasizes the holding in the above-cited *Milligan* case that the framers of the Constitution "limited the suspension to one great right and left the rest to remain forever inviolable." While perhaps at times likely to give rise to difficulties in the disposition of cases during a troubled era where a suspension has been decreed, such a view is to be taken into careful consideration.

3. For it is a truism that the Constitution is paramount, and the Supreme Court has no choice but to apply its provisions in the determination of actual cases and controversies before it. Nor is this all. The protection of the citizen and the maintenance of his constitutional rights is one of the highest duties and privileges of the judiciary.[5] The exercise thereof according to Justice Laurel requires that it gives effect to the supreme law to the extent in clear cases of setting aside legislative and executive action.[6] The supreme mandates of the Constitution are not to be loosely brushed aside.[7] Otherwise, the Bill of Rights might be emasculated into mere expressions of sentiment.[8] Speaking of this Court, Justice Abad Santos once pertinently observed: "This court owes its own existence to that great instrument and derives all its powers therefrom. In the exercise of its powers and jurisdiction, this court is bound by the provisions of the Constitution." [9] Justice Tuason would thus apply the constitutional rights with undeviating rigidity: "To the plea that the security of the State would be jeopardized by the release of the defendants on bail, the answer is that the existence of danger is never a justification for courts to tamper with the fundamental rights expressly granted by the Constitution. These rights are immutable, inflexible, yielding to no pressure of convenience, expediency, or the so-called 'judicial statesmanship.' The Legislature itself can not infringe them, and no court conscious of its responsibilities and limitations would do so. If the Bill of Rights are incompatible with stable government and a menace to the Nation, let the Constitution be amended, or abolished. It is trite to say that, while the Constitution stands, the courts of justice as the repository of civil liberty are bound to protect and maintain undiluted individual rights." [10]

It is in that context, to my mind, that the petitions before us should be appraised, for in terms of physical, as

distinguished from intellectual, liberty, the privilege of the writ of habeas corpus occupies a place, second to none. As was stressed in *Gumabon v. Director of Prisons*:^[11] "Rightly then could Chafee refer to the writ 'as the most important human rights provision' in the fundamental law." Care is to be taken then lest in the inquiry that must be undertaken to determine whether the constitutional requisites testifying a suspension are present, the effects thereof as to the other civil liberties are not fully taken into account. It affords no justification to say that such a move was prompted by the best motives and loftiest of intentions. Much less can there be acceptance of the view, as contended by one of the counsel for respondents, that between the safety of the overwhelming majority of Filipinos and the claims of the petitioners to liberty, the former must prevail. That is to indulge in the vice of oversimplification. Our fundamental postulate is that the state exists to assure individual rights, to protect which governments are instituted deriving their just powers from the consent of the governed. "The cardinal article of faith of our civilization," according to Frankfurter, "is the inviolable character of the individual."^[12]

4. With all the admitted difficulty then that the function of judicial review presents in passing upon the executive determination of suspending the privilege of the writ, there is still no way of evading such a responsibility, except on the pain of judicial abdication. It may not admit of doubt that on this matter this Court, unlike the President, cannot lay claim to the experience and the requisite knowledge that would instill confidence in its decisions. That is no warrant for an unquestioning and uncritical acceptance of what was done. It cannot simply fold its hands and evince an attitude of unconcern. It has to decide the case. This it does by applying the law to the facts as found, as it would in ordinary cases. If petitioners then can make out a case of an unlawful deprivation of liberty, they are entitled to the writ prayed for. If the suspension of the privilege be the justification, they could, as they did, challenge its validity. To repeat, this Court, even if denied the fullness of information and the conceded grasp of the Executive still must adjudicate the matter as best it can. It has to act not by virtue of its competence but by the force of its commission, a function authenticated by history.^[13] That would be to live up to its solemn trust, to paraphrase Cardozo, of preserving the great ideals of liberty and equally against the erosion of possible encroachments, whether minute or extensive.^[14] Even if there be no showing then of constitutional infirmity, at least one other branch of the government, that to which such an awesome duty has been conferred, has had the opportunity of reflecting on the matter with detachment, with objectivity, and with full awareness of the commands of the Constitution as well as the realities of the situation.

5. Nor is the power of the judiciary to so inquire, negated as contended by respondents, by reliance on the doctrine of political questions. The term has been made applicable to controversies clearly non-judicial and therefore beyond its jurisdiction or to an issue involved in a case appropriately subject to its cognizance, as to which there has been a prior legislative or executive determination to which deference must be paid.^[15] It has likewise been employed loosely to characterize a suit where the party proceeded against is the President or Congress, or any branch thereof.^[16] If to be delimited with accuracy, "political questions" should refer to such as would under the Constitution be decided by the people in their sovereign capacity or in regard to which full discretionary authority is vested either in the Presidency or Congress. It is thus beyond the competence of the judiciary to pass upon.^[17] Unless, clearly falling within the above formulation, the decision reached by the political branches whether in the form of a congressional act or an executive order could be tested in court. Where private rights are affected, the judiciary has no choice but to look into its validity. It is not to be lost sight of that such a power comes into play if there be an appropriate proceeding that may be filed only after either coordinate branch has acted. Even when the Presidency or Congress possesses plenary power, its improvident exercise or the abuse thereof, if shown, may give rise to a justiciable controversy.^[18] For the constitutional grant of authority is not usually unrestricted. There are limits to what may be done and how it is to be accomplished. Necessarily then, the courts in the proper exercise of judicial review could inquire into the question of whether or not either of the two coordinate branches has adhered to what is laid down by the Constitution. The question thus posed is judicial rather than political. So it

is in the matter before us as so clearly explained in the opinion of the Chief Justice.

6. The doctrine announced in *Montenegro V. Castañeda*[19] that such a question is political has thus been laid to rest. It is about time too. It owed its existence to the compulsion exerted by *Barcelon v. Baker*, a 1905 decision.[20] This Court was partly misled by an undue reliance in the latter case on what it considered to be authoritative pronouncements from such illustrious American jurists as Marshall, Story, and Taney. That is to misread what was said by them. This is most evident in the case of Chief Justice Marshall, whose epochal *Marbury v. Madison*[21] was cited. Why that was so is difficult to understand. For it speaks to the contrary. It was by virtue of this decision that the function of judicial review owes its origin notwithstanding the absence of any explicit provision in the American Constitution empowering the courts to do so. Thus: "It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each. So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty. If, then, the courts are to regard the constitution, and the constitution is superior to any ordinary act of the legislature, the constitution, and not such ordinary act, must govern the case to which they both apply." [22]

Nor is the excerpt from Justice Story, speaking for the United States Supreme Court, in *Martin v. Mott*, [23] as made clear in the opinion of the Chief Justice, an authority directly in point. There, a militiaman had been convicted of failing to respond to a call, made under the Act of 1795, to serve during the War of 1812. His property was taken to satisfy the judgment. He brought an action of replevin. The American Constitution empowers its Congress "to provide for calling forth the Militia" in certain cases, and Congress did provide that in those cases the President should have authority to make the call. All that Justice Story did in construing the statute in the light of the language and purpose of her Constitution was to recognize the authority of the American President to decide whether the exigency has arisen. In stating that such power was exclusive and thus had a conclusive effect, he relied on the language employed, impressed with such a character. The constitutional provision on the suspension of the privilege of the writ is, as shown, any-thing but that.[24] Chief Justice Taney, in *Luther v. Borden*, [25] likewise had to deal with a situation involving the calling out of the militia. As a matter of fact, an eminent commentator speaking of the two above decisions had this apt observation: "The common element in these opinions would seem to be a genuine judicial reluctance to speak in a situation where the voice of the Court, even if heard, could not have any effect. More than this, both Story and Taney seem to share the suspicion unusual in them, that under a popular form of government there are certain questions that the political branches must be trusted to answer with finality." [26] What was said next is even more pertinent. Thus: "It would be dangerous and misleading to push the principles of these cases too far, especially the doctrine of 'political questions' as implied in *Luther v. Borden*. Given the opportunity to afford a grievously injured citizen relief from a palpably unwarranted use of presidential or military power, especially when the question at issue falls in the penumbra between the 'political' and the 'justiciable', the Court will act as if it had never heard of this doctrine and its underlying assumption that there are some powers against which the judiciary simply cannot be expected to act as the last line of defense." [27] It would thus seem evident that support for the hitherto prevailing *Montenegro* ruling was rather frail. Happily, with our decision, it is no longer capable of the mischief to which it does lend itself of an undue diminution of judicial power to the prejudice of constitutional rights.

7. With such presidential determination of the existence of the conditions required by the Constitution to justify a suspension of the privilege of the writ no longer conclusive on the other branches, this Court may thus legitimately inquire into its validity. The question before us, 'it bears repeating, is whether or not Proclamation

No. 889 as it now stands, not as it was originally issued, is valid. The starting point must be a recognition that the power to suspend the privilege of the writ belongs to the Executive, subject to limitations. So the Constitution provides, and it is to be respected. The range of permissible inquiry to be conducted by this Tribunal is necessarily limited then to the ascertainment of whether or not such a suspension, in the light of the credible information furnished the President, was arbitrary. Such a test met with the approval of the chief counsel for petitioners, Senator Jose W. Diokno. To paraphrase Frankfurter, the question before the judiciary is not the correctness but the reasonableness of the action taken. One who is not the Executive but equally knowledgeable may entertain a different view, but the decision rests with the occupant of the office. As would be immediately apparent even from a cursory perusal of the data furnished the President, so impressively summarized in the opinion of the Chief Justice, the imputation of arbitrariness would be difficult to sustain. Moreover, the steps taken by him to limit the area where the suspension operates as well as his instructions attested to a firm resolve on his part to keep strictly within the bounds of his authority. Under the circumstances, the decision reached by the Court that no finding of unconstitutionality is warranted commends itself for approval. The most that can be said is that there was a manifestation of presidential power well-nigh touching the extreme border of his conceded competence, beyond which a forbidden domain lies. The requisite showing of either improvidence or abuse has not been made.

8. Why the dissent then. My basic premise is that the suspension of the privilege of the writ partakes of an executive action which if valid binds all who are within its operation. The function of enacting a legal norm general in character appertains to either Congress or the President. Its specific application to particular individuals, like petitioners here, is however a task incumbent on the judiciary. What is more, as had just been explained, its validity may be tested in courts. Even if valid, any one may seek judicial determination as to whether he is embraced within its terms. After our declaration of the validity of the Proclamation No. 889 as amended, the next question is its applicability to petitioners. I am the first to recognize the meticulous care with which the Chief Justice, after reaching the conclusion that petitioners are covered by the suspension, saw to it that their constitutional rights are duly safeguarded in whatever proceedings they would have thereafter to face. There is thus an assurance that as far as human foresight can anticipate matters, the possibility of abuse is minimized.

The matter, for me, could be viewed independently of whether or not petitioners, by the conduct imputed to them, could be detained further by virtue of the suspension of the privilege of the writ. For admittedly, a supervening fact, the Executive's determination to have them charged according to the ordinary procedural rules, did present itself. There was thus introduced an element decisive in its consequences. They are entitled to treatment no different from that accorded any other individual facing possible criminal charges. The opinion of the Chief Justice is correct in pointing out that such an approach follows the dictum of Justice Tuason, speaking for himself in *Nava v. Gatmaitan*,^[28] where a majority of five, lacking just one vote to enable this Court to reach a binding decision, did arrive at the conclusion that the suspension of the privilege of the writ does not suspend the right to bail. Thus: "By the same token, if and when formal complaint is presented, the court steps in and the executive steps out. The detention ceases to be an executive and becomes a judicial concern. Thereupon the corresponding court assumes its role and the judicial process takes its course to the exclusion of the executive or the legislative departments. Henceforward, the accused is entitled to demand all the constitutional safeguards and privileges essential to due process."^[29] Parenthetically, it may be observed that the above view reflects the stand taken by Justice Recto, fortified by Justice Laurel, drawing heavily on continental juristic thought, both of whom, having retired from the bench and thereafter having been elected to the Senate, were invited to appear as *amici curiae* in the *Nava* case.

It would follow to my way of thinking then that the petitioners still detained ought not to be further deprived of their liberty in the absence of a warrant of arrest for whatever offense they may be held to answer, be issued by a judge after a finding of probable cause. That is to comply with the constitutional requirement against

unreasonable search and seizure.[30] Moreover, to keep them in confinement after the ordinary processes of the law are to be availed of, as thereafter decreed by the Executive itself, is to ignore the safeguard in the Bill of Rights that no person shall be held to answer for a criminal offense without due process of law.[31] That would explain why with full recognition of the sense of realism that infuses the opinion of the Court, I cannot, from the above standpoint, reach the same conclusion they did. These six petitioners, Rodolfo del Rosario, Victor Felipe, Luzvimindo David, Gary Olivar, Angelo de los Reyes and Teresito Sison, have, for me, become immune from the operation of the proclamation suspending the privilege of the writ of habeas corpus and are thus entitled to their liberty. I am reinforced in my conviction by the well-settled principle of constitutional construction that if there are two possible modes of interpretation, that one which raises the least constitutional doubt should be preferred. Certainly, to my way of thinking, the choice is obvious. That interpretation which would throw the full mantle of protection afforded by the Constitution to those unfortunate enough to be caught in the meshes of criminal law is more in keeping with the high estate accorded constitutional rights.

There is another consideration that strengthens my conviction on the matter. The language of the Constitution would seem to imply at the most that the suspension of the privilege of the writ renders it unavailable for the time being. Still there are authorities sustaining the view that preventive detention subject to the test of good faith is allowable.[32] Such a doctrine is no doubt partly traceable to Anglo-American legal history where as pointed out by Maine: "Substantive law has at first the look of being gradually secreted in the interstices of procedure." [33] The writ of habeas corpus then is more than just an efficacious device or the most speedy means of obtaining one's liberty. It has become a most valuable substantive right. It would thus serve the cause of constitutional rights better if the Tuason dictum as to the judicial process supplanting executive rule the moment charges are filed be accorded acceptance. Thereby the number of individuals who would have to submit to further detention, that may well turn out to be unjustified, would be reduced. What is more, greater fidelity is manifested to the principle that liberty is the rule and restraint the exception.

I am not of course insensible to the observation in the opinion of the Court that this concept could be an obstacle to the early resumption of the ordinary judicial process as the Executive might be minded to postpone resort to it, considering that there would necessarily be an end to the detention at that early stage of individuals who continue to pose risk to the safety of the government. It does occur to me, however, that the presumption should be that the high executive dignitaries can be trusted to act in accordance with the dictates of good faith and the command of the Constitution. At least, such seems to be the case now. The opinion of the Court is quite explicit as to the measures taken to minimize the possibility of abuse from officials in the lower category, who in their zeal or even from less worthy motives might make a mockery of the other constitutional rights. That is as it should be. It should continue, to be so even if there be acceptance of the doctrine enunciated by Justice Tuason. There is, for me at least, no undue cause for pessimism.

There is to my mind another reinforcement to this approach to the question before us, perhaps one based more on policy rather than strictly legal considerations. The petitioners who have not been released are youth leaders, who for motives best known to them, perhaps excess of idealism, impatience with existing conditions, even overweening ambition, clamor for change, apparently oblivious at times that it could be accomplished through means of which the law does not disapprove. It would be premature at this stage to say whether or not their activities have incurred for them a penal sanction, which certainly would be appropriate if their conduct is beyond the pale. Even they should recognize that the existing order has the right to defend itself against those who would destroy it. Nonetheless as a constitutional democracy can justifiably pride itself on its allegiance to ways of persuasion rather than coercion, the most meticulous observance of the free way of life seems to me, even at this stage, not without its beneficent influence on their future course of conduct. This is not by any means to intimate that my brethren view matters differently. Far from it. Any difference if at all in the positions taken is a question

of emphasis. Rightly, the opinion of the Chief Justice stresses the importance of the rule of law. It is to be hoped that with a proper understanding of what has been decided by the Court today, there would be a diminution of the wholesale condemnation of the present system of government by some sectors of the youth and perhaps even lead to a much-needed refinement in the volume and quality of their utterances. It could even conceivably, not only for them but for others of a less radical cast of mind, but equally suffering from disenchantment and disillusion, induce a reassessment and reappraisal of their position, even if from all appearances their commitment and dedication are plain for all to see. More than that, such a response will go a long way towards a keener appreciation of the merits of a constitutional democracy. For thereby, it demonstrates that it lives up to its ideals, it strives to act in accordance with what it professes. Its appeal for all sectors of society becomes strengthened and vitalized. Nor do I close my eyes to the risk that such an attitude towards those who constitute a source of danger entails. That for me is not conclusive. With nations, as with ordinary mortals, that is unavoidable. Repose, in the often-quoted aphorism of Holmes, is not the destiny of man.

9. One last observation. It would appear to me that if there is really a resolve to maintain inviolate constitutional rights for all, more especially so for those inclined and disposed to differ and to be vocal, perhaps even intemperate, in their criticism, that serious thought should be given to the desirability of removing from the President his power to suspend the privilege of the writ of habeas corpus as well as the power to declare martial law. Nor would the government be lacking in authority to cope with the crisis of invasion, insurrection, or rebellion or lawless violence, as the President as commander-in-chief can summon the aid of the armed forces to meet the danger posed to public safety. If the privilege of the writ cannot be suspended and martial law beyond the power of the President to declare, there is a greater likelihood as far as the rights of the individual are concerned, of the Constitution remaining at all times supreme, as it ought to be, whether it be in peace or in war or under other crisis conditions. As long, however, as such a presidential prerogative exists, it would not be proper for the courts not to accord recognition to its exercise, if there be observance of the limitations imposed by the Constitution. At the most, they can only through construction nullify what would, amount to an unconstitutional application. How desirable it would be then, to my way of thinking, if the Constitution would strip the President of such power. That would be constitutionalism triumphant. In terms of Lincoln's memorable dilemma, the government would be neither too strong for the liberties of the people nor too weak to maintain its existence. This is a matter though appropriately addressed to the Constitutional Convention.

On the purely legal aspect, however, let me reiterate that my acceptance of the Tuason dictum in the Nava case did result in my inability to concur fully with the opinion of the Chief Justice, which, as pointed out at the outset, is possessed of a high degree of merit.

[1] Art. III, Constitution.

[2] According to the Constitution: "The privilege of the writ of habeas corpus shall not be suspended except in cases of invasion, insurrection, or rebellion, when the public safety requires it, in any of which events the same may be suspended wherever during such period the necessity for such suspension shall exist." Art. III, Sec. 1, par. (14).

[3] On this point, the Constitution reads: "In case of invasion, insurrection, or rebellion, or imminent danger thereof, when the public safety requires it, he may suspend the privileges of the writ of habeas corpus or place the Philippines or any part thereof under martial law." Art. VII, Sec. 10, par. (2). What is immediately noticeable is that the existence of an imminent danger of invasion, insurrection, or rebellion was included in the justification for the suspension.

- [4] 4 Wall. 123 (1866).
- [5] Alvarez v. Court, 64 Phil. 33 (1937).
- [6] People v. Vera, 65 Phil. 56, 94-95 (1937).
- [7] Pampanga Bus Co. v. Pambusco Employees Union, 68 Phil. 541 (1939).
- [8] Angara v. Electoral Tribunal, 63 Phil. 139, 157 (1936).
- [9] Schneckburger v. Moran, 63 Phil. 249, 251-252 (1936).
- [10] 90 Phil. 172, at p. 206 (1951).
- [11] L-30026, January 30, 1971, 37 SCRA 420, 423.
- [12] American Communications Asso. v. Douds, 339 US 382, 421 (1951).
- [13] Cf. West Virginia State Board of Education v. Barnette, 319 US 624 (1943).
- [14] Cardozo, The Nature of Judicial Process, 92-93, (1921).
- [15] Cf. Vera v. Avelino, 77 Phil. 192 (1946); Lopez v. Roxas, L-25716, July 28, 1966, 17 SCRA 756; Gonzales v. Commission on Elections, L-28196, Nov. 9, 1967, 21 SCRA 774.
- [16] Cf. Planas v. Gil. 67 Phil. 62 (1937); Vera v. Avelino, 77 Phil. 192 (1946).
- [17] Cf. Tañada v. Cuenco, 103, Phil. 1051 (1957).
- [18] Cf. Morrero v. Bocar, 66 Phil. 429 (1938); Rodriguez v. Quirino, L-19800, October 28, 1963, 9 SCRA 284.
- [19] 91 Phil. 882 (1952).
- [20] 5 Phil. 87.
- [21] 1 Cranch 137 (1803).
- [22] Ibid, pp. 177-178.
- [23] 12 Wheaton 19 (1827).
- [24] Cf. Fairman, The Law of Martial Rule and the National Emergency, 55 Harvard Law Review, 1253, 1270-1271 (1942).
- [25] 7 Howard 1 (1849).
- [26] Rossiter, The Supreme Court and the Commander in Chief, pp. 16-17 (1951).
- [27] Ibid, p. 17.
- [28] 90 Phil. 172 (1951).
- [29] Ibid, p. 204.
- [30] According to Article III, Section 1, paragraph 3 of the Constitution: "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized."

[31] Article III, section I, paragraph 15, Constitution.

[32] Cf. *Ex parte Milligan*, 4 Wallace 2 (1866); *Moyer v. Peabody*, 212 US 78 (1908); *Ex parte Simmerman*, 132 F2 442 (1942). That was likewise acknowledged in the opinion of Justice Tuason in the *Nava* case.

[33] Cf. Chafee, *Free Speech in the United States*, p. 63 (1941). Holmes and Maitland entertained a similar view.

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CONCURRING OPINION

CASTRO and BARREDO, JJ.:

While concurring fully in the opinion of the Court, we nevertheless write separately to answer, from our own perspective, a point which Mr. Justice Fernando makes in his dissent. His view, as we understand it, is that while an individual may be detained beyond the maximum detention period fixed by law when the privilege of the writ of habeas corpus is suspended, such individual is nevertheless entitled to be released from the very moment a formal complaint is filed in court against him. The theory seems to be that from the time the charge is filed, the court acquires, because the executive officials abdicate, jurisdiction.

This view is based on the separate opinion of Mr. Justice Pedro Tuason in *Nava vs. Gatmaitan*.^[1] Justice Tuason, in part, said:

"All persons detained for investigation by the executive department are under executive control. It is here where the Constitution tells the courts to keep their hands off - unless the cause of the detention be for an offense other than rebellion or insurrection, which is another matter.

"By the same token, if and when a formal complaint is presented, the court steps in and the executive steps out. The detention ceases to be an executive and becomes a judicial concern ..."

But the issue to which the Supreme Court Justices in *Nava* individually addressed themselves is radically disparate from that raised in these cases. There the question was whether after the detainees had been formally charged in court and an order for their arrest had been issued, they were entitled to bail. It was on that question that the Court was split 5 to 4, and it was the opinion of Justice Tuason, one of the five, that after the detainees had been accused in court, the question of release on bail was a matter that the court should decide.

Upon the other hand, the question here presented is whether the detainees should be released forthwith upon the filing of charges against them in court and cannot thereafter be re-arrested except only by court order. This is a totally different question it is our submission that they are not entitled to be released. The dissent is, we believe, based on the fallacy that when a formal charge is filed against a person he is thereby surrendered to the court and the arresting officer is thereby divested of custody over him. Except in a metaphorical sense, the detainee is, not delivered or surrendered at all to the judicial authorities. What the phrase "delivered to the court" simply means is that from the time a person is indicted in court, the latter acquires jurisdiction over the subject-matter.^[2] The detainee remains in the custody of the detaining officer, under the same authority invoked for the detention, until the court decides whether there is probable cause to order his arrest.

Under ordinary circumstances, when a person is arrested without a warrant and is charged in court, he is not

released. He is held until the judicial authority orders either his release or his confinement. It is no argument to say that under Article III, section 1 (3) of the Constitution only a court can order the arrest of an individual. Arrests without warrant are familiar occurrences, and they have been upheld as constitutional.[3]

What is more, the privilege of the writ was suspended precisely to authorize the detention of persons believed to be plotting against the security of the State until the courts can act on their respective cases. To require their peremptory release upon the mere filing of charges against them, without giving the proper court opportunity and time to decide the question of probable cause, would obviously be to defeat the very basic purpose of the suspension. We think our role as judges in the cases at bar is clear. After finding that the Presidential decree was validly issued, we should give it effect. To uphold its validity and then try to dilute its efficacy in the name of personal liberty is, we believe, actually to doubt the constitutionality of the exercise of the Presidential prerogative.

Not only that. If the rule were that the detainees must be released upon the mere filing of charges against them in court, it is unlikely that the executive officials would have filed the charges because of their awareness of the continuing danger which in the first place impelled the arrest of the detainees, and the end result would be to inflict on the latter a much longer period of deprivation of personal liberty than is warranted.

Whatever our personal views may be of the power to suspend, the fact remains that the power is there, writ large and indubitable in the Constitution. It is far too easy to write anthologies on the side of civil liberties or on the side of governmental order, depending on one's inclination or commitment. But that is not our function. Constitutional issues, it has been said, do not take the form, of right versus wrong, but of right versus right. And the Court's function, as we see it, is, fundamentally, to moderate the clash of values, and not to inflate them into constitutional dimensions.

Where it is possible, we should avoid passing on a constitutional question. But where there is no escape from the duty of abstention, our further duty is to decide the question of constitutional validity on a less heroic plane.

And that is what we have tried to do in pointing out that the ordinary rules of criminal procedure provide an adequate answer to Mr. Justice Fernando's problem. That solution is for the arresting officer to hold the person detained until the court can act, with the only difference that where the privilege of the writ of habeas corpus is available, the arresting officer must release the detainee upon the expiration of the maximum detention time allowed by law, if he has not delivered the detainee to the court within that period.

To insist on the procedural aspect of a constitutional problem as a manner of solving it is, after all, no less to be libertarian. Insistence on it is, to us, and in point of fact, one of the cornerstones of liberalism.

[1] 90 Phil. 172, 204 (1951).

[2] Sayo vs. Chief of Police, 80 Phil. 859 (1948).

[3] E.g., People vs. Kagui Malasugui, 63 Phil. 281 (1936).

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