

EDUARDO B. OLAGUER, OTHONIEL V. JIMENEZ, ESTER MISA-JIMENEZ, CARLOS LAZARO, REYNALDO MACLANG, MAGDALENA DE LOS SANTOS-MACLANG, TEODORICO N. DIESMOS, RENE J. MARCIANO, DANILO R. ...

G.R. Nos. 54558 & 69882. May 22, 1987

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

Filed with this Court are two Petitions wherein the fundamental question is whether or not a military tribunal has the jurisdiction to try civilians while the civil courts are open and functioning. The two Petitions have been consolidated inasmuch as the issues raised therein are interrelated.

On December 24, 1979, the herein petitioners Eduardo B. Olaguer, Othoniel V. Jimenez, Ester Misa-Jimenez, Carlos Lazaro, Reynaldo Maclang, Magdalena De Los Santos-Maclang, Teodorico N. Diesmos, Rene J. Marciano, Danilo R. De Ocampo and Victoriano C. Amado were arrested by the military authorities. They were all initially detained at Camp Crame in Quezon City. They were subsequently transferred to the detention center at Camp Bagong Diwa in Bicutan except for petitioner Olaguer who remained in detention at Camp Crame. Petitioner Mac Aeron voluntarily surrendered to the authorities sometime in June, 1980 and was, thereafter, also incarcerated at Camp Bagong Diwa. All of the petitioners are civilians.

On May 30, 1980, the petitioners were charged for subversion[1] upon the recommendation of the respondent Judge Advocate General and the approval of the respondent Minister of National Defense.[2] The case was designated as Criminal Case No. MC-34-1.

On June 13, 1980, the respondent Chief of Staff of the Armed Forces of the Philippines[3] created the respondent Military Commission No. 34 to try the criminal case filed against the petitioners.[4] On July 30, 1980, an amended charge sheet was filed for seven (7) offenses, namely: (1) unlawful possession of explosives and incendiary devices; (2) conspiracy to assassinate President and Mrs. Marcos; (3) conspiracy to assassinate cabinet members Juan Ponce Enrile, Francisco Tatad and Vicente Paterno; (4) conspiracy to assassinate Messrs. Arturo Tangco, Jose Roño and Onofre Corpus; (5) arson of nine buildings; (6) attempted murder of Messrs. Leonardo Perez, Teodoro Valencia and Generals Romeo Espino and Fabian Ver; and (7) conspiracy and proposal to commit rebellion, and inciting to rebellion.[5] Some-time thereafter, trial ensued.

In the course of the proceedings, particularly on August 19, 1980, the petitioners went to this Court and filed the instant Petition for prohibition and habeas corpus.[6] They sought to enjoin the respondent Military Commission No. 34 from proceeding with the trial of their case. They likewise sought their release from detention by way of a writ of habeas corpus. The thrust of their arguments is that military commissions have no jurisdiction to try civilians for offenses alleged to have been committed during the period of martial law. They also maintain that the proceedings before the respondent Military Commission No. 34 are in gross violation of their constitutional right to due process of law.

On September 23, 1980, the respondents filed their Answer to the Petition.[7] On November 20, 1980, the petitioners submitted their Reply to the Answer.[8] In a Motion filed with this Court on July 25, 1981, petitioner Olaguer requested that the Petition be considered withdrawn as far as he is concerned.[9] In the Resolution of this Court dated July 30, 1981, the said prayer was granted.[10] On August 31, 1984, the respondents filed a Rejoinder to the Reply submitted by the petitioners.[11]

On December 4, 1984, pending the resolution of the Petition, the respondent Military Commission No. 34 passed sentence convicting the petitioners and imposed upon them the penalty of death by electrocution. Thus, on February 14, 1985, petitioners Olaguer, Maclang and Othoniel and Ester Jimenez went to this Court and filed the other instant Petition, this time for habeas corpus, certiorari, prohibition and mandamus. They also sought the issuance of a writ of preliminary injunction.[12] The respondents named in the Petition are the Chief of Staff of the Armed Forces of the Philippines, Military Commission No. 34, the Judge Advocate General, the Minister of National Defense and the Director of the Bureau of Prisons.

In sum, the second Petition seeks to enjoin the said respondents from taking any further action on the case against the petitioners, and from implementing the judgment of conviction rendered by the respondent Military Commission No. 34 for the reason that the same is null and void. The petitioners also seek the return of all property taken from them by the respondents concerned. Their other arguments in the earlier Petition are stressed anew.

On August 9, 1985, the respondents filed their Answer to the Petition.[13] On September 12, 1985, this Court issued a temporary restraining order enjoining the respondents from executing the Decision of the respondent Military Commission No. 34.[14] On February 18, 1986 the petitioners submitted an extensive Brief.[15] Thereafter, and in due time, the cases were submitted for decision.

In resolving these two Petitions, We have taken into account several supervening events which have occurred hitherto, to wit --

(1) On January 17, 1981, President Ferdinand E. Marcos issued Proclamation No. 2045 officially lifting martial law in the Philippines. The same Proclamation revoked General Order No. 8 (creating military tribunals) and directed that "the military tribunals created pursuant thereto are hereby dissolved upon final determination of cases pending therein which may not be transferred to the civil courts without irreparable pre-judice to the state in view of the rules on double jeopardy, or other circumstances which render prosecution of the cases difficult, if not impossible." ; and

(2) Petitioner Ester Misa-Jimenez was granted provisional liberty in January, 1981. On the other hand, petitioners Eduardo Olaguer and Othoniel Jimenez obtained provisional liberty on January 23, 1986.[16] The rest of the petitioners have been released sometime before or after President Corazon C. Aquino assumed office in February, 1986.

The sole issue in habeas corpus proceedings is detention.[17] When the release of the persons in whose behalf the application for a writ of habeas corpus was filed is effected, the Petition for the issuance of the writ becomes moot and academic.[18] Inasmuch as the herein petitioners have been released from their confinement in military detention centers, the instant Petitions for the issuance of a writ of habeas corpus should be dismissed for having become moot and academic.

We come now to the other matters raised in the two Petitions. The main issue raised by the petitioners is whether or not military commissions or tribunals have the jurisdiction to try civilians for offenses allegedly committed during martial law when civil courts are open and functioning.

The petitioners maintain that military commissions or tribunals do not have such jurisdiction and that the

proceedings before the respondent Military Commission No. 34 are in gross violation of their constitutional right to due process of law. The respondents, however, contend otherwise.

The issue on the jurisdiction of military commissions or tribunals to try civilians for offenses allegedly committed before, and more particularly during a period of martial law, as well as the other issues raised by the petitioners, have been ruled upon by a divided Supreme Court in *Aquino, Jr. v. Military Commission No. 2*.^[19] The pertinent portions of the main opinion of the Court are as follows -?

"We hold that the respondent Military Commission No. 2 has been lawfully constituted and validly vested with jurisdiction to hear the cases against civilians, including the petitioner.

"1. The Court has previously declared that the proclamation of Martial Law xxx on September 21, 1972, xxx is valid and constitutional and that its continuance is justified by the danger posed to the public safety.^[20]

"2. To preserve the safety of the nation in times of national peril, the President of the Philippines necessarily possesses broad authority compatible with the imperative requirements of the emergency. On the basis of this, he has authorized in General Order No. 8 xxx the Chief of Staff, Armed Forces of the Philippines, to create military tribunals to try and decide cases 'of military personnel and such other cases as may be referred to them.' In General Order No. 12 xxx, the military tribunals were vested with jurisdiction 'exclusive of the civil courts', among others, over crimes against public order, violations of the Anti-Subversion Act, violations of the laws on firearms, and other crimes which, in the face of the emergency, are directly related to the quelling of the rebellion and preservation of the safety and security of the Republic. xxx. These measures he had the authority to promulgate, since this Court recognized that the incumbent President (President Marcos), under paragraphs 1 and 2 of Section 3 of Article XVII of the new (1973) Constitution, had the authority to 'promulgate proclamations, orders and decrees during the period of martial law essential to the security and preservation of the Republic, to the defense of the political and social liberties of the people and to the institution of reforms to prevent the resurgence of the rebellion or insurrection or secession or the threat thereof xxx'.^[21] xxx.

"3. Petitioner nevertheless insists that he being a civilian, his trial by military commission deprives him of his right to due process, since in his view the due process guaranteed by the Constitution to persons accused of 'ordinary' crimes means judicial process. This argument ignores the reality of the rebellion and the existence of martial law. It is, of course, essential that in a martial law situation, the martial law administrator must have ample and sufficient means to quell the rebellion and restore civil order. Prompt and effective trial and punishment of offenders have been considered as necessary in a state of martial law, as a mere power of detention may be wholly inadequate for the emergency.^[22] 'xxx martial law xxx creates an exception to the general rule of exclusive subjection to the civil jurisdiction, and renders offenses against the laws of war, as well as those of a civil character, triable, xxx by military tribunals.'^[23] 'Public danger warrants the substitution of executive process for judicial process.'^[24] xxx. 'The immunity of civilians from military jurisdiction must, however, give way in areas governed by martial law. When it is absolutely imperative for public safety, legal processes can be superseded and military tribunals authorized to exercise the jurisdiction normally vested in courts.'^[25] xxx."

"xxx.

"5. xxx. The guarantee of due process is not a guarantee of any particular form of tribunal in criminal cases. A military tribunal of competent jurisdiction, accusation in due form, notice and opportunity to defend and trial before an impartial tribunal, adequately meet the due process requirement. Due process of law does not necessarily mean a judicial proceeding in the regular courts.^[26] xxx."

This ruling has been affirmed, although not unanimously, in at least six other cases, to wit: *Gumaua v. Espino*,^[27] *Buscayno v. Enrile*,^[28] *Sison v. Enrile*,^[29] *Luneta v. Special Military Commission No. 1*,^[30]

Ocampo v. Military Commission No. 25,[31] and Buscayno v. Military Commission Nos. 1, 2, 6 and 25.[32]

These rulings notwithstanding, the petitioners anchor their argument on their prayer that the ruling in Aquino, Jr. be appraised anew and abandoned or modified accordingly. After a thorough deliberation on the matter, We find cogent basis for re-examining the same.

Some recent pronouncements of this Court could be considered as attempts to either abandon or modify the ruling in Aquino, Jr.

In *De Guzman v. Hon. Leopando, et al.*,[33] an officer of the Armed Forces of the Philippines and several other persons were charged with Serious Illegal Detention before the Court of First Instance of Maguindanao sometime in October, 1982. The military officer sought to effect the transfer of the case against him to the General Court Martial for trial pursuant to the provisions of Presidential Decree No. 1850. The trial court disallowed such transfer for the reason that the said Decree is unconstitutional inasmuch as it violates the due process and equal protection clauses of the Constitution, as well as the constitutional provisions on social justice, the speedy disposition of cases, the republican form of government, the integrity and independence of the judiciary, and the supremacy of civilian authority over the military.

When the matter was elevated to this Court by way of a Petition for certiorari, prohibition and mandamus, the Court decided that a ruling on the constitutional issues raised was not necessary. With the view that practical and procedural difficulties will result from the transfer sought, this Court resolved to dismiss the Petition for lack of merit.

In *Animas v. The Minister of National Defense*,[34] a military officer and several civilians were charged with murder alleged to have been committed sometime in November, 1971. All of the said accused were recommended for prosecution before a military tribunal. In the course of the proceedings, the said accused went to this Court on a Petition for certiorari and challenged the jurisdiction of the military tribunal over their case. The petitioners contended that General Order No. 59 upon which the jurisdiction of the military tribunal is anchored refers only to the crime of illegal possession of firearms and explosives in relation to other crimes committed with a political complexion. They stressed that the alleged murder was devoid of any political complexion.

This Court, speaking through Mr. Justice Hugo E. Gutierrez, Jr., ordered the transfer of the criminal proceedings to the civil courts after noting that with martial law having been lifted in the country in 1981, all cases pending before the military tribunals should, as a general rule, be transferred to the civil courts. The Court was also of the view that the crime alleged to have been committed did not have any political complexion. We quote the pertinent portions of the Decision of the Court, to wit --

"In spite or because of the ambiguous nature of xxx civilian takeover of jurisdiction was concerned and notwithstanding the shilly-shallying and vacillation characteristic of its implementation, this Court relied on the enunciated policy of normalization in upholding the primacy of civil courts. This policy meant that as many cases as possible involving civilians being tried by military tribunals as could be transferred to civil courts should be turned over immediately. In case of doubt, the presumption was in favor of civil courts always trying civilian accused.

"xxx.

"The crime for which the petitioners were charged was committed xxx long before the proclamation of martial law. xxx. Now that it is already late 1986, and martial law is a thing of the past, hopefully never more to return, there is no more reason why a murder committed in 1971 should still be retained, at this time, by a military tribunal. xxx."

We agree with the dissenting views of then Justice, now Chief Justice Claudio Teehankee[35] and Madame Justice Cecilia Muñoz-Palma[36] in *Aquino, Jr.* in so far as they hold that military commissions or tribunals have no jurisdiction to try civilians for alleged offenses when the civil courts are open and functioning.

Due process of law demands that in all criminal prosecutions (where the accused stands to lose either his life or his liberty), the accused shall be entitled to, among others, a trial.[37] The trial contemplated by the due process clause of the Constitution, in relation to the Charter as a whole, is a trial by judicial process, not by executive or military process. Military commissions or tribunals, by whatever name they are called, are not courts within the Philippine judicial system. As explained by Justice Teehankee in his separate dissenting opinion --

"xxx Civilians like (the) petitioner placed on trial for civil offenses under general law are entitled to trial by judicial process, not by executive or military process.

"Judicial power is vested by the Constitution exclusively in the Supreme Court and in such inferior courts as are duly established by law. Judicial power exists only in the courts, which have 'exclusive power to hear and determine those matters which affect the life or liberty or property of a citizen.'[38]

"Since we are not enemy-occupied territory nor are we under a military government and even on the premise that martial law continues in force, the military tribunals cannot try and exercise jurisdiction over civilians for civil offenses committed by them which are properly cognizable by the civil courts that have remained open and have been regularly functioning.[39] xxx.

"And in *Toth v. Quarles*,[40] the U.S. Supreme Court further stressed that 'the assertion of military authority over civilians cannot rest on the President's power as Commander-in-Chief or on any theory of martial law.'

"xxx.

"The U.S. Supreme Court aptly pointed out xxx, in ruling that discharged army veterans (estimated to number more than 22.5 million) could not be rendered 'helpless before some latter-day revival of old military charges' and subjected to military trials for offenses committed while they were in the military service prior to their discharge, that 'the presiding officer at a court martial is not a judge whose objectivity and independence are protected by tenure and undiminished salary and nurtured by the judicial tradition, but is a military law officer. Substantially different rules of evidence and procedure apply in military trials. Apart from these differences, the suggestion of the possibility of influence on the actions of the court-martial by the officer who convenes it, selects its members and the counsel on both sides, and who usually has direct command authority over its members is a pervasive one in military law, despite strenuous efforts to eliminate the danger.'

"The late Justice Black xxx added that '(A) Court-Martial is not yet an independent instrument of justice but remains to a significant degree a specialized part of the over-all mechanism by which military discipline is preserved,' and that exservicemen should be given 'the benefits of a civilian court trial when they are actually civilians xxx. Free countries of the world have tried to restrict military tribunals to the narrowest jurisdiction deemed absolutely essential to maintaining discipline among troops in active service.' "

Moreover, military tribunals pertain to the Executive Department of the Government and are simply instrumentalities of the executive power, provided by the legislature for the President as Commander-in-Chief to aid him in properly commanding the army and navy and enforcing discipline therein, and utilized under his orders or those of his authorized military representatives.[41] Following the principle of separation of powers underlying the existing constitutional organization of the Government of the Philippines, the power and the duty of interpreting the laws (as when an individual should be considered to have violated the law) is primarily a function of the judiciary.[42] It is not, and it cannot be the function of the Executive Department, through the military authorities. And as long as the civil courts in the land remain open and are regularly functioning, as they do so today and as they did during the period of martial law in the country, military tribunals cannot try and

exercise jurisdiction over civilians for offenses committed by them and which are properly cognizable by the civil courts.[43] To have it otherwise would be a violation of the constitutional right to due process of the civilian concerned.

In addition to this pronouncement, We take note of the observation made by the Solicitor General to the effect that the death penalty imposed upon the petitioners by the respondent Military Commission No. 34 appears to have been rendered too hastily to the prejudice of the petitioners, and in complete disregard of their constitutional right to adduce evidence on their behalf. We quote the pertinent portions of the Manifestation submitted by the Solicitor General, to wit -

"Prior to the session of December 4, 1984, when the respondent Commission rendered its sentence, petitioners have requested the prosecution to provide them with copies of the complete record of trial, including the evidences presented against them, but the prosecution dillydallied and failed to provide them with the documents requested. According to petitioners, they needed the documents to adequately prepare for their defense.

"But a few days before December 4, 1984 the prosecution suddenly furnished them with certain transcripts of the proceedings which were not complete. Petitioner Othoniel Jimenez was scheduled to start with the presentation of his evidence on said date and he requested that his first witness be served with subpoena. The other petitioners, as agreed upon, were to present their evidence after the first one, Othoniel Jimenez, has finished presenting his evidence. But on that fateful day, December 4, 1984, the witness requested to be served with subpoena was not around, because as shown by the records, he was not even served with the requested subpoena. But in spite of that, respondent Military Commission proceeded to ask each one of the petitioners if they are ready to present their evidence. Despite their explanation that Othoniel Jimenez cannot proceed because the prosecution, which performs the duties and functions of clerk of court, failed to subpoena his witness, and that the other petitioners were not ready because it was not yet their turn to do so, the Commission abruptly decided that petitioners are deemed to have waived the presentation of evidence in their behalf, and considered the case submitted for resolution.

"After a recess of only twenty-five (25) minutes, the session was resumed and the Commission rendered its sentence finding petitioners guilty of all the charges against them and imposing upon them the penalty of death by electrocution." [44]

Thus, even assuming arguendo that the respondent Military Commission No. 34 does have the jurisdiction to try the petitioners, the Commission should be deemed ousted of its jurisdiction when, as observed by the Solicitor General, the said tribunal acted in disregard of the constitutional rights of the accused. Indeed, it is well-settled that once a deprivation of a constitutional right is shown to exist, the tribunal that rendered the judgment in question is deemed ousted of jurisdiction.[45]

Moreover, We find that Proclamation No. 2045 (dated January 17, 1981) officially lifting martial law in the Philippines and abolishing all military tribunals created pursuant to the national emergency effectively divests the respondent Military Commission No. 34 (and all military tribunals for that matter) of its supposed authority to try civilians, including the herein petitioners.

The main opinion in *Aquino, Jr.* is premised on the theory that military tribunals have the jurisdiction to try civilians as long as the period of national emergency (brought about by public disorder and similar causes) lasts. Undoubtedly, Proclamation No. 2045 is an acknowledgment on the part of the Executive Department of the Government that the national emergency no longer exists. Thereafter, following the theory relied upon in the main opinion, all military tribunals should henceforth be considered *functus officio* in their relationship with civilians.

By virtue of the proclamation itself, all cases against civilians pending therein should eventually be transferred to

the civil courts for proper disposition. The principle of double jeopardy would not be an obstacle to such transfer because an indispensable element of double jeopardy is that the first tribunal which tried the case must be of competent jurisdiction.[46] As discussed earlier, the military tribunals are devoid of the required jurisdiction.

We take this opportunity to reiterate that as long as the civil courts in the land are open and functioning, military tribunals cannot try and exercise jurisdiction over civilians for offenses committed by them. Whether or not martial law has been proclaimed throughout the country or over a part thereof is of no moment. The imprimatur for this observation is found in Section 18, Article VII of the 1987 Constitution, to wit -?

"A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ." (Emphasis supplied.)

This provision in the fundamental law is just one of the many steps taken by the Filipino people towards the restoration of the vital role of the judiciary in a free country -- that of the guardian of the Constitution and the dispenser of justice without fear or favor.

No longer should military tribunals or commissions exercise jurisdiction over civilians for offenses allegedly committed by them when the civil courts are open and functioning. No longer may the exclusive judicial power of the civil courts, beginning with the Supreme Court down to the lower courts[47] be appropriated by any military body or tribunal, or even diluted under the guise of a state of martial law, national security and other similar labels.

At this juncture, We find it appropriate to quote a few paragraphs from the ponencia of Mr. Justice Gutierrez in *Animas v. The Minister of National Defense*,[48] viz --

"The jurisdiction given to military tribunals over common crimes and civilian(s) accused at a time when all civil courts were fully operational and freely functioning constitutes one of the saddest chapters in the history of the Philippine judiciary.

"The downgrading of judicial prestige caused by the glorification of military tribunals, the instability and insecurity felt by many members of the judiciary due to various causes both real and imagined, and the many judicial problems spawned by extended authoritarian rule which effectively eroded judicial independence and self-respect will require plenty of time and determined efforts to cure.

"The immediate return to civil courts of all cases which properly belong to them is only a beginning."

And in his separate concurring opinion in *Animas*, Mr. Chief Justice Teehankee had this to say --

"I only wish to add that the great significance of our judgment in this case is that we reestablish and reinstate the fundamental principle based on civilian supremacy over the military as urged in vain in my dissent in the case of *Benigno S. Aquino, Jr. vs. Military Commission No. 2, et al.* that 'Civilians placed on trial for offenses under general law are entitled to trial by judicial process, not by executive or military process. Judicial power is vested by the Constitution exclusively in the Supreme Court and in such inferior courts as are duly established by law. Military commissions, or tribunals, are not courts and do not form part of the judicial system. Since we are not enemy-occupied territory nor are we under a military government and even on the premise that martial law continues in force, the military tribunals cannot try and exercise jurisdiction over civilians for civil offenses committed by them which are properly cognizable by the civil courts that have remained open and have been regularly functioning.'

"xxx.

"The terrible consequences of subjecting civilians to trial by military process is best exemplified in the sham military trial of the martyred former Senator Benigno S. Aquino, Jr., whereby he was deprived (1) by the summary ex parte investigation by the chief prosecution staff of the JAGO, of his right to be informed of the charges against him and of his right to counsel as expressly recognized by Section 20 of the Bill of Rights of the 1973 Constitution; (2) of his vested statutory right to a preliminary investigation of the subversion charges against him before the proper court of first instance as required under Section 5 of the Anti-Subversion Act, R.A. 1700 and of the other charges against him before the proper civilian officials and to confront and cross-examine the witnesses against him under R.A. 5180; (3) of the right to be tried by judicial process, by the regular independent courts of justice, with all the specific constitutional, statutory and procedural safeguards embodied in the judicial process and presided over not by military officers; and (4) of the right to appeal to the regular appellate courts and to judicial review by this Court in the event of conviction and imposition of a sentence of death or life imprisonment which the charges carry and wherein a qualified majority of ten (10) votes for affirmance of the death penalty is required. In fine, he was denied due process of law as guaranteed under the Bill of Rights which further ordains that 'No person shall be held to answer for a criminal offense without due process of law.' Worse, his trial by a military tribunal created by the then President and composed of the said President's own military subordinates without tenure and of non-lawyers (except the law member) and of whose decision the President is the final reviewing authority as Commander-in-Chief of the Armed Forces deprived him of a basic constitutional right to be heard by a fair and impartial tribunal, considering that the said President had publicly declared the evidence against petitioner 'not only strong (but) overwhelming' and thereby prejudged and predetermined his guilt, and none of his military subordinates could be expected to go against their Commander-in-Chief's declaration.

"Hopefully, all these aberrations now belong to the dead and nightmarish past, when time-tested doctrines, to borrow a phrase from the then Chief Justice, 'shrivelled in the effulgence of the overpowering rays of martial rule.' "[49]

As stated earlier, We have been asked to re-examine a previous ruling of the Court with a view towards abandoning or modifying the same. We do so now but not without careful reflection and deliberation on Our part. Certainly, the rule of stare decisis is entitled to respect because stability in jurisprudence is desirable. Nonetheless, reverence for precedent, simply as precedent, cannot prevail when constitutionalism and the public interest demand otherwise. Thus, a doctrine which should be abandoned or modified should be abandoned or modified accordingly. After all, more important than anything else is that this Court should be right.[50]

Accordingly, it is Our considered opinion, and We so hold, that a military commission or tribunal cannot try and exercise jurisdiction, even during the period of martial law, over civilians for offenses allegedly committed by them as long as the civil courts are open and functioning, and that any judgment rendered by such body relating to a civilian is null and void for lack of jurisdiction on the part of the military tribunal concerned.[51] For the same reasons, Our pronouncement in *Aquino, Jr. v. Military Commission No. 2*[52] and all decided cases affirming the same, in so far as they are inconsistent with this pronouncement, should be deemed abandoned.

WHEREFORE, in view of the foregoing, the Petitions for habeas corpus are DISMISSED for having become moot and academic. The Petitions for certiorari and prohibition are hereby GRANTED. The creation of the respondent Military Commission No. 34 to try civilians like the petitioners is hereby declared unconstitutional and all its proceedings are deemed null and void. The temporary restraining order issued against the respondents enjoining them from executing the Decision of the respondent Military Commission No. 34 is hereby made permanent and the said respondents are permanently prohibited from further pursuing Criminal Case No. MC-34-1 against the petitioners. The sentence rendered by the respondent Military Commission No. 34 imposing the death penalty on the petitioners is hereby vacated for being null and void, and all the items or properties taken from the petitioners in relation to the said criminal case should be returned to them immediately. No

pronouncement as to costs.

SO ORDERED.

Yap, Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Bidin, Sarmiento, and Cortes, JJ., concur.

Teehankee, C.J., separate concurring opinion.

Padilla, J., no part; counsel for petitioner, O. Jimenez is my brother.

[1] For violation of Presidential Decree No. 885 (The Revised Anti-Subversion Law), as amended by Batas Pambansa Blg. 31.

[2] At that time, the Judge Advocate General was General Hamilton Dimaya while the Minister of National Defense was Juan Ponce Enrile.

[3] At the time Military Commission No. 34 was created, General Romeo Espino was the Chief of Staff of the Armed Forces of the Philippines.

[4] Military Commission No. 34 is composed of Brigadier General Emilio P. Melendres as President, Colonel Marciano I. Bacalla as Law Member, and Colonels Roberto F. Ang, Higinio E. Dacanay, Norberto Furagganan, Mayo Domingo and Soliman Gutierrez as Members; Page 95, Rollo.

[5] Page 19, Rollo.

[6] G.R. No. 54558, pages 2 to 44, Rollo.

[7] The respondents were represented by the Office of the Solicitor General.

[8] Pages 255 to 268, Rollo.

[9] Pages 287 to 291, Rollo.

[10] Page 296, Rollo.

[11] Pages 333 to 352, Rollo.

[12] G.R. No. 69882, pages 2 to 64, Rollo.

[13] Pages 243 to 267, Rollo.

[14] Page 346, Rollo.

[15] Pages 299 to 415, Rollo.

[16] Page 308, Rollo, Vol. II, G.R. No. 69882.

[17] *Herrera v. Enrile*, L-40181, 62 SCRA 547 (1975).

[18] *Cagaya v. Tangonan*, L-40970, 66 SCRA 216, 219 (1975).

[19] 63 SCRA 546 (1975). Mr. Justice Felix Q. Antonio wrote the main opinion. The Decision of the Court was not unanimous inasmuch as some Justices had dissenting views.

[20] Citing *Benigno S. Aquino, Jr., et al. v. Juan Ponce Enrile*, L-35546, 59 SCRA 183 (1974), and companion cases.

- [21] Citing Benigno S. Aquino, Jr., et al. v. Commission on Elections, L-40004, 62 SCRA 275 (1975).
- [22] Citing Fairman, The Law of Martial Rule, 1943 Ed., p. 262.
- [23] Citing Winthrop, Military Law and Precedents, Vols. 1 and 2, p. 830.
- [24] Citing Moyer v. Peabody, 212 U.S. 78.
- [25] Citing Schwartz, Constitutional Law, p. 160.
- [26] Citing Simon v. Craft, 182 U.S. 427 (1901) and Ballard v. Hunter, 204 U.S. 241 (1907).
- [27] 96 SCRA 402, February 29, 1980.
- [28] 102 SCRA 7, January 15, 1981.
- [29] 102 SCRA 33, January 15, 1981.
- [30] 102 SCRA 56, January 16, 1981.
- [31] 109 SCRA 22, November 6, 1981.
- [32] 109 SCRA 273, November 19, 1981.
- [33] G.R. No. 62798, December 22, 1983 and March 13, 1984; cited in Rodolfo Animas v. The Minister of National Defense, G.R. No. 51747, December 29, 1986. See also Sardinia-Linco v. Pineda (104 SCRA 757) where this Court did not implement the Executive Order to transfer the criminal case from the civil court to the Sandiganbayan, and Evangelista v. Judge Luis Peña, et al. (G.R. No. 62640, July 22, 1983) where a Petition of a member of the Philippine Constabulary seeking the transfer of the case to a military tribunal was dismissed for lack of merit.
- [34] G.R. No. 51747, December 29, 1986.
- [35] 63 SCRA 611 to 648.
- [36] 63 SCRA 665 to 666.
- [37] In re Oliver, 333 U.S. 257 (1948); Sections 1 and 14 (2), Article III, 1987 Constitution. There appears to be no substantial change from the corresponding provisions of the 1973 Constitution.
- [38] Citing Lopez v. Roxas, 17 SCRA 756 (1966) and Scoty's Department Store v. Micaller, 99 Phil. 762 (1956).
- [39] Citing Ex-parte Milligan, 4 Wallace (U.S.) 127, 18 L. Ed. 297.
- [40] 350 U.S. 5, 14 (1955).**
- [41] Ruffy v. Chief of Staff, 75 Phil. 875 (1946).
- [42] Koppel (Phil.), Inc. v. Yatco, 77 Phil. 496, 515 (1946).
- [43] Ex-parte Milligan, supra.
- [44] Manifestation dated February 11, 1987.
- [45] Gumabon v. Director of the Bureau of Prisons, 37 SCRA 420, 427 (1971), reiterated in Dacuyan v. Ramos, 85 SCRA 487, 491 (1978).
- [46] People v. Ylagan, 58 Phil. 851 (1933).

[47] Section 1, Article VIII, 1987 Constitution.

[48] Supra.

[49] Citations omitted.

[50] Phil. Trust Company and Smith, Bell & Co. v. Mitchell, 59 Phil. 30, 36 (1933), cited with approval in Koppel (Phil.), Inc. v. Yatco, supra, at 515.

[51] People v. Navarro, 63 SCRA 264, 274 (1975).

[52] L-37364, 63 SCRA 546.

Olague vs Military Commission No. 34 : 54558 & 69882 : May 22, 1987 : C.J. Teehankee : En Banc : Separate Concurring Opinion Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 st1:*{behavior:url(#ieooui) } /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

SEPARATE CONCURRING OPINION

TEEHANKEE, C.J.:

I hail the Court's unanimous judgment^[1] vacating and setting aside the penalty of death by electrocution summarily imposed by respondent military commission on December 4, 1984 upon the principal petitioners Eduardo Olague, Othoniel Jimenez, Reynaldo Mac-lang and Ester Misa Jimenez for lack of jurisdiction of military commissions over civilians, and expressly overturning and rejecting the contrary 1975 ruling in Benigno S. Aquino, Jr. vs. Military Commission No. 2^[2] and subsequent cases, issued during the darkest chapter of our history when time-tested doctrines guaranteeing a person's right to due process in preservation of his life and liberty "shrivelled in the effulgence of the overpowering rays of martial rule." We uphold once again the supremacy of the Constitution and of the Rule of Law and of civilian authority over the military.

1. As petitioners submitted in apparent futility at the time in view of the Aquino ruling, they were denied from the very beginning elementary due process which guarantees their constitutional right to an impartial trial because, prescinding from civilians' right to trial by judicial, not military, process, the President (Commander-in-Chief) and the Defense Minister who were the supposed targets of petitioners' conspiracy, were also the very authorities who personally approved the filing of the charges against them and referred them to the respondent commission for trial, and as reviewing authorities, had the power to reverse or modify every judgment of respondent commission, even a judgment of acquittal; furthermore, the President and the Defense Minister had the power directly or indirectly to substitute at pleasure the members of respondent commission, assign them as sub-ordinates to more hazardous or difficult duties and to promote or prevent their promotion to higher rank. They could hardly be expected to go against their superiors' declaration of the "overwhelming" evidence against the accused. As stressed in my dissent in Aquino:

"Petitioner's plea that his trial by a military tribunal created by the President and composed of the President's own military subordinates without tenure and of non-lawyers (except the law member) and of whose decision the President is the final reviewing authority as Commander-in-Chief of the Armed Forces deprives him of a basic constitutional right to be heard by a fair and impartial tribunal, considering that the President has publicly

declared the evidence against petitioner 'not only strong (but) overwhelming' and in petitioner's view thereby prejudged and predetermined his guilt merits consideration.

"In petitioner's view, he has been publicly indicted and his guilt prejudged by the President when in a nation-wide press conference on August 24, 1971 following the Plaza Miranda bombing three days earlier of the Liberal Party proclamation meeting, the President charged him and disclosed evidence in the possession of the government linking petitioner to some illegal and subversive activities, in 1965 - 1971, which are virtually the same charges now filed against him before respondent military commission, and declared the evidence against petitioner 'not only strong (but) overwhelming.' The President explained on the same occasion that in not acting against petitioner, he had 'erred on the side of generosity as well as of liberality hoping that good sense may someday catch up with him' since petitioner was 'the only opposition senator left in the Senate' after the [Plaza Miranda] bombing, but that he did not know 'what will happen later on, because, of course, the military insist that we must not make any exceptions to the general rule.'

"While one may agree that the President as Commander-in-Chief would discharge his duty as the final reviewing authority with fealty to his oath 'to do justice to every man', particularly because of his renowned legal sagacity and experience, still under the environmental facts where the military appears to have been impressed by the President's appraisal of the evidence and without casting any reflection on the integrity of the members of respondent military commission which petitioner himself acknowledges, the doctrine consistently held by the Court that 'elementary due process requires a hearing before an impartial and disinterested tribunal' and that 'All suitors . . . are entitled to nothing short of the cold neutrality of an independent, wholly free, disinterested and impartial tribunal' calls for application in the present case." [3]

The then President had himself acknowledged the indispensability of the judicial process, stating in the same nationwide press conference of August 24, 1971 that:

"I am a lawyer, my training is oriented towards the protection of the Bill of Rights, because if you will remember, I have repeatedly said, that if it were not for the Bill of Rights I would not be here now. If it were not for the judicial process, I would not be President of the Republic of the Philippines. x x x." [4]

Yet, he denied to Aquino the very self-same rights to due process and judicial process.

2. The total unacceptability of military trials for civilians may be appreciated from the fate and ordeal of petitioners. Since their arrest on December 24, 1979, they had been continuously confined for over five years (without physical access to lawyers, witnesses and court records in the case of Eduardo Olaguer [5]) and spent seven Christmases in confinement, before their provisional release on January 23, 1986 (save petitioner Ester Misa Jimenez whose provisional release was earlier granted in January, 1981). The extreme difficulties encountered by civilian counsels in defending them before respondent military commission can best be seen from their written motions/manifestations of withdrawal as such counsel. Former Senator Lorenzo M. Tañada and Atty. Wigberto Tañada had previously withdrawn as civilian counsel for petitioner Eduardo Olaguer.

Civilian counsel Sabino Padilla, Jr. for petitioner Othoniel Jimenez was likewise constrained to file on January 10, 1983 his Motion to Withdraw Appearance, stating the following:

"1. In the hearing of March 2, 1982, the prosecution moved for the discharge of the accused Carlos Lazaro and Teodorico Diesmos. The prosecution alleged that the requirements of sec. 9, Rule 119 of the Rules of Court had been complied with. Considering that trial had commenced one year and a half before the prosecution made this move, the defense vehemently objected. This Military Commission ruled:

LAW MEMBER:

Please, just listen. We are of the view that this Commission has no authority to discharge the accused Carlos Lazaro and accused Teodorico Diesmos from the Charge Sheet to be utilized as state witnesses. In the same

manner that the herein accused have been included in the Charge Sheet upon the approval of the appointing authority, the exclusion or discharge of any of them should likewise carry the approval of the appointing authority. Therefore, the matter of the discharge of the said two (2) accused should be addressed to the appointing authority for his consideration. (Tsn, March 2, 1982, pp. 42-43)

xxx xxx xxx

"3. At the start of the hearing last December 13, 1982, the prosecution informed this Military Commission and the defense that on December 11, 1982 (a Saturday), the Minister of National Defense had ordered the discharge of the accused Lazaro and Diesmos, and that the prosecution would be presenting these accused in that hearing.

"In view of the vital implications of such a discharge on the conduct of the defense of the other accused, all three counsel of choice immediately moved that the hearing be postponed or that witnesses other than Lazaro and Diesmos be presented in that hearing, to allow counsel to take to the Supreme Court the ruling of the Minister of National Defense as well as this Military Commission's abdication of a trial court's jurisdiction to grant or deny a prosecution motion to discharge an accused.

"To the complete surprise and dismay of defense counsel of choice, the prosecution insisted on presenting Lazaro and Diesmos before the other accused could take to the Supreme Court the legality and propriety of their discharge as accused to be state witnesses. Counsel of choice had no alternative but to withdraw from the proceedings that day.

"Subsequent events disclosed why Lazaro and Diesmos had to be presented as witnesses on that day, December 13, 1982. They were to recite, as indeed they recited, a newly fabricated and fantastic story linking (three years after the fact) the present accused with the accused in the We Forum case, who were being arraigned that afternoon in the Court of First Instance of Quezon City. Pursuant to this scenario, all the newspapers the following day carried the same re-lease that the accused herein and those in the We Forum were members of one conspiracy.

"It has thus become abundantly clear to the undersigned counsel that under the present circumstances any further participation on his part in the proceedings before this Military Commission would not only be futile but also bring disgrace and dishonor to himself and to the legal profession."[6]

Civilian counsel Joaquin L. Misa for his close kin, Ester Misa Jimenez, after prefatory remarks that he "had never appeared before in a military court [and] entertained a degree of confidence in the quality of military justice [and] was reared with a healthy regard for military officers" stated in his written manifestation dated January 10, 1983 that:

"x x x many events in the course of these proceedings have eroded the confidence of the undersigned in ultimately obtaining justice from this Honorable Commission.

"The last straws so to speak, were the events of December 13, 1982. Three hearings of this case prior to the December 13 hearing were cancelled or postponed upon motion of the Prosecution on the shallow and never explained excuse that their next supposed witness, Col. Beroya, was not available. On December 13, the Prosecution read into the record an alleged resolution on the state witness question by the Minister of National Defense (Note that up to this writing the undersigned has not been served with a copy of that alleged resolution perhaps because it was written on stationery marked CONFIDENTIAL). After the supposed resolution by the Minister of National Defense was read into the record, the undersigned moved for a postponement of even one week to afford the undersigned the opportunity to either ask for a reconsideration by the Minister or raise the matter to the Supreme Court on Certiorari. The Prosecution's objection was so vehement that it was incomprehensible to the undersigned why a simple motion could evoke such a violent reaction from the Prosecution (Cols. Ridao and Disierto seemed to be outdoing each other in the decibels of

their objections). This was especially baffling to the undersigned because thereto-fore in several instances when the undersigned inquired if there had been a ruling by 'the higher authorities' on the question of the state witnesses, the Prosecution always assured the undersigned and the other civilian defense counsel that if a ruling is made, and it is adverse to the defense we will be given enough time to deal with the problem.

"As the Commission well knows the defense motion for postponement was denied and two (2) accused who were released from the case testified in the absence of all the civilian defense counsel. Only upon reading the newspaper the next day was the indecent haste of the Prosecution to present the two (2) witnesses explained. The Prosecution, and the Commission by going along with the Prosecution, apparently wanted to time the newly fabricated testimony of Diesmos and Lazaro linking this case with the We Forum case the arraignment of which was held on December 13, in the afternoon.

"The orchestration and synchronization of such testimony in this case (at the expense of denying the accused recourse against the resolution of the Minister) with the arraignment in the We Forum case taken together with the identically worded newspaper stories appearing in all the dailies now in publication, has made it clear to the undersigned that this case will not be decided on its merits but on the convenience that it affords to the pursuit of the government's objectives."[7]

Respondent military commission furthermore on December 4, 1984 summarily called all proceedings to a halt, denied any continuation of the case and abruptly declared the case submitted without any evidence for the defense, notwithstanding that it had not subpoenaed the first defense witness for petitioner Othoniel Jimenez as duly re-requested, while the other petitioners were not expected to be ready with their witnesses until later hearings; and after a mere 25-minute recess, rendered its "judgment" imposing the death penalty by electrocution on all the above-named petitioners. No objection to this bizarre procedure came from military counsels who were assigned to represent petitioners after their civilian counsels' withdrawal, for as the Solicitor General now manifested, "the records show, they more often than not practically acted for the prosecution rather than as defense counsels."7-a

3. I hail the Court's reinstatement of the settled ruling in this jurisdiction that deprivation and disregard of the constitutional rights of an accused ousts the court or tribunal of jurisdiction, which had been greatly eroded. This reenforces the 1987 Constitution's reaffirmation of the role of the Supreme Court as the guarantor of the constitutional and human rights of all persons within its jurisdiction with the function of seeing to it that these rights are respected and enforced. As the Court stressed in *Gumabon vs. Director of Bureau of Prisons*[8] "Once a deprivation of a constitutional right is shown to exist, the court that rendered the judgment is deemed ousted of jurisdiction and habeas corpus is the appropriate remedy to assail the legality of the detention."[9] So accused persons who are deprived of their constitutional right of a speedy trial should be set at liberty.[10] Likewise persons detained indefinitely without charges so much so that the detention becomes punitive and not merely preventive in character are entitled to regain their freedom, for the spirit and the letter of our Constitution negates as contrary to the precepts of human rights and freedom that a person be detained indefinitely without any charges.

4. Indeed, Art. VII, section 18 of the 1987 Constitution, drawing upon the sad lessons of the excessive concentration of powers in the Chief Executive in the previous Constitutions which enabled him to exercise absolute power to the point of taking over the entire government, has provided for measures to curtail such abuse of executive power. The late former Chief Justice Roberto Concepcion, pillar and champion of the Rule of Law, chairman of the 1986 Constitutional Commission's Judiciary Committee and Chief Justice of the Supreme Court at the time of the imposition of martial law in 1972, summarized these salutary changes, in his last public address, as follows:

"1. Under the New Constitution, martial law does not suspend the operation of the New Constitution or supplant the functioning of the civil courts or legislative assemblies. Neither does it authorize the conferment

of jurisdiction on military courts and agencies over civilians when civil courts are able to function.

"2. Martial law does not supplant the civil courts when the same are able to function.

"3. Martial law does not automatically suspend the privilege of the writ of habeas corpus.

"4. Martial law may not be declared upon the ground of imminent danger of invasion or rebellion. In the event of such danger, the President may call the armed forces to prevent or suppress the danger, without declaring martial law or suspending the privilege of the writ.

"5. Within forty-eight (48) hours after the proclamation of martial law, the President shall report the same to Congress in person or in writing.

"6. Congress may, by a majority vote of all its members, revoke the proclamation of martial law or the suspension of the privilege of the writ, which action of Congress may not be set aside by the President.

"7. The proclamation of martial law or suspension of the privilege of the writ by the President, may not exceed sixty (60) days without the concurrence of Congress.

"8. The Supreme Court has been expressly authorized to 'review in an appropriate proceeding filed by any citizen the sufficiency of the factual basis of the proclamation of martial law or of the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty (30) days from its filing.'

"9. Under the '1973 Constitution', as amended, at least ten (10) votes of the members of the Supreme Court were necessary to invalidate or declare a law unconstitutional, regardless of the number of vacancies in the Supreme Court or the number of its members who participated in the deliberations on the issues involved in the case, and voted thereon. Under the New Constitution a simple majority of the members who took part in such deliberation and cast their votes thereon is sufficient.

"10. In the case of suspension of the privilege of the writ, the same does not apply to persons who have not been placed under the custody of a court of justice.

"11. In case of suspension of the privilege of the writ, the person detained must be released unless judicially charged within three (3) days." [11]

These substantial checks by the legislature as well as by the judiciary on the Chief Executive's power to proclaim martial law or to suspend the privilege of the writ of habeas corpus were meant to forestall a recurrence of the long and horrible nightmare of the past regime when one single clause, the Commander-in-Chief clause of the Constitution then in force that authorized the President to declare martial law was held to have nullified the entire Constitution and the Bill of Rights and justified the then President's taking over "absolute command" of the nation and that the people could "only trust and pray that, giving him their own loyalty with utmost patriotism, (he) will not fail them," Thus, persons held under Presidential Commitment or Detention Orders were detained indefinitely without charges, yet had no recourse to the courts. Even if they were acquitted in court, the military would not release them until and unless the then President lifted the preventive detention order.[12] It was a long and horrible nightmare when our people's rights, freedoms and liberties were sacrificed at the altar of "national security" even though it involved nothing more than the President-dictator's perpetuation in office and the security of his relatives and some officials in high positions and their protection from public accountability of their acts of venality and deception in government, many of which were of public knowledge.

Draconian decrees were issued whereby many were locked up indefinitely for "rumor-mongering", "unlawful use of means of publication and unlawful utterances, and alarms and scandals." While the people for the most part suffered in silence and waited, others never gave up the struggle for truth, freedom, justice and democracy, a

common commitment which is what makes a people a nation instead of a gathering of self-seeking individuals. The national will was systematically undermined to the point of national mockery, that the day of imposition of martial law was proclaimed as "National Thanks-giving Day." As the Court observed through Mr. Justice Gutierrez in *Animas vs. Minister of National Defense*[13], the era of martial law when military tribunals, against all tenets of due process, were conferred jurisdiction over common crimes and civilians, their glorification with the downgrading of judicial prestige and "the many judicial problems spawned by extended authoritarian rule which effectively eroded judicial independence and self-respect will require plenty of time and determined efforts to cure."

5. The treacherous assassination on August 21, 1983 of the martyred Benigno S. Aquino, Jr., within minutes of his arrival at the Manila International Airport, although ringed with 2,000 soldiers, shocked and outraged the conscience of the nation. After three years of exile following almost eight years of detention since martial law, Aquino, although facing the military commission's predetermined death sentence, *supra*, yet refused proper travel documents, was returning home "to strive for genuine national reconciliation founded on justice." The late Senator Jose W. Diokno who passed away this year was among the first victims of the martial law coup d'etat to be locked up with Senator Aquino. In March, 1973, all of their personal effects, including their eyeglasses were ominously returned to their homes. Their wives' visitation privileges were suspended and they lost all contact for over a month. It turned out that Aquino had smuggled out of his cell a written statement critical of the martial law regime. In swift retribution, both of them were flown out blindfolded to the army camp at Fort Laur in Nueva Ecija and kept in solitary confinement in dark boarded cells with hardly any ventilation. When their persons were produced before the Court on habeas corpus proceedings, they were a pitiable sight having lost about 30 to 40 lbs. in weight. Senator Diokno was to be released in September, 1974 after almost two years of detention. No charges of any kind were ever filed against him. His only fault was that he was a possible rival for the presidency.

Horacio Morales, Jr., 1977 TOYM awardee for government service and then executive vice-president of the Development Academy of the Philippines, was among the hard-working government functionaries who had been radicalized and gave up their government positions. Morales went underground on the night he was supposed to receive his TOYM award, declaring that "(F)or almost ten years, I have been an official in the reactionary government, serviced the Marcos dictatorship and all that it stands for, serving a ruling system that has brought so much suffering and misery to the broad masses of the Filipino people. (I) refuse to take any more part of this. I have had enough of this regime's tyranny and treachery, greed and brutality, exploitation and oppression of the people," and "(I)n rejecting my position and part in the reactionary government, I am glad to be finally free of being a servant of foreign and local vested interests. I am happy to be fighting side by side with the people." He was apprehended in 1982 and was charged with the capital crime of subversion, until he was freed in March, 1986 after President Corazon C. Aquino's assumption of office, together with other political prisoners and detainees and prisoners of conscience in fulfillment of her campaign pledge.

Countless others forfeited their lives and stand as witnesses to the tyranny and repression of the past regime. Driven by their dreams to free our motherland from poverty, oppression, iniquity and injustice, many of our youthful leaders were to make the supreme sacrifice. To mention a few: U.P. Collegian editor Abraham Sarmiento, Jr. worthy son of an illustrious member of the Court pricked the conscience of many as he asked on the front page of the college paper: Sino ang kikibo kung hindi tayo kikibo? Sino ang kikilos kung hindi tayo kikilos? Kung hindi ngayon, kailan pa?^{13-a} He was locked up in the military camp and released only when he was near death from a severe attack of asthma, to which he succumbed. Another TOYM awardee, Edgar Jopson, an outstanding honor student at the Ateneo University, instinctively pinpointed the gut issue in 1971 - he pressed for a "non-partisan Constitutional Convention;" and demanded that the then president-soon-to-turn-dictator "put

down in writing" that he was not going to manipulate the Constitution to remove his disqualification to run for a third term or perpetuate him-self in office and was called down as "son of a grocer." When as he feared, martial law was declared, Jopson went underground to continue the struggle and was to be waylaid and killed at the age of 34 by 21 military troops as the reported head of the rebel movement in Mindanao.[14] Another activist honor student leader, Emmanuel Yap, son of another eminent member of the Court, was to disappear on Valentine's Day in 1976 at the young age of 24, reportedly picked up by military agents in front of Channel 7 in Quezon City, and never to be seen again.

One of our most promising young leaders, Evelio B. Javier, 43, unarmed, governor of the province of Antique at 28, a Harvard-trained lawyer, was mercilessly gunned down with impunity in broad daylight at 10 a.m. in front of the provincial capitol building by six mad-dog killers who riddled his body with 24 bullets fired from M-16 armalite rifles (the standard heavy automatic weapon of our military). He was just taking a breather and stretching his legs from the tedious but tense proceedings of the canvassing of the returns of the presidential snap election in the capitol building. This was to be the last straw and the blood-less EDSA revolt was soon to unfold. The Court in *Javier vs. Com-elec*[15], through Mr. Justice Cruz, "said these meager words in tribute to a fallen hero who was struck down in the vigor of his youth because he dared to speak against tyranny. Where many kept a meekly silence for fear of retaliation, and still others feigned and fawned in hopes of safety and even reward, he chose to fight. He was not afraid. Money did not tempt him. Threats did not daunt him. Power did not awe him. His was a singular and all-exacting obsession: the return of freedom to his country. And though he fought not in the barricades of war amid the sound and smoke of shot and shell, he was a soldier nonetheless, fighting valiantly for the liberties of his people against the enemies of his race, unfortunately of his race too, who would impose upon the land a perpetual night of dark enslavement. He did not see the breaking of the dawn, sad to say, but in a very real sense Evelio B. Javier made that dawn draw nearer because he was, like Saul and Jonathan, 'swifter than eagles and stronger than lions.'"

6. The greatest threat to freedom is the shortness of human memory. We must note here the unforgettable and noble sacrifices of the countless brave and patriotic men and women who fell as martyrs and victims during the long dark years of the deposed regime. In vacating the death sentence imposed on the petitioners who survived the holocaust, we render them simple justice and we redeem and honor the memory of those who selflessly offered their lives for the restoration of truth, decency, justice and freedom in our beloved land. Due recognition must be given also that 85% of the Armed Forces of the Philippines readily joined the EDSA revolt and redeemed the honor of the military by recognizing civilian supremacy and the supreme mandate given by the people to the true winners of the elections. Witness the testimony of Gen. Fidel V. Ramos, now chief of the new Armed Forces of the Philippines, as he recounted early last year his breakaway from the past regime:

"The Armed Forces of the Philippines had ceased to be the real armed forces supposed to be the defender of the people. There had developed an elite group within the AFP x x x and the AFP no longer represented its rank and file and officers corps.

"Mr. Marcos was no longer the same President that we used to know, to whom we pledged our loyalty and dedicated our services. He was no longer the able and capable commander-in-chief whom we used to count on. He had already put his personal interest, his family interest, above the interest of the people.

"The small people in the AFP and the Integrated National Police were now being pushed around by powerful military officers motivated by very selfish desires and intentions. Many of those officers were now practically the servants of powerful politicians." [16]

The present PC/INP Chief, Major General Renato de Villa, on the 85th anniversary of the Philippine Constabulary last August 8th publicly stated that "for the perfidy of a few, we owe the whole nation a sincere apology and a

commitment to intensively pursue our new program of reforms, to weed out the misfits who bring discredit to our organization," and solemnly pledged that "now and forever, your PC/INP stands ready and committed to fight lawlessness, injustice and oppression, as well as the sinister forces that continue to threaten our stability and progress as a free country. We make this solemn pledge here and now, before our entire nation, before our Commander-in-Chief who is the personification of our national honor and unity, before God who has always blessed our people x x x - to consecrate our lives to the protection and preservation of our national ideals - of unity, peace, justice and democracy."

7. The people by their overwhelming ratification of the 1987 Constitution at the plebiscite held last February 2nd unequivocally reaffirmed their collective act of installing our new government following the bloodless EDSA revolt. They refused to be deterred by the last-ditch efforts of the forces of the Right and of the Left to derail our return to full normalcy and the restoration of our democratic institutions. They proclaimed a renewed and vigorous faith in the democratic process. Among the great changes introduced in the 1987 Constitution to harness the Presidential power to impose martial law and strengthen the system of checks and balances in our government were those made by the venerable late Chief Justice Roberto Concepcion and his fellow members of the 1986 Constitutional Commission, hereinabove enumerated.[17] With their work completed, and the 1987 Constitution decisively approved and ratified by the people, Chief Justice Concepcion could then claim his eternal rest on last May 3rd and leave us this legacy and caveat: "One thing," he said, "I have learned during the martial law regime, and that is - that a Constitution is as good only as it is enforced. x x x the Primacy of the Law depends ultimately upon the people; upon their awareness of this fact and their willingness and readiness to assume the corresponding responsibility, in short, upon their political maturity." [18]

[1] Save for Mr. Justice Padilla who inhibited from the case, as his brother was counsel for petitioner Othoniel Jimenez.

[2] 63 SCRA 546.

[3] *Idem* at pp. 625-627.

[4] *Idem* at p. 628.

[5] Record, Vol. I, G.R. No. 69882, p. 84.

[6] Record, *Idem*, Annex "E", pp. 71-73; emphasis supplied.

[7] Record, *idem*, Annex "F", pp. 75-76; emphasis supplied.

7-a Solicitor General's Manifestation in lieu of Brief dated February 11, 1987, Record, Vol. II, p. 528.

[8] 37 SCRA 420, 427.

[9] Cf. *Conde v. Rivera*, 45 Phil. 650 (1924); *Harden v. Director of Prisons*, 81 Phil. 741 (1948); *Abriol v. Homeres*, 84 Phil. 525 (1949); *Chavez v. Court of Appeals*, 24 SCRA 663 (1968); *Celeste v. People*, 31 SCRA 391 (1970).

[10] *Conde v. Diaz*, 45 Phil. 173 (1923).

[11] Address of Chief Justice Roberto Concepcion on February 10, 1987 on the eve of the first death anniversary of the Antique martyr Evelio Javier at the Ateneo Law School.

[12] In re: habeas corpus petition for Dr. Aurora Parong, et al., 121 SCRA 472 (1983); see *Toyoto vs. Ramos*, 139

SCRA 316 (1985); Habeas Corpus cases of Renato Cañete (G.R. No. 63776, August 16, 1984) and Aristedes Sarmiento (131 SCRA 405, August 27, 1984).

[13] G.R. No. 51747, Dec. 29, 1986.

13-a If we don't protest, who will protest? If we don't move, who will move? If not now, when else?

[14] Olivares; Babst: Bulletin Today issue of Sept. 29, 1982; Soliven: Mr. & Ms. issue of Sept. 28-Oct. 4, 1984.

[15] 144 SCRA 194 208 (Sept. 22, 1986)

[16] Manila Times issue of March 11, 1986.

[17] Supra, par. 4 hereof.

[18] Supra, see fn. 11.

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