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PROF. RANDOLF S. DAVID, LORENZO TAÑADA III, RONALD LLAMAS, H. HARRY L. ROQUE, JR., JOEL RUIZ BUTUYAN, ROGER R. RAYEL, GARY S. MALLARI, ROMEL REGALADO BAGARES, CHRISTOPHER F.C. BOLASTIG, Petitioners, - versus - GLORIA MACAPAGAL-ARROYO, AS PRESIDENT AND COMMANDER-IN-CHIEF, EXECUTIVE SECRETARY EDUARDO ERMITA, HON. AVELINO CRUZ II, SECRETARY OF NATIONAL DEFENSE, GENERAL GENEROSO SENGA, CHIEF OF STAFF, ARMED FORCES OF THE PHILIPPINES, DIRECTOR GENERAL ARTURO LOMIBAO, CHIEF, PHILIPPINE NATIONAL POLICE, Respondents. x----------x	G.R. No. 171396 Present: PANGANIBAN, *C.J.*, *PUNO, QUISUMBING, YNARES-SANTIAGO, SANDOVAL-GUTIERREZ, CARPIO, AUSTRIA-MARTINEZ, CORONA, CARPIO MORALES, CALLEJO, SR., AZCUNA, TINGA, CHICO-NAZARIO, GARCIA, and VELASCO, *JJ.* Promulgated: _____
NIÑEZ CACHO-OLIVARES AND TRIBUNE PUBLISHING CO., INC., Petitioners, - versus - HONORABLE SECRETARY EDUARDO ERMITA AND HONORABLE DIRECTOR GENERAL ARTURO C. LOMIBAO, Respondents. x----------x	G.R. No. 171409
FRANCIS JOSEPH G. ESCUDERO, JOSEPH A. SANTIAGO, TEODORO A.	G.R. No. 171485

* On leave.

CASINO, AGAPITO A. AQUINO, MARIO J. AGUJA, SATUR C. OCAMPO, MUJIV S. HATAMAN, JUAN EDGARDO ANGARA, TEOFISTO DL. GUINGONA III, EMMANUEL JOSEL J. VILLANUEVA, LIZA L. MAZA, IMEE R. MARCOS, RENATO B. MAGTUBO, JUSTIN MARC SB. CHIPECO, ROILO GOLEZ, DARLENE ANTONINO-CUSTODIO, LORETTA ANN P. ROSALES, JOSEL G. VIRADOR, RAFAEL V. MARIANO, GILBERT C. REMULLA, FLORENCIO G. NOEL, ANA THERESIA HONTIVEROS-BARAQUEL, IMELDA C. NICOLAS, MARVIC M.V.F. LEONEN, NERI JAVIER COLMENARES, MOVEMENT OF CONCERNED CITIZENS FOR CIVIL LIBERTIES REPRESENTED BY AMADO GAT INCIONG,

Petitioners,

- versus -

EDUARDO R. ERMITA, EXECUTIVE SECRETARY, AVELINO J. CRUZ, JR., SECRETARY, DND RONALDO V. PUNO, SECRETARY, DILG, GENEROSO SENGA, AFP CHIEF OF STAFF, ARTURO LOMIBAO, CHIEF PNP,

Respondents.

x----------x

KILUSANG MAYO UNO, REPRESENTED BY ITS CHAIRPERSON ELMER C. LABOG AND SECRETARY GENERAL JOEL MAGLUNSOD, NATIONAL FEDERATION OF LABOR UNIONS – KILUSANG MAYO UNO (NAFLU-KMU), REPRESENTED BY ITS NATIONAL PRESIDENT, JOSELITO V. USTAREZ, ANTONIO C. PASCUAL, SALVADOR T. CARRANZA, EMILIA P. DAPULANG, MARTIN CUSTODIO, JR., AND ROQUE M. TAN,

Petitioners,

G.R. No. 171483

- versus -

HER EXCELLENCY, PRESIDENT GLORIA MACAPAGAL-ARROYO, THE HONORABLE EXECUTIVE SECRETARY, EDUARDO ERMITA, THE CHIEF OF STAFF, ARMED FORCES OF THE PHILIPPINES, GENEROSO SENGA, AND THE PNP DIRECTOR GENERAL, ARTURO LOMIBAO,

Respondents.

x----------x

ALTERNATIVE LAW GROUPS, INC. (ALG),

Petitioner,

G.R. No. 171400

- versus -

EXECUTIVE SECRETARY EDUARDO R. ERMITA, LT. GEN. GENEROSO SENGA, AND DIRECTOR GENERAL ARTURO LOMIBAO,

Respondents.

x----------x

JOSE ANSELMO I. CADIZ, FELICIANO M. BAUTISTA, ROMULO R. RIVERA, JOSE AMOR M. AMORADO, ALICIA A. RISOS-VIDAL, FELIMON C. ABELITA III, MANUEL P. LEGASPI, J.B. JOVY C. BERNABE, BERNARD L. DAGCUTA, ROGELIO V. GARCIA AND INTEGRATED BAR OF THE PHILIPPINES (IBP),

Petitioners,

G.R. No. 171489

- versus -

HON. EXECUTIVE SECRETARY EDUARDO ERMITA, GENERAL GENEROSO SENGA, IN HIS CAPACITY AS AFP CHIEF OF STAFF, AND DIRECTOR GENERAL ARTURO LOMIBAO, IN HIS CAPACITY AS PNP CHIEF,

Respondents.

x----------x

LOREN B. LEGARDA,
Petitioner, G.R. No. 171424

- versus -

GLORIA MACAPAGAL-ARROYO, IN HER CAPACITY AS PRESIDENT AND COMMANDER-IN-CHIEF; ARTURO LOMIBAO, IN HIS CAPACITY AS DIRECTOR-GENERAL OF THE PHILIPPINE NATIONAL POLICE (PNP); GENEROSO SENGA, IN HIS CAPACITY AS CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIPPINES (AFP); AND EDUARDO ERMITA, IN HIS CAPACITY AS EXECUTIVE SECRETARY,
Respondents.

x----------x

DECISION

SANDOVAL-GUTIERREZ, *J.*:

All powers need some restraint; practical adjustments rather than rigid formula are necessary.[1] Superior strength – the use of force – cannot make wrongs into rights. In this regard, the courts should be vigilant in safeguarding the constitutional rights of the citizens, specifically their liberty.

Chief Justice Artemio V. Panganiban's philosophy of liberty is thus most relevant. He said: "**In cases involving liberty, the scales of justice should weigh heavily against government and in favor of the poor, the oppressed, the marginalized, the dispossessed and the weak**." Laws and

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[1] *Law and Disorder, The Franklin Memorial Lectures,* Justice Tom C. Clark – Lecturer, Volume XIX, 1971, p. 29.

actions that restrict fundamental rights come to the courts "with a heavy presumption against their constitutional validity."[2]

These seven (7) consolidated petitions for *certiorari* and prohibition allege that in issuing Presidential Proclamation No. 1017 (PP 1017) and General Order No. 5 (G.O. No. 5), President Gloria Macapagal-Arroyo committed grave abuse of discretion. Petitioners contend that respondent officials of the Government, in their professed efforts to defend and preserve democratic institutions, are actually trampling upon the very freedom guaranteed and protected by the Constitution. Hence, such issuances are void for being unconstitutional.

Once again, the Court is faced with an age-old but persistently modern problem. *How does the Constitution of a free people combine the degree of* ***liberty****, without which, law becomes tyranny, with the degree of* ***law****, without which, liberty becomes license*?[3]

On February 24, 2006, as the nation celebrated the 20th Anniversary of the *Edsa People Power I*, President Arroyo issued PP 1017 declaring a state of national emergency, thus:

> **NOW, THEREFORE**, I, Gloria Macapagal-Arroyo, President of the Republic of the Philippines and Commander-in-Chief of the Armed Forces of the Philippines, by virtue of the powers vested upon me by Section 18, Article 7 of the Philippine Constitution which states that: "The President. . . whenever it becomes necessary, . . . may call out (the) armed forces to prevent or suppress. . .rebellion. . .," and in my capacity as their Commander-in-Chief, **do hereby command the Armed Forces of the Philippines, to maintain law and order throughout the Philippines, prevent or suppress all forms of lawless violence as well as any act of insurrection or rebellion and to enforce obedience to all the laws and to all decrees, orders and regulations promulgated by me personally or upon my direction**; and **as provided in Section 17, Article 12 of the Constitution do hereby declare a State of National Emergency.**

She cited the following facts as bases:

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[2] Chief Justice Artemio V. Panganiban, *Liberty and Prosperity*, February 15, 2006.

[3] Articulated in the writings of the Greek philosopher, Heraclitus of Ephesus, 540-480 B.C., who propounded universal impermanence and that all things, notably opposites are interrelated.

WHEREAS, over these past months, elements in the **political opposition have conspired with authoritarians of the extreme Left represented by the NDF-CPP-NPA and the extreme Right, represented by military adventurists – the historical enemies of the democratic Philippine State** – who are now in a tactical alliance and engaged in a concerted and systematic conspiracy, over a broad front, to bring down the duly constituted Government elected in May 2004;

WHEREAS, these conspirators have repeatedly tried to bring down the President;

WHEREAS, **the claims of these elements have been recklessly magnified by certain segments of the national media;**

WHEREAS, this series of actions is hurting the Philippine State – by obstructing governance including **hindering the growth of the economy and sabotaging the people's confidence in government and their faith in the future of this country**;

WHEREAS, these **actions are adversely affecting the economy;**

WHEREAS, **these activities give totalitarian forces of both the extreme Left and extreme Right the opening to intensify their avowed aims to bring down the democratic Philippine State**;

WHEREAS, Article 2, Section 4 of the our Constitution makes the defense and preservation of the democratic institutions and the State the primary duty of Government;

WHEREAS, the activities above-described, their consequences, ramifications and collateral effects constitute a **clear and present danger** to the safety and the integrity of the Philippine State and of the Filipino people;

On the same day, the President issued G. O. No. 5 implementing PP 1017, thus:

WHEREAS, over these past months, elements in the political opposition have conspired with authoritarians of the extreme Left, represented by the NDF-CPP-NPA and the extreme Right, represented by military adventurists - the historical enemies of the democratic Philippine State – and who are now in a tactical alliance and engaged in a concerted and systematic conspiracy, over a broad front, to bring down the duly-constituted Government elected in May 2004;

WHEREAS, these conspirators have repeatedly tried to bring down our republican government;

WHEREAS, the claims of these elements have been recklessly magnified by certain segments of the national media;

WHEREAS, these series of actions is hurting the Philippine State by obstructing governance, including hindering the growth of the economy and sabotaging the people's confidence in the government and their faith in the future of this country;

WHEREAS, these actions are adversely affecting the economy;

WHEREAS, these activities give totalitarian forces; of both the extreme Left and extreme Right the opening to intensify their avowed aims to bring down the democratic Philippine State;

WHEREAS, Article 2, Section 4 of our Constitution makes the defense and preservation of the democratic institutions and the State the primary duty of Government;

WHEREAS, the activities above-described, their consequences, ramifications and collateral effects constitute a clear and present danger to the safety and the integrity of the Philippine State and of the Filipino people;

WHEREAS, Proclamation 1017 date February 24, 2006 has been issued declaring a State of National Emergency;

NOW, THEREFORE, I GLORIA MACAPAGAL-ARROYO, by virtue of the powers vested in me under the Constitution as President of the Republic of the Philippines, and Commander-in-Chief of the Republic of the Philippines, and pursuant to Proclamation No. 1017 dated February 24, 2006, do hereby call upon the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP), to prevent and suppress acts of terrorism and lawless violence in the country;

I hereby direct the Chief of Staff of the AFP and the Chief of the PNP, as well as the officers and men of the AFP and PNP, **to immediately carry out the necessary and appropriate actions and measures to suppress and prevent acts of terrorism and lawless violence**.

On March 3, 2006, exactly one week after the declaration of a state of national emergency and after all these petitions had been filed, the President lifted PP 1017. She issued Proclamation No. 1021 which reads:

WHEREAS, pursuant to Section 18, Article VII and Section 17, Article XII of the Constitution, Proclamation No. 1017 dated February 24, 2006, was issued declaring a state of national emergency;

WHEREAS, by virtue of General Order No.5 and No.6 dated February 24, 2006, which were issued on the basis of Proclamation No. 1017, the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP), were directed to maintain law and order throughout the Philippines, prevent and suppress all form of lawless violence as well as any act of rebellion and to undertake such action as may be necessary;

WHEREAS, the AFP and PNP have effectively prevented, suppressed and quelled the acts lawless violence and rebellion;

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Republic of the Philippines, by virtue of the

> powers vested in me by law, hereby **declare that the state of national emergency has ceased to exist.**

In their presentation of the factual bases of PP 1017 and G.O. No. 5, respondents stated that the proximate cause behind the executive issuances was the conspiracy among some military officers, leftist insurgents of the New People's Army (NPA), and some members of the political opposition in a plot to unseat or assassinate President Arroyo.[4] They considered the aim to oust or assassinate the President and take-over the reigns of government as a clear and present danger.

During the oral arguments held on March 7, 2006, the Solicitor General specified the facts leading to the issuance of PP 1017 and G.O. No. 5. **Significantly, there was no refutation from petitioners' counsels.**

The Solicitor General argued that the intent of the Constitution is to give full **discretionary powers** to the President in determining the necessity of calling out the armed forces. He emphasized that none of the petitioners has shown that PP 1017 was without factual bases. While he explained that it is not respondents' task to state the facts behind the questioned Proclamation, however, they are presenting the same, narrated hereunder, for the elucidation of the issues.

On January 17, 2006, Captain Nathaniel Rabonza and First Lieutenants Sonny Sarmiento, Lawrence San Juan and Patricio Bumidang, members of the Magdalo Group indicted in the Oakwood mutiny, escaped their detention cell in Fort Bonifacio, Taguig City. In a public statement, they vowed to remain defiant and to elude arrest at all costs. They called upon the people to "*show and proclaim our displeasure at the sham regime. Let us demonstrate our disgust, not only by going to the streets in protest, but also by wearing red bands on our left arms.*"[5]

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[4] Respondents' Comment dated March 6, 2006.
[5] *Ibid.*

On February 17, 2006, the authorities got hold of a document entitled "*Oplan Hackle I* " which detailed plans for bombings and attacks during the Philippine Military Academy Alumni Homecoming in Baguio City. The plot was to assassinate selected targets including some cabinet members and President Arroyo herself.[6] Upon the advice of her security, President Arroyo decided not to attend the Alumni Homecoming. The next day, at the height of the celebration, a bomb was found and detonated at the PMA parade ground.

On February 21, 2006, Lt. San Juan was recaptured in a communist safehouse in Batangas province. Found in his possession were two (2) flash disks containing minutes of the meetings between members of the Magdalo Group and the National People's Army (NPA), a tape recorder, audio cassette cartridges, diskettes, and copies of subversive documents.[7] Prior to his arrest, Lt. San Juan announced through DZRH that the "*Magdalo's D-Day would be on February 24, 2006, the 20th Anniversary of Edsa I."*

On February 23, 2006, PNP Chief Arturo Lomibao intercepted information that members of the PNP- Special Action Force were planning to defect. Thus, he immediately ordered SAF Commanding General Marcelino Franco, Jr. to *"disavow"* any defection. The latter promptly obeyed and issued a public statement: "*All SAF units are under the effective control of responsible and trustworthy officers with proven integrity and unquestionable loyalty.*"

On the same day, at the house of former Congressman Peping Cojuangco, President Cory Aquino's brother, businessmen and mid-level government officials plotted moves to bring down the Arroyo administration. Nelly Sindayen of TIME Magazine reported that Pastor Saycon, longtime Arroyo critic, called a U.S. government official about his group's plans if President Arroyo is ousted. Saycon also phoned a man

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6 *Ibid.*

7 Minutes of the Intelligence Report and Security Group, Philippine Army, Annex "I" of Respondents' Consolidated Comment.

code-named Delta. Saycon identified him as B/Gen. Danilo Lim, Commander of the Army's elite Scout Ranger. Lim said "*it was all systems go for the planned movement against Arroyo.*"[8]

B/Gen. Danilo Lim and Brigade Commander Col. Ariel Querubin confided to Gen. Generoso Senga, Chief of Staff of the Armed Forces of the Philippines (AFP), that a huge number of soldiers would join the rallies to provide a critical mass and armed component to the Anti-Arroyo protests to be held on February 24, 2005. According to these two (2) officers, there was no way they could possibly stop the soldiers because they too, were breaking the chain of command to join the forces foist to unseat the President. However, Gen. Senga has remained faithful to his Commander-in-Chief and to the chain of command. He immediately took custody of B/Gen. Lim and directed Col. Querubin to return to the Philippine Marines Headquarters in Fort Bonifacio.

Earlier, the CPP-NPA called for intensification of political and revolutionary work within the military and the police establishments in order to forge alliances with its members and key officials. NPA spokesman Gregorio "Ka Roger" Rosal declared: "*The Communist Party and revolutionary movement and the entire people look forward to the possibility in the coming year of accomplishing its immediate task of bringing down the Arroyo regime; of rendering it to weaken and unable to rule that it will not take much longer to end it*."[9]

On the other hand, Cesar Renerio, spokesman for the National Democratic Front (NDF) at North Central Mindanao, publicly announced: "*Anti-Arroyo groups within the military and police are growing rapidly, hastened by the economic difficulties suffered by the families of AFP officers and enlisted personnel who undertake counter-insurgency operations in the field.*" He claimed that with the forces of the national democratic movement, the anti-Arroyo conservative political parties, coalitions, plus the

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8 Respondents' Consolidated Comment.

9 *Ibid.*

groups that have been reinforcing since June 2005, it is probable that the President's ouster is nearing its concluding stage in the first half of 2006.

Respondents further claimed that the bombing of telecommunication towers and cell sites in Bulacan and Bataan was also considered as additional factual basis for the issuance of PP 1017 and G.O. No. 5. So is the raid of an army outpost in Benguet resulting in the death of three (3) soldiers. And also the directive of the Communist Party of the Philippines ordering its front organizations to join 5,000 Metro Manila radicals and 25,000 more from the provinces in mass protests.[10]

By midnight of February 23, 2006, the President convened her security advisers and several cabinet members to assess the gravity of the fermenting peace and order situation. She directed both the AFP and the PNP to account for all their men and ensure that the chain of command remains solid and undivided. To protect the young students from any possible trouble that might break loose on the streets, the President suspended classes in all levels in the entire National Capital Region.

For their part, petitioners cited the events that followed after the issuance of PP 1017 and G.O. No. 5.

Immediately, the Office of the President announced the cancellation of all programs and activities related to the 20th anniversary celebration of *Edsa People Power I*; and revoked the permits to hold rallies issued earlier by the local governments. Justice Secretary Raul Gonzales stated that political rallies, which to the President's mind were organized for purposes of destabilization, are cancelled. Presidential Chief of Staff Michael Defensor announced that "*warrantless arrests and take-over of facilities, including media, can already be implemented*."[11]

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10 *Ibid.*

11 Petition in G.R. No. 171396, p. 5.

Undeterred by the announcements that rallies and public assemblies would not be allowed, groups of protesters (members of *Kilusang Mayo Uno* [KMU] and National Federation of Labor Unions-*Kilusang Mayo Uno* [NAFLU-KMU]), marched from various parts of Metro Manila with the intention of converging at the EDSA shrine. Those who were already near the EDSA site were violently dispersed by huge clusters of anti-riot police. The well-trained policemen used truncheons, big fiber glass shields, water cannons, and tear gas to stop and break up the marching groups, and scatter the massed participants. The same police action was used against the protesters marching forward to Cubao, Quezon City and to the corner of Santolan Street and EDSA. That same evening, hundreds of riot policemen broke up an EDSA celebration rally held along Ayala Avenue and Paseo de Roxas Street in Makati City.[12]

According to petitioner *Kilusang Mayo Uno*, the police cited PP 1017 as the ground for the dispersal of their assemblies.

During the dispersal of the rallyists along EDSA, police arrested (without warrant) petitioner Randolf S. David, a professor at the University of the Philippines and newspaper columnist. Also arrested was his companion, Ronald Llamas, president of party-list *Akbayan*.

At around 12:20 in the early morning of February 25, 2006, operatives of the Criminal Investigation and Detection Group (CIDG) of the PNP, on the basis of PP 1017 and G.O. No. 5, raided the *Daily Tribune* offices in Manila. The raiding team confiscated news stories by reporters, documents, pictures, and mock-ups of the Saturday issue. Policemen from Camp Crame in Quezon City were stationed inside the editorial and business offices of the newspaper; while policemen from the Manila Police District were stationed outside the building.[13]

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[12] Police action in various parts of Metro Manila and the reactions of the huge crowds being dispersed were broadcast as "breaking news" by the major television stations of this country.

[13] Petition in G.R. No. 171400, p. 11.

A few minutes after the search and seizure at the *Daily Tribune* offices, the police surrounded the premises of another pro-opposition paper, Malaya, and its sister publication, the tabloid Abante.

The raid, according to Presidential Chief of Staff Michael Defensor, is *"meant to show a 'strong presence,' to tell media outlets not to connive or do anything that would help the rebels in bringing down this government."* The PNP warned that it would take over any media organization that would not follow *"standards set by the government during the state of national emergency."* Director General Lomibao stated that *"if they do not follow the standards – and the standards are - if they would contribute to instability in the government, or if they do not subscribe to what is in General Order No. 5 and Proc. No. 1017 – we will recommend a 'takeover.'"* National Telecommunications' Commissioner Ronald Solis urged television and radio networks to *"cooperate"* with the government for the duration of the state of national emergency. He asked for *"balanced reporting"* from broadcasters when covering the events surrounding the coup attempt foiled by the government. He warned that his agency will not hesitate to recommend the closure of any broadcast outfit that violates rules set out for media coverage when the national security is threatened.[14]

Also, on February 25, 2006, the police arrested Congressman Crispin Beltran, representing the *Anakpawis* Party and Chairman of *Kilusang Mayo Uno* (KMU), while leaving his farmhouse in Bulacan. The police showed a warrant for his arrest dated 1985. Beltran's lawyer explained that the warrant, which stemmed from a case of inciting to rebellion filed during the Marcos regime, had long been quashed. Beltran, however, is not a party in any of these petitions.

When members of petitioner KMU went to Camp Crame to visit Beltran, they were told they could not be admitted because of PP 1017 and

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[14] *Ibid.*

G.O. No. 5. Two members were arrested and detained, while the rest were dispersed by the police.

Bayan Muna Representative Satur Ocampo eluded arrest when the police went after him during a public forum at the Sulo Hotel in Quezon City. But his two drivers, identified as Roel and Art, were taken into custody.

Retired Major General Ramon Montaño, former head of the Philippine Constabulary, was arrested while with his wife and golfmates at the Orchard Golf and Country Club in Dasmariñas, Cavite.

Attempts were made to arrest *Anakpawis* Representative Satur Ocampo, Representative Rafael Mariano, *Bayan Muna* Representative Teodoro Casiño and Gabriela Representative Liza Maza. *Bayan Muna* Representative Josel Virador was arrested at the PAL Ticket Office in Davao City. Later, he was turned over to the custody of the House of Representatives where the "Batasan 5" decided to stay indefinitely.

Let it be stressed at this point that the alleged violations of the rights of Representatives Beltran, Satur Ocampo, *et al*., are not being raised in these petitions.

On March 3, 2006, President Arroyo issued PP 1021 declaring that the state of national emergency has ceased to exist.

In the interim, these seven (7) petitions challenging the constitutionality of PP 1017 and G.O. No. 5 were filed with this Court against the above-named respondents. Three (3) of these petitions impleaded President Arroyo as respondent.

In **G.R. No. 171396**, petitioners Randolf S. David, *et al*. assailed PP 1017 on the grounds that **(1)** it encroaches on the emergency powers of Congress; **(2)** it is a subterfuge to avoid the constitutional requirements for

the imposition of martial law; and **(3)** it violates the constitutional guarantees of freedom of the press, of speech and of assembly.

In **G.R. No. 171409**, petitioners Ninez Cacho-Olivares and *Tribune* Publishing Co., Inc. challenged the CIDG's act of raiding the *Daily Tribune* offices as a clear case of "censorship" or "prior restraint." They also claimed that the term "emergency" refers only to tsunami, typhoon, hurricane and similar occurrences, hence, there is "*absolutely no emergency*" that warrants the issuance of PP 1017.

In **G.R. No. 171485***,* petitioners herein are Representative Francis Joseph G. Escudero, and twenty one (21) other members of the House of Representatives, including Representatives Satur Ocampo, Rafael Mariano, Teodoro Casiño, Liza Maza, and Josel Virador. They asserted that PP 1017 and G.O. No. 5 constitute "*usurpation of legislative powers*"; "*violation of freedom of expression*" and "*a declaration of martial law*." They alleged that President Arroyo "g*ravely abused her discretion in calling out the armed forces without clear and verifiable factual basis of the possibility of lawless violence and a showing that there is necessity to do so.*"

In **G.R. No. 171483***,* petitioners KMU, NAFLU-KMU, and their members averred that PP 1017 and G.O. No. 5 are unconstitutional because **(1)** they arrogate unto President Arroyo the power to enact laws and decrees; **(2)** their issuance was without factual basis; and **(3)** they violate freedom of expression and the right of the people to peaceably assemble to redress their grievances.

In **G.R. No. 171400***,* petitioner Alternative Law Groups, Inc. (ALGI) alleged that PP 1017 and G.O. No. 5 are unconstitutional because they

violate **(a)** Section 4[15] of Article II, **(b)** Sections 1,[16] 2,[17] and 4[18] of Article III, **(c)** Section 23[19] of Article VI, and **(d)** Section 17[20] of Article XII of the Constitution.

In **G.R. No. 171489**, petitioners Jose Anselmo I. Cadiz *et al.,* alleged that PP 1017 is an "*arbitrary and unlawful exercise by the President of her Martial Law powers*." And assuming that PP 1017 is not really a declaration of Martial Law, petitioners argued that "*it amounts to an exercise by the President of emergency powers without congressional approval.*" In addition, petitioners asserted that PP 1017 "*goes beyond the nature and function of a proclamation as defined under the Revised Administrative Code."*

And lastly, in **G.R. No. 171424**, petitioner Loren B. Legarda maintained that PP 1017 and G.O. No. 5 are "*unconstitutional for being violative of the freedom of expression, including its cognate rights such as freedom of the press and the right to access to information on matters of public concern, all guaranteed under Article III, Section 4 of the 1987 Constitution.*" In this regard, she stated that these issuances prevented her from fully prosecuting her election protest pending before the Presidential Electoral Tribunal.

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15 The prime duty of the Government is to serve and protect the people. The Government may call upon the people to defend the State and, in the fulfillment thereof, all citizens may be required, under conditions provided by law, to render personal military or civil service.

16 No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

17 The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally 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.

18 No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances.

19 **(1)** The Congress, by a vote of two-thirds of both Houses in joint session assembled, voting separately, shall have the sole power to declare the existence of a state of war.

(2) In times of war or other national emergency, the Congress may, by law, authorize the President, for a limited period and subject to such restrictions as it may prescribe, to exercise powers necessary and proper to carry out a declared national policy. Unless sooner withdrawn by resolution of the Congress, such powers shall cease upon the next adjournment thereof.

20 In times of national emergency, when the public interest so requires, the State may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any privately owned public utility or business affected with public interest.

In respondents' Consolidated Comment, the Solicitor General countered that: *first,* the petitions should be dismissed for being moot; *second,* petitioners in G.R. Nos. 171400 (ALGI), 171424 (Legarda), 171483 (KMU *et al*.), 171485 (Escudero *et al.*) and 171489 (Cadiz *et al*.) have no legal standing; *third*, it is not necessary for petitioners to implead President Arroyo as respondent; *fourth,* PP 1017 has constitutional and legal basis; and *fifth,* PP 1017 does not violate the people's right to free expression and redress of grievances.

On March 7, 2006, the Court conducted oral arguments and heard petitioners on the above interlocking issues which may be summarized as follows:

A. PROCEDURAL:

1) Whether the issuance of PP 1021 renders the petitions moot and academic.

2) Whether petitioners in **171485** (Escudero *et al.*), **G.R. Nos. 171400** (ALGI), **171483** (KMU *et al*.), **171489** (Cadiz *et al*.), and **171424** (Legarda) have legal standing.

B. SUBSTANTIVE:

1) Whether the Supreme Court can review the factual bases of PP 1017.

2) Whether PP 1017 and G.O. No. 5 are unconstitutional.

a. Facial Challenge
b. Constitutional Basis
c. As Applied Challenge

A. PROCEDURAL

First, we must resolve the procedural roadblocks.

I- Moot and Academic Principle

One of the greatest contributions of the American system to this country is the concept of judicial review enunciated in *Marbury v. Madison.*[21] This concept rests on the extraordinary simple foundation --

> The Constitution is the supreme law. It was ordained by the people, the ultimate source of all political authority. It confers limited powers on the national government. x x x **If the government consciously or unconsciously oversteps these limitations there must be some authority competent to hold it in control, to thwart its unconstitutional attempt, and thus to vindicate and preserve inviolate the will of the people as expressed in the Constitution. This power the courts exercise. This is the beginning and the end of the theory of judicial review**.[22]

But the power of judicial review does not repose upon the courts a "self-starting capacity."[23] Courts may exercise such power only when the following requisites are present: *first,* there must be an actual case or controversy; *second,* petitioners have to raise a question of constitutionality; *third,* the constitutional question must be raised at the earliest opportunity; and *fourth,* the decision of the constitutional question must be necessary to the determination of the case itself.[24]

Respondents maintain that the first and second requisites are absent, hence, we shall limit our discussion thereon.

An actual case or controversy involves a conflict of legal right, an opposite legal claims susceptible of judicial resolution. It is "definite and concrete, touching the legal relations of parties having adverse legal interest;" a real and substantial controversy admitting of specific relief.[25] The Solicitor General refutes the existence of such actual case or

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21 1 Cranch 137 [1803].

22 Howard L. MacBain, "*Some Aspects of Judicial Review," Bacon Lectures on the Constitution of the United States* (Boston: Boston University Heffernan Press, 1939), pp. 376-77.

23 The Court has no self-starting capacity and must await the action of some litigant so aggrieved as to have a justiciable case. (Shapiro and Tresolini, *American Constitutional Law*, Sixth Edition, 1983, p. 79).

24 Cruz, Philippine Political Law, 2002 Ed., p. 259.

25 *Ibid.*

controversy, contending that the present petitions were rendered "moot and academic" by President Arroyo's issuance of PP 1021.

Such contention lacks merit.

A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events,[26] so that a declaration thereon would be of no practical use or value.[27] Generally, courts decline jurisdiction over such case[28] or dismiss it on ground of mootness.[29]

The Court holds that President Arroyo's issuance of PP 1021 did not render the present petitions moot and academic. During the eight (8) days that PP 1017 was operative, the police officers, according to petitioners, committed illegal acts in implementing it. **Are PP 1017 and G.O. No. 5 constitutional or valid? Do they justify these alleged illegal acts?** These are the vital issues that must be resolved in the present petitions. It must be stressed that "**an unconstitutional act is not a law, it confers no rights, it imposes no duties, it affords no protection; it is in legal contemplation, inoperative**."[30]

The "moot and academic" principle is not a magical formula that can automatically dissuade the courts in resolving a case. Courts will decide cases, otherwise moot and academic, if: *first,* there is a grave violation of the Constitution;[31] *second*, the exceptional character of the situation and the paramount public interest is involved;[32] *third,* when constitutional issue raised requires formulation of controlling principles to guide the bench, the

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26 *Province of Batangas v. Romulo*, G.R. No. 152774, May 27, 2004, 429 SCRA 736.

27 *Banco Filipino Savings and Mortgage Bank v. Tuazon, Jr.,* G.R. No. 132795, March 10, 2004, 425 SCRA 129; *Vda. De Dabao v. Court of Appeals*, G.R. No. 1165, March 23, 2004, 426 SCRA 91; and *Paloma v. Court of Appeals*, G.R. No. 145431, November 11, 2003, 415 SCRA 590.

28 *Royal Cargo Corporation v. Civil Aeronautics Board,* G.R. Nos. 103055-56, January 26, 2004, 421 SCRA 21; *Vda. De Dabao v. Court of Appeals*, *supra*.

29 *Lacson v. Perez*, G.R. No. 147780, May 10, 2001, 357 SCRA 756.

30 Cruz, Philippine Political Law, 2002, p. 268 citing *Norton v. Shelby*, 118 U.S. 425.

31 *Province of Batangas v. Romulo*, *supra*.

32 *Lacson v. Perez*, *supra.*

bar, and the public;[33] and *fourth,* the case is capable of repetition yet evading review.[34]

All the foregoing exceptions are present here and justify this Court's assumption of jurisdiction over the instant petitions. Petitioners alleged that the issuance of PP 1017 and G.O. No. 5 violates the Constitution. There is no question that the issues being raised affect the public's interest, involving as they do the people's basic rights to freedom of expression, of assembly and of the press. Moreover, the Court has the duty to formulate guiding and controlling constitutional precepts, doctrines or rules. It has the symbolic function of educating the bench and the bar, and in the present petitions, **the military and the police**, on the extent of the protection given by constitutional guarantees.[35] And lastly, respondents' contested actions are capable of repetition. Certainly, the petitions are subject to judicial review.

In their attempt to prove the alleged mootness of this case, respondents cited Chief Justice Artemio V. Panganiban's Separate Opinion in *Sanlakas v. Executive Secretary*.[36] However, they failed to take into account the Chief Justice's very statement that an otherwise "moot" case may still be decided "*provided the party raising it in a proper case has been and/or continues to be prejudiced or damaged as a direct result of its issuance.*" The present case falls right within this exception to the mootness rule pointed out by the Chief Justice.

II- Legal Standing

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[33] *Province of Batangas v. Romulo*, *supra.*

[34] *Albaña v. Commission on Elections,* G.R. No. 163302, July 23, 2004, 435 SCRA 98, *Acop v. Guingona, Jr.,* G.R. No. 134855, July 2, 2002, 383 SCRA 577, *Sanlakas v. Executive Secretary*, G.R. No. 159085, February 3, 2004, 421 SCRA 656.

[35] *Salonga v. Cruz Paño, et al.,* No. L- 59524, February 18, 1985, 134 SCRA 438.

[36] G.R. No. 159085, February 3, 2004, 421 SCRA 656.

In view of the number of petitioners suing in various personalities, the Court deems it imperative to have a more than passing discussion on legal standing or *locus standi.*

Locus standi is defined as "a right of appearance in a court of justice on a given question."[37] In private suits, standing is governed by the "real-parties-in interest" rule as contained in Section 2, Rule 3 of the 1997 Rules of Civil Procedure, as amended. It provides that "**every action must be prosecuted or defended in the name of the real party in interest**." Accordingly, the "real-party-in interest" is "**the party who stands to be benefited or injured by the judgment in the suit or the party entitled to the avails of the suit.**"[38] Succinctly put, the plaintiff's standing is based on his own right to the relief sought.

The difficulty of determining *locus standi* arises in **public suits**. Here, the plaintiff who asserts a "public right" in assailing an allegedly illegal official action, does so as a representative of the general public. He may be a person who is affected no differently from any other person. He could be suing as a "stranger," or in the category of a "citizen," or 'taxpayer." In either case, he has to adequately show that he is entitled to seek judicial protection. In other words, he has to make out a sufficient interest in the vindication of the public order and the securing of relief as a "citizen" or "taxpayer.

Case law in most jurisdictions now allows both "citizen" and "taxpayer" standing in public actions. The distinction was first laid down in *Beauchamp v. Silk*,[39] where it was held that the plaintiff in a taxpayer's suit is in a different category from the plaintiff in a citizen's suit. **In the former, the plaintiff is affected by the expenditure of public funds, while in the latter, he is but the mere instrument of the public concern.** As held by

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37 Black's Law Dictionary, 6th Ed. 1991, p. 941.

38 *Salonga v. Warner Barnes & Co.,* 88 Phil. 125 (1951).

39 275 Ky 91, 120 SW2d 765 (1938).

the New York Supreme Court in *People ex rel Case v. Collins*:[40] "**In matter of mere public right, however…the people are the real parties… It is at least the right, if not the duty, of every citizen to interfere and see that a public offence be properly pursued and punished, and that a public grievance be remedied**." With respect to taxpayer's suits, *Terr v. Jordan*[41] held that "**the right of a citizen and a taxpayer to maintain an action in courts to restrain the unlawful use of public funds to his injury cannot be denied.**"

However, to prevent just about any person from seeking judicial interference in any official policy or act with which he disagreed with, and thus hinders the activities of governmental agencies engaged in public service, the United State Supreme Court laid down the more stringent "**direct injury**" **test** in *Ex Parte Levitt*,[42] later reaffirmed in *Tileston v. Ullman.*[43] The same Court ruled that for a private individual to invoke the judicial power to determine the validity of an executive or legislative action, **he must show that he has sustained a direct injury as a result of that action, and it is not sufficient that he has a general interest common to all members of the public.**

This Court adopted the **"direct injury" test** in our jurisdiction. In *People v. Vera*,[44] it held that the person who impugns the validity of a statute must have "**a personal and substantial interest in the case such that he has sustained, or will sustain direct injury as a result**." The *Vera* doctrine was upheld in a litany of cases, such as, *Custodio v. President of the Senate*,[45] *Manila Race Horse Trainers' Association v. De la Fuente*,[46]

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40 19 Wend. 56 (1837).

41 232 NC 48, 59 SE2d 359 (1950).

42 302 U.S. 633.

43 318 U.S. 446.

44 65 Phil. 56 (1937).

45 G.R. No. 117, November 7, 1945 (Unreported).

46 G.R. No. 2947, January 11, 1959 (Unreported).

Pascual v. Secretary of Public Works[47] and *Anti-Chinese League of the Philippines v. Felix.*[48]

However, being a mere procedural technicality, the requirement of *locus standi* may be waived by the Court in the exercise of its discretion. This was done in the **1949 Emergency Powers Cases,** *Araneta v. Dinglasan*,[49] where the "**transcendental importance**" of the cases prompted the Court to act liberally. Such liberality was neither a rarity nor accidental. In *Aquino v. Comelec*,[50] this Court resolved to pass upon the issues raised due to the "**far-reaching implications**" of the petition notwithstanding its categorical statement that petitioner therein had no personality to file the suit. Indeed, there is a chain of cases where this liberal policy has been observed, allowing ordinary citizens, members of Congress, and civic organizations to prosecute actions involving the constitutionality or validity of laws, regulations and rulings.[51]

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47 110 Phil. 331 (1960).

48 77 Phil. 1012 (1947).

49 84 Phil. 368 (1949) The Court held: "Above all, the transcendental importance to the public of these cases demands that they be settled promptly and definitely, brushing aside, if we must, technicalities of procedure."

50 L-No. 40004, January 31, 1975, 62 SCRA 275.

51 ***Tañada v. Tuvera,*** G.R. No. 63915, April 24, 1985, 136 SCRA 27, where the Court held that where the question is one of public duty and the enforcement of a public right, the people are the real party in interest, and it is sufficient that the petitioner is a citizen interested in the execution of the law;

Legaspi v. Civil Service Commission, G.R. No. 72119, May 29, 1987, 150 SCRA 530, where the Court held that in cases involving an assertion of a public right, the requirement of personal interest is satisfied by the mere fact that the petitioner is a citizen and part of the general public which possesses the right.

Kapatiran ng mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc. v. Tan, L. No. 81311, June 30, 1988, 163 SCRA 371, where the Court held that objections to taxpayers' lack of personality to sue may be disregarded in determining the validity of the VAT law;

Albano v. Reyes, G.R. No. 83551, July 11, 1989, 175 SCRA 264, where the Court held that while no expenditure of public funds was involved under the questioned contract, nonetheless considering its important role in the economic development of the country and the magnitude of the financial consideration involved, public interest was definitely involved and this clothed petitioner with the legal personality under the disclosure provision of the Constitution to question it.

Association of Small Landowners in the Philippines, Inc. v. Sec. of Agrarian Reform, G.R. No. 78742, July 14, 1989, 175 SCRA 343, where the Court ruled that while petitioners are strictly speaking, not covered by the definition of a "proper party," nonetheless, it has the discretion to waive the requirement, in determining the validity of the implementation of the CARP.

Gonzales v. Macaraig, Jr., G.R. No. 87636, November 19, 1990, 191 SCRA 452, where the Court held that it enjoys the open discretion to entertain taxpayer's suit or not and that a member of the Senate has the requisite personality to bring a suit where a constitutional issue is raised.

Maceda v. Macaraig, Jr., G.R. No. 88291, May 31, 1991, 197 SCRA 771, where the Court held that petitioner as a taxpayer, has the personality to file the instant petition, as the issues involved, pertains to illegal expenditure of public money;

Osmeña v. Comelec, G.R. No. 100318, 100308, 100417,100420, July 30, 1991, 199 SCRA 750, where the Court held that where serious constitutional questions are involved, the "transcendental

Thus, the Court has adopted a rule that even where the petitioners have failed to show direct injury, they have been allowed to sue under the principle of "**transcendental importance**." Pertinent are the following cases:

> **(1)** *Chavez v. Public Estates Authority,*[52] where the Court ruled that **the enforcement of the constitutional right to information and the equitable diffusion of natural resources are matters of transcendental importance which clothe the petitioner with *locus standi*;**
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> ***(2)*** *Bagong Alyansang Makabayan v. Zamora,*[53] wherein the Court held that **"given the transcendental importance of the issues involved, the Court may relax the standing requirements and allow the suit to prosper despite the lack of direct injury to the parties seeking judicial review"** of the Visiting Forces Agreement;
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> **(3)** *Lim v. Executive Secretary*,[54] while the Court noted that the petitioners may not file suit in their capacity as taxpayers absent a showing that "Balikatan 02-01" involves the exercise of Congress' taxing or spending powers, it reiterated its ruling in *Bagong Alyansang Makabayan v. Zamora,*[55] t**hat in cases of transcendental importance, the cases must be settled promptly and definitely and standing requirements may be relaxed**.

By way of summary, the following rules may be culled from the cases decided by this Court. Taxpayers, voters, concerned citizens, and legislators may be accorded standing to sue, provided that the following requirements are met:

(1) the cases involve constitutional issues;

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importance" to the public of the cases involved demands that they be settled promptly and definitely, brushing aside technicalities of procedures;

De Guia v. Comelec, G.R. No. 104712, May 6, 1992, 208 SCRA 420, where the Court held that the importance of the issues involved concerning as it does the political exercise of qualified voters affected by the apportionment, necessitates the brushing aside of the procedural requirement of *locus standi*.

52 G.R. No. 133250, July 9, 2002, 384 SCRA 152.

53 G.R. Nos. 138570, 138572, 138587, 138680, 138698, October 10, 2000, 342 SCRA 449.

54 G.R. No. 151445, April 11, 2002, 380 SCRA 739.

55 *Supra.*

(2) for **taxpayers**, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;

(3) for **voters**, there must be a showing of obvious interest in the validity of the election law in question;

(4) for **concerned citizens**, there must be a showing that the issues raised are of transcendental importance which must be settled early; and

(5) for **legislators**, there must be a claim that the official action complained of infringes upon their prerogatives as legislators.

Significantly, recent decisions show a certain toughening in the Court's attitude toward legal standing.

In *Kilosbayan, Inc. v. Morato*,[56] the Court ruled that the status of *Kilosbayan* as a people's organization does not give it the requisite personality to question the validity of the on-line lottery contract, more so where it does not raise any issue of constitutionality. Moreover, it cannot sue as a taxpayer absent any allegation that public funds are being misused. Nor can it sue as a concerned citizen as it does not allege any specific injury it has suffered.

In *Telecommunications and Broadcast Attorneys of the Philippines, Inc. v. Comelec*,[57] the Court reiterated the "direct injury" test with respect to concerned citizens' cases involving constitutional issues. It held that "there must be a showing that the citizen personally suffered some actual or threatened injury arising from the alleged illegal official act."

In *Lacson v. Perez*,[58] the Court ruled that one of the petitioners, *Laban ng Demokratikong Pilipino* (LDP), is not a real party-in-interest as it had not demonstrated any injury to itself or to its leaders, members or supporters.

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[56] G.R. No. 118910, November 16, 1995, 250 SCRA 130.

[57] G.R. No. 132922, April 21, 1998, 289 SCRA 337.

[58] G.R. No. 147780, 147781, 147799, 147810, May 10, 2001, 357 SCRA 756.

In *Sanlakas v. Executive Secretary*,[59] the Court ruled that only the petitioners who are members of Congress have standing to sue, as they claim that the President's declaration of a state of rebellion **is a usurpation of the emergency powers of Congress, thus impairing their legislative powers**. As to petitioners *Sanlakas, Partido Manggagawa, and Social Justice Society*, the Court declared them to be devoid of standing, equating them with the LDP in *Lacson*.

Now, the application of the above principles to the present petitions.

The *locus standi* of petitioners in **G.R. No. 171396**, particularly David and Llamas, is beyond doubt. The same holds true with petitioners in **G.R. No. 171409**, Cacho-Olivares and *Tribune* Publishing Co. Inc. They alleged "direct injury" resulting from "illegal arrest" and "unlawful search" committed by police operatives pursuant to PP 1017. Rightly so, the Solicitor General does not question their legal standing.

In **G.R. No. 171485**, the opposition Congressmen alleged there was usurpation of legislative powers. They also raised the issue of whether or not the concurrence of Congress is necessary whenever the alarming powers incident to Martial Law are used. Moreover, it is in the interest of justice that those affected by PP 1017 can be represented by their Congressmen in bringing to the attention of the Court the alleged violations of their basic rights.

In **G.R. No. 171400**, (ALGI), this Court applied the liberality rule in *Philconsa v. Enriquez*,[60] *Kapatiran Ng Mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc. v. Tan*,[61] *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*,[62] *Basco v. Philippine Amusement and*

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59 G.R. No. 159085, February 3, 2004, 421 SCRA 656.

60 235 SCRA 506 (1994).

61 *Supra.*

62 *Supra.*

Gaming Corporation,[63] and *Tañada v. Tuvera*,[64] that when the issue concerns a public right, it is sufficient that the petitioner is a citizen and has an interest in the execution of the laws.

In **G.R. No. 171483**, KMU's assertion that PP 1017 and G.O. No. 5 violated its right to peaceful assembly may be deemed sufficient to give it legal standing. **Organizations may be granted standing to assert the rights of their members**.[65] We take judicial notice of the announcement by the Office of the President banning all rallies and canceling all permits for public assemblies following the issuance of PP 1017 and G.O. No. 5.

In **G.R. No. 171489**, petitioners, *Cadiz et al.,* who are national officers of the Integrated Bar of the Philippines (IBP) have no legal standing, having failed to allege any direct or potential injury which the IBP as an institution or its members may suffer as a consequence of the issuance of PP No. 1017 and G.O. No. 5. In *Integrated Bar of the Philippines v. Zamora,*[66] the Court held that the mere invocation by the IBP of its duty to preserve the rule of law and nothing more, while undoubtedly true, is not sufficient to clothe it with standing in this case. This is too general an interest which is shared by other groups and the whole citizenry. However, in view of the transcendental importance of the issue, this Court declares that petitioner have *locus standi.*

In **G.R. No. 171424**, Loren Legarda has no personality as a taxpayer to file the instant petition as there are no allegations of illegal disbursement of public funds. The fact that she is a former Senator is of no consequence. She can no longer sue as a legislator on the allegation that her prerogatives as a lawmaker have been impaired by PP 1017 and G.O. No. 5. Her claim that she is a media personality will not likewise aid her because there was no showing that the enforcement of these issuances prevented her from

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[63] 197 SCRA 52, 60 (1991).

[64] *Supra.*

[65] See *NAACP v. Alabama*, 357 U.S. 449 (1958).

[66] G.R. No. 141284, August 15, 2000, 338 SCRA 81.

pursuing her occupation. Her submission that she has pending electoral protest before the Presidential Electoral Tribunal is likewise of no relevance. She has not sufficiently shown that PP 1017 will affect the proceedings or result of her case. But considering once more the transcendental importance of the issue involved, this Court may relax the standing rules.

It must always be borne in mind that the question of *locus standi* is but corollary to the bigger question of proper exercise of judicial power. This is the underlying legal tenet of the "liberality doctrine" on legal standing. It cannot be doubted that the validity of PP No. 1017 and G.O. No. 5 is a judicial question which is of paramount importance to the Filipino people. To paraphrase Justice Laurel, the whole of Philippine society now waits with bated breath the ruling of this Court on this very critical matter. The petitions thus call for the application of the "**transcendental importance**" doctrine, a relaxation of the standing requirements for the petitioners in the "PP 1017 cases."

This Court holds that all the petitioners herein have *locus standi*.

Incidentally, it is not proper to implead President Arroyo as respondent. Settled is the doctrine that the President, during his tenure of office or actual incumbency,[67] may not be sued in *any* civil or criminal case, and there is no need to provide for it in the Constitution or law. It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as such. Furthermore, it is important that he be freed from any form of harassment, hindrance or distraction to enable him to fully attend to the performance of his official duties and functions. Unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his usefulness in the discharge of the many great and important duties imposed upon him by the Constitution necessarily impairs the operation of the Government.

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[67] From the deliberations of the Constitutional Commission, the intent of the framers is clear that the immunity of the President from suit is concurrent only with his tenure and not his term. (De Leon, *Philippine Constitutional Law*, Vol. 2, 2004 Ed., p. 302).

However, this does not mean that the President is not accountable to anyone. Like any other official, he remains accountable to the people[68] but he may be removed from office only in the mode provided by law and that is by impeachment.[69]

B. SUBSTANTIVE

I. Review of Factual Bases

Petitioners maintain that PP 1017 has no factual basis. Hence, it was not "necessary" for President Arroyo to issue such Proclamation.

The issue of whether the Court may review the factual bases of the President's exercise of his Commander-in-Chief power has reached its distilled point - from the indulgent days of *Barcelon v. Baker*[70] and *Montenegro v. Castaneda*[71] to the volatile era of *Lansang v. Garcia,*[72] *Aquino, Jr. v. Enrile,*[73] *and Garcia-Padilla v. Enrile.*[74] The tug-of-war always cuts across the line defining "political questions," particularly those questions "in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government."[75] *Barcelon and Montenegro* were in unison in declaring that the **authority to decide whether an exigency has arisen belongs to the President** and **his decision is final and conclusive on the courts**. *Lansang* took the opposite view. There, the members of the Court were unanimous in the conviction that the Court has the authority to inquire into the existence of factual bases in order to determine their constitutional sufficiency. **From the principle of separation of powers, it shifted the focus to the system of checks and**

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68 Section 1, Article XI of the Constitution provides: Public Office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives.

69 *Ibid.*, Sec. 2.

70 No. 2908, September 30, 2005, 471 SCRA 87.

71 91 Phil. 882 (1952).

72 No. L-33964, December 11, 1971, 42 SCRA 448.

73 No. L-35546, September 17, 1974, 59 SCRA 183.

74 No. L-61388, April 20, 1983, 121 SCRA 472.

75 *Tañada v. Cuenco,* 103 Phil. 1051 (1957).

balances, "under which the President is supreme, x x x 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 *supreme*."[76] In 1973, the unanimous Court of *Lansang* was divided in *Aquino v. Enrile.*[77] There, the Court was almost evenly divided on the issue of whether the validity of the imposition of Martial Law is a political or justiciable question.[78] Then came *Garcia-Padilla v. Enrile* which greatly diluted *Lansang*. It declared that there is a need to re-examine the latter case, ratiocinating that "**in times of war or national emergency, the President must be given absolute control for the very life of the nation and the government is in great peril. The President, it intoned, is answerable only to his conscience, the People, and God**."[79]

The *Integrated Bar of the Philippines v. Zamora*[80] -- a recent case most pertinent to these cases at bar -- echoed a principle similar to *Lansang.* While the Court considered the President's "calling-out" power as a discretionary power solely vested in his wisdom, it stressed that "**this does not prevent an examination of whether such power was exercised within permissible constitutional limits or whether it was exercised in a manner constituting grave abuse of discretion**." This ruling is mainly a

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76 *Lansang v. Garcia, supra,* pp. 473 and 481.

77 *Supra.*

78 "Five Justices – Antonio, Makasiar, Esguerra, Fernandez, and Aquino – took the position that the proclamation of martial law and the arrest and detention orders accompanying the proclamation posed a "political question" beyond the jurisdiction of the Court. Justice Antonio, in a separate opinion concurred in by Makasiar, Fernandez, and Aquino, argued that the Constitution had deliberately set up a strong presidency and had concentrated powers in times of emergency in the hands of the President and had given him broad authority and discretion which the Court was bound to respect. He made reference to the decision in *Lansang v. Garcia* but read it as in effect upholding the "political question" position. Fernandez, in a separate opinion, also argued *Lansang*, even understood as giving a narrow scope of review authority to the Court, affirmed the impossible task of 'checking' the action taken by the President. Hence, he advocated a return to *Barcelon v. Baker*. Similarly, Esguerra advocated the abandonment of *Lansang* and a return to *Barcelon*. And, although Justices Castro, Fernando, Muñoz- Palma, and, implicitly, Teehankee, lined up on the side of justiciability as enunciated in *Lansang*, x x x Barredo, however, wanted to have the best of both worlds and opted for the view that "political questions are not *per se* beyond the Court's jurisdiction ... but that as a matter of policy implicit in the Constitution itself the Court should abstain from interfering with the Executive's Proclamation." (Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 1996 Edition, p. 794.)

79 See Separate Opinion of J. Puno in *Integrated Bar of the Philippines v. Zamora, supra.*

80 *Supra.*

result of the Court's reliance on Section 1, Article VIII of 1987 Constitution which fortifies the authority of the courts to determine in an appropriate action the validity of the acts of the political departments. Under the new definition of judicial power, the courts are authorized not only "to settle actual controversies involving rights which are legally demandable and enforceable," but also "**to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government**." The latter part of the authority represents a broadening of judicial power to enable the courts of justice to review what was before a forbidden territory, to wit, the discretion of the political departments of the government.[81] It speaks of judicial prerogative not only in terms of **power** but also of **duty**.[82]

As to how the Court may inquire into the President's exercise of power, *Lansang* adopted the test that "judicial inquiry can *go no further* than to satisfy the Court *not* that the President's decision is *correct,*" but that "the President did not act *arbitrarily*." Thus, the standard laid down is not correctness, but arbitrariness.[83] In *Integrated Bar of the Philippines*, this Court further ruled that "**it is incumbent upon the petitioner to show that the President's decision is totally bereft of factual basis**" and that if he fails, by way of proof, to support his assertion, then "**this Court cannot undertake an independent investigation beyond the pleadings**."

Petitioners failed to show that President Arroyo's exercise of the calling-out power, by issuing PP 1017, is totally bereft of factual basis. A reading of the Solicitor General's Consolidated Comment and Memorandum shows a detailed narration of the events leading to the issuance of PP 1017, with supporting reports forming part of the records. Mentioned are the escape of the Magdalo Group, their audacious threat of the *Magdalo D-Day*, the defections in the military, particularly in the Philippine Marines, and the

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81 *Cruz*, Philippine Political Law, 2002 Ed., p. 247.

82 *Santiago v. Guingona*, Jr., G.R. No. 134577, November 18, 1998, 298 SCRA 756.

83 *Supra,* 481-482.

reproving statements from the communist leaders. There was also the Minutes of the Intelligence Report and Security Group of the Philippine Army showing the growing alliance between the NPA and the military. Petitioners presented nothing to refute such events. Thus, absent any contrary allegations, the Court is convinced that the President was justified in issuing PP 1017 calling for military aid.

Indeed, judging the seriousness of the incidents, President Arroyo was not expected to simply fold her arms and do nothing to prevent or suppress what she believed was lawless violence, invasion or rebellion. However, the exercise of such power or duty must not stifle liberty.

II. Constitutionality of PP 1017 and G.O. No. 5

Doctrines of Several Political Theorists on the Power of the President in Times of Emergency

This case brings to fore a contentious subject -- the power of the President in times of emergency. A glimpse at the various political theories relating to this subject provides an adequate backdrop for our ensuing discussion.

John Locke, describing the architecture of civil government, called upon the English doctrine of prerogative to cope with the problem of emergency. In times of danger to the nation, positive law enacted by the legislature might be inadequate or even a fatal obstacle to the promptness of action necessary to avert catastrophe. In these situations, the Crown retained a prerogative "**power to act according to discretion for the public good, without the proscription of the law and sometimes even against it**."[84] But Locke recognized that this moral restraint might not suffice to avoid abuse of prerogative powers. **Who shall judge the need for resorting to the prerogative and how may its abuse be avoided?** Here, Locke readily

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[84] Smith and Cotter, *Powers of the President during Crises*, 1972, p. 6.

admitted defeat, suggesting that **"the people have no other remedy in this, as in all other cases where they have no judge on earth, but to appeal to Heaven**."[85]

Jean-Jacques Rousseau also assumed the need for temporary suspension of democratic processes of government in time of emergency. According to him:

> The inflexibility of the laws, which prevents them from adopting themselves to circumstances, may, in certain cases, render them disastrous and make them bring about, at a time of crisis, the ruin of the State…
>
> It is wrong therefore to wish to make political institutions as strong as to render it impossible to suspend their operation. Even Sparta allowed its law to lapse...
>
> If the peril is of such a kind that the paraphernalia of the laws are an obstacle to their preservation, the method is to nominate a supreme lawyer, who shall silence all the laws and suspend for a moment the sovereign authority. In such a case, there is no doubt about the general will, and it clear that the people's first intention is that the State shall not perish.[86]

Rosseau did not fear the abuse of the emergency dictatorship or "**supreme magistracy**" as he termed it. For him, it would more likely be cheapened by "indiscreet use." He was unwilling to rely upon an "**appeal to heaven**." Instead, he relied upon a tenure of office of prescribed duration to avoid perpetuation of the dictatorship.[87]

John Stuart Mill concluded his ardent defense of representative government: "**I am far from condemning, in cases of extreme necessity, the assumption of absolute power in the form of a temporary dictatorship**."[88]

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85 *Ibid.*

86 *The Social Contract* (New York: Dutton, 1950), pp. 123-124.

87 Smith and Cotter, *Powers of the President during Crises*, 1972, pp. 6-7.

88 *Representative Government*, New York, Dutton, 1950, pp. 274, 277-78.

Nicollo Machiavelli's view of emergency powers, as one element in the whole scheme of limited government, furnished an ironic contrast to the Lockean theory of prerogative. He recognized and attempted to bridge this chasm in democratic political theory, thus:

> Now, in a well-ordered society, it should never be necessary to resort to extra –constitutional measures; for although they may for a time be beneficial, yet the precedent is pernicious, for if the practice is once established for good objects, they will in a little while be disregarded under that pretext but for evil purposes. Thus, no republic will ever be perfect if she has not by law provided for everything, having a remedy for every emergency and fixed rules for applying it.[89]

Machiavelli – in contrast to Locke, Rosseau and Mill – sought to incorporate into the constitution a regularized system of standby emergency powers to be invoked with suitable checks and controls in time of national danger. He attempted forthrightly to meet the problem of combining a capacious reserve of power and speed and vigor in its application in time of emergency, with effective constitutional restraints.[90]

Contemporary political theorists, addressing themselves to the problem of response to emergency by constitutional democracies, have employed the doctrine of constitutional dictatorship.[91] Frederick M. Watkins saw "**no reason why absolutism should not be used as a means for the defense of liberal institutions**," provided it "**serves to protect established institutions from the danger of permanent injury in a period of temporary emergency and is followed by a prompt return to the previous forms of political life**."[92] He recognized the two (2) key elements of the problem of emergency governance, as well as all constitutional governance: **increasing administrative powers of the executive, while at the same time "imposing limitation upon that power**."[93] Watkins placed

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89 *The Discourses*, Bk. 1, Ch. XXXIV.

90 Smith and Cotter, *Powers of the President During Crises*, 1972. p. 8.

91 *Ibid.*

92 See *The Problem of Constitutional Dictatorship*, p. 328.

93 *Ibid.,* p. 353.

his real faith in a scheme of constitutional dictatorship. These are the conditions of success of such a dictatorship: **"The period of dictatorship must be relatively short…Dictatorship should always be strictly legitimate in character…Final authority to determine the need for dictatorship in any given case must never rest with the dictator himself**…"[94] and the objective of such an emergency dictatorship should be "**strict political conservatism**."

Carl J. Friedrich cast his analysis in terms similar to those of Watkins.[95] "It is a problem of concentrating power – in a government where power has consciously been divided – to cope with… situations of unprecedented magnitude and gravity. There must be a broad grant of powers, subject to equally strong limitations as to who shall exercise such powers, when, for how long, and to what end."[96] Friedrich, too, offered criteria for judging the adequacy of any of scheme of emergency powers, to wit: **"The emergency executive must be appointed by constitutional means – i.e., he must be legitimate; he should not enjoy power to determine the existence of an emergency; emergency powers should be exercised under a strict time limitation; and last, the objective of emergency action must be the defense of the constitutional order**."[97]

Clinton L. Rossiter, after surveying the history of the employment of emergency powers in Great Britain, France, Weimar, Germany and the United States, reverted to a description of a scheme of "constitutional dictatorship" as solution to the vexing problems presented by emergency.[98] Like Watkins and Friedrich, he stated *a priori* the conditions of success of the "constitutional dictatorship," thus:

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94 *Ibid.*, pp. 338-341.

95 Smith and Cotter, *Powers of the President During Crises,* 1972, p. 9.

96 *Constitutional Government and Democracy*, Ch. XXVI, rev. ed., Boston: Ginn & Co., 1949, p. 580.

97 *Ibid*, pp. 574-584.

98 *Smith and Cotter,* Powers of the President During Crises, 1972, p. 10.

> **1)** No general regime or particular institution of constitutional dictatorship should be initiated unless it is necessary or even indispensable to the preservation of the State and its constitutional order…
>
> **2)** …the decision to institute a constitutional dictatorship should never be in the hands of the man or men who will constitute the dictator…
>
> **3)** No government should initiate a constitutional dictatorship without making specific provisions for its termination…
>
> **4)** …all uses of emergency powers and all readjustments in the organization of the government should be effected in pursuit of constitutional or legal requirements…
>
> **5)** … no dictatorial institution should be adopted, no right invaded, no regular procedure altered any more than is absolutely necessary for the conquest of the particular crisis . . .
>
> **6)** The measures adopted in the prosecution of the a constitutional dictatorship should never be permanent in character or effect…
>
> **7)** The dictatorship should be carried on by persons representative of every part of the citizenry interested in the defense of the existing constitutional order. . .
>
> **8)** Ultimate responsibility should be maintained for every action taken under a constitutional dictatorship. . .
>
> **9)** The decision to terminate a constitutional dictatorship, like the decision to institute one should never be in the hands of the man or men who constitute the dictator. . .
>
> **10)** No constitutional dictatorship should extend beyond the termination of the crisis for which it was instituted…
>
> **11)** …the termination of the crisis must be followed by a complete return as possible to the political and governmental conditions existing prior to the initiation of the constitutional dictatorship…[99]

Rossiter accorded to legislature a far greater role in the oversight exercise of emergency powers than did Watkins. He would secure to Congress final responsibility for declaring the existence or termination of an emergency,

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[99] *Rossiter*, Constitutional Dictatorship, Princeton: Princeton University Press, 1948, pp. 298-306.

and he places great faith in the effectiveness of congressional investigating committees.[100]

Scott and *Cotter*, in analyzing the above contemporary theories in light of recent experience, were one in saying that, "**the suggestion that democracies surrender the control of government to an authoritarian ruler in time of grave danger to the nation is *not* based upon sound constitutional theory**." To appraise emergency power in terms of constitutional dictatorship serves merely to distort the problem and hinder realistic analysis. It matters not whether the term "dictator" is used in its normal sense (as applied to authoritarian rulers) or is employed to embrace all chief executives administering emergency powers. However used, "constitutional dictatorship" cannot be divorced from the implication of suspension of the processes of constitutionalism. Thus, they favored instead the "concept of constitutionalism" articulated by Charles H. McIlwain:

> A concept of constitutionalism which is less misleading in the analysis of problems of emergency powers, and which is consistent with the findings of this study, is that formulated by Charles H. McIlwain. While it does not by any means necessarily exclude some indeterminate limitations upon the substantive powers of government, full emphasis is placed upon **procedural limitations**, and **political responsibility**. McIlwain clearly recognized the need to repose adequate power in government. And in discussing the meaning of constitutionalism, he insisted that the **historical and proper test of constitutionalism was the existence of adequate processes for keeping government responsible**. He refused to equate constitutionalism with the enfeebling of government by an exaggerated emphasis upon separation of powers and substantive limitations on governmental power. He found that the really effective checks on despotism have consisted not in the weakening of government but, but rather in the **limiting of it**; between which there is a great and very significant difference. **In associating constitutionalism with "limited" as distinguished from "weak" government, McIlwain meant government limited to the orderly procedure of law as opposed to the processes of force. The two fundamental correlative elements of constitutionalism for which all lovers of liberty must yet fight are the legal limits to arbitrary power and a complete political responsibility of government to the governed**.[101]

In the final analysis, the various approaches to emergency of the above political theorists –- from Lock's "theory of prerogative," to Watkins'

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100 *Smith and Cotter, Powers of the President During Crises,* 1972, p. 11.

101 Smith and Cotter, *Powers of the President During Crises,* 1972, p. 12.

doctrine of "constitutional dictatorship" and, eventually, to McIlwain's "principle of constitutionalism" --- ultimately aim to solve one real problem in emergency governance, i.e., **that of allotting increasing areas of discretionary power to the Chief Executive, while insuring that such powers will be exercised with a sense of political responsibility and under effective limitations and checks.**

Our Constitution has fairly coped with this problem. Fresh from the fetters of a repressive regime, the 1986 Constitutional Commission, in drafting the 1987 Constitution, endeavored to create a government in the concept of Justice Jackson's "balanced power structure."[102] Executive, legislative, and judicial powers are dispersed to the President, the Congress, and the Supreme Court, respectively. Each is supreme within its own sphere. **But none has the monopoly of power in times of emergency. Each branch is given a role to serve as limitation or check upon the other.** This system does not **weaken** the President, it just **limits** his power, using the language of McIlwain. In other words, in times of emergency, our Constitution reasonably demands that we repose a certain amount of faith in the basic integrity and wisdom of the Chief Executive but, at the same time, **it obliges him to operate within carefully prescribed procedural limitations**.

a. "Facial Challenge"

Petitioners contend that PP 1017 is void on its face because of its "overbreadth." They claim that its enforcement encroached on both unprotected and protected rights under Section 4, Article III of the Constitution and sent a "chilling effect" to the citizens.

A facial review of PP 1017, using the overbreadth doctrine, is uncalled for.

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[102] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579; 72 Sup. Ct. 863; 96 L. Ed. 1153 (1952), See Concurring Opinion J. Jackson.

First and foremost, the overbreadth doctrine is an analytical tool developed for testing "on their faces" statutes in **free speech cases,** also known under the American Law as First Amendment cases.[103]

A plain reading of PP 1017 shows that it is not primarily directed to speech or even speech-related conduct. It is actually a call upon the AFP to prevent or suppress all forms of **lawless violence.** In *United States v. Salerno*,[104] the US Supreme Court held that "**we have not recognized an 'overbreadth' doctrine outside the limited context of the First Amendment" (freedom of speech)**.

Moreover, the overbreadth doctrine is not intended for testing the validity of a law that "reflects legitimate state interest in maintaining comprehensive control over harmful, constitutionally unprotected conduct." Undoubtedly, lawless violence, insurrection and rebellion are considered "harmful" and "constitutionally unprotected conduct." In *Broadrick v. Oklahoma,*[105] it was held:

> It remains a 'matter of no little difficulty' to determine when a law may properly be held void on its face and when 'such summary action' is inappropriate. **But the plain import of our cases is, at the very least, that facial overbreadth adjudication is an exception to our traditional rules of practice and that its function, a limited one at the outset, attenuates as the otherwise unprotected behavior that it forbids the State to sanction moves from 'pure speech' toward conduct** and **that conduct –even if expressive – falls within the scope of otherwise valid criminal laws that reflect legitimate state interests in maintaining comprehensive controls over harmful, constitutionally unprotected conduct**.

Thus, claims of facial overbreadth are entertained in cases involving statutes which, **by their terms**, seek to regulate only "**spoken words**" and

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[103] See Concurring Opinion of Justice Mendoza in *Estrada v. Sandiganbayan*, G.R. No. 148560, November 19, 2001, 369 SCRA 393.

[104] 481 U.S. 739, 95 L. Ed. 2d 697 (1987).

[105] *Supra*.

again, that "**overbreadth claims, if entertained at all, have been curtailed when invoked against ordinary criminal laws that are sought to be applied to protected conduct**."[106] Here, the incontrovertible fact remains that PP 1017 pertains to a spectrum of **conduct**, not free speech, which is manifestly subject to state regulation.

Second, facial invalidation of laws is considered as "**manifestly strong medicine**," to be used "**sparingly and only as a last resort**," and is "**generally disfavored**;"[107] The reason for this is obvious. Embedded in the traditional rules governing constitutional adjudication is the principle that a person to whom a law may be applied will not be heard to challenge a law on the ground that it may conceivably be applied unconstitutionally to others, i.e., **in other situations not before the Court.**[108] A writer and scholar in Constitutional Law explains further:

> **The most distinctive feature of the overbreadth technique is that it marks an exception to some of the usual rules of constitutional litigation. Ordinarily, a particular litigant claims that a statute is unconstitutional as applied to him or her; if the litigant prevails, the courts carve away the unconstitutional aspects of the law by invalidating its improper applications on a case to case basis. Moreover, challengers to a law are not permitted to raise the rights of third parties and can only assert their own interests. In overbreadth analysis, those rules give way; challenges are permitted to raise the rights of third parties**; and the court invalidates the entire statute "on its face," not merely "as applied for" so that the overbroad law becomes unenforceable until a properly authorized court construes it more narrowly. The factor that motivates courts to depart from the normal adjudicatory rules is the concern with the "chilling;" deterrent effect of the overbroad statute on third parties not courageous enough to bring suit. The Court assumes that an overbroad law's "very existence may cause others not before the court to refrain from constitutionally protected speech or expression." An overbreadth ruling is designed to remove that deterrent effect on the speech of those third parties.

In other words, a facial challenge using the overbreadth doctrine will require the Court to examine PP 1017 and pinpoint its flaws and defects, not on the basis of its actual operation to petitioners, but on the assumption or

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106 See Concurring Opinion of Justice Mendoza in *Estrada v. Sandiganbayan*, *supra.*

107 *Broadrick v. Oklahoma*, 413 U.S. 601 (1973).

108 *Ibid.*

prediction that its very existence may cause **others not before the Court** to refrain from constitutionally protected speech or expression. In *Younger v. Harris*,[109] it was held that:

> [T]he task of analyzing a proposed statute, pinpointing its deficiencies, and requiring correction of these deficiencies before the statute is put into effect, is rarely if ever an appropriate task for the judiciary. The combination of the **relative remoteness of the controversy**, the **impact on the legislative process of the relief sought**, and above all **the speculative and amorphous nature of the required line-by-line analysis of detailed statutes,**...ordinarily results in a kind of case that is **wholly unsatisfactory** for deciding constitutional questions, whichever way they might be decided.

And *third,* a facial challenge on the ground of overbreadth is the most difficult challenge to mount successfully, since the challenger must establish that **there can be no instance when the assailed law may be valid**. Here, petitioners did not even attempt to show whether this situation exists.

Petitioners likewise seek a facial review of PP 1017 on the ground of vagueness. This, too, is unwarranted.

Related to the "overbreadth" doctrine is the "void for vagueness doctrine" which holds that "**a law is facially invalid if men of common intelligence must necessarily guess at its meaning and differ as to its application.**"[110] It is subject to the same principles governing overbreadth doctrine. For one, it is also an analytical tool for testing "on their faces" **statutes in free speech cases**. And like overbreadth, it is said that a litigant may challenge a statute on its face only if it is **vague in all its possible applications. Again, petitioners did not even attempt to show that PP 1017 is vague in all its application.** They also failed to establish that men of common intelligence cannot understand the meaning and application of PP 1017.

b. Constitutional Basis of PP 1017

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[109] 401 U.S. 37, 52-53, 27 L.Ed.2d 669, 680 (1971), *United States v. Raines*, 362 U.S. 17, 4 L.Ed.2d 524 (1960); *Board of Trustees, State Univ. of N.Y v. Fox*, 492 U.S. 469, 106 L.Ed.2d 388 (1989).

[110] *Ermita-Malate Hotel and Motel Operators Association v. City Mayor*, No. L-24693, July 31, 1967, 20 SCRA 849 (1967).

Now on the constitutional foundation of PP 1017.

The operative portion of PP 1017 may be divided into three important provisions, thus:

First provision:

> "by virtue of the power vested upon me by Section 18, Artilce VII … do hereby command the Armed Forces of the Philippines, to maintain law and order throughout the Philippines, prevent or suppress all forms of lawless violence as well any act of insurrection or rebellion"

Second provision:

> "and to enforce obedience to all the laws and to all decrees, orders and regulations promulgated by me personally or upon my direction;"

Third provision:

> "as provided in Section 17, Article XII of the Constitution do hereby declare a State of National Emergency."

First Provision: Calling-out Power

The first provision pertains to the President's calling-out power. In

Sanlakas v. Executive Secretary,[111] this Court, through Mr. Justice Dante O. Tinga, held that Section 18, Article VII of the Constitution reproduced as follows:

> **Sec. 18.** The President shall be the Commander-in-Chief of all armed forces of the Philippines and **whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion**. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.
>
> The Congress, if not in session, shall within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.
>
> The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual bases of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.
>
> 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.
>
> The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion.
>
> During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.

grants the President, as Commander-in-Chief, a "sequence" of graduated powers. From the most to the least benign, these are: the calling-out power, the power to suspend the privilege of the writ of *habeas corpus*, and the

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[111] G.R. No. 159085, February 3, 2004, 421 SCRA 656, wherein this Court sustained President Arroyo's declaration of a "state of rebellion" pursuant to her calling-out power.

power to declare Martial Law. Citing *Integrated Bar of the Philippines v. Zamora*,[112] the Court ruled that the only criterion for the exercise of the calling-out power is that "**whenever it becomes necessary**," the President may call the armed forces "**to prevent or suppress lawless violence, invasion or rebellion**." *Are these conditions present in the instant cases*? As stated earlier, considering the circumstances then prevailing, President Arroyo found it necessary to issue PP 1017. Owing to her Office's vast intelligence network, she is in the best position to determine the actual condition of the country.

Under the calling-out power, the President may summon the armed forces to aid him in suppressing **lawless violence, invasion and rebellion**. This involves ordinary police action. But every act that goes beyond the President's calling-out power is considered illegal or *ultra vires*. For this reason, a President must be careful in the exercise of his powers. He cannot invoke a greater power when he wishes to act under a lesser power. There lies the wisdom of our Constitution, the greater the power, the greater are the limitations.

It is pertinent to state, however, that there is a distinction between the President's authority to declare a "state of rebellion" (in *Sanlakas*) and the authority to proclaim a state of national emergency. While President Arroyo's authority to declare a "state of rebellion" emanates from her powers as Chief Executive, the statutory authority cited in *Sanlakas* was Section 4, Chapter 2, Book II of the Revised Administrative Code of 1987, which provides:

> SEC. 4. – Proclamations. – Acts of the President fixing a date or declaring a status or condition of public moment or interest, upon the existence of which the operation of a specific law or regulation is made to depend, shall be promulgated in proclamations which shall have the force of an executive order.

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112 *Supra.*

President Arroyo's declaration of a "state of rebellion" was merely an act declaring a status or condition of public moment or interest, a declaration allowed under Section 4 cited above. Such declaration, in the words of *Sanlakas*, is harmless, without legal significance, and deemed not written. In these cases, PP 1017 is more than that. In declaring a state of national emergency, President Arroyo did not only rely on Section 18, Article VII of the Constitution, a provision calling on the AFP to prevent or suppress lawless violence, invasion or rebellion. She also relied on Section 17, Article XII, a provision on the State's extraordinary power to take over privately-owned public utility and business affected with public interest. Indeed, PP 1017 calls for the exercise of an **awesome power**. Obviously, such Proclamation cannot be deemed harmless, without legal significance, or not written, as in the case of *Sanlakas*.

Some of the petitioners vehemently maintain that PP 1017 is actually a declaration of Martial Law. It is no so. What defines the character of PP 1017 are its wordings. It is plain therein that what the President invoked was her calling-out power.

The declaration of Martial Law is a "warn[ing] to citizens that the military power has been called upon by the executive to assist in the maintenance of law and order, and that, while the emergency lasts, they must, upon pain of arrest and punishment, not commit any acts which will in any way render more difficult the restoration of order and the enforcement of law."[113]

In his "*Statement before the Senate Committee on Justice*" on March 13, 2006, Mr. Justice Vicente V. Mendoza,[114] an authority in constitutional law, said that of the three powers of the President as Commander-in-Chief, the power to declare Martial Law poses the most severe threat to civil

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113 *Westel Willoughby*, Constitutional Law of the United States 1591 [2d Ed. 1929, quoted in *Aquino v. Ponce Enrile*, 59 SCRA 183 (1974), (Fernando, J., concurring)].

114 Retired Associate Justice of the Supreme Court.

liberties. It is a strong medicine which should not be resorted to lightly. It cannot be used to stifle or persecute critics of the government. It is placed in the keeping of the President for the purpose of enabling him to secure the people from harm and to restore order so that they can enjoy their individual freedoms. In fact, Section 18, Art. VII, provides:

> 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.

Justice Mendoza also stated that PP 1017 is not a declaration of Martial Law. It is no more than a call by the President to the armed forces to prevent or suppress lawless violence. As such, it cannot be used to justify acts that only under a valid declaration of Martial Law can be done. Its use for any other purpose is a perversion of its nature and scope, and any act done contrary to its command is *ultra vires*.

Justice Mendoza further stated that specifically, (a) arrests and seizures without judicial warrants; (b) ban on public assemblies; (c) take-over of news media and agencies and press censorship; and (d) issuance of Presidential Decrees, are powers which can be exercised by the President as Commander-in-Chief **only** where there is a valid declaration of Martial Law or suspension of the writ of *habeas corpus*.

Based on the above disquisition, it is clear that PP 1017 is not a declaration of Martial Law. **It is merely an exercise of President Arroyo's calling-out power** for the armed forces to assist her in preventing or suppressing lawless violence.

Second Provision: "Take Care" Power

The second provision pertains to the power of the President to ensure that the laws be faithfully executed. This is based on Section 17, Article VII which reads:

> **SEC. 17**. The President shall have control of all the executive departments, bureaus, and offices. **He shall ensure that the laws be faithfully executed**.

As the Executive in whom the executive power is vested,[115] the primary function of the President is to enforce the laws as well as to formulate policies to be embodied in existing laws. He sees to it that all laws are enforced by the officials and employees of his department. Before assuming office, he is required to take an oath or affirmation to the effect that as President of the Philippines, he will, among others, "execute its laws."[116] In the exercise of such function, the President, if needed, may employ the powers attached to his office as the Commander-in-Chief of all the armed forces of the country,[117] including the Philippine National Police[118] under the Department of Interior and Local Government.[119]

Petitioners, especially Representatives Francis Joseph G. Escudero, Satur Ocampo, Rafael Mariano, Teodoro Casiño, Liza Maza, and Josel Virador argue that PP 1017 is unconstitutional as it arrogated upon President Arroyo the power to enact laws and decrees in violation of Section 1, Article VI of the Constitution, which vests the power to enact laws in Congress. They assail the clause "**to enforce obedience to all the laws and to all decrees, orders and regulations promulgated by me personally or upon my direction**."

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115 Section 1, Article VII of the Constitution.

116 Section 5, Article VII of the Constitution.

117 Section 18, Article VII of the Constitution.

118 Section 6, Article XVI of the Constitution.

119 See Republic Act No. 6975.

Petitioners' contention is understandable. A reading of PP 1017 operative clause shows that it was lifted[120] from Former President Marcos' Proclamation No. 1081, which partly reads:

> **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 place the entire Philippines as defined in Article 1, Section 1 of the Constitution under martial law and, in my capacity as their Commander-in-Chief, **do hereby command the Armed Forces of the Philippines, to maintain law and order throughout the Philippines, prevent or suppress all forms of lawless violence as well as any act of insurrection or rebellion and to enforce obedience to all the laws and decrees, orders and regulations promulgated by me personally or upon my direction.**

We all know that it was PP 1081 which granted President Marcos legislative power. Its enabling clause states: **"to enforce obedience to all the laws and decrees, orders and regulations promulgated by me personally or upon my direction."** Upon the other hand, the enabling clause of PP 1017 issued by President Arroyo is: **to enforce obedience to all the laws and *to all* decrees, orders and regulations promulgated by me personally or upon my direction**."

*Is it within the domain of President Arroyo to promulgate "**decrees**"?*

PP 1017 states in part: "to enforce obedience to all the laws and **decrees** x x x **promulgated by me personally or upon my direction.**"

The President is granted an Ordinance Power under Chapter 2, Book III of Executive Order No. 292 (Administrative Code of 1987). She may issue any of the following:

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120 Ironically, even the 7th Whereas Clause of PP 1017 which states that "*Article 2, Section 4 of our Constitution **makes the defense** and preservation **of** the democratic institutions and the **State** the primary duty of Government"* replicates more closely Section 2, Article 2 of the 1973 Constitution than Section 4, Article 2 of the 1987 Constitution which provides that, "[t[he prime duty of the Government is to **serve and protect the people**."

> Sec. 2. *Executive Orders*. — Acts of the President providing for rules of a general or permanent character in implementation or execution of constitutional or statutory powers shall be promulgated in executive orders.
>
> Sec. 3. *Administrative Orders*. — Acts of the President which relate to particular aspect of governmental operations in pursuance of his duties as administrative head shall be promulgated in administrative orders.
>
> Sec. 4. *Proclamations*. — Acts of the President fixing a date or declaring a status or condition of public moment or interest, upon the existence of which the operation of a specific law or regulation is made to depend, shall be promulgated in proclamations which shall have the force of an executive order.
>
> Sec. 5. *Memorandum Orders*. — Acts of the President on matters of administrative detail or of subordinate or temporary interest which only concern a particular officer or office of the Government shall be embodied in memorandum orders.
>
> Sec. 6. *Memorandum Circulars*. — Acts of the President on matters relating to internal administration, which the President desires to bring to the attention of all or some of the departments, agencies, bureaus or offices of the Government, for information or compliance, shall be embodied in memorandum circulars.
>
> Sec. 7. *General or Special Orders*. — Acts and commands of the President in his capacity as Commander-in-Chief of the Armed Forces of the Philippines shall be issued as general or special orders.

President Arroyo's ordinance power is limited to the foregoing issuances. She cannot issue **decrees** similar to those issued by Former President Marcos under PP 1081. Presidential Decrees are laws which are of the same category and binding force as statutes because they were issued by the President in the exercise of his legislative power during the period of Martial Law under the 1973 Constitution.[121]

This Court rules that the assailed PP 1017 is unconstitutional insofar as it grants President Arroyo the authority to promulgate "decrees." Legislative power is peculiarly within the province of the Legislature. Section 1, Article VI categorically states that "**[t]he legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives**." To be sure, neither

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[121] Agpalo, *Statutory Construction, Fourth Edition,* 1998, p. 1, citing *Legaspi v. Ministry of Finance*, 115 SCRA 418 (1982); *Garcia-Padilla v. Ponce-Enrile*, *supra. Aquino v. Commission on Election, supra.*

Martial Law nor a state of rebellion nor a state of emergency can justify President Arroyo's exercise of legislative power by issuing decrees.

Can President Arroyo enforce obedience to all decrees and laws through the military?

As this Court stated earlier, President Arroyo has no authority to enact decrees. It follows that these decrees are void and, therefore, cannot be enforced. With respect to "laws," she cannot call the military to enforce or implement certain laws, such as customs laws, laws governing family and property relations, laws on obligations and contracts and the like. She can only order the military, under PP 1017, to enforce laws pertinent to its duty **to suppress lawless violence**.

Third Provision: Power to Take Over

The pertinent provision of PP 1017 states:

> x x x and to enforce obedience to all the laws and to all decrees, orders, and regulations promulgated by me personally or upon my direction; **and as provided in Section 17, Article XII of the Constitution do hereby declare a state of national emergency.**

The import of this provision is that President Arroyo, during the state of national emergency under PP 1017, can call the military not only to enforce obedience "to all the laws and to all decrees x x x" but also to act pursuant to the provision of Section 17, Article XII which reads:

> **Sec. 17.** In times of national emergency, when the public interest so requires, the State may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any privately-owned public utility or business affected with public interest.

What could be the reason of President Arroyo in invoking the above provision when she issued PP 1017?

The answer is simple. During the existence of the state of national emergency, PP 1017 purports to grant the President, without any authority or delegation from Congress, to take over or direct the operation of any privately-owned public utility or business affected with public interest.

This provision was first introduced in the 1973 Constitution, as a product of the "martial law" thinking of the 1971 Constitutional Convention.[122] In effect at the time of its approval was President Marcos' Letter of Instruction No. 2 dated September 22, 1972 instructing the Secretary of National Defense to take over "*the management, control and operation of the Manila Electric Company, the Philippine Long Distance Telephone Company, the National Waterworks and Sewerage Authority, the Philippine National Railways, the Philippine Air Lines, Air Manila (and) Filipinas Orient Airways . . . for the successful prosecution by the Government of its effort to contain, solve and end the present national emergency.*"

Petitioners, particularly the members of the House of Representatives, claim that President Arroyo's inclusion of Section 17, Article XII in PP 1017 is an encroachment on the legislature's emergency powers.

This is an area that needs delineation.

A distinction must be drawn between the President's authority to **declare** "a state of national emergency" and to **exercise** emergency powers. To the first, as elucidated by the Court, Section 18, Article VII grants the President such power, hence, no legitimate constitutional objection can be raised. But to the second, manifold constitutional issues arise.

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[122] Section 17, Article XIV of the 1973 Constitution reads: "In times of national emergency when the public interest so requires, the State may temporarily take over or direct the operation of any privately owned public utility or business affected with public interest."

Section 23, Article VI of the Constitution reads:

> **SEC. 23. (1)** The Congress, by a vote of two-thirds of both Houses in joint session assembled, voting separately, shall have the **sole power to declare the existence of a state of war**.
>
> **(2)** In times of war or **other national emergency**, the Congress may, by law, authorize the President, for a limited period and subject to such restrictions as it may prescribe, to exercise powers necessary and proper to carry out a declared national policy. Unless sooner withdrawn by resolution of the Congress, such powers shall cease upon the next adjournment thereof.

It may be pointed out that the second paragraph of the above provision refers not only to war but also to "**other national emergency**." If the intention of the Framers of our Constitution was to withhold from the President the authority to declare a "state of national emergency" pursuant to Section 18, Article VII (calling-out power) and grant it to Congress (like the declaration of the existence of a state of war), then the Framers could have provided so. Clearly, they did not intend that Congress should first authorize the President before he can declare a "state of national emergency." The logical conclusion then is that President Arroyo could validly declare the existence of a state of national emergency even in the absence of a Congressional enactment.

But the **exercise** of emergency powers, such as the taking over of privately owned public utility or business affected with public interest, is a

different matter. This requires a delegation from Congress.

Courts have often said that constitutional provisions in *pari materia* are to be construed together. Otherwise stated, different clauses, sections, and provisions of a constitution which relate to the same subject matter will be construed together and considered in the light of each other.[123] Considering that Section 17 of Article XII and Section 23 of Article VI, previously quoted, relate to national emergencies, they must be read together to determine the limitation of the exercise of emergency powers.

Generally, Congress is the repository of emergency powers. This is evident in the tenor of Section 23 (2), Article VI authorizing it to delegate such powers to the President. **Certainly, a body cannot delegate a power not reposed upon it.** However, knowing that during grave emergencies, it may not be possible or practicable for Congress to meet and exercise its powers, the Framers of our Constitution deemed it wise to allow Congress to grant emergency powers to the President, subject to certain conditions, thus:

> **(1)** There must be a **war** or **other emergency**.
>
> **(2)** The delegation must be for a **limited period only**.
>
> **(3)** The delegation must be **subject to such restrictions as the Congress may prescribe**.
>
> **(4)** The emergency powers must be exercised to **carry out a national policy** declared by Congress.[124]

Section 17, Article XII must be understood as an aspect of the emergency powers clause. The taking over of private business affected with public interest is just another facet of the emergency powers generally reposed upon Congress. Thus, when Section 17 states that the "**the State may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any privately owned public utility or business affected with public interest**," it refers to

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123 Antieau, Constitutional Construction, 1982, p.21.

124 Cruz, Philippine Political Law, 1998, p. 94.

Congress, not the President. Now, whether or not the President may exercise such power is dependent on whether Congress may delegate it to him pursuant to a law prescribing the reasonable terms thereof. *Youngstown Sheet & Tube Co. et al. v. Sawyer,*[125] held:

> It is clear that if the President had authority to issue the order he did, it must be found in some provision of the Constitution. And it is not claimed that express constitutional language grants this power to the President. The contention is that presidential power should be implied from the aggregate of his powers under the Constitution. Particular reliance is placed on provisions in Article II which say that "The executive Power shall be vested in a President . . . .;" that "he shall take Care that the Laws be faithfully executed;" and that he "shall be Commander-in-Chief of the Army and Navy of the United States.
>
> The order cannot properly be sustained as an exercise of the President's military power as Commander-in-Chief of the Armed Forces. The Government attempts to do so by citing a number of cases upholding broad powers in military commanders engaged in day-to-day fighting in a theater of war. Such cases need not concern us here. **Even though "theater of war" be an expanding concept, we cannot with faithfulness to our constitutional system hold that the Commander-in-Chief of the Armed Forces has the ultimate power as such to take possession of private property in order to keep labor disputes from stopping production. This is a job for the nation's lawmakers, not for its military authorities.**
>
> **Nor can the seizure order be sustained because of the several constitutional provisions that grant executive power to the President. In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make laws which the President is to execute. The first section of the first article says that "All legislative Powers herein granted shall be vested in a Congress of the United States**. . ."[126]

Petitioner *Cacho-Olivares*, *et al.* contends that the term "emergency" under Section 17, Article XII refers to "**tsunami**," "**typhoon,**" "**hurricane**" and "**similar occurrences**." This is a limited view of "emergency."

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125 343 U.S. 579; 72 Sup. Ct. 863; 96 L. Ed. 1153 (1952).

126 Tresolini, *American Constitutional Law*, 1959, Power of the President, pp. 255-257.

Emergency, as a generic term, connotes the existence of conditions suddenly intensifying the degree of existing danger to life or well-being beyond that which is accepted as normal. Implicit in this definitions are the elements of intensity, variety, and perception.[127] Emergencies, as perceived by legislature or executive in the United Sates since 1933, have been occasioned by a wide range of situations, classifiable under three (3) principal heads: **a) economic**,[128] **b) natural disaster**,[129] and **c) national security**.[130]

"Emergency," as contemplated in our Constitution, is of the same breadth. It may include rebellion, economic crisis, pestilence or epidemic, typhoon, flood, or other similar catastrophe of nationwide proportions or effect.[131] This is evident in the Records of the Constitutional Commission, thus:

> MR. GASCON. Yes. What is the Committee's definition of "national emergency" which appears in Section 13, page 5? It reads:

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127 Smith and Cotter, *Powers of the President During Crises,* 1972, p. 14

128 The Federal *Emergency Relief Act of 1933* opened with a declaration that the **economic depression** created a serious emergency, due to wide-spread unemployment and the inadequacy of State and local relief funds, . . . making it imperative that the Federal Government cooperate more effectively with the several States and Territories and the District of Columbia in furnishing relief to their needy and distressed people. President Roosevelt in declaring a bank holiday a few days after taking office in 1933 proclaimed that "heavy and unwarranted withdrawals of gold and currency from … banking institutions for the purpose of hoarding; ... resulting in "sever drains on the Nation's stocks of gold … have created a national emergency," requiring his action. Enacted within months after Japan's attack on Pearl Harbor, the *Emergency Price Control Act of 1942* was designed to prevent **economic dislocations** from endangering the national defense and security and the effective prosecution of the war. (Smith and Cotter, *Powers of the President During Crises,* 1972, p.18)

129 The *Emergency Appropriation Act for Fiscal 1935* appropriated fund to meet the emergency and necessity for relief in stricken agricultural areas and in another section referred to "**the present drought emergency**." *The India Emergency Food Aid Act of 1951* provided for emergency shipments of food to India to meet famine conditions then ravaging the great Asian sub-continent. The *Communication Act of 1934* and its 1951 amendment grant the President certain powers in time of "public peril or disaster." The other statutes provide for existing or anticipated emergencies attributable to earthquake, flood, tornado, cyclone, hurricane, conflagration an landslides. There is also a Joint Resolution of April 1937. It made "funds available for the control of incipient or emergency outbreaks of insect pests or plant diseases, including grasshoppers, Mormon crickets, and chinch bugs. (66 Stat 315, July 1, 1952, Sec. 2 [a]) *Supra.*

130 National Security may be cataloged under the heads of **(1)** Neutrality, **(2)** Defense, **(3)** Civil Defense, and **(4)** Hostilities or War. (p. 22) *The Federal Civil Defense Act of 1950* contemplated an attack or series of attacks by an enemy of the United States which conceivably would cause substantial damage or injury to civilian property or persons in the United States by any one of several means; sabotage, the use of bombs, shellfire, or atomic, radiological, chemical, bacteriological means or other weapons or processes. Such an occurrence would cause a "National Emergency for Civil Defense Purposes," or "a state of civil defense emergency," during the term which the Civil Defense Administrator would have recourse to extraordinary powers outlined in the Act. The *New York-New Jersey Civil Defense Compact* supplies an illustration in this context for emergency cooperation. "Emergency" as used in this compact shall mean and include **invasion**, or other **hostile action**, **disaster**, **insurrection** or **imminent danger** thereof. (*Id*., p.15-16)

131 *Cruz*, Philippine Political Law, 1998, p. 95.

> When the common good so requires, the State may temporarily take over or direct the operation of any privately owned public utility or business affected with public interest.
>
> MR. VILLEGAS. What I mean is threat from **external aggression**, for example, **calamities** or **natural disasters**.
>
> MR. GASCON. There is a question by Commissioner de los Reyes. What about strikes and riots?
>
> MR. VILLEGAS. Strikes, no; those would not be covered by the term "national emergency."
>
> MR. BENGZON. Unless they are of such proportions such that they would paralyze government service.[132]
>
> x x x x x x
>
> MR. TINGSON. May I ask the committee if "national emergency" refers to **military national emergency** or could this be **economic emergency**?"
>
> MR. VILLEGAS. Yes, it could refer to **both military or economic dislocations.**
>
> MR. TINGSON. Thank you very much.[133]

It may be argued that when there is national emergency, Congress may not be able to convene and, therefore, unable to delegate to the President the power to take over privately-owned public utility or business affected with public interest.

In *Araneta v. Dinglasan*,[134] this Court emphasized that legislative power, through which extraordinary measures are exercised, remains in Congress even in times of crisis.

> "x x x
>
> After all the criticisms that have been made against the efficiency of the system of the separation of powers, the fact remains that the Constitution has set up this form of government, with all its defects and shortcomings, in preference to the commingling of powers in one man or group of men. The Filipino people by adopting parliamentary government have given notice

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132 Record of the Constitutional Commission, Vol. III, pp. 266-267.

133 Record of the Constitutional Convention, pp. 648-649.

134 84 Phil. 368 (1949).

> that they share the faith of other democracy-loving peoples in this system, with all its faults, as the ideal. The point is, under this framework of government, legislation is preserved for Congress all the time, not excepting periods of crisis no matter how serious. Never in the history of the United States, the basic features of whose Constitution have been copied in ours, have specific functions of the legislative branch of enacting laws been surrendered to another department – unless we regard as legislating the carrying out of a legislative policy according to prescribed standards; no, not even when that Republic was fighting a total war, or when it was engaged in a life-and-death struggle to preserve the Union. The truth is that under our concept of constitutional government, in times of extreme perils more than in normal circumstances 'the various branches, executive, legislative, and judicial,' given the ability to act, are called upon 'to perform the duties and discharge the responsibilities committed to them respectively."

Following our interpretation of Section 17, Article XII, invoked by President Arroyo in issuing PP 1017, this Court rules that such Proclamation does not authorize her during the emergency to temporarily take over or direct the operation of any privately owned public utility or business affected with public interest without authority from Congress.

Let it be emphasized that while the President alone can declare a state of national emergency, however, without legislation, he has no power to take over privately-owned public utility or business affected with public interest. The President cannot decide whether exceptional circumstances exist warranting the take over of privately-owned public utility or business affected with public interest. Nor can he determine when such exceptional circumstances have ceased. Likewise, **without legislation**, the President has no power to point out the types of businesses affected with public interest that should be taken over. In short, the President has no absolute authority to exercise all the powers of the State under Section 17, Article VII in the absence of an emergency powers act passed by Congress.

c. "AS APPLIED CHALLENGE"

One of the misfortunes of an emergency, particularly, that which pertains to security, is that military necessity and the guaranteed rights of the individual are often not compatible. Our history reveals that in the crucible of conflict, many rights are curtailed and trampled upon. Here, the **right against unreasonable search and seizure; the right against warrantless arrest;** and **the freedom of speech, of expression, of the press, and of assembly** under the Bill of Rights suffered the greatest blow.

Of the seven (7) petitions, three (3) indicate "direct injury."

In **G.R. No. 171396**, petitioners David and Llamas alleged that, on February 24, 2006, they were arrested without warrants on their way to EDSA to celebrate the 20th Anniversary of *People Power I.* The arresting officers cited PP 1017 as basis of the arrest.

In **G.R. No. 171409**, petitioners Cacho-Olivares and *Tribune* Publishing Co., Inc. claimed that on February 25, 2006, the CIDG operatives "raided and ransacked without warrant" their office. Three policemen were assigned to guard their office as a possible "source of destabilization." Again, the basis was PP 1017.

And in **G.R. No. 171483**, petitioners KMU and NAFLU-KMU *et al.* alleged that their members were "turned away and dispersed" when they went to EDSA and later, to Ayala Avenue, to celebrate the 20th Anniversary of *People Power I.*

A perusal of the "direct injuries" allegedly suffered by the said petitioners shows that they resulted from the **implementation**, pursuant to G.O. No. 5, of PP 1017.

Can this Court adjudge as unconstitutional PP 1017 and G.O. No 5 on the basis of these illegal acts? In general, *does the illegal implementation of a law render it unconstitutional?*

Settled is the rule that courts are not at liberty to declare statutes invalid **although they may be abused and misabused**[135] and **may afford an opportunity for abuse in the manner of application**.[136] The validity of a statute or ordinance is to be determined from its general purpose and its efficiency to accomplish the end desired, **not from its effects in a particular case**.[137] PP 1017 is merely an invocation of the President's calling-out power. Its general purpose is to command the AFP to suppress all forms of lawless violence, invasion or rebellion. It had accomplished the end desired which prompted President Arroyo to issue PP 1021. But there is nothing in PP 1017 allowing the police, expressly or impliedly, to conduct illegal arrest, search or violate the citizens' constitutional rights.

Now, may this Court adjudge a law or ordinance unconstitutional on the ground that its implementor committed illegal acts? The answer is no. The criterion by which the validity of the statute or ordinance is to be measured is the essential basis for the exercise of power, **and not a mere incidental result arising from its exertion**.[138] This is logical. Just imagine the absurdity of situations when laws maybe declared unconstitutional just because the officers implementing them have acted arbitrarily. If this were so, judging from the blunders committed by policemen in the cases passed upon by the Court, majority of the provisions of the Revised Penal Code would have been declared unconstitutional a long time ago.

President Arroyo issued G.O. No. 5 to carry into effect the provisions of PP 1017. General orders are "acts and commands of the President in his capacity as Commander-in-Chief of the Armed Forces of the Philippines." They are internal rules issued by the executive officer to his subordinates

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135 *Uren v Bagley*, 118 Or 77, 245 P 1074, 46 ALR 1173.

136 *Gutierrez v. Middle Rio Grande Conservancy Dist.*, 34 NM 346, 282 P 1, 70 ALR 1261, cert den 280 US 610, 74 L ed 653, 50 S Ct 158.

137 *Sanitation Dist. V. Campbell (Ky)*, 249 SW 2d 767; *Rochester v. Gutberlett*, 211 NY 309, 105 NE 548.

138 *Hammond Packing Co. v. Arkansas*, 212 US 322, 53 L ed 530, 29 S Ct 370.

precisely for the **proper** and **efficient administration of law.** Such rules and regulations create no relation except between the official who issues them and the official who receives them.[139] They are based on and are the product of, a relationship in which power is their source, and obedience, their object.[140] For these reasons, one requirement for these rules to be valid is that they must be **reasonable, not arbitrary or capricious.**

G.O. No. 5 mandates the AFP and the PNP to immediately carry out the "**necessary and appropriate actions and measures to suppress and prevent acts of terrorism and lawless** violence."

Unlike the term "lawless violence" which is unarguably extant in our statutes and the Constitution, and which is invariably associated with "invasion, insurrection or rebellion," the phrase "acts of terrorism" is still an amorphous and vague concept. Congress has yet to enact a law defining and punishing acts of terrorism.

In fact, this "definitional predicament" or the "absence of an agreed definition of terrorism" confronts not only our country, but the international

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139 De Leon and De Leon Jr., Administrative Law, Text and Cases, 2001 Ed., p. 115.

140 *Ibid.*

community as well. The following observations are quite apropos:

> In the actual unipolar context of international relations, the "fight against terrorism" has become one of the basic slogans when it comes to the justification of the use of force against certain states and against groups operating internationally. Lists of states "sponsoring terrorism" and of terrorist organizations are set up and constantly being updated according to criteria that are not always known to the public, but are clearly determined by strategic interests.
>
> The basic problem underlying all these military actions – or threats of the use of force as the most recent by the United States against Iraq – consists in the absence of an agreed definition of terrorism.
>
> Remarkable confusion persists in regard to the legal categorization of acts of violence either by states, by armed groups such as liberation movements, or by individuals.
>
> The dilemma can by summarized in the saying "One country's terrorist is another country's freedom fighter." The apparent contradiction or lack of consistency in the use of the term "terrorism" may further be demonstrated by the historical fact that leaders of national liberation movements such as Nelson Mandela in South Africa, Habib Bourgouiba in Tunisia, or Ahmed Ben Bella in Algeria, to mention only a few, were originally labeled as terrorists by those who controlled the territory at the time, but later became internationally respected statesmen.
>
> What, then, is the defining criterion for terrorist acts – the *differentia specifica* distinguishing those acts from eventually legitimate acts of national resistance or self-defense?
>
> Since the times of the Cold War the United Nations Organization has been trying in vain to reach a consensus on the basic issue of definition. The organization has intensified its efforts recently, but has been unable to bridge the gap between those who associate "terrorism" with any violent act by non-state groups against civilians, state functionaries or infrastructure or military installations, and those who believe in the concept of the legitimate use of force when resistance against foreign occupation or against systematic oppression of ethnic and/or religious groups within a state is concerned.
>
> The dilemma facing the international community can best be illustrated by reference to the contradicting categorization of organizations and movements such as Palestine Liberation Organization (PLO) – which is a terrorist group for Israel and a liberation movement for Arabs and Muslims – the Kashmiri resistance groups – who are terrorists in the perception of India, liberation fighters in that of Pakistan – the earlier Contras in Nicaragua – freedom fighters for the United States, terrorists for the Socialist camp – or, most drastically, the Afghani Mujahedeen (later to become the Taliban movement): during the Cold War period they were a group of freedom fighters for the West, nurtured by the United States, and a terrorist gang for the Soviet Union. One could go on and on in enumerating examples of conflicting categorizations that cannot be reconciled in any way – because of opposing political interests that are at the roots of those perceptions.

> How, then, can those contradicting definitions and conflicting perceptions and evaluations of one and the same group and its actions be explained? In our analysis, the basic reason for these striking inconsistencies lies in the divergent interest of states. Depending on whether a state is in the position of an occupying power or in that of a rival, or adversary, of an occupying power in a given territory, the definition of terrorism will "fluctuate" accordingly. A state may eventually see itself as protector of the rights of a certain ethnic group outside its territory and will therefore speak of a "liberation struggle," not of "terrorism" when acts of violence by this group are concerned, and vice-versa.
>
> The United Nations Organization has been unable to reach a decision on the definition of terrorism exactly because of these conflicting interests of sovereign states that determine in each and every instance how a particular armed movement (i.e. a non-state actor) is labeled in regard to the terrorists-freedom fighter dichotomy. A "policy of double standards" on this vital issue of international affairs has been the unavoidable consequence.
>
> This "definitional predicament" of an organization consisting of sovereign states – and not of peoples, in spite of the emphasis in the Preamble to the United Nations Charter! – has become even more serious in the present global power constellation: one superpower exercises the decisive role in the Security Council, former great powers of the Cold War era as well as medium powers are increasingly being marginalized; and the problem has become even more acute since the terrorist attacks of 11 September 2001 I the United States.[141]

The absence of a law defining "acts of terrorism" may result in abuse and oppression on the part of the police or military. An illustration is when a group of persons are merely engaged in a drinking spree. Yet the military or the police may consider the act as an act of terrorism and immediately arrest them pursuant to G.O. No. 5. Obviously, this is abuse and oppression on their part. It must be remembered that an act can only be considered a crime if there is a law defining the same as such and imposing the corresponding penalty thereon.

So far, the word "terrorism" appears only once in our criminal laws, i.e., in P.D. No. 1835 dated January 16, 1981 enacted by President Marcos during the Martial Law regime. This decree is entitled "Codifying The Various Laws on Anti-Subversion and Increasing The Penalties for

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[141] In a Lecture delivered on March 12, 2002 as part of the Supreme Court Centenary Lecture Series, Hans Koechler, Professor of Philosophy at the University of Innsbruck (Austria) and President of the International Progress Organization, speaking on "The United Nations, The International Rule of Law and Terrorism" cited in the Dissenting Opinion of Justice Kapunan in *Lim v. Executive Secretary*, G.R. No. 151445, April 11, 2002, 380 SCRA 739.

Membership in Subversive Organizations." The word "terrorism" is mentioned in the following provision: "That one who conspires with any other person for the purpose of overthrowing the Government of the Philippines x x x by force, violence, **terrorism**, x x x shall be punished by *reclusion temporal* x x x."

P.D. No. 1835 was repealed by E.O. No. 167 (which outlaws the Communist Party of the Philippines) enacted by President Corazon Aquino on May 5, 1985. These two (2) laws, however, do not define "acts of terrorism." Since there is no law defining "acts of terrorism," it is President Arroyo alone, under G.O. No. 5, who has the discretion to determine what acts constitute terrorism. Her judgment on this aspect is absolute, without restrictions. Consequently, there can be indiscriminate arrest without warrants, breaking into offices and residences, taking over the media enterprises, prohibition and dispersal of all assemblies and gatherings unfriendly to the administration. All these can be effected in the name of G.O. No. 5. These acts go far beyond the calling-out power of the President. Certainly, they violate the due process clause of the Constitution. Thus, this Court declares that the "acts of terrorism" portion of G.O. No. 5 is unconstitutional.

Significantly, there is nothing in G.O. No. 5 authorizing the military or police to commit acts beyond what are **necessary and appropriate to suppress and prevent lawless violence**, the limitation of their authority in pursuing the Order. Otherwise, such acts are considered illegal.

We first examine **G.R. No. 171396** (*David et al.*)

The Constitution provides that "the right of the people to be secured in their persons, houses, papers and effects against unreasonable search and seizure of whatever nature and for any purpose shall be ***inviolable,*** and no

search warrant or **warrant of arrest** shall issue except upon probable cause to be determined personally 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."[142] The plain import of the language of the Constitution is that searches, seizures and arrests are **normally** unreasonable unless authorized by a validly issued search warrant or warrant of arrest. Thus, the fundamental protection given by this provision is that between person and police must stand the protective authority of a magistrate clothed with power to issue or refuse to issue search warrants or warrants of arrest.[143]

In the Brief Account[144] submitted by petitioner David, certain facts are established: *first,* he was arrested without warrant; *second,* the PNP operatives arrested him on the basis of PP 1017; *third,* he was brought at Camp Karingal, Quezon City where he was fingerprinted, photographed and booked like a criminal suspect; *fourth,* he was treated brusquely by policemen who "held his head and tried to push him" inside an unmarked car; *fifth,* he was charged with Violation of **Batas Pambansa Bilang No. 880**[145] and **Inciting to Sedition**; *sixth,* he was detained for seven (7) hours; and *seventh,* he was eventually released for insufficiency of evidence.

Section 5, Rule 113 of the Revised Rules on Criminal Procedure provides:

> Sec. 5. ***Arrest without warrant; when lawful***. - A peace officer or a private person may, without a warrant, arrest a person:
>
> **(a)** When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense.

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142 Section 2, Article III of the 1987 Constitution.

143 Bernas, *The 1987 Constitution of the Republic of the Philippines*, A Reviewer-Primer, p. 51.

144 Annex "A" of the Memorandum in G.R. No. 171396, pp. 271-273.

145 An Act Ensuring the Free Exercise by the People of their Right Peaceably to Assemble and Petition the Government for Other Purposes.

> **(b)** When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
>
> x x x.

Neither of the two (2) exceptions mentioned above justifies petitioner David's warrantless arrest. During the inquest for the charges of i**nciting to sedition** and **violation of BP 880**, all that the arresting officers could invoke was their observation that some rallyists were wearing t-shirts with the invective *"Oust Gloria Now"* and their erroneous assumption that petitioner David was the leader of the rally.[146] Consequently, the Inquest Prosecutor ordered his immediate release on the ground of insufficiency of evidence. He noted that petitioner David was not wearing the subject t-shirt and even if he was wearing it, such fact is insufficient to charge him with i**nciting to sedition**. Further, he also stated that there is insufficient evidence for the charge of **violation of BP 880** as it was not even known whether petitioner David was the leader of the rally.[147]

But what made it doubly worse for petitioners David *et al.* is that not only was their right against warrantless arrest violated, but also their right to peaceably assemble.

Section 4 of Article III guarantees:

> No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

"Assembly" means a right on the part of the citizens to meet peaceably for consultation in respect to public affairs. It is a necessary consequence of our republican institution and complements the right of

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146 Annex "A" of the Memorandum in G.R. No. 171396, pp. 271-273.

147 *Ibid.*

speech. As in the case of freedom of expression, this right is not to be limited, much less denied, except on a showing of a **clear and present danger** of a substantive evil that Congress has a right to prevent. In other words, like other rights embraced in the freedom of expression, the right to assemble is not subject to previous restraint or censorship. It may not be conditioned upon the prior issuance of a permit or authorization from the government authorities except, of course, if the assembly is intended to be held in a public place, a permit for the use of such place, and not for the assembly itself, may be validly required.

The ringing truth here is that petitioner David, *et al*. were arrested while they were exercising their right to peaceful assembly. They were not committing any crime, neither was there a showing of a clear and present danger that warranted the limitation of that right. As can be gleaned from circumstances, the charges of **inciting to sedition** and **violation of BP 880** were mere afterthought. Even the Solicitor General, during the oral argument, failed to justify the arresting officers' conduct. In *De Jonge v. Oregon*,[148] it was held that peaceable assembly cannot be made a crime, thus:

> Peaceable assembly for lawful discussion cannot be made a crime. The holding of meetings for peaceable political action cannot be proscribed. Those who assist in the conduct of such meetings cannot be branded as criminals on that score. The question, if the rights of free speech and peaceful assembly are not to be preserved, is not as to the auspices under which the meeting was held but as to its purpose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects. If the persons assembling have committed crimes elsewhere, if they have formed or are engaged in a conspiracy against the public peace and order, they may be prosecuted for their conspiracy or other violations of valid laws. **But it is a different matter when the State, instead of prosecuting them for such offenses, seizes upon mere participation in a peaceable assembly and a lawful public discussion as the basis for a criminal charge.**

On the basis of the above principles, the Court likewise considers the dispersal and arrest of the members of KMU *et al.* (G.R. No. 171483)

[148] 299 U.S. 353, 57 S. Ct. 255, 81 L. Ed. 278.

unwarranted. Apparently, their dispersal was done merely on the basis of Malacañang's directive canceling all permits previously issued by local government units. This is arbitrary. The wholesale cancellation of all permits to rally is a blatant disregard of the principle that "**freedom of assembly is not to be limited, much less denied, except on a showing of a *clear and present danger* of a substantive evil that the State has a right to prevent**."[149] Tolerance is the rule and limitation is the exception. Only upon a showing that an assembly presents a clear and present danger that the State may deny the citizens' right to exercise it. Indeed, respondents failed to show or convince the Court that the rallyists committed acts amounting to lawless violence, invasion or rebellion. With the blanket revocation of permits, the distinction between protected and unprotected assemblies was eliminated.

Moreover, under BP 880, the authority to regulate assemblies and rallies is lodged with the local government units. They have the power to issue permits and to revoke such permits **after due notice and hearing** on the determination of the presence of clear and present danger. Here, petitioners were not even notified and heard on the revocation of their permits.[150] The first time they learned of it was at the time of the dispersal. Such absence of notice is a fatal defect. When a person's right is restricted by government action, it behooves a democratic government to see to it that the restriction is fair, reasonable, and according to procedure.

G.R. No. 171409, (Cacho-Olivares, *et al.*) presents another facet of freedom of speech i.e., the freedom of the press. Petitioners' narration of facts, which the Solicitor General failed to refute, established the following:

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149 *Reyes v. Bagatsing*, No. L-65366, November 9, 1983, 125 SCRA 553.

150 **Section 5.** *Application requirements* - All applications for a permit shall comply with the following guidelines:

x x x x x x

(c) If the mayor is of the view that there is imminent and grave danger of a substantive evil warranting the **denial** or **modification** of the permit, he shall immediately inform the applicant who must be heard on the matter.

first, the *Daily Tribune's* offices were searched without warrant; *second,* the police operatives seized several materials for publication; *third*, the search was conducted at about 1:00 o' clock in the morning of February 25, 2006; *fourth,* the search was conducted in the absence of any official of the *Daily Tribune* except the security guard of the building; and *fifth,* policemen stationed themselves at the vicinity of the *Daily Tribune* offices.

Thereafter, a wave of warning came from government officials. Presidential Chief of Staff Michael Defensor was quoted as saying that such raid was **"meant to show a 'strong presence,' to tell media outlets not to connive or do anything that would help the rebels in bringing down this government."** Director General Lomibao further stated that **"if they do not follow the standards –and the standards are if they would contribute to instability in the government, or if they do not subscribe to what is in General Order No. 5 and Proc. No. 1017 – we will recommend a 'takeover**.'" National Telecommunications Commissioner Ronald Solis urged television and radio networks to *"**cooperate**"* with the government for the duration of the state of national emergency. **He warned that his agency will not hesitate to recommend the closure of any broadcast outfit that violates rules set out for media coverage during times when the national security is threatened**.[151]

The search is illegal. Rule 126 of The Revised Rules on Criminal Procedure lays down the steps in the conduct of search and seizure. **Section 4** requires that a **search warrant** be issued upon probable cause in connection with one specific offence to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce. **Section 8** mandates that the search of a house, room, or any other premise be made **in the presence of the lawful occupant** thereof or any member of his family or in the absence of the latter, in the presence of two (2) witnesses of sufficient age and discretion residing in the same locality. And **Section 9** states that the warrant must direct that it be

[151] Petition in G.R. No. 171400, p. 11.

served in the **daytime**, unless the property is on the person or in the place ordered to be searched, in which case a direction may be inserted that it be served at any time of the day or night. All these rules were violated by the CIDG operatives.

Not only that, the search violated petitioners' freedom of the press. The best gauge of a free and democratic society rests in the degree of freedom enjoyed by its media. In the *Burgos v. Chief of Staff*[152] this Court held that --

> As heretofore stated, the premises searched were the business and printing offices of the "*Metropolitan Mail*" and the "*We Forum*" newspapers. As a consequence of the search and seizure, **these premises were padlocked and sealed, with the further result that the printing and publication of said newspapers were discontinued**.
>
> **Such closure is in the nature of previous restraint or censorship abhorrent to the freedom of the press guaranteed under the fundamental law, and constitutes a virtual denial of petitioners' freedom to express themselves in print. This state of being is patently anathematic to a democratic framework where a free, alert and even militant press is essential for the political enlightenment and growth of the citizenry**.

While admittedly, the *Daily Tribune* was not padlocked and sealed like the "*Metropolitan Mail*" and "*We Forum*" newspapers in the above case, yet it cannot be denied that the CIDG operatives exceeded their enforcement duties. The search and seizure of materials for publication, the stationing of policemen in the vicinity of the *The Daily Tribune* offices, and the arrogant warning of government officials to media, are plain censorship. It is that officious functionary of the repressive government who tells the citizen that he may speak only if allowed to do so, and no more and no less than what he is permitted to say on pain of punishment should he be so rash as to disobey.[153] Undoubtedly, the *The Daily Tribune* was subjected to these arbitrary intrusions because of its anti-government sentiments. This Court

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[152] No. L-64161, December 26, 1984, 133 SCRA 816.

[153] Dissenting Opinion, J. Cruz, *National Press Club v. Commission on Elections*, G.R. Nos. 102653, 102925 & 102983, March 5, 1992, 207 SCRA 1.

cannot tolerate the blatant disregard of a constitutional right even if it involves the most defiant of our citizens. Freedom to comment on public affairs is essential to the vitality of a representative democracy. It is the duty of the courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. The motto should always be *obsta principiis*.[154]

Incidentally, during the oral arguments, the Solicitor General admitted that the search of the *Tribune's* offices and the seizure of its materials for publication and other papers are illegal; and that the same are inadmissible "for any purpose," thus:

> JUSTICE CALLEJO:
>
> > You made quite a mouthful of admission when you said that the policemen, when inspected the Tribune for the purpose of gathering evidence and you admitted that the policemen were able to get the clippings. Is that not in admission of the admissibility of these clippings that were taken from the Tribune?
>
> SOLICITOR GENERAL BENIPAYO:
>
> > Under the law they would seem to be, if they were illegally seized, I think and I know, Your Honor, and these are inadmissible for any purpose.[155]
>
> x x x x x x x x x
>
> SR. ASSO. JUSTICE PUNO:
>
> > These have been published in the past issues of the Daily Tribune; all you have to do is to get those past issues. So why do you have to go there at 1 o'clock in the morning and without any search warrant? Did they become suddenly part of the evidence of rebellion or inciting to sedition or what?
>
> SOLGEN BENIPAYO:
>
> > Well, it was the police that did that, Your Honor. Not upon my instructions.
>
> SR. ASSO. JUSTICE PUNO:

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154 *Boyd v. United States*, 116 U.S. 616 (1886).

155 Transcript of Stenographic Notes, Oral Arguments, March 7, 2006, p. 470.

> Are you saying that the act of the policeman is illegal, it is not based on any law, and it is not based on Proclamation 1017.

SOLGEN BENIPAYO:

> It is not based on Proclamation 1017, Your Honor, because there is nothing in 1017 which says that the police could go and inspect and gather clippings from Daily Tribune or any other newspaper.

SR. ASSO. JUSTICE PUNO:

> Is it based on any law?

SOLGEN BENIPAYO:

> As far as I know, **no**, Your Honor, from the facts, **no**.

SR. ASSO. JUSTICE PUNO:

> So, it has no basis, no legal basis whatsoever?

SOLGEN BENIPAYO:

> Maybe so, Your Honor. Maybe so, that is why I said, I don't know if it is premature to say this, **we do not condone this**. **If the people who have been injured by this would want to sue them, they can sue and there are remedies for this**.[156]

Likewise, the warrantless arrests and seizures executed by the police were, according to the Solicitor General, illegal and cannot be condoned, thus:

CHIEF JUSTICE PANGANIBAN:

> There seems to be some confusions if not contradiction in your theory.

SOLICITOR GENERAL BENIPAYO:

> I don't know whether this will clarify. The acts, the supposed illegal or unlawful acts committed on the occasion of 1017, as I said, **it cannot be condoned**. You

[156] *Ibid.*, pp. 432-433.

> cannot blame the President for, as you said, a misapplication of the law. These are acts of the police officers, that is their responsibility.[157]

The Dissenting Opinion states that PP 1017 and G.O. No. 5 are constitutional in every aspect and "should result in no constitutional or statutory breaches if applied according to their letter."

The Court has passed upon the constitutionality of these issuances. Its ratiocination has been exhaustively presented. At this point, suffice it to reiterate that PP 1017 is limited to the calling out by the President of the military to prevent or suppress lawless violence, invasion or rebellion. When in implementing its provisions, pursuant to G.O. No. 5, the military and the police committed acts which violate the citizens' rights under the Constitution, this Court has to declare such acts unconstitutional and illegal.

In this connection, Chief Justice Artemio V. Panganiban's concurring opinion, attached hereto, is considered an integral part of this *ponencia*.

S U M M A T I O N

In sum, the lifting of PP 1017 through the issuance of PP 1021 – a supervening event – would have normally rendered this case moot and academic. However, while PP 1017 was still operative, illegal acts were committed allegedly in pursuance thereof. Besides, there is no guarantee that PP 1017, or one similar to it, may not again be issued. Already, there have been media reports on April 30, 2006 that allegedly PP 1017 would be reimposed "if the May 1 rallies" become "unruly and violent." Consequently, the transcendental issues raised by the parties should not be "evaded;" they must now be resolved to prevent future constitutional aberration.

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[157] *Ibid*, pp. 507-508.

The Court finds and so holds that PP 1017 is constitutional insofar as it constitutes a call by the President for the AFP to prevent or suppress **lawless violence.** The proclamation is sustained by Section 18, Article VII of the Constitution and the relevant jurisprudence discussed earlier. However, PP 1017's extraneous provisions giving the President express or implied power (1) to issue decrees; (2) to direct the AFP to enforce obedience to **all laws** even those not related to lawless violence as well as decrees promulgated by the President; and (3) to impose standards on media or any form of prior restraint on the press, are *ultra vires* and **unconstitutional**. The Court also rules that under Section 17, Article XII of the Constitution, the President, in the absence of a legislation, cannot take over privately-owned public utility and private business affected with public interest.

In the same vein, the Court finds G.O. No. 5 valid. It is an Order issued by the President – acting as Commander-in-Chief – addressed to subalterns in the AFP to carry out the provisions of PP 1017. Significantly, it also provides a valid standard – that the military and the police should take only the "**necessary and appropriate actions and measures to suppress and prevent acts of lawless violence**." But the words "**acts of terrorism**" found in G.O. No. 5 have not been legally defined and made punishable by Congress and should thus be deemed deleted from the said G.O. While "terrorism" has been denounced generally in media, no law has been enacted to guide the military, and eventually the courts, to determine the limits of the AFP's authority in carrying out this portion of G.O. No. 5.

On the basis of the relevant and uncontested facts narrated earlier, it is also pristine clear that (1) the warrantless arrest of petitioners Randolf S. David and Ronald Llamas; (2) the dispersal of the rallies and warrantless arrest of the KMU and NAFLU-KMU members; (3) the imposition of standards on media or any prior restraint on the press; and (4) the warrantless search of the *Tribune* offices and the whimsical seizures of

some articles for publication and other materials, are not authorized by the Constitution, the law and jurisprudence. Not even by the valid provisions of PP 1017 and G.O. No. 5.

Other than this declaration of invalidity, this Court cannot impose any civil, criminal or administrative sanctions on the individual police officers concerned. They have not been individually identified and given their day in court. The civil complaints or causes of action and/or relevant criminal Informations have not been presented before this Court. Elementary due process bars this Court from making any specific pronouncement of civil, criminal or administrative liabilities.

It is **well to remember that military power is a means to an end and substantive civil rights are ends in themselves. How to give the military the power it needs to protect the Republic without unnecessarily trampling individual rights is one of the eternal balancing tasks of a democratic state**. During emergency, governmental action may vary in breadth and intensity from normal times, yet they should not be arbitrary as to unduly restrain our people's liberty.

Perhaps, the vital lesson that we must learn from the theorists who studied the various competing political philosophies is that, it is possible to grant government the authority to cope with crises without surrendering the two vital principles of constitutionalism: **the maintenance of legal limits to arbitrary power**, and **political responsibility of the government to the governed**.[158]

WHEREFORE, the Petitions are partly granted. The Court rules that PP 1017 is **CONSTITUTIONAL** insofar as it constitutes a call by President Gloria Macapagal-Arroyo on the AFP **to prevent or suppress lawless violence**. However, the provisions of PP 1017 commanding the AFP to

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[158] Smith and Cotter, Powers of the President During Crisis, 1972, p. 146.

enforce laws not related to lawless violence, as well as decrees promulgated by the President, are declared **UNCONSTITUTIONAL**. In addition, the provision in PP 1017 declaring national emergency under Section 17, Article VII of the Constitution is **CONSTITUTIONAL,** but such declaration does not authorize the President to take over privately-owned public utility or business affected with public interest without prior legislation.

G.O. No. 5 is **CONSTITUTIONAL** since it provides a standard by which the AFP and the PNP should implement PP 1017, i.e. whatever is "**necessary and appropriate actions and measures to suppress and prevent acts of lawless violence.**" **C**onsidering that "acts of terrorism" have not yet been defined and made punishable by the Legislature, such portion of G.O. No. 5 is declared **UNCONSTITUTIONAL.**

The warrantless arrest of Randolf S. David and Ronald Llamas; the dispersal and warrantless arrest of the KMU and NAFLU-KMU members during their rallies, in the absence of proof that these petitioners were committing acts constituting lawless violence, invasion or rebellion and violating BP 880; the imposition of standards on media or any form of prior restraint on the press, as well as the warrantless search of the *Tribune* offices and whimsical seizure of its articles for publication and other materials, are declared **UNCONSTITUTIONAL**.

No costs.

SO ORDERED.

ANGELINA SANDOVAL-GUTIERREZ
Associate Justice

WE CONCUR:

ARTEMIO V. PANGANIBAN
Chief Justice

(On leave)
REYNATO S. PUNO
Associate Justice

LEONARDO A. QUISUMBING
Associate Justice

CONSUELO YNARES-SANTIAGO
Associate Justice

ANTONIO T. CARPIO
Associate Justice

MA. ALICIA AUSTRIA-MARTINEZ
Associate Justice

RENATO C. CORONA
Associate Justice

CONCHITA CARPIO MORALES
Associate Justice

ROMEO J. CALLEJO, SR.
Associate Justice

ADOLFO S. AZCUNA
Associate Justice

DANTE O. TINGA
Associate Justice

MINITA V. CHICO-NAZARIO
Associate Justice

CANCIO C. GARCIA
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ARTEMIO V. PANGANIBAN
Chief Justice