

**LEGITIMIZING THE ILLEGITIMATE:**  
DISREGARDING THE RULE OF LAW IN *ESTRADA V. DESIERTO*  
AND *ESTRADA V. MACAPAGAL-ARROYO*\*

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*“Lust of power is the most flagrant of all passions.”*  
*- Tacitus<sup>1</sup>*

They say history repeats itself. But it does so in ironic ways.

In 1986, the world became witness to a bloodless revolution, where the outraged Filipinos took to the streets and faced the military might of an overstaying President. The EDSA<sup>2</sup> People Power Revolution became a part of Philippine history. In 2001, EDSA again became the site of mass protests, this time leading to the downfall of an elected President accused of corruption, ineptitude and immorality, barely half into his legal term. Like its predecessor, People Power II will also be forever a marker in Philippine history. However, unlike its predecessor, People Power II was barely bloodless and definitely not a revolution.<sup>3</sup>

In 1986, Supreme Court Chief Justice Claudio Teehankee administered the oath as President to Corazon Cojuangco Aquino as revolutionary successor of Ferdinand Edralin Marcos. The oath taking was met with much celebration, as it symbolized hope and freedom from tyranny for the Filipinos. In 2001, Supreme Court Chief Justice Hilario Davide, Jr.

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<sup>1</sup> CECILIO T. ARILLO, *POWER GRAB!* (2001).

<sup>2</sup> EDSA is an abbreviation for the Epifanio Delos Santos Avenue, a major thoroughfare that cuts across the cities of Caloocan, Quezon, Pasig, Mandaluyong, Makati and Pasay.

administered the oath as President to Gloria Macapagal-Arroyo, as constitutional successor of Joseph Ejercito Estrada. There was celebration, but only a fleeting one as cracks in the thought-to-be-perfect picture slowly developed and became manifest. This time, the presidential oath-taking took on a character with much foreboding, clouded with doubt and tainted with signs of deceit and betrayal.<sup>4</sup>

The Supreme Court, in the consolidated cases of *Estrada v. Desierto*<sup>5</sup> and *Estrada v. Macapagal-Arroyo*,<sup>6</sup> held that President Joseph Estrada had resigned, based on “his acts and omissions before, during and after January 20, 2001, or by the totality of prior, contemporaneous and posterior facts and circumstantial evidence bearing a material relevance on the issue.”<sup>7</sup> By virtue of such resignation, the Court validated Vice-President Gloria Macapagal-Arroyo’s ascension to the presidency.

However, instead of writing *finis* to the controversy, the decisions in the above cases have raised more doubts, not only with respect to the constitutionality of Gloria Macapagal-Arroyo’s assumption to the presidency and the real political score in the country, but more so with respect to the legality and soundness of the decision itself. The ultimate question remains: did President Estrada really resign?

This paper will examine the reasoning of the Court in deciding the issue of President Estrada’s resignation in light of the facts and circumstances surrounding the case, and the prevailing Constitutional and statutory law and jurisprudence on the matter. Although the Court passed upon other issues, the issue of resignation was the very *lis mota* of the controversy, upon

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<sup>3</sup> This paper will explain the circumstances which surrounded People Power II.

<sup>4</sup> This paper will elucidate and examine the specific events that transpired during the oath-taking of Gloria Macapagal-Arroyo as the 14<sup>th</sup> President of the Philippines.

<sup>5</sup> G.R. Nos. 146710-15, Mar. 2, 2001; Apr. 2, 2001 (Resolution).

<sup>6</sup> G.R. No. 146738, Mar. 2, 2001; Apr. 2, 2001 (Resolution).

<sup>7</sup> *Estrada v. Desierto*, G.R. Nos. 146710-15, Mar. 2, 2001; *Estrada v. Macapagal-Arroyo*, G.R. No. 146738, Mar. 2, 2001.

which the other issues depended. In upholding the contention that President Joseph Estrada had resigned, it is respectfully submitted that the Supreme Court violated fundamental Constitutional and due process tenets, in disregard of the rule of law, justice and fair play.

## I. REVISITING THE IMPEACHMENT TRIAL AND EDSA II

Joseph Ejercito Estrada became President of the Philippines in 1998, garnering 10,722,295 votes.<sup>8</sup> Estrada became President with the largest number of votes ever recorded in Philippine history.<sup>9</sup> Gloria Macapagal-Arroyo, on the other hand, was elected Vice-President in the same election, receiving even more votes than Estrada.<sup>10</sup>

In 4 October 2000, Ilocos Sur Governor Luis “Chavit” Singson accused President Estrada and his family of receiving millions of illegal jueteng money.<sup>11</sup> The very next day, Senator Teofisto Guingona, Jr. delivered a privileged speech where he accused the President of pocketing cigarette excise taxes from Governor Singson, which funds were intended for the tobacco farmers of Ilocos Sur.<sup>12</sup>

Vice-President Arroyo resigned as Secretary of the Department of Social Welfare and Development,<sup>13</sup> and subsequently called on President Estrada to resign.<sup>14</sup> An Impeachment Complaint began circulating in the House of Representatives for endorsement signatures.<sup>15</sup>

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<sup>8</sup> ARILLO, *supra* note 1, at 2.

<sup>9</sup> NATIONAL STATISTICAL COORDINATING BOARD, NSCB STATISTICS SERIES 2001-02, A STATISTICAL ANALYSIS OF THE COUNTRY’S ELECTORAL EXERCISES 7 (2001).

<sup>10</sup> *Id.*

<sup>11</sup> *See generally* Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001.

<sup>12</sup> *See generally* Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001.

<sup>13</sup> *See generally* Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001.

<sup>14</sup> *See generally* Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001..

<sup>15</sup> *See generally* Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001.

Before the end of October 2000, the President was already being demanded to resign by the Catholic Church,<sup>16</sup> former Presidents,<sup>17</sup> civil society groups,<sup>18</sup> political parties,<sup>19</sup> and private sector business clubs.<sup>20</sup> President Estrada rejected the idea of resigning and called on his critics to unite with him instead.<sup>21</sup> By November, a number of his Cabinet members and advisers had resigned.<sup>22</sup> Political personalities withdrew from the “Lapian ng Masang Pilipino” or LAMP, an alliance that included President Estrada’s party “Partido ng Masang Pilipino”.<sup>23</sup>

### **A. An Impeached President**

On 13 November 2000, President Estrada was impeached when House Speaker Manuel Villar transmitted the Articles of Impeachment<sup>24</sup> to the Senate. It was endorsed by 115 members of the House of Representatives.<sup>25</sup> On November 20, 2000, the Senate convened as an Impeachment Court, with Chief Justice Hilario Davide, Jr. as Presiding Officer and the Senators

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<sup>16</sup> See generally Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001. Jaime Cardinal Sin delivered a pastoral letter urging President Estrada to resign for having lost the “moral ascendancy to govern.”

<sup>17</sup> See generally Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001. Former Presidents Aquino and Ramos personally called on President Estrada to resign.

<sup>18</sup> See generally Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001. Among these groups are Akbayan, Bayan, Sanlakas, Kompil II, and PCA.

<sup>19</sup> See generally Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001. Among these political parties are Lakas-NUCD, Reporma, and Promdi.

<sup>20</sup> See generally Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001. Some examples are the Makati Business Club and other Chambers of Commerce in major cities.

<sup>21</sup> See generally Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001.

<sup>22</sup> *November 2000—Estrada on Trial: Chronology of Events* (copy on file with author). The Senior Economic Advisers, composed of former Prime Minister Cesar Virata, former Senator Vicente Paterno, Washington Sycip and Jaime Augusto Zobel de Ayala resigned. They were followed by Trade and Industry Secretary Mar Roxas, Senior Economic Adviser Gabriel Singson, and Presidential Adviser for Political Affairs and Philippine Tourism Authority Head Lito Banayo. More Cabinet members and presidential advisers followed suit.

<sup>23</sup> *Id.* In the Senate, Senate President Franklin Drilon, Nikki Coseteng and Rodolfo Biazon withdrew from LAMP. In the House of Representatives, House Speaker Manuel Villar and 40 other members of the House withdrew from LAMP.

<sup>24</sup> The Articles accused President Estrada of bribery, graft and corruption, betrayal of public trust and culpable violation of the Constitution.

<sup>25</sup> See generally Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001.

as judges.<sup>26</sup> The impeachment trial of President Joseph Estrada thus began. The entire trial was broadcasted live and was seen on the television and heard on the radio nationwide.

The prosecution commenced presenting its case. Among its witnesses were Ilocos Sur Governor Luis “Chavit” Singson and former Securities and Exchange Commission Chairperson Perfecto Yasay, Jr. But the prosecution’s star witness was Clarissa Ocampo, Senior Vice-President of Equitable-PCI Bank, who testified that she personally witnessed President Estrada affix his signature as “Jose Velarde” on documents involving a PhP 500 million investment agreement with their bank sometime in February 2000.<sup>27</sup> President Estrada was being accused by the prosecution of maintaining a secret bank account in the name of “Jose Velarde”, an account which he allegedly failed to disclose in his Statement of Assets and Liabilities.<sup>28</sup> More calls for his immediate resignation mounted in light of Ocampo’s testimony. Militant Anti-Estrada groups marched to the Senate demanding a verdict of “guilty” from the senators.<sup>29</sup>

## **B. An Aborted Trial**

The evening of January 16, 2001 was perhaps the most crucial event that transpired in the short-lived impeachment trial. The prosecution requested that a second envelope of documents from Equitable-PCI Bank which were said to have contained damning evidence which would further link Estrada to the Jose Velarde account, allegedly containing PhP 3.3 Billion or \$62

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<sup>26</sup> See generally *Estrada v. Desierto*, G.R. Nos. 146710-15, Mar. 2, 2001; *Estrada v. Macapagal-Arroyo*, G.R. No. 146738, Mar. 2, 2001.

<sup>27</sup> See generally *Estrada v. Desierto*, G.R. Nos. 146710-15, Mar. 2, 2001; *Estrada v. Macapagal-Arroyo*, G.R. No. 146738, Mar. 2, 2001.

<sup>28</sup> See generally *Estrada v. Desierto*, G.R. Nos. 146710-15, Mar. 2, 2001; *Estrada v. Macapagal-Arroyo*, G.R. No. 146738, Mar. 2, 2001. Although the account was not specifically mentioned in the Bill of Particulars submitted by the prosecution, Chief Justice Davide allowed Ocampo to testify on the account, notwithstanding the objection of the defense.

<sup>29</sup> See generally *Estrada v. Desierto*, G.R. Nos. 146710-15, Mar. 2, 2001; *Estrada v. Macapagal-Arroyo*, G.R. No. 146738, Mar. 2, 2001.

Million.<sup>30</sup> The defense objected, contending that the contents of the envelope was not relevant nor material to case, as the prosecution’s articles of impeachment and list of Estrada’s alleged undeclared assets did not include the Velarde account.<sup>31</sup> Chief Justice Davide allowed the opening of the envelope.<sup>32</sup> Eleven Senators vetoed the ruling of the Chief Justice, while ten voted in its favor.<sup>33</sup> Senator Pimentel resigned as Senate President after the voting.<sup>34</sup> The private prosecutors walked out of the session hall after the vote was read.<sup>35</sup> Outraged by the results of the voting that transpired in the Senate, cellular phone text messages began transmitting around 11:00 p.m., coaxing people who received them to gather mass at EDSA to protest the non-opening of the envelope.<sup>36</sup> The gathering was dubbed “EDSA Dos” by the media.<sup>37</sup>

The next day, the Impeachment Court received a letter from the private prosecutors, informing the Court of their withdrawal from the impeachment case. Senator Raul Roco moved to adjourn the trial indefinitely until the House of Representatives have selected a new panel of prosecutors. The trial is adjourned indefinitely over the plea of the defense to be heard.<sup>38</sup>

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<sup>30</sup> See generally Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001.

<sup>31</sup> See generally Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001.

<sup>32</sup> See generally Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001.

<sup>33</sup> See generally Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001. The eleven senators who voted against the opening of the second envelope were Senators Coseteng, Enrile, Defensor-Santiago, Sotto, Honasan, John Osmeña, Revilla, Jaworski, Tatad, Ople and Aquino-Oreta. The ten who voted in favor of opening it were Senators Legarda-Leviste, Roco, Cayetano, Biazon, Pimentel, Drilon, Flavier, Sergio Osmeña, Magsaysay and Guingona.

<sup>34</sup> See generally Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001. However, Senator Pimentel never really physically resigned as Senate President as he continued to act as Senate President until after his announced resignation during the impeachment trial.

<sup>35</sup> See generally Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001.

<sup>36</sup> *January 2001—Estrada on Trial; Chronology of Event*, (copy on file with author).

<sup>37</sup> Television Networks and Broadcasting Corporations GMA-7 and ABS-CBN began reporting on the gathering and naming it “EDSA Dos” or “People Power II” before midnight of January 16, 2001.

<sup>38</sup> FRANCISCO S. TATAD, *A NATION ON FIRE: THE UNMAKING OF JOSEPH EJERCITO ESTRADA AND THE REMAKING OR DEMOCRACY IN THE PHILIPPINES* 488 (2002).

### C. The Military and Police Defect

Meanwhile, crowds poured in steadily into the EDSA Shrine. Jaime Cardinal Sin continued to call for the people to stay at EDSA “until evil is conquered by good.”<sup>39</sup> More resignations<sup>40</sup> and defections<sup>41</sup> from the executive branch followed. Both private and public sector employees engaged in walkouts, boycotts and work stoppages.<sup>42</sup> The ten senators who had voted for the opening of the second envelope went to EDSA Shrine to join the crowd assembled there.<sup>43</sup>

In the afternoon of 19 January 2001, key military commanders and defense officials withdrew support for Estrada and joined the Anti-Estrada forces in EDSA.<sup>44</sup> AFP Chief of Staff Gen. Angelo Reyes said the President and his family should be allowed to exit with dignity and their safety should be ensured.<sup>45</sup> Defense Secretary Orlando Mercado also joined the EDSA crowd. More cabinet secretaries,<sup>46</sup> undersecretaries, assistant secretaries and bureau chiefs

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<sup>39</sup> See generally Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001.

<sup>40</sup> See generally Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001. National Economic and Development Authority (NEDA) Deputy Director General Ruperto Alonzo resigned from his post effective Monday, January 22nd. 19 of the 25 commissioners of the Estrada-created EDSA People Power Commission resigned, among others are Rep. Wigberto Tañada, Msgr. Socrates Villegas, Pastor Saycon, Teodoro Benigno, Oscar Villadolid, Victoria Gachitorea, Jose Lina Jr., Lourdes Siytango, Ramon del Rosario, Jose Alejandro, Teresita Baltazar, Antonio de los Reyes, Patricia Sison, Lito Lorenzana, Maria Montelibano, Christopher Carrion, Margarita Juico, Angelina Catajoy, and Luz Emmanuel Soriano.

<sup>41</sup> *Estrada on Trial: Chronology of Events*, supra note 36. Cavite Governor Jose Mari Bautista also known as actor Ramon “Bong” Revilla, Jr. went to EDSA and joined in calling for President Estrada’s resignation. He was a very close family friend of the Estradas, particularly of Estrada’s son, Mayor Jinggoy Estrada. Popular actress Nora Aunor also went to EDSA and accused him of beating her when they were still romantically involved.

<sup>42</sup> *Id.*

<sup>43</sup> See generally Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001.

<sup>44</sup> See generally Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001. Included in those who defected were AFP Generals Calimlim, Delos Santos, Villanueva and Defensor, and PNP General Aglipay.

<sup>45</sup> See generally Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001.

<sup>46</sup> See generally Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001. Among those who resigned were Robert Aventajado, presidential assistant for flagship projects; DILG Secretary Alfredo Lim; National Security Adviser Alexander Aguirre; Department of Tourism Secretary Gemma Cruz-Araneta; and Education Secretary Andrew Gonzales.

resigned.<sup>47</sup> PNP Chief Director General Panfilo Lacson and the commanders of the PNP made an announcement in Camp Crame that the PNP was withdrawing its support from President Estrada.<sup>48</sup>

Later that evening, President Estrada made two statements. In the first statement, Estrada asked the defense panel of the impeachment trial to allow the opening of the second envelope from Equitable-PCI Bank. He issued a second statement calling for a snap election in May 2001, saying he will not run in the snap elections. The opposition rejected the election proposal and gave him a January 20 6 a.m. deadline to resign.<sup>49</sup> Negotiations between Malacañang and the EDSA opposition commenced.<sup>50</sup>

The opposition failed to obtain a letter of resignation from President Estrada. In the early hours of January 20, after the 6 a.m. deadline had lapsed, the negotiations were terminated.<sup>51</sup>

#### **D. The Supreme Court and Gloria Macapagal-Arroyo in EDSA**

By 8:45 a.m. of January 20, Vice-President Gloria Arroyo was already waiting for her oath taking as President. She was quoted as saying that she wanted to make sure that President Estrada had already resigned before she takes her oath as she did not want her assumption to the Presidency to be unconstitutional.<sup>52</sup> Militant student and civil society groups began mobilizing

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<sup>47</sup> See generally *Estrada v. Desierto*, G.R. Nos. 146710-15, Mar. 2, 2001; *Estrada v. Macapagal-Arroyo*, G.R. No. 146738, Mar. 2, 2001.

<sup>48</sup> See generally *Estrada v. Desierto*, G.R. Nos. 146710-15, Mar. 2, 2001; *Estrada v. Macapagal-Arroyo*, G.R. No. 146738, Mar. 2, 2001.

<sup>49</sup> See generally *Estrada v. Desierto*, G.R. Nos. 146710-15, Mar. 2, 2001; *Estrada v. Macapagal-Arroyo*, G.R. No. 146738, Mar. 2, 2001.

<sup>50</sup> See generally *Estrada v. Desierto*, G.R. Nos. 146710-15, Mar. 2, 2001; *Estrada v. Macapagal-Arroyo*, G.R. No. 146738, Mar. 2, 2001.

<sup>51</sup> See generally *Estrada v. Desierto*, G.R. Nos. 146710-15, Mar. 2, 2001; *Estrada v. Macapagal-Arroyo*, G.R. No. 146738, Mar. 2, 2001.

<sup>52</sup> *People Power 2*, Iskandalo Café website (copy on file with author).



for a march toward Malacañang Palace to force Estrada to vacate the Palace.<sup>53</sup> In Mendiola, the marchers had a brief encounter with Pro-Estrada supporters that resulted in stone-throwing and minor injuries.<sup>54</sup> The Anti-Estrada marchers had smashed the police barricades and succeeded in penetrating an area just 200 meters from the Palace's Main Gate 7.<sup>55</sup> The Presidential Security Group reinforced its positions in order to protect the President and his family.<sup>56</sup>

Meanwhile, the Supreme Court decided to meet to deliberate about the legality of swearing in Vice-President Gloria Macapagal-Arroyo as the new Chief Executive even as President Joseph Estrada had yet to step down.<sup>57</sup> The high tribunal reached a quorum at 10:00 a.m. and reached a consensus on the propriety of the oath taking.<sup>58</sup> News broke out that Chief Justice Davide would be administering the oath to Arroyo at high noon at the EDSA Shrine.<sup>59</sup> Supreme Court Associate Justice Artemio Panganiban was quoted as saying the scheduled oath taking was not only constitutional but also legal, based on the common law principle, *salus populi est suprema lex* or "the welfare and the will of the people is the supreme law."<sup>60</sup> He had said that the administering of the oath to Arroyo was an "extreme measure," but it was necessary for the Chief Justice to invoke this principle in order to prevent bloodshed and violence.<sup>61</sup> Justice Panganiban, the official spokesperson of Mr. Davide, said the Chief Justice was appealing to the President to heed the call for peace and step down.<sup>62</sup>

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<sup>53</sup> Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001 (Sandoval-Gutierrez, J., separate opinion).

<sup>54</sup> *Id.*, (Main Decision).

<sup>55</sup> *Anti-Estrada forces now 200 meters away from Palace*, BUSINESS WORLD INTERNET EDITION, Jan. 20, 2001 (copy on file with author).

<sup>56</sup> *Supreme Court meets on legality of Arroyo's oath-taking*, BUSINESS WORLD INTERNET EDITION, Jan. 20, 2001 (copy on file with author).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001.

<sup>60</sup> *Supreme Court meets on legality of Arroyo's oath-taking*, *supra* note 56.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

At 12:00 noon, in the absence of a resignation letter from President Estrada, Chief Justice Hilario Davide, Jr. administered the oath as President to Vice-President Gloria Macapagal-Arroyo.<sup>63</sup>

**E. President Estrada and His Family Leave Malacañang**

That afternoon, President Estrada, accompanied by his family, went from the Presidential Residence in Malacañang via barge to the Presidential Security Group camp on the other side of the Pasig River. They proceeded to their residence in Polk Street, Greenhills in San Juan.<sup>64</sup>

**F. Estrada's Two Letters**

Before leaving the Palace, President Estrada had written the following press statement:

20 January 2001

**STATEMENT FROM PRESIDENT JOSEPH EJERCITO ESTRADA**

At twelve o'clock noon today, Vice-President Gloria Macapagal-Arroyo took her oath as President of the Republic of the Philippines. While along with many other legal minds of our country, I have strong and serious doubts about the legality and constitutionality of her proclamation as President, I do not wish to be a factor that will prevent the restoration of unity and order in our civil society.

It is for this reason that I now leave Malacañang Palace, the seat of the presidency of this country, for the sake of peace and in order to begin the healing process of our nation, I leave the Palace of our people with gratitude for the opportunities given to me for service to our people. I will not shirk from any future challenges that may come ahead in the same service of our country.

I call on all my supporters and followers to join me in the promotion of a constructive national spirit of reconciliation and solidarity.

May the Almighty bless our country and beloved people.

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<sup>63</sup> See generally *Estrada v. Desierto*, G.R. Nos. 146710-15, Mar. 2, 2001; *Estrada v. Macapagal-Arroyo*, G.R. No. 146738, Mar. 2, 2001.

<sup>64</sup> *First Family leaves the Palace*, BUSINESS WORLD INTERNET EDITION, Jan. 20, 2001 (copy on file with author).

MABUHAY!

(Sgd.) JOSEPH EJERCITO ESTRADA<sup>65</sup>

On the same day he signed another letter:

Sir:

By virtue of the provisions of Section 11, Article VII of the Constitution, I am hereby transmitting this declaration that I am unable to exercise the powers and duties of my office. By operation of law and the Constitution, the Vice-President shall be the Acting President.

(Sgd.) JOSEPH EJERCITO ESTRADA<sup>66</sup>

A copy of the letter was sent to House of Representatives Speaker Fuentebella at 8:30 a.m., on January 20.<sup>67</sup> Another copy was transmitted to Senate President Pimentel on the same day although it was received only at 9:00 p.m.<sup>68</sup>

**G. Administrative Matter No. 01-1-05-SC**

On January 22, Gloria Arroyo began discharging the powers and duties as President. On the same day, the Supreme Court issued the following Resolution in Administrative Matter No. 01-1-05-SC:<sup>69</sup>

*A.M. No. 01-1-05-SC – In re: Request of Vice-President Gloria Macapagal-Arroyo to Take her Oath of Office as President of the Republic of the Philippines before the Chief Justice – Acting on the urgent request of Vice-President Gloria Macapagal-Arroyo to be sworn in as President of the Republic of the Philippines, addressed to the Chief Justice and confirmed by a letter to the Court, dated January 20, 2001, which request was treated as an administrative matter, the court Resolved unanimously to confirm the authority given by the twelve (12) members of the Court then present to the Chief Justice on January 20, 2001 to administer*

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<sup>65</sup> Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

the oath of office to Vice-President Gloria Macapagal-Arroyo as President of the Philippines, at noon of January 20, 2001.

This resolution is without prejudice to the disposition of any justiciable case that may be filed by a proper party.

## **H. Arroyo's Letter-Request**

It appears that Vice-President Arroyo had requested Chief Justice Davide to have the oath administered to her as President on January 20, 2001, at noon. The letter was received by facsimile at about half past eleven A.M. on January 20, 2001.<sup>70</sup> Although she had publicly denied that she ever made any request,<sup>71</sup> Associate Justice Artemio Panganiban, Jr. said that Arroyo had called him and said that she would like to have the Court swear her in as President at 12:00 noon.<sup>72</sup> Panganiban had told her that a letter from her requesting the Chief Justice to swear her in was needed.<sup>73</sup> Twenty-six days after Arroyo's denial of the existence of the letter, the letter sent to the Supreme Court was produced:

20 January 2001

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<sup>70</sup> *Id.*, Concurring opinion of Justice Vitug.

<sup>71</sup> TATAD, *supra* note 38, at 519-520. On January 20, 2001, in an interview with ABS-CBN broadcaster Korina Sanchez conducted immediately after the oath-taking in the EDSA Shrine, Arroyo denied that she ever made any request. Arroyo also said that the Supreme Court acted on its own volition in administering the oath to her as President.

SANCHEZ: I understand that you asked for an opinion from the Supreme Court.

ARROYO: No, no, I didn't.

SANCHEZ: Ah, you didn't. Because this was on radio today.

ARROYO: No, no. I didn't ask for an opinion. This . . . this was . . . ahh . . . coming from the Supreme Court of its own volition.

SANCHEZ: Ah, so . . . This has to be made clear, because on radio today somebody had been saying that there was an opinion sought . . .

ARROYO: No.

SANCHEZ: [F]rom your camp.

ARROYO: No.

SANCHEZ: No? That's not true?

ARROYO: No.

SANCHEZ: I see. So it was a surprise that the Supreme Court did this on its own volition?

ARROYO: Yes, yes.

SANCHEZ: I see.

<sup>72</sup> See generally Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001.

<sup>73</sup> *Id.*

THE HONORABLE SUPREME COURT  
Supreme Court Building  
Padre Faura St., Ermita, Manila

Attention: Hon. Hilario G. Davide, Jr.  
Chief Justice

Your Honors:

The undersigned respectfully informs the Honorable Court that Joseph Ejercito Estrada is permanently incapable of performing the duties of his office resulting in his permanent disability to govern and serve his unexpired term. Almost all of his Cabinet members have resigned and the Armed Forces of the Philippines and the Philippine National Police have withdrawn their support for Joseph Ejercito Estrada. Civil society has likewise refused to recognize him as President.

In view of this, I am assuming the position of President of the Republic of the Philippines. Accordingly, I would like to take my oath as President of the Republic of the Philippines before the Honorable Chief Justice Hilario G. Davide, Jr., today, 20 January 2001, at 12:00 noon, at the EDSA Shrine, Quezon City, Metro Manila.

May I have the honor to invite all the members of the Honorable Court to attend the oath taking.

Very truly yours,  
(Sgd.) GLORIA MACAPAGAL-ARROYO<sup>74</sup>

## **I. Arroyo is Acknowledged President**

As President, Arroyo appointed members of her Cabinet as well as ambassadors and special envoys.<sup>75</sup> In a reception or *vin d'honneur* at Malacañang, led by the Dean of the Diplomatic Corps, more than a hundred foreign diplomats recognized the government of respondent Arroyo.<sup>76</sup> U.S. President George W. Bush gave the respondent a telephone call from the White House congratulating her oath taking as President.<sup>77</sup> Both houses of Congress

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<sup>74</sup> TATAD, *supra* note 38, at 530.

<sup>75</sup> See generally Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001.

<sup>76</sup> See generally Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001.

<sup>77</sup> See generally Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001.

likewise extended recognition<sup>78</sup> to her presidency, with her nomination of Senator Guingona as Vice-President being confirmed by both the Senate<sup>79</sup> and the House of Representatives.<sup>80</sup> As President, Arroyo also signed into law various bills transmitted to the Office of the President by Congress.<sup>81</sup> On February 7, 2001, the Senate passed Resolution No. 83 declaring that the impeachment court *functus officio* and terminated.<sup>82</sup> Surveys conducted also purportedly showed Arroyo's wide acceptance as President.<sup>83</sup>

On February 6, 2001, President Estrada filed a Petition for Quo Warranto against President Gloria Macapagal-Arroyo and a Petition for Prohibition against Ombudsman Aniano Desierto.

## II. THE RULE OF LAW

In order to have a good understanding of the basis of criticism of the Estrada decision, a brief discussion on the rule of law is necessary.

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<sup>78</sup> Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001. The House of Representatives passed Resolution No. 175 "expressing the full support of the House of Representatives to the administration of Her Excellency Gloria Macapagal-Arroyo, President of the Philippines." It also approved Resolution No. 176 "expressing the support of the House of Representatives to the assumption into office by Vice-President Gloria Macapagal-Arroyo as President of the Republic of the Philippines, extending its congratulations and expressing its support for her administration as a partner in the attainment of the nation's goals under the Constitution."

<sup>79</sup> *Id.* The Senate adopted Resolution No. 82 confirming the nomination of Senator Guingona. Senators Miriam Defensor-Santiago, Juan Ponce Enrile, and John Osmeña voted "yes" with reservations, citing as reason therefor the pending challenge on the legitimacy of respondent Arroyo's presidency before the Supreme Court.

<sup>80</sup> *Id.* The House of Representatives also approved Senator Guingona's nomination as Vice-President in Resolution No. 178.

<sup>81</sup> *Id.* Among others, she had signed into law the Solid Waste Management Act and the Political Advertising Ban and Fair Practices Act.

<sup>82</sup> *Id.* Senator Miriam Defensor-Santiago stated "for the record" that she voted against the closure of the impeachment court on the grounds that the Senate had failed to decide on the impeachment case and that resolution left open the question of whether Estrada was still qualified to run for another elective post.

<sup>83</sup> *Id.* The Court cited a survey conducted by Pulse Asia, where President Arroyo's public acceptance rating rose from 16% on January 20, 2001 to 38% on January 26, 2001. In another survey cited by the Court, this time conducted by the ABS-CBN/SWS from February 2-7, 2001, results showed that 61% of the Filipinos nationwide accepted President Arroyo as replacement of petitioner Estrada. The survey also revealed that President Arroyo is accepted by 60% in Metro Manila, by also 60% in the balance of Luzon, by 71% in the Visayas, and 55% in Mindanao. Her trust rating increased to 52%. Her presidency is accepted by majorities in all classes: 58% in the ABC or middle-to-upper classes, 64% in the D or mass, and 54% among the E's or very poor class.

## **A. The Rule of Law**

There is no specific definition of the “rule of law,” in much the same way as there is no single meaning attributed to “law.” The rule of law maintains society’s stability by preventing arbitrariness. It is the rule of law which enables the state to exercise political control through principles of conduct. It consists of legal principles, standards, and rules, which are enforced by civil or criminal sanctions.<sup>84</sup>

Traditionally, the rule of law is defined as the principle “that no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land. In this sense the rule of law is contrasted with every system of government based on the exercise by persons in authority of wide, arbitrary or discretionary powers of constraint.”<sup>85</sup> Thus, rule of law may be understood as the absolute supremacy or predominance of law as against arbitrary powers. In this sense, arbitrariness, prerogative, or even the exercise of wide discretionary powers on the part of the government is excluded.<sup>86</sup>

### **a. The Supremacy of the Constitution**

Let justice be done though the heavens may fall.<sup>87</sup> The rule of law is primarily characterized by the supremacy of the Constitution. According to the principle of constitutional supremacy, any act that violates the Constitution shall have no legal effect. Under the rule of

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<sup>84</sup> MIRIAM DEFENSOR SANTIAGO, *POLITICS AND GOVERNMENT* 99 (1999).

<sup>85</sup> WILLIAM J. CHAMBLISS AND ROBERT B. SEIDMAN, *LAW, ORDER AND POWER* 77 (1971).

<sup>86</sup> Alberto T. Muyot, *Amendment No. 6 and the Rule of Law*, 59 *PHIL. L. J.* 140 (1984).

<sup>87</sup> Interview with Dr. Miriam Defensor Santiago, Office of Dr. Miriam Defensor Santiago, Quezon City, Feb. 18, 2003.

law, therefore, every governmental act must follow the letter of the Constitution and any derogation therefrom is consequently unconstitutional and violative of the rule of law.

The Constitution is the basic and paramount law to which all other laws must conform and to which all persons, including the highest officials of the land, must defer.<sup>88</sup> No act shall be valid, however noble its intentions, if it conflicts with the Constitution.<sup>89</sup> Expediency must not be allowed to sap its strength nor greed for power debase its rectitude.<sup>90</sup> Right or wrong, the Constitution must be upheld as long as it has not been changed by the sovereign people lest its disregard result in the usurpation of the majesty of law by the pretenders to illegitimate power.<sup>91</sup>

#### **b. Democracy and Sovereignty**

“The Philippines is a democratic and republican state. Sovereignty resides in the people and all government authority emanates from them.”<sup>92</sup> A government republican in form is one where sovereignty resides in the people and where all government authority emanates from the people.<sup>93</sup> A democracy on the other hand, is a government where the sovereign power resides in and is exercised by the whole body of free citizens, as distinguished from monarchy, anarchy, and oligarchy. In a democracy, every person is presumed equal before the law. This presumption is concretized in the due process and equal protection clauses<sup>94</sup> where each person is presumed to have the same rights and duties as the rest. In a democracy, the vote of one person for instance, carries the same weight and value as the vote of any other person, regardless

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<sup>88</sup> ISAGANI CRUZ, CONSTITUTIONAL LAW 4 (2002).

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*, citing ISAGANI CRUZ, CONSTITUTIONAL LAW 11 (1987).

<sup>92</sup> PHIL. CONST., art. II, § 1 (1987).

<sup>93</sup> JOAQUIN G. BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 52 (1996).

<sup>94</sup> PHIL. CONST., art. III, § 1 (1987). This section reads:

Sec. 1. 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.



of the wealth, education, or other personal circumstances of each.<sup>95</sup> The rule of the people is equated with the rule of the majority because of the presumption of equality of persons, and the will of the majority of them shall be presumed the will of the people.

Under the rule of law, the people rule, but they rule according to law. The Supreme Court had underscored the importance of the rule of law in a democracy:

It is said that in a democracy the will of the people is the supreme law. Indeed, the people are sovereign, but the will of the people must be expressed in a manner as the law and the demands of a well-ordered society require. The rule of law must prevail even over the apparent will of the majority of the people, if that will had not been expressed or obtained, in accordance with the law. Under the rule of law public questions must be decided in accordance with the Constitution and the law.<sup>96</sup>

It is thus unacceptable for the people to exercise their sovereignty in any manner outside the parameters of the Constitution. Hence, the term “sovereignty resides in the people,” according to constitutionalist Joaquin Bernas, is principally expressed in the election process and in the referendum and plebiscite processes<sup>97</sup> as provided by the Constitution.

### **III. DISSECTING THE DECISION: UNRAVELING THE SOPHISTRY**

Under the 1987 Constitution, there are only four modes by which a vacancy in the Office of the President is created, namely in case of death, permanent disability, removal from office, or

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<sup>95</sup> Qualified of course by the age, citizenship, residency and other similar requirements which may be provided by a Constitution or Charter. In the case of the Philippines, these qualifications are provided under Article V, Section 1 of the 1987 Constitution.

<sup>96</sup> Planas v. Commission on Elections, G.R. No. L-35925, Jan. 22, 1973.

<sup>97</sup> II RECORD OF THE CONSTITUTIONAL COMMISSION 316.

resignation.<sup>98</sup> In the case of President Joseph Estrada, the Supreme Court held that a vacancy occurred as a result of his resignation.<sup>99</sup>

In the United States, resignation is defined as the formal renunciation or relinquishment of a public office.<sup>100</sup> Resignation involves a formal notification of relinquishing an office or position.<sup>101</sup> This definition has been adopted by our courts in numerous cases.<sup>102</sup> According to Philippine jurisprudence, to constitute a complete and operative resignation of public office, there must be an intention to relinquish a part of the term, accompanied by the act of relinquishment.<sup>103</sup> Resignation implies an expression by the incumbent in some form, express or implied, of the intention to surrender, renounce, and relinquish his right to the office and its acceptance by competent and lawful authority.<sup>104</sup> Except when the law provides otherwise, resignation may be effected by any method indicative of purpose.<sup>105</sup> In general, it need not be in writing; it may be oral or implied by conduct.<sup>106</sup> But in order for a resignation to be valid and effective, it must be done voluntarily.<sup>107</sup> When procured by fraud or duress, the resignation may be repudiated.<sup>108</sup>

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<sup>98</sup> PHIL. CONST., art. VII, § 8 (1987).

<sup>99</sup> Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001.

<sup>100</sup> HECTOR S. DE LEON AND HECTOR M. DE LEON, JR., THE LAW ON PUBLIC OFFICERS AND ELECTION LAW 354 (2000)

<sup>101</sup> BLACK'S LAW DICTIONARY 1311, (7th ed., 1999).

<sup>102</sup> This definition has been used in both labor and public officer cases. To name a few: Molave Tours Corp. v. National Labor Relations Commission, G.R. No. 112909, Nov. 24, 1995; Triste, Jr., v. Macaraig, Jr., G.R. No. 84113, Jul. 12, 1989.

<sup>103</sup> Gonzales v. Hernandez, G.R. No. L-15482, May 30, 1961.

<sup>104</sup> *Id. citing* Nome v. Rice, 3 Alaska 602, 602 (1909).

<sup>105</sup> DE LEON AND DE LEON, JR., *supra* note 100, at 354-355.

<sup>106</sup> *Id.* at 355.

<sup>107</sup> Ortiz v. Commission on Elections, et al., G.R. No. 78957, June 28, 1988.

<sup>108</sup> ANTONIO B. NACHURA, OUTLINE REVIEWER IN POLITICAL LAW 396 (2002).

It is a rule in our jurisdiction that a strict interpretation should be observed in construing the resignation of Constitutional officials whose removal from office entails an impeachment proceeding, such as the Office of the President.<sup>109</sup>

#### **A. The Totality Test**

The main question brought before the Supreme Court was whether or not President Estrada had resigned. The answer to this question was determined by the Court from the President's "acts and omissions, before, during and after January 20, 2001 or by the totality of prior, contemporaneous and posterior facts and circumstantial evidence bearing a material relevance to the issue."<sup>110</sup>

The decision cited the case of *Gonzales v. Hernandez*,<sup>111</sup> wherein it was held that in resignation, there must be intent to resign and the intent must be coupled by acts of relinquishment. However, nowhere in the *Gonzales* decision was there mention of any doctrine of totality as a mode to determine the existence or non-existence of a resignation by a public official.<sup>112</sup>

In the absence of a resignation letter,<sup>113</sup> the Court considered the different circumstances that transpired before, during, and after Vice-President Gloria Macapagal-Arroyo's oath taking at the EDSA Shrine. Taking cue from the very name of the test, one would reasonably expect the Court to have considered all or the entirety of the facts and circumstances materially relevant to

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<sup>109</sup> *Ortiz v. Commission on Elections*, *supra* note 107. The Supreme Court here held that a stringent interpretation of courtesy resignations must be observed, particularly in cases involving constitutional officials like the petitioner Ortiz whose removal from office entails an impeachment proceeding. The Court applied this rule in a case involving a courtesy resignation, where a resignation letter was written.

<sup>110</sup> *Estrada v. Desierto*, G.R. Nos. 146710-15, Mar. 2, 2001; *Estrada v. Macapagal-Arroyo*, G.R. No. 146738, Mar. 2, 2001.

<sup>111</sup> *Gonzales v. Hernandez*, G.R. No. L-15482, May 30, 1961.

<sup>112</sup> Alan F. Pagua, *Estrada vs. Arroyo: Rule of Law or Rule of Force?*, MALAYA, Nov. 20, 2002, at 7.

the controversy. However, as will be established, the Court failed to properly consider facts and circumstances so materially relevant to the case that had it done so, the outcome would have been drastically different.

**a. What the Court Considered**

Relying heavily on a diary published in a newspaper, a press statement issued after the Macapagal-Arroyo oath taking took place, and the departure of the Estrada family from Malacañang Palace after the said oath taking, the Court concluded that President Estrada had resigned.<sup>114</sup>

**a.1 The Angara Diary, Rules on Evidence and Misappreciation of Facts**

The Supreme Court cited the newspaper-published diary<sup>115</sup> of President Estrada's former Executive Secretary, now Senator, Edgardo Angara, as an "authoritative window on the state of

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<sup>113</sup> Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001. The Court itself stated as a fact that there was no resignation letter from President Estrada.

<sup>114</sup> Estrada v. Desierto, G.R. Nos. 146710-15, Apr. 3, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Apr. 3, 2001 (Resolution). In the April 3, 2001 Resolution, the Court enumerated prior events that built up the irresistible pressure for President Estrada to resign: 1) the expose of Governor Luis Singson on Oct. 4, 2000; 2) the "I Accuse" speech of then Senator Teofisto Guingona in the Senate; 3) the joint investigation of the speech of Senator Guingona by the Blue Ribbon Committee and the Committee on Justice; 4) the investigation of the Singson expose by the House Committee on Public Order and Security; 5) the move to impeach President Estrada in the House of Representatives; 6) the pastoral Letter of Archbishop Jaime Cardinal Sin demanding Estrada's resignation; 7) a similar demand by the CBCP; 8) similar demands for Estrada's resignation by former Presidents Aquino and Ramos; 9) the resignation of then Vice-President Arroyo as DSWD Secretary; 10) the resignation of the members of the Presidential Council of Senior Economic Advisers and of DTI Secretary Mar Roxas; 11) the defection of then Senate President Franklin Drilon and House Speaker Manuel Villar and 47 representatives from the President's LAMP coalition; 12) the transmission of the Articles of Impeachment by Speaker Villar to the Senate; 13) the unseating of Senator Drilon as Senate President and of Representative Villar as Speaker of the House; 14) the impeachment trial; 15) the testimonies of Clarissa Ocampo and former Finance Secretary Edgardo Espiritu in the impeachment trial; 16) the 11-10 vote of the senator-judges denying the prosecutor's motion to open the second envelope which allegedly contained evidence showing that Estrada held a PhP 3.3 billion deposit in a secret bank account under the name "Jose Velarde"; 17) the prosecutor walk out and resignation; 18) the indefinite postponement of the impeachment proceedings to give a chance to the House of Representatives to resolve the issue of resignation of their prosecutors; 19) the rally in the EDSA Shrine and its intensification in various parts of the country; 20) the withdrawal of support of then DND Secretary Orlando Mercado and the chiefs of all the armed services; 21) the same withdrawal of support by then PNP Director General Panfilo Lacson and the major service commanders; 22) the stream of resignations by Cabinet members, undersecretaries, assistant secretaries and bureau

mind”<sup>116</sup> of the President during the events that led to his fall from power. This statement alone has given rise to much criticism as to the Court’s reasoning. According to Senator Francisco Tatad, for the Court to claim that the diary was an “authoritative window on the state of mind” of the President is to assume a power not granted to it by law, by Providence or by its professional expertise.<sup>117</sup> Psychology—especially one practiced at a distance—is not the Court’s field of competence.<sup>118</sup>

### **a.1.1. The Angara Diary is Hearsay**

Evidence is called hearsay when its probative force depends in whole or in part, on the competency and credibility of some persons other than the witness by whom it is sought to produce it.<sup>119</sup> It is a primordial rule that hearsay evidence is inadmissible except when such evidence falls under certain exceptions.<sup>120</sup> The basis for excluding hearsay evidence is the fact that it is not subject to the tests which can ordinarily be applied for the ascertainment of the truth of testimony, since the declarant is not present and available for cross-examination.<sup>121</sup>

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chiefs; 23) President Estrada’s agreement to hold a snap election and opening of the controversial second envelope. These events, the Court said, were also considered in concluding that Estrada had resigned.

<sup>115</sup> Edgardo J. Angara, *Erap’s Final Hours Told*, PHILIPPINE DAILY INQUIRER, Feb. 4-6, 2001.

<sup>116</sup> *Estrada v. Desierto*, G.R. Nos. 146710-15, Mar. 2, 2001; *Estrada v. Macapagal-Arroyo*, G.R. No. 146738, Mar. 2, 2001.

<sup>117</sup> TATAD, *supra* note 38, at 544.

<sup>118</sup> *Id.* Senator Tatad quipped, “Is the Court now trying to tell the world that its members have been given the faculty to read authoritatively what lies in the recesses of men’s minds? How much longer before they tell us they actually grow wings and fly at midnight?”

<sup>119</sup> RICARDO J. FRANCISCO. EVIDENCE 244 (1996).

<sup>120</sup> RULES OF COURT, Rule 130, §§ 37-47. Exceptions to the hearsay rule are as follows: 1) dying declaration; 2) declaration against interest; 3) act or declaration about pedigree; 4) family reputation or tradition regarding pedigree; 5) common reputation; 6) part of *res gestae*; 7) entries in the course of business; 8) entries in official records; 9) commercial lists and the like; 10) learned treatises; and 11) testimony or deposition at a former proceeding.

<sup>121</sup> FRANCISCO, *supra* note 119, at 245.

The Supreme Court has held in numerous cases that newspaper articles are “hearsay evidence, twice removed”<sup>122</sup> and have no probative or evidentiary value,<sup>123</sup> whether objected to or not,<sup>124</sup> unless offered for a purpose other than proving the truth of the matter asserted.<sup>125</sup>

It is quite evident that the diary of Senator Angara published in the Philippine Daily Inquirer is hearsay and therefore inadmissible as evidence. As mandated by a long line of *stare decisis*, the Court should not have given any evidentiary value to the diary. In its April 3, 2001 Resolution,<sup>126</sup> the Court contended the diary was an exception to the hearsay rule for it contained direct statements of Estrada which can be categorized as admissions of a party.<sup>127</sup> The problem with the Court’s reasoning is the fact that the statements alluded to were contained, not in a sworn testimony of a witness, but in a journal *reprinted* in a newspaper article which remains to be “hearsay evidence, twice removed”<sup>128</sup>, or in this case, three times removed.<sup>129</sup> Since the Court had decided to act as a trier of facts in Estrada’s case, when as a rule it only resolves questions of law and does not entertain questions of facts,<sup>130</sup> then it should have ensured that the evidence it was relying on were admissible. The least it could have done was to summon Angara to personally appear before the Court and, under oath, attest to the truth of the contents of his

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<sup>122</sup> State Prosecutors v. Muro, A.M. No. RTJ-92-876, Dec. 19, 1994.

<sup>123</sup> Kapatiran ng mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc., et al v. Commissioner of Internal Revenue, G.R. No. L-81311, June 30, 1988.

<sup>124</sup> State Prosecutors v. Muro, A.M. No. RTJ-92-876, Dec. 19, 1994.

<sup>125</sup> Feria v. Court of Appeals, G.R. No. 122954, Feb. 15, 2000.

<sup>126</sup> Estrada v. Desierto, G.R. Nos. 146710-15, Apr. 3, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Apr. 3, 2001 (Resolution).

<sup>127</sup> *Id.* The Court said the diary was an exception to the hearsay rule under Rule 130, § 26 of the Rules of Court which provides “the act, declaration or omission of a party as to a relevant fact may be given in evidence against him.”

<sup>128</sup> State Prosecutors v. Muro, *supra* note 122; Feria v. Court of Appeals, *supra* note 125.

<sup>129</sup> It is thrice removed because, given that newspaper articles are already “twice removed”, we add the fact that such newspaper article was based on another document, the original copy of the diary.

<sup>130</sup> Sobremonte v. Enrile, et al., G.R. No. L-60602, Sept. 30, 1982. The Supreme Court held that it was not a trier of facts and it will not inquire into the veracity of allegations of maltreatment and violation of Constitutional rights; Lim v. Court of Appeals, G.R. No. L-41979, Feb. 29, 1988. The Supreme Court held that is not a trier of facts and its appellate jurisdiction is confined to the review of questions of law, except where the findings of fact are not supported by the record or are so glaringly erroneous as to constitute a serious abuse of discretion.

published diary so that Estrada and all the parties concerned would have the opportunity to test the veracity of the diary's contents. Fundamental rules of fairness demanded that minimum.

The Court reasoned further that Estrada was estopped from questioning the admissibility of the diary, as he had not objected its use in his pleadings and during the oral arguments of then Secretary of Justice Hernando Perez.<sup>131</sup> The Court seemed to have forgotten its recent February 15, 2000 ruling that newspaper articles amount to hearsay evidence and such evidence are not only inadmissible but without any probative value at all, *whether objected to or not*.<sup>132</sup> According to the Court's own ruling, it was not incumbent upon Estrada to object to its admissibility. Moreover, Estrada had constantly questioned the use of the diary in his pleadings, citing jurisprudence ruling on the inadmissibility of newspaper articles for being hearsay,<sup>133</sup> so it is difficult to understand why he would be deemed as to have not objected to its use and admissibility.

#### **a.1.2. Misappreciation of Facts**

However, notwithstanding its hearsay character and consequent inadmissibility, for one reason or another, the Court decided to cite certain excerpts from the serialized diary to support its finding that there was resignation. The Court considered President Estrada's call for a snap election for President in May 2001 where he would not be a candidate as an indicium that he had intended to give up the presidency even at that time.<sup>134</sup> Assuming the Court was correct in saying that there was intent on the part of the President to give up the presidency, it is clear that

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<sup>131</sup> Estrada v. Desierto, G.R. Nos. 146710-15, Apr. 3, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Apr. 3, 2001 (Resolution).

<sup>132</sup> Feria v. Court of Appeals, G.R. No. 122954, Feb. 15, 2000.

<sup>133</sup> Petitioner's Omnibus Motion, Mar. 17, 2001; Petitioner's Second Motion for Reconsideration, Apr. 4, 2001.

<sup>134</sup> Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001, citing the Angara diary. According to the diary, an hour after President Estrada knew of AFP Chief of Staff

he did not intend to give up the presidency on January 20, 2001 when Arroyo was sworn in as President, but rather in May 2001.

President Estrada's non-objection to the suggestion for a graceful and dignified exit,<sup>135</sup> and his statement to Secretary Angara that he had been guaranteed by Gen. Reyes of five days to a week in Malacañang,<sup>136</sup> were regarded by the Court as "proof that petitioner (Estrada) had reconciled himself to the reality that he had to resign."<sup>137</sup> The Court said that at this point, Estrada was already concerned with the five-day grace period he could stay in the Palace.<sup>138</sup> On the contrary, there was no mention by Estrada that he was to resign in five days. Moreover, when the President said, "*Pagod na pagod na ako. Ayoko na, masyado nang masakit. Pagod na ako sa red tape, bureaucracy, intriga.* (I am very tired. I don't want any more of this – it's too painful. I'm tired of the red tape, the bureaucracy, the intrigue.) I just want to clear my name, then I will go,"<sup>139</sup> the Court states that this statement by the President was *high-grade evidence* that he had resigned.<sup>140</sup> Again, nowhere in this statement can it be inferred that Estrada would resign. He may have felt exhausted and exasperated about the situation but he never said he would resign. Why the Court would describe such a vague and equivocal statement, and from a newspaper source at that, as "high-grade evidence" is beyond the authors.

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Gen. Reyes' withdrawal of support and exclaimed "*Ed, seryoso na ito. Kumalas na si Angelo.*" (Ed, this is serious, Angelo has defected), he had decided to call for a snap election.

<sup>135</sup> *Id.*, citing the Angara diary. At 9:30 PM, Senator Pimentel repeated his earlier suggestion to the President of making a graceful and dignified exit.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*



### a.1.3. The Res Inter Alios Acta Doctrine

When former President Ramos called Secretary Angara to discuss a peaceful and orderly transfer of power to which Secretary Angara had agreed,<sup>141</sup> the Court said that at this point, the resignation of Estrada was implied.<sup>142</sup> The difficulty in accepting the assertion that there was an implied resignation at this point is the fact that it was not Estrada who had agreed to a peaceful and orderly transfer of power – it was Angara who had agreed. According to the doctrine *res inter alios acta alteri nocere non debet*, the rights of a party cannot be prejudiced by an act, declaration, or omission of another, except as provided for by the Rules of Court.<sup>143</sup> The Court argues that Angara’s act of agreeing to the suggestion of President Ramos was an exception to the *res inter alios acta* rule, admission by a co-partner or agent under Rule 130, Section 29<sup>144</sup> of the Rules of Court.<sup>145</sup> The Court reasoned that Executive Secretary Angara was an alterego of the President; he was the “Little President” and he was authorized to act for Estrada in the critical hours and days before he abandoned the Palace, and thus Angara’s admissions during that time bound the President.<sup>146</sup>

The Court was rather hasty in concluding that Angara’s declarations came within the purview of admission by agent. An essential requisite is missing – the Rules expressly state that such admissions may be given in evidence against the party *after such agency is proven by*

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<sup>141</sup> *Id.*, citing the Angara diary.

<sup>142</sup> *Id.*

<sup>143</sup> RULES OF COURT, Rule 130, § 28.

<sup>144</sup> RULES OF COURT, Rule 130, § 29. Section 29 of the Rules of Court provides:

Sec. 29 *Admission by co-partner or agent* – The act or declaration of a partner or agent of the party within the scope of his authority and during the existence of the partnership or agency, may be given in evidence against such party after the partnership or agency is shown by evidence other than such act or declaration. The same rule applies to the act or declaration of a joint owner, joint debtor, or other person jointly interested with the party.

<sup>145</sup> *Estrada v. Desierto*, G.R. Nos. 146710-15, Apr. 3, 2001; *Estrada v. Macapagal-Arroyo*, G.R. No. 146738, Apr. 3, 2001 (Resolution).

<sup>146</sup> *Id.*

evidence other than the admission itself.<sup>147</sup> It is thus necessary that *the agency be proven by other evidence before* the admissions of an agent can be held against the principal. In President Estrada’s case, no other evidence was relied upon by the Court in holding that the President was bound by Angara’s declarations other than the newspaper-published Angara diary. A condition to the introduction of the declarations of one who is alleged to have been an agent is that the agency must be proved *aliunde* and not by the declarations themselves.<sup>148</sup> The declarations of the alleged agent are not competent to prove the existence of the relation of the principal and agent although they are accompanied by acts purporting to be acts of agency.<sup>149</sup>

If the Court, in saying that Executive Secretary Angara, being the alter-ego of the President and was the Little President, was implying that Angara’s being Executive Secretary was its proof of the existence of the agency, then such reasoning is troubling. It is in effect saying that an Executive Secretary has the power, as Executive Secretary, to resign the presidency in behalf of the President or to enter into negotiations to secure the resignation of the President. Though it is granted that the Executive Secretary may be considered an “agent” under the theory of qualified political agency, the powers exercisable by the Executive Secretary pertains to the executive power conferred in the President by the Constitution and by law. Under this doctrine, as the President cannot be expected to exercise his control powers all at the same time and in person, he will have to delegate some of them to his Cabinet members.<sup>150</sup> The powers exercisable by Cabinet members, including the Executive Secretary, do not include powers to be exercised in “cases where the Chief Executive is required by the Constitution or the

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<sup>147</sup> RULES OF COURT, Rule 130, § 29.

<sup>148</sup> FRANCISCO, *supra* note 119, at 194, citing 1 JONES, EVIDENCE 485-486 (4th ed.).

<sup>149</sup> *Id.*

<sup>150</sup> Carpio v. Executive Secretary, et al, G.R. No. 96409, Feb. 14, 1992.

law to act in person or the exigencies of the situation demand that he act personally.”<sup>151</sup> The act of resignation by a President is a personal act, in the same vein that the assumption to office by a President is a personal act. Thus, even if Angara was acting as an ordinary agent during the negotiations, he could not resign the President either directly or by declaration. Even if Angara was acting as an agent in the civil law sense, his act of agreeing to terms and conditions set by the opposition would not be binding upon Estrada. This is simply because the act of resignation is a purely personal act, and cannot be delegated or effected by a person in behalf of another. Angara had acted beyond the scope of his authority and his declarations will not bind his principal under the admission by agent exception.

Moreover, even assuming that Angara had been acting as President Estrada’s agent within the contemplation of the admission by agent exception, President Estrada would still not be bound by Angara’s admissions on resignation, if indeed he had made such admissions. A cursory reading of the diary reveals that it contained express statements that there was no resignation at all.<sup>152</sup> The proposed resignation of President Estrada was not to take place unless some conditions were met. When General Reyes notified Angara that the Supreme Court had decided to administer the oath on Gloria Macapagal-Arroyo as President, the conditions precedent for the proposed resignation never came to be and were never agreed upon.<sup>153</sup> Angara had instructed Presidential Management Staff (PMS) Head Macel Fernandez to delete the provision on resignation in the agreement, as it was already moot and academic.<sup>154</sup> It was evident that no resignation took place.

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<sup>151</sup> Villena v. Secretary of Interior, 67 Phil. 451, at 463 (1939).

<sup>152</sup> Edgardo J. Angara, *The Resignation that Never Was*, PHILIPPINE DAILY INQUIRER, Feb. 6, 2001, at A1.

<sup>153</sup> Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001, citing the Angara diary.

<sup>154</sup> *Id.*

Thus, the Court, in using the Angara diary, violated not only rudimentary rules and principles on evidence, but grossly misinterpreted the contents of the diary itself.

**a.2. The Estrada Press Statement and the Departure from Malacañang**

Although the Court did not treat the issued press statement<sup>155</sup> as President Estrada's resignation letter,<sup>156</sup> it held that the statement was proof of his resignation. The Court ruled that President Estrada's press statement and his family's departure from the Palace on the afternoon of January 20, 2001 confirmed his resignation from office and these were overt acts which leave no doubt that Estrada had resigned.<sup>157</sup> This is yet another flawed conclusion by the Court.

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<sup>155</sup> Statement from President Joseph Estrada, Jan. 20, 2001 (copy on file with author). The statement reads:  
STATEMENT FROM PRESIDENT JOSEPH EJERCITO ESTRADA

At twelve o'clock noon today, Vice-President Gloria Macapagal-Arroyo took her oath as President of the Republic of the Philippines. While along with many other legal minds of our country, I have strong and serious doubts about the legality and constitutionality of her proclamation as President, I do not wish to be a factor that will prevent the restoration of unity and order in our civil society.

It is for this reason that I now leave Malacañang Palace, the seat of the presidency of this country, for the sake of peace and in order to begin the healing process of our nation, I leave the Palace of our people with gratitude for the opportunities given to me for service to our people. I will not shirk from any future challenges that may come ahead in the same service of our country.

I call on all my supporters and followers to join me in the promotion of a constructive national spirit of reconciliation and solidarity.

May the Almighty bless our country and beloved people.

MABUHAY!

(Sgd.) JOSEPH EJERCITO ESTRADA.

<sup>156</sup> *Id.* The Court said: "In the cases at bar, the facts shows that petitioner did not write any formal letter of resignation before he evacuated Malacañang Palace in the afternoon of January 20, 2001 after the oath-taking of respondent Arroyo."

<sup>157</sup> *Estrada v. Desierto*, G.R. Nos. 146710-15, Apr. 3, 2001; *Estrada v. Macapagal-Arroyo*, G.R. No. 146738, Apr. 3, 2001 (Resolution). In the March 2nd Decision, the Court ruled that, in Estrada's press statement, (1) he acknowledged the oath-taking of the respondent as President of the Republic albeit with the reservation about its legality; (2) he emphasized he was leaving the Palace, the seat of the presidency, for the sake of peace and in order to begin the healing process of our nation. He did not say he was leaving the Palace due to any kind of inability and he was going to re-assume the presidency as soon as the disability disappears; (3) he expressed his gratitude to the people for the opportunity to serve them. Without doubt, he was referring to the past opportunity given him to serve the people as President; (4) he assured that he will not shirk from any future challenge that may come ahead in the

Assuming that these were indeed the overt acts of resignation, how was it possible for the Court to have granted Chief Justice Davide the authority to administer the oath as president to then Vice-President Gloria Macapagal Arroyo on the morning of January 20, 2001 if there was yet no confirmation that Estrada had resigned as President at that time? How was it possible for the Court to have known on the *morning* of January 20, 2001, when it had deliberated and decided to grant Arroyo's request, that Estrada would "resign" on the *afternoon* of that day? Remember that the oath taking took place *before* these two acts occurred.

Moreover, the Court itself said that resignation is a factual question and its elements are beyond quibble; there must be an intent to resign and the intent must be coupled by acts of relinquishment.<sup>158</sup> If we are to accept the contention that Estrada had indeed exhibited intent to resign during the negotiations prior to January 20, 2001, and that the press statement and the departure from Malacañang were the overt acts of resignation, then the act of resignation was not completed until the occurrence of the two overt acts mentioned. Apart from these two "overt acts", the Court never mentioned any other act of relinquishment. This necessarily means that President Estrada had not resigned when Vice-President Arroyo took the oath as President for the simple reason that at that moment, the overt acts referred to by the Court had not happened yet. If Estrada had not resigned, there would be no vacancy in the Office of the President. If there was no vacancy, then the Court did not have any basis in fact and in law to authorize the Chief Justice to administer the oath as President on Vice-President Macapagal-Arroyo. And consequently, if there was no legal or factual basis for the Court to grant the authority to

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same service of our country. Petitioner's reference is to a future challenge after occupying the office of the president which he has given up; and (5) he called on his supporters to join him in the promotion of a constructive national spirit of reconciliation and solidarity. Certainly, the national spirit of reconciliation and solidarity could not be attained if he did not give up the presidency. The press release was petitioner's valedictory, his final act of farewell. His presidency is now in the past tense.

<sup>158</sup> Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001, *citing* Gonzales v. Hernandez, G.R. No. L-15482, May 30, 1961.

administer such oath, then the oath taking of Vice-President Macapagal-Arroyo as President was unconstitutional and therefore a complete nullity.

In his Omnibus Motion, President Estrada asserted that it was fear of bloodshed and the safety of his person and family that made him decide to leave the Palace.<sup>159</sup> He also explained that the statement he had issued was a call for sobriety in the face of clear and present danger from a threatening mob outside the Palace.<sup>160</sup> It was not an act of relinquishing the presidency. The Court belittled Estrada's expressed fears, saying that the Malacañang ground was fully protected by the Presidential Security Group armed with tanks and high-powered weapons.<sup>161</sup> The Court then cited the assurances of General Reyes that no harm would befall the President as he left the Palace and the fact that no actual physical harm was inflicted upon Estrada or his family.<sup>162</sup> Thus, the Court held, the voluntariness in President Estrada's resignation could not be said to have been vitiated by the pressure exerted upon him.<sup>163</sup>

President Estrada never said he had resigned. In fact, it is his principal contention that he never resigned. So the issue of vitiated voluntariness is irrelevant. But assuming *arguendo*, that Estrada had indeed resigned, the Court's conclusion that there was lack of sufficient duress to render the resignation voidable and revocable was erroneous. There was more than sufficient duress. Any reasonable man, if placed in the same situation as Estrada at that time, would feel not only tremendous pressure but also fear of the clear and present danger of violence. Joseph Estrada was the elected President of the Philippines and his entire military and police force had just withdrew support from him. They no longer recognized him as President of the Republic and, at any time, they could use all the force necessary to have him vacate the Palace so their

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<sup>159</sup> Petitioner's Omnibus Motion, Mar. 17, 2001.

<sup>160</sup> *Id.*

<sup>161</sup> *Estrada v. Desierto*, G.R. Nos. 146710-15, Apr. 3, 2001; *Estrada v. Macapagal-Arroyo*, G.R. No. 146738, Apr. 3, 2001 (Resolution).

newly recognized Commander-in-Chief could occupy it. President Estrada had no other protection apart from the Presidential Security Group (PSG) *vis a vis* the angry Anti-Estrada mob outside the Palace gates, the entire AFP, and the PNP. He only had eleven tanks and a handful of PSG members to protect him, as opposed to the entire arsenal of the military and police force. At that precise moment, emotions were still running high and had President Estrada refused to vacate the Palace, violence would have definitely ensued, as the PSG would have been bound to defend Malacañang. In addition, according to the same Angara diary upon which the Court had relied, by 11:00 A.M. of January 20, 2001, the Palace received reports from radio commentators that security forces have allowed Anti-Estrada rioters to proceed to Mendiola and the PSG reacted by arming civilians inside the Palace.<sup>164</sup> The Anti-Estrada marchers had smashed the police barricades and succeeded in penetrating an area just 200 meters from the Palace's Main Gate 7.<sup>165</sup> Four of the PSG's eleven tanks were sent out to meet any incoming hostile force.<sup>166</sup> From his residence, the President saw what was happening and recalled the tanks in order to avoid any bloodshed.<sup>167</sup> It can be seen that there was present a threat on the security of the President and an impending bloody and violent encounter between the PSG and the protesters, possibly even the AFP and PNP. Thus, if by his act of leaving the Palace he was considered to have resigned, then such resignation could be repudiated on the basis of duress.

General Reyes' assurance that no harm would befall the President is no justification for the argument raised by the Court that there was lack of sufficient duress. Less than 24 hours before January 19, 2001, when General Reyes defected, President Estrada was convinced of his

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<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> TATAD, *supra* note 38, at 513, citing the Angara diary.

<sup>165</sup> *Anti-Estrada forces now 200 meters away from Palace*, *supra* note 55.

<sup>166</sup> TATAD, *supra* note 164.

<sup>167</sup> *Id.* Angara recalls the President as saying "I will not have the blood of our people on my hands."

loyalty.<sup>168</sup> On a January 17, 2001 meeting, General Reyes assured President Estrada that “everything was under control.”<sup>169</sup> On the morning of January 19, 2001, Defense Secretary Orlando Mercado even assured Malacañang that the military is “100 percent secure.”<sup>170</sup> But the swift events would later reveal that there was no such loyalty or control, nor was there any security in the military.<sup>171</sup> Reliance on Reyes’ assurances does not mean that there was no threat. In fact, why would Reyes be giving such assurances when there was indeed no threat in the first place? Reyes’ assurances indicate President Estrada’s anxiety of the whole situation. Furthermore, and more importantly, it would be foolish to believe or to expect that anyone would rely on the assurances of a person who had just betrayed his confidence and trust by treacherously stabbing him in the back.

The fact that President Estrada was not actually injured during his last hours in the Palace does not mean that there was no cause for worry of an attack. One does not need to see actual exchange of gunfire or blood being spilled in the streets to know that there was a clear and present danger of violence obtaining at that moment. President Estrada’s explanation as to why he left the Palace is more credible than the interpretation of the Court.

Furthermore, it is incorrect to equate the act of leaving the Palace of Malacañang as an overt act of resignation. When President Quezon left not only the Presidential Palace but also the Philippine Islands during the Japanese occupation, he was neither considered to have resigned nor abandoned the Office of the President.<sup>172</sup> Leaving the presidential residence given

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<sup>168</sup> TATAD, *supra* note 38, at 500.

<sup>169</sup> ARILLO, *supra* note 1, at 22.

<sup>170</sup> *Id.*, at 501.

<sup>171</sup> On January 19, 2001, the military defected. AFP Chief of Staff Angelo Reyes, along with Secretary Mercado, and other high-ranking AFP officials joined the Anti-Estrada crowd in the EDSA Shrine and announced their withdrawal of support.

<sup>172</sup> *Co Kim Cham v. Valdez Tan Keh*, G.R. No. L-5, Sept. 17, 1945. The Supreme Court had considered the government in exile of President Manuel L. Quezon to be the *de jure* government during the Japanese occupation.



the conditions prevailing cannot be considered as leaving the presidency itself. One is never to be blamed for leaving a house when an approaching fire threatens to raze it down.<sup>173</sup>

Why was it so difficult for the Court to accept President Estrada's explanation that the press statement and his leaving the Palace were steps to avert bloodshed? This explanation is consistent with his claim that he never resigned. If the very Chief Justice of the Court can invoke this reason for the rather hasty oath taking of Arroyo,<sup>174</sup> then why cannot the President of the Philippines, who was under threat of an imminent attack?

**b. What the Court Did Not Consider**

The Court failed to consider Senator Angara's affidavit wherein he categorically stated that in his diary, he never said nor intimated that President Estrada had resigned. Nor did the Court consider the two Estrada letters transmitted to the Senate President and the House of Representatives. Worse, the Court, using the political question doctrine, turned a blind eye to the patent unconstitutional acts of Congress in extending recognition to the presidency of Gloria Macapagal-Arroyo and at the same time citing these acts as proof that Estrada no longer had a claim to the presidency.

It is also curious to note that the Court never answered Estrada's repeated allegations that Chief Justice Hilario Davide, Jr. had made a categorical statement on the morning of January 20, 2001, that he was swearing in Arroyo not as President but as *Acting* President.<sup>175</sup>

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<sup>173</sup> Petitioner's Omnibus Motion, Mar. 17, 2001.

<sup>174</sup> *Supreme Court meets on legality of Arroyo's oath-taking*, *supra* note 61.

<sup>175</sup> Petitioner's Petition for Quo Warranto, Feb. 6, 2001; Petitioner's Memorandum, Feb. 20, 2001; Petitioner's Omnibus Motion, Mar. 17, 2001; Petitioner's 2nd Motion for Reconsideration, Apr. 4, 2001.

## b.1. The Angara Affidavit

An integral part of President Estrada's Omnibus Motion, the Angara affidavit was presented to the Court.<sup>176</sup> Angara clarified in his affidavit that no resignation ever took place.<sup>177</sup>

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<sup>176</sup> *Id.* The affidavit reads:

### AFFIDAVIT

I, EDGARDO J. ANGARA, Filipino, of legal age, married and with office address c/o ACCRA Law Office, 122 Gamboa St., Legaspi Village, Makati City, after being duly sworn in accordance with law, do hereby depose and state:

1. I took my oath as Executive Secretary on 6 January 2001.
2. In the performance of my duties, I was at Malacañang Palace with President Joseph Ejercito Estrada for the most part of January 19 to 20, 2001.
3. At 1:20 in the afternoon of 19 January 2001, President Estrada advised me that General Angelo Reyes, Chief of Staff of the Armed Forces of the Philippines (AFP), had withdrawn support from President Estrada. Later in the afternoon, the Philippine National police (PNP), likewise withdrew their support from President Estrada.
4. Around 11:00 in the evening of 19 January 2001, I received a call from Secretary Renato de Villa asking that I meet him for a round of exploratory talks.
5. Through January 19 to 20, 2001, I twice met with Secretary de Villa and his panel of negotiators to see if we could break the impasse in the best possible manner. I likewise made numerous phone calls to General Reyes and former Finance Secretary Jose T. Pardo, who was also facilitating the negotiating process, in order to define the parameters of a negotiated peace.
6. By 11:00 in the morning of 20 January 2001, General Reyes and I had reached a consensus on five conditions precedent for a peaceful transition, namely:
  - 6.1 Resignation by way of a resignation letter of the President dated 20 January, 2001, which resignation would take effect on 24 January 2001;
  - 6.2 A five-day transition process commencing 20 January 2001;
  - 6.3 Guarantee of security of the President and his families;
  - 6.4 Functioning of the AFP and PNP under the Vice-President;
  - 6.5 Request by both parties for the impeachment court to open the second envelope.
7. At 11:20 in the morning of 20 January 2001, General Reyes informed me that Vice-President Gloria Macapagal Arroyo had already decided to take her oath as President before the Chief Justice Hilario Davide, Jr. at 12:00 noon of that day.
8. President Estrada did not, and has not, resigned from the presidency, in that:
  - 8.1 The parties never reached an agreement on the five conditions precedent for a peaceful transition, much less were these five conditions precedent ever fulfilled or complied with;
  - 8.2 No resignation letter was ever signed by President Estrada; and
  - 8.3 Absent an agreement on the five conditions precedent to a peaceful transition, President Estrada had no intention whatsoever to relinquish the presidency.
9. On 21 January 2001, I learned that President Estrada had transmitted a letter to former Speaker Arnulfo Fuentebella invoking Section 11, Article VII of the Constitution which covers temporary incapacity of the President to discharge his functions. The letter to Speaker Fuentebella is marked as received by him personally on 20 January 2001 at 8:30 in the morning. An identical letter was received by Senate President Aquilino Pimentel, with marks indicating his office received the letter on 20 January 2001 at 9:00 in the evening.
10. From February 4 to 6, an account of my observations and impressions of the events in Malacañang Palace on January 19 to 20, 2001 was published in three parts by the Philippine Daily Inquirer.

President Estrada never resigned as no agreement on the conditions precedent to the proposed resignation was ever reached. The affidavit also dispels any assumption that Angara had made a declaration in his diary that Estrada had resigned. It is interesting to note that the Court never mentioned the affidavit of the very author of the diary upon which the decision was based. If the Court had given much credence on an unsworn newspaper-published diary, then it should have all the more given weight and evidentiary value to the sworn statement of its author. But contrary to reasonable expectations, the Court treated the affidavit as though it did not exist.

## **b.2. Ignoring the Estrada Letter**

President Estrada alleges that he had never resigned as President but is temporarily unable to act as President. Pursuant to Article VII, Section 11 of the Constitution,<sup>178</sup> he wrote a

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11. I am executing this affidavit in view of the misinterpretations of the published account of my observations and impressions of the events of January 19 to 20, 2001.

(Sgd.) Edgardo J. Angara  
Affiant

SUBSCRIBED AND SWORN to before me this 19<sup>th</sup> day of March, 2001, affiant exhibiting to me his CTC No. 04181462 issued on February 28, 2001 at Makati City.

<sup>177</sup> *Id.* Paragraph 8 of the Angara affidavit.

<sup>178</sup> The 1987 Constitution provides:

SEC. 11. Whenever the President transmit to the President of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice-President as Acting President.

Whenever a majority of all the Members of the Cabinet transmit to the President of the Senate and to the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice-President shall immediately assume the powers and duties of the office as Acting President

Thereafter, when the President transmits to the President of the Senate and to the Speaker of the House of Representatives his written declaration that no inability exists, he shall reassume the powers and duties of his office. Meanwhile, should a majority of all the Members of the Cabinet transmit within five days to the President of the Senate and to the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Congress shall decide the issue. For that purpose, the Congress shall convene, if it is not in session, within forty-eight hours, in accordance with its rules and without need of call.

If the Congress, within ten days after receipt of the last written declaration, or, if not in session within twelve days after it is required to assemble, determines by a two-thirds vote of both Houses, voting separately, that the President is unable to discharge the powers and duties of his

letter<sup>179</sup> declaring his temporary incapacity and sent identical copies to both chambers of Congress.

### **b.2.1. “Wrapped in Mystery”**

The Court characterized the letter as “wrapped in mystery.”<sup>180</sup> The Court refused to consider the letter because of the failure of Estrada to discuss the circumstances that led to its preparation, and because there was not the slightest hint of its existence when he issued his final press release.<sup>181</sup> The Court further argued: “Under any circumstance, however, the mysterious letter cannot negate the resignation of the petitioner. If it was prepared before the press release of the petitioner (Estrada) clearly showing his resignation from the presidency, then the resignation must prevail as the later act. If, however, it was prepared after the press release, still it commands scant legal significance. Petitioner’s (Estrada’s) resignation from the presidency cannot be subject to a changing caprice nor of a whimsical will especially if the resignation is the result of his repudiation by the people.”<sup>182</sup>

This pronouncement of the Court is disturbing to say the least. Why the difference in the treatment of the letter and the press statement? Why give more legal weight and significance to

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office, the Vice-President shall act as President; otherwise, the President shall continue exercising the powers and duties of his office.

PHIL. CONST., art. VII, § 11 (1987).

<sup>179</sup> The letter reads:

20 January 2001

Sir:

By virtue of the provisions of Section 11, Article VII of the Constitution, I am hereby transmitting this declaration that I am unable to exercise the powers and duties of my office. By operation of law and the Constitution, the Vice-President shall be the Acting President.

(Sgd.) JOSEPH EJERCITO ESTRADA.

<sup>180</sup> Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001, citing the Angara diary, where Angara said that the letter came from Asst. Secretary Remulla; that he and Political Adviser Lito Banayo had opposed the letter and that PMS Head Macel Fernandez believed President Estrada would not sign the letter.

the press statement when the letter was an official act of the executive, a co-equal department of the judiciary? In the same manner that the press statement never mentioned the existence of the letter sent to Congress, it never mentioned any act of resignation. The letter, on the other hand, stated clearly and unequivocally the fact that the President was temporarily unable to act as President. The letter was transmitted to both houses of Congress and was received by the Senate President and the Speaker of the House, in accordance with the Constitution.<sup>183</sup> The Court refused to give the letters consideration arguing that President Estrada never hinted at the existence or on the preparation of these letters. Why did the Court refuse to accept the letter's existence when both the Speaker of the House and the Senate President had acknowledged its receipt?<sup>184</sup> By describing the letter as "wrapped in mystery," did the Court mean to say that it was non-existent or that its existence was doubtful? The letter *does* exist and the transmitted copies of it are now of public record in the custody of both houses of Congress. Even assuming that President Estrada had not mentioned its existence or its preparation, the letters are public records. In fact, the transmitted letters are considered official acts of the executive department of the Philippines, which are subject to *mandatory* judicial notice.<sup>185</sup> President Estrada was therefore not bound to prove the letter's existence to the Court. Was the Court of the impression that the letter was not an official act of the executive because, in accordance with its thesis, Estrada was no longer President as he had resigned? If we follow this reasoning and we assume

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<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> PHIL. CONST., art. VII, § 11 (1987).

<sup>184</sup> Speaker Fuentebella personally received the letter at 8:30 A.M. on Jan. 20, 2001, while Senate President Pimentel received it on 9:00 P.M. on the same day.

<sup>185</sup> RULES OF COURT, Rule 129, § 1. The Section provides:

Section 1. *Judicial notice, when mandatory.* – A court shall take judicial notice, without the introduction of evidence, the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.

that President Estrada had indeed resigned, then the letter would still be an official act of the Executive because at the time he had transmitted it, he was still President. Recall that the Supreme Court itself held that the press statement, as proof of resignation, would prevail as a later act, and therefore, the letter being made prior to the press statement, it was an official act of the executive subject to mandatory judicial notice. Thus, the Court had no reason for not taking into consideration the letter, nor was the Court correct in implying that its existence should have been proven by Estrada for under its own promulgated Rules. It was bound to take judicial notice of the letters without the need for introduction of evidence.

The Court insisted that the letters deserve scant legal significance because Estrada had already resigned, whether it was prepared prior or posterior to the final press statement, arguing that the press statement would prevail over the letter since it clearly showed his resignation and his resignation cannot be the subject of a changing caprice nor of a whimsical will especially if the resignation is the result of his repudiation by the people.<sup>186</sup> Contrary to the opinion of the Court, the press statement was not evidence that “clearly showed” his resignation. It was not a resignation letter and the Court recognized this as a fact. Nowhere in the press statement was there any mention that Estrada had resigned. As discussed earlier, the statement was not an overt act of resignation. Rather, it was a call for sobriety to pacify high emotions.<sup>187</sup>

Furthermore, it was inappropriate for the Court to insinuate that Estrada’s resignation, assuming that there was a resignation, was because of “his repudiation by the people.” The term “people” is at best, ambiguous. Was the Court referring to the EDSA II crowd and the Anti-Estrada protesters as the “people” who had repudiated Estrada’s presidency? Or was it referring to the 10.7 million Filipinos who elected Estrada in 1998? Was the Court implying that the

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<sup>186</sup> Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001.

“people” have already decided that Estrada must resign and therefore, he is deemed to have done so? It is hardly proper for the Court to invoke the repudiation by the “people” argument in such a contentious issue. The Court was in no position to determine for a fact that the “people” had already repudiated Estrada as President, in the same manner that it was in no position to determine to the point of judicial certainty<sup>188</sup> that the people had overwhelmingly ratified the 1973 Constitution in *Javellana v. Executive Secretary*.<sup>189</sup> If Estrada was repudiated by the “people” during EDSA II, then it can be said that this repudiation was in turn repudiated by those who were in EDSA III. Just as EDSA II is a part of Philippine history, so is EDSA III,<sup>190</sup> where more people than those in EDSA II took to the streets,<sup>191</sup> but this time to support President Estrada and to call for Arroyo’s stepping down from the presidency. If “the people” the Court referred to in the decision were acting as the sovereign, then there is no reason why those in EDSA III would not be considered as the sovereign. After all, what is sauce for the goose is sauce for the gander.

### **b.2.2. A Political Question?**

President Estrada contended that it was not the Vice-President but Congress, which had the ultimate authority under the Constitution to determine whether or not he was unable to act as

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<sup>187</sup> Petitioner’s Omnibus Motion, Mar. 17, 2001.

<sup>188</sup> Separate opinion of Justice Ynares-Santiago, *Estrada v. Desierto*, G.R. Nos. 146710-15, Mar. 2, 2001; *Estrada v. Macapagal-Arroyo*, G.R. No. 146738, Mar. 2, 2001, citing the opinions of Messrs. Justice Makalintal and Castro in *Javellana v. Executive Secretary*, 50 SCRA 30 (1973).

<sup>189</sup> 50 SCRA 30 (1973).

<sup>190</sup> Sometimes referred to as the “April 2001 EDSA gathering” or the May 1, 2001 Siege” by those who refuse to recognize that its participants, like those of EDSA I and II, were fighting for their own principles and causes. This was because most of the participants of EDSA III came from the marginalized sectors of society, composed of the poor and were not as wealthy as EDSA II participants, and according to some, were the “dumb *masa*,” illiterate and “non-thinking,” and therefore incapable of understanding social and political issues.

<sup>191</sup> TATAD, *supra* note 38, at 554.

President pursuant to Article VII, Section 11 of the 1987 Constitution.<sup>192</sup> The Court, in the guise of sustaining his contention, held that both houses of Congress had rejected his claim of inability.<sup>193</sup> The ponencia cited that despite receipt of the letter, both houses recognized Arroyo as President and had confirmed her nomination of Senator Guingona as Vice-President,<sup>194</sup> and both houses started sending bills to be signed into law by Arroyo as President.<sup>195</sup> Implicitly clear in that recognition is the premise that the inability of the Estrada was no longer temporary.<sup>196</sup> The Court further held that Estrada was bound by his own submission to the authority of Congress in determining his incapability of performing his functions,<sup>197</sup> and its alleged erroneous exercise cannot be corrected by the Court under the political question doctrine.<sup>198</sup> According to the Court, its “political judgment may be right or wrong but Congress is answerable only to the people for its judgment” and that the doctrine of separation of powers constitutes an insuperable bar against its exercise of judicial review.<sup>199</sup> The Court held that Estrada’s claim of temporary

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<sup>192</sup> Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001.

<sup>193</sup> *Id.*

<sup>194</sup> The House of Representatives passed House Resolution 176 on January 24, 2001, which states: “Resolution Expressing the Support of the House of Representatives to the Assumption into Office by Vice-President Gloria Macapagal-Arroyo as President of the Republic of the Philippines, Extending its Congratulations and Expressing its Support for Her Administration as a Partner in the Attainment of the Nation’s Goals under the Constitution.” On February 7, 2001, the House of Representatives passed House Resolution 178, which states: “Resolution Confirming President Gloria Macapagal-Arroyo’s Nomination of Senator Teofisto T. Guingona, Jr. as Vice-President of the Republic of the Philippines.” On February 7, 2001, the Senate passed Senate Resolution 82, which states: “Resolution Confirming President Gloria Macapagal-Arroyo’s Nomination of Sen. Teofisto T. Guingona, Jr. as Vice-President of the Republic of the Philippines.” Senators Miriam Defensor-Santiago, Juan Ponce Enrile, and John Osmeña voted “yes” with reservations, citing as reason therefor the pending challenge on the legitimacy of respondent Arroyo’s presidency before the Supreme Court.

<sup>195</sup> Among others, she had signed into law the Solid Waste Management Act and the Political Advertising Ban and Fair Practices Act.

<sup>196</sup> Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001.

<sup>197</sup> Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001.; Estrada v. Desierto, G.R. Nos. 146710-15, Apr. 3, 2001 (Resolution); Estrada v. Macapagal-Arroyo, G.R. No. 146738, Apr. 3, 2001 (Resolution).

<sup>198</sup> Estrada v. Desierto, G.R. Nos. 146710-15, Apr. 3, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Apr. 3, 2001 (Resolution).

<sup>199</sup> *Id.*



inability has been laid to rest by Congress and the decision that Arroyo is the *de jure* President made by a co-equal branch of government cannot be reviewed.<sup>200</sup>

Needless to say, the Court's reasoning renders one speechless. Not only was it indicative of gross ignorance of the law, it revealed the lopsided treatment by the Court against Estrada and in favor of Arroyo. The Court itself stated, in resolving the issue of justiciability, that the "cases at bar pose legal and not political questions" and that "the principal issues for resolution require the proper interpretation of certain provisions in the 1987 Constitution, notably Section 1 of Article II, and Section 8 of Article VII, and the allocation of governmental powers under Section 11 of Article VII."<sup>201</sup> However, when the Court passed upon the issue raised by President Estrada as to the improper application of Section 11, Article VII of the Constitution, the Court rebuffed him, invoking the separation of powers and political question doctrines, saying that Congress' application of the said section was not a legal but rather a political question. It is understandable and excusable for the Court to sometimes contradict itself in deciding cases, but when it contradicts itself in the same case and in the same decision, especially on such a basic and crucial Constitutional issue, it is difficult to believe that the Court is still interested in upholding justice.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.<sup>202</sup> Political questions are those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in

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<sup>200</sup> Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001.

<sup>201</sup> *Id.*

<sup>202</sup> PHIL. CONST., art. VIII, § 1 (1987).

regard to which full discretionary authority has been delegated to the legislative or executive branch of the government.<sup>203</sup> However, all powers organized under the Constitution, is in form a delegated and hence limited power, so that the Supreme Court is vested that authority to determine whether that power has been discharged within its limits.<sup>204</sup> Since a constitutional grant of authority is not unrestricted, limitations being provided for as to what may be done and how it is to be accomplished, it necessarily becomes the responsibility of the courts to ascertain whether the two coordinate branches have adhered to the mandate of the fundamental law. The question thus posed is judicial rather than political. The duty remains to assure that the supremacy of the Constitution is upheld.<sup>205</sup>

When political questions are involved, the Constitution limits judicial review to the determination to whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the official whose action is being questioned.<sup>206</sup> In the grant of judicial power, the Constitution imposes a *duty* upon the courts to make a determination whenever whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction is presented as an issue.

### **b.2.3. Either Way, the Issue Was Justiciable**

Applying the foregoing discussion on the nature of judicial review, Congress' application or misapplication of Section 11, Article VII of the Constitution is not a political question. The issue involves the interpretation of the Constitution and the determination whether Congress had

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<sup>203</sup> Tañada v. Cuenco, G.R. No. L-10520, Feb. 28, 1965.

<sup>204</sup> Sanidad v. Commission on Elections, G.R. No. L-44640, Oct. 12, 1976.

<sup>205</sup> Aquino v. Ponce Enrile, G.R. No. L-35546, Sept. 17, 1974.

<sup>206</sup> Marcos, et al. v. Manglapus, et al., G.R. No. 88211, Sept. 15, 1989.

exercised its discretion of recognizing Arroyo as *de jure* President within the limits provided for by the Constitution. The Constitution provides:

SEC. 11. Whenever the President transmits to the President of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice-President as Acting President.

Whenever a majority of all the Members of the Cabinet transmit to the President of the Senate and to the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice-President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President of the Senate and to the Speaker of the House of Representatives his written declaration that no inability exists, he shall reassume the powers and duties of his office. Meanwhile, should a majority of all the Members of the Cabinet transmit within five days to the President of the Senate and to the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Congress shall decide the issue. For that purpose, the Congress shall convene, if it is not in session, within forty-eight hours, in accordance with its rules and without need of call.

If the Congress, within ten days after receipt of the last written declaration, or, if not in session within twelve days after it is required to assemble, determines by a two-thirds vote of both Houses, voting separately, that the President is unable to discharge the powers and duties of his office, the Vice-President shall act as President; otherwise, the President shall continue exercising the powers and duties of his office.<sup>207</sup>

The Constitution provides the rules to be followed by both Congress and the Executive branch in cases where the President is temporarily unable to discharge the functions of his office. Nowhere is it provided in Section 11 or any other provision of the Constitution that Congress has the power to determine whether or not the inability of the President is of a temporary character or a permanent one. Meanwhile, there is only one event when the Constitution allows Congress to make a determination as to whether or not the President is able to exercise the functions of his

office. This is when the President transmits to the Senate President and Speaker of the House that his written declaration that no inability exists, but a majority of the Cabinet transmits to the latter a written declaration to the contrary, then Congress shall decide the issue. The issue shall be decided by a vote of two-thirds of both houses, voting separately. If the two-thirds vote is attained, then the Vice-President shall act as President, otherwise, the President shall continue exercising the powers and duties of his office.

It is expressly clear that Congress, by a vote of two-thirds of each House, voting separately, can determine only whether or not the President's inability still subsists. Such determination does not translate that the inability of the President has become permanent. This is why the Vice-President only *acts* as President in case where both houses of Congress obtain such a two-thirds vote. To act as President is not equivalent to becoming President. The difference between acting as President and becoming President can be seen from Articles 7<sup>208</sup> and 8<sup>209</sup> of the Constitution.

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<sup>207</sup> PHIL. CONST., art. VII, § 11 (1987).

<sup>208</sup> *Id.*, art. VII, § 7. The section provides:

Section 7. The President-elect and the Vice-President-elect shall assume office at the beginning of their terms. If the President-elect fails to qualify, the Vice-President-elect shall act as President until the President-elect shall have qualified. If a President shall not have been chosen, the Vice-President-elect shall act as President until a President shall have been chosen and qualified. If at the beginning of the term of the President, the President-elect shall have died or have become permanently disabled, the Vice-President-elect shall become President. Where no President and Vice-President shall have been chosen or shall have qualified, or where both shall have died or become permanently disabled, the President of the Senate or, in case of his inability, the Speaker of the House of Representatives shall act as President until a President or a Vice-President shall have been chosen and qualified. The Congress shall by law provide for the manner in which one who is to act as President shall be selected until a President or a Vice-President shall have qualified, in case of death, permanent disability, or inability of the officials mentioned in the next preceding paragraph.

<sup>209</sup> *Id.*, art. VII, § 8. This section provides:

Section 8. In case of death, permanent disability, removal from office, or resignation of the President, the Vice-President shall become the President to serve the unexpired term. In case of death, permanent disability, removal from office, or resignation of both the President and Vice-President, the President of the Senate or, in case of his inability, the Speaker of the House of Representatives, shall then act as President until the President or Vice-President shall have been elected and qualified. The Congress shall, by law, provide who shall serve as President in case of death, permanent disability, or resignation of the Acting President. He shall serve until the

Under Section 8, there are four instances when the Vice-President assumes office as President, namely, in cases of death of the President; his permanent disability; his removal from office; or his resignation.<sup>210</sup> Death is self-explanatory. Removal from office is by impeachment, the only mode of removal of the President sanctioned by the Constitution.<sup>211</sup> Permanent disability involves a physical or mental condition or illness which permanently incapacitates the President from discharging his functions as President.<sup>212</sup> Resignation involves a formal notification of relinquishing office or position.<sup>213</sup> The vacancy created in these situations is a permanent vacancy.

On the other hand, there are two instances provided in Section 7 when a Vice-President assumes office as Acting President. First, when a President-elect has been chosen but fails to qualify, the Vice-President-elect shall act as President until the President shall have qualified.<sup>214</sup> Second, when no President has yet been chosen, the Vice-President shall act as President until a President shall have been chosen and qualified.<sup>215</sup> The Vice-President assumes the presidency only in an acting capacity in these instances because the vacancies created are only of a temporary character. The third instance provided by the Constitution is when the Vice-President assumes office as Acting President is the situation provided for in Section 11, dealing with the President's temporary inability. Thus, in case of *temporary vacancy*, the Vice-President does not become President. It is only in case of a *permanent vacancy* when the Vice-President assumes office as President, and not in a mere acting capacity.

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President or the Vice-President shall have been elected and qualified, and be subject to the same restrictions of powers and disqualifications as the Acting President.

<sup>210</sup> *Id.*, art. VII, § 8.

<sup>211</sup> *Id.*, art. XI, § 2.

<sup>212</sup> *See* ISAGANI CRUZ, PHILIPPINE POLITICAL LAW 191 (2002) (giving incurable insanity as an example of permanent disability).

<sup>213</sup> BLACK'S LAW DICTIONARY 1311, (7th ed., 1999).

<sup>214</sup> PHIL. CONST., art. VII, § 7 (1987).

<sup>215</sup> *Id.*, art. VII, § 7.

According to the Constitution, it is Congress, which has the power to determine whether the President is ready or able to reassume the exercise of his powers as President. This determination is limited to the determination of *temporary inability*, and Congress cannot say that the President is unable to reassume because of permanent disability. The words of the Constitution are very clear. When the President transmits a written declaration of his temporary inability to discharge his functions, the Vice-President shall assume office only as Acting President. Congress, with all its powers under the Constitution, cannot recognize the Vice-President as President, unless a permanent vacancy has occurred. In Estrada's case, there was no such permanent vacancy as he has neither died, been removed by impeachment, been permanently disabled nor has he resigned.

Assuming, on the other hand, that the act of Congress constituted a political question, the same conclusion will be arrived at. Under the 1987 Constitution, the Court's judicial power now extends 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.<sup>216</sup> Thus, even if the question were political in nature, it would still come within the courts' powers of review under the expanded jurisdiction conferred by Article VIII, Section 1, of the Constitution.<sup>217</sup>

Grave abuse of discretion is defined as such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction and must be patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary or despotic manner by

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<sup>216</sup> *Id.*, art. VIII, § 1.

<sup>217</sup> *Daza v. Singson*, G.R. No. 86344, Dec. 21, 1989.

reason of passion or hostility.<sup>218</sup> Congress, as discussed above, did not follow the mandate of the Constitution in extending recognition to Arroyo. Rather, the steps it took clearly contravened Article VII, Section 11. It exercised a power not granted to it by the Constitution. The Constitution mandated that a two-thirds vote of each house is necessary for a finding that the President is still unable to discharge his functions.<sup>219</sup> But this finding is limited to a determination of temporary inability and not permanent inability. The two-thirds vote requirement was also not met, as only twelve Senators signed the resolution recognizing Arroyo as President.<sup>220</sup>

The resolutions confirming Guingona as Vice-President suffer from the same substantive infirmity - under the Constitution, Congress has no power to determine the permanent disability of the President. Arroyo thus remained the Vice-President, as she could not have become the President pursuant to Article VII, Section 11. Under the said section of the Constitution, Congress can only recognize Arroyo as Acting President. Consequently, Congress gravely abused its discretion in extending such recognition to Arroyo as President and in confirming Guingona as Vice-President.

#### **b.2.4. No Permanent Disability**

Even if we assume that Congress was empowered by Article VII, Section 11 to determine the permanent disability of the President, still its recognition of Arroyo as President was violative of the Constitution, both substantively and procedurally.

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<sup>218</sup> *Sinon v. Civil Service Commission*, G.R. No. 101251, Nov. 5, 1992.

<sup>219</sup> PHIL. CONST., art. VII, § 11 (1987).

<sup>220</sup> *Estrada v. Desierto*, G.R. Nos. 146710-15, Mar. 2, 2001; *Estrada v. Macapagal-Arroyo*, G.R. No. 146738, Mar. 2, 2001.

As regards the procedural requirements of the Constitution, Congress can only make such a determination *after* the President transmits a written declaration that he is reassuming the exercise of his office as President and the majority of the Cabinet transmits a written declaration saying otherwise. It then has to obtain the two-thirds vote of both houses. In Estrada's case, he never transmitted a written declaration that he was reassuming the exercise of his functions. Nor had the majority of his Cabinet transmitted any written declaration to the contrary. The resignation of his Cabinet members, even if they had constituted the majority thereof, does not satisfy the Constitutional requirement for two important reasons. The first reason is that in resigning, there was no written declaration transmitted to the Senate President and the House Speaker. The second and more fundamental reason is the fact that when they had resigned, they ceased to be a part of the Cabinet. Hence, even if they constituted a majority, and had transmitted a written declaration, such declaration would have no legal effect whatsoever because they were no longer Cabinet members. Likewise, the resolutions recognizing Arroyo were procedurally defective. They were not passed pursuant to the two-thirds vote required of both houses. Only twelve Senators signed the Senate Resolution,<sup>221</sup> when a two-thirds vote requires at least sixteen signatures.

With respect to substance, Congress had cited that they were recognizing Arroyo as a consequence of the people's loss of confidence in the ability of President Estrada to effectively govern, and the withdrawal of support from him by majority of his cabinet, the Armed Forces of the Philippines and the Philippine National Police.<sup>222</sup> These circumstances cited by Congress are not those that render the President permanently disabled to discharge his functions. The term permanent disability refers to the President's a physical and mental condition as can be gleaned

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<sup>221</sup> *Id.*

<sup>222</sup> *Id.*



from the deliberations of the framers of the Constitution.<sup>223</sup> If we were to accept the contention that the above-enumerated circumstances and the other circumstances relied upon by the Court were indicators of permanent disability, then we would be left with an inutile President. The powers conferred upon the Chief Executive by the Constitution would be meaningless for his ability or capacity to exercise his functions would be subject to the whims and caprices of persons and institutions that are supposedly under his control and supervision.<sup>224</sup> He is supposed to be the Commander-in-Chief of the AFP;<sup>225</sup> it is not the other way around. He has control and supervision over all executive departments, including the Philippine National Police;<sup>226</sup> they do not exercise any authority or control over him.<sup>227</sup> If the Cabinet withdraws support from him, the President can appoint a new Cabinet. If the military or police force withdraw support from him, he can choose new commanders and have those who withdrew support prosecuted criminally for rebellion<sup>228</sup> or *coup d'etat*,<sup>229</sup> if the circumstances so warrant, or have them administratively

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<sup>223</sup> 2 RECORD OF THE CONSTITUTIONAL COMMISSION OF THE 1987 CONSTITUTION 446.

MR. SUAREZ: Thank you, Madam President. In the proposed draft for Section 5 of the Honorable delos Reyes, he employed the phrase “becomes permanently disabled.” I suppose this would refer to a physical disability, or does it also include mental disability?

MR. DE LOS REYES: It includes all kinds of disabilities which will disable or incapacitate the President or Vice-President from performance of his duties.

<sup>224</sup> Exception is taken of Article VII, Section 11 of the 1987 Constitution as this section deals with temporary disability.

<sup>225</sup> PHIL. CONST., art. VII, § 18 (1987).

<sup>226</sup> *Id.*, art. VII, § 17. The Philippine National Police operates under the Department of Interior and Local Government.

<sup>227</sup> Exception again is taken of the power of the majority of the Cabinet to declare the temporary inability of the President under Article VII, Section 11 of the 1987 Constitution.

<sup>228</sup> REVISED PENAL CODE, art. 134.

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

<sup>229</sup> REVISED PENAL CODE, art. 134-A.

ART. 134-A. *Coup d'etat – How committed* – The crime of *coup d'etat* is a swift attack accompanied by violence, intimidation, threat, strategy or stealth, directed against any duly constituted authorities of the Republic of the Philippines, or any military camp or installation, communications networks, public utilities or other facilities needed for the exercise and continued possession of power, singly or simultaneously carried out anywhere in the Philippines by any person or persons, belonging to the military or police or holding any public office or employment

disciplined or court-martialed for abandonment of duties, insubordination, sedition or mutiny.<sup>230</sup> This is why it is more reasonable and sound to construe permanent disability as limited to the physical or mental condition of the President.

President Estrada was clearly in no condition to assume his duties as President. He experienced a psychologically traumatizing event in his life during the weeklong crisis that led to Arroyo's oath taking. He was within his rights to take a leave, so to speak, in order to collect himself. His experience did not leave him permanently disabled, physically or mentally, as evidenced by his filing of a petition to question Arroyo's assumption to office.

We come now to the alleged people's loss of confidence in the President. Suffice it to say that this is, again, a very dangerous statement. Who are the "people" referred to here? The EDSA II crowd and all the Anti-Estrada groups, including civil society? Is Congress referring to the entire Filipino population? Is it referring to Filipinos who elected Estrada in 1998? Is it referring to those Filipinos who did not vote for Estrada but for some other candidate in 1998? This statement by Congress cannot be considered as a ground for declaring the permanent disability of the President, precisely because it is only through an election that "the people's" confidence in a person's ability to effectively govern is determined. Whether or not "the people" have lost confidence in an elected official is precisely a political question that can only be answered through an election. It involves a question which, under the Constitution, is to be decided by the people in their sovereign capacity.<sup>231</sup> In the absence of an election, therefore,

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with or without civilian support or participation for the purpose of seizing or diminishing state power.

<sup>230</sup> See Commonwealth Act 408, known as the Articles of War.

<sup>231</sup> Tañada v. Cuenco, G.R. No. L-10520, Feb. 28, 1965.

neither Congress,<sup>232</sup> the Commission on Elections,<sup>233</sup> nor the Supreme Court<sup>234</sup> is empowered to ascertain whether or not the people have lost confidence in any elective official.

### **b.2.5. Who Gave the First Recognition?**

In fairness to both houses of Congress, the resolutions recognizing Arroyo as President mentioned neither Estrada's permanent disability nor resignation as contemplated under the Constitution as a reason for the recognition.<sup>235</sup> Rather, it cited the Court's *en banc* resolution,

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<sup>232</sup> When resolving election-related cases, Congress acts through the House of Representatives Electoral Tribunal and the Senate Electoral Tribunal, pursuant to Article VI, Section 17 of the 1987 Constitution. Congress also determines the authenticity and due execution of certificates of canvass relating to the election of the President and Vice-President, pursuant to Article VII, Section 4 of the 1987 Constitution.

<sup>233</sup> PHIL. CONST., art. IX-C, § 2 (1987).

<sup>234</sup> The Supreme Court acts as the Presidential Electoral Tribunal, pursuant to Art. VII, Sec. 4 of the 1987 Constitution.

<sup>235</sup> For instance, House Resolution No. 176, Jan. 24, 2001, states:

Resolution Expressing the Support of the House of Representatives to the Assumption into Office by Vice-President Gloria Macapagal-Arroyo as President of the Republic of the Philippines, Extending its Congratulations and Expressing its Support for Her Administration as a Partner in the Attainment of the Nation's Goals under the Constitution.

WHEREAS, as a consequence of the people's loss of confidence on the ability of former President Joseph Ejercito Estrada to effectively govern, the Armed Forces of the Philippines, the Philippine National Police and majority of his cabinet had withdrawn support from him;

WHEREAS, upon authority of an *en banc* resolution of the Supreme Court, Vice-President Gloria Macapagal-Arroyo was sworn in as President of the Philippines on 20 January 2001 before Chief Justice Hilario G. Davide, Jr.;

WHEREAS, immediately thereafter, members of the international community had extended their recognition to her Excellency, Gloria Macapagal-Arroyo as President of the Republic of the Philippines;

WHEREAS, Her Excellency, President Gloria Macapagal-Arroyo has espoused a policy of national healing and reconciliation with justice for the purpose of national unity and development;

WHEREAS, it is axiomatic that the obligations of the government cannot be achieved if it is divided, thus by reason of the constitutional duty of the House of Representatives as an institution and that of the individual members thereof of fealty to the supreme will of the people, the House of Representatives must ensure to the people a stable, continuing government and therefore must remove all obstacles to the attainment thereof;

WHEREAS, it is a concomitant duty of the House of Representatives to exert all efforts to unify the nation, to eliminate fractious tension, to heal social and Political wounds, and to be an instrument of national reconciliation and solidarity as it is a direct representative of the various segments of the whole nation;

which granted authority to Chief Justice Davide in administering the oath to Arroyo as President.<sup>236</sup> Hence, it appears that Congress did not really *motu proprio* recognize Arroyo as President. Rather it relied on other circumstances, particularly the Supreme Court's acts, in conferring such recognition. It can be concluded that Congress recognized Arroyo as President because the Court had already recognized her as President on January 20, 2001. The recognition extended by Congress therefore, was a *post facto* recognition.

The Court contended that there was *a priori* recognition followed by *post facto* acts of recognition. The Court cited a Joint Statement<sup>237</sup> prepared by Senate President Pimentel and

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WHEREAS, without surrendering its independence, it is vital for the attainment of all the foregoing, for the House of Representatives to extend its support and collaboration to the administration of Her Excellency, President Gloria Macapagal-Arroyo, and to be a constructive partner in nation-building, the national interest demanding no less: Now, therefore, be it

Resolved by the House of Representatives, To express its support to the assumption into office by Vice-President Gloria Macapagal-Arroyo as President of the Republic of the Philippines, to extend its congratulations and to express its support for her administration as a partner in the attainment of the Nation's goals under the Constitution.

Adopted,  
(Sgd.) FELICIANO BELMONTE, JR.  
Speaker

This Resolution was adopted by the House of Representatives on January 24, 2001.  
(Sgd.) ROBERTO P. NAZARENO  
Secretary General.

<sup>236</sup> *Id.* The second paragraph of the Resolution provides: "WHEREAS, upon authority of an en banc resolution of the Supreme Court, Vice-President Gloria Macapagal-Arroyo was sworn in as President of the Philippines on 20 January 2001 before Chief Justice Hilario G. Davide, Jr."

<sup>237</sup> The Joint Statement reads:

Joint Statement of Support and Recognition from the  
Senate President and Speaker of the House of Representatives

We, the elected leaders of the Senate and the House of Representatives, are called upon to address the constitutional crisis affecting the authority of the President to effectively govern our distressed nation. We understand that the Supreme Court at that time is issuing an en banc resolution recognizing this political reality. While we may differ on the means to effect a change of leadership, we however, cannot be indifferent and must act resolutely. Thus, in line with our goals for peace and prosperity to all, the Senate President and the Speaker of the House of Representatives, hereby declare our support and recognition to the constitutional successor to the Presidency. We similarly call on all sectors to close ranks despite our political differences. May God Bless our nation in this period of new beginnings.  
Mabuhay ang Pilipinas at ang mamamayang Pilipino.

House Speaker Fuentebella before the oath taking as evidence of Congress' *a priori* recognition.<sup>238</sup> Assuming that this was indeed *a priori* recognition, it cannot be considered as an *a priori* recognition of Congress because it was a recognition extended only by two persons – the House Speaker and the Senate President. These two officials, although the elected leaders of both Chambers of Congress, do not comprise or make up the entire Congress, nor can their acts bind the entire legislature.

In any event, the recognition extended, whether *a priori* or *post facto* or both, remain unconstitutional. No matter how many times and in how many ways such recognition be extended by the Senate President, or by the Speaker of the House, or by the entire Congress, such recognition will never be in accord with the Constitution because there was no permanent vacancy in the Office of the President and as august bodies that they are, they have no power to determine whether or not the President is permanently disabled. That is the law.

Was the Court trying to say that it had no hand in Congress' act of recognizing Arroyo as President when its act of swearing in Arroyo was a basis used by Congress in recognizing her as President? If so, it was certainly a poor attempt at denying involvement when it is clear from the text of the resolutions cited that it was party to the entire thing.

#### **b.2.6. The Vice-President's Unconstitutional Request**

Neither does the Vice-President have any power to determine the permanent disability of the President under the Constitution. The only event that the Vice-President can say that there

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(Sgd) AQUILINO PIMENTEL, JR.  
Senate President

(Sgd) ARNULFO FUENTEBELLA  
Speaker of the House of Representatives

<sup>238</sup> Estrada v. Desierto, G.R. Nos. 146710-15, Apr. 3, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Apr. 3, 2001 (Resolution).

exists some inability on the part of the President to discharge the functions of his office is when the Vice-President is a part of the majority of the Cabinet who will transmit a written declaration to that effect to the House Speaker and Senate President.<sup>239</sup> Still, this written declaration is limited to a temporary inability and the Vice-President will assume office only as Acting President.<sup>240</sup> This cannot be emphasized enough. Thus, Vice-President Arroyo's letter dated January 20, 2001<sup>241</sup> informing the Court that President Estrada was permanently disabled and requesting the Chief Justice to administer the oath to her as President does not only not have any basis under law, but is violative of the very text of the Constitution. The Court should not have granted such a patently unconstitutional and illegal request. It should have known better. The Court's looking the other way manifested its predisposition towards Arroyo's immediate assumption to the presidency.

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<sup>239</sup> PHIL. CONST., art. VII, § 11 (1987). According to Article VII, Section 3, the President may appoint the Vice-President may be appointed as a member of the Cabinet, without need of confirmation.

<sup>240</sup> *Id.*

<sup>241</sup> The letter reads:

20 January 2001

THE HONORABLE SUPREME COURT  
Supreme Court Building  
Padre Faura St., Ermita, Manila

Attention: Hon. Hilario G. Davide, Jr.  
Chief Justice

Your Honors:

The undersigned respectfully informs the Honorable Court that Joseph Ejercito Estrada is permanently incapable of performing the duties of his office resulting in his permanent disability to govern and serve his unexpired term. Almost all of his Cabinet members have resigned and the Armed Forces of the Philippines and the Philippine National Police have withdrawn their support for Joseph Ejercito Estrada. Civil society has likewise refused to recognize him as President.

In view of this, I am assuming the position of President of the Republic of the Philippines. Accordingly, I would like to take my oath as President of the Republic of the Philippines before the Honorable Chief Justice Hilario G. Davide, Jr., today, 20 January 2001, at 12:00 noon, at the EDSA Shrine, Quezon City, Metro Manila.

May I have the honor to invite all the members of the Honorable Court to attend the oath-taking.

Very truly yours,

**c. Evading the “Acting” Issue**

Before noon of January 20, 2001, Chief Justice Hilario G. Davide, Jr. was caught on video, telling a reporter that he was on his way to EDSA to administer the oath on the Vice-President as *Acting* President.<sup>242</sup> However, when the decision was promulgated on March 3, 2001, Arroyo was no longer Acting President but President by virtue of Estrada’s “resignation.” Immediately after she took her oath, she delivered a speech wherein she expressed, “In all humility, I accept the privilege and responsibility to *act* as President of the Republic.”<sup>243</sup> But when this speech was printed, it had been changed to “In all humility, I accept the presidency of the Republic.”<sup>244</sup>

The Court never made any attempt to shed light on the obvious discrepancy between the statement of the Chief Justice and the decision rendered. It was an allegation that the Court would certainly have had difficulty to explain.<sup>245</sup> The statement of the Chief Justice is considered as part of the *res gestae*,<sup>246</sup> and is consequently admissible evidence of the allegation that Arroyo was to be sworn in only as *Acting* President. Statements made instinctively at the time of a specific transaction or event, without the opportunity for formulation of statements

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(Sgd.) GLORIA MACAPAGAL-ARROYO.

<sup>242</sup> His statement can be viewed in the documentary “AMA NG MASA” featuring President Joseph Ejercito Estrada. The Chief Justice’s exact words were: “We are now proceeding to EDSA to administer the oath on the Vice-President as *Acting* President.” He particularly emphasized the word “acting.” This particular statement was broadcasted during the morning of January 20, 2001 in the major television networks of the country. The authors recall witnessing this particular event on television during that day.

<sup>243</sup> *Id.*

<sup>244</sup> TATAD, *supra* note 38, at 519.

<sup>245</sup> Interview with Senator Juan Ponce Enrile, The Jeepney Restaurant, Hotel Inter-Continental Manila, Makati City (Feb. 17, 2003).

<sup>246</sup> RULES OF COURT, Rule 130, § 42. This section provides:

Sec. 42. *Part of the res gestae.* – Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of the *res gestae*. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the *res gestae*.

favorable to one's own cause, are likely to cast important light upon the matter in issue and the law creates a presumption of truthfulness upon such statements.<sup>247</sup> The Chief Justice had made this statement before the issuance of the administrative resolution and before the decision on Estrada's case was rendered. It is a strong indication that the authority given by the Court to the Chief Justice was to swear in Arroyo only as *Acting* President. But somewhere, sometime between the oath taking and the rendering of the decision, the Court had changed its mind and its theory as to the assumption of the Vice-President into the presidency. Contrary to the decision of the Court, it is evident that Estrada's supposed resignation was not the true reason why it considered administering the oath on Arroyo.

#### **B. Resignation of the President Must Be in Writing**

Contrary to the opinion of the Court, the Constitution requires that the resignation of the President be made formally in writing. Law Professor Alan Paguia argues that it does not seem reasonable to suppose that the Constitution would forego with official formality with respect to a presidential resignation, considering that it involves the highest office in the government and therefore matters of national security may be compromised because of uncertainty as to the validity or invalidity of any alleged resignation.<sup>248</sup> Unless there is a written resignation, there would be reasonable doubt not only as to the existence of the act of resignation, which is a question of fact, but also as to its validity, which is a question law.<sup>249</sup>

Although there is no express provision in the Constitution requiring that it be in written form, resorting to rules on constitutional and statutory construction would disclose that resignation must be in a written form. Article VII, Section 11 of the Constitution requires a

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<sup>247</sup> FRANCISCO, *supra* note 119, at 303-304.

<sup>248</sup> Paguia, *supra* note 112.



written declaration when the President suffers from temporary inability to govern as President. If the Constitution requires a written declaration in the case of the President's temporary inability where the President does not abdicate his position, then all the more should it be interpreted that the Constitution requires a written letter or declaration of resignation where the president permanently relinquishes his office. Furthermore, under the Constitution, resignation stands in equal footing with the other situations which create a permanent vacancy in office, namely death, permanent disability and removal from office.<sup>250</sup> Paguia maintains that it would be absurd to imagine that in case of death, no written proof of death, or in case of removal from office, no written decision of conviction by the impeachment tribunal, or in the case of permanent disability, no written declaration to such physical or mental disability would be required by the Constitution.<sup>251</sup> So too, would it be absurd to assume that in case of resignation, no written form to that effect would be required by the Constitution.<sup>252</sup>

According to Dr. Miriam Defensor Santiago, the Court should have looked at the existing practice in the United States, where our Constitution and Presidential form of government was patterned after, on the issue of the formality requirement in the President's resignation.<sup>253</sup> Resignation is defined as the formal renunciation or relinquishment of a public office.<sup>254</sup> The word "formal" on the other hand is defined as that pertaining to or following established procedural rules, customs and practices.<sup>255</sup> Since there are no such established procedural rules, customs and practices in the Philippines, as this was the first time that a President was argued to have "resigned," it was incumbent upon the Court as a matter of prudence, to consult the

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<sup>249</sup> *Id.*

<sup>250</sup> *Id.*

<sup>251</sup> *Id.*

<sup>252</sup> *Id.*

<sup>253</sup> Santiago interview, *supra* note 87.

<sup>254</sup> DE LEON AND DE LEON, JR., *supra* note 100.

<sup>255</sup> BLACK'S LAW DICTIONARY 662 (7th ed., 1999).

procedure in the United States which had an established practice as to the resignation of both the President and Vice-President. The United States requires a resignation to be in written form which must be transmitted to the proper authority. Vice-President Spiro Agnew had written a resignation letter, wherein he had stated that it was in the best interest of the nation that he relinquish the vice presidency.<sup>256</sup> He had addressed and transmitted the letter to President Richard Nixon.<sup>257</sup> President Richard Nixon, on the other hand, made a much simpler letter of resignation, containing only one sentence.<sup>258</sup> It was addressed and transmitted to the Secretary of State, Henry A. Kissinger.<sup>259</sup>

### **C. The Judgment That Came before the Petition**

Even before President Estrada had filed his Petition for Quo Warranto and Prohibition on February 6, 2001, judgment was already rendered. It was rendered on January 20, 2001 when the Supreme Court decided to administer the oath to Vice-President Macapagal-Arroyo as President of the Philippines. The written judgment was embodied in A.M. No. 01-05-SC entitled “In re: Request of Vice-President Gloria Macapagal-Arroyo to Take Her Oath of Office as President of the Republic of the Philippines before the Chief Justice.”<sup>260</sup> This resolution was released two days after the oath taking at the EDSA Shrine.<sup>261</sup>

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<sup>256</sup> *Hall of Fame—Spiro Theodore Agnew*, available at [http://www.i-resign.com/uk/halloffame/viewHOF\\_24.asp](http://www.i-resign.com/uk/halloffame/viewHOF_24.asp) (last visited Apr. 1, 2005).

<sup>257</sup> *Id.*

<sup>258</sup> *Nixon’s Resignation Letter*, available at <http://www.watergate.info/nixon/resignation-letter.shtml> (last visited Apr. 1, 2005). The letter reads:

Dear Mr. Secretary:

I hereby resign the Office of the President of the United States.

Sincerely,  
(Sgd.) RICHARD M. NIXON

<sup>259</sup> *Id.*

<sup>260</sup> “A.M. No. 01-1-05-SC – In re: Request of Vice-President Gloria Macapagal-Arroyo to Take her Oath of Office as President of the Republic of the Philippines before the Chief Justice – Acting on the urgent request of Vice-

The Court reasoned out that there is no prejudgment of the case as it is clear from the resolution that the Court did not treat the letter of Arroyo as a case but as an administrative matter.<sup>262</sup> To dispel the erroneous notion that such resolution was a predetermination of Arroyo's legitimacy, the letter was treated as an administrative matter and emphasized that it was issued "without prejudice to the disposition of any justiciable case that may be filed by a proper party."<sup>263</sup> The Court further said that it did not issue a resolution on 20 January 2001 declaring the Office of the President vacant.<sup>264</sup>

Such a justification is difficult to believe. Indeed, who would believe that the swearing in of a person as President is a mere administrative matter?<sup>265</sup> It was improper for the Court to treat the matter of the presidency as a mere administrative matter. Contentious factual and constitutional issues were involved which entailed a full-blown judicial proceeding. It involved a substantial right, the right to occupy the presidency, the highest office in the land. An issue concerning a substantive right cannot be dispensed with by a mere administrative resolution, without affording the holder or claimant of such a right any opportunity to be heard.

Is it a part of the administrative powers of the Court to accede to a request of a Vice-President to be administered the oath as President, without any determination as to its legality or veracity, which request is solely based upon an allegation that the incumbent President is

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President Gloria Macapagal-Arroyo to be sworn in as President of the Republic of the Philippines, addressed to the Chief Justice and confirmed by a letter to the Court, dated January 20, 2001, which request was treated as an administrative matter, the court Resolved unanimously to confirm the authority given by the twelve (12) members of the Court then present to the Chief Justice on January 20, 2001 to administer the oath of office to Vice-President Gloria Macapagal-Arroyo as President of the Philippines, at noon of January 20, 2001. This resolution is without prejudice to the disposition of any justiciable case that may be filed by a proper party."

<sup>261</sup> Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001.

<sup>262</sup> Estrada v. Desierto, G.R. Nos. 146710-15, Apr. 3, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Apr. 3, 2001 (Resolution).

<sup>263</sup> *Id.*

<sup>264</sup> *Id.* According to the Court, it issued a resolution on February 20, 2001, explaining that it never issued a resolution declaring the Presidency vacant on January 20, 2001 and that the Chief Justice never issued a press statement justifying the alleged resolution.

permanently disabled? Does this mean that the Court would grant any request from anybody to be sworn in as President without any determination as to its propriety whatsoever because it is a mere administrative matter? The Court should have been more circumspect in administering the oath to Arroyo. It was incumbent upon the Court to determine whether or not Arroyo had a right, under the facts and under the Constitution, to occupy the presidency.

While the Court may not have issued a resolution expressly declaring a vacancy in the Office of the President, its resolution granting Chief Justice Davide authority to administer the oath on Arroyo implies that the Court had determined that there was such a vacancy. Otherwise, why would it have the oath administered on someone as President if it still acknowledged that there was still a sitting President in Malacañang?

Since the resolution impliedly determined the existence of a vacancy in the presidency, Estrada was denied due process of law.

**a. A Denial of Fundamental Due Process**

The Constitution provides that no person shall be deprived of life, liberty, or property without due process of law.<sup>266</sup> Due process mandates the minimum observance of the twin requirements of notice and hearing and neither of these elements can be eliminated without running afoul of the Constitutional guaranty.<sup>267</sup> While it may be true that public office is not a right to property as contemplated under the due process clause of the Constitution,<sup>268</sup> a holder of a constitutional office which provide special immunity as regards tenure is considered to have a

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<sup>265</sup> Enrile interview, *supra* note 245.

<sup>266</sup> PHIL. CONST., art. III, § 1 (1987).

<sup>267</sup> *Vinta Maritime Co., Inc. v. National Labor Relations Commission*, 284 SCRA 656, *cited in* CRUZ, *supra* note 88, at 108-109.

<sup>268</sup> DE LEON AND DE LEON, JR., *supra* note 100, at 3.

vested right in such office.<sup>269</sup> Even assuming that the right to such an office is a mere privilege, the incumbent's right to office is entitled to the protection of the law.<sup>270</sup> He cannot be deprived of his right to office without hearing when the right to have it terminated is limited to specified causes.<sup>271</sup>

The justice that procedural due process guarantees, is one which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial.<sup>272</sup> In issuing the administrative resolution, Estrada was neither given prior notice by the Court of its issuance of the resolution nor of Arroyo's request. Only Arroyo was given a copy of the resolution.<sup>273</sup> He was never given an opportunity to defend his presidency.<sup>274</sup> Estrada did not even rate the courtesy of being informed officially about it.<sup>275</sup> Again, the Court's failure to notify Estrada casts more doubt and suspicion as to the legality of the oath taking on January 20, 2001.

Although the resolution was issued "without prejudice to the disposition of a justiciable case filed by a proper party,"<sup>276</sup> the Quo Warranto Petition filed by Estrada did not cure the lack of due process that occasioned the issuance of the resolution. In a denial of procedural due process, what the law prohibits is not the absence of a previous notice but the absolute absence thereof and lack of opportunity to be heard.<sup>277</sup> In Estrada's case, there was an absolute absence of prior notice as he was not notified of Arroyo's request, the Court's deliberations upon the matter or of the decision to grant the request.

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<sup>269</sup> *Id.*, citing National Land Titles and Deeds Registration Administration v. Civil Service Commission, 221 SCRA 145.

<sup>270</sup> *Id.*, at 4.

<sup>271</sup> *Id.*

<sup>272</sup> CRUZ, *supra* note 88, at 108.

<sup>273</sup> Rene A. V. Saguisag, *Is a Fair Trial for President Estrada Possible?*, 38 SAN BEDA L.J. 59 (2001).

<sup>274</sup> *Id.*

<sup>275</sup> *Id.*

<sup>276</sup> Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001.

<sup>277</sup> Embate v. Penolio, G.R. No. L-4942, Sept. 23, 1953; Sun Un Giok v. Matusa, et al., G.R. No. L-10304, May 31, 1957.

There was also an absolute lack of opportunity for Estrada to be heard. After receipt of Arroyo's letter, the Court deliberated among themselves and then decided to have the Chief Justice administer the oath on Arroyo.<sup>278</sup> Such a deliberation is not a hearing as mandated by the due process clause of the Constitution. In a hearing, a party is given the chance to adduce his evidence to support his side of the controversy and that evidence should be taken into account in the adjudication of the controversy.<sup>279</sup> In the issuance of the resolution, only Arroyo's allegations as to the President's permanent disability were presented. President Estrada, who was the one alleged to be permanently disabled, was not given any opportunity to be heard before the decision of the Court to accede to Arroyo's request was rendered. The Court's disclaimer cannot cure the patent lack of due process. A deprivation had already occurred *before* the "opportunity to be heard" was given. Estrada was already deprived of the presidency when the resolution was issued by the Court two days after the oath-taking.<sup>280</sup>

The due process clause of the Constitution mandates that *before* a person is deprived of a right, due process must first be observed. The deprivation cannot take place before the observance of due process. Although administering an oath to a public officer or servant can be characterized as administrative, it no longer becomes a mere administrative act when the oath is administered to a person claiming a right to an office *while there is an incumbent occupant* to the office. It becomes a deprivation of a right without due process of law.

The undeniable fact is that the Court, before 12:00 noon of January 20, 2001, had already determined that Estrada no longer occupied the presidency. And contrary to the decision it rendered, the Court did not consider him resigned because his alleged overt and confirmatory

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<sup>278</sup> *Supreme Court meets on legality of Arroyo's oath-taking*, *supra* note 56.

<sup>279</sup> *Gonzales v. Commission on Elections*, G.R. No. L-52789, Dec. 19, 1980.

<sup>280</sup> *Estrada v. Desierto*, G.R. Nos. 146710-15, Mar. 2, 2001; *Estrada v. Macapagal-Arroyo*, G.R. No. 146738, Mar. 2, 2001.

acts of resignation happened *hours after* Chief Justice Davide administered the oath on Arroyo and *weeks after* the “authoritative window to Estrada’s mind”<sup>281</sup> was reprinted in the Philippine Daily Inquirer. Or did the Court resort to soothsaying in determining before noon of January 20, 2001 that Estrada would issue his press statement, that he would leave Malacañang, and that Angara was keeping a diary and that he would have it published?

Perhaps it was foolish for Estrada to have filed the petition at all, considering that it was the Court itself, by going to EDSA and allowing Chief Justice Davide to administer the oath on Arroyo, that effectively sealed his case and terminated his presidency. But he cannot be blamed for placing his faith and presuming good faith in the sense of justice and fair play of the Supreme Court, the protector of the highest law of the land. After all, we are expected to trust and always presume good faith in the judiciary. Otherwise, the credibility of the entire justice system will be destroyed.

#### **IV. THE CASUALTIES AND CONSEQUENCES OF DISREGARDING THE RULE OF LAW**

President Joseph Ejercito Estrada’s case presents a rather grim and saddening reality on the true state of the rule of law in the Philippines. We are left with a weak and subservient President, an extremely politicized military, and a disenfranchised electorate.

##### **A. A Weakened President**

The decision of the Court lowered the stringent standards and measures provided by the Constitution, which are supposed to strengthen the Office of the President and to protect the President’s tenure. For instance, the President’s right to be removed only by impeachment is the

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<sup>281</sup> The Court’s description of the Angara dairy.

Constitution's strongest guarantee of security of tenure.<sup>282</sup> The guarantee effectively blocks the use of other legal ways of ousting an officer.<sup>283</sup> With respect to resignation, the Supreme Court held in *Ortiz v. Commission on Elections*<sup>284</sup> that a strict interpretation should be observed in construing the resignation of Constitutional officials whose removal from office entails an impeachment proceeding. This case involved a written courtesy resignation of a Commissioner of the COMELEC. The Court held that a "courtesy resignation" could not properly be interpreted as resignation in the legal sense for it is not necessarily a reflection of a public official's intention to surrender his position. Rather, it manifests his submission to the will of the political authority and the appointing power.<sup>285</sup> If the Supreme Court had strictly construed a "courtesy resignation," as in the above-cited case, where a letter of resignation was involved, then all the more should it strictly construe a supposed "resignation" by the President of the Republic in the absence of a resignation letter.

By considering President Estrada resigned in view of the circumstances, which do not present any clear evidence of resignation, the Office of the President is now a weakened institution. The President's tenure is effectively stripped of the Constitutional protection against his removal or "constructive resignation." Impeachment is no longer the only mode by which a President can be removed. "Resignation" pursuant to the totality doctrine is now considered a mode of removal. Preoccupied with preserving his precarious tenure, the President will be forced to cater to the whims and wants of the world around him. It will be extremely difficult, if not impossible, for him to exercise his functions and perform his duties with political and legal independence for fear that he may dissatisfy some sectors of society because of his policies and

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<sup>282</sup> BERNAS, *supra* note 93, at 990.

<sup>283</sup> *Id.*

<sup>284</sup> *Ortiz v. Commission on Elections, et al.*, G.R. No. 78957, June 28, 1988.

<sup>285</sup> *Id.*



actions. Instead of concentrating on his duties as President, he will be constrained to make political concessions to assure himself of security of tenure, lest he become the victim of a military withdrawal of support or an EDSA uprising, factors which can now consider him legally “resigned” according to the Supreme Court.

## **B. An Unprofessional and Politicized Military**

“The military is the protector of the people.”<sup>286</sup> This was a justification of former AFP Chief of Staff General Angelo Reyes when he withdrew the military’s support from President Joseph Estrada on the afternoon of January 19, 2001. With the Court virtually stamping its *imprimatur* on the military’s act of withdrawing support from the President, it will now be legal for the military to effect a change in the country’s political leadership by merely invoking that it is the protector of the people.

Article II, Section 3 of the Constitution provides, “Civilian authority is, at all times, supreme over the military. The Armed Forces of the Philippines is the protector of the people and of the State. Its goal is to secure the sovereignty of the State and the integrity of the national territory.” The principle of civilian supremacy as provided by the first sentence of the section is institutionalized by Article VII, Section 18,<sup>287</sup> which makes the President, a civilian and

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<sup>286</sup> PHIL. CONST., art. II, § 3 (1987).

<sup>287</sup> *Id.*, art. VII, § 18. The section provides:

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

precisely as civilian, Commander-in-Chief of the armed forces.<sup>288</sup> The military establishment is the strongest single institution in the country and could easily employ its physical force to wrest power from the civilian authorities.<sup>289</sup> It is important that the military be subordinated to the President so he can keep it in check whenever it is tempted to impose its will upon the government.<sup>290</sup> By making the President the Commander-in-Chief of all the armed forces, the Constitution lessens the danger of a military take-over of the government in violation of its republican nature.<sup>291</sup>

From the foregoing, it is clear that the military withdrawal from the duly constituted civilian authority has no basis under the Constitution. The provision that the AFP is the protector of the people does not give the AFP the power to determine who the “people” are or whether or not the “people” have lost confidence in the duly constituted authority. An election is the proper mode provided by law to ascertain whether or not the “people” have lost confidence in an elective official. The AFP is bound to accept the results of an election as conclusive evidence of the “will of the people.” It has no power to nullify an election or proclaim that it has determined the “will of the people,” especially if its only means of ascertainment is by looking at a crowd massed up against a President. Likewise, the military is given no power by the

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following such proclamation or suspension, convene in accordance with its rules without any need of a call. The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus* 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 the 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 of *habeas corpus*. 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 the invasion. During the suspension of the privilege of the writ of *habeas corpus*, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.

<sup>288</sup> BERNAS, *supra* note 93, at 21.

<sup>289</sup> CRUZ, *supra* note 212, at 218.

<sup>290</sup> *Id.*

<sup>291</sup> *Id.*

Constitution to determine whether or not the President remains the duly constituted civilian authority. This power is granted to the other branches of government.<sup>292</sup> The military is bound to recognize and be subject under the authority of the civilian President as mandated by the Constitution. For so long as the President remains President under the Constitution, it is unconstitutional for the AFP or PNP to withdraw support from his government. To hold otherwise will be to allow the military to assert its supremacy over the civilian authority, and thus nullifying the tenure of the President who can only be removed through impeachment based on specific grounds. If this is the case, we can no longer be called a republican state, but a military state, where the military exercises the ultimate authority over civilians in political and governmental matters. The Court's decision in the Estrada case, with some of its members practically applauding the military's defection,<sup>293</sup> has opened the possibility to this dangerous situation.

The Constitution further provides that the armed forces shall be insulated from partisan politics and shall not engage directly or indirectly in any partisan political activity except to vote.<sup>294</sup> The framers of the Constitution intended to insulate the Armed Forces from partisan politics as political influence destroys its morale.<sup>295</sup> The withdrawal of the military of its support from the President to join his political opponents in EDSA is exactly what the Constitution prohibits. President Estrada was in the middle of an impeachment trial, which was a highly political exercise. The massing up by the Anti-Estrada crowd at the EDSA Shrine was a politically motivated event as well. The President never gave any unlawful order for the use of

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<sup>292</sup> For instance, the role of Congress in an impeachment proceeding as provided by Article XI, Section 3. The House of Representatives transmits to the Senate the articles of impeachment and the latter acts as the impeachment court. Another example is when the Supreme Court acts as the Presidential Electoral Tribunal in election cases involving the presidency, as provided by Article VII, Section 4.

<sup>293</sup> See the concurring opinion of Justice Vitug in *Estrada v. Desierto*, G.R. Nos. 146710-15, Mar. 2, 2001; *Estrada v. Macapagal-Arroyo*, G.R. No. 146738, Mar. 2, 2001.

<sup>294</sup> PHIL. CONST., art. XVI, § 5(3) (1987).

violence or force to disperse the crowd, nor was he found guilty of any Constitutional breach by the impeachment court. The military therefore, was not justified under the facts and under the Constitution, to interfere or implicate itself in the situation. The withdrawal of the military, with its highest officials succumbing to political pressure exerted by the opposition at that time,<sup>296</sup> was the result of the destruction of the military's resolve and morale. Politicking by the Chief of Staff, the top generals and service commanders had eroded the military's sworn commitment to protect the Constitution and obey the duly constituted authorities. The military refused to acknowledge the authority of the Constitutional Commander-in-Chief and by transferring its allegiance to the Vice-President, it had proclaimed a new Commander-in-Chief on the basis of its own judgment and assessment as to the supposed "will of the people." The highest officials of the AFP knowingly participated in a patent partisan political activity and in doing so, violated the Constitution and subverted the supremacy of the civilian authority over the military. The Court, by using the fact of the military's withdrawal of support as a basis in rendering its decision, in effect recognized the active participation by the military in the partisan political events that lead to Arroyo's oath taking as valid and legal. It is saying that it is perfectly valid and legal for the military to withdraw support from the duly elected President of the Republic to force him to resign. The decision encourages, mildly speaking, a politically active military, which, to say the least, is violative of the Constitution.

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<sup>295</sup> 2 RECORDS OF THE CONSTITUTIONAL COMMISSION 36.

<sup>296</sup> Author Nick Joaquin interviewed Atty. Miguel Arroyo, President Gloria Macapagal-Arroyo's husband. Arroyo revealed that the opposition was constantly talking to the Generals during the crisis, convincing them to defect. Retired General Renato de Villa was focused on the Chief of Staff Angelo Reyes and the major service commanders. By 2:00 P.M. of January 19, 2001, the opposition knew that Reyes had been convinced to join. Reyes' only condition was: "Show us a million people in EDSA so it will be easier to bring in the service commanders." Quijano De Manila, *Atty. Miguel Arroyo: First Gent of State*, PHILIPPINE GRAPHIC, Mar. 5, 2001, at 12.

### C. A Nullified Electoral Mandate

An election is one of the three modes by which the people are allowed to directly exercise their sovereignty under the Constitution.<sup>297</sup> It is through the ballot that the will of the majority is expressed.<sup>298</sup> In a democracy, leaders are chosen through the ballot and the law dictates that the candidate who receives the highest number of votes shall be proclaimed elected.<sup>299</sup> A President assumes office pursuant to an election. Under the Constitution, the will of the majority is not expressed through mass demonstrations or public uprisings. A President is not chosen or appointed through a People Power phenomenon.

In a democracy, a President can only be removed pursuant to law. In a democratic system, the President can only be removed from office based on the grounds and modes provided by the Constitution. The only mode provided by the Constitution for removing a President is through an impeachment proceeding. He cannot be removed through mass demonstrations or public uprisings. A President cannot be removed by a People Power phenomenon.

People Power II was a perfectly valid exercise of the freedom of speech and the right to peaceably assemble and petition government for redress of grievances.<sup>300</sup> But it can never be proclaimed as “the will of the people.” To declare it as “the will of the people” will be to subject the application of the Constitution to the whims of a vociferous mob. Elections will be nullified and rendered useless as a hooting throng can always gather and assemble and claim that they are

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<sup>297</sup> Referendum and plebiscite are the two other modes.

<sup>298</sup> *Aquino v. Commission on Elections*, G.R. No. 120265, Sept. 18, 1995.

<sup>299</sup> In the case of the President, the provision is Article VII, Section 4 of the Constitution. The pertinent paragraph reads:

The person having the highest number of votes shall be proclaimed elected, but in case two or more shall have an equal and highest number of votes, one of them shall forthwith be chosen by the vote of a majority of all Members of both Houses of Congress, voting separately.

<sup>300</sup> PHIL. CONST., art. III, § 4 (1987).

the people and they have decided that an elected official no longer has the people's confidence. If this is the case, we might as well go parliamentary or revolutionary.<sup>301</sup>

The Court's pronouncement that Estrada's resignation was a result of "his repudiation by the people"<sup>302</sup> necessarily means that the Court recognizes People Power II as "the will of the people". The Court has no power to determine to a judicial certainty that the gathering in EDSA in January 2001 was truly representative of the sovereign people.<sup>303</sup> Precisely because it is only through the modes of election, referendum and plebiscite as provided by the Constitution that the will of the people can be ascertained to a judicial certainty. The Court, even with all the powers granted to it by the Constitution, cannot declare the will of a crowd, a multitude, an assembly, or a mob,<sup>304</sup> as the will of the people. Even if the Court employs a mathematical or scientific formula for estimating or by manually counting the number of people in the crowd by a show of hands, it cannot claim that the crowd is the majority. In the absence of an election, referendum or plebiscite, the Court has no means of determining the will of the people as contemplated in the Constitution.

The rage and loud outcry of the EDSA II crowd should not have overwhelmed the Court for it to be constrained to overturn the mandate granted by 10.7 million Filipinos to President Estrada when they elected him to the presidency. The decision validating EDSA II as the "will of the people" has disenfranchised and nullified the votes of 10.7 million Filipinos who had trusted that their choice would be respected by those whose choices were not elected.

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<sup>301</sup> Saguisag, *supra* note 273.

<sup>302</sup> Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, Mar. 2, 2001.

<sup>303</sup> *Id.*, Separate opinion of Justice Ynares-Santiago.

<sup>304</sup> *Id.*

We must be reminded constantly that ours is a democracy where sovereignty resides in the people whose sovereign will is expressed through the ballot.<sup>305</sup> The sanctity of the people's will must be observed at all times if our nascent democracy is to be preserved.<sup>306</sup>

## V. CONCLUSION: RULE OF LAW OR RULE OF MEN?

The rule of law dictates that the Constitution must be kept supreme over all. The Constitution is the basic and paramount law to which all other laws must conform and to which all persons, including the highest officials of the land, must defer.<sup>307</sup> No act shall be valid, however noble its intentions, if it conflicts with the Constitution.<sup>308</sup> Expediency must not be allowed to sap its strength nor greed for power debase its rectitude.<sup>309</sup>

The decisions in *Estrada v. Macapagal-Arroyo*<sup>310</sup> and *Estrada v. Desierto*<sup>311</sup> have shown the dispensability and insignificance of the Constitution and the concept of due process when political expediency and political stability are at stake. A President can now be considered “constructively resigned” based on the totality of circumstances. A newspaper reproduction of a diary is no longer considered hearsay and is now admissible as evidence. The Rules on Evidence can now be suspended totally against a party. Both Congress and the Vice-President can now declare the President permanently disabled. A Vice-President can now be sworn in as President even while there is still an incumbent sitting President. Violations of the Constitution are no longer considered justiciable issues, or acts which amount to grave abuse of discretion. The

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<sup>305</sup> Dissenting opinion of Justice Kapunan, *Defensor Santiago v. Ramos*, P.E.T. Case No. 001, Feb. 13, 1996.

<sup>306</sup> *Aquino v. Commission on Elections*, G.R. No. 120265, Sept. 18, 1995.

<sup>307</sup> CRUZ, *supra* note 88, at 4.

<sup>308</sup> *Id.*

<sup>309</sup> *Id.*

<sup>310</sup> G.R. No. 146738, Mar. 2, 2001; Apr. 3, 2001 (Resolution).

<sup>311</sup> G.R. Nos. 146710-15, Mar. 2, 2001; Apr. 3, 2001 (Resolution).

military is now supreme over the civilian authority. Electoral mandates can now be nullified on the basis of a gathering of a loud and angry crowd.

When the Constitution is disregarded, the respect for law and government disintegrates. A society where the rule of law is made dependent upon the exigencies of the circumstances and political climate can never attain true justice and equality. The rule of law is supposed to be a weapon against arbitrariness. However, in a society where the Constitution is pragmatically applied and made to adapt to the perceived political necessities, the law becomes a weapon for oppression and despotism. The rule of law is rendered meaningless.

With the decision of the Supreme Court in the Estrada cases, one cannot help but ask, “Are we still under the rule of law, or are we now under the Rule of Men?” Perhaps the ultimate casualty when the rule of law is disregarded is the judicial system’s credibility and the confidence and assurance it once provided to the ordinary Filipino that under the law, he will be treated in the same manner and given the same rights and respect as anyone else, regardless of the wealth he possesses or the influence he commands in society. When we are under the Rule of Men, justice is denied to each and every one of us.