

THE SUPREME COURT: GUARDIAN OF THE CONSTITUTION

By Atty. ABRAHAM VERA

The Constitution is the fundamental law of the land and the Supreme Court is the vigilant and zealous guardian of this priceless document. This herculean task the highest court has to attack frontally to keep a close watch over the ramparts of individual freedoms and liberties and to give life and vigor to a truly democratic government.

This inescapable role of the tribunal as a citadel and bulwark of liberty and democracy is projected to its zenith in times of stress — in times like the present when the sacred rights of individuals are likely to grapple with the encroaching arms of government interests. Now seems the time when the "eleven wise men" of the tribunal have only one alternative — to enforce the mandate and command of the sovereign as embodied in the Constitution.

A searching look at contemporary events reveals the delicate job the justices have been shouldering in their efforts to inject more and more blood to the living and dynamic instrument — the Constitution.

Typical of this delicate job is the decision the tribunal had to hand down recently in a bold move by the government to take over a sizeable portion of the sprawling tract of land owned by former Speaker Jose Yulo and his family in Canlubang, Laguna.

Under the Constitution, the Yulo property may be expropriated for public use after payment of just compensation. Thus the government move could appear laudable if one considers that the fundamental charter ordains that "the promotion of social justice to insure the well being and economic security of the people should be the concern of the state".

The decision on the question of whether the Yulos should remain undisturbed in their Canlubang property or whether the government should be permitted to intervene for the tenants among whom the property may be apportioned hinges on the thinking of the high court. Meanwhile, in implementing its role as a stabilizing governmental institution, the Supreme Court has restrained the Laguna court of first instance from taking any steps towards condemning the Yulo property in favor of the State.

The Supreme Court has also notably extended its shield of justice to two cases involving no less than Senator Fernando Lopez and his brother, industrialist Eugenio, who are considered to be the "pet hates" of President Macapagal. One of the Lopezes' suits involves their properties — radio stations from as far north as Laoag, Ilocos Norte, to as down south as Zamboanga City. The other litigation refers to the Lopezes alleged tax liability in connection with their ownership of vast diversified businesses.

Acting with dispatch to aid the accused Lopezes before the Manila fiscal's office, the high court blocked the filing of any tax evasion charges against the wealthy and affluent brothers. The high court will yet decide if a case brought by the Lopezes before the court of tax appeals contesting the revenue assessment of ₱7-million should take priority over the government's tax evasion raps. In the first case, the high court has stopped the Radio Control Board from supposedly harassing the Lopez-owned radio stations.

Hardly had President Macapagal assumed office when his conduct was question before the tribunal. The core of the controversy was the President's administrative order no. 2 recalling all *ad interim* appointments extended by ex-President Garcia after the latter had lost the elections. The legal question

cropped up when Dominador Aytona, whose appointment as Central Bank governor was cancelled, decided to fight the designation of Andres Castillo by President Macapagal to the same post.

Invoking the principle of separation of powers, which is deeply imbedded in the Constitution, the tribunal politely declined to set aside administrative order no. 2. Though taking this somewhat passive action, the tribunal made the cynical observation that Mr. Garcia should not have wielded his powers as President "to continue political warfare that had ended or to avail himself of presidential prerogatives to serve partisan purposes" after "the electorate had spoken." Exercising its judgment and discretion, the tribunal junked Aytona's claim.

In the process of minutely interpreting the provisions of the Constitution involved in the Aytona case, Justices Sabino Padilla, Arsenio Dizon, and Felix Bautista Angelo wrote concurring opinions, Justice Roberto Concepcion a concurring and dissenting opinion and Justice Jesus G. Barrera a dissenting opinion, all in addition to the majority opinion penned by Chief Justice Cesar Bengzon.

Then there was the decision on the case of Dr. Paulino J. Garcia. Upholding the security of tenure of government officials and maintaining a robust and efficient civil service, the high court directed the reinstatement of Dr. Garcia to his post as chairman of the National Science and Development Board. The tribunal reaffirmed this lofty stand when it also directed the reinstatement of former Ilocos Sur Gov. Perfecto Faypon as member of the board of the Philippine Virginia Tobacco Administration. Undoubtedly, President Macapagal was irritated by these verdicts but in line with his oath to "preserve and defend its Constitution" he, nevertheless, abided with them.

There are at least six cases pending with the tribunal where it has to pass upon the legality of the President's appointment. One case centers on the President's appointment of Cesar Mirafior as a member of the commission on elections, a constitutional body, in place of Genaro Visarra, an appointee of President Garcia. The other notable case involves the President's appointment of Carlos Quirino as director of public libraries, an appointment which has been contested by Ernesto R. Rodriguez Jr., a Garcia appointee.

Admittedly, the President has the constitutional power to appoint men to top public positions. But, definitely, a decision on the legality of the President's action lies within the exclusive domain of the Supreme Court.

By way of drawing parallels, the name of the late President Quirino had also been repeatedly hailed to the temples of justice.

On October 22, 1950, President Quirino issued a proclamation suspending the writ of habeas corpus. The presidential edict was decreed four days after the army's military intelligence service rounded up 105 alleged Communists, including nine members of the national secretariat of the local Communist Party. Three months later, MIS agents continued with the roundup of a Manila councilor and five newspapermen.

Even against a backdrop of communist aggression in southeast Asia and an immediate peril to national security then poised by the communist plot to take over the government, the proclamation drew a volley of protest from civil libertarians. But there were those who bravely stood by the proclamation and saw in it the need of curtailing, in effect, the individual rights for the sake of national survival.

(Continued next page)

SUPREME COURT AND THE RULE OF LAW*

By Sec. JUAN R. LIWAG

We are pleased to think that the Philippines being a Republican State, ours is indeed "a government of laws and not of men." But we like to think further that this government of laws must forever recognize the supremacy of the Rule of Law.

The Supreme Court, by common consent, is recognized as the last bulwark of democracy, the guardian of our civil liberties, the arbiter of constitutional controversies. As the Highest Tribunal of the land it is ordained by the constitution to interpret the law. It is the indestructible bastion of the rule of law in our country.

But let us not look at the Supreme Court as if it were a paragon of perfection, or that it is a body composed of supermen incapable of committing errors. Let us not worship the members of our Supreme Court as gods with supernatural powers or, better still, as sacred cows who are beyond the reach of human touch and beyond reproach. Rather let us look at our Supreme Court as a body of men with feelings, affected by prejudices, possessed of caprices and susceptible to other frailties of human nature, whose imperfections are often reflected, wittingly or unwittingly, in their judicial pronouncements.

Guided by this realization and at the risk of being misunderstood by some sectors of our society, I have taken it upon myself as a public duty to expose what I consider the abuses of the Supreme Court committed in the name of judicial supremacy. Let me give the assurance, however, that I am not motivated by any personal or ulterior design as I have, in fact, the highest respect for the individual members of the Court as men of integrity, probity and competence. What motivates me, here and

* Speech delivered before the Manila Lions Club on January 9, 1963.

now, is a genuine desire to awaken our people from the passive thinking verging on blind submission which has taken the better hold of them and make them adopt a more aggressive trend of thinking conducive to active sovereign participation in public affairs and the molding of a militant and vigilant public opinion. Neither is it my intention to undermine the people's faith in the Supreme Court; rather, I should like to arouse our people, in the name of free speech, to break away from the kind of sub-conscious indoctrination which seeks to perpetuate a seemingly popish image of infallibility in the Supreme Court in matters of law and justice — a myth of invincibility and untouchability certainly obnoxious to the letter and spirit of the Constitution.

Judicial supremacy does not imply and much less mean the subordination of the executive and the legislative to the judiciary. It does not envision a judiciary higher than, and superior to, the other two co-ordinate and co-equal branches of the government in the manner of a hierarchical system. It does not import aristocracy. But rather, it means the power of judicial review, or the authority to declare statutes and other governmental acts invalid when these are repugnant to the Constitution. It is the power to interpret the law and not to reform the law through judicial amendment.

Much has been said of the excesses of the executive and the legislative branches of our government, but strange as it may seem, little or none has been said of the excesses of the Supreme Court and the other courts of the land. Recent events, however, indicate that the Supreme Court has, time and again, perpetrated a veiled assault on purely executive functions, thereby abusing its power of judicial review. It is strange that while in many

(Continued next page)

THE SUPREME . . . (Continued from page 2)

In cases which cropped up because of the proclamation, the Supreme Court justices, for lack of the requisite votes, were not able to rule squarely on the effect of the suspension of the privilege of *habeas corpus* on the right to bail accused persons.

In a long line of cases, the tribunal has likewise imprinted in bold letters the spirit and intent of the organic law. The tribunal has set the pace in the nationalistic movement by upholding the government's move to nationalize not only the retail trade but also the labor in retail establishments. It has zealously protected the right of Filipinos in the acquisition of public agricultural lands and has closed the door to aliens desirous of securing the Filipinos' privilege under the Constitution. Further blaring out the nationalistic tone, the tribunal has parried attempts by alien-opportunists for naturalization.

During the past years, the tribunal has underscored its judicial power as it declared as unconstitutional the redistricting law, a congressional brainwork, which reapportioned the various congressional districts.

Chief Justice Bengzon and his ten learned associates have to slosh through legal perplexities and dilemma many times in transforming into realities the noble and lofty exhortations woven in the Constitution's priceless fabric.

No matter how alert and vigilant is the Supreme Court in safekeeping the Constitution, the noble ideals and revered traditions and institutions enmeshed in this living instrument will be meaningless if the people themselves will not be as active and ever watchful.

The late U.S. Justice Robert H. Jackson forcefully lectured on the role of both the people and the courts in guarding indi-

vidual liberties: "If an organized society wants the kind of justice that an independent, professional judicial establishment is qualified to administer, our judiciary is certainly a most effective instrument for applying law and justice to individual cases and for cultivating public attitudes which rely upon law and seek justice. But I know of no modern instance in which any judiciary has saved a whole people from the currents of intolerance, passion, usurpation and tyranny which have threatened liberty and free institutions."

Continuing with this thesis, Justice Jackson said: "It is not idle speculation to inquire which comes first, either in time of importance, an independent and enlightened judiciary or a free and tolerant society. Must we first maintain a system of free political government to assure a free judiciary, or can we rely on an aggressive, activist judiciary to guarantee free government? While each undoubtedly is a support for the other, and the two are frequently found together, it is my belief that the attitude of a society and of its organized political forces, rather than its legal machinery, is the controlling force in the character of free institutions."

Justice Jackson, summing up, emphasized: "However well the court and its bar may discharge their tasks, the destiny of this court is inseparably linked to the fate of our democratic system of representative government. Judicial functions, as we evolved them, can be discharged only in that kind of society which is willing to submit its conflict to adjudication and to subordinate power to reason. The future of the court may demand more upon the competence of the executive and legislative branches of government to solve their problems adequately and in time than upon the merit which is its own."