EN BANC

G.R. No. 213847 – JUAN PONCE ENRILE, Petitioner, **v. SANDIGANBAYAN (THIRD DIVISION) AND PEOPLE OF THE PHILIPPINES,** Respondents.

Promulgated:

July 12, 2016

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DISSENTING OPINION

LEONEN, *J.*:

After his release solely on the basis of his frail health, Senator Juan Ponce Enrile immediately reported for work at the Senate.[1]

Until the end of his term on June 30, 2016, he actively and publicly participated in the affairs of the Senate.[2] The majority maintains that his release on humanitarian grounds due to his frail health still stands.[3] This is a contradiction I cannot accept.

With due respect to my esteemed colleagues, I maintain my dissent.

The reversal of the Sandiganbayan Decision on its actions on the Motion to Fix Bail filed by petitioner is an unacceptable deviation from clear constitutional norms and procedural precepts. Carving this extraordinary

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1 *See* Patricia Lourdes Viray, *Enrile returns to work at Senate*, PHILIPPINE STAR, August 24, 2015 <http://www.philstar.com/headlines/2015/08/24/1491693/enrile-returns-work-senate> (visited July 7, 2016).

2 *See* Maila Ager, *Enrile returns to Senate after dengue bout, gives warning to non-performing agencies*, PHILIPPINE DAILY INQUIRER, October 5, 2015 <http://newsinfo.inquirer.net/728017/enrile-returns-to-senate-after-dengue-bout-gives-warning-to-non-performing-agencies> (visited July 7, 2016); Leila B. Salaverria, *Enrile seeks reopening of Mamasapano probe*, PHILIPPINE DAILY INQUIRER, November 10, 2015 <http://newsinfo.inquirer.net/738231/enrile-seeks-reopening-of-mamasapano-probe> (visited July 7, 2016); Maila Ager, *Enrile proposes to raise OVP's 2016 budget to P500 million*, INQUIRER.NET, November 23, 2015 <http://newsinfo.inquirer.net/741700/enrile-proposes-to-raise-ovps-2016-budget-to-p500-million> (visited July 7, 2016); Ruth Abbey Gita, *Enrile question P250M intel fund for Aquino office*, SUNSTAR DAILY, November 23, 2015 <http://www.sunstar.com.ph/manila/local-news/2015/11/23/enrile-questions-p250m-intel-fund-aquino-office-443088> (visited July 7, 2016); Charissa Luci, *Enrile: Senate could override presidential veto on SSS pension hike bill*, MANILA BULLETIN, January 17, 2016 <http://www.mb.com.ph/enrile-senate-could-override-presidential-veto-on-sss-pension-hike-bill> (visited July 8, 2016); Maila Ager, *Enrile blocks confirmation of COA, CSC officials*, PHILIPPINE DAILY INQUIRER, February 3, 2016 <http://newsinfo.inquirer.net/761183/enrile-blocks-confirmation-of-audit-civil-service-appointments-officials> (visited July 7, 2016); and *Enrile censures AMLC over stolen Bangladesh millions*, GMA News Online, March 29, 2016 <http://www.gmanetwork.com/news/story/560759/money/companies/enrile-censures-amlc-over-stolen-bangladesh-millions> (visited July 7, 2016).

3 *See* Ponencia, p. 4.

exception is dangerous. The ponencia opens the opportunity of unbridled discretion of every trial court. It erases canonical and textually based interpretations of our Constitution. It undermines the judicial system and weakens our resolve to ensure that we guarantee the rule of law.

I

Fundamental to resolving this Petition for Certiorari is Article III, Section 13 of the Constitution:

ARTICLE III
BILL OF RIGHTS

. . . .

> SECTION 13. All persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. Excessive bail shall not be required.

Bail is a constitutional right of the accused. It should be correctly read in relation to his fundamental right to be presumed innocent.[4] However, contrary to the position of the ponencia and of Associate Justice Arturo Brion in his Separate Opinion, availing of this right is also constrained by the same Constitution.

When the offense charged is not punishable by *reclusion perpetua*, bail is automatic. The only discretion of the court is to determine the amount and kind of bail to be posted.[5] When the crime is not punishable by *reclusion perpetua*, there is no need for the court to determine whether the evidence of guilt is strong.

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[4] CONST., art. III, sec. 14 (2) provides:
SECTION 14. . . . .
(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

[5] RULES OF COURT, rule 114, sec. 4 provides:
SEC. 4. *Bail, a matter of right; exception.* — All persons in custody shall be admitted to bail as a matter of right, with sufficient sureties, or released on recognize as prescribed by law or this Rule (a) before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities, or Municipal Circuit Trial Court, and (b) before conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment.

Equally fundamental, from the clear and unambiguous text of the provision of the Constitution, the Rules of Court, and our jurisprudence, is that when the offense charged is punishable by *reclusion perpetua*, bail shall be granted only after a hearing occasioned by a petition for bail. The phrase "*except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong*" found in the Constitution is a sovereign determination that qualifies the presumption of innocence and the right to bail of persons detained under custody of law. There is no room for equity when the provisions of the law are clear.

The Sandiganbayan, in that hearing, provides the prosecution with the opportunity to overcome its burden of proving that the evidence of guilt is strong.

The opportunity granted to the prosecution to prove that evidence of guilt is strong so as to defeat the prayer of an accused to be released on bail is a mandatory constitutional process.[6] It is part of the prosecution's right to due process. It is an elementary requirement of fairness required by law and equity. In criminal prosecutions, it is not only the accused that is involved. The state represents the People. Thus, violating the prosecution's right to due process of law trivializes the interest of the People in criminal actions.

Thus, when the offense charged is punishable by *reclusion perpetua*, bail is regarded as a "matter of discretion."[7]

When bail is a matter of discretion,[8] an application for bail must be filed and a bail hearing must be mandatorily conducted to determine if the evidence of guilt is strong.[9] Absent this, bail can neither be granted nor denied.

Accused was charged with plunder. Under Republic Act No. 7080,[10] plunder is punishable by *reclusion perpetua* to death. Accused, through counsel, submitted a Motion to Fix Bail and thereby precluded any determination on whether the evidence against him was strong. Accused, through counsel, disregarded the fundamental requirements of the

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6 Const., Art. III, sec. 13.

7 *See* RULES OF COURT, rule 114, sec. 5.

8 *See* RULES OF COURT, rule 114, secs. 4 and 5.

9 *See Teehankee v. Rovira*, 75 Phil. 634, 640–643 (1945) [Per J. Hilado, En Banc]; *Herras Teehankee v. Director of Prisons*, 76 Phil, 756, 774 (1946) [Per J. Hilado, En Banc]; *Ocampo v. Bernabe*, 77 Phil. 55, 62–63 (1946) [Per C.J. Moran, En Banc]; *Feliciano v. Pasicolan,* 112 Phil. 781 (1961) [Per J. Natividad, En Banc]; *Siazon v. Presiding Justice of Circuit Criminal Court, 16th Judicial District, Davao City*, 149 Phil. 241, 249 (1971) [Per J. Makalintal, En Banc]; *Basco v. Repatalo,* 336 Phil. 214, 219–221 (1997) [Per J. Romero, Second Division]; *People v. Honorable Presiding Judge of the Regional Trial Court of Muntinlupa (Branch 276)*, G.R. No. 151005, June 8, 2004, 431 SCRA 319, 324 [Per J. Panganiban, First Division]; and *People v. Gako*, 401 Phil. 514, 536–537 (2000) [Per J. Gonzaga-Reyes, Third Division].

10 An Act Defining and Penalizing the Crime of Plunder (1989).

Constitution, the Rules of Court that this Court promulgated, and the unflinching jurisprudence of this Court.

The strength or weakness of the evidence has not been conclusively determined by the Sandiganbayan. The Sandiganbayan could not do so because accused's Motion to Fix Bail did not provide the prosecution the opportunity to present proof of whether the evidence of guilt is strong. Rather, the Motion to Fix Bail was premised on the following grounds:

First, the mitigating circumstances of accused's advanced age and his alleged voluntary surrender.[11] Second, his allegation that his age and physical condition ensured that he was not a flight risk.[12]

To repeat for purposes of emphasis, the prosecution did not have the opportunity to present evidence of whether the evidence of guilt was strong. This opportunity was truncated by accused himself when his counsel filed a Motion to Fix Bail, and not an application or a petition for bail as required by existing rules.

Justice Brion reveals that he has weighed the evidence still being presented before the Sandiganbayan.[13] In his Separate Opinion, he points to his evaluation of the annexes attached to another Petition filed before this Court, which had nothing to do with the weight of the evidence or with whether accused is entitled to bail.

Enrile v. People,[14] docketed as G.R. No. 213455, has nothing to do with this case. It cannot even be consolidated with this case docketed as G.R. No. 213847. That case raised the issue of whether there were sufficient allegations in the Information to sustain an arraignment.[15] It did not occasion a hearing to determine whether the evidence of guilt was strong. To sustain the relief of petitioner, there was no need to examine the admissibility and weight of the evidence.

Documentary annexes attached to the pleadings in G.R. No. 213455 do not appear to have been evidence presented, admitted, and weighed by the Sandiganbayan in an application for bail. Neither, then, should a news report[16]—hearsay in character—be accepted by any Justice of the Supreme Court as proof without the news report having undergone the fair process of

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11 *Rollo*, pp. 252–253, Motion to Fix Bail.

12 Id.

13 See J. Brion, Separate Opinion, pp. 15–16.

14 *Enrile v. People*, G.R. No. 213455, August 11, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/august2015/213847.pdf > [Per J. Brion, En Banc].

15 Id. at 5–8.

16 *See* J. Brion, Separate Opinion, pp. 15–16.

presentation and admission during trial or in a proper hearing before the Sandiganbayan. Not only is it improper; it is unfair to the prosecution, and it is another extraordinary deviation from our Rules of Court.

II

I am also unable to accept the ponencia's ruling that:

> Clearly, the People were *not denied* the reasonable opportunity to challenge or refute the allegations about his advanced age and the instability of his health even if the allegations had not been directly made in connection with his *Motion to Fix Bail.*[17] (Emphasis in the original)

With all due respect, this conclusion is based on an inaccurate appreciation of what happened before the Sandiganbayan and the content of the present Petition for Certiorari. To recall:

> On June 5, 2014, Senator Juan Ponce Enrile (Enrile) was charged with the crime of plunder punishable under Republic Act No. 7080. Section 2 of this law provides:
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> > SEC. 2. *Definition of the Crime of Plunder, Penalties.* - Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1 (d) hereof in the aggregate amount or total value of at least Fifty million pesos (P50,000,000.00) shall be guilty of the crime of plunder *and shall be punished by reclusion perpetua to death*[.]
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> On June 10, 2014, Enrile filed an Omnibus Motion before the Sandiganbayan, praying that he be allowed to post bail if the Sandiganbayan should find probable cause against him. On July 3, 2014, the Sandiganbayan denied the Omnibus Motion on the ground of prematurity since no warrant of arrest had been issued at that time. In the same Resolution, the Sandiganbayan ordered Enrile's arrest.
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> On the same day the warrant of arrest was issued and served, Enrile proceeded to the Criminal Investigation and Detection Group of the Philippine National Police in Camp Crame, Quezon City.
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> On July 7, 2014, Enrile filed a Motion to Fix Bail, arguing that his alleged age and voluntary surrender were mitigating and extenuating circumstances that would lower the imposable penalty to reclusion temporal. He also argued that his alleged age and physical condition indicated that he was not a flight risk. His prayer states:

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[17] Ponencia, p. 3.

> WHEREFORE, accused Enrile prays that the Honorable Court allow Enrile to post bail, and forthwith set the amount of bail pending determination that (a) evidence of guilt is strong; (b) uncontroverted mitigating circumstances of at least 70 years old and voluntary surrender will not lower the imposable penalty to reclusion temporal; and (c) Enrile is a flight risk [sic].

The Office of the Ombudsman filed its Opposition to the Motion to Fix Bail dated July 9, 2014. Enrile filed a Reply dated July 11, 2014.

Pending the resolution of his Motion to Fix Bail, Enrile filed a Motion for Detention at the PNP General Hospital dated July 4, 2014, arguing that "his advanced age and frail medical condition" merit hospital arrest in the Philippine National Police General Hospital under such conditions that may be prescribed by the Sandiganbayan. He also prayed that in the event of a medical emergency that cannot be addressed by the Philippine National Police General Hospital, he may be allowed to access an outside medical facility. His prayer states:

> WHEREFORE, accused Enrile prays that the Honorable Court temporarily place him under hospital confinement at the PNP General Hospital at Camp Crame, Quezon City, with continuing authority given to the hospital head or administrator to exercise his professional medical judgment or discretion to allow Enrile's immediate access of, or temporary visit to, another medical facility outside of Camp Crame, in case of emergency or necessity, secured with appropriate guards, but after completion of the appropriate medical treatment or procedure, he be returned forthwith to the PNP General Hospital.

After the prosecution's submission of its Opposition to the Motion for Detention at the PNP General Hospital, the Sandiganbayan held a hearing on July 9, 2014 to resolve this Motion.

On July 9, 2014, the Sandiganbayan issued an Order allowing Enrile to remain at the Philippine National Police General Hospital for medical examination until further orders of the court.[18]

What is clear is that there were two (2) Motions separately filed, separately heard, and were the subjects of separate orders issued by the Sandiganbayan.

The Motion to Fix Bail was filed on July 7, 2014.[19] The Ombudsman filed its Opposition to the Motion to Fix Bail on July 9, 2014.[20] Accused

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[18] J. Leonen, Dissenting Opinion in *Enrile v. Sandiganbayan (Third Division)*, G.R. No. 213847, August 18, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/august2015/213847_leonen.pdf> 3–4 [Per J. Bersamin, En Banc], *citing* Petition for Certiorari, Annex I, pp. 4–5, 6–7; Annex J; Annex K; Annex H; and Annex O, p. 5.

[19] Id.

[20] Id.

filed his Reply on July 11, 2014.[21] The Sandiganbayan Resolution denying accused's Motion to Fix Bail for being premature was issued on July 14, 2014.[22]

It is this Resolution dated July 14, 2014—*only* this Resolution, together with the denial of the Motion for Reconsideration of this Resolution, and no other—that is the subject of the present Petition for Certiorari.

The other motion was a Motion for Detention at the Philippine National Police General Hospital dated July 4, 2014. It was in this Motion that accused argued "his advanced age and frail medical condition."[23] The prosecution submitted an Opposition to this Motion on July 7, 2014.[24] This Motion was orally heard on July 9, 2014.[25] There was a separate Order allowing accused to remain at the Philippine National Police General Hospital. This Order was dated July 9, 2014.[26]

The Order dated July 9, 2014, which allowed accused's detention in a hospital, is not the subject of this Petition for Certiorari. Apart from his hospital detention not being the subject of this Petition, accused did not question the conditions of his detention. The prosecution had conclusive basis to rely on accused's inaction. While evidence of his advanced age and frail medical condition was presented, accused was satisfied with hospital arrest and not release.

The basis for the Motion to Fix Bail was not the frail condition of accused. Rather, it was the Motion's argument that there were two (2) mitigating circumstances: advanced age and voluntary surrender.

Thus, the Sandiganbayan Resolution, the subject of this Petition for Certiorari, states:

> [I]t is only after the prosecution shall have presented its evidence and the Court shall have made a determination that the evidence of guilt is not strong against accused Enrile can he demand bail as a matter of right. Then and only then will the Court be duty-bound to fix the amount of his bail.
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> To be sure, no such determination has been made by the Court. In fact, accused Enrile has not filed an application for bail. Necessarily, no bail hearing can even commence. It is thus exceedingly premature for

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21 Id.
22 Id.
23 *Rollo*, p. 245, Petition for Certiorari, Annex H.
24 Id. at 307, Petition for Certiorari, Annex O.
25 Id. at 306.
26 Id. at 306–308.

accused Enrile to ask the Court to fix his bail.[27]

Accused, through counsel, filed a Motion for Reconsideration[28] based on the same argument, but this was similarly denied.[29] Accused only raised his frail health in relation to the conclusion that he was not a flight risk.[30]

Accused did not justify, on the basis of his frail health, his allowance to bail without a hearing on whether the evidence of guilt was strong. As extensively discussed in the Dissenting Opinion filed with the first resolution of this case, the majority in this Court granted bail on a ground other than that which was argued or prayed for in this Petition.

Furthermore, the certification relied upon by the majority was presented not for having accused released on bail. The hearing relating to this certification was to determine whether accused's detention in a hospital should continue.[31] It was not for determining whether there were serious reasons for his urgent release.

Dr. Jose C. Gonzales' certification was in a Manifestation and Compliance dated August 28, 2014.[32] This certification was submitted as an annex to a Manifestation[33] before this Court regarding the remoteness of the possibility of flight of accused. This certification was not submitted to release accused on bail due to his ailments.

Finally, we imposed an arbitrary amount of ₱1,000,000.00 as bail for accused.[34] The prosecution was not given the opportunity to comment on the amount of bail. The sufficiency of this amount, in relation to the net worth of accused or his sources of income, has not been presented in evidence. Whether it suffices to guarantee his appearance in further court proceedings, therefore, is the product of the collective conjecture of this

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27 Id. at 84, Petition for Certiorari, Annex A.
28 Id. at 271–277, Petition for Certiorari, Annex L.
29 Id. at 89–102, Petition for Certiorari, Annex B.
30 Id. at 274–275.
31 Id. at 309–312, Petition for Certiorari, Annex P.
32 Id. at 373–375, Manifestation, Annex B.
33 Id. at 323–328.
34 RULES OF COURT, rule 114, sec. 9 provides:
SEC. 9. *Amount of bail; guidelines.* — The judge who issued the warrant or granted the application shall fix a reasonable amount of bail considering primarily, but not limited to, the following factors:
(a) Financial ability of the accused to give bail;
(b) Nature and circumstances of the offense;
(c) Penalty for the offense charged;
(d) Character and reputation of the accused;
(e) Age and health of the accused;
(f) Weight of the evidence against the accused;
(g) Probability of the accused appearing at the trial;
(h) Forfeiture of other bail;
(i) The fact that accused was a fugitive from justice when arrested; and
(j) Pendency of other cases where the accused is on bail.
Excessive bail shall not be required.

Court. We are bereft with factual basis. Our rules are designed to have the Sandiganbayan or a trial court determine these facts. It is not within our competence to receive this type of evidence. Certainly, it is not within our jurisdiction to go beyond the provisions of the Constitution.

In my view, these observations show a quintessential disrespect for the inherent due process rights of the prosecution. We have sprung a surprise on the prosecution, and have given an unexpected gift to accused.

This is not fairness as I understand it.

III

Justice Brion further suggests that the prosecution was unable to show any other nonagenarian who is incarcerated and is in the same position as petitioner in this case.[35]

This certainly is not the point. Again, the point is whether there is basis in our Constitution or in our Rules of Court to grant exceptional treatment to petitioner. I maintain that there is none.

Even if there were, there are still those whose conditions are worse off than that of petitioner.

Those of us who have prosecuted or defended an accused at various levels in our court system know the conditions of detention facilities in this country. Many of my colleagues have had the privilege of serving as judges of both the first- and second-level trial courts. They have more intimate knowledge of the conditions of our detention because they have supervised detention facilities as executive judges of their various stations.

To say that detention facilities are overcrowded is an understatement. In many places, detention prisoners have nowhere to get sound sleep. These facilities are populated by those who are under detention for allegedly selling less than one (1) gram of shabu, for allegedly stealing a cell phone, for allegedly committing estafa against their employers, and for the countless allegations of crimes committed only by those who do not have as many opportunities as petitioner in this case. They do not have the resources to hire their own medical specialists. They do not have the ability to pay for focused legal assistance. Thus, they suffer in silence. They await the ordinary course of justice required by our law and our Rules of Court. They do not have the resources to craft exceptions to what is contained in our law.

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[35] J. Brion, Separate Opinion, p. 15.

Indeed, petitioner is a nonagenarian who suffers from some medical ailments. Yet, we should not erase the privileges he was given.

Petitioner is accused of plunder, which requires a charge that he has defrauded the people of at least ₱75,000,000.00 or more and has taken advantage of his public office.[36] He was not accused of stealing bread because he was driven by the hopelessness of fearing that his children would go hungry.

Petitioner did not share the crowded spaces of the impoverished hordes in detention facilities. He was given the privilege of being incarcerated in special quarters, and then later, in a government hospital. There was a constant stream of clothes and food that came to him through his friends, family, and staff.

Upon his release, petitioner would have mansions to go home to, with facilities full of comfort. He would not need to live in unnumbered shanties that could barely survive the vagaries of our weather systems.

Narrowing our vision and making his privileges invisible will result in unfounded judicial exceptionalism. Judicial exceptionalism, consciously or unconsciously, favors the rich and powerful. Injustice entrenches inequality. Inequality assures poverty. Poverty ensures crimes that provide discomfort to the rich. But crimes are expressions of hopelessness by many, no matter how illegitimate.

There may be no more nonagenarians who suffer in special confinement in government hospitals. Certainly, there are many more languishing in our ordinary detention centers.

All these should bother our sense of fairness.

IV

A lot of media coverage was given to my statements in Part IV of my Dissenting Opinion of the first resolution of this case. Many have concluded that my point was to imply that my colleagues who voted for the majority did not have the opportunity to read and reflect on the final contents of the Decision. Memes were generated to cast the result of this case as a battle between the Justices of this Court.

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[36] Rep. Act No. 7080 (2007), sec. 2.

That was neither my express nor implied intention. No opinion of this Court should be interpreted in that manner. Every member of this Court knew the consequences of his or her position.

The purpose of that narrative was to explain why another Associate Justice chose not to write her separate dissenting opinion[37] and to put in context the "apparent delay in the announcements regarding the vote and the date of promulgation"[38] of the judgment.

A dissenting opinion, in my view, should be read to express the principled view of its author regarding the facts, issues, legal principles, and interpretative methodologies that should be applied in a case. It is never the forum to cast doubt on the character of esteemed colleagues.

Dissents, by their very nature, cause a degree of discomfort to those whose views are different. This discomfort is part of a collegiate court and a vibrant judiciary. It should be appreciated by the public as reflecting competing points of view on matters of principle, not as a staged and puerile clash of gladiators. The drama lies on the points raised, not on the personalities that are mediums for these standpoints.

Effective dissents strive to be articulate, but not caustic. An effective dissent is an effort to call attention to details and principles that may have been overlooked by the majority. It is never a means to undermine the competence of any member of this Court. It is the result of a constitutional duty to lay down what each of us views as a more convincing standpoint as well as a more reasoned and just conclusion.

Thus, I maintain my dissent. Justice should always be in accordance with law. Accommodations given to select accused on very shaky legal foundations weaken the public's faith on our judicial institutions.

I urge that we reconsider.

ACCORDINGLY, I vote to **GRANT** the Motion for Reconsideration.

MARVIC M.V.F. LEONEN
Associate Justice

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[37] *See* J. Leonen, Dissenting Opinion in *Enrile v. Sandiganbayan (Third Division)*, G.R. No. 213847, August 18, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/august2015/213847.pdf> 16 [Per J. Bersamin, En Banc].

[38] Id. at 17.