

The Story Behind Imelda's Trial

ATTORNEY TED LAGUATAN (Special Counsel to the Philippine Government in the New York trial of Imelda Marcos): As I was entering the campus, I remembered my student days in this great university. I remember the days when I marched against the participation of the Philippines in the Vietnam war together with the great student leader, Voltaire Garcia. I remember the days when I was at the University Student Council, when we discussed the strategies on how we can utilize the student movement to create social justice in an unjust society. I remember the dreams that I dreamt about the Philippines where we no longer see children scrounging for food in the garbage cans; where our young women do not have to sell their bodies in order to help their families; where every talented Filipino child can have superior education; where every sick Filipino can have better health care; where our courts can truly dispense justice to every Filipino of every rank and of every level in our society. It is good to be home and share the dreams that I am sure you dream.

I have been attacked by a few Marcos loyalists for now being an American as if Filipinos who have become Americans no longer love or care for the Philippines and the Filipino people and as if being an American, by itself, is such a great sin. I assure you, there are many noble Filipino-Americans. I define a true Filipino nationalist not by the color of his passport but by the color of his heart in his commitment to seek a better life for all Filipinos. These Marcos loyalists who cooperated with the evil of Marcos in tyrannizing and looting our people now even claim that they are the nationalists and that those of us abroad who aided in the downfall of the dictatorship should keep our mouths shut. Their passports maybe brown but I question the color of their hearts.

Having had my legal education in the United States and having been involved in the fight against the Marcos dictatorship since my college days here in this great university up to my years of exile in the United States, I was in the initial position of providing valuable input to the prosecution not only legally but factually. So as in any criminal proceeding where the victim always cooperates with the prosecution in order to acquire justice, I did that for the Philippine government in the sense of giving background information, providing the needs of the witnesses, providing evidence, feeding other kinds of support and other legal arguments in the case. I would also like you to know that I'm not one of the highly paid American lawyers involved in the recovery effort. I have done work on other international cases for the Philippines since after the revolution. The expenses that were incurred meals, fares, hotel expenses, of course, have to be covered.

Like many Filipinos in exile trying to put body and soul together, I and so many others have had to become US citizens. Again, that needs explanation. Because it would have been difficult to survive and function effectively as TNT -- "tago nang tago" -- as a Filipino illegal alien. It is very difficult to be an illegal alien when you have a family to support and still be effective in the fight against the dictatorship. As US citizens, we were able to use all the available resources in the US while fighting against the dictatorship. While we advanced ourselves professionally and economically and learned to work within the American system, we have never forgotten the Philippines and our people as we constantly sought social justice for them in our battlefronts in the United States by lobbying in Washington, exposing the oppressiveness and corruption of the dictatorship in the media, and networking with sympathetic figures. We cannot forget that many

Filipinos suffered during the Marcos years, that so many innocent children starved, and that thousands have sweat for the country and lived lives of desperation to send some money back here to help their relatives. The economy deteriorated because of the terrible looting that took place. But of all these victims, the greatest victims of all are those who have walked with Marcos in spiritual darkness and continue to walk in that darkness today, no longer able to distinguish between goodness and evil, between right and wrong, seeing only the world as an arena for power, insensitive to the suffering they caused to the many. They are the greatest victims because their suffering move on to infinity. We tried our best in this prosecution to ease the pain and the hurt of the Filipino people and bring some justice to them in this trial, not out of hatred, not out of vengeance, but because it is right. For those who have suffered, justice helps heal the pain and the suffering. But circumstances beyond our control dictated the outcome of the trial. Yet, if there is one thing about my involvement in this trial which I regret, it is the fact that I sacrificed my anonymity which I treasure.

What was this case about in New York? Let me give you some basic information about criminal trials. In any criminal case, there are three parties involved. One is the defendant, the other is the prosecution and the third is the victim. In this particular crime alleged, the victims were the Filipino people as represented by the Philippine government and this is the party I represented. In simple terms, the evidence showed that the Marcoses looted the Philippines and transported huge sums through the United States' inter-state lines, a violation of the United States' federal racketeering laws. The Marcoses used these moneys to purchase hundreds of millions of dollars worth of real estate in Manhattan and elsewhere and a collection of art works known as the Samuels collection. When they fled the Philippines in February 1986, the Philippine government, shortly thereafter, on March 1, 1986, filed a suit in the US Federal Court in New York to recover these properties. On March 2, 1986, a federal judge, by way of an injunction, ordered the Marcoses not to sell or give away any of their properties. In order to avoid the injunction, the Marcoses, together with Bienvenido and Gliceria Tantoco, the owners of Rustan's Department Store, and Adnan Khashoggi manufactured documents to make it appear that these properties had already been bought by Khashoggi in 1985 prior to the injunction. This was discovered by the Philippine government lawyers who reported it to the US authorities and they were charged with obstruction of justice and racketeering. These are very, very serious crimes which the evidence suggested they committed, and so they were charged.

That the US attorney who headed the US Attorneys Office at that time, Rudolf Guilliani, had political ambitions which also helped the Marcoses may be a possibility. I do not know. I cannot read his life but the fact of the matter is that the evidence show that very, very serious violations of US law occurred.

Several factors influenced the outcome of the trial. The most important of these were the prejudicial statements of the judge that the trial did not properly belong in a New York court. Judge Keenan, a judge with a very strong personality, held sway over the jurors who admired him. But his questions which were reported in the media as his supposed "opinions" were asked during the raising of a motion to dismiss when he was asking questions interpolating the trial attorneys. His questions were "What is this case doing in an American Court?" and "What am I doing with this case of theft of Philippine money from Philippine banks?" These were not his opinions, he was asking the attorneys for the record but the media particularly the *New York Times*, gave the story that this was his opinion. Apparently, this reached the jurors who were not sequestered yet at that time. (During the trial courses, before the closing argument, that's three and a half month period, the jury would go home to their family and they were not supposed to discuss the case, nor watch the television. But in reality, this is very difficult to control and apparently the comments of the judge reached them via newspaper and via their relatives and these affected their decision on the case.) The fact is indicated in the press. The day they gave their verdict, they stated some reasons for their decision. They said, "Well, even the judge believes that this case does not properly belong in this court."

The second important circumstance or reason why the verdict came to be what it is was the failure of certain key witnesses to come and testify at the last moment which made the



prosecution rely on circumstantial evidence. Gliceria and Bienvenido Tantoco, the most important witnesses in this case who plotted with Imelda in the purchase of Manhattan buildings and the Samuels art collection and who could have testified on Imelda's direct involvement in, knowledge of, and connivance with Ferdinand Marcos in his massive and extensive embezzlements, backed off at the last moment. The evidence showed that whenever Imelda was involved in the transactions, where she would withdraw money from the bank deposits or purchase something, she would always use an agent, either Fe-Roa Jimenez or Gliceria Tantoco. The prosecution established this pattern very, very well. It repeated itself over and over again. If Imelda wanted the Samuels collection, she would be the one to go there, look at the collection and it would be Gliceria Tantoco who would sign the documents. And this is also true with the building in Manhattan. The reason is that they wouldn't want the public to know, otherwise, there would be a scandal.

Immunity agreements with the US prosecution and the PCGG were already agreed upon by them. This immunity agreements provided the Tantoco's protection against criminal and civil suits anywhere in the world enabling them to come home and travel freely and retain some assets. The FBI agents were already set to accompany them from their point of base to the United States but a few hours before departure, they called the US prosecutors' office and said they would not come because a kidnap attempt was made on their grandchild in Manila. This was confirmed by Mr. LaBella in his interview with the Philippine Daily Inquirer in the Tuesday issue this week (July 10, 1990). Other key witnesses from Manila who testified on Imelda's knowledge and direct involvement also refused to come at the last moment for some reason or another.

The third reason for the verdict was the lack of sense of history of the jurors about the Philippines which affected their decision. Some of them actually thought that the Philippines was in South America.

Because of the frustration of many for not getting the conviction, there is a natural tendency to vent this on somebody. The politicians blame one another. There are those who blame the

prosecutors and there are also those who blame me. Well, I take responsibility for whatever failings I may have made there. But I would say that the prosecution lawyers, Charles LaBella and Debra Livingston were very sensitive to what happened in the Philippines. They wanted so much to see justice done.

Any court of justice in the world is just an approximation of the ideal. They are not heavenly courts dispensing absolute justice and so many variables affect the verdict, including the availability of witnesses, the evidence, the competence of the lawyers, the effect of the mass media, statements of the judge, the political situation, the background of the jurors. It is said that even the weather or an on-going sports event, or a holiday affect the verdict because these make the jurors rush their decisions. While the jury system generally works, any American legal scholar will affirm that it has its failings and no adjustments or mechanisms have yet been devised to make the system foolproof so as to dispense absolute justice. But it is the system of legal justice that generally works and exists in the United States and people accept it with all its limitations. And we accept it because this is what happened. The US government was never able to convict Al Capone for his real crimes under the jury system even if everyone knew that he was engaged in widespread racketeering, bootlegging and murder. He covered his tracks well, and the government cannot get sufficient evidence. In the end, they could only get him for tax evasion where little evidence was needed to convict him. Acquittal, therefore, does not necessarily mean that one is not really guilty.

Procedurally, we accept the decision of the jury but we know in our hearts, the Filipino people know in their hearts and from their experience, that she is not the innocent widow her lawyers portrayed her to be, but the other half of the conjugal dictatorship. She knew what embezzlements Mr. Marcos was engaged in. She was shopping all over the world for hundreds of millions of dollars worth of mansions and artworks -- she just had to ask herself where all the money came from.

While the defendant was acquitted, the trial gained significant victories for the Filipino people. The long-term effects of these victories will someday be assessed. Oftentimes, from small temporary defeats, great victories emerge. The following are the positive results of the trial for the Filipino people:

1) It confirmed once and for all the voluminous incontrovertible evidence that Ferdinand Marcos was a world-class pirate, engaged directly in wholesale embezzlement of hundred of million of dollars through kickbacks, stealing directly from the treasury and from US aid funds, squeezing businessmen, and engaging in various corrupt enterprises. The massive evidence was so heavy that the defendant's lawyers could not contradict them. They relied on the argument that while Ferdinand Marcos was aware of this, Imelda knew nothing. The twelve jurors who have no sense of Philippine history may have thought that she is somewhat guilty but gave her the benefit of the doubt, because in this system, there is a prevailing philosophy that it is better to let a guilty person free than condemn an innocent one.

2) The extensive three-year investigation prior to this trial which covered five continents involving the FBI, Interpol, PCGG and other law enforcement agencies resulted in the accumulation of so much informations and evidences which could have never been accomplished by the Philippine government with its limited resources and influence. Much of these data are not related to the New York trial and were not introduced as evidence but they bolster other pending cases and could lead in the filing of new cases both inside and outside the Philippines. These evidences and materials are now in the process of being turned over to the the Philippine government.

3) The California Overseas Bank which was named as a co-defendant corporation, a bank which has been used by the Marcoses to loan their money, pleaded guilty in this criminal proceedings. This bank now belongs to the Philippine government. It has a market value of about \$30 million.

4) Yesterday, a very, very important development took place. One of Imelda's co-defendants, Adnan Khashoggi, has quit-claimed all of his claims to these properties in favor of the Philippine government. He is not going to contest any claim of the Philippine government against his properties. What this means is that the Samuels collection, which is worth \$10 million, is now completely with the Philippine government. The quit-claim also includes the house in Beverly Hills where George Hamilton lives. (There is a pending suit on this in Los Angeles and when the trial proceeds, there should be no contest to that house.) As for the case of the other four Manhattan properties, there is also a big development because the only party left to contest those buildings are the Bernstein brothers. The civil suit would proceed and I am sure the Bernstein brothers would continue to affirm their claim but given these developments, by the evidence that came, our work is made much easier.

5) The most important development of this trial is probably the sense of outrage in all Filipinos of goodwill. It is not the case that this trial is the end-all and be-all in our quest for justice. It only means that the efforts continue on our part, on other levels and other dimensions.

Already, a relatively few but visible followers of the Marcoses, bolstered and emboldened by her acquittal, are now calling for her return. Some even announce her running for president. They see and announce her return in fancy rhetorics such as "national reconciliation." But all Filipinos of goodwill must see through this rhetoric, that it is a mere blinder folding before their eyes. Using this vague concept, it is as if we were going against the national interest if we do not support her coming back, as if we were going against the concept of Christian reconciliation if we do not support her coming back. We cannot have reconciliation because she shows no sign of good faith. We cannot talk of peace when they carry guns behind their backs. We cannot have reconciliation with those who express no remorse, no sorrow to the Filipinos to whom they caused so much sufferings. We cannot have reconciliation with those who refuse to return a single cent from the hundreds of millions they stole. These things have to be considered.

There are, of course views that she should be tried in our courts and that she should be brought to justice here. But decisions and considerations should be made in the light of reality, more than anything else. The courts may work but given the fact that they work slow here, all kinds of problems may be caused while the final decision is yet to be made. We cannot rely on the politicians or propagandas to give us the truth. We can only rely on our own hearts and our own feelings on this particular issue which affects all of us. Perhaps, we may not grasp the immediate meaning of it but it could lead to great disaster to our nation. The question to ask in this issue is if Imelda's return will bring better life to the Filipinos. Will it bring more food on their tables? Will it give them more health care? Will it give us more justice? In reality, when she comes back here, with all her tremendous resources here and abroad, think of the problems that she could bring. She still has networks in the various institutions in the Philippines.

Right before their very eyes, with their televisions, all the peoples of the world saw how Filipinos stood before tanks, their lives put on the line to drive away the dictators. What will it look like to the whole world if we allow them to come back? The world will tell us, "You fools, why did you allow them to come back? With all their resources, with their know-how in political ruthlessness now more advanced because they have learned from the lessons of the past, and with some of their associates now back in the Philippines using the same techniques, they could get altogether again and crush this country, put it in their grips and tyrannize it more than ever before. It would even be more difficult to get them out." This is the reality.

The right of millions of Filipinos to improve their lives is a far greater priority than the right of a few individuals, who have caused so much suffering, to return to the Philippines. The issue here is not how the present government has grown so inefficient but the issue is to continue making sacrifices to bring dignity and justice to the Filipinos. So, it is all up to you to keep them from coming back. Tell the world, tell the Congress, tell the politicians, tell the Supreme Court, "Don't let her back!"

The Imelda Marcos trial will always be a part of our history. The result was a real surprise to all of us because we were confident with the mass of circumstantial evidence pointing to her guilt. The meaning of this trial is that it is not so much of Imelda Marcos who is on trial. (Yes, she is guilty.) I think it is the entire Filipino nation that is on trial. I think we cannot make this single person our scapegoat for all our sins. We have to be involved and we have to make this decision to get involved.

DR. BELINDA AQUINO (Vice-President for Public Affairs, U.P.): I would like to express my appreciation to Ted Laguatan for making himself available to this forum, and for his equanimity in the face of the disastrous defeat of the Philippine government which he represented in the recent trial of Imelda Marcos in New York. It is not easy to accept something like this, when you spent practically all your waking hours trying to grapple with the problem, and thinking you had so tight a case there was no way you could lose. This defeat is specially painful for all of us Filipinos here and abroad who underwent intolerable suffering under the 20-year Marcos regime with its instruments of terror, corruption, and criminality, unparalleled in the annals of Philippine, if not world, history. Ted and I go a long way in the struggle against the dictatorship in the US during all those dark years, where on panels like this, we would try to convince, not always successfully, American and Filipino audiences to oppose the dictatorship. It must be doubly painful for Ted who is now pushed to the defensive for being an American citizen by the likes of Raffy Recto, Kit Tatad, and other scums of the earth who are now gloating in glee with the Marcos acquittal.

As personally incensed as I am, however, part of the academic in me dictates that I should view what has happened with less recrimination and more detachment. I guess what we can do, since the Marcos issue is by no means dead, is to revive and continue the struggle on a different plane, on a people's level, so to speak, because the current government unfortunately has not had a coherent strategy from the beginning to deal with the Marcos legacy of disaster. If there is anything that is so galling, it is that in only less than five years, we seem to have forgotten the immensity of the Marcos plunder and crimes against the Filipino people. I expect people's memories to be short, but not that short! I keep asking myself, what is it in the Filipino psyche that does not seem continuously outraged by something like this? Is it forgiveness? Is it forgetfulness? Is it part of our survival instincts which include escapism? Is it the Filipinos pragmatic nature, expressed in such attitudes as "tapos na yan -- what else can you do?" Is it our faith in God that He will mete out the proper punishment by consigning Ferdinand and Imelda to the lowest limbo of hell?

Speaking of Philippine history and culture, Ted alluded to the jury's lack of that in their deliberations during the trial period. This is an important dimension of the case that Chief Prosecutor Charles Labella probably failed to appreciate, and if he did, failed to address. The average American is really a very uninformed animal, especially with regard to international events. You would think that with just about every family owning a TV set, they would be more informed or even sophisticated in their views and outlook in life. But there were times when I was studying on the East Coast that people wondered whether Hawaii or Alaska was part of the United States. It is not realistic to expect the average American to have even a rudimentary knowledge of Philippine history. In this light, I wonder why part of LaBella's strategy for the prosecution did not include familiarizing the jury with the nature of power in Philippine society, specially during the Marcos conjugal dictatorship. Instead of those huge charts detailing the flow of money from Manila to the Caribbean, the prosecution could have graphically shown the power of Imelda as the other half of the dictatorship having other powerful positions such as Minister of Human Settlements, member of the Batasan, Governor of Metro Manila and Director of about thirty government corporations which masterminded all that plunder.

In this way, Spence's ridiculous assertions that Imelda was just an innocent housewife in Marcos's powerplay would have been blunted somehow. The position of women in American society is not influential. Even upper-class or highly-educated women have a hard time getting into positions of power whether in bureaucracy or other institutions. As late as 1960, there were only about ten women who were full professors in American universities. In a sense, the women

in the jury probably thought all Imelda did was to buy shoes and dresses. This was reinforced by the playing up of the shoe story in the tabloids like the New York Post which has a corner called "Shoe Time."

Speaking of media, another point that may have been taken for granted, as brought up by Kristina Luz in the *Inquirer* this morning, was the role of media in the trial. The lack of strategy to deal with the US media full time might have been a flaw in the government's case. Considering the influential role that the media plays in American society, specially in New York, there should have been a strong network for this function. Carmen Pedrosa (author of *The Untold Story of Imelda Marcos*), did the best she could, but in retrospect, she might not have been the best person to handle the job from a professional perspective. While she is knowledgeable on Imelda's history, she might not have known the US media scene that well since she had lived in London for the past 20 years. Kristina Luz's report also mentioned that Pedrosa's energies were also directed at writing commentaries for the *Philippine Star*, which took a lot of her time.

The other issue that perhaps Ted can enlighten us about is why the prosecution went for the RICO instead of the ordinary State Statutes and Laws on Racketeering, Theft and Fraud. Couldn't the "Al Capone" solution of tax evasion which was easier to prove have been more applicable in this case? The trouble with RICO is that it was specifically developed by the US Congress in 1970 to go after Mafia leaders with a known pattern of racketeering. Imelda's racketeering was a repeated pattern, in the Philippines but not in the US. It might not have been the right law to apply to her case. According to Professor Lawrence Tribe of Harvard, the RICO law over the years represents the combined effects of "congressional laziness and prosecutorial grandstanding." The US Congress has not amended the statute to specify the crimes covered by the act. This leaves the prosecutor with much discretion and in general, Tribe concludes, prosecutors are tempted to reach beyond their grasp. Labella may have overstepped or overreached realistic bounds in arguing the government's case with 300,000 pieces of evidence. It is mind-boggling how anybody can go through 300,000 pieces of evidence.

Everyone is blaming everybody else for this debacle: Judge Keenan influenced the jury with his ill-considered remarks about the propriety of trying the case in New York; LaBella was too blunt and too hostile; Guilliani wanted to use the case to advance his political career; Livingston was too hostile; The PCGG was inept; Senate President Salonga was a bungler; and so on. People had a field day trying to find scapegoats for this acquittal. Somebody has to be blamed for this disaster.

It has not occurred to anyone to question the competence and the attitudes of the jurors. This is because, as a general rule, the jury is a great and sacred American institution. It is supposed to be the bed-rock of American justice. It is a living symbol of American democracy. It is the keeper of American conscience. It lies at the very heart of American liberalism. Without juries, US district and federal courts would not be able to function.

But the post-trial statements of Imelda's jurors make you wonder if this supposed "guardians of American justice" are worthy of the venerable institution they represent. Allan Belofsky said, "Gerry Spence lied an awful lot" but that was easier to excuse than LaBella's inability to come forward with the right evidence. The hardworking Labella presented 300,000 pieces of evidence. Belofsky had a bundle to choose from. He also said that Judge Keenan's remarks influenced the jury. Weren't the jurors supposed to be independent-minded? Belofsky went further and expressed his dislike for Spence whom nobody in the jury "liked or trusted." As if Belofsky's pea-brained ideas were not enough, his peer Thomas O'Rourke even had a more profound assessment: "We're not big brothers to the people overseas. It was totally a silly case." To top it all, jury forewoman Catherine Balton chimed with: "There was no evidence. It was a poorly prepared case."

What kind of jurors are these? The way they were talking, they were absolutely uninformed. Their level of comprehension of the case was their problem, not LaBella's or Livingston's. There

should have been an effort to make sure that the jurors understood the laws concerned and the complex manner of how they are violated.

With regard to Judge Keenan -- he said what he said out of frustration. I don't think he meant to prejudice the case. He knew the trial was being held in New York. That was very clear in the indictment papers of Marcos and Imelda. The trouble was the jurors were not sequestered and they certainly read the Judge's remarks in the papers.

Finally, the acquittal is being seen as a political defeat for the Aquino government. Once again, this administration was maneuvered. This relates to what I said earlier about the current government's lack of strategy in solving its major problems. Whether in political or economic problems, there seems to be no one in charge. This is typical of the disarray and drift that characterize the Aquino Government. This acquittal is therefore a lesson to the present government. Ted mentioned that the mountains of documents used in the New York trial will be turned over to the Philippine government to be used in future trials. But will the PCGG have the ability to take care of all these? Already we hear about documents being stolen.

I am worried about the ability of this government to have any coherent and organized strategy to deal with the Marcos issue. PCGG was set up but that was only to go after the ill-gotten wealth. That was not all there was to the Marcos dictatorship. As Pete Daroy said, "Going after the ill-gotten wealth became an obsession." How about the other larger questions of justice, the human rights violations, of the fact that Imelda was at the other half of the dictatorship under which about 60,000 were jailed without charges and 6,000 disappeared? Even when we get all the money from the quit-claims and all the evidence, we don't get the sense that the current government has a strategy to meet any problem that it encounters.

This reminds me of the case of the Nazi war criminals. Until now, the Israeli government is still going after them and will not stop until they get the last of these criminals. The government also erected a museum in which all the crimes are detailed just so future generations of Jews will not forget the holocaust. This is so sad compared to our case. In four years, we seem to have forgotten. The Aquino government doesn't have a pattern to control problems and doesn't reassure us that this is the kind of setting in which we have to deal with the next level of struggle. Since it is not realistic to depend on the government, we should once again get people power into play for something like this. I guess we can begin by reminding people constantly of the Marcos years like putting up a museum.

With regard to the return of Imelda, Filipinos tend to say "Kawawa naman siya. She has the right to come home." We have to look at the problem at a higher level of abstraction that is governed by higher ideals of justice, fairness -- what we are fighting for. If we personalize this, I think we should just kiss the problem goodbye.

PROF. RAFAEL LOTILLA (U.P. College of Law): Ted has mentioned two issues which I consider distinct and separate. One is in relation to Imelda's trial and the other is about the right to return.

The loss by the prosecution of the case came as a shock to most people in the Philippines and that indicates that there was something wrong. The many shows and articles that we see trying to explain the case in a different light are susceptible to interpretation as part of an effort to explain the damage that had been done. I don't feel shocked at the outcome. As early as the time Imelda started appearing at the trial, I impressed upon the members of the press that the case should be viewed really more as a US case. Remember that this is a criminal case and what we have in a criminal case is an injury or damage which is suffered by the collective, by the society which seeks now to enforce its justice upon its wrongdoer. Ordinarily it is only the private individual who suffered damage or injury who proceeds against the person who did wrong to him but in a criminal case, it is the collective interest that is sought to be upheld.

Whose collective interest was sought to be vindicated in this case? While it is true as Ted

explained that the Philippines appears as a private complainant, we must understand that a private complainant in a US criminal case is not the same as a private complainant in a Philippine criminal case. Here you will find that it is often the private complainant who is in control of the situation, although theoretically it is the state through the government fiscal who has control of the case. In fact, our practice is to allow the private prosecutor to proceed and actually control the case. All the fiscal has to do is to be present there, sit back, relax and earn his salary. Because of this, the major law that was supposed to be violated by Imelda was a federal law and therefore, the way to present it was to say that the American jury was being called upon to determine if there was damage or injury to the collective interest of US law. It is not "People of the Philippines versus Imelda Marcos" here that was the primary concern. It was the US represented by the Federal government proceeding against Imelda for the violation of the Federal laws of the US. Looking at it in that manner, the impress to the Filipino people becomes marginal from the point of view of the jury who represents the American people.

I do agree with the points that Dr. Aquino has raised but then I would not want to speak on the deck of somebody else's ship. If an American is tried in the Philippines for a crime he has committed in the Philippines and there are defects in our judicial system, still I would not want them (the Americans) to put the blame on us. In this case, the American judge had a narrower way of looking at things. He did not have in mind the Philippine interest here.

The control is with the state prosecution service, in this case, the federal prosecutors. We should appreciate the things that have been done by people like Ted. You see, you can cooperate, you can provide everything but you do not have control. And that should have been made clear to our people. Yes, we are cooperating, we are doing all the things that we can to assist the Americans in proceeding against Imelda but regardless of the outcome of this case, it has nothing to do with vindicating the rights of the Filipino people.

In normal circumstances, usually it is the government that is wronged that will seek to get the wrongdoer from the other country. That is why we have extradition treaties. So if a criminal has fled Philippine jurisdiction, and goes to the US, if we have an extradition treaty with the US -- which we do not have -- then we make arrangements for that person to be brought back to the Philippines and then we try him here under Philippine law. But this is not the case that happened with Imelda because of the unique circumstances surrounding the case. The government made the decision that Imelda should be kept away from the Philippines. So, we didn't want to touch her, not at this time, and we do not even question that decision. The government is in control of most of the facts and information. For one reason or another, they made a decision not to allow Imelda to the Philippines. Therefore, we cannot try her here because our Constitution requires that the person should be here in the Philippines. Of course, we must be thankful that in this case, the government acted. In other cases, it has failed to act. Even if I disagree to the act, at least there was a decision that was made.

We should take a look at the Imelda trial as only one of the many cases which are sought to be filed by the Philippines in order to recover the ill-gotten wealth. For me, we lost the case in the US but since it was primarily of US interest, it does not really matter. At the time that we can afford to bring back Imelda and try her here, she can always be tried under our laws and under our own system. If that time will come when we have more confidence in our judicial system than in the American judicial system, I think that will be the time to say that our interest has really been vindicated.

My concern really is on the impact that the American jurists decision have on future litigations that may take place in the Philippines. Let us say that 10 years from now the government decides that it can now allow Imelda to come back and charge before the Philippine court. If she is found guilty, how now can people look at this verdict -- "Lutong Cory?" They will say that if the American jury which was supposed to be objective found her not guilty, how can the verdict be different in the Philippines? So again, there is a need to explain that the Filipino interest, our quest for justice, is different from the American quest for justice. If Imelda

stole money from the US and invested it somewhere else, she was sure to have been convicted.

But, in this case, she stole from the Philippines and brought it to the US. Whom do you think benefitted? I mean, are you in your right mind to prosecute people for bringing in money into your country and investing it there? No, that would mean less job, less business. These are some of the pragmatic considerations that may have unconsciously seeped into the minds of people judging this case. I do not question the dedication or competence of the prosecution of LaBella and others in the US. It has nothing to do with that.

What are some of the lessons to be learned here? Let me put it in a broader context. We are not the only country from whom somebody has stolen and stolen in the proportions that Marcos did. We are in the same boat as other Third World countries where for so many years, a government supported by the US stole uncontrolled, without any inhibitions, from its own people. What this shows is that there is no remedy that is available in the US for us to recover the wealth of which we were deprived. The remedies that we have now are purely national in character. They are not international. We've got to litigate in the US, in Switzerland, in the many jurisdictions where the money was brought by the Marcoses. That is a difficulty because it means choosing where to file the case. Should we file the case here or in the US? Well, we cannot afford to file it here so let us file it in the US. If it will be in the US, should it be a civil or criminal case? If it is going to be a criminal case, should it be a criminal case before the federal courts for violation of federal law or a criminal case in the state court for violation of state law? If it is going to be a state law, which state are you going to litigate in? Think of the difficulties. First, you have to get a lawyer and you know how lawyers charge. We are lucky that we have people like Ted. Besides lawyers, you have to get bankers as consultants, accountants and public relations people because we are dealing with the case in an entirely different jurisdiction from that of the Philippines. These are parts of litigations in the US. There is also the practical difficulty of maintaining suits by long distance. Dr. Aquino asked, "Was there really somebody on top of these things?" As Dr. Aquino has underlined, there has been no coherence nor continuity in the system we have for the recovery of the ill-gotten wealth. Has there been continuity even in the PCGG? How many times have the people there been changed? So what collective memory can we rely on except in cases of people like Ted who have been there since 1986, but they are only a part of the picture, not the total one. Of course there is also the reluctance of other states to enforce the law of the victim states. This is common to almost all of the countries of the Third World. These are some of the questions and the lessons that we can learn from this.

I have already alluded to the lack of coordination in the government. Even the Office of the President, in this case, has been rather inconsistent in its treatment of the subject so that whereas before there was enthusiasm for bringing attention to the fact that Imelda was being charged in the US, suddenly there was a back-tracking on the same subject matter and now it does not really matter. So the credibility of the explanations that have been belatedly provided is lower than before.

Like other Filipinos, I don't feel that much outraged not because I think the Marcoses did not do anything wrong to the Philippines but because if you think about it, if we are going to recover a lot, some people would say, "Anyway, who is going to make use of them?" Not the Filipino people. So, what interest do Filipinos have in winning the cases if that is the degree of confidence we place in the ability of the government to spend wisely any amount that we will recover?

In the end, I agree with the other speakers that it is we, the Filipinos who are going to act on the matter. I think the reason why the government has been able to get away from not having to prosecute grafters and violators of the law and therefore that tends to cloud people's judgments about the guilt of Marcos. If we do unite and force the government to face up with the issues then I think we will be able to have the rights that were violated by the Marcoses vindicated right here in the Philippines.

As far as the right of Imelda Marcos to return, even people who are equally sincere can disagree about this matter. It is dependent on the perception of how much a threat she is to the nation at this time. Because of that, I wouldn't really criticize the government on its position that she should not come home at this time and be prosecuted here but when the conditions are ripe and the government agrees with us on this point, then I think she should come home to face Philippine judgment.

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ATTY. LAGUATAN: In bringing this case to New York for trial, it is not necessarily the interest of the Filipino people alone that was involved. The interest that initiated this case was actually the obstruction of justice charge which is serious because what is being destroyed is the power of the court which is committed by misrepresenting things. This is what started the case, not the stealing in the Philippines. It just so happened that there is a concurrence of interest here as far as the interests of American justice and justice for the Philippines are concerned. This kind of case is actually new in the US. There have been no cases of going after a dictator's money, so this case is blazing trails in American jurisprudence.

Why were the RICO charges filed rather than other kind of crimes such as theft? Theft by itself would not apply because the theft occurred in the Philippines. In law, there is such a thing as jurisdiction. The court has proper power over a particular case. Why not tax evasion? Because the tax evasion did not occur in the US but it occurred here.

I agree with the professor's comments that a lot of points should have been made about how the Filipinos suffered. I suggested this to Labella to make more of an emotional appeal so the jury might feel the sufferings that the Filipinos went through. However, the jurors might say, "That is none of our business," or the judge might think this irrelevant because it is not related to the purchase of properties. I still believe that more emotional appeal should have been made because Spence was doing this all the time. This was the argument of Spence. He is a great actor. In terms of substance, I wasn't impressed to what he was saying. Nobody believed when he said that the money stolen was actually not stolen but was brought there under the color of law by the Marcoses to use against a communist takeover; that they were advised by the CIA to invest in real estate in Manhattan. Spence was a very cosmic actor. When he presents an argument, he is quite a scene to watch. So if Labella presented more emotional arguments, there should have been a difference.

Comment: Those who are trying to explain why the Imelda trial was lost saying that while we lost the battle, we won the war, or something to that effect, really attempt to moderate a defeat within a fiasco. One of the reasons why there was a disaster was the strategic error of filing this case in the US with our government willingly, deliberately surrendering our right to the US. We helped them gather evidence in this country, we transported 300,000 documents, we spent millions and millions of pesos, and what have we got? Nothing. The mountain [sic] in the US composed of Labella, the FBI, the entire federal system and the Philippine government through the PCGG heaved and heaved and labored mightily and it did not produce even a small mouse. The reason for this is that we have violated a very important right, and that is the right of sovereignty. We claim we are sovereign, but what are we doing to our sovereignty? We are ruining it.

PROF. LOTILLA: I did not state that no case should have been filed in the US. Before any lawyer can make any recommendation like that one should have the information available. I do not have access to the informations. The things that will affect such a decision -- for example, a decision to file a case in the US as a civil one to make it easier to make fishing expeditions for evidence there -- should be taken into account. If one of the objectives was to enable the Philippine government to have access to public records that have now become part of the records of this criminal case, that is a valid ground for doing it.

ATTY. LAGUATAN: The case was filed by the US prosecution and not by the Philippine government and so the case pertains only to crimes committed in the US. It does not pertain to thefts, including money in Switzerland, or the violations of crimes in the Philippines.

Without the resources of the US government -- going to five continents, getting records from Hongkong, California and Swiss banks and other documentations from France and South America -- we ourselves would not have been able to get these because we have limited power and resources. Not all of these documents are related to the trial because in investigating the trial, other documents were incidentally acquired. Now that the trial is over, all of these documentations will be turned over to the Philippine government. We haven't seen a lot of these because the trial was not yet over. What we have seen are those which have been introduced as evidence for this trial. Also, it is not the case that all the 300,000 documents were introduced.

The government spent only 70,000 dollars to cover telephone calls, hotel bills, meals and all of that. The expenditures were mostly made by the US government because this is a federal case. Even the fare of all the witnesses from the Philippines were under US care. So in balance, we gained very, very much with very little expenditures.

Question: What about Senator Jovito Salonga's statements on television that a lot of the documents used in the trial were not accessible to the Philippine government and they were taken from Hongkong?

DR. AQUINO: Salonga may have been referring to the 2,700 pieces of documents that were found with Marcos in the plane when they went on exile. The first plane contained their properties. But there was a second plane that took their possessions from Clark Field and Solarz wanted to conduct a hearing of his own on these possessions as chairman of the US House of Representatives Committee on Asian-Pacific Affairs. So, he needed these papers and what he did was to subpoena to compel Marcos to give up these documents. Solarz made these documents public. In effect the documents had to come from the US to PCGG. But some of these were not included since they are said to be personal notes of Marcos. Whether these are letters to Reagan or whatever we don't know.

Question: Why should there be a question on whether Imelda should have been tried in the US or not? If she violated US laws in the US, then she should be tried in the US for those violations. If she violated Philippine laws in the Philippines, she should also be tried here in the Philippines. Why is there moral uncertainty about this?

ATTY. LAGUATAN: I have no doubts.

PROF. LOTILIA: Neither do I have doubts about trying her here. In fact, I think she should be tried here but I leave it to the wisdom of those who have greater access to information about the threat that she presents to national security to determine when she can be allowed to be tried here. The position of the Supreme Court here was that the President has the power to determine whether the Marcoses be allowed to come back or not. So, it is not really a moral dilemma whether she should be tried here or not. I think the President's statement was that she should be tried here at the right time.

The filing of criminal cases in the US is not within our control. It is the decision of the US government whether or not a case should be filed against her.

DR. AQUINO: I think it is all part of the recrimination going on. I think we have some kind of a language-politics situation here where it could mean many things. On one level, it means: if we have tried her here, she would have been found guilty. Another meaning is that: why is it that the Americans are trying to grab this case? They have no business trying it there.

Question: If the two missing ladies, Mrs. Gliceria Tantoco and Mrs. Fe Roa-Jimenez, have

appeared in the hearing, would have their testimonies made a difference? What kind of evidence was hoped to be established by the testimonies of these two women?

ATTY. LAGUATAN: Even the defense attorney of Khashoggi completely agreed that if they had come, the verdict would have been different. Even Tantoco alone could have come, she could have said, "Yes, the real owners of these properties are the Marcoses including Imelda, and that I, Gliceria, and my husband acted as fronts for them because they do not want the public to discover that these are their properties because if it is known that they transported hundreds of thousands of dollars here, the Filipinos would know that they are thieves. Yes, we are familiar of Imelda's connivance with her husband in so far as the embezzlement of these moneys in the Philippines is concerned, how they got it from kickback, how they got it from stealing from the treasury, stealing from US aid money." The Tantocos were the direct link so it could have made a very big difference.

Question: What was investigated here is not all the money stolen by the Marcoses but just particular funds. What are these moneys, where did they come from, how much do we get from the properties bought with them, and when can we own these properties?

ATTY. LAGUATAN: What is involved in this trial were the funds that were used to purchase all the properties in New York and the art collection. There are other properties all over the world including Swiss deposits which are not related to this case in Manhattan and therefore could not be introduced.

The Los Angeles case now becomes almost moot because the subject matter of this case is the California Overseas Bank which has pleaded guilty in this criminal suit and is now with the Philippine government. The other subject matter is the house of Hamilton and this has been quit-claimed by Khashoggi to the Philippines.

Let me just give you a brief story of the bank deposit of Imelda. Just about a few days after the EDSA revolution when they flew to the US, a Filipino who was working with the Lloyds Bank in LA called to tell me that Imelda has an account of about 700,000 dollars in their bank since 1984. Maybe she forgot about this deposit since she has a lot of money scattered around. (Imelda has lots of money, of course. She paid Spence \$5 million though the papers say it was Doris Duke who paid him.) We put a lien on this so it can not be withdrawn. That was four years ago so its now over a million dollars. Everybody was just waiting for this criminal case to proceed before proceeding with all the other criminal cases.

In New York, there are four buildings involved. The three had been foreclosed by the banks because the Marcoses stopped paying on the monthly mortgages. It does not mean that the Philippines would not get any money from the three buildings that are foreclosed because these properties were used as collateral. What Imelda did was to borrow money on these properties using them as security so when they are sold, the Philippines would get some equities on these. On the fourth, the Crown building, there is about 70 million dollars going to the Philippine government.

Question: Why did Keenan put his questions in such a prejudicial manner?

ATTY. LAGUATAN: The jury was not in the room when he asked those questions. Procedurally, before a jury goes into sequestration after the closing arguments, it is a normal procedure for the defense to make a last-ditch effort to win the case by filing a motion to dismiss on grounds of insufficient evidence. By way of establishing the record, Keenan directed these questions to the US attorney. He was not making an opinion but establishing the record by way of interpolation. The problem was when it came out in a *New York Times* story written by a Craig Wolf, it came out in the headlines that this was Keenan's opinion which the judge later denied. Unfortunately, the jurors read it when they're not supposed to read anything and admittedly, it affected their verdict.

Question: Can the fact that the jurors knew about Keenan's questions be a basis for a motion to declare a mistrial?

ATTY. LAGUATAN: It could but it's very difficult to determine what made the jury make the decision. There is a general policy to respect the decision of the jury. There is such a thing as a judgment notwithstanding the verdict of the jury which happens when there is proof that there is tampering with the jury or that the jury determined certain facts to be so but made wrong application of the law.

In this particular case, while the jury admitted that they were influenced by the judge, they were also saying that there was not enough evidence linking Imelda Marcos to her husband's crimes. There's no way of probing the minds of each juror on how he/she arrived at the decision, so based on track record, it's very difficult to file this kind of motion.

Question: Were not members of the jury chosen by both the defense and prosecution? Shouldn't have the prosecution chosen then more competent and non-"pea-brained" jurors?

DR. AQUINO: I exaggerated a little bit. I did not mean incompetent per se. I questioned more the overall quality of the jurors. There is a complex and lengthy process of jury selection but it doesn't necessarily mean that you get the best because people do not qualify if there is an indication of even just a slight bias.



ATTY. LAGUATAN: The judge asks certain questions from the jurors and both defense and prosecution have some input on that, then the prosecutors have a so-called "six peremptory challenges." They can get rid of any juror for any reason or no reason at all. The defense has twelve. Given the limited time to pick the jurors and if you have a universe to choose from, you don't get the ideal and so just hope for the best in what is there. The jurors here were postal clerks, retired secretaries, etc.

Comment: I feel that the jurors were able to make a clear distinction between a crime being committed against the Americans and a crime against the Filipinos. They decided there wasn't a crime against the Americans. They have implicitly decided in their judgment that it should be tried elsewhere, perhaps in the Philippines. The fact that these people are not lawyers or accountants or politicians will not make them less capable of making a fair judgment so the comments about them not having a sense of history about the Philippines is irrelevant to their ability to make a fair judgment of the case.

ATTY. LAGUATAN: Generally, you are right about jurors. The system works in general but it has its defects. This case is so different because this is a case of first impression in the US, where a former First Lady of another land is being tried together with a well-known Arab. So, I am sure those attitudes affected the jurors' minds but it does not mean, however, that they arrived at an absolutely correct decision based on the evidence because it would appear that there was so much evidence there but they just did not take enough time to look at them.

DR. AQUINO: One thing to remember about the juries is their unpredictability. I think there is now an effort in jurisprudence circles to come up with a sub-field of law specifically dealing with jury behavior.

Comment: The prosecution had an advantage because there is a universal knowledge of the Marcoses' lifestyle and Imelda Marcos years prior to her trial. There was a universal dislike for her that was going for the prosecutor.

ATTY. LAGUATAN: The jurors knew very little about the Philippines. As for Imelda, they knew about her shoes.

She was a great actress and this could have affected the jury. If you were there in the courtroom, you could see the expression on her face as if she was so lonely; she was wearing black; she was weeping; she was holding on to the rosary all the time that she was in front of the jurors. As soon as the jurors left, she started shaking hands with the people in the crowd. At the time she vomited blood, when her stomach was examined, there was no blood. Supposedly when you vomit blood, the blood comes from the stomach. She and Spence were a great tandem. They were both great performers.

Comment: I understand that the defense rested principally on the establishment of the fact that the woman in the American family system is not expected to know the business dealings of the husband. I read one comment which stated that perhaps, somebody who had some knowledge of Philippine culture should have been brought in to shed some light on domestic relationships within a typical Filipino family, that the Filipino wife is not exactly a stupid role-player within the concept of the family as an institution and that it was far-fetched to think that Mrs. Marcos, with the position that she was in during the regime, could not have known anything about the business dealings. But that was the failure of the prosecution rather than the jury. I agree with the position that one cannot fault the jury because it is the burden of the prosecution to prove.

Question: Should not the quit-claim of Khashoggi be considered as an admission of guilt and if so, should we not consider it as an admission of Imelda as well? If the quit-claim is valid and the Philippines could have a valid claim on the subjects of the quit-claim, how much time and what do we have to do to really own such properties?

ATTY. LAGUATAN: The quit-claim happened after the trial so we cannot use it as evidence of guilt. As to when we will get these properties: the art collection is already ours; with the Hamilton property, at the moment our lawyer appears in Los Angeles, there should no longer be a problem; with the New York properties, the other claimants are the Bernstein brothers who were used as fronts. They maneuvered against Marcos when his downfall was imminent because they wanted him to sell the properties at a low price or else they would go public and state that the properties are his. Until now, they still continue with the claim. But with all these evidences from the trial, I doubt if they will have a strong claim. There will still be a trial. As to how long, I think it would be in a year's time.

Question: The quit-claim is the best thing that ever happened in the Imelda trial. It proves that this was not so disastrous a defeat since we got the properties. Why doesn't the media play this up to show that we didn't lose?

ATTY. LAGUATAN: Media has special interests. If you look at the Marcos diaries found in Malacanang when they left, you will see the amount of money given to the media by the

Marcoses. A lot of the people in the list are still writing in the media. We hope that all of this will come out eventually.

Question: Why is little importance given to the case in Seattle where Ferdinand Marcos was held liable for ordering the murder of two individuals, a crime more serious than that for which Imelda was tried?

ATTY. LAGUATAN: The case referred to is a civil case for the recovery of moneys based on the allegation that Marcos ordered the killings using a Marcos lieutenant and a Marcos friend, Dr. Leonilo Malabet. The plaintiffs filed suit against the Marcos estate because Marcos is already dead, meaning you can no longer file a criminal suit against somebody who is dead. The court in Seattle decided that the Marcoses were in fact involved and the estate of the two victims won the case getting a judgment of \$16 million against the estate of Marcos and \$8M from Malabet.

Comment: There are two things that worry many of us. First, the uses to which the decision on the Imelda trial can be put. One American lawyer has remarked that this Imelda case in the US might be used, as it has already been used extensively, to vindicate the entire Marcos regime, which I think is very far from whatever meaning you can read from that New York decision. Our cynicism about these things grows in direct proportion to our disenchantment with the Aquino government. This should not be the case. I think our struggle against the Marcos dictatorship is independent of the rise to power of Mrs. Aquino. Our effort to establish a just and prosperous society in our country should be independent of any member of the elite.

The second thing that bothers us is the fixation with the recovery of the hidden wealth to the neglect of the other things for which we rejected the Marcos regime, the violation of human rights: the repression, the incarceration of many innocent people and the ruination of many lives including many students of UP, members of the peasantry and the working classes. Not a single one of those who violated the rights of our people has been jailed by this government. We expected this government to epitomize and symbolize that quest and it has only produced a dismal record of one disappointment after another. Perhaps justice will be won under another government.

ATTY. LAGUATAN: The really bad legacy that the Marcoses left to the country is what they have done to the moral fabric of Philippine society. It is difficult for many to distinguish right from wrong because some of the corrupt things that are now here are institutionalized, so embedded in the minds of people.

The greater task is to make this government more responsive to the legitimate needs of our people who have suffered so much. We have a tradition of politicians who have almost always sold them down the river. You cannot allow these to speak for you. We have to stick to the fundamentals of having the courage to speak out for ourselves.