

JUDICIAL RESPONSE TO TERRORISM*

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(Original Text in English)

Responding and Being Proactive

There is no conflict between exploring appropriate judicial responses to terrorism and a more proactive judicial stance. The judiciary in most systems of constitutional democracy is “passive” by design, in that it acts only when its jurisdiction is invoked and disputes are brought before it for adjudication. As the global village, however, responds to the challenge of terrorism that assumes perversely devious forms, the entire mechanism of the State must be proactive, and so then must the judiciary, without transgressing its constitutionally apportioned limits.

Actively coping with the menace of terrorism can engage courts in the enterprise of engendering jurisprudence that is at once bold as it is responsible in framing juridical parameters for the treatment of terrorism. Without compromising the constitutionally and internationally guaranteed rights of persons – including (and perhaps, especially) those charged with acts of terrorism – courts can be proactive by abandoning doctrines that become obsolete in the face of the schemes of terrorists. Judicial precedent laid down in more peaceful, less violent times may be ill-suited for more volatile and less benign circumstances, with the result that reliance on such doctrines without qualification or modification does not serve the spirit, purpose and intent of the law.

Recently, the Congress of the Republic of the Philippines amended its Anti-Money Laundering Law. Under Republic Act Number 9194¹ the indicia of a “suspicious transaction” that would place it within the purview of the law are enumerated, leaving the courts, however, that necessary latitude to appreciate evidence and to draw inferences. A proactive judiciary would make use of the discretion afforded by such laws to be more responsive to the exigencies brought about by terrorism. Thus, the malignant pervasiveness of terrorists and their subtlety should be factored into the judge’s use of the discretion he enjoys so that present and future cases benefit from germane and appropriate judicial standards. When applied to the amended Anti-Money Laundering Law of the Philippines, for example, proactive jurisprudence would allow relevant State agencies to uncover funds hidden by terrorists. Our courts in the Philippines must await cases invoking the new law to be brought before them. They will still be proactive, however, if they enunciate juridical standards that allow them not only to dispose of cases actually before them but similar cases in the future in the wake of possible terrorist activity.

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¹ An Act Amending Republic Act No. 9160, Otherwise Known as the ‘Anti-Money Laundering act of 2001’ Section 2, amending Section 3 of R.A. 9160.

