

# [ PRESIDENTIAL DECREE NO. 328, October 31, 1973 ]

## **AMENDMENTS TO THE RULES GOVERNING THE CREATION, COMPOSITION, JURISDICTION AND PROCEDURE AND OTHER MATTERS RELEVANT TO MILITARY TRIBUNALS.**

**WHEREAS**, the rules governing the creation, composition, jurisdiction, procedures and other matters relevant to military tribunals as promulgated by Presidential Decree No. 39 dated 7 November 1972 does not authorize/provide for: (a) right to counsel to respondent during summary preliminary investigation, and (b) perpetuation of testimony;

**WHEREAS**, in the counterpart Fiscal's preliminary investigation in the civil courts, the procedure set forth in Presidential Decree No. 77 dated 6 December 1972, amending Section 1 of RA No. 5180, affords respondent the right to counsel but the presentation of evidence is limited to sworn statements of the parties;

**WHEREAS**, to prevent a failure or delay of justice, it is imperative, more so when the overriding interest of national security is at stake, that perpetuation of testimony be provided for and authorized in such manner as would achieve the aforesaid ends without impairing the substantive rights of the accused;

**NOW, THEREFORE, I, FERDINAND E. MARCOS**, President of the Philippines, by virtue of the powers vested in me by the Constitution as Commander-in-Chief of all the Armed Forces of the Philippines, and pursuant to Proclamation No. 1081 dated September 21, 1972 do hereby decree, declare and promulgate the following amendments to the rules governing the creation, composition, jurisdiction, procedure and other matters relevant to military tribunals, which are hereby approved, adopted and made part of the law of the land:

(1) Subparagraph 4a shall read as follows:

Before any charge is referred for trial, a summary preliminary investigation shall be conducted, unless one has previously been made. The investigation shall be for the purpose of determining whether or not there is prima facie evidence warranting referral to a military commission for trial. The investigator shall have the power to issue compulsory process to secure either testimonial or documentary evidence. The investigation shall, to the extent appropriate, follow the procedure set forth in Presidential Decree No. 77, dated December 6, 1972 and shall be concluded with the least possible delay. The investigation report shall contain a summary of the evidence, the acts constituting the offenses committed, and the findings and recommendation of the investigating officer. It shall be forwarded to the Judge Advocate General, AFP who shall determine for either the Secretary of National Defense, or the Chief of Staff, AFP, whether the case shall be referred for trial by a military commission.