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FROM

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MANILA
2014

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.M. No. P-09-2602. December 1, 2010]
(Formerly A.M. OCA IPI No. 07-2583-P)

Atty. JONNA M. ESCABARTE, Judge BONIFACIO SANZ MACEDA, SOTERA JAVIER, LETICIA AGBAYANI, NELLY CHAVEZ, CLAIRE GERERO, JOSEFINO ORTIZ, ANA RAMOS and EDGAR VILLAR, all of the RTC, Branch 275, Las Piñas City, *complainants, vs.* **Ms. LOIDA MARCELINA J. GENABE, Legal Researcher, RTC, Branch 275, Las Piñas City,** *respondent.*

(Formerly A.M. OCA IPI No. 08-2792-RTJ)

Ms. LOIDA MARCELINA J. GENABE, *complainant, vs.* **Judge BONIFACIO SANZ MACEDA, Atty. JONNA M. ESCABARTE, SOTERA JAVIER, LETICIA AGBAYANI, NELLY CHAVEZ, CLAIRE GERERO, JOSEFINO ORTIZ, ANA RAMOS and EDGAR VILLAR, all of the RTC, Branch 275, Las Piñas City,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; THE EMPLOYEE'S NEGATIVE ATTITUDE AND HIS USE OF OFFENSIVE LANGUAGE CONSTITUTE CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE AND CONDUCT UNBECOMING OF A

COURT EMPLOYEE.— [G]enabe's negative attitude and penchant for using offensive language can only prejudice the best interest of the service, not to mention that they constitute conduct unbecoming a court employee. It is well to remind Genabe that "the conduct and behavior of everyone connected with x x x the dispensation of justice, from the presiding judge to the x x x lowliest clerk x x x must be characterized with propriety and decorum, as Genabe's attitude goes against the principles of public service. Also, every "official and employee of an agency involved in the administration of justice, like the Court of Appeals, from the Presiding Justice to the most junior clerk, should be circumscribed with the heavy burden of responsibility.

2. JUDICIAL ETHICS; JUDGES; DISCIPLINARY JURISDICTION OF EXECUTIVE JUDGE OVER LIGHT OFFENSES.— We agree with the OCA observations that while the act of Judge Maceda in disciplining Genabe with a 30-day suspension is "not oppressive, capricious or despotic, that is, without color of law or reason, or without supporting facts," he still had no authority to *directly* discipline her under the terms of A.M. No. 03-8-02-SC, which provides: CHAPTER VIII. Administrative Discipline. SECTION 1. Disciplinary jurisdiction over light offenses. — The Executive Judge shall have the authority to act upon and investigate administrative complaints involving light offenses as defined under the Civil Service Law and Rules (Administrative Code of 1987), and the Code of Conduct and Ethical Standards for Public Officials and Employees (Republic Act No. 6713), where the penalty is reprimand, suspension for not more than thirty (30) days, or a fine not exceeding thirty (30) days' salary, and as classified in pertinent Civil Service resolutions or issuances, filed by (a) a judge against a court employee, except lawyers, who both work in the same station within the Executive Judge's area of supervision; or (b) a court employee against another court employee, except lawyers, who both work in the same station within the Executive Judge's area of supervision; x x x Under these terms, Judge Maceda's order of December 21, 2006 was clearly out of line. But while the Judge overstepped the limits of his authority, we see no reason not to ratify his action in light of its obvious merits. Thus, the 30-day suspension he imposed should stand but he should be warned against a repetition of the direct action he took.

3. ID.; JUDGES; SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL THEIR ACTIVITIES.— On the matter of the Judge's handling of the Subic seminar fund in September 2006, provided by the Las Piñas City, we agree with the OCA that the judge cannot not be held liable. Nevertheless, in view of the nature of the fund (which required no liquidation and is not an accountable judicial fund), we believe that the Judge should have taken steps – such as the informing the court staff or filing of a report with the OCA – on how the fund was handled. This precautionary move would have placed the Judge above any suspicion of impropriety. We stress that "Judges shall avoid impropriety and the appearance of impropriety in all their activities."

4. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CHARGE OF DISHONESTY AND FALSIFICATION, DISMISSED.— We likewise agree with the OCA recommendation that the charge of dishonesty and the charge of falsification against Escabarte and the other members of the staff be dismissed. We quote with approval the OCA finding on this point, thus — Under Section 23, par. (f), Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, falsification of official documents is punishable with dismissal from the service even for the first offense. Complainant Genabe's allegation, however, fell short of being supported with substantial evidence to hold her officemates-respondents administratively liable for falsification of their Daily Time Records. Complainant's averments, unsupported by substantial evidence, remain bare and unsubstantiated allegations. Well-settled is the rule in this jurisdiction that, in the resolution of complaints, reliance should not be reposed on the weakness of the defense, answer or comment but on the strength of the evidence adduced by the complainant.

D E C I S I O N

BRION, *J.*:

For resolution are the present consolidated administrative complaints involving the presiding judge and the staff of the Regional Trial Court (RTC), Branch 275, Las Piñas City. The

first, A.M. OCA IPI No. 07-2583-P, stemmed from a letter-petition, dated March 12, 2007,[1] filed by the court's staff, led by Atty. Jonna M. Escabarte, Branch Clerk of Court, praying that Ms. Loida Marcelina J. Genabe, Legal Researcher of the same court, be placed under preventive suspension. The second, A.M. OCA IPI No. 08-2792-RTJ, involves Genabe's countercharges of (1) acts of oppression and malversation of funds against Judge Bonifacio Sanz Maceda, and (2) dishonesty and falsification of daily time records (DTRs) against Escabarte; Leticia B. Agbayani, Court Stenographer; Claire Layco-Gerero, Court Stenographer; Ana Dalore-Ramos, Court Stenographer; Josefino R. Ortiz, Sheriff; Sotera T. Javier, Court Interpreter; Edgar F. Villar, Clerk; and Nelly R. Chavez, Utility Aide.[2]

The Antecedents

The material facts are summarized below.

The letter-petition of the staff of the RTC, Branch 275, Las Piñas City, is the offshoot of the order, dated December 21, 2006,[3] of Judge Maceda suspending Genabe for 30 days for neglect of duty. Escabarte and her group alleged that Genabe continued to render service despite her 30-day suspension by Judge Maceda and the judge's recommendation, contained in his investigation, report and recommendation (IRRC), dated January 18, 2007,[4] submitted to the Office of the Court Administrator (OCA), that Genabe be preventively suspended and, thereafter, dismissed from the service.

According to the judge, he issued the order after Genabe became unruly and highly combative during the staff meeting in his chambers on November 29, 2006, shouting disrespectfully to him, "*hindi na ko kailangan karinyo karinyohin pa ninyo*

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[1] *Rollo*, pp. 230-232.

[2] *Id.* at 260-266; contained in Genabe's Comment dated May 28, 2007.

[3] *Id.* at 11-13; A.M. No. 07-2-93-RTC (re-docketed as P-07-2320).

[4] *Id.* at 14-25.

x x x ang kakapal nyo x x x hindi kagalang galang,"[5] and disrupting the meeting; Genabe's outburst was a reaction to Escabarte's memorandum dated November 20, 2006,[6] citing her for neglectfully leaving for Baguio City on November 16, 2006, to attend the convention of legal researchers, without finishing her assigned task to summarize the statement of facts of a criminal case set for promulgation on November 21, 2006 (Criminal Case Nos. 03-0059 to 03-0063).

The IRRC, on the other hand, came about when Judge Maceda, at his own initiative, conducted an investigation of Genabe for attending the convention with an unfinished assigned task and for conduct unbecoming, pursuant to Rule 135 of the Rules of Court, Circular No. 30-91 dated September 30, 1991, and the ruling in *Aguirre v. Baltazar*.[7]

In support of their petition, Escabarte and the others alleged that Genabe continued to bully the staff of Branch 275, causing trouble and conflict in the office, as validated by the following incidents:

1. On December 27, 2006, Genabe, allegedly without provocation, shouted defamatory accusations at Agbayani, court stenographer, thus, "*Ang galing mo Lety, sinabi mo na tinapos mo yung Marvilla case, ang galing mo. Feeling lawyer ka kasi, bakit di ka magduty na lang, stenographer ka, magsteno ka na lang, ang galing mo, feeling lawyer ka talaga. Nagbebenta ka ng kaso, tirador ka ng Judge. Sige high blood din ka, mamatay ka sana sa high blood mo.*"[8] Apparently, Genabe was blaming Agbayani for her suspension. Genabe's derogatory statements allegedly echoed along the court's hallway and were heard by several court employees who executed affidavits regarding the incident.

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[5] *Id.* at 11.

[6] *Id.* at 34.

[7] A.M. No. P-05-1957, February 7, 2005, 450 SCRA 518.

[8] *Rollo*, p. 2.

Agbayani filed a criminal complaint for grave oral defamation against Genabe, and Prosecutor Carlo DL Monzon recommended the filing of an information against Genabe.

2. Escabarte filed a report, dated February 20, 2007, for Judge Maceda saying that Genabe, in apparent dissatisfaction of the low performance rating for the 2nd semester of 2006 she got from Escabarte, accused her and the other members of the court's staff of conspiring against her and falsifying their DTRs.

3. In a police blotter dated March 8, 2007, it appeared that Genabe allegedly called Gerero, court stenographer, "*pinakamandaraya sa Branch na ito.*"[9] Previously, Genabe was also quoted saying, "*Hindi ka in sa Branch na ito kapag hindi ka mandaraya*."[10]

In her Comment dated May 28, 2007,[11] Genabe denied the complainants' allegation that there was no provocation when she allegedly insulted Agbayani in December 2006; she just asked Agbayani why she claimed to have finished the bulk of the summary of facts of the criminal cases when she had almost finished the task before she left for Baguio City; and the alleged offensive remarks she made against Agbayani were work-related and based on her honest assessment of the situation.

Genabe admitted that she protested the performance rating she obtained from Escabarte for July 2006 to December 2006 and claimed that it must have been caused by her being observant and vocal about office decorum and practices and which must have drawn the ire of Atty. Escabarte.

Genabe likewise denied that she verbally abused Gerero, saying that Gerero must have found out that she knew Gerero leaves during office hours to attend her classes at the Perpetual University.

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[9] *Ibid.*

[10] *Ibid.*

[11] *Supra* note 2.

In a turnaround, Genabe accused the court staff of having their bundy cards punched in and out "on-time" by just one employee, as confirmed by the monthly attendance record of the employees. She alleged that she actually witnessed court interpreter Javier punch the DTRs of several employees; yet, despite the false entries in the DTRs, Escabarte certified the correctness of the DTRs; Judge Maceda himself had no way of knowing the anomalous practice as he himself reports for work only at two o'clock in the afternoon daily.

Finally, Genabe claimed that Judge Maceda treated her oppressively to drive her out of her employment in the judiciary and to get even with her on account of her intolerance of the anomalous practices prevailing in the court. She narrated that Judge Maceda would insult her during staff meetings and, on numerous occasions, even demanded that she resign from office; Judge Maceda's alter ego, Agbayani, had been securing the signatures of court and non-court employees of Las Piñas City to substantiate the complaints against her, thus isolating her and rendering her inutile since no work had been assigned to her from the time she reported back for work.

Further, Genabe accused Judge Maceda of malversation when the judge allegedly diverted to other purposes the court's training budget for 2006, obtained from the Las Piñas City government, as there had been no seminar/training had been conducted.

The Comments of Escabarte and the Other Personnel of RTC Branch 275, Las Piñas City

In compliance with the Court's Resolution of January 16, 2008,[12] the respondent members of the staff of the RTC, Branch 275, Las Piñas City, in A.M. OCA IPI No. 08-2792-RTJ, filed their individual comments on Genabe's charges of dishonesty and falsification of DTRs.[13] They all denied Genabe's

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[12] *Id.* at 315-316.

[13] *Id.* at 583-602 (Agbayani); pp. 624-633 (Ramos); pp. 654-658 (Chavez); pp. 659-663 (Villar); pp. 664-670 (Ortiz); pp. 670-672 (Gerero); pp. 691-695 (Javier); pp. 705-713 (Escabarte).

accusations and characterized her as an officemate with a volatile personality and who picks quarrels with the other personnel of the court and even non-court employees.

Specifically, they denied the charge of falsifying their DTRs. If it was true that Genabe had knowledge of the anomaly as early as two weeks after she commenced employment with the court, they wondered why it took her so long to divulge it and why she did not report the practice to Judge Maceda. In any event, they maintained that no evidence had been adduced establishing their involvement in the alleged anomaly.

Judge Maceda's Comment

On February 26, 2008, Judge Maceda filed his Comment[14] to Genabe's counter-charge against him. He even expressed surprise about it because he was not a party to the staff's complaint against her. He explained that he merely conducted an inquiry into the staff's letter-complaint, dated January 2, 2005,[15] praying that Genabe's lateral transfer be denied and that she be required to resign and seek employment elsewhere. The staff then charged Genabe for dereliction of duty and for some attitude problem, particularly her quarrelsome behavior that, according to the staff, needed psychiatric treatment.

Judge Maceda pointed out that his inquiry adverted to Genabe's 30-day suspension (for a light offense) in his order, dated December 21, 2006,[16] pursuant to SC Circular No. 30-91, which provides that the presiding judge of a particular branch, as the "head of office," retains the disciplining authority over his own personnel. He argued that Genabe had no basis in claiming that her suspension was "oppressive," for it was supported with facts.

As to Genabe's performance rating which offended her, Judge Maceda explained that her poor performance may be excused

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[14] *Id.* at 373-381.

[15] *Id.* at 382-383; Annex "A", Judge Maceda's Comment.

[16] *Supra* note 3.

once or twice, but beyond that, she deserved a stern lecture or even scolding which is not "verbal abuse" *per se*. He claimed Genabe already had, at the time, three low ratings.

Judge Maceda withheld comment on the intramurals among his staff, saying that the matter was between Genabe and the other court personnel and, therefore, Genabe's "quarrelsome behavior" was better told by the members of the staff themselves.

With respect to Genabe's malversation charge, Judge Maceda argued that no irregularity intervened in the handling of the training fund provided to the RTC, Branch 275 by the Las Piñas City as it was extended as a financial assistance to the court that needed no liquidation; the Las Piñas City itself had not asked for a liquidation and the sums given for the personal expenses of the recipients is not an accountable judicial fund.

The OCA Report/Recommendation

On November 6, 2008, the OCA submitted a Memorandum/Report[17] on the present administrative matters. It recommended the following: (1) Genabe be found guilty of conduct prejudicial to the best interest of the service and conduct unbecoming of a court employee and be fined in an amount equivalent to one month's salary; (2) Judge Maceda be reminded to strictly comply with A.M. No. 03-8-02-SC, with a warning against a similar violation in the future; and (3) the charge against Escabarte, Agbayani, Chavez, Gerero, Ortiz, Ramos and Villar be dismissed for lack of merit.

The Court's Ruling

We find the OCA recommendations well-founded.

First. Genabe ought to be disciplined. Although she had already been sanctioned by Judge Maceda for neglect of duty with a 30-day suspension (for the November 29, 2006 incident),[18] we cannot close our eyes to her work ethic and quarrelsome

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[17] *Id.* at 731-735.

[18] *Supra* note 3.

deportment in office as shown by the December 27, 2006 incident involving her and Agbayani. As abundantly demonstrated by the staff of the RTC, Branch 275, Las Piñas City, she had the habit of hurling "invectives" at her superiors and co-employees who displeased her and whom she suspected of having caused her suspension. The OCA itself found the unsavory and defamatory remarks Genabe threw at her officemates to have been made in a fit of anger, the product of uncontrolled rage and passionate outburst of emotions, unavoidably creating an unwholesome atmosphere in the court. It is no surprise then that the court staff urged Judge Maceda to deny Genabe's lateral transfer and to ask her to resign and seek employment elsewhere.

Without doubt, Genabe's negative attitude and penchant for using offensive language can only prejudice the best interest of the service, not to mention that they constitute conduct unbecoming a court employee. It is well to remind Genabe that "the conduct and behavior of everyone connected with x x x the dispensation of justice, from the presiding judge to the x x x lowliest clerk x x x must be characterized with propriety and decorum,[19] as Genabe's attitude goes against the principles of public service. Also, every "official and employee of an agency involved in the administration of justice, like the Court of Appeals, from the Presiding Justice to the most junior clerk, should be circumscribed with the heavy burden of responsibility.

Second. We agree with the OCA observations that while the act of Judge Maceda in disciplining Genabe with a 30-day suspension is "not oppressive, capricious or despotic, that is, without color of law or reason, or without supporting facts,"[20] he still had no authority to *directly* discipline her under the terms of A.M. No. 03-8-02-SC,[21] which provides:

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[19] *Almacha v. Payumo*, A.M. No. P-05-2010, June 8, 2007, 524 SCRA 34, 40.

[20] *Rollo*, p. 733.

[21] Guidelines on the Selection and Appointment of Executive Judges and Defining Their Powers, Prerogatives and Duties, approved on January 27, 2004 and took effect on February 15, 2004.

CHAPTER VIII. Administrative Discipline.

SECTION 1. Disciplinary jurisdiction over light offenses. — The Executive Judge shall have the authority to act upon and investigate administrative complaints involving light offenses as defined under the Civil Service Law and Rules (Administrative Code of 1987), and the Code of Conduct and Ethical Standards for Public Officials and Employees (Republic Act No. 6713), where the penalty is reprimand, suspension for not more than thirty (30) days, or a fine not exceeding thirty (30) days' salary, and as classified in pertinent Civil Service resolutions or issuances, filed by (a) a judge against a court employee, except lawyers, who both work in the same station within the Executive Judge's area of supervision; or (b) a court employee against another court employee, except lawyers, who both work in the same station within the Executive Judge's area of supervision;

In the preceding instances, the Executive Judge shall conduct the necessary inquiry and submit to the Office of the Court Administrator the results thereof with a recommendation as to the action to be taken thereon, including the penalty to be imposed, if any, within thirty (30) days from termination of said inquiry. At his/her discretion, the Executive Judge may delegate the investigation of complaints involving light offenses to any of the Presiding Judges or court officials within his/her area of administrative supervision.

Under these terms, Judge Maceda's order of December 21, 2006 was clearly out of line. But while the Judge overstepped the limits of his authority, we see no reason not to ratify his action in light of its obvious merits. Thus, the 30-day suspension he imposed should stand but he should be warned against a repetition of the direct action he took.

On the matter of the Judge's handling of the Subic seminar fund in September 2006, provided by the Las Piñas City, we agree with the OCA that the judge cannot not be held liable. Nevertheless, in view of the nature of the fund (which required no liquidation and is not an accountable judicial fund), we believe that the Judge should have taken steps — such as the informing the court staff or filing of a report with the OCA — on how the fund was handled. This precautionary move would have placed the Judge above any suspicion of impropriety. We stress that

"Judges shall avoid impropriety and the appearance of impropriety in all their activities."[22]

Third. We likewise agree with the OCA recommendation that the charge of dishonesty and the charge of falsification against Escabarte and the other members of the staff be dismissed. We quote with approval the OCA finding on this point, thus —

> Under Section 23, par. (f), Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, falsification of official documents is punishable with dismissal from the service even for the first offense. Complainant Genabe's allegation, however, fell short of being supported with substantial evidence to hold her officemates-respondents administratively liable for falsification of their Daily Time Records. Complainant's averments, unsupported by substantial evidence, remain bare and unsubstantiated allegations. Well-settled is the rule in this jurisdiction that, in the resolution of complaints, reliance should not be reposed on the weakness of the defense, answer or comment but on the strength of the evidence adduced by the complainant.

WHEREFORE, premises considered, Loida Marcelina J. Genabe, Legal Researcher, RTC, Branch 275, City of Las Piñas, is declared *GUILTY* of conduct prejudicial to the best interest of the service and conduct unbecoming of a court employee; is ordered to pay a *FINE* equivalent to her one month's salary; and is *WARNED* that a similar violation in the future shall be dealt with more severely.

Judge Bonifacio Sanz Maceda is *WARNED* against a similar violation in the future of A.M. No. 03-8-02-SC, and is advised to avoid any appearance of impropriety in the handling of financial assistance from the local government.

The charges of dishonesty and falsification of public documents in A.M. OCA IPI No. 08-2792-RTJ against Jonna M. Escabarte, Leticia Agbayani, Nelly Chavez, Josefino Ortiz, Claire Gerero, Sotera Javier, Ana Ramos and Edgar Villar are *DISMISSED* for lack of merit.

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[22] New Code of Conduct for the Philippine Judiciary, Canon 4(1).

SO ORDERED.

Carpio Morales (Chairperson), Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

FIRST DIVISION

[G.R. No. 154486. December 1, 2010]

FEDERICO JARANTILLA, JR., *petitioner, vs.* **ANTONIETA JARANTILLA, BUENAVENTURA REMOTIGUE, SUBSTITUTED BY CYNTHIA REMOTIGUE, DOROTEO JARANTILLA and TOMAS JARANTILLA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE RAISED BY THE PARTIES AND PASSED UPON BY THE COURT; QUESTION OF LAW DISTINGUISHED FROM QUESTION OF FACT.— It is a settled rule that in a petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure, only questions of law may be raised by the parties and passed upon by this Court. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. *For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them.* The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it

is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.

2. ID.; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT, WHEN CONFIRMED BY THE COURT OF APPEALS, ARE FINAL AND CONCLUSIVE; EXCEPTIONS.— Factual findings of the trial court, when confirmed by the Court of Appeals, are final and conclusive except in the following cases: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is a grave abuse of discretion; (3) when the finding is grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the Court of Appeals is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings of the Court of Appeals are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (10) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.

3. CIVIL LAW; PROPERTY AND OWNERSHIP; CO-OWNERSHIP; DISTINGUISHED FROM PARTNERSHIP.— There is a co-ownership when an undivided thing or right belongs to different persons. It is a partnership when two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves. The Court, in *Pascual v. The Commissioner of Internal Revenue*, quoted the concurring opinion of Mr. Justice Angelo Bautista in *Evangelista v. The Collector of Internal Revenue* to further elucidate on the distinctions between a co-ownership and a partnership, to wit: I wish however to make the following observation: Article 1769 of the new Civil Code lays down the rule for determining when a transaction should be deemed a partnership or a co-ownership. Said article paragraphs 2 and 3, provides; (2) Co-

ownership or co-possession does not itself establish a partnership, whether such co-owners or co-possessors do or do not share any profits made by the use of the property; (3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived; *From the above it appears that the fact that those who agree to form a co- ownership share or do not share any profits made by the use of the property held in common does not convert their venture into a partnership. Or the sharing of the gross returns does not of itself establish a partnership whether or not the persons sharing therein have a joint or common right or interest in the property. This only means that, aside from the circumstance of profit, the presence of other elements constituting partnership is necessary, such as the clear intent to form a partnership, the existence of a juridical personality different from that of the individual partners, and the freedom to transfer or assign any interest in the property by one with the consent of the others. It is evident that an isolated transaction whereby two or more persons contribute funds to buy certain real estate for profit in the absence of other circumstances showing a contrary intention cannot be considered a partnership.* x x x.

4. ID.; SPECIAL CONTRACTS; PARTNERSHIP; ESSENTIAL ELEMENTS; FIRST ELEMENT, PRESENT.— Under Article 1767 of the Civil Code, there are two essential elements in a contract of partnership: *(a) an agreement to contribute money, property or industry to a common fund; and (b) intent to divide the profits among the contracting parties*. The first element is undoubtedly present in the case at bar, for, admittedly, all the parties in this case have agreed to, and did, contribute money and property to a common fund.

5. ID.; ID.; ID.; SHARE OF EACH PARTNER IN THE PARTNERSHIP, CLARIFIED; APPLICATION TO THE CASE AT BAR.— It is clear from [Article 1797 of the Civil Code], that a partner is entitled only to his share as agreed upon, or in the absence of any such stipulations, then to his share in proportion to his contribution to the partnership. The petitioner himself claims his share to be 6%, as stated in the Acknowledgement of Participating Capital. However, petitioner

fails to realize that this document specifically enumerated the businesses covered by the partnership: Manila Athletic Supply, Remotigue Trading in Iloilo City and Remotigue Trading in Cotabato City. Since there was a clear agreement that the capital the partners contributed went to the three businesses, then there is no reason to deviate from such agreement and go beyond the stipulations in the document. **Therefore, the Court of Appeals did not err in limiting petitioner's share to the assets of the businesses enumerated in the Acknowledgement of Participating Capital.** In *Villareal v. Ramirez*, the Court held that since a partnership is a separate juridical entity, the shares to be paid out to the partners is necessarily limited only to its total resources, to wit: Since it is the partnership, as a separate and distinct entity, that must refund the shares of the partners, the amount to be refunded is necessarily limited to its total resources. In other words, it can only pay out what it has in its coffers, which consists of all its assets. However, before the partners can be paid their shares, the creditors of the partnership must first be compensated. After all the creditors have been paid, whatever is left of the partnership assets becomes available for the payment of the partners' shares. There is no evidence that the subject real properties were assets of the partnership referred to in the Acknowledgement of Participating Capital.

6. ID.; ID.; TRUSTS; CONCEPT OF.— In *Pigao v. Rabanillo*, this Court explained the concept of trusts, to wit: Express trusts are created by the intention of the trustor or of the parties, while implied trusts come into being by operation of law, either through implication of an intention to create a trust as a matter of law or through the imposition of the trust irrespective of, and even contrary to, any such intention. In turn, implied trusts are either resulting or constructive trusts. Resulting trusts are based on the equitable doctrine that valuable consideration and not legal title determines the equitable title or interest and are presumed always to have been contemplated by the parties. They arise from the nature or circumstances of the consideration involved in a transaction whereby one person thereby becomes invested with legal title but is obligated in equity to hold his legal title for the benefit of another.

7. ID.; ID.; ID.; BURDEN OF PROVING EXISTENCE THEREOF LIES ON THE PARTY ASSERTING ITS EXISTENCE;

REQUIRED PROOF.— On proving the existence of a trust, this Court held that: Respondent has presented only bare assertions that a trust was created. Noting the need to prove the existence of a trust, this Court has held thus: "As a rule, the burden of proving the existence of a trust is on the party asserting its existence, and such proof must be clear and satisfactorily show the existence of the trust and its elements. While implied trusts may be proved by oral evidence, the evidence must be trustworthy and received by the courts with extreme caution, and should not be made to rest on loose, equivocal or indefinite declarations. Trustworthy evidence is required because oral evidence can easily be fabricated." The petitioner has failed to prove that there exists a trust over the subject real properties. Aside from his bare allegations, he has failed to show that the respondents used the partnership's money to purchase the said properties.

8. ID.; PROPERTY AND OWNERSHIP; CO-OWNERSHIP; CLAIM OF CO-OWNERSHIP CANNOT BE BASED ON UNSUBSTANTIATED AND SELF-SERVING TESTIMONIES; TESTIMONIAL EVIDENCE CANNOT PREVAIL OVER DOCUMENTARY EVIDENCE.— In essence, the petitioner is claiming his 6% share in the subject real properties, by relying on his own self-serving testimony and the equally biased testimony of Antonieta Jarantilla. Petitioner has not presented evidence, other than these unsubstantiated testimonies, to prove that the respondents did not have the means to fund their other businesses and real properties without the partnership's income. On the other hand, the respondents have not only, by testimonial evidence, proven their case against the petitioner, but have also presented sufficient documentary evidence to substantiate their claims, allegations and defenses. They presented preponderant proof on how they acquired and funded such properties in addition to tax receipts and tax declarations. It has been held that "while tax declarations and realty tax receipts do not conclusively prove ownership, they may constitute strong evidence of ownership when accompanied by possession for a period sufficient for prescription." Moreover, it is a rule in this jurisdiction that testimonial evidence cannot prevail over documentary evidence. This Court had on several occasions, expressed our disapproval on using mere self-serving testimonies to support one's claim.

9. ID.; LAND TITLES AND DEEDS; TORRENS TITLE; GENERALLY CONCLUSIVE EVIDENCE OF OWNERSHIP OF THE LAND REFERRED THEREIN AND A STRONG PRESUMPTION EXISTS THAT A TORRENS TITLE WAS REGULARLY ISSUED AND VALID.— It is true that a certificate of title is merely an evidence of ownership or title over the particular property described therein. Registration in the Torrens system does not create or vest title as registration is not a mode of acquiring ownership; hence, this cannot deprive an aggrieved party of a remedy in law. However, petitioner asserts ownership over portions of the subject real properties on the strength of his own admissions and on the testimony of Antonieta Jarantilla. As held by this Court in *Republic of the Philippines v. Orfinada, Sr.*: Indeed, a Torrens title is generally conclusive evidence of ownership of the land referred to therein, and a strong presumption exists that a Torrens title was regularly issued and valid. A Torrens title is incontrovertible against any *informacion possessoria*, of other title existing prior to the issuance thereof not annotated on the Torrens title. Moreover, persons dealing with property covered by a Torrens certificate of title are not required to go beyond what appears on its face.

10. ID.; ID.; ID.; COLLATERAL ATTACK DISTINGUISHED FROM DIRECT ATTACK.— As we have settled that this action never really was for partition of a co-ownership, to permit petitioner's claim on these properties is to allow a collateral, indirect attack on respondents' admitted titles. x x x. This Court has deemed an action or proceeding to be "an attack on a title when its objective is to nullify the title, thereby challenging the judgment pursuant to which the title was decreed." In *Aguilar v. Alfaro*, this Court further distinguished between a direct and an indirect or collateral attack, as follows: A collateral attack transpires when, in another action to obtain a different relief and as an incident to the present action, an attack is made against the judgment granting the title. This manner of attack is to be distinguished from a direct attack against a judgment granting the title, through an action whose main objective is to annul, set aside, or enjoin the enforcement of such judgment if not yet implemented, or to seek recovery if the property titled under the judgment had been disposed of. x x x.

APPEARANCES OF COUNSEL

Quisumbing Torres for petitioner.

Filemon L. Fernandez for Cynthia Remotigue, Doroteo Jarantilla and Tomas Jarantilla.

Teodulfo L.C. Castro for Antonieta Jarantilla.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This petition for review on *certiorari*[1] seeks to modify the Decision[2] of the Court of Appeals dated July 30, 2002 in CA-G.R. CV No. 40887, which set aside the Decision[3] dated December 18, 1992 of the Regional Trial Court (RTC) of Quezon City, Branch 98 in Civil Case No. Q-50464.

The pertinent facts are as follows:

The spouses Andres Jarantilla and Felisa Jaleco were survived by eight children: Federico, Delfin, Benjamin, Conchita, Rosita, Pacita, Rafael and Antonieta.[4] Petitioner Federico Jarantilla, Jr. is the grandchild of the late Jarantilla spouses by their son Federico Jarantilla, Sr. and his wife Leda Jamili.[5] Petitioner also has two other brothers: Doroteo and Tomas Jarantilla.

Petitioner was one of the defendants in the complaint before the RTC while Antonieta Jarantilla, his aunt, was the plaintiff therein. His co-respondents before he joined his aunt Antonieta in her complaint, were his late aunt Conchita Jarantilla's husband Buenaventura Remotigue, who died during the pendency of the

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 34-45; penned by Associate Justice Buenaventura J. Guerrero with Associate Justices Rodrigo V. Cosico and Perlita J. Tria Tirona concurring.

[3] *Id.* at 105-110.

[4] *Id* at 34.

[5] Records, Vol. I, p. 1.

case, his cousin Cynthia Remotigue, the adopted daughter of Conchita Jarantilla and Buenaventura Remotigue, and his brothers Doroteo and Tomas Jarantilla.[6]

In 1948, the Jarantilla heirs extrajudicially partitioned amongst themselves the real properties of their deceased parents.[7] With the exception of the real property adjudicated to Pacita Jarantilla, the heirs also agreed to allot the produce of the said real properties for the years 1947-1949 for the studies of Rafael and Antonieta Jarantilla.[8]

In the same year, the spouses Rosita Jarantilla and Vivencio Deocampo entered into an agreement with the spouses Buenaventura Remotigue and Conchita Jarantilla to provide mutual assistance to each other by way of financial support to any commercial and agricultural activity on a joint business arrangement. This business relationship proved to be successful as they were able to establish a manufacturing and trading business, acquire real properties, and construct buildings, among other things.[9] This partnership ended in 1973 when the parties, in an "Agreement,"[10] voluntarily agreed to completely dissolve their "joint business relationship/arrangement."[11]

On April 29, 1957, the spouses Buenaventura and Conchita Remotigue executed a document wherein they acknowledged that while registered only in Buenaventura Remotigue's name, they were not the only owners of the capital of the businesses Manila Athletic Supply (712 Raon Street, Manila), Remotigue Trading (Calle Real, Iloilo City) and Remotigue Trading (Cotabato City). In this same "Acknowledgement of Participating Capital," they stated the participating capital of their co-owners as of the

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[6] *Rollo*, p. 49.

[7] *Id* at 34-35.

[8] Records, Vol. I, p. 1.

[9] *Id* at 7.

[10] *Id* at 7-9.

[11] *Id* at 7.

year 1952, with Antonieta Jarantilla's stated as eight thousand pesos (₱8,000.00) and Federico Jarantilla, Jr.'s as five thousand pesos (₱5,000.00).[12]

The present case stems from the amended complaint[13] dated April 22, 1987 filed by Antonieta Jarantilla against Buenaventura Remotigue, Cynthia Remotigue, Federico Jarantilla, Jr., Doroteo Jarantilla and Tomas Jarantilla, for the accounting of the assets and income of the co-ownership, for its partition and the delivery of her share corresponding to eight percent (8%), and for damages. Antonieta claimed that in 1946, she had entered into an agreement with Conchita and Buenaventura Remotigue, Rafael Jarantilla, and Rosita and Vivencio Deocampo to engage in business. Antonieta alleged that the initial contribution of property and money came from the heirs' inheritance, and her subsequent annual investment of seven thousand five hundred pesos (₱7,500.00) as additional capital came from the proceeds of her farm. Antonieta also alleged that from 1946-1969, she had helped in the management of the business they co-owned without receiving any salary. Her salary was supposedly rolled back into the business as additional investments in her behalf. Antonieta further claimed co-ownership of certain properties[14] (the subject real properties) in the name of the defendants since the only way the defendants could have purchased these properties were through the partnership as they had no other source of income.

The respondents, including petitioner herein, in their Answer,[15] denied having formed a partnership with Antonieta in 1946. They claimed that she was in no position to do so as she was still in school at that time. In fact, the proceeds of the lands they partitioned were devoted to her studies. They also averred

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[12] *Id* at 6.

[13] *Rollo*, pp. 48-57.

[14] *Rollo*, p. 18; the subject real properties are covered by TCT Nos. 35655, 338398, 338399 & 335395, all of the Registry of Deeds of Quezon City; TCT Nos. (18303)23341, 142882 & 490007(4615), all of the Registry of Deeds of Rizal; and TCT No. T-6309 of the Registry of Deeds of Cotabato.

[15] *Id.* at 72-76.

that while she may have helped in the businesses that her older sister Conchita had formed with Buenaventura Remotigue, she was paid her due salary. They did not deny the existence and validity of the "Acknowledgement of Participating Capital" and in fact used this as evidence to support their claim that Antonieta's 8% share was limited to the businesses enumerated therein. With regard to Antonieta's claim in their other corporations and businesses, the respondents said these should also be limited to the number of her shares as specified in the respective articles of incorporation. The respondents denied using the partnership's income to purchase the subject real properties and said that the certificates of title should be binding on her.[16]

During the course of the trial at the RTC, petitioner Federico Jarantilla, Jr., who was one of the original defendants, entered into a compromise agreement[17] with Antonieta Jarantilla wherein he supported Antonieta's claims and asserted that he too was entitled to six percent (6%) of the supposed partnership in the same manner as Antonieta was. He prayed for a favorable judgment in this wise:

> Defendant Federico Jarantilla, Jr., hereby joins in plaintiff's prayer for an accounting from the other defendants, and the partition of the properties of the co-ownership and the delivery to the plaintiff and to defendant Federico Jarantilla, Jr. of their rightful share of the assets and properties in the co-ownership.[18]

The RTC, in an Order[19] dated March 25, 1992, approved the Joint Motion to Approve Compromise Agreement[20] and on December 18, 1992, decided in favor of Antonieta, to wit:

> WHEREFORE, premises above-considered, the Court renders judgment in favor of the plaintiff Antonieta Jarantilla and against

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[16] *Id.* at 111-197.

[17] *Id.* at 83-87.

[18] *Id.* at 85-86.

[19] *Id.* at 102-104.

[20] *Id.* at 83-87.

defendants Cynthia Remotigue, Doroteo Jarantilla and Tomas Jarantilla ordering the latter:

1. to deliver to the plaintiff her 8% share or its equivalent amount on the real properties covered by TCT Nos. 35655, 338398, 338399 & 335395, all of the Registry of Deeds of Quezon City; TCT Nos. (18303)23341, 142882 & 490007(4615), all of the Registry of Deeds of Rizal; and TCT No. T-6309 of the Registry of Deeds of Cotabato based on their present market value;

2. to deliver to the plaintiff her 8% share or its equivalent amount on the Remotigue Agro-Industrial Corporation, Manila Athletic Supply, Inc., MAS Rubber Products, Inc. and Buendia Recapping Corporation based on the shares of stocks present book value;

3. to account for the assets and income of the co-ownership and deliver to plaintiff her rightful share thereof equivalent to 8%;

4. to pay plaintiff, jointly and severally, the sum of ₱50,000.00 as moral damages;

5. to pay, jointly and severally, the sum of ₱50,000.00 as attorney's fees; and

6. to pay, jointly and severally, the costs of the suit.[21]

Both the petitioner and the respondents appealed this decision to the Court of Appeals. The petitioner claimed that the RTC "erred in not rendering a complete judgment and ordering the partition of the co-ownership and giving to [him] six per centum (6%) of the properties."[22]

While the Court of Appeals agreed to some of the RTC's factual findings, it also established that Antonieta Jarantilla was **not** part of the partnership formed in 1946, and that her 8% share was **limited** to the businesses enumerated in the Acknowledgement of Participating Capital. On July 30, 2002,

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[21] *Id.* at 109-110.

[22] *Id.* at 205.

the Court of Appeals rendered the herein challenged decision setting aside the RTC's decision, as follows:

WHEREFORE, the decision of the trial court, dated 18 December 1992 is SET ASIDE and a new one is hereby entered ordering that:

(1) after accounting, plaintiff Antonieta Jarantilla be given her share of 8% in the assets and profits of Manila Athletic Supply, Remotigue Trading in Iloilo City and Remotigue Trading in Cotabato City;

(2) after accounting, defendant Federico Jarantilla, Jr. be given his share of 6% of the assets and profits of the above-mentioned enterprises; and, holding that

(3) plaintiff Antonieta Jarantilla is a stockholder in the following corporations to the extent stated in their Articles of Incorporation:

(a) Rural Bank of Barotac Nuevo, Inc.;

(b) MAS Rubber Products, Inc.;

(c) Manila Athletic Supply, Inc.; and

(d) B. Remotigue Agro-Industrial Development Corp.

(4) No costs.[23]

The respondents, on August 20, 2002, filed a Motion for Partial Reconsideration but the Court of Appeals denied this in a Resolution[24] dated March 21, 2003.

Antonieta Jarantilla filed before this Court her own petition for review on *certiorari*[25] dated September 16, 2002, assailing the Court of Appeals' decision on "similar grounds and similar assignments of errors as this present case"[26] but it was dismissed on November 20, 2002 for failure to file the appeal within the

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[23] *Id.* at 44.

[24] CA *rollo*, p. 564.

[25] Docketed as G.R. No. 154722.

[26] *Rollo*, p. 313.

reglementary period of fifteen (15) days in accordance with Section 2, Rule 45 of the Rules of Court.[27]

Petitioner filed before us this petition for review on the sole ground that:

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN NOT RULING THAT PETITIONER FEDERICO JARANTILLA, JR. IS ENTITLED TO A SIX PER CENTUM (6%) SHARE OF THE OWNERSHIP OF THE REAL PROPERTIES ACQUIRED BY THE OTHER DEFENDANTS USING COMMON FUNDS FROM THE BUSINESSES WHERE HE HAD OWNED SUCH SHARE.[28]

Petitioner asserts that he was in a partnership with the Remotigue spouses, the Deocampo spouses, Rosita Jarantilla, Rafael Jarantilla, Antonieta Jarantilla and Quintin Vismanos, as evidenced by the Acknowledgement of Participating Capital the Remotigue spouses executed in 1957. He contends that from this partnership, several other corporations and businesses were established and several real properties were acquired. In this petition, he is essentially asking for his 6% share in the subject real properties. He is relying on the Acknowledgement of Participating Capital, on his own testimony, and Antonieta Jarantilla's testimony to support this contention.

The core issue is whether or not the partnership subject of the Acknowledgement of Participating Capital funded the subject real properties. In other words, what is the petitioner's right over these real properties?

It is a settled rule that in a petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure, only questions of law may be raised by the parties and passed upon by this Court.[29]

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[27] CA *rollo*, p. 284.

[28] *Rollo*, p. 20.

[29] *Vector Shipping Corporation v. Macasa*, G.R. No. 160219, July 21, 2008, 559 SCRA 105.

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. *For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them.* The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.[30]

Since the Court of Appeals did not fully adopt the factual findings of the RTC, this Court, in resolving the questions of law that are now in issue, shall look into the facts only in so far as the two courts *a quo* differed in their appreciation thereof.

The RTC found that an unregistered partnership existed since 1946 which was affirmed in the 1957 document, the "Acknowledgement of Participating Capital." The RTC used this as its basis for giving Antonieta Jarantilla an 8% share in the three businesses listed therein and in the other businesses and real properties of the respondents as they had supposedly acquired these through funds from the partnership.[31]

The Court of Appeals, on the other hand, agreed with the RTC as to Antonieta's 8% share in the business enumerated in the Acknowledgement of Participating Capital, but not as to her share in the other corporations and real properties. The Court of Appeals ruled that Antonieta's claim of 8% is based on the "Acknowledgement of Participating Capital," a duly notarized document which was specific as to the subject of its coverage. Hence, there was no reason to pattern her share in the other corporations from her share in the partnership's

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[30] *Binay v. Odeña*, G.R. No. 163683, June 8, 2007, 524 SCRA 248, 255-256, citing *Velayo-Fong v. Velayo*, G.R. No. 155488, December 6, 2006, 510 SCRA 320, 329-330.

[31] *Rollo*, pp. 105-110.

businesses. The Court of Appeals also said that her claim in the respondents' real properties was more "precarious" as these were all covered by certificates of title which served as the best evidence as to all the matters contained therein.[32] Since petitioner's claim was essentially the same as Antonieta's, the Court of Appeals also ruled that petitioner be given his 6% share in the same businesses listed in the Acknowledgement of Participating Capital.

Factual findings of the trial court, when confirmed by the Court of Appeals, are final and conclusive except in the following cases: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is a grave abuse of discretion; (3) when the finding is grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the Court of Appeals is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings of the Court of Appeals are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (10) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.[33]

In this case, we find no error in the ruling of the Court of Appeals.

Both the petitioner and Antonieta Jarantilla characterize their relationship with the respondents as a co-ownership, but in the same breath, assert that a verbal partnership was formed in 1946 and was affirmed in the 1957 Acknowledgement of Participating Capital.

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[32] *Id.* at 42.

[33] *Go v. Court of Appeals*, 403 Phil. 883, 890 (2001).

There is a co-ownership when an undivided thing or right belongs to different persons.[34] It is a partnership when two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves.[35] The Court, in *Pascual v. The Commissioner of Internal Revenue*,[36] quoted the concurring opinion of Mr. Justice Angelo Bautista in *Evangelista v. The Collector of Internal Revenue*[37] to further elucidate on the distinctions between a co-ownership and a partnership, to wit:

> I wish however to make the following observation: Article 1769 of the new Civil Code lays down the rule for determining when a transaction should be deemed a partnership or a co-ownership. Said article paragraphs 2 and 3, provides;
>
> (2) Co-ownership or co-possession does not itself establish a partnership, whether such co-owners or co-possessors do or do not share any profits made by the use of the property;
>
> (3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived;
>
> *From the above it appears that the fact that those who agree to form a co- ownership share or do not share any profits made by the use of the property held in common does not convert their venture into a partnership. Or the sharing of the gross returns does not of itself establish a partnership whether or not the persons sharing therein have a joint or common right or interest in the property. This only means that, aside from the circumstance of profit, the presence of other elements constituting partnership is necessary, such as the clear intent to form a partnership, the existence of a juridical personality different from that of the individual partners, and the freedom to transfer or assign any interest in the property by one with the consent of the others.*

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[34] CIVIL CODE, Art. 484.

[35] CIVIL CODE, Art. 1767.

[36] 248 Phil. 788 (1988).

[37] 102 Phil. 140 (1957).

It is evident that an isolated transaction whereby two or more persons contribute funds to buy certain real estate for profit in the absence of other circumstances showing a contrary intention cannot be considered a partnership.

Persons who contribute property or funds for a common enterprise and agree to share the gross returns of that enterprise in proportion to their contribution, but who severally retain the title to their respective contribution, are not thereby rendered partners. They have no common stock or capital, and no community of interest as principal proprietors in the business itself which the proceeds derived.

A joint purchase of land, by two, does not constitute a co-partnership in respect thereto; nor does an agreement to share the profits and losses on the sale of land create a partnership; the parties are only tenants in common.

Where plaintiff, his brother, and another agreed to become owners of a single tract of realty, holding as tenants in common, and to divide the profits of disposing of it, the brother and the other not being entitled to share in plaintiff's commission, no partnership existed as between the three parties, whatever their relation may have been as to third parties.

In order to constitute a partnership inter sese there must be: (a) An intent to form the same; (b) generally participating in both profits and losses; (c) and such a community of interest, as far as third persons are concerned as enables each party to make contract, manage the business, and dispose of the whole property. x x x.

The common ownership of property does not itself create a partnership between the owners, though they may use it for the purpose of making gains; and they may, without becoming partners, agree among themselves as to the management, and use of such property and the application of the proceeds therefrom.[38] (Citations omitted.)

Under Article 1767 of the Civil Code, there are two essential elements in a contract of partnership: *(a) an agreement to contribute money, property or industry to a common fund; and (b) intent to divide the profits among the contracting parties.* The first element is undoubtedly present in the case at bar, for,

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[38] *Pascual v. The Commissioner of Internal Revenue, supra* note 36 at 795-796.

admittedly, all the parties in this case have agreed to, and did, contribute money and property to a common fund. *Hence, the issue narrows down to their intent in acting as they did*.[39] It is not denied that all the parties in this case have agreed to contribute capital to a common fund to be able to later on share its profits. They have admitted this fact, agreed to its veracity, and even submitted one common documentary evidence to prove such partnership — the Acknowledgement of Participating Capital.

As this case revolves around the legal effects of the Acknowledgement of Participating Capital, it would be instructive to examine the pertinent portions of this document:

ACKNOWLEDGEMENT OF PARTICIPATING CAPITAL

KNOW ALL MEN BY THESE PRESENTS:

That we, the spouses Buenaventura Remotigue and Conchita Jarantilla de Remotigue, both of legal age, Filipinos and residents of Loyola Heights, Quezon City, P.I. hereby state:

That the Manila Athletic Supply at 712 Raon, Manila, the Remotigue Trading of Calle Real, Iloilo City and the Remotigue Trading, Cotabato Branch, Cotabato, P.I., all dealing in athletic goods and equipments, and general merchandise are recorded in their respective books with Buenaventura Remotigue as the registered owner and are being operated by them as such:

That they are not the only owners of the capital of the three establishments and their participation in the capital of the three establishments together with the other co-owners as of the year 1952 are stated as follows:

1. Buenaventura Remotigue (TWENTY-FIVE THOUSAND)	₱25,000.00
2. Conchita Jarantilla de Remotigue (TWENTY-FIVE THOUSAND)....	25,000.00
3. Vicencio Deocampo (FIFTEEN THOUSAND).....	15,000.00
4. Rosita J. Deocampo (FIFTEEN THOUSAND).....	15,000.00
5. Antonieta Jarantilla (EIGHT THOUSAND).....	8,000.00

[39] *Id.* at 795.

6. Rafael Jarantilla (SIX THOUSAND)..... 6,000.00
7. Federico Jarantilla, Jr. (FIVE THOUSAND)..... 5,000.00
8. Quintin Vismanos (TWO THOUSAND)..... 2,000.00

That aside from the persons mentioned in the next preceding paragraph, no other person has any interest in the above-mentioned three establishments.

IN WITNESS WHEREOF, they sign this instrument in the City of Manila, P.I., this 29th day of April, 1957.

[Sgd.]

BUENAVENTURA REMOTIGUE

[Sgd.]

CONCHITA JARANTILLA DE REMOTIGUE[40]

The Acknowledgement of Participating Capital is a duly notarized document voluntarily executed by Conchita Jarantilla-Remotigue and Buenaventura Remotigue in 1957. Petitioner does not dispute its contents and is actually relying on it to prove his participation in the partnership. Article 1797 of the Civil Code provides:

Art. 1797. The losses and profits shall be distributed in conformity with the agreement. If only the share of each partner in the profits has been agreed upon, the share of each in the losses shall be in the same proportion.

In the absence of stipulation, the share of each partner in the profits and losses shall be in proportion to what he may have contributed, but the industrial partner shall not be liable for the losses. As for the profits, the industrial partner shall receive such share as may be just and equitable under the circumstances. If besides his services he has contributed capital, he shall also receive a share in the profits in proportion to his capital. (Emphases supplied.)

It is clear from the foregoing that a partner is entitled only to his share as agreed upon, or in the absence of any such stipulations, then to his share in proportion to his contribution to the partnership. The petitioner himself claims his share to be 6%, as stated in the Acknowledgement of Participating Capital. However,

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[40] Records, Vol. I, p. 6.

petitioner fails to realize that this document specifically enumerated the businesses covered by the partnership: Manila Athletic Supply, Remotigue Trading in Iloilo City and Remotigue Trading in Cotabato City. Since there was a clear agreement that the capital the partners contributed went to the three businesses, then there is no reason to deviate from such agreement and go beyond the stipulations in the document. **Therefore, the Court of Appeals did not err in limiting petitioner's share to the assets of the businesses enumerated in the Acknowledgement of Participating Capital.**

In *Villareal v. Ramirez*,[41] the Court held that since a partnership is a separate juridical entity, the shares to be paid out to the partners is necessarily limited only to its total resources, to wit:

> Since it is the partnership, as a separate and distinct entity, that must refund the shares of the partners, the amount to be refunded is necessarily limited to its total resources. In other words, it can only pay out what it has in its coffers, which consists of all its assets. However, before the partners can be paid their shares, the creditors of the partnership must first be compensated. After all the creditors have been paid, whatever is left of the partnership assets becomes available for the payment of the partners' shares.[42]

There is no evidence that the subject real properties were assets of the partnership referred to in the Acknowledgement of Participating Capital.

The petitioner further asserts that he is entitled to respondents' properties based on the concept of trust. He claims that since the subject real properties were purchased using funds of the partnership, wherein he has a 6% share, then "law and equity mandates that he should be considered as a co-owner of those properties in such proportion."[43] In *Pigao v. Rabanillo*,[44] this Court explained the concept of trusts, to wit:

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[41] 453 Phil. 999 (2003).

[42] *Id.* at 1008-1009.

[43] *Rollo*, p. 24.

[44] G.R. No. 150712, May 2, 2006, 488 SCRA 546.

Express trusts are created by the intention of the trustor or of the parties, while implied trusts come into being by operation of law, either through implication of an intention to create a trust as a matter of law or through the imposition of the trust irrespective of, and even contrary to, any such intention. In turn, implied trusts are either resulting or constructive trusts. Resulting trusts are based on the equitable doctrine that valuable consideration and not legal title determines the equitable title or interest and are presumed always to have been contemplated by the parties. They arise from the nature or circumstances of the consideration involved in a transaction whereby one person thereby becomes invested with legal title but is obligated in equity to hold his legal title for the benefit of another.[45]

On proving the existence of a trust, this Court held that:

Respondent has presented only bare assertions that a trust was created. Noting the need to prove the existence of a trust, this Court has held thus:

> "As a rule, the burden of proving the existence of a trust is on the party asserting its existence, and such proof must be clear and satisfactorily show the existence of the trust and its elements. While implied trusts may be proved by oral evidence, the evidence must be trustworthy and received by the courts with extreme caution, and should not be made to rest on loose, equivocal or indefinite declarations. Trustworthy evidence is required because oral evidence can easily be fabricated." [46]

The petitioner has failed to prove that there exists a trust over the subject real properties. Aside from his bare allegations, he has failed to show that the respondents used the partnership's money to purchase the said properties. Even assuming *arguendo* that **some** partnership income was used to acquire these properties, the petitioner should have successfully shown that these funds came from his share in the partnership profits. After all, by his own admission, and as stated in the Acknowledgement of Participating Capital, he owned a mere 6% equity in the partnership.

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[45] *Id.* at 560-561.

[46] *Oco v. Limbaring,* G.R. No. 161298, January 31, 2006, 481 SCRA 348.

In essence, the petitioner is claiming his 6% share in the subject real properties, by relying on his own self-serving testimony and the equally biased testimony of Antonieta Jarantilla. Petitioner has not presented evidence, other than these unsubstantiated testimonies, to prove that the respondents did not have the means to fund their other businesses and real properties without the partnership's income. On the other hand, the respondents have not only, by testimonial evidence, proven their case against the petitioner, but have also presented sufficient documentary evidence to substantiate their claims, allegations and defenses. They presented preponderant proof on how they acquired and funded such properties in addition to tax receipts and tax declarations.[47] It has been held that "while tax declarations and realty tax receipts do not conclusively prove ownership, they may constitute strong evidence of ownership when accompanied by possession for a period sufficient for prescription."[48] Moreover, it is a rule in this jurisdiction that testimonial evidence cannot prevail over documentary evidence.[49] This Court had on several occasions, expressed our disapproval on using mere self-serving testimonies to support one's claim. In *Ocampo v. Ocampo*,[50] a case on partition of a co-ownership, we held that:

> Petitioners assert that their claim of co-ownership of the property was sufficiently proved by their witnesses — Luisa Ocampo-Llorin and Melita Ocampo. We disagree. Their testimonies cannot prevail over the array of documents presented by Belen. A claim of ownership cannot be based simply on the testimonies of witnesses; much less on those of interested parties, self-serving as they are.[51]

It is true that a certificate of title is merely an evidence of ownership or title over the particular property described therein.

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[47] Records, Vol. I, pp. 7-9, 54-62, Vol. II, pp. 482-486, 535-564, 567-653.

[48] *Heirs of Clemente Ermac v. Heirs of Vicente Ermac*, 451 Phil. 368, 378 (2003).

[49] *Romago Electric Co., Inc. v. Court of Appeals,* 388 Phil. 964, 976 (2000).

[50] 471 Phil. 519 (2004).

[51] *Id.* at 539.

Registration in the Torrens system does not create or vest title as registration is not a mode of acquiring ownership; hence, this cannot deprive an aggrieved party of a remedy in law.[52] However, petitioner asserts ownership over portions of the subject real properties on the strength of his own admissions and on the testimony of Antonieta Jarantilla. As held by this Court in *Republic of the Philippines v. Orfinada, Sr.*[53]:

> Indeed, a Torrens title is generally conclusive evidence of ownership of the land referred to therein, and a strong presumption exists that a Torrens title was regularly issued and valid. A Torrens title is incontrovertible against any *informacion possessoria*, of other title existing prior to the issuance thereof not annotated on the Torrens title. Moreover, persons dealing with property covered by a Torrens certificate of title are not required to go beyond what appears on its face.[54]

As we have settled that this action never really was for partition of a co-ownership, to permit petitioner's claim on these properties is to allow a collateral, indirect attack on respondents' admitted titles. In the words of the Court of Appeals, "such evidence cannot overpower the conclusiveness of these certificates of title, more so since plaintiff's [petitioner's] claims amount to a collateral attack, which is prohibited under Section 48 of Presidential Decree No. 1529, the Property Registration Decree."[55]

> SEC. 48. *Certificate not subject to collateral attack*. —A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law.

This Court has deemed an action or proceeding to be "an attack on a title when its objective is to nullify the title, thereby challenging the judgment pursuant to which the title was

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[52] *Heirs of Clemente Ermac v. Heirs of Vicente Ermac*, *supra* note 48 at 377.

[53] G.R. No. 141145, November 12, 2004, 442 SCRA 342.

[54] *Id.* at 359.

[55] *Rollo,* pp. 42-43.

decreed."[56] In *Aguilar v. Alfaro*,[57] this Court further distinguished between a direct and an indirect or collateral attack, as follows:

> A collateral attack transpires when, in another action to obtain a different relief and as an incident to the present action, an attack is made against the judgment granting the title. This manner of attack is to be distinguished from a direct attack against a judgment granting the title, through an action whose main objective is to annul, set aside, or enjoin the enforcement of such judgment if not yet implemented, or to seek recovery if the property titled under the judgment had been disposed of. x x x.

Petitioner's only piece of documentary evidence is the Acknowledgement of Participating Capital, which as discussed above, failed to prove that the real properties he is claiming co-ownership of were acquired out of the proceeds of the businesses covered by such document. Therefore, petitioner's theory has no factual or legal leg to stand on.

WHEREFORE, the Petition is hereby *DENIED* and the Decision of the Court of Appeals in CA-G.R. CV No. 40887, dated July 30, 2002 is *AFFIRMED*.

SO ORDERED.

Corona, C.J. (Chairperson), Peralta,[*] *Abad,*[**] and *Perez, JJ.*, concur.

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[56] *Oño v. Lim*, G.R. No. 154270, March 9, 2010.

[57] G.R. No. 164402, July 5, 2010.

[*] Per Special Order No. 913 dated November 2, 2010.

[**] Per Special Order No. 917 dated November 24, 2010.

THIRD DIVISION

[G.R. No. 157315. December 1, 2010]

CITY GOVERNMENT OF BUTUAN and CITY MAYOR LEONIDES THERESA B. PLAZA, the latter in her personal capacity and as representative of her co-defendant, *petitioners, vs.* **CONSOLIDATED BROADCASTING SYSTEM (CBS), INC., doing business under the name and style "DXBR" Bombo Radyo Butuan, represented by its Manager, Norberto P. Pagaspas, and HON. ROSARITO F. DABALOS, PRESIDING JUDGE, RTC, BRANCH 2, OF AGUSAN DEL NORTE and BUTUAN CITY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; DISQUALIFICATION OF JUDGES; VOLUNTARY INHIBITION; SECOND PARAGRAPH OF SECTION 1, RULE 137 OF THE RULES OF COURT; CONSTRUED; APPLICATION TO CASE AT BAR.— Section 1, Rule 137 of the *Rules of Court,* which contains the rule on inhibition and disqualification of judges, states: Section 1. *Disqualification of judges*.— x x x A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just and valid reasons other than those mentioned above. The second paragraph of Section 1 (unlike the first paragraph) does not expressly enumerate the specific grounds for inhibition. This means that the determination of the grounds is left to the sound discretion of the judge, who must discern with only his or her conscience as guide on what may be just and valid reasons for self-inhibition. The vesting of discretion necessarily proceeds from the reality that there may be many and different grounds for a judge to recuse from a case, and such grounds cannot all be catalogued in the *Rules of Court.* Thus did the Court cogently point out in *Gutang v. Court of Appeals*: x x x The import of the rule on the voluntary inhibition of judges is that the decision on whether or not to inhibit is left to the sound discretion and conscience of the trial judge based on his rational and logical assessment of the circumstances prevailing in the case brought

before him. It makes clear to the occupants of the Bench that outside of pecuniary interest, relationship or previous participation in the matter that calls for adjudication, there might be other causes that could conceivably erode the trait of objectivity, thus calling for inhibition. That is to betray a sense of realism, for the factors that lead to preference or predilections are many and varied. In his case, Judge Dabalos clearly discerned after the return of Civil Case No. 5193 to him by the Vice Executive Judge that his self-doubt about his ability to dispense justice in Civil Case No. 5193 generated by the airing of criticisms against him and other public officials by CBS's commentators and reporters would not ultimately affect his objectivity and judgment. Such re-assessment of the ground for his self-inhibition, absent a showing of any malice or other improper motive on his part, could not be assailed as the product of an unsound exercise of his discretion.

2. ID.; ID.; ID.; THE TRIAL JUDGE'S DISCRETION TO RECONSIDER THE SELF-INHIBITION AND RE-ASSUME JURISDICTION AFTER A RE-ASSESSMENT OF THE CIRCUMSTANCES GIVING CAUSE TO THE INHIBITION WILL NOT BE DISTURBED BY THE REVIEWING TRIBUNAL EXCEPT UPON A CLEAR AND STRONG FINDING OF ARBITRARINESS OR WHIMSICALITY.— We hold that although a trial judge who voluntarily inhibits loses jurisdiction to hear a case, he or she may decide to reconsider the self-inhibition and re-assume jurisdiction after a re-assessment of the circumstances giving cause to the inhibition. The discretion to reconsider acknowledges that the trial judge is in the better position to determine the issue of inhibition, and a reviewing tribunal will not disturb the exercise of that discretion except upon a clear and strong finding of arbitrariness or whimsicality. Thus, Judge Dabalos' re-assumption of jurisdiction was legally tenable, having come from his seizing the opportunity to re-assess the circumstances impelling his self-inhibition upon being faced with the urgent need to hear and resolve CBS's application for preliminary injunction. Such action was commendable on his part, given that the series of self-inhibitions by the other RTC Judges had left no competent judge in the station to hear and resolve the application. It can even be rightly said that a refusal by Judge Dabalos to re-assess and reconsider might have negated his sacred and sworn duty as a judge to dispense justice. Verily,

Judge Dabalos' decision to hear the application for preliminary injunction pending the Court's resolution of the query on whether or not another Judge sitting outside the City of Butuan should take cognizance of Civil Case No. 5193 did not constitute or equate to arbitrariness or whimsicality.

3. ID.; PROVISIONAL REMEDIES; INJUNCTION; PROHIBITORY INJUNCTION DISTINGUISHED FROM MANDATORY INJUNCTION.— A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order requiring a party or a court, an agency, or a person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case it is known as a preliminary mandatory injunction. Thus, a prohibitory injunction is one that commands a party to refrain from doing a particular act, while a mandatory injunction commands the performance of some positive act to correct a wrong in the past.

4. ID.; ID.; ID.; CONDITIONS FOR THE ISSUANCE THEREOF.— As with all equitable remedies, injunction must be issued only at the instance of a party who possesses sufficient interest in or title to the right or the property sought to be protected. It is proper only when the applicant appears to be entitled to the relief demanded in the complaint, which must aver the existence of the right and the violation of the right, or whose averments must in the minimum constitute a *prima facie* showing of a right to the final relief sought. Accordingly, the conditions for the issuance of the injunctive writ are: (*a*) that the right to be protected exists *prima facie*; (*b*) that the act sought to be enjoined is violative of that right; and (*c*) that there is an urgent and paramount necessity for the writ to prevent serious damage. An injunction will not issue to protect a right not *in esse*, or a right which is merely contingent and may never arise; or to restrain an act which does not give rise to a cause of action; or to prevent the perpetration of an act prohibited by statute. Indeed, a right, to be protected by injunction, means a right clearly founded on or granted by law or is enforceable as a matter of law.

5. ID.; ID.; ID.; GRANT OF THE INJUNCTIVE WRIT, PROPER.— While it is true that CBS was not required to present evidence to prove its entitlement to the injunctive writ, the writ was nonetheless properly granted on the basis of the

undisputed facts that CBS was a grantee of a franchise from the Legislature, and that the acts complained against (*i.e.*, refusal of the Mayor's permit and resulting closure of the radio station) were imminent and, unless enjoined, would curtail or set at naught CBS's rights under the franchise. In this regard, worthy of mention is that even the Vice Executive Judge, acknowledging that CBS had stood to suffer grave injustice and irreparable injury should its radio station suffer closure, had issued *ex parte* the TRO.

6. ID.; ID.; ID.; THE PARTIES SOUGHT TO BE ENJOINED HAS THE BURDEN OF SHOWING CAUSE WHY THE APPLICATION FOR THE WRIT OF PRELIMINARY INJUNCTION SHOULD NOT BE GRANTED.— It was error on the part of the petitioners to insist that the evidence of CBS should have first been required before Judge Dabalos issued the writ of preliminary injunction. Rule 58 of the *Rules of Court* clearly lays the burden on the shoulders of the petitioners, as the parties against whom the TRO was issued, to show cause why the application for the writ of preliminary injunction should not issue x x x. In fine, Judge Dabalos properly directed the petitioners to first present evidence why the application for the writ of preliminary injunction should not be granted. By their refusal to comply with the directive to show cause by presenting their evidence to that effect, the petitioners could blame no one but themselves.

APPEARANCES OF COUNSEL

Hedeliza O. Hormachuelos-Cruz and *Patrick R. Battad* for City Government of Butuan City.

Nelbert T. Poculan and *Tan Acut & Lopez Law Offices* for Leonides Theresa B. Plaza.

Dolfuss R. Go for CBS/Bombo Radyo.

D E C I S I O N

BERSAMIN, *J.*:

Petitioners City Government of Butuan and City Mayor Leonides Theresa B. Plaza (petitioners) appeal the adverse

decision dated October 28, 2002 (dismissing their petition for *certiorari* and prohibition to challenge the grant by the trial judge of the application for a writ of preliminary injunction after reconsidering his earlier self-inhibition),[1] and the resolution dated January 29, 2003 (denying their *motion for reconsideration*), both promulgated by the Court of Appeals (CA) in C.A.-G.R. SP No. 69729 entitled *City Government of Butuan and City Mayor Leonides Theresa B. Plaza, the latter in her personal capacity and as representative of her co-defendant v. Consolidated Broadcasting System (CBS), Inc., doing business under the name and style "DXBR" Bombo Radyo Butuan, represented by its Manager, Norberto P. Pagaspas, and the Hon. Rosarito F. Dabalos, Presiding Judge, RTC, Branch 2, of Agusan del Norte and Butuan City*.

Antecedents[2]

In February, 2002, City Mayor Plaza (Mayor Plaza) wrote to the Sangguniang Panlungsod of Butuan City to solicit its support for her decision to deny the application for mayor's permit of respondent Bombo Radyo/Consolidated Broadcasting System (CBS), and to eventually close down CBS's radio station. She justified her decision by claiming that CBS's operating its broadcasting business within the Arujiville Subdivision, a residential area, had violated the City's zoning ordinance. Her letter pertinently reads:

> In 1994, Bombo Radyo/Consolidated Broadcasting System manifested their intention to operate on their current site at Arujiville Subdivision which is a residential area. They were informed that they cannot situate their business in the area as it violates our zoning ordinance. However, they have pleaded and was agreeable to operate in the area by virtue of a Temporary Use Permit (TUP) xxx.

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[1] *Rollo*, pp. 37-47; penned by Associate Justice Cancio C. Garcia (later Presiding Justice and a Member of the Court, but already retired), and concurred in by Associate Justice Eloy R. Bello, Jr. (retired) and Associate Justice Sergio L. Pestaño (retired and deceased).

[2] This rendition is largely based on the narration made in appealed decision of the CA.

The TUP allowed them to operate in the area but only for a very limited period. As a matter of fact, the TUP was good only for one year, which can be renewed every year for a maximum of five (5) years or until 1999. Thus, right from the beginning they have been informed and forewarned that they cannot operate in the area forever and that they have to relocate to a proper area.

Bombo Radyo renewed its TUP only in 1995 and 1996. They have failed to renew their TUP up to today.

This office has received numerous complaints against Bombo Radyo for violation of private rights, inciting people to go rise against the government, malicious imputations, insinuations against people not of their liking, false or fabricated news, *etc*. The list is so long to enumerate. Copies of the petitions, manifestos from various groups is hereto attached for your perusal.

Thus, for violation of the city zoning ordinance, the expiration of their TUP, which was never renewed since 1997, failure to secure ECC and the numerous complaints against the station of the residents within the immediate vicinity of their premises and the threat they are causing to the peace and order of the City, I have decided to deny their application for a mayor's permit and thereafter to close the radio station.

In view of the foregoing premises, I am forwarding this matter to the Sangguniang Panlungsod to solicit your resolution of support on the matter.

This is not a decision calculated to deprived (sic) Radio Bombo of its freedom of speech or expression. This is just a simply matter of whether or not Radyo Bombo has complied with existing laws and ordinances.

Thereupon, the Sangguninang Panlungsod adopted Resolution-057-2002 "to strongly support the decision of the City Mayor to deny the application of Consolidated Broadcasting System Development Corporation (Bombo Radyo-Butuan) for a Mayor's Permit and thereafter close the radio station."[3]

On February 18, 2002, the City's licensing officer served on CBS's station manager a *final/last notice of violation and demand*

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[3] *Rollo*, pp. 103-104.

to cease and desist illegal operation, with a warning that he would recommend the closure of its business in case of non-compliance.

On February 19, 2002, CBS and its manager, Norberto Pagaspas, filed a complaint for prohibition, *mandamus*, and damages against the petitioners in the Regional Trial Court in Butuan City (RTC),[4] with prayer for a temporary restraining order (TRO) and writ of preliminary injunction to restrain the petitioners from closing its station, or from disturbing and preventing its business operations. The case, docketed as Civil Case No. 5193, was raffled to Branch 2, presided by Judge Rosarito P. Dabalos.

On February 20, 2002, Judge Dabalos voluntarily inhibited and directed the return of Civil Case No. 5193 to the Office of the Clerk of Court for re-raffle.[5] He cited the circumstances that might affect his objectivity and impartiality in resolving the controversy as his justification, to wit:

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a) That the undersigned was the object of its (plaintiff's) attacks and criticism which are judgmental and not inquisitorial in the comments over the air;

b) That the undersigned was shouted at disrespectfully by one of plaintiff's reporters/news gatherers in the vicinity of the Hall of Justice;

c) That plaintiff's commentaries are making pronouncements on legal matters, substantive and procedural, based on its perception and not on laws;

d) That in its commentaries in attacking public officials as well as private individuals, words which are disrespectful and indecent are used.

and the net effect and result of its commentaries over the air causes confusion on the minds of the public, including the young that the

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[4] *Id.*, pp. 72-83.

[5] *Id.*, pp.106-108.

court and government offices and public officials will lose their credibility and respect which are due them.

The court is aware of press freedom is enshrined in our constitution but such freedom should not be abused because in every right there is a concomitant obligation.

Let therefore this case be returned immediately to the office [of the] Clerk of Court VI for re-raffling.

SO ORDERED.

On the same day, Judge Victor Tomaneng, Presiding Judge of Branch 33, issued an order also inhibiting himself from handling Civil Case No. 5193, and in his capacity as Vice Executive Judge (in lieu of Executive Judge Cipriano B. Alvizo, Jr., then on sick leave) directed the assignment of Civil Case No. 5193 to Branch 5 without raffle,[6] *viz*:

xxx Considering that the Executive Judge Hon. Cipriano B. Alvizo, the Presiding Judge of RTC-Branch 4 and Acting-Designate Presiding Judge of RTC-Branch 3, but who is now in Cebu City for medical treatment, it would be impractical to include his courts in the re-raffling of cases for the reason that the case is for prohibition, *mandamus*, injunction, etc., that needs immediate action. The herein Vice-Executive Judge who is the Presiding Judge of RTC-Branch 33, could not also act on this case on the ground of '*delicadeza*' considering that defendant Hon. Mayor Leonides Theresa B. Plaza is his '*kumadre*' plus the fact that before becoming judge he was the legal counsel of the LDP party here in Butuan City, in the election of 1992 and 1995, which is the political party of the Plazas. RTC-Branch 1, being the exclusive Family Court cannot also be included in any raffle.

In view of the foregoing, and on the ground of expediency, the Clerk of Court is ordered to send this case to RTC-Branch 5, without raffle anymore, it being the only practical available court in this jurisdiction as of this moment.

Civil Case No. 5193 was forwarded to Branch 5, presided by Judge Augustus L. Calo, who recused because his wife had

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[6] *Id.*, p. 42.

been recently appointed by Mayor Plaza to the City's Legal Office. Judge Calo ordered the immediate return of the case to the Clerk of Court for forwarding to Vice Executive Judge Tomaneng.

Without any other judge to handle the case, Judge Tomaneng formally returned Civil Case No. 5193 to Judge Dabalos, stating in his letter that Judge Dabalos' reason for inhibition did not amount to a plausible ground to inhibit. Judge Tomaneng instructed Judge Dabalos to hear the case unless the Supreme Court approved the inhibition.[7]

On February 21, 2002, Judge Tomaneng issued a TRO,[8] to wit:

> The Court believes that there is a need to maintain the status quo until all the other issues in the complaint shall have been duly heard and determined without necessarily implying that plaintiff is entitled to the prayers for injunction. The Court hereby resolves in the meantime to grant a temporary restraining order.
>
> WHEREFORE, defendants City Gov't of Butuan and City Mayor Leonides Theresa B. Plaza, their attorneys, agents, employees, police authorities and/or any person acting upon the Mayor's order and instruction under her authority are hereby enjoined to cease, desist and to refrain from closing or padlocking RADYO BOMBO or from preventing, disturbing, or molesting its business operations, including but not limited to the use and operation of its building, structures and broadcasting facilities, and the ingress or egress of its employees therein.
>
> As this Court cannot issue a seventy-two (72) hour Temporary Restraining Order because of the incoming delay on Monday, February 25, 2002, a temporary restraining order is hereby issued effective for twenty (20) days from issuance (Sec. 5, Rule 58, 1997 Revised Rules on Civil Procedure).
>
> Meanwhile, let this case be set for summary hearing on March 11, 2002 at 8:30 in the morning to resolve the pending application

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[7] *Id.*, p. 111.

[8] *Id.*, pp. 109-110.

for injunction and for the defendants to show cause why the same shall not be granted.

IT IS SO ORDERED.

On February 25, 2002, the petitioners filed an *urgent motion to lift or dissolve temporary restraining order* in Branch 2 (*sala* of Judge Dabalos).

On February 26, 2002, Judge Dabalos referred his order of inhibition in Civil Case No. 5193 to the Court Administrator for consideration, with a request for the designation of another Judge not stationed in Butuan City and Agusan del Norte to handle the case.[9]

Consequently, CBS requested the Court to designate another judge to hear its application for the issuance of a writ of preliminary injunction, the hearing of which Judge Tomaneng had set on March 11, 2002.[10]

In the meanwhile, or on March 8, 2002, the petitioners filed their answer to the complaint, alleging affirmative and special defenses and praying for the dismissal of the complaint, the lifting of the TRO, the denial of the prayer for preliminary injunction, and the granting of their counterclaims for moral and exemplary damages, attorney's fees, and litigation expenses.

During the hearing on March 11, 2002 of CBS's application for the issuance of a writ of preliminary injunction, at which the petitioners and their counsel did not appear, CBS's counsel manifested that he was desisting from his earlier request with the Court for the designation of another judge to hear Civil Case No. 5193. Judge Dabalos noted the manifestation but reset the hearing of the application for preliminary injunction on March 12, 2002, to give the petitioners an opportunity to show cause why the writ prayed for should not issue. For the purpose of the resetting, Judge Dabalos caused a notice of hearing to be served on the petitioners.[11]

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[9] *Id.*, pp. 116-117.

[10] *Id.*, pp. 119-124.

[11] *Id.*, p. 45.

Upon receipt of the notice of hearing, the petitioners moved to quash the notice and prayed that the TRO be lifted, insisting that Judge Dabalos had already lost his authority to act on Civil Case No. 5193 by virtue of his inhibition.[12]

Nonetheless, Civil Case No. 5193 was called on March 12, 2002. The parties and their respective counsel appeared. At the close of the proceedings on that date, Judge Dabalos granted CBS's prayer for a writ of preliminary injunction,[13] to wit:

> WHEREFORE, in view of the foregoing as the defendants did not introduce any evidence in spite of the order of the Court to show cause why no writ of preliminary injunction be issued and the repeated directive of the court in open court for the defendants to present evidence which the defendants firmly refused to do so on flimsy grounds, the Court resolves to issue a writ of preliminary injunction as the complaint under oath alleges that plaintiff is a grantee of a franchise from the Congress of the Philippines and the act threatened to be committed by the defendants curtail the constitutional right of freedom of speech of the plaintiff which the Court finds that it should be looked into, the defendants' refusal to controvert such allegations by evidence deprived the Court [of] the chance to be guided by such evidence to act accordingly that it left the court no alternative but to grant the writ prayed for, the City Government of Butuan and City Mayor Leonides Theresa B. Plaza, their attorneys, agents, employees, police authorities and/or any person acting upon the Mayor's order or instructions or under her authority are hereby enjoined to cease and desist and to refrain from closing or padlocking RADYO BOMBO or from preventing, disturbing or molesting its business operations, including but not limited to the use and operation of its building, structures, broadcasting facilities and the ingress or egress of its employees therein upon plaintiff's putting up a bond in the amount of ₱200,000.00 duly approved by this court which injunction bond shall be executed in favor of the defendants to answer for whatever damages which the defendants may sustain in connection with or arising from the issuance of this writ if, after all the court will finally adjudge that plaintiff is not entitled thereto.

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[12] *Id.*, p. 46.

[13] *Id.*, pp. 127-133.

This order is without prejudice to the findings of the court after a formal hearing or a full blown trial.

Furnish copies of this order to the Hon. Supreme Court and the Hon. Court Administrator.

SO ORDERED.[14]

Following CBS's posting of ₱200,000.00 as the required injunction bond, Branch 2 issued the writ of preliminary injunction on March 15, 2002,[15] commanding and directing the provincial sheriff to:

> xxx forthwith enjoin the City Government of Butuan and the Hon. City Mayor Leonides Theresa B. Plaza, their attorneys, agents, employees, police authorities and/or any person acting upon the mayor's order or instruction or under her authority to cease and desist and to refrain from closing or padlocking RADIO BOMBO or from preventing disturbing or molesting its business operations, including the use and operation of its building, structures, broadcasting facilities and the ingress and egress of its employees therein. Copies of the writ of preliminary injunction, bond and other pertinent documents thereto be served on the defendants and thereafter make a return of your service of this writ within the period required by law and the Rules of Court.

Thus, the petitioners commenced in the CA a special civil action for *certiorari* and prohibition (with prayer for TRO or writ of preliminary injunction).

The CA dismissed the petition for *certiorari* and prohibition upon a finding that Judge Dabalos had committed no grave abuse of discretion in acting upon CBS's application for preliminary injunction, given the peculiar circumstances surrounding the raffling and assignment of Civil Case No. 5193, and the urgent need to resolve the application for preliminary injunction due to the expiration of Judge Tomaneng's TRO by March 13, 2002. The CA held that the writ of preliminary injunction had properly issued, because the petitioners had

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[14] *Id.*, p. 133.

[15] *Id.*, p. 47.

threatened to defeat CBS's existing franchise to operate its radio station in Butuan City by not issuing the permit for its broadcast business.

Issues

Hence, this appeal *via* petition for review on *certiorari*, with the petitioners contending that:[16]

I. THE COURT OF APPEALS ERRED IN NOT FINDING THAT RESPONDENT JUDGE ROSARITO F. DABALOS ACTED WITH GRAVE ABUSE OF DISCRETION WHEN, ON MARCH 12, 2002, WITHOUT SUFFICIENT NOTICE TO PETITIONERS, HE AGAIN TOOK COGNIZANCE OF AND RE-ASSUMED JURISDICTION OVER CIVIL CASE NO. 5193 AFTER HE HAD ALREADY EFFECTIVELY INHIBITED HIMSELF FROM HEARING THE SAME IN TWO EARLIER ORDERS HE HAD ISSUED DATED FEBRUARY 20 AND FEBRUARY 26, 2002 RESPECTIVELY.

II. ASSUMING THAT RESPONDENT JUDGE ROSARITO DABALOS COULD VALIDLY RE-ASSUME JURISDICTION OVER CIVIL CASE NO. 5193 AFTER HE HAD EARLIER ISSUED TWO ORDERS VOLUNTARILY INHIBITING HIMSELF FROM HEARING SAID CASE, THE COURT OF APPEALS ERRED IN NOT FINDING THAT RESPONDENT COURT ACTED WITH GRAVE ABUSE OF DISCRETION IN ISSUING A WRIT OF PRELIMINARY INJUNCTION WITHOUT REQUIRING PRIVATE RESPONDENT TO PRESENT EVIDENCE TO SHOW WHETHER SAID PRIVATE RESPONDENT HAS A CLEAR RIGHT THERETO.

Ruling

The appeal lacks merit. We find that the CA did not commit any error in upholding the questioned orders of the RTC.

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[16] *Id.*, pp. 23-24.

I
Judge Dabalos lawfully re-assumed jurisdiction over Civil Case No. 5193

In its decision, the CA ruled that Judge Dabalos did not gravely abuse his discretion in re-assuming jurisdiction over Civil Case No. 5193 in the light of the obtaining circumstances cogently set forth in its assailed decision, to wit:[17]

> Seemingly, petitioners lost sight of the reality that after the respondent judge issued his order of inhibition and directed the return of the case to the Office of the Clerk of Court for re-raffle to another judge, Vice-Executive Judge Victor A. Tomaneng, noting that there is no other judge to handle the case, directed the return thereof to the public respondent in view of the extreme urgency of the preliminary relief therein prayed for. Under the circumstances then obtaining, the respondent judge could do no less but to act thereon. So it is that he proceeded with the scheduled hearing on the application for preliminary injunction on March 11, 2002 and thereafter reset it for continuation the following day to afford the petitioners an opportunity to oppose the application and show cause why the writ prayed for should not issue. The urgency of the action demanded of the respondent judge is further accentuated by the fact that the TRO issued by Judge Tomaneng was then about to expire on March 13, 2002, not to mention the circumstance that Executive Judge Cipriano B. Alvizo, Jr., who happened to be around, advised the respondent judge to resolve the issues to the best of his discretion. xxx

The petitioners disagree, and insist that Judge Dabalos lost the authority to act upon CBS's application for preliminary injunction by virtue of his prior self-inhibition from hearing Civil Case No. 5193.

We cannot sustain the petitioners' insistence.

Section 1, Rule 137 of the *Rules of Court*, which contains the rule on inhibition and disqualification of judges, states:

> Section 1. *Disqualification of judges*.— No judge or judicial officer shall sit in any case in which he, or his wife or child, is

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[17] *Id.*, p. 53.

pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties-in-interest, signed by them and entered upon the record.

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just and valid reasons other than those mentioned above.

The self-inhibition of Judge Dabalos was one taken in accordance with the second paragraph of Section 1. Our resolution herein turns, therefore, on the proper interpretation and application of the second paragraph.

The second paragraph of Section 1 (unlike the first paragraph) does not expressly enumerate the specific grounds for inhibition. This means that the determination of the grounds is left to the sound discretion of the judge, who must discern with only his or her conscience as guide on what may be just and valid reasons for self-inhibition. The vesting of discretion necessarily proceeds from the reality that there may be many and different grounds for a judge to recuse from a case, and such grounds cannot all be catalogued in the *Rules of Court*. Thus did the Court cogently point out in *Gutang v. Court of Appeals*:[18]

xxx The import of the rule on the voluntary inhibition of judges is that the decision on whether or not to inhibit is left to the sound discretion and conscience of the trial judge based on his rational and logical assessment of the circumstances prevailing in the case brought before him. It makes clear to the occupants of the Bench that outside of pecuniary interest, relationship or previous participation in the matter that calls for adjudication, there might be other causes that could conceivably erode the trait of objectivity, thus calling for inhibition. That is to betray a sense of realism, for the factors that lead to preference or predilections are many and varied.

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[18] G.R. No. 124760, July 8, 1998, 292 SCRA 76.

In his case, Judge Dabalos clearly discerned after the return of Civil Case No. 5193 to him by the Vice Executive Judge that his self-doubt about his ability to dispense justice in Civil Case No. 5193 generated by the airing of criticisms against him and other public officials by CBS's commentators and reporters would not ultimately affect his objectivity and judgment. Such re-assessment of the ground for his self-inhibition, absent a showing of any malice or other improper motive on his part, could not be assailed as the product of an unsound exercise of his discretion. That, it seems to us, even the petitioners conceded, their objection being based only on whether he could still re-assume jurisdiction of Civil Case No. 5193.

We hold that although a trial judge who voluntarily inhibits loses jurisdiction to hear a case,[19] he or she may decide to reconsider the self-inhibition and re-assume jurisdiction after a re-assessment of the circumstances giving cause to the inhibition. The discretion to reconsider acknowledges that the trial judge is in the better position to determine the issue of inhibition, and a reviewing tribunal will not disturb the exercise of that discretion except upon a clear and strong finding of arbitrariness or whimsicality.[20] Thus, Judge Dabalos' re-assumption of jurisdiction was legally tenable, having come from his seizing the opportunity to re-assess the circumstances impelling his self-inhibition upon

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[19] *Alcantara v. Tamin*, A.M. No. RTJ-95-1305, April 21, 1995, 243 SCRA 549, 550.

[20] In the cited case of *Gutang v. Court of Appeals, supra*, at p. 85, the Court observed:

> In the final reckoning, there is really no hard and fast rule when it comes to the inhibition of judges. Each case should be treated differently and decided based on its peculiar circumstances. The issue of voluntary inhibition is primarily a matter of conscience and sound discretion on the part of the judge. It is a subjective test the result of which the reviewing tribunal will not disturb in the absence of any manifest finding of arbitrariness and whimsicality. The discretion given to trial judges is an acknowledgment of the fact that these judges are in a better position to determine the issue of inhibition as they are the ones who directly deal with the parties-litigants in their courtrooms.

being faced with the urgent need to hear and resolve CBS's application for preliminary injunction. Such action was commendable on his part, given that the series of self-inhibitions by the other RTC Judges had left no competent judge in the station to hear and resolve the application. It can even be rightly said that a refusal by Judge Dabalos to re-assess and reconsider might have negated his sacred and sworn duty as a judge to dispense justice.

In this connection, the urgency for the RTC to hear and resolve the application for preliminary injunction factually existed. In fact, CBS had communicated it to the Court in its letter dated March 5, 2002,[21] to wit:

> If not for the temporary restraining order issued on February 21, 2002 by the Honorable Judge VICTOR A. TOMANENG, Vice-Executive Judge and Presiding Judge of Branch 33 of said court xxx violent confrontations would have continued between supporters of plaintiff RADIO BOMBO BUTUAN, on the one hand, and the loyalists of City Mayor LEONIDES THERESA PLAZA (including some city employees) led by the Mayor herself and her husband, former Mayor DEMOCRITO PLAZA II, on the other hand.
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> As set forth in the temporary restraining order, the hearing on the application for a writ of preliminary injunction is set on Monday, March 11, 2002 because the twenty-day lifetime of the temporary restraining order would expire on March 13, 2002. A repeat of the violent scenario of February 21 may occur unless the application is heard as scheduled by a Regional Trial Court Judge who had not inhibited himself. xxx

Verily, Judge Dabalos' decision to hear the application for preliminary injunction pending the Court's resolution of the query on whether or not another Judge sitting outside the City of Butuan should take cognizance of Civil Case No. 5193 did not constitute or equate to arbitrariness or whimsicality. He had reasonable grounds to do so in the context of the tight circumstances that had developed in Civil Case No. 5193 following

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[21] *Rollo*, pp. 120-121.

his self-inhibition. Surely, his decision to reconsider did not proceed from passion or whim, but from his faithful adherence to his solemn oath to do justice to every man. He thereby neither violated any law or canon of judicial conduct, nor abused his juridical authority.

II.
Petitioners to adduce evidence after granting of TRO

The petitioners submit that Judge Dabalos improperly resolved CBS's application for preliminary injunction by not first requiring the applicant to adduce evidence in support of the application.

We do not agree with the petitioners.

A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order requiring a party or a court, an agency, or a person to refrain from a particular act or acts.[22] It may also require the performance of a particular act or acts, in which case it is known as a preliminary mandatory injunction.[23] Thus, a prohibitory injunction is one that commands a party to refrain from doing a particular act, while a mandatory injunction commands the performance of some positive act to correct a wrong in the past.[24]

As with all equitable remedies, injunction must be issued only at the instance of a party who possesses sufficient interest in or title to the right or the property sought to be protected.[25] It is proper only when the applicant appears to be entitled to the relief demanded in the complaint,[26] which must aver the

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[22] *Levi Strauss & Co. v. Clinton Aparelle, Inc.*, G.R. No. 138900, September 20, 2005, 470 SCRA 236.

[23] *Lee Hiong Wee v. Dee Ping Wee*, G.R. No. 163511, June 30, 2006, 494 SCRA 258.

[24] *Levi Strauss & Co. v. Clinton Aparelle, Inc*, *supra*.

[25] *Saulog v. Court of Appeals*, G.R. No. 119769, September 18, 1996, 262 SCRA 51.

[26] *Toyota Motor Philippines Corporation v. Court of Appeals*, G.R. No. 102881, December 7, 1992, 216 SCRA 236.

existence of the right and the violation of the right,[27] or whose averments must in the minimum constitute a *prima facie* showing of a right to the final relief sought.[28] Accordingly, the conditions for the issuance of the injunctive writ are: (*a*) that the right to be protected exists *prima facie*; (*b*) that the act sought to be enjoined is violative of that right; and (*c*) that there is an urgent and paramount necessity for the writ to prevent serious damage. An injunction will not issue to protect a right not *in esse*, or a right which is merely contingent and may never arise; or to restrain an act which does not give rise to a cause of action; or to prevent the perpetration of an act prohibited by statute.[29] Indeed, a right, to be protected by injunction, means a right clearly founded on or granted by law or is enforceable as a matter of law.[30]

While it is true that CBS was not required to present evidence to prove its entitlement to the injunctive writ, the writ was nonetheless properly granted on the basis of the undisputed facts that CBS was a grantee of a franchise from the Legislature, and that the acts complained against (*i.e.*, refusal of the Mayor's permit and resulting closure of the radio station) were imminent and, unless enjoined, would curtail or set at naught CBS's rights under the franchise. In this regard, worthy of mention is that even the Vice Executive Judge, acknowledging that CBS had stood to suffer grave injustice and irreparable injury should its radio station suffer closure, had issued *ex parte* the TRO.

It was error on the part of the petitioners to insist that the evidence of CBS should have first been required before Judge Dabalos issued the writ of preliminary injunction. Rule 58 of the *Rules of Court* clearly lays the burden on the shoulders of

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[27] *Lopez v. Court of Appeals*, G.R. No. 110929, January 20, 2000, 322 SCRA 686.

[28] *Buayan Cattle Co., Inc. v. Quintillan*, G.R. L-26970, March 19, 1984, 128 SCRA 276.

[29] 43 CJS *Injunctions* § 18.

[30] *Orocio v. Anguluan*, G.R. Nos. 179892-93, January 30, 2009, 577 SCRA 531.

the petitioners, as the parties against whom the TRO was issued, to show cause why the application for the writ of preliminary injunction should not issue,[31] thus:

> Section 5. *Preliminary injunction not granted without notice; exception.* — No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue *ex parte* a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. **Within the said twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.**
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In fine, Judge Dabalos properly directed the petitioners to first present evidence why the application for the writ of preliminary injunction should not be granted. By their refusal to comply with the directive to show cause by presenting their evidence to that effect, the petitioners could blame no one but themselves.

WHEREFORE, we deny the petition for review on *certiorari*, and affirm the decision dated October 28, 2002 promulgated by the Court of Appeals in C.A.-G.R. SP No. 69729.

Costs of suit to be paid by the petitioners.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Villarama, Jr., and *Aranal-Sereno, JJ.,* concur.

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[31] See also *Lee v. Court of Appeals*, G.R. No. 147191, July 27, 2006, 496 SCRA 668, 699.

SECOND DIVISION

[G.R. No. 169761. December 1, 2010]

ARRA REALTY CORPORATION, CARLOS D. ARGUELLES and REMEDIOS DE LA RAMA-ARGUELLES, *petitioners, vs.* **PACES INDUSTRIAL CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; DOCTRINE OF FINALITY OF JUDGMENT.— The importance of the doctrine of finality of judgment cannot be gainsaid. In *Pasiona, Jr. v. Court of Appeals*, the Court emphasized the oft-repeated ruling, thus: x x x This doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice. In fact, nothing is more settled in law than that **once a judgment attains finality it thereby becomes immutable and unalterable. It may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land**. x x x

2. ID.; APPEALS; SERVICE; UNLESS A NOTICE OF CHANGE OF ADDRESS HAS BEEN SEASONABLY FILED, THE COUNSEL'S OFFICIAL ADDRESS REMAINS TO BE THAT OF HIS ADDRESS OF RECORD; SERVICE OF THE DECISION OF THE APPELLATE COURT AT THE COUNSEL'S OFFICIAL ADDRESS CONSIDERED SUFFICIENT NOTICE.— [F]or failing to seasonably file a notice of change of address with the CA, petitioners' counsel's official address remained as "N.C. Lat Bldg., Tanauan, Batangas," and service of the CA Decision at said official address should be deemed sufficient notice of the decision to petitioners' counsel. Petitioners have no one to blame but themselves for not actually getting a copy of the CA Decision. Hence, as ruled in the *Philippine Airlines* case, such constructive service to herein petitioners should be considered completed five days

after the first notice, in this case, five days after April 15, 2005, or April 20, 2005. Petitioners then only had until May 5, 2005, within which to file a motion for reconsideration, but no such motion was filed within the requisite period.

3. ID.; ID.; ID.; ID.; FILING OF A NOTICE OF FORWARDING ADDRESS WITH THE OFFICE OF THE POSTMASTER CAN NEVER BE A SUBSTITUTE TO FILING A NOTICE OF CHANGE OF ADDRESS WITH THE COURT; DECISION OF THE COURT OF APPEALS ALREADY FINAL AND EXECUTORY.— The filing of a notice of forwarding address with the Office of the Postmaster can never be a substitute to filing a notice of change of address with the court. Petitioners have not presented any acceptable excuse for their failure to file such notice of change of address. They alone should bear the burden of their carelessness. It is not right to make respondent suffer the consequences of petitioners' fault. Since petitioners failed to file a timely motion for reconsideration, the CA Decision had become final and executory and, thus, immutable.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioners.
Emiliano S. Samson for respondent.

D E C I S I O N

PERALTA, *J.*:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying that the Decision[1] of the Court of Appeals (CA), dated April 11, 2005, and the Resolution[2] dated September 13, 2005, denying herein petitioner's motion for reconsideration, be reversed and set aside.

The records reveal the following antecedent facts.

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[1] Penned by Associate Justice Romeo A. Brawner, with Associate Justices Edgardo P. Cruz and Jose C. Mendoza, concurring; *rollo*, pp. 69-77.

[2] *Id.* at 79-81.

Petitioner ARRA Realty Corporation (hereinafter ARRA) and respondent Paces Industrial Corporation (hereinafter Paces) entered into an agreement which was summarized in ARRA's letter addressed to Paces dated November 18, 1982, to wit:

> I would like to review the arrangement arrived at our meeting yesterday afternoon. You shall share two (2) floors of the proposed 5-storey office building to be constructed on a 992 sq. m. Lot owned by ARRA Realty Corporation located at Alvarado St., Legaspi Village, Makati, Metro Manila. The consideration for which you shall own two (2) floors is SIX MILLION TWO HUNDRED ELEVEN THOUSAND SIX HUNDRED SEVENTY-SIX PESOS (₱6,211,676.00) on a deferred payment plan. The initial payment of ONE MILLION EIGHT HUNDRED THREE THOUSAND FOUR HUNDRED SEVENTY-SIX PESOS (₱1,803,476.00) shall be paid within sixty (60) days from November 20, 1982 and the balance payable in 20 equal quarterly payments of TWO HUNDRED TWENTY THOUSAND FOUR HUNDRED TEN PESOS (₱220,410.00). Every payment that you make, ARRA shall credit your account by way of partial payment to your stock subscriptions of ARRA's capital stock. As soon as our contractor, Pyramid Construction & Engineering Corporation, completes the commitment with us, which is not more than five (5) months, you shall immediately take possession of the floors of your choice. Further, as soon as practicable, the title corresponding to the two (2) floors that you own shall be transferred to your name.
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> However, should you pay in full at the end of the fourth quarter or at any time prior to the 5 year arrangement, the price shall be adjusted accordingly.
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> x x x x x x x x x[3]

Paces' authorized representatives affixed their signatures to the foregoing letter to signify its agreement thereto.

Paces was only able to pay ARRA ₱2,774,992.02 out of the total contract price of ₱6,211,676.00 but, nevertheless, it was able to take possession of the 3rd and 4th floors of the building, bare as a shell. Paces had to spend the amount of ₱1,312,935.00

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[3] *Rollo,* p. 91.

for improvements on said floors, including four air-conditioning units, to make it suitable for use as office spaces.

On the other hand, to complete the construction of the building, ARRA had to obtain a loan from China Banking Corporation (CHINABANK), mortgaging the property subject of this case as security for said loan. Subsequently, the property was foreclosed, with CHINABANK as buyer in the amount of ₱13,900,000.00. Within the period of redemption, ARRA was able to sell the property to Guarantee Development Corporation and Insurance Agency (GUARANTEE) for ₱22,000,000.00, with the condition that ARRA shall deliver the property to GUARANTEE not later than May 15, 1987, totally free of occupants. GUARANTEE only paid ARRA the partial amount of ₱21,000,000.00, because the latter failed to deliver the property totally vacated. From the proceeds of the sale to GUARANTEE, ARRA was then able to redeem the property from CHINABANK. On May 15, 1987, title to the lot was transferred in the name of GUARANTEE.

Thereafter, due to the harassment it allegedly suffered at the hands of GUARANTEE, Paces filed a complaint against GUARANTEE and herein petitioners for "Annulment of Sale, Title and Recovery of Real Property and Damages." However, Paces and GUARANTEE subsequently entered into a Compromise Agreement, which was embodied in the Partial Decision of the Regional Trial Court of Makati (RTC). Pursuant to said Partial Decision, Paces turned over possession of the 3rd and 4th floors to GUARANTEE, for which the latter paid Paces the amount of ₱2,000,000.00.

Paces then filed an Amended Complaint, dropping GUARANTEE as defendant and Emiliano Samson as plaintiff in the case. Paces prayed that petitioners be ordered to pay ₱5,500,000.00 as actual or compensatory damages, ₱500,000.00 as attorney's fees, and ₱500,000.00 as exemplary damages.

After trial, the RTC ruled that for Paces' failure to pay the full amount of ₱6,211,676.00, it did not acquire ownership of the 3rd and 4th floors. Hence, the RTC ordered petitioners to

reimburse or pay Paces ₱2,774,992.02, the amount the latter had already paid ARRA, with legal interest from the time of the filing of the complaint.

Both parties appealed to the CA, and on April 11, 2005, the CA rendered its Decision, ruling that Paces obtained ownership of the 3rd and 4th floors, and disposed as follows:

> WHEREFORE, the appealed decision is hereby AFFIRMED with the MODIFICATION that the defendants-appellants are ordered to pay, jointly and severally, the herein plaintiff-appellant the amount ₱4,723,316.00, together with the legal interest thereof, from the time of the filing of the complaint.
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> SO ORDERED.[4]

Subsequently, Paces filed a Motion for Entry of Judgment[5] dated May 19, 2005, where it was pointed out that a copy of the CA Decision was actually delivered to counsel's address of record, but it was returned to sender with the notation "Moved, left no address." Hence, it prayed that entry of judgment be made as the period for filing a motion for reconsideration had lapsed. Petitioners opposed said motion for entry of judgment and filed a motion with leave of court to admit its motion for reconsideration, attaching a certification[6] from the Office of the Postmaster stating that as far back as July 18, 2000, petitioners' counsel, Atty. Igmidio C. Lat, had filed with said office a new forwarding address. Paces opposed the motion for reconsideration, reiterating that the CA Decision had attained finality, attaching a letter[7] from the Postmaster, Philpost Tanauan, dated May 25, 2005, stating that Registered Mail No. 4310 (addressed to petitioners' counsel, containing the CA Decision) was delivered to Atty. Lat's address on April 15, 2005, but the addressee has moved out without leaving a forwarding address.

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[4] *Id.* at 76-77.

[5] *Rollo*, pp. 193-195.

[6] *Id.* at 199.

[7] See Annex "B", Opposition to Defendants-Appellants' Motion for Reconsideration, dated May 25, 2005, *id.* at 223-231.

The CA then issued a Resolution dated July 22, 2005, admitting petitioners' motion for reconsideration in the interest of justice. Nevertheless, petitioners' motion for reconsideration of the CA Decision was denied, per Resolution dated September 13, 2005.

Hence, this petition where the following issues are raised, to wit:

(1) WHETHER OR NOT PETITIONERS' APPEAL BY *CERTIORARI* IS PROPER;

(2) WHETHER OR NOT PETITIONERS' APPEAL IN THE COURT OF APPEALS SUBSTANTIALLY CONTAINED AN ASSIGNMENT OF ERRORS;

(3) WHETHER OR NOT THE DECISION OF THE COURT OF APPEALS HAS NOT BECOME FINAL AND UNAPPEALABLE;

(4) WHETHER OR NOT THE COURT OF APPEALS ERRED IN HOLDING THAT THE AGREEMENT ENTERED INTO BETWEEN THE PARTIES IS ONE OF SALE;

(5) WHETHER OR NOT THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONERS ARE LIABLE TO PAY RESPONDENT BASED ON THE FAIR MARKET VALUE OF THE 3rd AND 4th FLOORS OF THE BUILDING;

(6) WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT RULING THAT RESPONDENT IS BARRED FROM CLAIMING DAMAGES FROM PETITIONERS;

(7) WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT ORDERING RESPONDENT TO PAY RENTALS IN ARREARS, PLUS INTEREST, ON THE LATTER'S OCCUPANCY OF THE 3rd AND 4th FLOORS OF THE BUILDING;

(8) WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT ANNULLING THE CONDITIONAL DEED OF SALE AND THE DEED OF ABSOLUTE SALE ENTERED INTO BETWEEN PETITIONERS AND GUARANTEE; and

(9) WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT AWARDING MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES TO PETITIONERS FOR RESPONDENT'S

FILING OF THE WRIT OF ATTACHMENT AND/OR GARNISHMENT.[8]

The petition is doomed to fail.

The foremost question that should be determined is whether the CA Decision has indeed attained finality. The importance of the doctrine of finality of judgment cannot be gainsaid. In *Pasiona, Jr. v. Court of Appeals*,[9] the Court emphasized the oft-repeated ruling, thus:

> x x x With the full knowledge that courts are not infallible, **the litigants submit their respective claims for judgment, and they have a right at some time or other to have final judgment on which they can rely as a final disposition of the issue submitted, and to know that there is an end to the litigation.** (Emphasis supplied.)
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> This doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice. In fact, nothing is more settled in law than that **once a judgment attains finality it thereby becomes immutable and unalterable. It may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land**. (Emphasis supplied.)
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> **The finality of decision is a jurisdictional event which <u>cannot be made to depend on the convenience of the party</u>.** To rule otherwise would completely negate the purpose of the rule on completeness of service, which is to place the date of receipt of pleadings, judgment and processes beyond the power of the party being served to determine at his pleasure. (Emphasis and underscoring supplied)

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[8] *Rollo*, p. 205.

[9] G.R. No. 165471, 137, July 21, 2008, 559 SCRA 137.

It should be borne in mind that the right of the winning party to enjoy the finality of the resolution of the case is also an essential part of public policy and the orderly administration of justice. Hence, such right is just as weighty or equally important as the right of the losing party to appeal or seek reconsideration within the prescribed period.[10] (Emphasis supplied.)

In this case, petitioners' former counsel, Atty. Lat, never denied that he has not filed a notice of change of address with the CA. He indicated his address in all his pleadings filed with the CA as "N.C. Lat Bldg., Tanauan, Batangas." It was only in his motion for reconsideration of the CA Decision where Atty. Lat stated that he has in fact changed address and had previously notified the Office of the Postmaster of his new address, as shown by a certification from the Office of the Postmaster, Central Post Office, Manila, stating that as far back as July 18, 2000, petitioners' counsel, Atty. Igmidio C. Lat, had filed with said office a new forwarding address.

Considering that no notice of change of address was filed with the CA, Atty. Lat's address of record remained as "N.C. Lat Bldg., Tanauan, Batangas," and petitioners' copy of the CA Decision was, of course, sent to said address. Atty. Lat allegedly never received a copy of the decision and it was only on June 23, 2005, when he personally followed-up the status of the case at the CA, that he was able to obtain a copy of the same.

The question then is, should petitioners be deemed to have received the CA Decision only on June 23, 2005 and begin counting the 15-day period for filing a motion for reconsideration only from said date? The Court holds in the negative.

In *Philippine Airlines, Inc. v. Heirs of Bernardin J. Zamora*,[11] the petitioner therein also moved to another address but failed to file a notice of change of address with the NLRC. Hence, when a copy of the NLRC decision was sent to said petitioner's

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[10] *Id.* at 145-147. (Emphasis supplied.)

[11] G.R. Nos. 164267 and 166996, March 31, 2009, 582 SCRA 670.

address of record *via* registered mail, the same was returned to sender. In said case, the Court ruled, thus:

> The rule on service by registered mail contemplates two situations: (1) actual service, the completeness of which is determined upon receipt by the addressee of the registered mail; and (2) constructive service, the completeness of which is determined upon expiration of five days from the date the addressee received the first notice of the postmaster. A party who relies on constructive service or who contends that his adversary has received a copy of a final order or judgment upon the expiration of five days from the date the addressee received the first notice sent by the postmaster must prove that the first notice was actually received by the addressee. Such proof requires a certified or sworn copy of the notice given by the postmaster to the addressee.
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> **In the instant case, there is no postmaster's certification to the effect that the registered mail containing the NLRC decision was unclaimed by the addressee and thus returned to sender, after first notice was sent to and received by the addressee on a specified date. All that appears from the records are the envelopes containing the NLRC decision with the stamped markings and notation on the face and dorsal sides thereof showing "RTS" (meaning, "Return To Sender") and "MOVED." Still, we must rule that service upon PAL and the other petitioners was complete.**
>
> *First*, the NLRC Deputy Executive Clerk issued a Certification that the envelopes containing the NLRC decision addressed to Mr. Jose Pepiton Garcia and Atty. Bienvenido T. Jamoralin, Jr. were returned to the NLRC with the notation "RTS" and "MOVED." Yet, **they and the other petitioners, including PAL, have not filed any notice of change of address at any time prior to the issuance of the NLRC decision up to the date when the Certification was issued on January 24, 2000**.
>
> *Second*, **the non-receipt by PAL and the other petitioners of the copies of the NLRC decision was due to their own failure to immediately file a notice of change of address with the NLRC**, which they expressly admitted. It is settled that where a party appears by attorney in an action or proceeding in a court of record, **all notices or orders required to be given therein must be given to the attorney of record. Accordingly, notices to counsel should be**

properly sent to his address of record, and, unless the counsel files a notice of change of address, his official address remains to be that of his address of record.

x x x To our mind, **it would have been more prudent had PAL informed the NLRC that it has moved from one floor to another rather than allowed its old address at Allied Bank Center to remain as its official address. To rule in favor of PAL considering the circumstances in the instant case would negate the purpose of the rules on completeness of service and the notice of change of address, which is to place the date of receipt of pleadings, judgments and processes beyond the power of the party being served to determine at his pleasure**.

Resultantly, service of the NLRC decision *via* registered mail was deemed completed as of August 16, 1999, or five days after the first notice on August 11, 1999. As such, PAL only had 10 days from August 16, 1999 to file its motion for reconsideration. Its motion filed on October 29, 1999 was, therefore, late. Hence the NLRC decision became final and executory.[12]

The factual circumstances in the foregoing case are closely analogous to what transpired in the present case. No notice of change of address was ever filed by petitioners' counsel. The CA sent the notice of the decision to petitioners' counsel's address of record *via* registered mail. Respondent submitted a letter[13] from the Postmaster, Philpost Tanauan, dated May 25, 2005, stating that Registered Mail No. 4310 (addressed to petitioners' counsel, containing the CA Decision) was delivered to Atty. Lat's address on April 15, 2005, but the addressee has moved out without leaving a forwarding address. The records show that the envelope containing the CA Decision was returned to the CA with the notation, "Return to Sender, Moved left no address."[14]

Thus, for failing to seasonably file a notice of change of address with the CA, petitioners' counsel's official address

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[12] *Id.* at 683-685. (Emphasis and underscoring supplied.)

[13] See Annex "B", Opposition to Defendants-Appellants' Motion for Reconsideration, dated May 25, 2005, CA *rollo*, pp. 223-231.

[14] CA *rollo*, see envelope attached to the back of p. 191.

remained as "N.C. Lat Bldg., Tanauan, Batangas," and service of the CA Decision at said official address should be deemed sufficient notice of the decision to petitioners' counsel. Petitioners have no one to blame but themselves for not actually getting a copy of the CA Decision. Hence, as ruled in the *Philippine Airlines*[15] case, such constructive service to herein petitioners should be considered completed five days after the first notice, in this case, five days after April 15, 2005, or April 20, 2005. Petitioners then only had until May 5, 2005, within which to file a motion for reconsideration, but no such motion was filed within the requisite period.

The filing of a notice of forwarding address with the Office of the Postmaster can never be a substitute to filing a notice of change of address with the court. Petitioners have not presented any acceptable excuse for their failure to file such notice of change of address. They alone should bear the burden of their carelessness. It is not right to make respondent suffer the consequences of petitioners' fault. Since petitioners failed to file a timely motion for reconsideration, the CA Decision had become final and executory and, thus, immutable.

IN VIEW OF THE FOREGOING, the Petition is *DENIED*. The Decision of the Court of Appeals dated April 11, 2005, and the Resolution dated September 13, 2005, are *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Nachura, Leonardo-de Castro,[*] and *Abad, JJ.,* concur.

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[15] *Supra* note 11.

[*] Designated as an additional member in lieu of Associate Justice Jose C. Mendoza, per raffle dated November 24, 2010.

THIRD DIVISION

[G.R. No. 173138. December 1, 2010]

NOEL B. BACCAY, *petitioner, vs.* **MARIBEL C. BACCAY and REPUBLIC OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; MARRIAGE; NULL AND VOID MARRIAGE; PSYCHOLOGICAL INCAPACITY; CONFINED TO THE MOST SERIOUS OF CASES OF PERSONALITY DISORDERS CLEARLY DEMONSTRATIVE OF AN UTTER INSENSITIVITY OR INABILITY TO GIVE MEANING AND SIGNIFICANCE TO THE MARRIAGE.— The Court held in *Santos v. Court of Appeals* that the phrase "psychological incapacity" is not meant to comprehend all possible cases of psychoses. It refers to no less than a mental (not physical) incapacity that causes a party to be truly noncognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage which, as expressed by Article 68 of the Family Code, include their mutual obligations to live together, observe love, respect and fidelity and render help and support. The intendment of the law has been to confine it to the most serious of cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.

2. ID.; ID.; ID.; ID.; ID.; THE ROOT CAUSE OF THE ALLEGED PSYCHOLOGICAL INCAPACITY MUST BE PROVED AND THE REQUIREMENTS OF GRAVITY, JURIDICAL ANTECEDENCE AND INCURABILITY MUST BE ESTABLISHED; MERE DIFFICULTY TO SUSTAIN MARRIAGE IS NOT THE INCAPACITY CONTEMPLATED BY LAW.— In this case, the totality of evidence presented by Noel was not sufficient to sustain a finding that Maribel was psychologically incapacitated. Noel's evidence merely established that Maribel refused to have sexual intercourse with him after their marriage, and that she left him after their quarrel when he confronted her about her alleged miscarriage. He failed to prove the root cause of the alleged psychological incapacity and establish the requirements of gravity, juridical antecedence, and incurability.

As correctly observed by the CA, the report of the psychologist, who concluded that Maribel was suffering from Narcissistic Personality Disorder traceable to her experiences during childhood, did not establish how the personality disorder incapacitated Maribel from validly assuming the essential obligations of the marriage. Indeed, the same psychologist even testified that Maribel was capable of entering into a marriage except that it would be difficult for her to sustain one. Mere difficulty, it must be stressed, is not the incapacity contemplated by law.

3. ID.; ID.; ID.; ID.; ID.; PETITIONING SPOUSE MUST PROVE THAT THE PSYCHOLOGICAL DISORDER RENDERS THE RESPONDENT SPOUSE TRULY INCOGNITIVE OF THE BASIC MARITAL COVENANTS THAT CONCOMITANTLY MUST BE ASSUMED AND DISCHARGED BY THE PARTIES TO THE MARRIAGE; AN UNSATISFACTORY MARRIAGE IS NOT A NULL AND VOID MARRIAGE.— The Court emphasizes that the burden falls upon petitioner, not just to prove that private respondent suffers from a psychological disorder, but also that such psychological disorder renders her "truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage." Psychological incapacity must be more than just a "difficulty," a "refusal," or a "neglect" in the performance of some marital obligations. An unsatisfactory marriage is not a null and void marriage. As we stated in *Marcos v. Marcos*: Article 36 of the Family Code, we stress, is not to be confused with a divorce law that cuts the marital bond at the time the causes therefor manifest themselves. It refers to a serious psychological illness afflicting a party even before the celebration of the marriage. It is a malady so grave and so permanent as to deprive one of awareness of the duties and responsibilities of the matrimonial bond one is about to assume. x x x.

BRION, *J., concurring opinion:*

1. CIVIL LAW; FAMILY CODE; NULL AND VOID MARRIAGE; ARTICLE 36 OF THE FAMILY CODE; ELEMENTS; THE PSYCHOLOGICAL INCAPACITY MUST RELATE TO THE ESSENTIAL OBLIGATIONS OF MARRIAGE; NON-COMPLIANCE WITH THE NON-ESSENTIAL MARITAL

OBLIGATIONS HAS NO EFFECT ON THE VALIDITY OF THE MARRIAGE.— Article 36 of the Family Code states that – A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization. Dissecting the terms of the provision, we list down its elements: 1. a celebration of marriage; 2. non-performance of marital obligations; **3. the marital obligations which are not performed are essential obligations; 4. non-performance is due to causes psychological in nature and it is chronic: constant and habitual;** 5. the cause/s are present during the celebration of marriage although they may not be manifest or evident at that point; and 6. the cause/s surface after the celebration of marriage. Article 36 of the Family Code requires that the psychological incapacity relate to the essential obligations of marriage, *i.e.*, "it is the non-performance of this class of obligations which will lead to a declaration of nullity of marriage due to psychological incapacity." Corollarily, "the non-compliance with these non-essential marital obligations has no effect on the validity of the marriage."

2. ID.; ID.; ID.; ID.; PSYCHOLOGICAL INCAPACITY; THE INCAPACITY SHOULD MAKE THE PARTY DISABLED FROM RENDERING WHAT IS DUE IN THE MARRIAGE, WITHIN THE CONTEXT OF JUSTICE, NOT MERELY IN THE SPHERE OF GOOD WILL; FAILURE TO MAINTAIN HARMONIOUS RELATIONSHIP WITH THE IN-LAWS NOT CONSIDERED A NON-FULFILLMENT OF AN ESSENTIAL MARITAL OBLIGATION.— The essential marital obligations under the Family Code are found in Articles 68 to 71, 220, 221, and 225. Notably, these essential marital obligations refer primarily to obligations of spouses *towards each other* and *towards their children*. While a harmonious relationship with the in-laws is ideal, particularly in this country's cultural set-up, it appears that the law does not consider it an *essential* obligation of either spouse to maintain one. The "incapacity should make the party disabled from rendering what is due in the marriage, within the context of justice, not merely in the sphere of good will." Maribel's failure to socialize, interact, and endear herself to Noel's family, as far as our family laws are concerned, is, thus, not considered

a non-fulfillment of an essential marital obligation. If at all, Maribel has failed to meet her husband Noel's expectations of how she should conduct herself with and relate to his family, a matter not dealt with by Article 36.

3. ID.; ID.; ID.; ID.; ID.; THE FAILURE TO CONSUMMATE THE MARRIAGE BY ITSELF DOES NOT CONSTITUTE AS A GROUND TO NULLIFY THE MARRIAGE; THE SPOUSE'S REFUSAL TO HAVE INTIMATE SEXUAL RELATIONS MUST BE DUE TO CAUSES PSYCHOLOGICAL IN NATURE.— The consummation of the marriage, on the other hand, is an essential marital obligation. Marriage is entered into for the establishment of conjugal and family life; its consummation is not only an expression of the couple's love for each other, but is also a means for procreation. That the Court nullified a marriage due to the husband's obstinate and unjustified refusal to have intimate sexual relations with his wife indicates that the consummation of the marriage is considered an essential marital obligation. The failure to consummate the marriage by itself, however, does not constitute as a ground to nullify the marriage. The spouse's refusal to have intimate sexual relations must be due to causes psychological in nature, *i.e.*, the psychological condition of the spouse renders him/her incapable of having intimate sexual relations with the other. This crucial nexus between the non-fulfilled essential marital obligation and the psychological condition was what Noel failed to allege and prove; Maribel's refusal to satisfy Noel's sexual needs during their marriage was never proven to have been due to some psychological condition.

4. ID.; ID.; ID.; ID.; ID.; SLIGHT CHARACTER FLAWS DO NOT MAKE A PERSON INCAPABLE OF MARRIAGE; NOT EVERY PSYCHOLOGICAL ILLNESS IS A GROUND FOR DECLARING THE MARRIAGE A NULLITY.— Noel enumerated other negative traits of Maribel that he claimed were indicative of a psychological illness, specifically, that of NPD. But not all negative traits exhibited by a person are rooted in some psychological illness or disorder; these may simply be a character flaw or a bad habit that the person has developed over the years. It has been said that "[a] deeply ingrained bad habit does not qualify as a source of x x x

incapacity." Slight character flaws also do not make a person incapable of marriage. Assuming that these negative traits were indeed manifestations of NPD or some other psychological illness, jurisprudence has declared that *not every psychological illness/disorder/condition is a ground for declaring the marriage a nullity under Article 36*. "[T]he meaning of 'psychological incapacity' [is confined] to the **most serious cases** of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage." The psychologist testified that persons suffering from NPD were unmotivated to participate in therapy sessions and would reject any form of psychological help, rendering their condition long lasting, if not incurable, perhaps in an attempt to define the gravity and extent of Maribel's NPD. This, however, is but a general description of persons with personality disorders, as the term is clinically defined; NPD is just one of the kinds of personality disorders. The testimony did not specifically refer to Maribel and did not paint a clear picture of the seriousness of her NPD.

5. ID.; ID.; ID.; ID.; ID.; THE PETITIONING SPOUSE MUST ALLEGE AND PROVE THAT THE PSYCHOLOGICAL ILLNESS IS THE ROOT CAUSE OF THE RESPONDENT SPOUSE'S INCAPACITY OR INABILITY TO FULFILL THE ESSENTIAL MARITAL OBLIGATIONS; A SPOUSE'S LACK OF UNDERSTANDING OF THE MARRIAGE AND ITS OBLIGATIONS IS AN IRRELEVANT CONSIDERATION.— [T]he *petitioning spouse must also allege and prove that the psychological illness/disorder/condition is the* ***root cause*** *of the respondent spouse's incapacity or inability to fulfill any, some, or all of the essential obligations of marriage*. Noel attempted to establish this link by alleging that Maribel's NPD has made her view marriage simply as a piece of paper and made her believe that she can easily get rid of her husband without any provocation. He claimed that she entered marriage not because of an emotional desire for it, but to prove something. Rather than establishing Maribel's incapacity to fulfill the essential marital obligations, Noel's contentions seem to indicate that Maribel was utterly unaware of the nature of marriage and its consequent obligations. There is, however, a significant difference between *lack of awareness or understanding of*

marriage and its obligations, and *lack of capacity to fulfill these marital obligations.* A spouse's lack of awareness or understanding of marriage and its obligation is an irrelevant consideration for a petition filed under Article 36 of the Family Code.

6. ID.; ID.; ID.; ID.; DOES NOT REFER TO INCAPACITY TO KNOW AND UNDERSTAND MARRIAGE AND ITS CONCOMITANT OBLIGATIONS BUT THE INCAPACITY TO FULFILL THESE OBLIGATIONS FOR SOME PSYCHOLOGICAL REASON.— [T]he incapacity that Article 36 speaks of is not the incapacity to know and understand marriage and its concomitant obligations (lack of due discretion), but the incapacity to fulfill these obligations for some psychological reason (lack of due capacity). A party may be considered as incapable of assuming the essential obligations of marriage even though he may have sufficient use of reason plus due discretion in judgment. The lack of due discretion, on the other hand, *may be* indicative of vitiated consent, but this is not the concern of Article 36 of the Family Code. Noel's assertion of Maribel's failure to appreciate marriage and its obligations was, therefore, an irrelevant allegation insofar as his Article 36 petition was concerned.

7. ID.; ID.; ID.; THE GUIDELINES LISTED IN THE MOLINA CASE (G.R. NO. 108763, 13 FEBRUARY 1997) WERE NEVER INTENDED TO REMOVE THE RESILIENCY AND FLEXIBILITY ENVISIONED BY THE FRAMERS IN THE APPLICATION AND INTERPRETATION OF ARTICLE 36 OF THE FAMILY CODE; GUIDELINES MERELY INCORPORATED THE BASIC REQUIREMENTS OF GRAVITY, JURIDICAL ANTECEDENCE AND INCURABILITY.— The guidelines listed in *Molina* are but expositions of what the Court has determined in *Santos v. Bedia-Santos* as characteristics of the psychological incapacity that render a marriage void under Article 36 of the Family Code; these guidelines merely incorporated the basic requirements of gravity, juridical antecedence and incurability. *Molina* did not create new rules, but simply identified and consolidated the legislative intent behind Article 36 of the Family Code. A majority of the guidelines listed corresponds to and is consistent with the concept of psychological incapacity that

the members of the Family Code Revision Committee had in mind, the interpretation of Canon 1095 from which the provision was modeled after, and the existing laws, both procedural and substantive. The guidelines in *Molina* were never intended to remove the resiliency and flexibility envisioned by the framers in the application and interpretation of Article 36 of the Family Code. The resiliency and flexibility, however, are not a license to interpret Article 36 of the Family Code as allowing any and every assertion of psychological incapacity to merit a declaration of nullity of marriage. The Court remains bound to interpret the provision in a manner consistent with the Constitution and relevant family laws. For now, Article 36 of the Family Code will remain to be a limited remedy, addressing only a specific situation — a relationship where no marriage could have been validly concluded because the parties, or one of them, by reason of grave and incurable psychological illness existing at the time when the marriage was celebrated, was incapacitated to fulfill the essential marital obligations and, thus, could not have validly entered into a marriage. Outside of this situation, the Court is powerless to provide any permanent remedy.

SERENO, *J.*, *concurring opinion:*

CIVIL LAW; FAMILY CODE; NULL AND VOID MARRIAGE; ARTICLE 36 OF THE FAMILY CODE; IF NOT ABLY REBUTTED, THE PRESUMPTION IN FAVOR OF THE VALIDITY OF MARRIAGE SHALL PREVAIL; PSYCHOLOGICAL INCAPACITY OF THE RESPONDENT SPOUSE, NOT PROVED.— [W]hether we apply the *Molina* standard or a more relaxed interpretation and application of Article 36, petitioner was unable to prove his case with preponderant evidence. Since the presumption in favor of the validity of marriage was not ably rebutted, this presumption prevails.

APPEARANCES OF COUNSEL

Redemptor Peig for petitioner.
The Solicitor General for public respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

This petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assails the Decision[1] dated August 26, 2005 and Resolution[2] dated June 13, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 74581. The CA reversed the February 5, 2002 Decision[3] of the Regional Trial Court (RTC) of Manila, Branch 38, which declared the marriage of petitioner Noel B. Baccay (Noel) and Maribel Calderon-Baccay (Maribel) void on the ground of psychological incapacity under Article 36[4] of the Family Code of the Philippines.

The undisputed factual antecedents of the case are as follows:

Noel and Maribel were schoolmates at the Mapua Institute of Technology where both took up Electronics and Communications Engineering. Sometime in 1990, they were introduced by a mutual friend and became close to one another. Noel courted Maribel, but it was only after years of continuous pursuit that Maribel accepted Noel's proposal and the two became sweethearts. Noel considered Maribel as the snobbish and hard-to-get type, which traits he found attractive.[5]

Noel's family was aware of their relationship for he used to bring Maribel to their house. Noel observed that Maribel was inordinately shy when around his family so to bring her closer to them, he always invited Maribel to attend family gatherings

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[1] *Rollo*, pp. 6-21. Penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Jose L. Sabio, Jr. and Noel G. Tijam.

[2] *Id.* at 22-25.

[3] *Id.* at 100-104. Penned by Judge Priscilla J. Baltazar-Padilla.

[4] ART. 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization. (*As amended by E.O. 227.*)

[5] *Rollo*, pp. 83, 92, 100.

and other festive occasions like birthdays, Christmas, and fiesta celebrations. Maribel, however, would try to avoid Noel's invitations and whenever she attended those occasions with Noel's family, he observed that Maribel was invariably aloof or snobbish. Not once did she try to get close to any of his family members. Noel would talk to Maribel about her attitude towards his family and she would promise to change, but she never did.

Around 1997, Noel decided to break up with Maribel because he was already involved with another woman. He tried to break up with Maribel, but Maribel refused and offered to accept Noel's relationship with the other woman so long as they would not sever their ties. To give Maribel some time to get over their relationship, they still continued to see each other albeit on a friendly basis.

Despite their efforts to keep their meetings strictly friendly, however, Noel and Maribel had several romantic moments together. Noel took these episodes of sexual contact casually since Maribel never demanded anything from him except his company. Then, sometime in November 1998, Maribel informed Noel that she was pregnant with his child. Upon advice of his mother, Noel grudgingly agreed to marry Maribel. Noel and Maribel were immediately wed on November 23, 1998 before Judge Gregorio Dayrit, the Presiding Judge of the Metropolitan Trial Court of Quezon City.

After the marriage ceremony, Noel and Maribel agreed to live with Noel's family in their house at Rosal, Pag-asa, Quezon City. During all the time she lived with Noel's family, Maribel remained aloof and did not go out of her way to endear herself to them. She would just come and go from the house as she pleased. Maribel never contributed to the family's coffer leaving Noel to shoulder all expenses for their support. Also, she refused to have any sexual contact with Noel.

Surprisingly, despite Maribel's claim of being pregnant, Noel never observed any symptoms of pregnancy in her. He asked Maribel's office mates whether she manifested any signs of pregnancy and they confirmed that she showed no such signs. Then, sometime in January 1999, Maribel did not go home for

a day, and when she came home she announced to Noel and his family that she had a miscarriage and was confined at the Chinese General Hospital where her sister worked as a nurse.

Noel confronted her about her alleged miscarriage sometime in February 1999. The discussion escalated into an intense quarrel which woke up the whole household. Noel's mother tried to intervene but Maribel shouted "*Putang ina nyo, wag kayo makialam*" at her. Because of this, Noel's mother asked them to leave her house. Around 2:30 a.m., Maribel called her parents and asked them to pick her up. Maribel left Noel's house and did not come back anymore. Noel tried to communicate with Maribel but when he went to see her at her house nobody wanted to talk to him and she rejected his phone calls.[6]

On September 11, 2000 or after less than two years of marriage, Noel filed a petition[7] for declaration of nullity of marriage with the RTC of Manila. Despite summons, Maribel did not participate in the proceedings. The trial proceeded after the public prosecutor manifested that no collusion existed between the parties. Despite a directive from the RTC, the Office of the Solicitor General (OSG) also did not submit a certification manifesting its agreement or opposition to the case.[8]

On February 5, 2002, the RTC rendered a decision in favor of Noel. The dispositive portion of the decision reads:

> WHEREFORE, judgment is hereby rendered declaring the marriage of the parties hereto celebrated on November 23, 1998 at the sala of Judge Gregorio Dayrit of the Metropolitan Trial Court in Quezon City as NULL and VOID.
>
> The Local Civil Registrar of Quezon City and the Chief of the National Statistics Office are hereby directed to record and enter this decree into the marriage records of the parties in their respective marriage registers.

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[6] *Id.* at 83-87, 93-95.

[7] *Id.* at 83-88.

[8] *Id.* at 101-102.

The absolute community property of the parties is hereby dissolved and, henceforth, they shall be governed by the property regime of complete separation of property.

With costs against respondent.

SO ORDERED.[9]

The RTC found that Maribel failed to perform the essential marital obligations of marriage, and such failure was due to a personality disorder called Narcissistic Personality Disorder characterized by juridical antecedence, gravity and incurability as determined by a clinical psychologist. The RTC cited the findings of Nedy L. Tayag, a clinical psychologist presented as witness by Noel, that Maribel was a very insecure person. She entered into the marriage not because of emotional desire for marriage but to prove something, and her attitude was exploitative particularly in terms of financial rewards. She was emotionally immature, and viewed marriage as a piece of paper and that she can easily get rid of her husband without any provocation.[10]

On appeal by the OSG, the CA reversed the decision of the RTC, thus:

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court of Manila Branch 38 declaring as null and void the marriage between petitioner-appellee and respondent is hereby REVERSED. Accordingly, the instant Petition for Declaration of Nullity of Marriage is hereby DENIED.

SO ORDERED.[11]

The appellate court held that Noel failed to establish that Maribel's supposed Narcissistic Personality Disorder was the psychological incapacity contemplated by law and that it was permanent and incurable. Maribel's attitudes were merely mild peculiarities in character or signs of ill-will and refusal or neglect to perform marital obligations which did not amount to

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[9] *Id.* at 103-104.

[10] *Id.* at 102.

[11] *Id.* at 20.

psychological incapacity, said the appellate court. The CA noted that Maribel may have failed or refused to perform her marital obligations but such did not indicate incapacity. The CA stressed that the law requires nothing short of mental illness sufficient to render a person incapable of knowing the essential marital obligations.[12]

The CA further held that Maribel's refusal to have sexual intercourse with Noel did not constitute a ground to find her psychologically incapacitated under Article 36 of the Family Code. As Noel admitted, he had numerous sexual relations with Maribel before their marriage. Maribel therefore cannot be said to be incapacitated to perform this particular obligation and that such incapacity existed at the time of marriage.[13]

Incidentally, the CA held that the OSG erred in saying that what Noel should have filed was an action to annul the marriage under Article 45 (3)[14] of the Family Code. According to the CA, Article 45 (3) involving consent to marriage vitiated by fraud is limited to the instances enumerated under Article 46[15]

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[12] *Id.* at 10-14.

[13] *Id.* at 17.

[14] ART. 45. A marriage may be annulled for any of the following causes, existing at the time of the marriage:

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(3) That the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband and wife;

x x x x x x x x x

[15] ART. 46. Any of the following circumstances shall constitute fraud referred to in Number 3 of the preceding Article:

(1) Nondisclosure of a previous conviction by final judgment of the other party of a crime involving moral turpitude;

(2) Concealment by the wife of the fact that at the time of the marriage, she was pregnant by a man other than her husband;

(3) Concealment of a sexually transmissible disease, regardless of its nature, existing at the time of the marriage; or

(4) Concealment of drug addiction, habitual alcoholism or homosexuality or lesbianism existing at the time of the marriage.

of the Family Code. Maribel's misrepresentation that she was pregnant to induce Noel to marry her was not the fraud contemplated under Article 45 (3) as it was not among the instances enumerated under Article 46.[16]

On June 13, 2006, the CA denied Noel's motion for reconsideration. It held that Maribel's personality disorder is not the psychological incapacity contemplated by law. Her refusal to perform the essential marital obligations may be attributed merely to her stubborn refusal to do so. Also, the manifestations of the Narcissistic Personality Disorder had no connection with Maribel's failure to perform her marital obligations. Noel having failed to prove Maribel's alleged psychological incapacity, any doubts should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity.[17]

Hence, the present petition raising the following assignment of errors:

I. THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN HOLDING THAT THE CASE OF *CHI MING TSOI vs. COURT OF APPEALS* DOES NOT FIND APPLICATION IN THE INSTANT CASE.

II. THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN HOLDING THAT THE RESPONDENT IS NOT SUFFERING FROM NARCISSISTIC PERSONALITY DISORDER; AND THAT HER FAILURE TO PERFORM HER ESSENTIAL MARITAL OBLIGATIONS DOES NOT CONSTITUTE PSYCHOLOGICAL INCAPACITY.[18]

The issue to be resolved is whether the marriage between the parties is null and void under Article 36 of the Family Code.

No other misrepresentation or deceit as to character, health, rank, fortune or chastity shall constitute such fraud as will give grounds for action for the annulment of marriage. (86a)

[16] *Rollo*, pp. 18-20.

[17] *Id.* at 22-25.

[18] *Id.* at 41-42.

Petitioner Noel contends that the CA failed to consider Maribel's refusal to procreate as psychological incapacity. Insofar as he was concerned, the last time he had sexual intercourse with Maribel was before the marriage when she was drunk. They never had any sexual intimacy during their marriage. Noel claims that if a spouse senselessly and constantly refuses to perform his or her marital obligations, Catholic marriage tribunals attribute the causes to psychological incapacity rather than to stubborn refusal. He insists that the CA should not have considered the pre-marital sexual encounters between him and Maribel in finding that the latter was not psychologically incapacitated to procreate through marital sexual cooperation. He argues that making love for procreation and consummation of the marriage for the start of family life is different from "plain, simple and casual sex." He further stresses that Maribel railroaded him into marrying her by seducing him and later claiming that she was pregnant with his child. But after their marriage, Maribel refused to consummate their marriage as she would not be sexually intimate with him.[19]

Noel further claims that there were other indicia of Maribel's psychological incapacity and that she consistently exhibited several traits typical of a person suffering from Narcissistic Personality Disorder before and during their marriage. He points out that Maribel would only mingle with a few individuals and never with Noel's family even if they lived under one (1) roof. Maribel was also arrogant and haughty. She was rude and disrespectful to his mother and was also "interpersonally exploitative" as shown by her misrepresentation of pregnancy to force Noel to marry her. After marriage, Maribel never showed respect and love to Noel and his family. She displayed indifference to his emotional and sexual needs, but before the marriage she would display unfounded jealousy when Noel was visited by his friends. This same jealousy motivated her to deceive him into marrying her.

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[19] *Id.* at 42-47.

Lastly, he points out that Maribel's psychological incapacity was proven to be permanent and incurable with the root cause existing before the marriage. The psychologist testified that persons suffering from Narcissistic Personality Disorder were unmotivated to participate in therapy session and would reject any form of psychological help rendering their condition long lasting if not incurable. Such persons would not admit that their behavioral manifestations connote pathology or abnormality. The psychologist added that Maribel's psychological incapacity was deeply rooted within her adaptive system since early childhood and manifested during adult life. Maribel was closely attached to her parents and mingled with only a few close individuals. Her close attachment to her parents and their over-protection of her turned her into a self-centered, self-absorbed individual who was insensitive to the needs of others. She developed the tendency not to accept rejection or failure.[20]

On the other hand, the OSG maintains that Maribel's refusal to have sexual intercourse with Noel did not constitute psychological incapacity under Article 36 of the Family Code as her traits were merely mild peculiarities in her character or signs of ill-will and refusal or neglect to perform her marital obligations. The psychologist even admitted that Maribel was capable of entering into marriage except that it would be difficult for her to sustain one. Also, it was established that Noel and Maribel had sexual relations prior to their marriage. The OSG further pointed out that the psychologist was vague as to how Maribel's refusal to have sexual intercourse with Noel constituted Narcissistic Personality Disorder.

The petition lacks merit.

Article 36 of the Family Code provides:

> ART. 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

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[20] *Id.* at 48-52.

The Court held in *Santos v. Court of Appeals*[21] that the phrase "psychological incapacity" is not meant to comprehend all possible cases of psychoses. It refers to no less than a mental (not physical) incapacity that causes a party to be truly noncognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage which, as expressed by Article 68[22] of the Family Code, include their mutual obligations to live together, observe love, respect and fidelity and render help and support. The intendment of the law has been to confine it to the most serious of cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.

In *Republic of the Phils. v. Court of Appeals*,[23] the Court laid down the guidelines in resolving petitions for declaration of nullity of marriage, based on Article 36 of the Family Code, to wit:

(1) **The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity**. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family. Thus, our Constitution devotes an entire Article on the Family, recognizing it "as the foundation of the nation." It decrees marriage as legally "inviolable," thereby protecting it from dissolution at the whim of the parties. Both the family and marriage are to be "protected" by the state.

The Family Code echoes this constitutional edict on marriage and the family and emphasizes their *permanence*, *inviolability* and *solidarity*.

(2) The *root cause* of the psychological incapacity must be (a) medically or clinically identified, (b) **alleged in the complaint**, (c) sufficiently proven by experts and (d) clearly explained in the

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[21] G.R. No. 112019, January 4, 1995, 240 SCRA 20, 34.

[22] ART. 68. The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.

[23] 335 Phil. 664, 676-678 (1997).

decision. Article 36 of the Family Code requires that the incapacity must be psychological — not physical, although its manifestations and/or symptoms may be physical. The evidence must convince the court that the parties, or one of them, was mentally or psychically ill to such an extent that **the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof.** Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of *ejusdem generis*, nevertheless such root cause must be identified as a psychological illness and its incapacitating nature fully explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists.

(3) The incapacity must be **proven to be existing at "the time of the celebration" of the marriage**. The evidence must show that the illness was existing when the parties exchanged their "I do's." The manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto.

(4) Such **incapacity must also be shown to be medically or clinically permanent or *incurable***. Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, **such incapacity must be relevant to the assumption of marriage obligations, not necessarily to those not related to marriage, like the exercise of a profession or employment in a job**. Hence, a pediatrician may be effective in diagnosing illnesses of children and prescribing medicine to cure them but may not be psychologically capacitated to procreate, bear and raise his/her own children as an essential obligation of marriage.

(5) Such illness must be ***grave*** enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, "mild characteriological peculiarities, mood changes, occasional emotional outbursts" cannot be accepted as *root* causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

(6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision.

(7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. x x x.

x x x x x x x x x

(8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition, as the case may be, to the petition. The Solicitor General, along with the prosecuting attorney, shall submit to the court such certification within fifteen (15) days from the date the case is deemed submitted for resolution of the court. The Solicitor General shall discharge the equivalent function of the *defensor vinculi* contemplated under Canon 1095. (Emphasis ours.)

In this case, the totality of evidence presented by Noel was not sufficient to sustain a finding that Maribel was psychologically incapacitated. Noel's evidence merely established that Maribel refused to have sexual intercourse with him after their marriage, and that she left him after their quarrel when he confronted her about her alleged miscarriage. He failed to prove the root cause of the alleged psychological incapacity and establish the requirements of gravity, juridical antecedence, and incurability. As correctly observed by the CA, the report of the psychologist, who concluded that Maribel was suffering from Narcissistic Personality Disorder traceable to her experiences during childhood, did not establish how the personality disorder incapacitated Maribel from validly assuming the essential obligations of the marriage. Indeed, the same psychologist even testified that Maribel was capable of entering into a marriage except that it would be difficult

for her to sustain one.[24] Mere difficulty, it must be stressed, is not the incapacity contemplated by law.

The Court emphasizes that the burden falls upon petitioner, not just to prove that private respondent suffers from a psychological disorder, but also that such psychological disorder renders her "truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage."[25] Psychological incapacity must be more than just a "difficulty," a "refusal," or a "neglect" in the performance of some marital obligations. An unsatisfactory marriage is not a null and void marriage. As we stated in *Marcos v. Marcos*:[26]

> Article 36 of the Family Code, we stress, is not to be confused with a divorce law that cuts the marital bond at the time the causes therefor manifest themselves. It refers to a serious psychological illness afflicting a party even before the celebration of the marriage. It is a malady so grave and so permanent as to deprive one of awareness of the duties and responsibilities of the matrimonial bond one is about to assume. x x x.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R. CV No. 74581 is *AFFIRMED and UPHELD*.

Costs against petitioner.

SO ORDERED.

Carpio Morales (Chairperson) and *Bersamin, JJ.*, concur.

Brion and *Sereno, JJ.*, see concurring opinions.

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[24] TSN, April 24, 2001, p. 19.

[25] *Santos v. Court of Appeals, supra* note 21.

[26] 397 Phil. 840, 851 (2000).

CONCURRING OPINION

BRION, *J.*:

I agree with the *ponencia* that the totality of evidence presented by the petitioner Noel Baccay was not sufficient to sustain a finding that his wife, respondent Maribel Baccay, was psychologically incapacitated to comply with the essential marital obligations, and, thus, there was no basis to declare their marriage a nullity.

Noel primarily contended that Maribel failed to comply with her marital obligation to consummate their marriage. While admitting that he and Maribel had several sexual encounters before their marriage, Noel narrated that after getting married, Maribel senselessly and constantly refused to have any sexual relations with him. He asserted that Maribel's unreasonable refusal amounted to a psychological incapacity to comply with the essential marital obligations.

Noel further pointed to several traits of Maribel that negatively affected their marital relationship. Maribel was described as arrogant, haughty, rude, and disrespectful; she mingled only with a few individuals and failed to endear herself to Noel's family, even if they lived with them under the same roof. She was also "interpersonally exploitative," as shown by her misrepresentation of pregnancy to force Noel to marry her. All of these, Noel contended, are manifestations of a Narcissistic Personality Disorder (*NPD*), which clinical psychologist Nedy Tayag diagnosed Maribel to be suffering from. Accordingly, Noel petitioned the Court to review the Court of Appeals' decision that reversed and set aside the Regional Trial Court's decision granting his petition for declaration of nullity of marriage under Article 36 of the Family Code.

Article 36 refers to the Incapacity to Fulfill Essential Marital Obligations due to a Psychological Condition

Article 36 of the Family Code states that —

A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

Dissecting the terms of the provision, we list down its elements:

1. a celebration of marriage;
2. non-performance of marital obligations;
3. **the marital obligations which are not performed are essential obligations;**
4. **non-performance is due to causes psychological in nature and it is chronic: constant and habitual;**
5. the cause/s are present during the celebration of marriage although they may not be manifest or evident at that point; and
6. the cause/s surface after the celebration of marriage.[1]

Article 36 of the Family Code requires that the psychological incapacity relate to the essential obligations of marriage, *i.e.*, "it is the non-performance of this class of obligations which will lead to a declaration of nullity of marriage due to psychological incapacity."[2] Corollarily, "the non-compliance with these non-essential marital obligations has no effect on the validity of the marriage."[3]

The essential marital obligations under the Family Code are found in Articles 68 to 71,[4] 220, 221, and

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[1] M. Cruz-Abrenica, *Re-Examining the Concept of Psychological Incapacity: Towards a More Accurate Reflection of Legislative Intent*, 51 Ateneo Law Journal 596, 599 (2006), citing J. Temporal, *Republic v. Court of Appeals and Molina: Providing Definite Standards for the Interpretation and Application of Article 36 of the Family Code*, 43 Ateneo Law Journal 384 (1998).

[2] *Id.* at 601.

[3] *Ibid.*

[4] Art. 68. The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support. (109a)

Art. 69. The husband and wife shall fix the family domicile. In case of disagreement, the court shall decide.

225.[5] Notably, these essential marital obligations refer primarily to obligations of spouses *towards each other* and *towards their children*. While a harmonious relationship with the in-laws is ideal, particularly in this country's cultural set-up, it appears

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The court may exempt one spouse from living with the other if the latter should live abroad or there are other valid and compelling reasons for the exemption. However, such exemption shall not apply if the same is not compatible with the solidarity of the family. (110a)

Art. 70. The spouses are jointly responsible for the support of the family. The expenses for such support and other conjugal obligations shall be paid from the community property and, in the absence thereof, from the income or fruits of their separate properties. In case of insufficiency or absence of said income or fruits, such obligations shall be satisfied from the separate properties. (111a)

Art. 71. The management of the household shall be the right and duty of both spouses. The expenses for such management shall be paid in accordance with the provisions of Article 70. (115a)

[5] Art. 220. The parents and those exercising parental authority shall have with respect to their unemancipated children or wards the following rights and duties:

(1) To keep them in their company, to support, educate and instruct them by right precept and good example, and to provide for their upbringing in keeping with their means;
(2) To give them love and affection, advice and counsel, companionship and understanding;
(3) To provide them with moral and spiritual guidance, inculcate in them honesty, integrity, self-discipline, self-reliance, industry and thrift, stimulate their interest in civic affairs, and inspire in them compliance with the duties of citizenship;
(4) To enhance, protect, preserve and maintain their physical and mental health at all times;
(5) To furnish them with good and wholesome educational materials, supervise their activities, recreation and association with others, protect them from bad company, and prevent them from acquiring habits detrimental to their health, studies and morals;
(6) To represent them in all matters affecting their interests;
(7) To demand from them respect and obedience;
(8) To impose discipline on them as may be required under the circumstances; and
(9) To perform such other duties as are imposed by law upon parents and guardians. (316a)

Art. 221. Parents and other persons exercising parental authority shall be civilly liable for the injuries and damages caused by the acts or omissions of

that the law does not consider it an *essential* obligation of either spouse to maintain one. The "incapacity should make the party disabled from rendering what is due in the marriage, within the context of justice, not merely in the sphere of good will."[6] Maribel's failure to socialize, interact, and endear herself to Noel's family, as far as our family laws are concerned, is, thus, not considered a non-fulfillment of an essential marital obligation. If at all, Maribel has failed to meet her husband Noel's expectations of how she should conduct herself with and relate to his family, a matter not dealt with by Article 36.

The consummation of the marriage, on the other hand, is an essential marital obligation. Marriage is entered into for the establishment of conjugal and family life;[7] its consummation is

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their unemancipated children living in their company and under their parental authority subject to the appropriate defenses provided by law. (2180 [2]a and [4]a)

Art. 225. The father and the mother shall jointly exercise legal guardianship over the property of their unemancipated common child without the necessity of a court appointment. In case of disagreement, the father's decision shall prevail, unless there is a judicial order to the contrary.

Where the market value of the property or the annual income of the child exceeds ₱50,000, the parent concerned shall be required to furnish a bond in such amount as the court may determine, but not less than ten per centum (10%) of the value of the property or annual income, to guarantee the performance of the obligations prescribed for general guardians.

A verified petition for approval of the bond shall be filed in the proper court of the place where the child resides, or if the child resides in a foreign country, in the proper court of the place where the property or any part thereof is situated.

The petition shall be docketed as a summary special proceeding in which all incidents and issues regarding the performance of the obligations referred to in the second paragraph of this Article shall be heard and resolved.

The ordinary rules on guardianship shall be merely suppletory except when the child is under substitute parental authority, or the guardian is a stranger, or a parent has remarried, in which case the ordinary rules on guardianship shall apply. (320a)

[6] M. Cruz-Abrenica, *supra* note 1, at 617, citing Roman Rotal decision *c. Lanversin* (18 January 1995).

[7] FAMILY CODE, Article 1.

not only an expression of the couple's love for each other,[8] but is also a means for procreation.[9] That the Court nullified a marriage due to the husband's obstinate and unjustified refusal to have intimate sexual relations with his wife indicates that the consummation of the marriage is considered an essential marital obligation.[10]

The failure to consummate the marriage by itself, however, does not constitute as a ground to nullify the marriage. The spouse's refusal to have intimate sexual relations must be due to causes psychological in nature, *i.e.*, the psychological condition of the spouse renders him/her incapable of having intimate sexual relations with the other. This crucial nexus between the non-fulfilled essential marital obligation and the psychological condition was what Noel failed to allege and prove; Maribel's refusal to satisfy Noel's sexual needs during their marriage was never proven to have been due to some psychological condition. The evidence did not rule out the possibility that the refusal could be caused by other factors not related to Maribel's psychological make-up; the refusal could very well be attributed to Maribel's pregnancy and her subsequent miscarriage (assuming these were true). That Maribel's refusal to have intimate sexual relations with Noel had more to do with the stresses brought on by married life than her actual psychological condition is validated by Noel's statement that prior to marriage, they have had several sexual encounters. The connection between the psychologist's finding that Maribel was supposedly suffering from NPD and her refusal to have intimate sexual relations was similarly not established.

Even supposing that a spouse's refusal to have intimate sexual relations with the other spouse may be reasonably inferred from

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[8] *Id.*, Article 68, which declares that spouses must observe mutual love.

[9] See also Canon 1055 of the New Canon Law of the Catholic Church, which "describes marriage as a partnership of a whole life which is ordered towards the well-being of the spouses, and the procreation and upbringing of children," cited in M. Cruz-Abrenica, *supra* note 1, at 614.

[10] See *Ching Ming Tsoi v. Court of Appeals*, G.R. No. 119190, January 16, 1997, 266 SCRA 324.

or connected with the traditional signs and symptoms associated with NPD,[11] I have difficulty finding credible the psychologist's diagnosis of Maribel's psychological condition.

The narration of facts declared that Maribel never participated in the proceedings below, and indicated that the psychologist's evaluation of Maribel was based mainly on Noel's testimony. As the petitioning spouse, Noel's description of Maribel's nature would certainly be biased, and a psychological evaluation based on this one-sided description can hardly be considered as credible. In *Suazo v. Suazo*,[12] the Court declared that —

> Based on her declarations in open court, the psychologist [Nedy Tayag, who incidentally is the same psychologist in the present case] evaluated [the husband's] psychological condition only in an indirect manner — she derived all her conclusions from information coming from [the wife] whose bias for her cause cannot of course be doubted. *Given the source of the information upon which the psychologist heavily relied upon, the court must evaluate the evidentiary worth of the opinion with due care and with the application of the more rigid and stringent set of standards* outlined above, *i.e.*, that there must be a thorough and in-depth assessment of the parties by the psychologist or expert, for a conclusive diagnosis of a psychological incapacity that is grave, severe and incurable.

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[11] Persons with [NPD] have grandiose sense of self-importance; they consider themselves special and expect special treatment. Their sense of entitlement is striking. They handle criticism poorly and may become enraged when someone dares to criticize them, or they may appear completely indifferent to criticism. Persons with this disorder want their own way and are frequently ambitious to achieve fame and fortune. Their relationships are fragile, and they can make others furious by their refusal to obey conventional rules of behavior. Interpersonal exploitativeness is commonplace. They cannot show empathy, and they feign sympathy only to achieve their selfish ends. Because of their fragile self-esteem, they are prone to depression. Interpersonal difficulties, occupational problems, rejections, and loss are among the stresses that narcissists commonly produce by their behavior – stresses they are least able to handle. (Kaplan and Sadock, *Synopsis of Psychiatry: Behavioral Sciences/Clinical Psychiatry* [9th ed.]), pp. 811-812.

[12] G.R. No. 164493, March 10, 2010.

The Court's statement above should not be read as making mandatory the personal examination by the psychologist or expert of the spouse alleged to be psychologically incapacitated. We have already stated in *Marcos v. Marcos*[13] that there is no requirement that the defendant/respondent spouse should be personally examined by a physician or psychologist to establish the former's psychological incapacity. Subsequently after the *Marcos* case, the Court promulgated the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages, which stated that "[t]he complete facts should allege the physical manifestations, if any, as are indicative of psychological incapacity at the time of the celebration of the marriage but expert opinion need not be alleged."[14]

To balance, however, the need for an objective evaluation of the psychological condition of the spouses alleged to be psychologically incapacitated and the non-necessity of an expert's opinion, we refer again to the Court's ruling in *Suazo*, which declared that —

> **[F]or a determination x x x of a party's complete personality profile, information coming from persons intimately related to [him/her] (such as the party's close relatives and friends) may be helpful.** This is an approach in the application of Article 36 that allows flexibility, at the same time that it avoids, if not totally obliterate, the credibility gaps spawned by supposedly expert opinion based entirely on doubtful sources of information.[15]

It did not help that Noel's case was based entirely on his testimony and that of the psychologist, whose findings, in turn, were also based on Noel's description of Maribel. Apart from these biased testimonies, there was no other evidence presented by which the Court could objectively evaluate Maribel's psychological condition.

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[13] G.R. No. 136490, October 19, 2000, 343 SCRA 755, 764.

[14] Section 2.

[15] *Supra* note 12.

Psychological incapacity, by its nature, refers only to the most serious cases and is the root cause of the failure to fulfill the essential marital obligations

Noel enumerated other negative traits of Maribel[16] that he claimed were indicative of a psychological illness, specifically, that of NPD. But not all negative traits exhibited by a person are rooted in some psychological illness or disorder; these may simply be a character flaw or a bad habit that the person has developed over the years. It has been said that "[a] deeply ingrained bad habit does not qualify as a source of x x x incapacity."[17] Slight character flaws also do not make a person incapable of marriage.[18]

Assuming that these negative traits were indeed manifestations of NPD or some other psychological illness, jurisprudence has declared that *not every psychological illness/disorder/condition is a ground for declaring the marriage a nullity under Article 36*. "[T]he meaning of 'psychological incapacity' [is confined] to the **most serious cases** of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage."[19] The psychologist testified that persons suffering from NPD were unmotivated to participate in therapy sessions and would reject any form of psychological help, rendering their condition long lasting, if not incurable, perhaps in an attempt to define the gravity and extent of Maribel's NPD. This, however, is but a general description of persons with personality disorders,[20] as the term is clinically defined;

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[16] Noel alleged that Maribel was "interpersonally exploitative," indifferent to his needs, and displayed unfounded jealousy. Decision, p. 7.

[17] M. Cruz-Abrenica, *supra* note 1 at 619.

[18] *Id.* at 621.

[19] *Santos v. Bedia-Santos*, G.R. No. 112019, January 4, 1995, 240 SCRA 20, 34.

[20] See Kaplan and Sadock, *supra* note 11, at 800, which states that "persons with personality disorders are far more likely to refuse psychiatric help and to deny their problems than persons with anxiety disorders, depressive disorders,

NPD is just one of the kinds of personality disorders.[21] The testimony did not specifically refer to Maribel and did not paint a clear picture of the seriousness of her NPD.

Furthermore, the *petitioning spouse must also allege and prove that the psychological illness/disorder/condition is the* ***root cause*** *of the respondent spouse's incapacity or inability to fulfill any, some, or all of the essential obligations of marriage.* Noel attempted to establish this link by alleging that Maribel's NPD has made her view marriage simply as a piece of paper and made her believe that she can easily get rid of her husband without any provocation. He claimed that she entered marriage not because of an emotional desire for it, but to prove something.[22]

Rather than establishing Maribel's incapacity to fulfill the essential marital obligations, Noel's contentions seem to indicate that Maribel was utterly unaware of the nature of marriage and its consequent obligations. There is, however, a significant difference between *lack of awareness or understanding of marriage and its obligations,* and *lack of capacity to fulfill these marital obligations.* A spouse's lack of awareness or understanding of marriage and its obligation is an irrelevant consideration for a petition filed under Article 36 of the Family Code.

Article 36 of the Family Code refers to psychological incapacity to fulfill essential marital obligations, not to understand or appreciate what these essential marital obligations are

Article 36 of the Family Code was based on Canon 1095 of the New Canon Law of the Catholic Church.[23] Canon 1095

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or obsessive-compulsive disorders. x x x Because they do not routinely acknowledge pain from what others perceive as their symptoms, they often seem disinterested in treatment and impervious to recovery."

[21] *Ibid.*

[22] See Decision, p. 4.

[23] Promulgated on January 25, 1983, and took effect on November 27, 1983; see M. Cruz-Abrenica, *supra* note 1, at 601-602.

states that —

> [t]he following are incapable of contracting marriage:
>
> 1. Those who lack sufficient use of reason;
> 2. Those who suffer from a grave lack of discretionary judgment concerning the essential matrimonial rights and obligations to be mutually given and accepted;
> 3. **Those who, because of causes of a psychological nature, are unable to assume the essential obligations of marriage.**

Specifically, it is the third paragraph of Canon 1095 that provided for the model for what is now Article 36 of the Family Code.[24]

The third paragraph of Canon 1095 does not refer to a defect in the consent of one of the contracting parties to the marriage; in fact, it recognizes the existence of a valid consent. Rather, the third paragraph of Canon 1095 refers to the incapacity to assume essential marital obligations. Church decisions "held that a person may appear to enjoy full use of his faculties, but because of some psychiatric defect, he/she may be incapable of assuming the obligations of marriage, *although he/she may have a conceptual understanding of such obligation*."[25] Thus, **a person's ability to give a valid consent can be equated to his/her ability to know and understand the essential marital obligations, but this does not necessarily equate to a similar ability or capacity to actually fulfill them.** The spouse "may very well know what are the substantive imperatives of marriage, and [he/she] may also very much want to observe these unconditionally, but at the same time [he/she] simply cannot do so for a given psychical causal factor that gravely lessens or seriously undermines their self-dominion in terms of dysfunctional volitive faculty."[26] This situation was exemplified by Adolfo Dacanay, S.J., in the following manner:

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[24] *Ngo-Te v. Te*, G.R. No. 161793, February 13, 2009, 579 SCRA 193, 211.

[25] M. Cruz-Abrenica, *supra* note 1, at 615, citing Adolfo Dacanay, *Canon Law on Marriage: Introductory Notes and Comments* 3 (2000).

[26] *Ibid.*

The evidence from the empirical sciences is abundant that there are certain anomalies of a sexual nature which may impel a person towards sexual activities which are not normal, either with respect to its frequency [nymphomania, satyriasis] or to the nature of the activity itself [sadism, masochism, homosexuality]. However, **these anomalies notwithstanding, it is altogether possible that the higher faculties remain intact such that a person so afflicted continues to have an adequate understanding of what marriage is and of the gravity of its responsibilities.** In fact, he can choose marriage freely. ***The question though is whether such a person can assume those responsibilities which he cannot fulfill, although he may be able to understand them***. In this latter hypothesis, the incapacity to assume the essential obligations of marriage issues from the incapacity to posit the object of consent, rather than the incapacity to posit consent itself.[27]

In the same manner that the Church has limited the third paragraph of Canon 1095 to refer only to lack of capacity to fulfill essential marital obligations (lack of due capacity), Article 36 of the Family Code should also be interpreted as limited only to this kind of incapacity. The framers of Article 36 of the Family Code intended that "jurisprudence under Canon Law prevailing at the time of the code's enactment x x x cannot be dismissed as impertinent for its value as an aid x x x to the interpretation and construction of the codal provision."[28]

Accordingly, the incapacity that Article 36 speaks of is not the incapacity to know and understand marriage and its concomitant obligations (lack of due discretion), but the incapacity to fulfill these obligations for some psychological reason (lack of due capacity). A party may be considered as incapable of assuming the essential obligations of marriage even though he may have sufficient use of reason plus due discretion in judgment. The lack of due discretion, on the other hand, *may be* indicative of vitiated consent, but this is not the concern of Article 36 of the Family Code. Noel's assertion of Maribel's failure to appreciate marriage and its obligations was, therefore, an irrelevant allegation insofar as his Article 36 petition was concerned.

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[27] *Ngo-Te v. Te*, *supra* note 24, at 215.

[28] *Santos v. Bedia-Santos*, *supra* note 19, at 32.

Republic v. CA and Molina did not set forth guidelines beyond those contemplated by the framers of Article 36 of the Family Code

Lately, the *Molina* case has been receiving flaks because, apparently, the guidelines it has established created a straitjacket that unduly limited the application of Article 36 of the Family Code. The case of *Ngo-Te v. Te* said that "[t]he resiliency with which the concept [of psychological incapacity] should be applied and the case-to-case basis by which the provision should be interpreted, as so intended by its framers, had, somehow, been rendered ineffectual by the imposition of a set of strict standards in Molina."[29] *Ngo-Te v. Te* found it erroneous for courts to apply the rigid set of rules laid down by *Molina*, without regard to the law's clear intent to treat each Article 36 case separately. As a consequence, "the Court, in conveniently applying Molina, has allowed diagnosed sociopaths, schizophrenics, nymphomaniacs, narcissists and the like, to continuously debase and pervert the sanctity of marriage. Ironically, the Roman Rota has annulled marriages on account of the personality disorders of the said individuals."[30]

I find *Ngo-Te's* argument contradictory. It advocates a case-to-case approach in resolving psychological incapacity cases, yet, at the same time, implies that since the Church has already annulled marriages on account of the enumerated personality disorders, the courts should declare the marriage's nullity if these were alleged and proved in the case.

Surprisingly enough, *Ngo-Te* backtracked on its criticism of Molina a month later by saying in the case of *Ting v. Velez-Ting*[31] that *Ngo-Te* did not abandon *Molina*. Far from abandoning *Molina*, *Ting* explains the *Ngo-Te* simply suggested a relaxation of the stringent requirements set forth in *Molina*.[32]

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[29] *Supra* note 24, at 220.

[30] *Id.* at 224-225.

[31] G.R. No. 166562, March 31, 2009, 582 SCRA 694.

[32] *Id.* at 708-709.

At any rate, whatever conflict and confusion that might have surfaced because of *Ngo-Te*'s attack against *Molina*, the Court reconciled these in *Suazo*,[33] saying that "[*Ngo-Te*] x x x merely [stood] for a more flexible approach in considering petitions for declaration of nullity of marriages based on psychological incapacity."[34] It noted *Ngo-Te* for the new evidentiary approach it directed the courts to adopt — to consider as decisive evidence the expert opinion on the psychological and mental temperaments of the parties.

The guidelines listed in *Molina* are but expositions of what the Court has determined in *Santos v. Bedia-Santos*[35] as characteristics of the psychological incapacity that render a marriage void under Article 36 of the Family Code; these guidelines merely incorporated the basic requirements of gravity, juridical antecedence and incurability.[36] *Molina* did not create new rules, but simply identified and consolidated the legislative intent behind Article 36 of the Family Code. A majority of the guidelines listed corresponds to and is consistent with the concept of psychological incapacity that the members of the Family Code Revision Committee had in mind, the interpretation of Canon 1095 from which the provision was modeled after, and the existing laws, both procedural and substantive. The guidelines in *Molina* were never intended to remove the resiliency and flexibility envisioned by the framers in the application and interpretation of Article 36 of the Family Code. The resiliency and flexibility, however, are not a license to interpret Article 36 of the Family Code as allowing any and every assertion of psychological incapacity to merit a declaration of nullity of marriage. The Court remains bound to interpret the provision in a manner consistent with the Constitution and relevant family laws. For now, Article 36 of the Family Code will remain to be a limited remedy, addressing only a specific situation — a relationship

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[33] *Supra* note 12.

[34] *Ibid.*

[35] *Supra* note 19.

[36] *Toring v. Toring*, G.R. No. 165321, August 3, 2010.

where no marriage could have been validly concluded because the parties, or one of them, by reason of grave and incurable psychological illness existing at the time when the marriage was celebrated, was incapacitated to fulfill the essential marital obligations and, thus, could not have validly entered into a marriage. Outside of this situation, the Court is powerless to provide any permanent remedy.[37]

CONCURRING OPINION

SERENO, *J.*:

Justice Eduardo Caguioa, member of the Civil Code Revision Committee that drafted the Family Code, explained that the definition of psychological incapacity "has been left [by the Family Code] for the determination by the judges since to define it in the Code would be straight-jacketing the concept."[1] I disagree with the wisdom of leaving to the judiciary the task of defining psychological incapacity. The legislature should have provided clear standards that the judiciary can apply even while the latter takes into account the peculiar circumstances of each case brought before it. However, I recognize that it has been twenty-two (22) years since the Family Code took effect and so much water has passed under the bridge. It is not an ideal situation and is not compatible with the constitutional design of the division of labor among the three great branches of government. The situation speaks poorly of the ability of the legislature to provide sufficient legal standards for application by the judiciary of a law as important as the law on declaration of nullity of marriages.

To clarify the meaning of Article 36, we need to look closely at its origin and the journey it has gone through in the courts. Article 36 of the Family Code was taken from paragraph 3 of Canon 1095 of the New Code of Canon Law which took effect

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[37] See *So v. Valera*, G.R. No. 150677, June 5, 2009, 588 SCRA 319, 343.

[1] Proceedings of the Public Hearing on the Family Code, 3 February 1988, p. 7.

on 27 November 1983.[2] The Court at one time explained the essence of "psychological incapacity" under the Family Code by referring to Canon Law discussions comparing marriage in the context of the psychological incapacity of one of the parties to a contract between the parties to sell a house, which, unknown to both, had already burned down. In such a case, "the consent may indeed be free, but is juridically ineffective because the party is consenting to an object that he cannot deliver. The house he is selling was gutted down by fire."[3]

Refining the concept, we held in *Santos v. Court of Appeals*[4] that psychological incapacity must be characterized by (a) gravity — the incapacity must be grave or serious, such that the party would be incapable of carrying out the ordinary duties required in marriage; (b) juridical antecedence — it must be rooted in the party's history antedating the marriage, although overt manifestations may emerge only after the marriage; and (c) incurability — it must be incurable or, even if it were otherwise, the cure must be beyond the means of the party involved.[5]

After observing that Article 36 was being abused as a convenient divorce law,[6] the Court laid down the procedural requirements for its interpretation and application in *Republic v. Court of Appeals and Molina.*[7] While a majority concurred in the decision, three justices concurred only "in the result" and another three rendered their individual Separate Opinions.[8] Justice Padilla

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[2] Justice Alicia Sempio-Diy, *Handbook on the Family Code of the Philippines* (1997).

[3] *Edward Kenneth Ngo Te vs. Rowena Gutierrez Yu-Te*, G.R. No. 161793, 13 February 2009, 579 SCRA 193.

[4] 310 Phil. 22 (1995).

[5] The Court adopted the opinion of Justice Sempio-Diy, who in turn cited the work of Dr. Gerardo Veloso, former Presiding Judge of the Metropolitan Marriage Tribunal of the Catholic Archdiocese of Manila (Branch I).

[6] *Brenda Marcos v. Wilson Marcos*, G.R. No. 136490, 19 October 2000, 343 SCRA 755.

[7] G.R. No. 108763, 13 February 1997, 268 SCRA 198.

[8] *Edward Kenneth Ngo Te vs. Rowena Gutierrez Yu-Te*, G.R. No. 161793, 13 February 2009, 579 SCRA 193.

warned that "each case must be judged, not on the basis of *a priori* assumptions, predilections or generalizations but according to its own facts." Justice Vitug preferred the earlier simpler legal standard set in *Santos v. Court of Appeals*.

In *Antonio v. Reyes*,[9] the Court reinstated the trial court's declaration of nullity of the subject marriage based on "the totality of the evidence," with the caveat that "*Molina* is not set in stone, and that the interpretation of Article 36 relies heavily on a case-to-case perception." We held that granting a petition for declaration of nullity of marriage based on Article 36 is not incompatible with the Constitution's recognition of the sanctity of the family. Rather, it "should be deemed as an implement of this constitutional protection of marriage. Given the avowed State interest in promoting marriage as the foundation of the family, which in turn serves as the foundation of the nation, there is a corresponding interest for the State to defend against marriages ill-equipped to promote family life."

In *Ngo Te v. Yu-Te*,[10] after tracing the origin and development of jurisprudence relating to Article 36, the Court noted that "(t)he resiliency with which the concept should be applied and the case-to-case basis by which the provision should be interpreted, as so intended by its framers, had, somehow, been rendered ineffectual by the imposition of a set of strict standards in *Molina*. ... Far from what was intended by the Court, *Molina* has become a strait-jacket, forcing all sizes to fit into and be bound by it. Wittingly or unwittingly, the Court, in conveniently applying Molina, has allowed diagnosed sociopaths, schizophrenics, nymphomaniacs, narcissists and the like, to continuously debase and pervert the sanctity of marriage. ... The Court need not worry about the possible abuse of the remedy provided by Article 36, for there are ample safeguards against this contingency .... The Court should rather be alarmed by the rising number of cases involving marital abuse, child abuse, domestic violence and incestuous rape."

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[9] G.R. No. 155800, 10 March 2006, 484 SCRA 353.

[10] G.R. No. 161793, 13 February 2009, 579 SCRA 193.

In *Ting v. Velez-Ting*,[11] the Court clarified that "(f)ar from abandoning *Molina*, we simply suggested the relaxation of the stringent requirements set forth therein." Requiring petitioner to allege in the petition the particular root cause of the psychological incapacity and to attach thereto the verified written report of the accredited psychologist or psychiatrist proved to be too expensive and adversely affected poor litigants' access to justice. This was the finding of the Committee on the Revision of the Rules on the rationale of the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages (A.M. No. 02-11-10-SC).

In *Azcueta v. Republic of the Philippines and Court of Appeals*, we then concluded that "(w)ith the advent of *Te v. Te*, the Court encourages a reexamination of jurisprudential trends on the interpretation of Article 36, although there has been no major deviation or paradigm shift from the Molina doctrine."[12]

In this instance, whether we apply the *Molina* standard or a more relaxed interpretation and application of Article 36, petitioner was unable to prove his case with preponderant evidence. Since the presumption in favor of the validity of marriage[13] was not ably rebutted, this presumption prevails. I therefore concur in the Decision denying the Petition, but I reach this conclusion based solely on the insufficiency of the evidence presented by petitioner. However, I disagree with the import this Decision conveys that *Molina*, in its undiluted form, should be reiterated and emphasized in this case. Had the case gone forward to a choice between the strict application of *Molina* and the more recent decisions cited, I would have submitted that a second hard look at *Molina* is warranted.

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[11] G.R. No. 166562, 31 March 2009.

[12] G.R. No. 180668, 26 May 2009.

[13] *Carating-Siayngco v. Siayngco*, G.R. No. 158896, 27 October 2004, 441 SCRA 422.

SECOND DIVISION

[G.R. No. 173379. December 1, 2010]

ABUBAKAR A. AFDAL and FATIMA A. AFDAL, *petitioners, vs.* **ROMEO CARLOS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY AND UNLAWFUL DETAINER; PETITION FOR RELIEF FROM JUDGMENT IS A PROHIBITED PLEADING.— Section 13(4) of Rule 70 of the Rules of Court provides: SEC. 13. *Prohibited pleadings and motions*. — The following petitions, motions, or pleadings shall not be allowed: x x x 4. Petition for relief from judgment; x x x Section 19(d) of the Revised Rule on Summary Procedure also provides: SEC. 19. *Prohibited pleadings and motions*. — The following pleadings, motions, or petitions shall not be allowed in the cases covered by this Rule: x x x (d) Petition for relief from judgment; x x x Clearly, a petition for relief from judgment in forcible entry and unlawful detainer cases, as in the present case, is a prohibited pleading. The reason for this is to achieve an expeditious and inexpensive determination of the cases subject of summary procedure.

2. ID.; JUDGMENTS; RELIEF FROM JUDGMENT; THE REGIONAL TRIAL COURT HAS NO JURISDICTION TO ENTERTAIN PETITIONS FOR RELIEF FROM JUDGMENTS OF THE MUNICIPAL TRIAL COURT; PETITION FOR *CERTIORARI,* PROPER REMEDY FOR LACK OF JURISDICTION OVER THE PERSON OF THE PETITIONER DUE TO ABSENCE OF SUMMONS .— A petition for relief from judgment, if allowed by the Rules and not a prohibited pleading, should be filed with and resolved by the court in the same case from which the petition arose. In the present case, petitioners cannot file the petition for relief with the MTC because it is a prohibited pleading in an unlawful detainer case. Petitioners cannot also file the petition for relief with the RTC because the RTC has no jurisdiction to entertain petitions for relief from judgments of the MTC. Therefore, the RTC did not err in dismissing the petition for

relief from judgment of the MTC. The remedy of petitioners in such a situation is to file a petition for *certiorari* with the RTC under Rule 65 of the Rules of Court on the ground of lack of jurisdiction of the MTC over the person of petitioners in view of the absence of summons to petitioners. Here, we shall treat petitioners' petition for relief from judgment as a petition for *certiorari* before the RTC.

3. ID.; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER OR FORCIBLE ENTRY; A REAL ACTION AND *IN PERSONAM*; ELABORATED.— An action for unlawful detainer or forcible entry is a real action and *in personam* because the plaintiff seeks to enforce a personal obligation on the defendant for the latter to vacate the property subject of the action, restore physical possession thereof to the plaintiff, and pay actual damages by way of reasonable compensation for his use or occupation of the property. In an action *in personam*, jurisdiction over the person of the defendant is necessary for the court to validly try and decide the case. Jurisdiction over the defendant is acquired either upon a valid service of summons or the defendant's voluntary appearance in court. If the defendant does not voluntarily appear in court, jurisdiction can be acquired by personal or substituted service of summons as laid out under Sections 6 and 7 of Rule 14 of the Rules of Court x x x. Any judgment of the court which has no jurisdiction over the person of the defendant is null and void.

4. ID.; CIVIL PROCEDURE; SUMMONS; SERVICE OF; SUBSTITUTED SERVICE; WHEN MAY BE AVAILED OF; NONCOMPLIANCE WITH THE STATUTORY REQUIREMENTS OF SUBSTITUTED SERVICE RENDERS SUCH SERVICE INEFFECTIVE.— Service of summons upon the defendant shall be by personal service first and only when the defendant cannot be promptly served in person will substituted service be availed of. In *Samartino v. Raon*, we said: We have long held that the impossibility of personal service justifying availment of substituted service should be explained in the proof of service; why efforts exerted towards personal service failed. The pertinent facts and circumstances attendant to the service of summons must be stated in the proof of service or Officer's Return; otherwise, the substituted service cannot be upheld. In this case, the indorsements failed to state

that prompt and personal service on petitioners was rendered impossible. It failed to show the reason why personal service could not be made. It was also not shown that efforts were made to find petitioners personally and that said efforts failed. These requirements are indispensable because substituted service is in derogation of the usual method of service. It is an extraordinary method since it seeks to bind the defendant to the consequences of a suit even though notice of such action is served not upon him but upon another whom the law could only presume would notify him of the pending proceedings. Failure to faithfully, strictly, and fully comply with the statutory requirements of substituted service renders such service ineffective.

5. ID.; ID.; ID.; ID.; ID.; THE PERSON ON WHOM THE SUBSTITUTED SERVICE OF SUMMONS WILL BE EFFECTED MUST BE OF SUITABLE AGE AND DISCRETION RESIDING AT THE DEFENDANT'S RESIDENCE; EXPLAINED.— [N]owhere in the return of summons or in the records of the case was it shown that Gary Acob, the person on whom substituted service of summons was effected, was a person of suitable age and discretion residing in petitioners' residence. In *Manotoc v. Court of Appeals*, we said: If the substituted service will be effected at defendant's house or residence, it should be left with a person of "suitable age and discretion then residing therein." A person of suitable age and discretion is one who has attained the age of full legal capacity (18 years old) and is considered to have enough discernment to understand the importance of a summons. "Discretion" is defined as "the ability to make decisions which represent a responsible choice and for which an understanding of what is lawful, right or wise may be presupposed." Thus, to be of sufficient discretion, such person must know how to read and understand English to comprehend the import of the summons, and fully realize the need to deliver the summons and complaint to the defendant at the earliest possible time for the person to take appropriate action. Thus, the person must have the "relation of confidence" to the defendant, ensuring that the latter would receive or at least be notified of the receipt of the summons. **The sheriff must therefore determine if the person found in the alleged dwelling or residence of defendant is of legal age, what the recipient's relationship**

with the defendant is, and whether said person comprehends the significance of the receipt of the summons and his duty to immediately deliver it to the defendant or at least notify the defendant of said receipt of summons. These matters must be clearly and specifically described in the Return of Summons. In this case, the process server failed to specify Gary Acob's age, his relationship to petitioners and to ascertain whether he comprehends the significance of the receipt of the summons and his duty to deliver it to petitioners or at least notify them of said receipt of summons.

6. ID.; ID.; ID.; ID.; ID.; ABSENT A VALID SERVICE OF SUMMONS AND COMPLAINT BY SUBSTITUTED SERVICE, THE MUNICIPAL TRIAL COURT FAILED TO ACQUIRE JURISDICTION OVER THE PERSON OF THE PETITIONERS; EFFECT.— [P]etitioners were not validly served with summons and the complaint in Civil Case No. 3719 by substituted service. Hence, the MTC failed to acquire jurisdiction over the person of the petitioners and, thus, the MTC's 23 August 2004 Decision is void. Since the MTC's 23 August 2004 Decision is void, it also never became final.

APPEARANCES OF COUNSEL

Ruben Cordero Landig for petitioners.
Nelson A, Loyola for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the 3 January 2005[2] and 16 June 2006[3] Orders of the Regional Trial Court, Branch 25, Biñan, Laguna (RTC) in Civil Case No. B-6721. In its 3 January 2005 Order, the RTC ordered the dismissal of petitioners Abubakar

[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, p. 63. Penned by Judge Hilario F. Corcuera.

[3] *Id.* at 65-66. Penned by Acting Presiding Judge Romeo C. De Leon.

A. Afdal and Fatima A. Afdal's (petitioners) petition for relief from judgment. In its 16 June 2006 Order, the RTC denied petitioners' motion for reconsideration.

The Facts

On 18 December 2003, respondent Romeo Carlos (respondent) filed a complaint for unlawful detainer and damages against petitioners, Zenaida Guijabar (Guijabar), John Doe, Peter Doe, Juana Doe, and all persons claiming rights under them docketed as Civil Case No. 3719 before the Municipal Trial Court, Biñan, Laguna (MTC). Respondent alleged that petitioners, Guijabar, and all other persons claiming rights under them were occupying, by mere tolerance, a parcel of land in respondent's name covered by Transfer Certificate of Title No. T-530139[4] in the Registry of Deeds Calamba, Laguna. Respondent claimed that petitioner Abubakar Afdal (petitioner Abubakar) sold the property to him but that he allowed petitioners to stay in the property. On 25 August 2003, respondent demanded that petitioners, Guijabar, and all persons claiming rights under them turn over the property to him because he needed the property for his personal use.[5] Respondent further alleged that petitioners refused to heed his demand and he was constrained to file a complaint before the *Lupon ng Tagapamayapa* (*Lupon*). According to respondent, petitioners ignored the notices and the *Lupon* issued a "certificate to file action."[6] Then, respondent filed the complaint before the MTC.

According to the records, there were three attempts to serve the summons and complaint on petitioners — 14 January, 3 and 18 February 2004.[7] However, petitioners failed to file an answer.

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[4] MTC records, p. 6.

[5] *Id.* at 7-8.

[6] *Id.* at 9.

[7] *Id.* at 41, 44 and 46.

On 2 June 2004, respondent filed an *ex-parte* motion and compliance with position paper submitting the case for decision based on the pleadings on record.[8]

In its 23 August 2004 Decision,[9] the MTC ruled in favor of respondent. The dispositive portion of the 23 August 2004 Decision reads:

> WHEREFORE, judgment is hereby rendered in favor of plaintiff and against defendants as follows:
>
> 1. Ordering defendants Abubakar Afdal, Zenaida Guijabar and all persons claiming rights under them to vacate the subject property and peacefully turn-over possession of the same to plaintiff;
>
> 2. Ordering defendants to pay plaintiff the amount of TEN THOUSAND PESOS (₱10,000.00) as rental arrears from August 25, 2003 up to the date of decision;
>
> 3. Ordering defendants to pay plaintiff the amount of TEN THOUSAND PESOS (₱10,000.00) a month thereafter, as reasonable compensation for the use of the subject premises until they finally vacate the same;
>
> 4. Ordering defendants to pay plaintiff the amount of FIFTY THOUSAND PESOS (₱50,000.00) as and for attorney's fees plus ONE THOUSAND FIVE HUNDRED PESOS (₱1,500.00) appearance fee;
>
> 5. Ordering defendants to pay the costs of suit.
>
> SO ORDERED.[10]

On 1 October 2004, the MTC issued a writ of execution.[11]

On 30 October 2004, petitioners filed a petition for relief from judgment with the MTC.[12] Respondent filed a motion to

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[8] *Id.* at 53-59.

[9] *Rollo*, pp. 55-57. Penned by Judge Josefina E. Siscar.

[10] *Id.* at 56-57.

[11] *Id.* at 58-59.

[12] *Id.* at 72-80.

dismiss or strike out the petition for relief.[13] Subsequently, petitioners manifested their intention to withdraw the petition for relief after realizing that it was a prohibited pleading under the Revised Rule on Summary Procedure. On 10 November 2004, the MTC granted petitioners' request to withdraw the petition for relief.[14]

On 6 December 2004, petitioners filed the petition for relief before the RTC.[15] Petitioners alleged that they are the lawful owners of the property which they purchased from spouses Martha D.G. Ubaldo and Francisco D. Ubaldo. Petitioners denied that they sold the property to respondent. Petitioners added that on 15 December 2003, petitioner Abubakar filed with the Commission on Elections his certificate of candidacy as mayor in the municipality of Labangan, Zamboanga del Sur, for the 10 May 2004 elections. Petitioners said they only learned of the MTC's 23 August 2004 Decision on 27 October 2004. Petitioners also pointed out that they never received respondent's demand letter nor were they informed of, much less participated in, the proceedings before the *Lupon*. Moreover, petitioners said they were not served a copy of the summons and the complaint.

On 3 January 2005, the RTC issued the assailed Order dismissing the petition for relief. The RTC said it had no jurisdiction over the petition because the petition should have been filed before the MTC in accordance with Section 1 of Rule 38 of the Rules of Court which provides that a petition for relief should be filed "in such court and in the same case praying that the judgment, order or proceeding be set aside."

Petitioners filed a motion for reconsideration. In its 16 June 2006 Order, the RTC denied petitioners' motion.

Hence, this petition.

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[13] *Id.* at 81-83.

[14] *Id.* at 85.

[15] *Id.* at 23-34.

The Issue

Petitioners raise the sole issue of whether the RTC erred in dismissing their petition for relief from judgment.

The Ruling of the Court

Petitioners maintain that the RTC erred in dismissing their petition for relief. Petitioners argue that they have no other recourse but to file the petition for relief with the RTC. Petitioners allege the need to reconcile the apparent inconsistencies with respect to the filing of a petition for relief from judgment under Rule 38 of the Rules of Court and the prohibition under the Revised Rule on Summary Procedure. Petitioners suggest that petitions for relief from judgment in forcible entry and unlawful detainer cases can be filed with the RTC provided that petitioners have complied with all the legal requirements to entitle him to avail of such legal remedy.

Section 13(4) of Rule 70 of the Rules of Court provides:

SEC. 13. *Prohibited pleadings and motions.* — The following petitions, motions, or pleadings shall not be allowed: x x x

4. Petition for relief from judgment; x x x

Section 19(d) of the Revised Rule on Summary Procedure also provides:

SEC. 19. *Prohibited pleadings and motions.* — The following pleadings, motions, or petitions shall not be allowed in the cases covered by this Rule: x x x

(d) Petition for relief from judgment; x x x

Clearly, a petition for relief from judgment in forcible entry and unlawful detainer cases, as in the present case, is a prohibited pleading. The reason for this is to achieve an expeditious and inexpensive determination of the cases subject of summary procedure.[16]

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[16] Batas Pambansa Blg. 129, Section 36.

Moreover, Section 1, Rule 38 of the Rules of Court provides:

> SEC. 1. *Petition for relief from judgment, order or other proceedings*. — When a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake or excusable negligence, **he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside**. (Emphasis supplied)

A petition for relief from judgment, if allowed by the Rules and not a prohibited pleading, should be filed with and resolved by the court in the same case from which the petition arose.[17]

In the present case, petitioners cannot file the petition for relief with the MTC because it is a prohibited pleading in an unlawful detainer case. Petitioners cannot also file the petition for relief with the RTC because the RTC has no jurisdiction to entertain petitions for relief from judgments of the MTC. Therefore, the RTC did not err in dismissing the petition for relief from judgment of the MTC.

The remedy of petitioners in such a situation is to file a petition for *certiorari* with the RTC under Rule 65[18] of the Rules of Court on the ground of lack of jurisdiction of the MTC over the person of petitioners in view of the absence of summons to petitioners. Here, we shall treat petitioners' petition for relief from judgment as a petition for *certiorari* before the RTC.

An action for unlawful detainer or forcible entry is a real action and *in personam* because the plaintiff seeks to enforce a personal obligation on the defendant for the latter to vacate the property subject of the action, restore physical possession thereof to the plaintiff, and pay actual damages by way of reasonable compensation for his use or occupation of the property.[19] In an action *in personam*, jurisdiction over the person

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[17] Florenz D. Regalado, *REMEDIAL LAW COMPENDIUM* 391 (1999).

[18] In relation to Section 22, Batas Pambansa Blg. 129, as amended.

[19] *Domagas v. Jensen*, 489 Phil. 631 (2005).

of the defendant is necessary for the court to validly try and decide the case.[20] Jurisdiction over the defendant is acquired either upon a valid service of summons or the defendant's voluntary appearance in court.[21] If the defendant does not voluntarily appear in court, jurisdiction can be acquired by personal or substituted service of summons as laid out under Sections 6 and 7 of Rule 14 of the Rules of Court, which state:

> Sec. 6. *Service in person on defendant*. — Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.
>
> Sec. 7. *Substituted Service*. — If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

Any judgment of the court which has no jurisdiction over the person of the defendant is null and void.[22]

The 23 August 2004 Decision of the MTC states:

> Record shows that there were three attempts to serve the summons to the defendants. The first was on January 14, 2004 where the same was unserved. The second was on February 3, 2004 where the same was served to one Gary Akob and the last was on February 18, 2004 where the return was duly served but refused to sign.[23]

A closer look at the records of the case also reveals that the first indorsement dated 14 January 2004 carried the annotation

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[20] *Asiavest Limited v. Court of Appeals*, 357 Phil. 536 (1998).

[21] *Id*.

[22] *Pascual v. Pascual*, G.R. No. 171916, 4 December 2009, 607 SCRA 288; *Manotoc v. Court of Appeals*, G.R. No. 130974, 16 August 2006, 499 SCRA 22; *Domagas v. Jensen*, *supra* note 19.

[23] *Rollo*, p. 55.

that it was "unsatisfied/given address cannot be located."[24] The second indorsement dated 3 February 2004 stated that the summons was "duly served as evidenced by his signature of one Gary Acob[25] (relative)."[26] While the last indorsement dated 18 February 2004 carried the annotation that it was "duly served but refused to sign" without specifying to whom it was served.[27]

Service of summons upon the defendant shall be by personal service first and only when the defendant cannot be promptly served in person will substituted service be availed of.[28] In *Samartino v. Raon*,[29] we said:

> We have long held that the impossibility of personal service justifying availment of substituted service should be explained in the proof of service; why efforts exerted towards personal service failed. The pertinent facts and circumstances attendant to the service of summons must be stated in the proof of service or Officer's Return; otherwise, the substituted service cannot be upheld.[30]

In this case, the indorsements failed to state that prompt and personal service on petitioners was rendered impossible. It failed to show the reason why personal service could not be made. It was also not shown that efforts were made to find petitioners personally and that said efforts failed. These requirements are indispensable because substituted service is in derogation of the usual method of service. It is an extraordinary method since it seeks to bind the defendant to the consequences of a suit even though notice of such action is served not upon him but upon another whom the law could only presume would notify

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[24] MTC records, p. 41.

[25] Sometimes appears in the records as "Gary Akob."

[26] MTC records, p. 44.

[27] *Id.* at 46.

[28] *Samartino v. Raon*, 433 Phil. 173 (2002); *Talsan Enterprises, Inc. v. Baliwag Transit, Inc.*, 369 Phil. 409 (1999).

[29] 433 Phil. 173 (2002).

[30] *Id.* at 184.

him of the pending proceedings. Failure to faithfully, strictly, and fully comply with the statutory requirements of substituted service renders such service ineffective.[31]

Likewise, nowhere in the return of summons or in the records of the case was it shown that Gary Acob, the person on whom substituted service of summons was effected, was a person of suitable age and discretion residing in petitioners' residence. In *Manotoc v. Court of Appeals*,[32] we said:

> If the substituted service will be effected at defendant's house or residence, it should be left with a person of "suitable age and discretion then residing therein." A person of suitable age and discretion is one who has attained the age of full legal capacity (18 years old) and is considered to have enough discernment to understand the importance of a summons. "Discretion" is defined as "the ability to make decisions which represent a responsible choice and for which an understanding of what is lawful, right or wise may be presupposed." Thus, to be of sufficient discretion, such person must know how to read and understand English to comprehend the import of the summons, and fully realize the need to deliver the summons and complaint to the defendant at the earliest possible time for the person to take appropriate action. Thus, the person must have the "relation of confidence" to the defendant, ensuring that the latter would receive or at least be notified of the receipt of the summons. **The sheriff must therefore determine if the person found in the alleged dwelling or residence of defendant is of legal age, what the recipient's relationship with the defendant is, and whether said person comprehends the significance of the receipt of the summons and his duty to immediately deliver it to the defendant or at least notify the defendant of said receipt of summons. These matters must be clearly and specifically described in the Return of Summons**.[33] (Emphasis supplied)

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[31] *Samartino v. Raon, supra*; citing *Hamilton v. Levy*, 398 Phil. 781 (2000); *Umandap v. Sabio, Jr.*, 393 Phil. 657 (2000); *Spouses Miranda v. Court of Appeals*, 383 Phil. 163 (2000); *Venturanza v. Court of Appeals*, 240 Phil. 306 (1987).

[32] G.R. No. 130974, 16 August 2006, 499 SCRA 21.

[33] *Id.* at 36. Citations omitted.

In this case, the process server failed to specify Gary Acob's age, his relationship to petitioners and to ascertain whether he comprehends the significance of the receipt of the summons and his duty to deliver it to petitioners or at least notify them of said receipt of summons.

In sum, petitioners were not validly served with summons and the complaint in Civil Case No. 3719 by substituted service. Hence, the MTC failed to acquire jurisdiction over the person of the petitioners and, thus, the MTC's 23 August 2004 Decision is void.[34] Since the MTC's 23 August 2004 Decision is void, it also never became final.[35]

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the 3 January 2005 and 16 June 2006 Orders of the Regional Trial Court, Branch 25, Biñan, Laguna. The 23 August 2004 Decision and the 1 October 2004 Writ of Execution, as well as all acts and deeds incidental to the judgment in Civil Case No. 3719, are declared *VOID*. We *REMAND* the case to the Municipal Trial Court, Biñan, Laguna, for consolidation with the unlawful detainer case in Civil Case No. 3719 and for the said Municipal Trial Court to continue proceedings thereon by affording petitioners Abubakar A. Afdal and Fatima A. Afdal a chance to file their answer and present evidence in their defense, and thereafter to hear and decide the case.

SO ORDERED.

Nachura, Peralta, Abad, and *Mendoza, JJ.,* concur.

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[34] *Pascual v. Pascual, supra* note 22.

[35] *Pascual v. Pascual, supra* note 22; *Metropolitan Bank & Trust Company v. Alejo*, 417 Phil. 303 (2001); *Leonor v. Court of Appeals*, 326 Phil. 74 (1996); *Arcelona v. Court of Appeals*, 345 Phil. 250 (1997).

SECOND DIVISION

[G.R. No. 173881. December 1, 2010]

HYATT ELEVATORS AND ESCALATORS CORPORATION, *petitioner, vs.* **CATHEDRAL HEIGHTS BUILDING COMPLEX ASSOCIATION, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE COURT OF APPEALS ARE CONCLUSIVE; EXCEPTIONS; CASE AT BAR FALLS UNDER THE 7TH EXCEPTION.— The determination of whether there exists a perfected contract of sale is essentially a question of fact. It is already a well-settled rule that the jurisdiction of this Court in cases brought before it from the CA by virtue of Rule 45 of the Revised Rules of Court is limited to reviewing errors of law. Findings of fact of the CA are conclusive upon this Court. There are, however, recognized exceptions to the foregoing rule, namely: (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when, in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) **when the findings are contrary to those of the trial court**; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record. The present case falls under the 7th exception, as the RTC and the CA arrived at conflicting findings of fact.

2. ID.; EVIDENCE; BURDEN OF PROOF; IN CIVIL CASES, THE BURDEN OF PROOF IS GENERALLY ON THE PLAINTIFF, WITH RESPECT TO HIS COMPLAINT.— In

varying language, our Rules of Court, in speaking of burden of proof in civil cases, states that each party must prove his own affirmative allegations and that the burden of proof lies on the party who would be defeated if no evidence were given on either side. Thus, in civil cases, the burden of proof is generally on the plaintiff, with respect to his complaint. In the case at bar, it is petitioner's burden to prove that it is entitled to its claims during the period in dispute.

3. ID.; ID.; ID.; ONE WHO ALLEGES A FACT HAS THE BURDEN OF PROVING IT AND A MERE ALLEGATION IS NOT EVIDENCE; EXISTENCE OF VERBAL AGREEMENT IN CASE AT BAR, NOT PROVED.— This Court finds that the testimony of Sua alone is insufficient to prove the existence of the verbal agreement, especially in view of the fact that respondent insists that the SOP should have been followed. It is an age-old rule in civil cases that one who alleges a fact has the burden of proving it and a mere allegation is not evidence. The testimony of Sua, at best, only alleges but does not prove the existence of the verbal agreement. It may even be hearsay. It bears stressing, that the agreement was supposedly entered into by petitioner's service manager and respondent's building engineer. It behooves this Court as to why petitioner did not present their service manager and Engineer Tisor, respondent's building engineer, the two individuals who were privy to the transactions and who could ultimately lay the basis for the existence of the alleged verbal agreement. It should have occurred to petitioner during the course of the trial that said testimonies would have proved vital and crucial to its cause. Therefore, absent such testimonies, the existence of the verbal agreement cannot be sustained by this Court.

4. CIVIL LAW; SPECIAL CONTRACTS; SALES; ABSENCE OF ANY OF THE ESSENTIAL ELEMENTS WILL NEGATE THE EXISTENCE OF A PERFECTED CONTRACT OF SALE.— By the contract of sale, one of the contracting parties obligates himself to transfer the ownership of and deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent. The absence of any of the essential elements will negate the existence of a perfected contract of sale.

5. ID.; ID.; ID.; A PRICE FIXED BY ONE OF THE CONTRACTING PARTIES, IF NOT ACCEPTED BY THE OTHER, WILL NOT GIVE RISE TO A PERFECTED CONTRACT OF SALE.— Based on the evidence presented in the RTC, it is clear to this Court that petitioner had failed to secure the necessary purchase orders from respondent's Board of Directors, or Finance Manager, to signify their assent to the price of the parts to be used in the repair of the elevators. In *Boston Bank of the Philippines v. Manalo,* this Court explained that the fixing of the price can never be left to the decision of one of the contracting parties, to wit: A definite agreement as to the price is an essential element of a binding agreement to sell personal or real property because it seriously affects the rights and obligations of the parties. Price is an essential element in the formation of a binding and enforceable contract of sale. **The fixing of the price can never be left to the decision of one of the contracting parties. But a price fixed by one of the contracting parties, if accepted by the other, gives rise to a perfected sale**. There would have been a perfected contract of sale had respondent accepted the price dictated by petitioner even if such assent was given after the services were rendered. There is, however, no proof of such acceptance on the part of respondent and, consequently, no perfected contract of sale between the parties.

6. ID.; ID.; QUASI-CONTRACTS; PRINCIPLE AGAINST UNJUST ENRICHMENT, APPLIED.—This Court disagrees with the findings of the CA that the claims of petitioner are questionable, because the date of the sales invoice and the date stated in the corresponding delivery receipt are too far apart. It is not an uncommon practice for contractors to deliver material and to bill the client at a later date, specially since the parties in the present action have an existing Service Agreement. Withal, it is indisputable that the repairs made on the elevators ultimately redounded to the benefit of respondent for without said repairs, the elevators would not be operational. Under Article 2142 of the Civil Code, such acts "give rise to the juridical relation of quasi-contract to the end that no one shall be unjustly enriched or benefited at the expense of another." It would certainly be unjust for respondent to benefit from the repairs done by petitioner only to refuse payment because the papers submitted were not in order.

APPEARANCES OF COUNSEL

Alan A. Leynes for petitioner.
Quasha Ancheta Peña & Nolasco for respondent.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a petition for review on *certiorari*,[1] under Rule 45 of the Rules of Court, seeking to set aside the April 20, 2006 Decision[2] and July 31, 2006 Resolution[3] of the Court of Appeals (CA), in CA-G.R. CV No. 80427.

The facts of the case are as follows:

On October 1, 1994, petitioner Hyatt Elevators and Escalators Corporation entered into an "Agreement to Service Elevators" (Service Agreement)[4] with respondent Cathedral Heights Building Complex Association, Inc., where petitioner was contracted to maintain four passenger elevators installed in respondent's building. Under the Service Agreement, the duties and obligations of petitioner included monthly inspection, adjustment and lubrication of machinery, motors, control parts and accessory equipments, including switches and electrical wirings.[5] Section D (2) of the Service Agreement provides that respondent shall pay for the additional charges incurred in connection with the repair and supply of parts.

Petitioner claims that during the period of April 1997 to July 1998 it had incurred expenses amounting to Php 1,161,933.47 in the maintenance and repair of the four elevators as itemized

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[1] *Rollo*, pp. 8-22.

[2] Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Andres B. Reyes, Jr. and Japar B. Dimaampao, concurring; *id.* at 27-39.

[3] *Id*. at 41-42.

[4] *Id*. at 46-49.

[5] *Id.* at 47.

in a statement of account.[6] Petitioner demanded from respondent the payment of the aforesaid amount allegedly through a series of demand letters, the last one sent on July 18, 2000.[7] Respondent, however, refused to pay the amount.

Petitioner filed with the Regional Trial Court (RTC), Branch 100, Quezon City, a Complaint for sum of money against respondent. Said complaint was docketed as Civil Case No. Q-01-43055.

On March 5, 2003, the RTC rendered Judgment[8] ruling in favor of petitioner, the dispositive portion of which reads:

> WHEREFORE, premises considered, JUDGMENT IS HEREBY RENDERED IN FAVOR OF THE PLAINTIFF AND AGAINST THE DEFENDANT ordering the latter to pay Plaintiff as follows:
>
> 1. The sum of ₱1,161,933.27 representing the costs of the elevator parts used, and for services and maintenance, with legal rate of interest from the filing of the complaint;
>
> 2. The sum of ₱50,000.00 as attorney's fees;
>
> 3. The costs of suit.
>
> SO ORDERED.[9]

The RTC held that based on the sales invoices presented by petitioner, a contract of sale of goods was entered into between the parties. Since petitioner was able to fulfill its obligation, the RTC ruled that it was incumbent on respondent to pay for the services rendered. The RTC did not give credence to respondent's claim that the elevator parts were never delivered and that the repairs were questionable, holding that such defense was a mere afterthought and was never raised by respondent against petitioner at an earlier time.

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[6] *Id.* at 50-51.

[7] *Id.* at 52.

[8] *Id.* at 62-64.

[9] *Id.* at 64.

Respondent filed a Motion for Reconsideration.[10] On August 17, 2003, the RTC issued a Resolution[11] denying respondent's motion. Respondent then filed a Notice of Appeal.[12]

On April 20, 2006, the CA rendered a Decision finding merit in respondent's appeal, the dispositive portion of which reads:

> WHEREFORE, premises considered, the instant appeal is GRANTED. The Judgment of the Regional Trial Court, Branch 100, Quezon City, dated March 5, 2003, is hereby REVERSED and SET ASIDE. The complaint below is dismissed.
>
> SO ORDERED.[13]

In reversing the RTC, the CA ruled that respondent did not give its consent to the purchase of the spare parts allegedly installed in the defective elevators. Aside from the absence of consent, the CA also held that there was no perfected contract of sale because there was no meeting of minds upon the price. On this note, the CA ruled that the Service Agreement did not give petitioner the unbridled license to purchase and install any spare parts and demand, after the lapse of a considerable length of time, payment of these prices from respondent according to its own dictated price.

Aggrieved, petitioner filed a Motion for Reconsideration,[14] which was, however, denied by the CA in a Resolution dated July 31, 2006.

Hence, herein petition, with petitioner raising a lone issue for this Court's resolution, to wit:

> WHETHER OR NOT THERE IS A PERFECTED CONTRACT OF SALE BETWEEN PETITIONER AND RESPONDENT WITH REGARD TO THE SPARE PARTS DELIVERED AND INSTALLED

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[10] Records, pp. 141-153.

[11] *Id.* at 160.

[12] *Id.* at 164-165.

[13] *Rollo*, p. 38.

[14] CA *rollo*, pp. 76-83.

BY PETITIONER ON THE FOUR ELEVATORS OF RESPONDENT AT ITS HOSPITAL UNDER THE AGREEMENT TO SERVICE ELEVATORS AS TO RENDER RESPONDENT LIABLE FOR THEIR PRICES?[15]

Before anything else, this Court shall address a procedural issue raised by respondent in its Comment[16] that the petition should be denied due course for raising questions of fact.

The determination of whether there exists a perfected contract of sale is essentially a question of fact. It is already a well-settled rule that the jurisdiction of this Court in cases brought before it from the CA by virtue of Rule 45 of the Revised Rules of Court is limited to reviewing errors of law. Findings of fact of the CA are conclusive upon this Court. There are, however, recognized exceptions to the foregoing rule, namely: (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when, in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) **when the findings are contrary to those of the trial court**; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[17]

The present case falls under the 7th exception, as the RTC and the CA arrived at conflicting findings of fact.

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[15] *Rollo*, p. 15.

[16] *Id.* at 67-105.

[17] *Citibank, N.A. (Formerly First National City Bank) v. Sabeniano*, G.R. No. 156132, October 16, 2006, 504 SCRA 378, 409; *Herbosa v. Court of Appeals*, 425 Phil. 431, 444 (2002).

Having resolved the procedural aspect, this Court shall now address the substantive issue raised by petitioner. Petitioner contends that the CA erred when it ruled that there was no perfected contract of sale between petitioner and respondent with regard to the spare parts delivered and installed.

It is undisputed that a Service Agreement was entered into by petitioner and respondent where petitioner was commissioned to maintain respondent's four elevators. Embodied in the Service Agreement is a stipulation relating to expenses incurred on top of regular maintenance of the elevators, to wit:

SERVICE AND INSPECTION FEE:

x x x x x x x x x

(2) In addition to the service fee mentioned in the preceding paragraph under this article, the **Customer shall pay whatever additional charges in connection with the repair, supply of parts** other than those specifically mentioned in ARTICLE A.2., or servicing of the elevator/s subject of this contract.[18]

Petitioner claims that during the period of April 1997 to July 1998, it had used parts in the maintenance and repair of the four elevators in the total amount of ₱1,161,933.47 as itemized in a statement of account[19] and supported by sales invoices, delivery receipts, trouble call reports and maintenance and checking reports. Respondent, however, refuses to pay the said amount arguing that petitioner had not complied with the Standard Operating Procedure (SOP) following a breakdown of an elevator.

As testified to by respondent's witness Celestino Aguilar, the SOP following an elevator breakdown is as follows: (a) they (respondent) will notify petitioner's technician; (b) the technician will evaluate the problem and if the problem is manageable the repair was done right there and then; (c) if some parts have to be replaced, petitioner will present the defective parts to the building administrator and a quotation is made; (d) the quotation

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[18] *Rollo*, p. 48. (Enphasis supplied).

[19] *Id*. at 50-51.

is then indorsed to respondent's Finance Department; and (e) a purchase order is then prepared and submitted to the Board of Directors for approval.[20]

Based on the foregoing procedure, respondent contends that petitioner had failed to follow the SOP since no purchase orders from respondent's Finance Manager, or Board of Directors relating to the supposed parts used were secured prior to the repairs.

At the outset, this Court observes that the SOP is not embodied in the Service Agreement nor was a document evidencing the same presented in the RTC. The SOP appears, however, to be the industry practice and as such was not contested by petitioner. Nevertheless, petitioner offers an excuse for non-compliance with the SOP on its claim that the SOP was not followed upon the behest and request of respondent.

In order to prove its allegations, petitioner presented Wilson Sua, its finance manager, as its sole witness. Sua testified to the procedure followed by petitioner in servicing respondent's elevators, to wit:

Q: Can you tell us Mr. witness, what is the procedure actually followed whenever there is a need for trouble call maintenance or repair?
A: The St. Luke's Cathedral's personnel, which includes the administrative officers, the guard on duty, or the receptionist, will call us through the phone if their elevators brake (sic) down.

Q: Then, what happened?
A: Immediately, we dispatched our technicians to check the trouble.

Q: And who were these technicians whom you normally or regularly dispatched to attend to the trouble of the elevators of the defendant?
A: With regard to this St. Luke's, we dispatched Sunny Jones and Gilbert Cinamin.

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[20] TSN, March 18, 2002, p. 11.

Q: And what happened after dispatching these technicians?
A: They come back immediately to the office to request the parts needed for the troubleshooting of the elevators.

Q: Then what happened?
A: A part will be brought to the project cite and they will install it and note it in the trouble call report and have it received properly by the building guard or the receptionist or by the building engineers, and they will test it for a couple of weeks to determine if the parts are the correct part needed for that elevator and **we will secure their approval**, thereafter we will issue our invoices and delivery receipts.

Q: This trouble call reports, are these in writing?
A: Yes, sir. These are in writing and these are being written within that day.

Q: Within the day of?
A: Of the trouble. And have it received by the duly personnel of St. Luke's Cathedral.

Q: And who prepared this trouble call reports?
A: The technician who actually checked the elevator.

Q: When do the parts being installed?
A: On the same date they brought the parts on the project cite.

Q: You mentioned sales invoice and delivery receipts. Who prepared these invoice?
A: Those were prepared by our inventory clerk under my supervision?

Q: How about the delivery receipts?
A: Just the same.

Q: When would the sales invoice be prepared?
A: After the approval of the building engineer.

Q: But at the time that the sales invoice and delivery receipts were being prepared after the approval of the building engineer, what happened to the parts? Were they already installed or what?
A: They were already installed.

Q: Now, why would the parts be installed before the preparation of the sales invoice and the delivery receipts?
A: There was an agreement between the building engineer and our service manager that the elevator should be running in good condition at all times, breakdown should be at least one day only. It cannot stop for more than a day.[21]

On cross examination, Sua testified that the procedure was followed on the authority of a verbal agreement between petitioner's service manager and respondent's engineer, thus:

Q: So, you mean to say that despite the fact that material are expensive you immediately installed these equipments without the prior approval of the board?
A: There is no need for the approval of the board since there is a verbal agreement between the building engineer and the Hyatt service manager to have the elevator run.

Q: Aside from the building engineer, there is a building administrator?
A: No, ma'am. He is already the building administrator and the building engineer. That is engineer Tisor.

Q: And with regard to the fact that the delivery receipts were acknowledged by the engineer, is that true?
A: Yes, ma'am.

Q: You also mentioned earlier that aside from the building engineer, the receptionist and guards are also authorized. Are you sure that they are authorized to receive the delivery receipts?
A: Yes, ma'am. It was an instruction given by Engineer Tisor, the building engineer and also the building administrator to have it received.

Q: So, all these agreements are only verbally, it is not in writing?

A: Yes, ma'am.[22]

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[21] TSN, January 25, 2002, pp. 7-9.

[22] *Id*. at 16-17.

In its petition, petitioner claims that because of the special circumstances of the building being a hospital, the procedure actually followed since October 1, 1994 was as follows:

1. Whenever any of the four elevators broke down, the administrative officers, security guard or the receptionist of respondent called petitioner by telephone;

2. Petitioner dispatched immediately a technician to the St. Luke's Cathedral Heights Building to check the trouble;

3. If the breakdown could be repaired without installation of parts, repair was done on the spot;

4. If the repair needed replacement of damaged parts, the technician went back to petitioner's office to get the necessary replacement parts;

5. The technician then returned to the St. Luke's Cathedral Heights Building and installed the replacement parts and finished the repair;

6. The placement parts, which were installed in the presence of the security guard, building engineers or receptionist of respondents whoever was available, were indicated in the trouble call report or sometimes in the delivery receipt and copy of the said trouble call report or delivery receipt was then given to the blue security guard, building engineers or receptionist, who duly acknowledged the same;

7. Based on the trouble call report or the delivery receipts, which already indicated the replacement parts installed and the services rendered, respondent should prepare the purchase order, but this step was never followed by respondent for whatever reason;

8. In the meantime, the elevator was tested for a couple of weeks to see if the replacement parts were correct and the approval of the building engineers was secured;

9. After the building engineers gave their approval that the replacement parts were correct or after the lapse of two weeks and nothing was heard or no complaint was lodged, then the corresponding sales invoices and delivery receipts, if nothing had been issued yet, were prepared by petitioner and given to respondent, thru its receptionists or security guards;

10. For its purposes, respondent should compare the trouble call reports or delivery receipts which indicated the replacement parts installed or with the sales invoices and delivery receipts to confirm the correctness of the transaction;

11. If respondent had any complaint that the parts were not actually installed or delivered or did not agree with the price of the parts indicated in the sales invoices, then it should bring its complaint or disagreement to the attention of petitioner. In this regard, no complaint or disagreement as to the prices of the spare parts has been lodged by respondent.[23]

In varying language, our Rules of Court, in speaking of burden of proof in civil cases, states that each party must prove his own affirmative allegations and that the burden of proof lies on the party who would be defeated if no evidence were given on either side. Thus, in civil cases, the burden of proof is generally on the plaintiff, with respect to his complaint.[24] In the case at bar, it is petitioner's burden to prove that it is entitled to its claims during the period in dispute.

This Court finds that the testimony of Sua alone is insufficient to prove the existence of the verbal agreement, especially in view of the fact that respondent insists that the SOP should have been followed. It is an age-old rule in civil cases that one who alleges a fact has the burden of proving it and a mere allegation is not evidence.[25]

The testimony of Sua, at best, only alleges but does not prove the existence of the verbal agreement. It may even be hearsay. It bears stressing, that the agreement was supposedly entered into by petitioner's service manager and respondent's building engineer. It behooves this Court as to why petitioner did not present their service manager and Engineer Tisor,

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[23] *Rollo*, pp. 18-19.

[24] *Villanueva v. Balaguer*, G.R. No. 180197, June 23, 2009, 590 SCRA 661, 670.

[25] *Heirs of Cipriano Reyes v. Calumpang*, G.R. No.138463, October 30, 2006, 506 SCRA 56, 72.

respondent's building engineer, the two individuals who were privy to the transactions and who could ultimately lay the basis for the existence of the alleged verbal agreement. It should have occurred to petitioner during the course of the trial that said testimonies would have proved vital and crucial to its cause. Therefore, absent such testimonies, the existence of the verbal agreement cannot be sustained by this Court.

Moreover, even assuming *arguendo*, that this Court were to believe the procedure outlined by Sua, his testimony[26] clearly mentions that prior to the preparation of the sales invoices and delivery receipts, the parts delivered and installed must have been accepted by respondent's engineer or building administrator. However, again, petitioner offered no evidence of such acceptance by respondent's engineer prior to the preparation of the sales invoices and delivery receipts.

By the contract of sale, one of the contracting parties obligates himself to transfer the ownership of and deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.[27] The absence of any of the essential elements will negate the existence of a perfected contract of sale. In the case at bar, the CA ruled that there was no perfected contract of sale between petitioner and respondent, to wit:

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[26] Q: Then what happened?
A: A part will be brought to the project cite and they will install it and note it in the trouble call report and have it received property by the building guard or the receptionist or by the building engineers, and they will test it for a couple of weeks to detrmine if the parts are the correct part needed for that elevator and **we will secure their approval**, thereafter we will issue our invoices and delivery receipts.
x x x x x x x x x
Q: How about the delivery receipts?
A: Just the same.
Q: **When would the sales invoice be prepared?**
A: **After the approval of the building engineer.**
(TSN, January 25, 2002, pp. 7-9) (Emphasis supplied.)

[27] New Civil Code, Art. 1458.

Aside from the absence of consent, there was no perfected contract of sale because there was no meeting of minds upon the price. As the law provides, the fixing of the price can never be left to the discretion of one of the contracting parties. In this case, the absence of agreement as to the price is evidenced by the lack of purchase orders issued by CHBCAI where the quantity, quality and price of the spare parts needed for the repair of the elevators are stated. In these purchase orders, it would show that the quotation of the cost of the spare parts earlier informed by Hyatt is acceptable to CHBCAI. However, as revealed by the records, it was only Hyatt who determined the price, without the acceptance or conformity of CHBCAI. From the moment the determination of the price is left to the judgment of one of the contracting parties, it cannot be said that there has been an arrangement on the price since it is not possible for the other contracting party to agree on something of which he does not know beforehand.[28]

Based on the evidence presented in the RTC, it is clear to this Court that petitioner had failed to secure the necessary purchase orders from respondent's Board of Directors, or Finance Manager, to signify their assent to the price of the parts to be used in the repair of the elevators. In *Boston Bank of the Philippines v. Manalo,*[29] this Court explained that the fixing of the price can never be left to the decision of one of the contracting parties, to wit:

A definite agreement as to the price is an essential element of a binding agreement to sell personal or real property because it seriously affects the rights and obligations of the parties. Price is an essential element in the formation of a binding and enforceable contract of sale. **The fixing of the price can never be left to the decision of one of the contracting parties. But a price fixed by one of the contracting parties, if accepted by the other, gives rise to a perfected sale**.[30]

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[28] *Rollo,* pp. 36-37.

[29] G.R. No. 158149, February 9, 2006, 482 SCRA 108.

[30] *Id.* at 129. (Emphasis supplied.)

There would have been a perfected contract of sale had respondent accepted the price dictated by petitioner even if such assent was given after the services were rendered. There is, however, no proof of such acceptance on the part of respondent and, consequently, no perfected contract of sale between the parties.

The foregoing findings notwithstanding, this Court rules that to deny petitioner's claim would unjustly enrich respondent who had benefited from the repairs of their four elevators.

This Court finds that respondent is also partly to be blamed for allowing petitioner to conduct the repairs without the necessary purchase orders. It would certainly be absurd for respondent to feign knowledge of the repairs, especially since the same were done within their premises and in the presence of their building engineer, clerk and guard on duty. It bears to point out that several repairs were made from 1997 to 1998. During this time, respondent and its employees never once questioned the authority of petitioner to install replacement parts during the repairs. Had they done so, then it would have been likely that things would not have gone out of hand and petitioner would have been reminded to follow the SOP is such was the case.

In addition, a perusal of the testimony of respondent's witness Mr. Perfecto Cruz (Cruz) shows that its security guards were aware of the installation of parts done by petitioner, to wit:

Q: Mr. witness, is it not a fact that in the trouble call report the parts were already istalled by the technician which is indicated in the document marked as Exh. "U"? This was duly acknowledged by your security guard.
A: Yes, sir.

Q: And it is not a fact in this trouble call report, 7 pieces of regenerative resistors were already installed by the technician as admitted by you?
A: What I know is, that is follow up trouble and not initial. It insisted prior to the servicing.

Q: It appears, Mr. witness, that there is indicated in the trouble call report duly acknowledged by your security guard, as you admitted, there is already installation of 7 regenerative resistors, correct?
A: Yes, sir.

Q: Now, Mr. witness, will you agree with me that these 7 pieces of regenerative resistors were installed even prior to the issuance of the purchase order?
A: Yes, sir.[31]

Moreover, a review of the trouble call reports, sales invoices and delivery receipts would show that all were signed by respondent's employees. This Court cannot agree with the observation of the CA that the signatures of receipt by the information clerk or the guard on duty on the sales invoices and delivery receipts merely pertain to the physical receipt of the papers and that the same does not indicate that the parts stated were actually delivered and installed. When confronted with Exhibit "U" for example, Cruz admitted that the parts stated in the receipt were already installed.[32] Likewise, on re-cross examination, when confronted with Exhibits "OO" and "SS", Cruz admitted that their employee received the defective parts replaced by petitioner, to wit:

Q: Mr. Witness, you mentioned the parts that were damaged and replaced were to be surrendered to the defendant, correct?
A. Yes, sir.

Q: Have you examined the trouble call report submitted by the plaintiff in this case?
A: Yes, sir.

Q: And have you not noticed that in the trouble call report the defective parts replaced were duly turned over by the plaintiff to the defendant as acknowledged by your security guard?
A: No, sir.

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[31] TSN, April 19, 2002, pp. 36-37. (Emphasis supplied).

[32] See TSN, April 19, 2002, p. 38.

Q: So, Mr. witness, I'll just [show] to you this trouble call report dated May 22, 1997. Will you please read the notation here at the back of the acknowledgment receipt of the security guard?
A: Return defective 1 unit BDC TCB serial number 9546.

Q: This is exhibit?
A: Exh."OO".

Q: Dated?
A: May 10, 1997.

Q: Will you please read the words here at the bottom?
A: All defective parts turn-over to Janet?

Q: Do you know who is Janet?
A: The clerk.

Q: Of the defandant?
A: Yes, sir.

Q: This is Exh?
A: Exh. "SS".

Q: I am showing to you this trouble call report dated May 16, 1997. Can you please read the written notation above the acknowledgment receipt of the security guard?
A: Turn-over defective AUR to Janet.

Q: And this Janet is an employee of the defendant?
A: Yes, sir.[33]

Lastly, upon inquiry from the presiding judge, Cruz admitted that respondent's information clerk was authorized to accept deliveries and that the parts received were used to repair their elevators, thus:

Q: What do you think is the import of their signing the delivery receipts? What is the significance since she is your subordinate?
A: These documents seems not in order because I have noticed and observed that the date of the delivery receipts were made at the time it was signed by the information clerk are too long.

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[33] *Id.* at 42-43.

Q: What are you suggesting? Are you suggesting anomaly by Ivy Gumisad?
A: No, the delivery.

Q: But Gumisad, your employee signed these, you're suggesting that she is an anomaly?
A: The length of time.

Q: Are you suggesting that she is doing this committing anomaly, irregularly or what? Is she doing dishonesty?
A: No, your Honor.

Q: Then what is the business of signing and receiving these when she is your employee? Unless she seek per mind she should not be receiving these? What was her motive of receiving this? You have to convince the Court that there is a reason why, otherwise, you have to pay the contractor. That's what the point there.
A: Your Honor, she is authorized to accept deliveries.

Q: These parts which were accepted first receipt costing fifteen thousand (₱15,000.00) pesos. Do you have the receipt? The other is twenty-one thousand (₱21,000.00) pesos, and the other is fourteen thousand (₱14,000.00) pesos worth of parts, another is three thousand five hundred (₱3,500.00) pesos, another is fifty-three thousand (₱53,000.00) pesos, another is three thousand five hundred (₱3,500.00) pesos. What did you use with these parts?
A: They were used to repair our elevators.

Q: And these was received by your co-employee, Ivy Gumisad, how could you explain that?
A: Your Honor, you can see the difference in time as required and the date the delivery receipt was signed by the...

Q: Correct, but she is your employee here. There is no suggestion of anomaly. You should know what your employee is doing. You should have terminated your employee after the process. What kind of employee are you? You have to convince the Court because we will decide the case in your favor if you are able to convince the Court.
A: Your Honor, these papers were only presented when they filed claims. There were parts in the document that were presented by

the Hyatt Elevators and Escalators Corporation when they are claiming for the repairs.

Q: Okay, the signature of Gumisad, is it her signature being your employee?
A: Yes, your Honor.[34]

On a final note, this Court disagrees with the findings of the CA that the claims of petitioner are questionable, because the date of the sales invoice and the date stated in the corresponding delivery receipt are too far apart. It is not an uncommon practice for contractors to deliver meterials and to bill the client at a later date, specially since the parties in the present action have an existing Service Agreement.

Withal, it is indisputable that the repairs made on the elevators ultimately redounded to the benefit of respondent for without said repairs, the elevators would not be operational. Under Article 2142 of the Civil Code, such acts "give rise to the juridical relation of quasi-contract to the end that no one shall be unjustly enriched or benefited at the expense of another." It would certainly be unjust for respondent to benefit from the repairs done by petitioner only to refuse payment because the papers submitted were not in order.

WHEREFORE, premises considered, the petition is *GRANTED*. The April 20, 2006 Decision and July 31, 2006 Resolution of the Court of Appeals, in CA-G.R. CV No. 80427, are *REVERSED and SET ASIDE*.

SO ORDERED.

Carpio (Chairperson), *Nachura*, *Abad*, and *Mendoza, JJ.*, concur.

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[34] *Id.* at 19-21. (Enphasis and underscoring supplied.)

FIRST DIVISION

[G.R. No. 178221. December 1, 2010]

MAY D. AÑONUEVO, ALEXANDER BLEE DESANTIS and JOHN DESANTIS NERI, *petitioners, vs.* **INTESTATE ESTATE OF RODOLFO G. JALANDONI, represented by BERNARDINO G. JALANDONI as Special Administrator,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; PLEADINGS AND PRACTICES; INTERVENTION; A COURT HAS NO AUTHORITY TO ALLOW A PERSON, WHO HAS NO INTEREST IN AN ACTION OR PROCEEDING, TO INTERVENE THEREIN.— A court's power to allow or deny intervention, albeit discretionary in nature, is circumscribed by the basic demand of sound judicial procedure that only a person with **interest** in an action or proceeding may be allowed to intervene. Otherwise stated, a court has no authority to allow a person, who has no interest in an action or proceeding, to intervene therein.

2. ID.; ID.; THE COURT'S DECISION TO ALLOW UNINTERESTED PERSON TO INTERVENE IN A CASE IS NOT SIMPLY AN ERROR OF JUDGMENT, BUT ONE OF JURISDICTION, REVIEWABLE IN A SPECIAL CIVIL ACTION FOR *CERTIORARI*.— When a court commits a mistake and allows an uninterested person to intervene in a case—the mistake is not simply an error of judgment, but one of jurisdiction. In such event, the allowance is made in excess of the court's jurisdiction and can only be the product of an exercise of discretion gravely abused. That kind of error may be reviewed in a special civil action for *certiorari*. Verily, the Court of Appeals was acting well within the limits of review under a writ of *certiorari*, when it examined the evidence proving Isabel's right to inherit from Rodolfo.

3. CIVIL LAW; MARRIAGE; COMPETENT EVIDENCE OF THE FACT OF MARRIAGE.— We agree with the finding of the Court of Appeals that the petitioners and their siblings failed

to offer sufficient evidence to establish that Isabel was the legal spouse of Rodolfo. The very evidence of the petitioners and their siblings negates their claim that Isabel has interest in Rodolfo's estate. Contrary to the position taken by the petitioners, the existence of a previous marriage between Isabel and John Desantis was adequately established. This holds true notwithstanding the fact that no marriage certificate between Isabel and John Desantis exists on record. While a marriage certificate is considered the primary evidence of a marital union, it is not regarded as the sole and exclusive evidence of marriage. Jurisprudence teaches that the fact of marriage may be proven by relevant evidence **other than** the marriage certificate. Hence, even a person's birth certificate may be recognized as competent evidence of the marriage between his parents.

4. ID.; ID.; ID.; A PERSON'S BIRTH CERTIFICATE IS COMPETENT EVIDENCE OF MARRIAGE BETWEEN HIS PARENTS; UNLESS REBUTTED BY CLEAR AND CONVINCING EVIDENCE, THE ENTRIES IN THE PERSON'S BIRTH CERTIFICATE, CAN AND WILL, STAND AS PROOF OF THE FACTS ATTESTED.— In the present case, the birth certificate of Sylvia precisely serves as the competent evidence of marriage between Isabel and John Desantis. [I]t contains the following notable entries: (a) that Isabel and John Desantis were "*married*" and (b) that Sylvia is their "*legitimate*" child. In clear and categorical language, Sylvia's birth certificate speaks of a subsisting marriage between Isabel and John Desantis. Pursuant to existing laws, the foregoing entries are accorded *prima facie* weight. They are presumed to be true. Hence, unless rebutted by clear and convincing evidence, they can, and will, stand as proof of the facts attested. In the case at bench, the petitioners and their siblings offered no such rebuttal.

5. REMEDIAL LAW; PLEADINGS AND PRACTICE; INTERVENTION; INTERVENTION IN THE SETTLEMENT PROCEEDING, UNJUSTIFIED WHERE PARTIES FAILED TO ESTABLISH ANY INTEREST IN THE ESTATE OF THE DECEASED.— The petitioners did no better than to explain away the entries in Sylvia's birth certificate as untruthful statements made only in order to "*save face*." They urge this Court to take note of a "*typical*" practice among unwed Filipino couples to concoct the illusion of marriage and make it appear

that a child begot by them is legitimate. That, the Court cannot countenance. The allegations of the petitioners, by themselves and unsupported by any other evidence, do not diminish the probative value of the entries. This Court cannot, as the petitioners would like Us to do, simply take judicial notice of a supposed folkway and conclude therefrom that the usage was in fact followed. It certainly is odd that the petitioners would themselves argue that the document on which they based their interest in intervention contains untruthful statements in its vital entries. Ironically, it is the evidence presented by the petitioners and their siblings themselves which, properly appreciated, supports the finding that Isabel was, indeed, previously married to John Desantis. Consequently, in the absence of any proof that such marriage had been dissolved by the time Isabel was married to Rodolfo, the inescapable conclusion is that the latter marriage is bigamous and, therefore, void *ab initio*. The inability of the petitioners and their siblings to present evidence to prove that Isabel's prior marriage was dissolved results in a failure to establish that she has interest in the estate of Rodolfo. Clearly, an intervention by the petitioners and their siblings in the settlement proceedings cannot be justified.

APPEARANCES OF COUNSEL

Nelson A. Clemente and *Redentor D. Roque* for petitioners.
Siguion Reyna Montecillo & Ongsiako for respondent.

D E C I S I O N

PEREZ, *J.*:

On appeal[1] is the Decision[2] dated 31 May 2007 of the Court of Appeals in CA-G.R. SP No. 00576. In the said decision, the

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[1] Via a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Francisco P. Acosta, with Associate Justices Arsenio J. Magpale and Agustin S. Dizon, concurring. *Rollo*, pp. 38-48.

Court of Appeals nullified, on *certiorari*, the Orders[3] of the Regional Trial Court, Branch 40, of Negros Occidental (intestate court) allowing herein petitioners and their siblings[4] to intervene in the estate proceedings of the late Rodolfo G. Jalandoni.[5] The decretal portion of the decision of the appellate court reads:

> ACCORDINGLY, the petition for *certiorari* is hereby **GRANTED**, the assailed Orders dated July 2, 2004 and January 26, 2005, of the Regional Trial Court in Spec. Proc. No. 338 are hereby **SET ASIDE** and **NULLIFIED**, and a permanent injunction is hereby **issued** enjoining respondents [petitioners], their agents and anyone acting for and in their behalves, from enforcing the assailed Orders. No costs.[6]

The antecedents are:

Rodolfo G. Jalandoni (Rodolfo) died intestate on 20 December 1966.[7] He died without issue.[8]

On 28 April 1967, Bernardino G. Jalandoni (Bernardino), the brother of Rodolfo, filed a petition for the issuance of letters of administration[9] with the Court of First Instance of Negros Occidental, to commence the judicial settlement of the latter's estate. The petition was docketed as Spec. Proc. No. 338 and is currently pending before the intestate court.[10]

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[3] Orders dated 2 July 2004 and 26 January 2005, issued by Judge Reynaldo M. Alon. *Id.* at 49-55 and 65-66.

[4] The other siblings of the petitioners are Isabel Blee Desantis, Pierre Jojo Desantis Joven, Cynthia Desantis Handy, William Chester Handy, Carroll Leon Handy and Nora Margaret Handy.

[5] Docketed as Spec. Proc. No. 338.

[6] *Rollo,* p. 47.

[7] Certificate of Death of Rodolfo G. Jalandoni. CA *rollo,* p. 187.

[8] Petition (for the Issuance of Letters of Administration). *Id.* at 183.

[9] *Id.* at 183-186.

[10] *Id*.

On 17 January 2003, the petitioners and their siblings filed a Manifestation[11] before the intestate court. In the Manifestation, they introduced themselves as the children of Sylvia Blee Desantis (Sylvia)—who, in turn, was revealed to be the daughter of Isabel Blee (Isabel) with one John Desantis.[12]

The petitioners and their siblings contend that their grandmother—Isabel—was, at the time of Rodolfo's death, the legal spouse of the latter.[13] For which reason, Isabel is entitled to a share in the estate of Rodolfo.

Seeking to enforce the right of Isabel, the petitioners and their siblings pray that they be allowed to intervene on her behalf in the intestate proceedings of the late Rodolfo G. Jalandoni.[14] As it was, by the time the Manifestation was filed, both Sylvia and Isabel have already passed away with the former predeceasing the latter.[15]

To support their cause, the petitioners and their siblings appended in their Manifestation, the following documents:

a.) Two (2) marriage certificates between Isabel and Rodolfo;[16]

b.) The birth certificate of their mother, Sylvia;[17] and

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[11] The Manifestation was coupled by a Motion to Admit Manifestation. *See id.* at 52-56; *id.* at 57-74.

[12] *Id.* at 57-58.

[13] *Id.* at 57.

[14] *Id.* at 58.

[15] Isabel Blee died on 21 November 1999 whereas Sylvia Blee Desantis died on 21 November 1994, *see* their respective Certificates of Death, *id.* at 65 and 84.

[16] Annexes "1" and "2" of the Manifestation. The certificates attest to two nuptials—the first one being in 1951 and the other in 1953—as both having been celebrated between Isabel and Rodolfo. *Id.* at 61-62.

[17] Annex "4" of the Manifestation, *id.* at 64.

c.) Their respective proof of births.[18]

It is the assertion of the petitioners and their siblings that the foregoing pieces of evidence sufficiently establish that Isabel was the spouse of Rodolfo, and that they are her lawful representatives.

The respondent intestate estate of Rodolfo G. Jalandoni, now represented by Bernardino as its Special Administrator, however, begged to differ. It opposed the intervention on the ground that the petitioners and their siblings have failed to establish the status of Isabel as an heir of Rodolfo. The very evidence presented by the petitioners and their siblings showed that Isabel had a previous and subsisting marriage with John Desantis at the time she was purportedly married to Rodolfo.

In its Comment to the Manifestation,[19] the respondent called attention to the entries in the birth certificate of Sylvia, who was born on 14 February 1946.[20] As it turned out, the record of birth of Sylvia states that she was a "*legitimate*" child of Isabel and John Desantis.[21] The document also certifies the status of both Isabel and John Desantis as "*married*."[22] The respondent posits that the foregoing entries, having been made in an official registry, constitute *prima facie* proof of a prior marriage between Isabel and John Desantis.[23]

According to the respondent, Isabel's previous marriage, in the absence of any proof that it was dissolved, made her subsequent marriage with Rodolfo bigamous and void *ab initio*.[24]

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[18] Annexes "6" to "14" of the Manifestation. The petitioners and their siblings all attached their birth certificates, with the exception of Nora Margaret Handy who presented her American passport. *Id.* at 66-74.

[19] *Id.* at 75-80.

[20] *Id.* at 76.

[21] *Id*.

[22] *Id*.

[23] *Rollo*, pp. 120-121.

[24] *Id.* at 121.

On 2 July 2004, the intestate court issued an order allowing the petitioners and their siblings to take part in the settlement proceedings.[25] The intestate court was convinced that the evidence at hand adequately establish Isabel's status as the legal spouse of Rodolfo and, by that token, permitted the petitioners and their siblings to intervene in the proceedings on her behalf.[26]

The intestate court also held that the birth certificate of Sylvia was insufficient to prove that there was a previous marriage between Isabel and John Desantis.[27] It ventured on the possibility that the entries in the birth record of Sylvia regarding her legitimacy and the status of her parents, may have been made only in order to save Isabel and her family from the social condemnation of having a child out of wedlock.[28]

The respondent sought for reconsideration, but was denied by the intestate court in its order dated 26 January 2006.[29] Undeterred, the respondent hoisted a petition for *certiorari* before the Court of Appeals.

On 31 May 2007, the Court of Appeals granted the petition and nullified the orders of the intestate court.[30]

In coming to its conclusion, the Court of Appeals found that it was an error on the part of the intestate court to have disregarded the probative value of Sylvia's birth certificate.[31] The appellate court, siding with the respondent, held that Sylvia's birth certificate serves as *prima facie* evidence of the facts therein stated—which includes the civil status of her parents.[32] Hence, the

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[25] *Id.* at 49-55.

[26] *Id.* at 54.

[27] *Id.*

[28] *Id.*

[29] *Id.* at 65-66.

[30] *Id.* at 47.

[31] *Id.* at 45.

[32] *Id.*

previous marriage of Isabel with John Desantis should have been taken as established.

The Court of Appeals added that since the petitioners and their siblings failed to offer any other evidence proving that the marriage of Isabel with John Desantis had been dissolved by the time she was married to Rodolfo, it then follows that the latter marriage—the Isabel-Rodolfo union—is a nullity for being bigamous.[33] From that premise, Isabel cannot be considered as the legal spouse of Rodolfo. The petitioners and their siblings, therefore, failed to show that Isabel has any interest in the estate of Rodolfo.

Hence, the instant appeal.[34]

The sole issue in this appeal is whether the Court of Appeals erred when it nullified the orders of the intestate court allowing the petitioners and their siblings to intervene in the settlement proceedings.

The petitioners answer in the affirmative. They proffer the following arguments:

One. The Court of Appeals exceeded the limits of review under a writ of *certiorari*.[35] In nullifying the intestate court's order, the appellate court did not confine itself to the issue of whether the same was issued with grave abuse of discretion.[36] Rather, it chose to re-assess the evidence and touch upon the issue pertaining to Isabel's right to inherit from Rodolfo.[37]

Had the appellate court limited itself to the issue of whether grave abuse of discretion exists, it would have found that the intestate court did not act whimsically or capriciously in issuing its assailed orders.[38] Grave abuse of discretion on the part of

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[33] *Id.* at 43.

[34] Petition for Review on *Certiorari*, *id.* at 10-81.

[35] *Id.* at 17.

[36] *Id.* at 21-22.

[37] *Id.* at 17-22.

[38] *Id*.

the intestate court is belied by the fact that the said orders may be supported by the two (2) marriage certificates between Isabel and Rodolfo.[39]

Second. Assuming *ex-gratia argumenti* that the Court of Appeals was correct in addressing the issue of whether there was sufficient evidence to prove that Isabel has a right to inherit from Rodolfo, it nevertheless erred in finding that there was none.[40] A proper evaluation of the evidence at hand does not support the conclusion that Isabel had a previous marriage with John Desantis.[41]

To begin with, the respondent was not able to produce any marriage certificate executed between Isabel and John Desantis.[42] The conspicuous absence of such certificate can, in turn, only lend credibility to the position that no such marriage ever took place.

Moreover, the entries in the birth certificate of Sylvia do not carry the necessary weight to be able to prove a marriage between Isabel and John Desantis.[43] In assessing the probative value of such entries, the Court of Appeals should have taken note of a "*typical*" practice among unwed Filipino couples who, in order to "*save face*" and *"not to embarrass their families,"* concoct the illusion of marriage and make it appear that a child begot by them is legitimate.[44]

Since the alleged previous marriage of Isabel with John Desantis was not satisfactorily proven, the Court of Appeals clearly erred in finding that her marriage with Rodolfo is bigamous.

We are not impressed.

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[39] *Id*.

[40] *Id.* at 23.

[41] *Id.* at 27-28.

[42] *Id.* at 26.

[43] *Id.* at 27.

[44] *Id*.

First Argument

The first argument raised by the petitioners is specious at best. The question of whether the intestate court gravely abused its discretion is intricately linked with the issue of whether there was sufficient evidence to establish Isabel's status as the legal spouse of Rodolfo.

A court's power to allow or deny intervention, albeit discretionary in nature, is circumscribed by the basic demand of sound judicial procedure that only a person with **interest** in an action or proceeding may be allowed to intervene.[45] Otherwise stated, a court has no authority to allow a person, who has no interest in an action or proceeding, to intervene therein.[46]

Consequently, when a court commits a mistake and allows an uninterested person to intervene in a case—the mistake is not simply an error of judgment, but one of jurisdiction. In such event, the allowance is made in excess of the court's jurisdiction and can only be the product of an exercise of discretion gravely abused. That kind of error may be reviewed in a special civil action for *certiorari*.

Verily, the Court of Appeals was acting well within the limits of review under a writ of *certiorari*, when it examined the evidence proving Isabel's right to inherit from Rodolfo. The sufficiency or insufficiency of such evidence determines whether the petitioners and their siblings have successfully established Isabel's interest in Rodolfo's estate—which, as already mentioned, is an indispensable requisite to justify any intervention. Ultimately, the re-assessment of the evidence presented by the petitioners and their siblings will tell if the assailed orders of the intestate court were issued in excess of the latter's jurisdiction or with grave abuse of discretion.

We now proceed to the second argument of the petitioners.

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[45] *See* Section 1 of Rule 19 of the Rules of Court, in relation to *Paras v. Narciso*, 35 Phil. 244, 246-247 (1916).

[46] *In the Matter of the Will of Cabigting*, 14 Phil 463, 467-468 (1909).

Second Argument

The second argument of the petitioners is also without merit. We agree with the finding of the Court of Appeals that the petitioners and their siblings failed to offer sufficient evidence to establish that Isabel was the legal spouse of Rodolfo. The very evidence of the petitioners and their siblings negates their claim that Isabel has interest in Rodolfo's estate.

Contrary to the position taken by the petitioners, the existence of a previous marriage between Isabel and John Desantis was adequately established. This holds true notwithstanding the fact that no marriage certificate between Isabel and John Desantis exists on record.

While a marriage certificate is considered the primary evidence of a marital union, it is not regarded as the sole and exclusive evidence of marriage.[47] Jurisprudence teaches that the fact of marriage may be proven by relevant evidence **other than** the marriage certificate.[48] Hence, even a person's birth certificate may be recognized as competent evidence of the marriage between his parents.[49]

In the present case, the birth certificate of Sylvia precisely serves as the competent evidence of marriage between Isabel and John Desantis. As mentioned earlier, it contains the following notable entries: (a) that Isabel and John Desantis were "*married*" and (b) that Sylvia is their "*legitimate*" child.[50] In clear and categorical language, Sylvia's birth certificate speaks of a subsisting marriage between Isabel and John Desantis.

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[47] *Trinidad v. Court of Appeals*, 352 Phil. 12, 30-31 (1988).

[48] *Pugeda v. Trias*, 114 Phil. 781, 787 (1962).

[49] In *Trinidad v. Court of Appeals*, *supra* note 47 at 30, this Court held:

> To prove the fact of marriage, the following would constitute competent evidence: the testimony of a witness to the matrimony, the couple's public and open cohabitation as husband and wife after the alleged wedlock, the **birth** and the baptismal **certificates of children born during such union**, and the mention of such nuptial in subsequent documents. (*Pugeda v. Trias*, *id.*) (Emphasis supplied)

[50] CA *rollo*, p. 64.

Pursuant to existing laws,[51] the foregoing entries are accorded *prima facie* weight. They are presumed to be true. Hence, unless rebutted by clear and convincing evidence, they can, and will, stand as proof of the facts attested.[52] In the case at bench, the petitioners and their siblings offered no such rebuttal.

The petitioners did no better than to explain away the entries in Sylvia's birth certificate as untruthful statements made only in order to "*save face*."[53] They urge this Court to take note of a "*typical*" practice among unwed Filipino couples to concoct the illusion of marriage and make it appear that a child begot by them is legitimate. That, the Court cannot countenance.

The allegations of the petitioners, by themselves and unsupported by any other evidence, do not diminish the probative value of the entries. This Court cannot, as the petitioners would like Us to do, simply take judicial notice of a supposed folkway and conclude therefrom that the usage was in fact followed. It certainly is odd that the petitioners would themselves argue that the document on which they based their interest in intervention contains untruthful statements in its vital entries.

Ironically, it is the evidence presented by the petitioners and their siblings themselves which, properly appreciated, supports the finding that Isabel was, indeed, previously married to John Desantis. Consequently, in the absence of any proof that such marriage had been dissolved by the time Isabel was married to Rodolfo, the inescapable conclusion is that the latter marriage is bigamous and, therefore, void *ab initio*.

The inability of the petitioners and their siblings to present evidence to prove that Isabel's prior marriage was dissolved results in a failure to establish that she has interest in the estate of Rodolfo. Clearly, an intervention by the petitioners and their siblings in the settlement proceedings cannot be justified. We affirm the Court of Appeals.

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[51] *See* Article 410 in relation to Article 408 of the Civil Code and Section 44 of Rule 130 of the Rules of Court.

[52] *Bustillo v. People*, G.R. No. 160718, 12 May 2010.

[53] *Rollo*, p. 27.

WHEREFORE, the instant appeal is *DENIED*. Accordingly, the decision dated 31 May 2007 of the Court of Appeals in CA-G.R. SP No. 00576 is hereby *AFFIRMED*.

Costs against the petitioners.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro,[*] *Peralta,*[**] and *Abad,*[***] *JJ.,* concur.

SECOND DIVISION

[G.R. Nos. 179282-83. December 1, 2010]

MICHAEL SYIACO, *petitioner, vs.* **EUGENE ONG,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; NEWLY DISCOVERED EVIDENCE; TWO ASPECTS; REQUISITES; NOT PRESENT.— The question of whether the pieces of evidence are newly discovered has two aspects: a temporal one, *i.e.*, when the evidence was discovered, and a predictive one, *i.e.*, when should or could it have been discovered. Under the Rules of Court, the requisites for "newly discovered evidence" are: 1) the evidence was discovered after trial (in this case, after investigation); 2) such evidence could not have been discovered

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[*] Per Special Order No. 916 dated 24 November 2010, Associate Justice Teresita J. Leonardo-De Castro as Acting Working Chairperson.

[**] Additional member in lieu of Associate Justice Mariano C. Del Castillo, per Special Order No. 913 dated 2 November 2010.

[***] Additional member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 917 dated 24 November 2010.

and produced during the trial even with the exercise of reasonable diligence; and 3) it is material, not merely cumulative, corroborative, or impeaching, and is of such weight that, if admitted, will probably change the judgment. In the case at bar, the foregoing requisites are not present.

2. ID.; ID.; ID.; IT MUST BE SHOWN THAT THE OFFERING PARTY HAD EXERCISED REASONABLE DILIGENCE IN TRYING TO LOCATE THE EVIDENCE BEFORE OR DURING TRIAL BUT NONETHELESS FAILED TO SECURE IT; TERM "DUE DILIGENCE," EXPLAINED.— In order that a particular piece of evidence may be properly appreciated as newly discovered, what is essential is not so much the time when the evidence first came into existence or the time when it first came to the knowledge of the party now submitting it. What is essential is that the offering party had exercised reasonable diligence in trying to locate such evidence before or during trial (or investigation), but had nonetheless failed to secure it. The Rules does not contain an exact definition of due diligence. It is often equated with "reasonable promptness to avoid prejudice to the defendant." It has both a time component and a good faith component. It contemplates a situation where the party acts reasonably and in good faith to obtain evidence, in light of the totality of the circumstances and the facts known to him. Applying the foregoing tests, we find that petitioner's purported pieces of evidence do not qualify as newly discovered.

3. CRIMINAL LAW; ESTAFA; ELEMENT OF MISAPPROPRIATION OR CONVERSION, NOT PRESENT; SPECULATION OR CONJECTURE CARRIES NO WEIGHT IN THE DETERMINATION OF THE EXISTENCE OF PROBABLE CAUSE.— Not even the Minutes of the Stockholders' meeting of Trans-Asia, designating respondent as the sole signatory, altered the court's conclusion in the first *estafa* case that there was no misappropriation or conversion. The fact remains that the checks were issued by petitioner for the account of Trans-Asia, and no withdrawal could be made by respondent alone because two signatures were required to effect any withdrawal. The Minutes actually shows that the stockholders' action was made long after the alleged acts of misappropriation or conversion. Petitioner would insinuate that, even if the claimed amounts are still in Trans-Asia's account, it is possible for respondent to convert them

to his personal use because he was designated as the sole signatory to the company's transactions. This expresses merely a possibility and does not show any act of conversion or misappropriation that would constitute the crime of *estafa*. At most, it only shows a speculation or conjecture, which carries no weight in the determination of the existence of probable cause.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; PROBABLE CAUSE; THE COURT MAY LOOK INTO THE QUESTION OF WHETHER OR NOT THE DEPARTMENT OF JUSTICE GRAVELY ABUSED ITS DISCRETION IN THE FINDING OF THE EXISTENCE OF PROBABLE CAUSE TO PROSECUTE THE SUPPOSED OFFENDERS.— [T]he CA did not err in nullifying the DOJ resolutions allowing the refiling of the two *estafa* cases. While it is true that in reviewing the findings of the DOJ, the settled rule is that the determination of probable cause is an executive function, one that properly pertains at the first instance to the public prosecutor and, ultimately, to the Secretary of Justice. For this reason, the Court leaves the DOJ ample latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause for the prosecution of supposed offenders. Courts are not empowered to substitute their judgment for that of the executive branch; they may, however, look into the question of whether such exercise has been made in grave abuse of discretion. In looking into the records of the case, the CA found and concluded that the DOJ gravely abused its discretion in allowing the refiling of the case. We find no reason to depart from such conclusion.

APPEARANCES OF COUNSEL

Vimka Bernadette S. Pacia for petitioner.
Tan Acut Lopez & Pison for respondent.

D E C I S I O N

NACHURA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by petitioner Michael Syiaco against

respondent Eugene Ong, seeking to reverse and set aside the Court of Appeals (CA) Decision[1] dated May 22, 2007 and Resolution[2] dated August 14, 2007 in CA-G.R. SP Nos. 86680 and 87253.

The factual and procedural antecedents are as follows:

Respondent was the President, while petitioner was the Chairman of the Board of Directors of Trans-Asia Securities, Inc. (Trans-Asia), a brokerage firm. Petitioner engaged the services of respondent, together with Trans-Asia's Chief Accountant Christina Dam (Dam), to purchase on his behalf 300,000,000 shares of stock of Palawan Oil and Gas Exploration (Palawan Oil), now iVantage, Equities, Inc. (iVantage), for ₱3,000,000.00 and 25,000 shares of stock of Equitable Banking Corporation (EBC) for ₱2,832,500.00. In payment of the purchase price, petitioner purportedly issued several checks made payable to the account of Trans-Asia, and drawn against Rizal Commercial Banking Corporation.[3] Despite full payment, respondent allegedly refused to deliver to petitioner the certificates of stock covering the same.[4]

In view of respondent's continued refusal to deliver the subject certificates despite demand, petitioner filed a criminal complaint against respondent and Dam for *estafa* through misappropriation or conversion under Article 315(1)(b) of the Revised Penal Code on March 9, 1998.[5] The case was docketed as I.S. No. 98C-10653.

In his defense, respondent claimed that he delivered the certificates of stock of Palawan Oil to petitioner's sister, Haling

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[1] Penned by Associate Justice Aurora Santiago-Lagman, with Associate Justices Bienvenido L. Reyes and Apolinario D. Bruselas, Jr., concurring; *rollo*, pp. 547-557.

[2] *Id.* at 594-598.

[3] *Id.* at 548-549.

[4] *Id.* at 242.

[5] *Id.* at 549.

Chua (Chua), in her office at the Philippine Stock Exchange, as requested by petitioner. As to the EBC shares, respondent maintained that there were still matters about said shares that needed to be cleared. Dam, for her part, denied any participation in the commission of the alleged *estafa*. She claimed that she was a mere accountant of Trans-Asia and, as such, her duties did not involve the recording of stock transactions or the custody and delivery of its stock certificates.[6]

On July 15, 1998, the City Prosecutor of Manila dismissed the complaint against respondent and Dam. This was affirmed by the Department of Justice (DOJ) in a resolution dated October 26, 1998, and subsequently affirmed by the CA in a Decision[7] dated October 31, 2000 in CA-G.R. SP No. 55522. The CA held that the element of conversion or misappropriation was not duly proven by petitioner. The appellate court noted that the checks were issued for the account of Trans-Asia, and that there was no showing how the money was converted by respondent and Dam to their personal use. The CA Decision became final and executory.[8]

Notwithstanding the finality of the CA Decision, petitioner refiled the case by instituting two criminal complaints against respondent and Dam for *estafa* through misappropriation or conversion. The first complaint, filed on August 27, 2001 and docketed as I.S. No. 01H-34490, pertained to the transactions involving the Palawan Oil shares, while the second complaint, filed on January 7, 2003 and docketed as I.S. No. 03A-00194, involved the EBC shares.[9] The refiling of the complaints was purportedly based on the following newly discovered evidence:

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[6] *Id.*

[7] Penned by Associate Justice Angelina Sandoval Gutierrez (now a retired member of this Court), with Associate Justices Portia Aliño-Hormachuelos and Elvi John S. Asuncion, concurring; *id.* at 192-202.

[8] *Id.* at 550.

[9] *Id.*

1) The letters issued by the Corporate Secretary and Stock and Transfer Agent of iVantage Equities, Inc. (formerly Palawan Oil) stating that complainant [petitioner herein] and his brother are not in the list of stockholders of iVantage Equities, Inc.

2) The Affidavit of Margarita dela Cruz, Trans-Asia's former Assistant Vice-President, stating that she does not remember having signed any check/s against Trans-Asia's account issued to and made payable to Palawan Oil or iVantage Securities or to Equitable Banking Corporation as payment for the shares of stocks bought for the private respondent.

3) The Minutes of Stockholders and Directors' Meeting of Trans-Asia, held on April 30, 1998, authorizing petitioner to sign all stock certificates and documents for any and all transactions consistent with the purpose of Trans-Asia Securities, Inc., so that according to private respondent, even if his money is still in the coffers of Trans-Asia, still, it is only petitioner who has access thereto considering that he has been designated as the sole signatory to all transactions of Trans-Asia.

4) The Affidavit of Haling Chua, denying receipt from [respondent] of any stock certificates of Palawan Oil Shares or any document representing the 300,000,000 Palawan Oil Shares bought by [petitioner].[10]

In a resolution[11] dated September 2, 2002, the Office of the Chief State Prosecutor (OCSP), in I.S. No. 01H-34490, involving the Palawan Oil shares, dismissed the complaint with respect to Dam, but found probable cause to indict respondent for *estafa* through misappropriation or conversion. On motion for reconsideration, the OCSP reversed and set aside its resolution on January 10, 2003. On appeal, however, the Secretary of Justice recommended that respondent be indicted for the crime of *estafa* involving the Palawan Oil shares.[12]

Meanwhile, in I.S. No. 03A-00194 involving the EBC shares, the OCSP dismissed the complaint in a Resolution dated January

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[10] *Id.* at 551.

[11] *Id.* at 241-251.

[12] *Id.* at 552.

15, 2004. The Prosecutor found that the pieces of evidence which petitioner presented were not newly discovered to warrant the reopening of the case. The resolution, however, was reversed by the DOJ, which recommended that respondent be likewise indicted for the crime of *estafa* involving the EBC shares.[13]

In view of the DOJ resolutions, respondent was constrained to institute petitions for *certiorari* before the CA, docketed as CA-G.R. SP No. 86680 and CA-G.R. SP No. 87253, which were later consolidated as they involved the same parties and issues.

On May 22, 2007, the CA rendered a Decision in favor of respondent, the dispositive portion of which reads:

> WHEREFORE, the Petitions for *Certiorari* in CA-G.R. SP No. 86680 and CA-G.R. SP No. 87253 are **GRANTED.** The assailed Resolutions dated May 5, 2004, July 5, 2004, July 28, 2004 and August 27, 2004, issued by public respondent Department of Justice in I.S. No. 01H-34490 and I.S. No. 03A-00194, respectively, are declared **NULL AND VOID**. The criminal complaints filed against petitioner subject of the said Resolutions, are ordered **DISMISSED**.
>
> SO ORDERED.[14]

The CA focused on the determination of whether the pieces of evidence might be regarded as newly discovered, and found that they were not. It explained that the alleged newly discovered pieces of evidence were already existing and could have been easily produced by petitioner. It added that petitioner failed to show that he exercised reasonable diligence in procuring the subject pieces of evidence. Therefore, they could not qualify as newly discovered and, thus, will not justify the filing of new criminal cases against respondent. In that light, the CA concluded that the DOJ gravely abused its discretion in allowing the refiling of the *estafa* cases against respondent on the basis of the subject newly discovered pieces of evidence.[15] The CA later denied petitioner's motion for reconsideration for lack of merit.

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[13] *Id*.

[14] *Id.* at 556-557.

[15] *Id.* at 555-556.

Aggrieved, petitioner comes before the Court in this Petition for Review on *Certiorari*, raising the following issues:

> First. The Court of Appeals [Former Twelfth Division] gravely erred when it applied the rule on "newly discovered evidence" as enunciated in the case of *Amarillo v. Sandiganbayan [396 SCRA 434] [2003]* which rules would apply only for the purpose of reopening a case and granting new trial.
>
> Second. The Court of Appeals [Former Twelfth Division] gravely erred in finding that Petitioner Syiaco did not exercise reasonable diligence in procuring the subject pieces of evidence before or during the trial of the first Estafa case.
>
> Third. The Court of Appeals [Former Twelfth Division] gravely erred in finding that the Department of Justice acted with grave abuse of discretion amounting to lack of or excess of jurisdiction when it allowed the re-filing of the Estafa cases against Respondent Ong on the basis of the subject evidence.[16]

Petitioner faults the CA for applying the requisites of "newly discovered evidence" laid down in *Amarillo v. Sandiganbayan*,[17] as the doctrine allegedly applies only to the reopening of a case and to the granting of a prayer for a new trial.[18] He adds that, in nullifying the DOJ resolutions, the CA usurped the investigatory and prosecutory powers granted to the executive branch of the government.[19] Lastly, petitioner states that, contrary to the findings of the CA, he exercised reasonable diligence in procuring the subject pieces of evidence before and during the pendency of the first *estafa* case.[20]

We find no merit in the petition.

The petition focuses on the issue of whether the pieces of evidence presented by petitioner to support the filing of the

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[16] *Id.* at 30.

[17] 444 Phil. 487 (2003).

[18] *Rollo*, pp. 31-34.

[19] *Id.* at 38-42.

[20] *Id.* at 38.

new *estafa* cases are newly discovered. The question of whether the pieces of evidence are newly discovered has two aspects: a temporal one, *i.e.*, when the evidence was discovered, and a predictive one, *i.e.*, when should or could it have been discovered.[21]

Under the Rules of Court, the requisites for "newly discovered evidence" are: 1) the evidence was discovered after trial (in this case, after investigation); 2) such evidence could not have been discovered and produced during the trial even with the exercise of reasonable diligence; and 3) it is material, not merely cumulative, corroborative, or impeaching, and is of such weight that, if admitted, will probably change the judgment.[22]

In the case at bar, the foregoing requisites are not present. Although the letter of iVantage and the affidavits of Chua and Margarita dela Cruz (Dela Cruz) were dated after the investigation in the first *estafa* case, still, they do not qualify as newly discovered. In order that a particular piece of evidence may be properly appreciated as newly discovered, what is essential is not so much the time when the evidence first came into existence or the time when it first came to the knowledge of the party now submitting it. What is essential is that the offering party had exercised reasonable diligence in trying to locate such evidence before or during trial (or investigation), but had nonetheless failed to secure it.[23] The Rules does not contain an exact definition of due diligence. It is often equated with "reasonable promptness to avoid prejudice to the defendant." It has both a time component and a good faith component. It contemplates a situation where the party acts reasonably and in good faith to obtain evidence, in light of the totality of the circumstances and the facts known

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[21] *Dinglasan, Jr. v. Court of Appeals*, G.R. No. 145420, September 19, 2006, 502 SCRA 253, 268; *Brig. Gen. Custodio v. Sandiganbayan*, 493 Phil. 194, 206 (2005).

[22] *Quintin B. Saludaga and SPO2 Fiel E. Genio v. The Honorable Sandiganbayan, 4th Division, and the People of the Philippines*, G.R. No. 184537, April 23, 2010; *Amarillo v. Sandiganbayan, supra* note 17, at 497.

[23] *Custodio v. Sandiganbayan, supra* note 21, at 206.

to him.[24] Applying the foregoing tests, we find that petitioner's purported pieces of evidence do not qualify as newly discovered.

As to the letter of iVantage saying that petitioner was not included in the list of its stockholders, petitioner failed to explain why no such verification was done at the first opportunity. Considering that the subject certificates of stock could not be located, it would have been prudent to immediately verify from the company where the stocks were purportedly acquired. Clearly, petitioner was remiss in exercising reasonable diligence to secure the document.

More importantly, petitioner failed to sufficiently explain why Chua and Dela Cruz belatedly executed their affidavits. Chua is petitioner's sister, while Dela Cruz is one of the officers of Trans-Asia. We cannot fathom why it took petitioner such a long time before he could make them execute their sworn statements. There was no showing of Chua's and Dela Cruz's unavailability at the time of the investigation of the first *estafa* case. As aptly held by the CA, petitioner did not exercise reasonable diligence in discovering and producing the above documents. Hence, the documents are not "newly discovered pieces of evidence."

Assuming that the documents could not have been reasonably produced during the investigation, still, they will not qualify as newly discovered pieces of evidence because they were not material to the issue. It was admitted by petitioner that the checks (allegedly intended for the payment of the purchased stocks) were issued for the account of Trans-Asia and not for the account of respondent. It is likewise undisputed that any two signatures of either petitioner, respondent, or Dela Cruz were needed for any of Trans-Asia's transactions. Dela Cruz's affidavit even strengthened respondent's claim that it was impossible for the latter to misappropriate the funds, as his signature was not sufficient to withdraw the amount from Trans-Asia's account.

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[24] *Id*.

Not even the Minutes of the Stockholders' meeting of Trans-Asia, designating respondent as the sole signatory, altered the court's conclusion in the first *estafa* case that there was no misappropriation or conversion. The fact remains that the checks were issued by petitioner for the account of Trans-Asia, and no withdrawal could be made by respondent alone because two signatures were required to effect any withdrawal. The Minutes actually shows that the stockholders' action was made long after the alleged acts of misappropriation or conversion. Petitioner would insinuate that, even if the claimed amounts are still in Trans-Asia's account, it is possible for respondent to convert them to his personal use because he was designated as the sole signatory to the company's transactions. This expresses merely a possibility and does not show any act of conversion or misappropriation that would constitute the crime of *estafa*. At most, it only shows a speculation or conjecture, which carries no weight in the determination of the existence of probable cause.

Based on the foregoing, the CA did not err in nullifying the DOJ resolutions allowing the refiling of the two *estafa* cases. While it is true that in reviewing the findings of the DOJ, the settled rule is that the determination of probable cause is an executive function, one that properly pertains at the first instance to the public prosecutor and, ultimately, to the Secretary of Justice.[25] For this reason, the Court leaves the DOJ ample latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause for the prosecution of supposed offenders.[26] Courts are not empowered to substitute their judgment for that of the executive branch; they may, however, look into the question of whether such exercise has been made in grave abuse of discretion.[27] In looking into the

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[25] *United Coconut Planters Bank v. Looyuko*, G.R. No. 156337, September 28, 2007, 534 SCRA 322, 330.

[26] *First Women's Credit Corporation v. Perez*, G.R. No. 169026, June 15, 2006, 490 SCRA 774, 777.

[27] *United Coconut Planters Bank v. Looyuko*, *supra* note 25, at 331.

records of the case, the CA found and concluded that the DOJ gravely abused its discretion in allowing the refiling of the case. We find no reason to depart from such conclusion.

WHEREFORE, premises considered, the petition is *DENIED*. The Court of Appeals Decision dated May 22, 2007 and Resolution dated August 14, 2007 in CA-G.R. SP Nos. 86680 and 87253 are *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Mendoza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 191963. December 1, 2010]

RITA NATAL, CHARITO LABATETE, RAMUEL MAGAHIS, FRANCISCA LOGDAT, JOCELYN MACUNAT, LUCENA MITANTE, GUADALUPE M. LLAMAS, NORITA MODIONG, AMELIA PANTOJA, MIRASOL NABIONG, ROMEO LOGDAT, EDUARDO JAQUECA, NATIVIDAD NAGUTOM, EMERENCIANA VILLA, JUANITO MALAGOTNOT, GORGONIO L. LICON, ACELA FORTON, JULIO NATAL, CONSORCIA LAZO, LUCENIO MATAYA, ELISA LOGDAT, HELEN LIVELO, ISIDRA LEYNES, VICENTE LAURESTA, LEONOR NUNEZ, CONCEPCION MALAGOTNOT, JUANA LUSTRE, PERLITO NAGUTOM, JULIA NALANGIS, RUSTICO LEYNES, FERNANDITO MAGUTOM, NARCISO RICOHERMOSO, DAISY MIRANDA, MARIA MIRONES, PERPETUA MIRANDA, *petitioners, vs.* **HON. MANUELITO O. CABALLES, Presiding Judge, Regional Trial Court-Branch 38, Boac, Marinduque,** *public respondent,* **MARCOPPER MINING CORP.,** *private respondent.*

SYLLABUS

REMEDIAL LAW; ACTIONS; WHEN CONSIDERED MOOT; EFFECT.— It is well settled that an action is considered "moot" when it no longer presents a justiciable controversy because the issues involved have become academic or when the matter in dispute has already been resolved, and no longer requires judicial intervention. Considering that the respondent Judge already issued the March 11, 2010 order requiring the production and inspection of documents and properties within the possession and control of respondent Marcopper, nothing left for us to act upon. Courts will not sit for the purpose of trying moot cases and spend time in deciding questions whose resolution cannot in any way affect the rights of the person or persons presenting them.

APPEARANCES OF COUNSEL

Marvic M.V.F. Leonen for petitioners.
Antonio & Revilla Law Firm for Marcopper Mining Corp.

R E S O L U T I O N

BRION, *J.*:

Before us is a petition for *mandamus*[1] filed by petitioner Rita Natal and 34 others (*petitioners*) to compel respondent Judge Manuelito O. Caballes (*respondent Judge*) of Branch 38 of the Regional Trial Court (*RTC*) of Boac, Marinduque, to resolve or act on the petitioners' Motion for Production and Inspection of Objects/Property[2] in Civil Case No. 01-10.[3]

The Factual Background

On April 6, 2001, the petitioners filed a complaint with the RTC for quasi-delict and tort against respondent Marcopper Mining Corporation (*respondent Marcopper*) and Placer Dome

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[1] Under Rule 65 of the Rules of Court; *rollo*, pp. 3-29.

[2] *Id.* at 232-235.

[3] Entitled *"Rita Natal, et al. v. Marcopper Mining Corporation."*

Inc., seeking payment of damages for losses due to the flooding and siltation of the Mogpog river, allegedly caused by the breach of respondent Marcopper's Maguila-guila dam.[4]

In the course of the proceedings, or on October 14, 2008, the petitioners filed a Motion for Production and Inspection of Objects/Property, seeking to require respondent Marcopper to produce specific documents and to allow the petitioners to enter, inspect and photograph respondent Marcopper's dams, dumpsite, mining pit, and all other related structures.[5]

In an October 21, 2008 order, the respondent Judge required respondent Marcopper to file its comment or opposition to the petitioner's motion.[6]

In an October 30, 2008 order, the respondent Judge gave respondent Marcopper 15 days, or until November 14, 2008, to file its comment to the motion, and for the petitioners to file their reply, within 15 days from receipt of respondent Marcopper's comment, after which the motion was deemed submitted for resolution.[7]

On November 11, 2008, respondent Marcopper filed its comment.[8] The petitioners' counsel received Marcopper's comment on November 19, 2008.[9] On December 4, 2008, the petitioners filed their reply to the comment.[10]

When the respondent Judge failed to resolve the motion despite the petitioners' two motions for early resolution filed on March 12, 2009 and June 22, 2009,[11] the petitioners filed on May 6, 2010 the present petition for *mandamus*.

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[4] *Rollo,* pp. 30-74.

[5] Under Rule 27 of the Rules of Court, *supra* note 2.

[6] *Rollo,* p. 237.

[7] *Id.* at 238.

[8] *Id.* at 239-243.

[9] *Ibid.*

[10] *Id.* at 244-249.

[11] *Id.* at 250-251 and 252-254.

The Petition

The petitioners argue that the respondent Judge failed to resolve their motion within the 3-month period mandated by Section 15, Article VIII of the 1987 Constitution.

The Case for the Respondents

Respondent Marcopper prays for the dismissal of the petition, pointing out that the respondent Judge issued a March 11, 2010 order, received by the petitioners on May 11, 2010, that resolved the motion.

The respondent Judge submits that he already resolved the petitioners' motion on March 11, 2010.

Our Ruling

We dismiss the petition.

It is well settled that an action is considered "moot" when it no longer presents a justiciable controversy because the issues involved have become academic or when the matter in dispute has already been resolved, and no longer requires judicial intervention.[12] Considering that the respondent Judge already issued the March 11, 2010 order[13] requiring the production and inspection of documents and properties within the possession and control of respondent Marcopper, nothing left for us to act upon. Courts will not sit for the purpose of trying moot cases and spend time in deciding questions whose resolution cannot in any way affect the rights of the person or persons presenting them.[14]

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[12] *Albay Electric Cooperative, Inc. v. Santelices*, G.R. No. 132540, April 16, 2009, 585 SCRA 103, 118, citing *Santiago v. Court of Appeals*, G.R. No. 121908, January 26, 1998, 285 SCRA 16, 21.

[13] *Rollo,* pp. 280-289.

[14] *Albay Electric Cooperative, Inc. v. Santelices, supra* note 12, citing *Delgado v. Court of Appeals,* G.R. No. 137881, August 19, 2005, 467 SCRA 418, 428.

In considering this case, however, we cannot help but notice that the resolution of a relatively simple motion took the Judge almost fourteen (14) months to act upon. The administrative consequences of this delay, however, is beyond our authority at this time to rule upon as an administrative case has already been filed with the Office of the Court Administrator, docketed there as OCA IPI No. 10-3376-RTJ (entitled *Natividad Nagutom, et al., represented by Atty. Minerva A. Quintela v. Judge Manuelito O. Caballes*). Hence, we leave this administrative matter for consideration in that case.

WHEREFORE, we resolve to *DISMISS* the petition on the ground of mootness.

SO ORDERED.

Carpio Morales, Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

THIRD DIVISION

[A.M. No. P-05-2003. December 6, 2010]
(Formerly A.M. OCA IPI No. 97-218-P)

GERMAN AGUNDAY, *complainant, vs.* **LEMUEL B. VELASCO, Deputy Sheriff, Office of the Clerk of Court, Regional Trial Court, Virac, Catanduanes,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; EXECUTION OF; RULE; THAT IF A JUDGMENT CANNOT BE SATISFIED WITHIN THIRTY (30) DAYS AFTER RECEIPT OF THE WRIT THE OFFICER IS MANDATED TO MAKE A PERIODIC REPORT TO THE COURT, EVERY THIRTY DAYS, ON

THE PROCEEDINGS TAKEN THEREON UNTIL JUDGMENT IS SATISFIED IN FULL, OR ITS EFFECTIVITY EXPIRES; NOT COMPLIED WITH IN CASE AT BAR.— Velasco also failed to comply with Section 14, Rule 39 of the Rules of Court. Under this Rule, the lifetime of a writ of execution is without limit for as long as the judgment has not been satisfied, but is "returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefore." The officer is mandated to "make a report to the court every thirty (30) days on the proceedings taken thereon until judgment is satisfied in full, or its effectivity expires." In the present case, the RTC issued a writ of execution and possession on July 9, 1996. Velasco submitted the Sheriff's Partial Return of Writ of Execution on August 23, 1996. However, nothing in the records shows that he made periodic reports to the court, every 30 days, on the proceedings taken thereon, *until the judgment was fully satisfied*.

2. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFFS; DUTY THEREOF IN THE EXECUTION OF A WRIT IS PURELY MINISTERIAL.— A sheriff's duty in the execution of a writ issued by a court is purely ministerial. When a writ is placed in the hands of a sheriff, it is his duty, in the absence of instructions, to proceed with reasonable celerity and promptness to execute it according to its mandate. Sheriffs must exert every effort to see to it that the final stage in the litigation process – the execution of a judgment – is carried out in order to ensure a speedy and efficient administration of justice. A decision left unexecuted or indefinitely delayed due to their inefficiency renders it useless. Worse, the parties prejudiced by the inaction tend to condemn the entire judicial system for the lapse.

3. ID.; ID.; ID.; ID.; FAILURE TO IMPLEMENT THE WRIT OF EXECUTION AND POSSESSION AS WELL AS TO SUBMIT THE REQUIRED PERIODIC REPORT CONSTITUTE SIMPLE NEGLECT OF DUTY; PROPER PENALTY FOR SIMPLE NEGLECT OF DUTY.— Velasco's failure to implement the writ of execution and possession, as well as to submit the required periodic report, shows his lack

of diligence and zeal in the performance of his duties. By his actuations, Velasco displayed conduct short of the stringent standards required of Court employees. We, thus, find him liable for simple neglect of duty, which has been defined as the failure of an employee to give one's attention to a task expected of him, signifying a disregard of duty resulting from carelessness or indifference. Under Section 52(B)(1) of the Uniform Rules on Administrative Cases in the Civil Service, simple neglect of duty is a less grave offense punishable by suspension from office for one (1) month and one (1) day to six (6) months for the first offense, and dismissal for the second offense.

4. ID.; ID.; ID.; ID.; PENALTY OF FINE IMPOSED INSTEAD OF SUSPENSION FOR SIMPLE NEGLECT OF DUTY; REASON.— In *Pesongco v. Estoya*, we found the respondent sheriff guilty of neglect of duty and suspended him for one (1) month for his failure to fully implement the writ of execution, and for his failure to make periodic reports to the court. xxx. While the recommended penalty of one-month suspension is reasonable, the same is not practical at this point, considering that Velasco's work would be left unattended by reason of his absence. Instead of suspension, we impose a fine equivalent to his one-month salary, so that he can finally implement the subject writ and perform the other duties of his office.

D E C I S I O N

BRION, *J.*:

We resolve as an administrative matter the affidavit-complaint,[1] dated October 21, 1996, of German Agunday (*complainant*) charging Clerk of Court VI Prospero V. Tablizo, Deputy Sheriff Lemuel B. Velasco, Process Server Valentin Gonzales and Court Aide Isidro Guerrero, all from the Regional Trial Court (*RTC*) of Virac, Catanduanes, with grave misconduct, gross ignorance of the law, and incompetence.

This case traces its roots from a civil case (for recovery of ownership and possession with damages) filed by Lope Panti,

[1] *Rollo*, pp. 2-3.

Sr. and Francisca Panti (*plaintiffs*) before the RTC, Branch 43, Virac, Catanduanes, against the complainant (therein defendant). The RTC decided in favor of the plaintiffs. The dispositive portion of this decision reads:

> WHEREFORE, judgment is hereby rendered:
>
> (1) Declaring Transfer Certificate of Title No. 3892 in the name of plaintiff Francisca Panti valid;
>
> (2) Ordering defendant to vacate that portion of subject lot equivalent to 23.1357 square meters of the 56.4737 he actually occupies on Lot C-1 immediately adjoining the area actually occupied by plaintiffs;
>
> (3) Ordering plaintiffs to reconvey to defendant 13.3380 square meters of the land erroneously included in Transfer Certificate of Title No. 3892.
>
> The parties' mutual claim for damages and attorney's fees is denied.
>
> Costs against both parties.[2]

The complainant appealed to the Court of Appeals (*CA*), with the appeal docketed as CA-G.R. CV No. 37494. The CA, in its decision of August 9, 1995, modified the RTC decision, as follows:

> THE FOREGOING CONSIDERED, the appealed decision is hereby modified: plaintiff is directed to reconvey to the defendant/appellant an area measuring 13.38 square meters.[3]

In his affidavit-complaint, the complainant alleges that Tablizo, as Clerk of Court and *Ex-Officio* Provincial Sheriff, issued, on July 9, 1996, a writ of execution and possession which varied the terms of the dispositive portion of the CA decision. Pursuant to this writ, Velasco, Gonzales and Guerrero, in conspiracy with the plaintiffs, caused the demolition of his (Agunday's) house without first notifying him or his brother-in-law, Santos Burce. Velasco, Gonzales and Guerrero allegedly effected the

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[2] *Id.* at 7-8.

[3] *Id.* at 101-102.

demolition without coordinating with the *barangay* officials and the Municipal Engineering Office, and without securing a writ of demolition from the RTC. The complainant further claims that Velasco, Gonzales and Guerrero did not prevent the plaintiffs from taking his personal belongings from the demolished house.

The complainant maintains that the 13.38-square meter land subject of the modified CA decision has not been reconveyed to him. Velasco, however, made it appear in the Certificate of Turn-Over of Real Estate Property Ownership dated August 21, 1996, that the 13.38-square meter lot had already been turned over to him (complainant).

Velasco and Gonzales filed their respective comments to the complaint. Guerrero filed a counter-affidavit, while Tablizo filed an answer. They all denied the charges made against them in the affidavit-complaint.

In his reply to the comment, the complainant maintains that the respondent, Tablizo, Guerrero and Gonzales conspired with the plaintiffs in effecting the demolition of his house. He claims they did not do anything to prevent the demolition despite the absence of an order of demolition from the RTC.

In our Resolution dated October 12, 1998,[4] we referred the case to Executive Judge Alfredo A. Cabral of the RTC of San Jose, Camarines Sur, for investigation, report and recommendation. Judge Cabral sought a reconsideration of this resolution, citing, among others, his heavy caseload.

In our Resolution dated October 6, 1999,[5] we granted Judge Cabral's request, and referred the case to the Executive Judge of the RTC of Tabaco City, Albay. Executive Judge Cesar Bordeos recommended the dismissal of the case due to the complainant's failure to appear at the hearing. The Court, in its Resolution of October 17, 2001,[6] ordered Judge Bordeos to conduct a more "earnest and exhaustive fact-finding investigation" of the case.

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[4] *Id.* at 57.

[5] *Id.* at 73.

[6] *Id.* at 126.

Due to Judge Bordeos' retirement, we designated Executive Judge Arnulfo B. Cabredo of the RTC, Tabaco City, to continue with the investigation of the case.[7] Judge Cabredo, however, was dismissed from the service due to misconduct; thus, we referred the case to Executive Judge Virginia G. Almonte of the RTC, Branch 17, Tabaco City.

In her Investigation Report dated November 27, 2003, Judge Almonte found Velasco to be remiss and negligent in the performance of his duties as sheriff for his failure to implement the writ of execution. She recommended that Velasco be fined ₱10,000.00 for his infraction. She, however, recommended the dismissal of the charges against Tablizo, Gonzales, and Guerrero for lack of merit.

In our Resolution of January 21, 2004, we noted Judge Almonte's Investigation Report. We, thereafter, referred the case to the Office of the Court Administrator (OCA) for evaluation, report and recommendation.

The OCA, in its Memorandum dated April 4, 2005, made the following recommendations:

1. this case be RE-DOCKETED as a regular administrative matter;
2. the complaint against respondents Prospero V. Tablizo, Valentin Gonzales and Isidro Guerrero be DISMISSED for lack of merit;
3. respondent Sheriff Lemuel B. Velasco be FOUND GUILTY of Neglect of Duty and be accordingly FINED in the amount of Ten Thousand Pesos (₱10,000.00); and
4. the Fiscal Management Office, Office of the Court Administrator, be DIRECTED to IMMEDIATELY RELEASE the withheld amount of ₱20,000.00 to Valentin Gonzales.

The OCA held that the evidence does not show that Tablizo, Guerrero and Gonzales had a hand in the demolition of the complainant's house. Lope Panti, Sr., the plaintiff in Civil Case No. 1528, admitted that the demolition of complainant's

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[7] *Id.* at 128.

house was through his own act and initiative. Tablizo, Guerrero and Gonzales only learned of the demolition from the complainant's cousin when the demolition was almost complete. The OCA added that Velasco even directed Lope to stop the demolition since the same was illegal. Lope initially complied, but continued with the demolition after the respondent, Tablizo, Guerrero and Gonzales had left.

The OCA, nonetheless, found Velasco liable for neglect of duty for his failure to reconvey the 13.38 square meters of the subject property to the complainant. The OCA reasoned out that for a period of eight years, more or less, the complainant had been deprived of his right to enjoy the 13.38-square meter portion of the subject lot that had been adjudged by the CA to belong to him.

As regards the charge that Tablizo issued a writ of execution and possession that varied the terms of the dispositive portion of the CA decision, the OCA held that the issue is a judicial matter which should have been raised in an appropriate judicial proceeding.

In our Resolution of April 27, 2005, we resolved to adopt the OCA's recommendations. Accordingly, we dismissed the complaint against Tablizo, Gonzales, and Guerrero for lack of merit. Thereafter, Velasco manifested that he is submitting the case for resolution on the basis of the pleadings/records filed and submitted.

THE COURT'S RULING

We agree with the OCA that Velasco is administratively liable for neglect of duty. We, however, modify the penalty imposed on him.

Velasco not involved in the demolition

We concur with the OCA's finding that Velasco did not have a hand in the demolition of the complainant's house. Lope himself admitted in his affidavit, dated March 18, 1997, that he alone ordered the demolition of the complainant's house. Lope's court

testimony likewise shows that Velasco had no participation in the demolition, thus:

ATTY. DOTE:

Q: Where were you on July 22, 1996 at about 4:00 o'clock (*sic*) in the afternoon?

WITNESS:

A: At my store.

Q: While at your store[,] what happened, if any?

A: On July 22, 1996[,] at about 4:00 o'clock (*sic*) in the afternoon[,] I was in the store and Mr. Lemuel Velasco came over to that store and told me or asked me if I was already prepared to make the survey and that the survey will be done tomorrow morning.

Q: What did you do after Lemuel Velasco told you that the area is to be surveyed?

A: **After that I told my son Leopoldo to prepare and get some workers for the survey, to remove the house of Mr. German Agunday because it will be an obstacle in the survey.**

Q: Why did you tell your son to demolish the house which according to you, will be an obstacle to the conduct of the survey?

A: Because Mr. Velasco told me that there will be a survey.

Q: Do you know that the survey that will be conducted is to determine whether the house of Mr. Agunday is encroaching upon your lot?

A: The house is encroaching on my lot.

Q: You mean to say that you know already that the house has encroached upon your lot?

A: Because before we had a case between us. I already procured the services of a private surveyor.

Q: **You mean to say that you did not wait for the Sheriff to tell you that the house of Mr. Agunday will be removed because it was occupying part of your lot?**

A: **No, I did not wait for the Sheriff because I already know that it was encroaching.**

x x x x x x x x x

Q: **x x x After the demolition, what happened next?**

A: Lemuel Velasco came over.

Q: Who was with him?

A: I do not know the names of those who were with him?

x x x x x x x x x

Q: **When Lemuel Velasco arrived, what did he do, if any?**

A: **He told us to stop the demolition which we were doing.**

Q: And what did you do when you were told to stop?

A: Because the demolition was already about to be finished so we stopped and we took a rest but **when Mr. Velasco left, we continued with the demolition**.[8]

These exchanges clearly establish that Velasco was not in any way involved in the demolition of the complainant's house; Lope alone ordered the demolition of the complainant's house. Velasco, in fact, only arrived on the scene when the demolition was almost finished. Velasco even ordered Lope and his men to stop the demolition. We, thus, find no basis to support the complainant's claim that Velasco conspired with the plaintiffs, Tablizo, Guerrero and Gonzales to effect the demolition of his house.

Velasco liable for neglect of duty

We, nonetheless, hold Velasco liable for his failure to reconvey the 13.38 square meters of the subject property to the complainant. We find no merit in his excuse that his failure to implement the

[8] TSN, September 26, 2003, pp. 43-47.

writ of execution and possession was due to the complainant's refusal to sign the Certificate of Turn-Over of Real Estate Property Ownership.

The records disclose that when Velasco received the writ of execution and possession, he saw the need for a relocation survey in order to determine the 13.38 square meters that must be reconveyed to the complainant. He informed Lope of the need for a relocation survey, and left to him the hiring of the surveyor. Lope hired a surveyor and ordered him (surveyor) to conduct a relocation survey. Thereafter, Lope ordered the demolition of the complainant's house based on the result of the relocation survey that the house was encroaching on.

As the implementing sheriff, it was Velasco's duty to inform *both* Lope and the complainant regarding the need for a relocation survey, to ensure that the relocation survey would be witnessed by all the parties concerned. He has to personally supervise the conduct of the relocation survey, and not delegate this duty to one of the interested parties. More importantly, he should have requested the surveyor, during the survey, to point to the complainant the exact metes and bounds of the property to be reconveyed to him. As explained by Judge Almonte in her Investigation Report:

> Velasco can not deliver the portion of the lot decreed for Agunday by merely making him sign the Certificate of Turn-Over of Real Estate Property Ownership that he prepared. There should be an actual delivery, pointing to Agunday the metes and bounds of the 13.38 square meters pursuant to the survey plan prepared by the surveyor. Also, the relocation survey should have been conducted in the presence of both parties in Civil Case No. 1528, possibly assisted by their counsel. The particular surveyor should have been the choice of both and not the unilateral preference of one party. Velasco, as the implementing Sheriff had to supervise the conduct of the relocation survey. x x x
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> It appears, however, that it was only Lope Panti who was informed by the Sheriff about the need for the relocation survey and he left it to the former, the hiring of a surveyor. The survey was then conducted on July 23, 1996[,] right after the house was demolished and this was without the direct supervision of Velasco. Agunday was

not present. Yet on the basis of the results of the survey, Velasco prepared the Certificate of Turn-Over of Real Estate Property Ownership (Exh. 1-I). Agunday, however, did not sign the certificate. Thereafter, Velasco filed in Court a Sheriff Partial Return of Writ of Execution, indicating, among others, that Agunday "did not recognize" the survey made by Engr. Fernando Asuncion and the area of 13.38 square meters was not officially reconveyed to him (Exh. 1-H).[9]

We cannot, therefore, fault the complainant for refusing to recognize the results of the relocation survey. As earlier discussed, he was not informed by Velasco regarding the need for a relocation survey. Neither did he witness the relocation survey. In addition, the surveyor was hired by Lope, and the survey was done at the latter's instance. These circumstances rendered the integrity of the survey highly suspect.

Velasco also failed to comply with Section 14, Rule 39 of the Rules of Court. Under this Rule, the lifetime of a writ of execution is without limit for as long as the judgment has not been satisfied, but is "returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefore." The officer is mandated to "make a report to the court every thirty (30) days on the proceedings taken thereon until judgment is satisfied in full, or its effectivity expires."[10]

In the present case, the RTC issued a writ of execution and possession on July 9, 1996. Velasco submitted the Sheriff's Partial Return of Writ of Execution on August 23, 1996. However, nothing in the records shows that he made periodic reports to the court, every 30 days, on the proceedings taken thereon, *until the judgment was fully satisfied*.

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[9] Investigation Report, p. 19.

[10] See *Pesongco v. Estoya*, A.M. No. P-06-2131 [formerly OCA I.P.I. No. 05-7-2132-P], March 10, 2006, 484 SCRA 239, 250.

A sheriff's duty in the execution of a writ issued by a court is purely ministerial. When a writ is placed in the hands of a sheriff, it is his duty, in the absence of instructions, to proceed with reasonable celerity and promptness to execute it according to its mandate.[11] Sheriffs must exert every effort to see to it that the final stage in the litigation process — the execution of a judgment — is carried out in order to ensure a speedy and efficient administration of justice. A decision left unexecuted or indefinitely delayed due to their inefficiency renders it useless. Worse, the parties prejudiced by the inaction tend to condemn the entire judicial system for the lapse.[12]

Velasco's failure to implement the writ of execution and possession, as well as to submit the required periodic report, shows his lack of diligence and zeal in the performance of his duties. By his actuations, Velasco displayed conduct short of the stringent standards required of Court employees. We, thus, find him liable for simple neglect of duty, which has been defined as the failure of an employee to give one's attention to a task expected of him, signifying a disregard of duty resulting from carelessness or indifference. Under Section 52(B)(1) of the Uniform Rules on Administrative Cases in the Civil Service, simple neglect of duty is a less grave offense punishable by suspension from office for one (1) month and one (1) day to six (6) months for the first offense, and dismissal for the second offense.[13]

In *Pesongco v. Estoya*,[14] we found the respondent sheriff guilty of neglect of duty and suspended him for one (1) month for his failure to fully implement the writ of execution, and for his failure to make periodic reports to the court. Likewise, in *Reyes v. Cabusao*,[15] we imposed a one-month suspension on

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[11] See *Zarate v. Judge Untalan*, 494 Phil. 208 (2005).

[12] See *Aquino v. Martin*, 458 Phil. 76 (2003).

[13] See *Calo v. Dizon*, A.M. No. P-07-2359 [formerly OCA I.P.I. No. 05-2304-P], August 11, 2008, 561 SCRA 517, 533.

[14] *Supra* note 10.

[15] A.M. No. P-03-1676 [formerly OCA I.P.I. No. 02-1266-P], July 15, 2005, 463 SCRA 433.

the respondent sheriff for his delay in the implementation of the writ of execution.

While the recommended penalty of one-month suspension is reasonable, the same is not practical at this point, considering that Velasco's work would be left unattended by reason of his absence. Instead of suspension, we impose a fine equivalent to his one-month salary, so that he can finally implement the subject writ and perform the other duties of his office.[16]

WHEREFORE, respondent Sheriff Lemuel B. Velasco is found guilty of simple neglect of duty and is *FINED* in an amount equivalent to his salary for one (1) month. He is warned that the commission of the same offense or a similar act in the future will be dealt with more severely. Let a copy of this decision be attached to his personal record.

SO ORDERED.

Carpio Morales, Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

SECOND DIVISION

[A.M. No. P-09-2714. December 6, 2010]
[Formerly OCA I.P.I. No. 08-2707-P]

FERNANDO P. CHAN, *complainant, vs.* **JOVEN T. OLEGARIO, Process Server, Regional Trial Court, Branch 6, Iligan City,** *respondent.*

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[16] See *Mariñas v. Florendo,* A.M. No. P-07-2304, February 12, 2009, 578 SCRA 502.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CONDUCT THEREOF SHOULD BE CIRCUMSCRIBED WITH THE HEAVY BURDEN OF *ONUS* AND MUST AT ALL TIMES BE CHARACTERIZED BY UPRIGHTNESS, PROPRIETY AND DECORUM.— The Court cannot overstress the need for circumspect and proper behavior on the part of court employees. While it may be just for an individual to incur indebtedness unrestrained by the fact that he is a public officer or employee, caution should be taken to prevent the occurrence of dubious circumstances that might inevitably impair the image of the public office. Employees of the court should always keep in mind that the court is regarded by the public with respect. Consequently, the conduct of each court personnel should be circumscribed with the heavy burden of *onus* and must at all times be characterized by, among other things, uprightness, propriety and decorum.

2. ID.; ID.; ID.; THE COURT WILL NOT TOLERATE ACTUATIONS THEREOF WHICH TAINT THE COURT'S IMAGE.— There is no question as to the existence of the debt and its justness as Olegario himself admitted them. Likewise, Olegario's allegation of financial difficulties is not a sufficient excuse for failing to pay his debt to Chan. He claimed that he had no intention of evading his obligation, but we are unconvinced. The fact that it took more than seven years before he attempted to pay his obligation clearly negated his claim. Moreover, we also take note that it was Olegario's pronouncement that he is a court employee which induced Chan to trust him and extend a loan to him. Thus, Olegario's non-payment of his debt for more than 7 years not only tainted his name but the court's image as well. This we will not tolerate.

3. ID.; ID.; ID.; ADMINISTRATIVE CHARGES; THE WITHDRAWAL OF COMPLAINTS CANNOT DIVEST THE COURT OF JURISDICTION NOR STRIP IT OF ITS POWER TO DETERMINE THE VERACITY OF THE CHARGES MADE AND TO DISCIPLINE AN ERRING COURT PERSONNEL.— [T]he fact that Chan, on December 12, 2009, manifested that he is no longer interested to pursue the instant administrative case since he and Olegario have already agreed to settle their dispute amicably would not render this case moot. The withdrawal of complaints cannot divest

the Court of its jurisdiction nor strip it of its power to determine the veracity of the charges made and to discipline, such as the results of its investigation may warrant, an erring respondent. Administrative actions cannot depend on the will or pleasure of the complainant who may, for reasons of his own, condone what may be detestable. Neither can the Court be bound by the unilateral act of the complainant in a matter relating to its disciplinary power. The Court's interest in the affairs of the judiciary is of paramount concern. For sure, public interest is at stake in the conduct and actuations of officials and employees of the judiciary, inasmuch as the various programs and efforts of this Court in improving the delivery of justice to the people should not be frustrated and put to naught by private arrangements between the parties as in the instant case.

4. ID.; ID.; ID.; WILLFUL FAILURE TO PAY JUST DEBT AMOUNTS TO CONDUCT UNBECOMING A COURT EMPLOYEE; PAYMENT OF DEBT WILL NOT EXCULPATE HIM FROM ADMINISTRATIVE LIABILITY.— [T]he fact that Olegario settled his obligation with complainant during the pendency of the present complaint does not exculpate him from administrative liability. While the Court is not a collection agent, the non-payment of a just debt requires the imposition of disciplinary action. Willful failure to pay just debt amounts to conduct unbecoming a court employee.

5. ID.; ID.; ID.; EXPECTED TO BE A PARAGON OF UPRIGHTNESS, FAIRNESS AND HONESTY NOT ONLY IN HIS OFFICIAL CONDUCT BUT ALSO IN HIS PERSONAL ACTUATIONS SO AS TO AVOID BECOMING HIS COURT'S ALBATROSS OF INFAMY.— We cannot overlook the fact that Olegario's unethical conduct has diminished the honor and integrity of his office and stained the image of the judiciary. Certainly, to preserve decency within the judiciary, court personnel must comply with just contractual obligations, act fairly and adhere to high ethical standards. Like all other court personnel, Olegario is expected to be a paragon of uprightness, fairness and honesty not only in all his official conduct but also in his personal actuations, including business and commercial transactions, so as to avoid becoming his court's albatross of infamy. The penalty imposed by the law is not directed at Olegario's private life, but at his actuation unbecoming a public official.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a criminal complaint dated July 30, 2007 filed by Fernando P. Chan (Chan) against respondent Joven Olegario (Olegario), Process Server of the Regional Trial Court (RTC) of Makati City, Branch 6, Iligan City, for *Estafa*. The complaint was filed before the Office of the Ombudsman, however, Olegario being a court employee, the instant complaint was forwarded to the Office of the Court Administrator (OCA) for administrative disciplinary action.

The antecedent facts of the case, as culled from the records, are as follows:

Complainant Chan is the owner/proprietor of XRG Hardware and Construction Supply located at Tibanga Highway, Iligan City.

On February 3, 2001, Olegario went to Chan's hardware to obtain construction materials which will be utilized for the construction of his house. He introduced himself to Chan as a court process server at the RTC of Iligan, Branch 6, and showed certain documents as proof. Olegario explained then to Chan that he was short of funds for the construction of his house and that he had applied for a loan at GSIS. He then asked Chan for construction materials and promised that he will pay his loan as soon as he received the proceeds of his GSIS loan as well as an interest of 20% per annum.

Banking on the words of Olegario and his being a government employee, Chan agreed to his request and delivered to him construction materials, to wit: (1) 10 bags of cement; (2) 10 pcs. of Plywood; and (3) 10 pcs. of corrugated G.I. sheet. The total cost of the construction materials amounted to Four Thousand Five Hundred Ten Pesos (₱4,510.00).

Three months after, Chan demanded payment from Olegario, but the latter told him that his loan has yet to be released. He promised though that he will pay his obligation with interest. His promise to pay his obligation went on and on.

Chan averred that for seven years, Olegario has not paid him even a single centavo.

On June 15, 2007, Chan sent another demand letter to Olegario to pay his obligation. Again, Olegario merely promised him that he will pay his obligation within 15 days, but he never did.

On October 16, 2007, the Court directed Olegario to submit his comment on the instant complaint against him.

In his Comment dated March 4, 2008, Olegario denied that he had been evading his obligation to pay his debts to Chan. He alleged that his wife died on February 6, 2008 after a month of fighting a massive stroke, thus, he had to attend to the needs of his wife.

Olegario likewise manifested that he attempted to tender partial payment to Chan, but the latter refused it. He asked the Court to give him more time to settle his obligation to Chan.

Subsequently, in its Memorandum dated September 23, 2009, the OCA recommended that the instant complaint be redocketed as a regular administrative complaint. It further found Olegario guilty of willful failure to pay just debt and conduct unbecoming of a court employee, thus, also recommended the imposition of a fine in the amount of ₱5,000.00.

We agree with the findings and recommendation of the OCA.

The Court cannot overstress the need for circumspect and proper behavior on the part of court employees. While it may be just for an individual to incur indebtedness unrestrained by the fact that he is a public officer or employee, caution should be taken to prevent the occurrence of dubious circumstances that might inevitably impair the image of the public office. Employees of the court should always keep in mind that the court is regarded by the public with respect. Consequently, the conduct of each court personnel should be circumscribed with the heavy burden of *onus* and must at all times be characterized by, among other things, uprightness, propriety and decorum.[1]

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[1] *Tan v. Hernando*, A.M. No. P-08-2501, August 28, 2009, 597 SCRA 380.

There is no question as to the existence of the debt and its justness as Olegario himself admitted them. Likewise, Olegario's allegation of financial difficulties is not a sufficient excuse for failing to pay his debt to Chan. He claimed that he had no intention of evading his obligation, but we are unconvinced. The fact that it took more than seven years before he attempted to pay his obligation clearly negated his claim.

Moreover, we also take note that it was Olegario's pronouncement that he is a court employee which induced Chan to trust him and extend a loan to him. Thus, Olegario's non-payment of his debt for more than 7 years not only tainted his name but the court's image as well. This we will not tolerate.

Furthermore, the fact that Chan, on December 12, 2009, manifested that he is no longer interested to pursue the instant administrative case since he and Olegario have already agreed to settle their dispute amicably would not render this case moot. The withdrawal of complaints cannot divest the Court of its jurisdiction nor strip it of its power to determine the veracity of the charges made and to discipline, such as the results of its investigation may warrant, an erring respondent. Administrative actions cannot depend on the will or pleasure of the complainant who may, for reasons of his own, condone what may be detestable. Neither can the Court be bound by the unilateral act of the complainant in a matter relating to its disciplinary power. The Court's interest in the affairs of the judiciary is of paramount concern. For sure, public interest is at stake in the conduct and actuations of officials and employees of the judiciary, inasmuch as the various programs and efforts of this Court in improving the delivery of justice to the people should not be frustrated and put to naught by private arrangements between the parties as in the instant case.[2]

Likewise, the fact that Olegario settled his obligation with complainant during the pendency of the present complaint does not exculpate him from administrative liability. While the Court

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[2] *Bayaca v. Ramos*, A.M. No. MTJ-07-1676, January 29, 2009, 577 SCRA 93, 102.

is not a collection agent, the non-payment of a debt requires the imposition of disciplinary action. Willful failure to pay just debt amounts to conduct unbecoming a court employee.[3]

We cannot overlook the fact that Olegario's unethical conduct has diminished the honor and integrity of his office and stained the image of the judiciary. Certainly, to preserve decency within the judiciary, court personnel must comply with just contractual obligations, act fairly and adhere to high ethical standards. Like all other court personnel, Olegario is expected to be a paragon of uprightness, fairness and honesty not only in all his official conduct but also in his personal actuations, including business and commercial transactions, so as to avoid becoming his court's albatross of infamy.[4] The penalty imposed by the law is not directed at Olegario's private life, but at his actuation unbecoming a public official.[5]

WHEREFORE, the Court finds **JOVEN T. OLEGARIO**, Process Server, Regional Trial Court of Iligan City, Branch 6, *GUILTY of CONDUCT UNBECOMING OF COURT EMPLOYEE* for which he is *FINED* in the amount of *₱5,000.00* with *STERN WARNING* that a repetition of the same or similar acts shall be dealt with more severely.

SO ORDERED.

Carpio (Chairperson), Nachura, Abad, and *Mendoza, JJ.*, concur.

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[3] See *Rosales v. Monesit, Sr.*, A.M. No. P-08-2447, April 10, 2008, 551 SCRA 80, 85.

[4] *Tan v. Sermonia,* A.M. No. P-08-2436, August 4, 2009, 595 SCRA 1, 9-10.

[5] See *Tan v. Sermonia, supra,* at 10.

THIRD DIVISION

[A.M. No. RTJ-06-2007. December 6, 2010]
(Formerly A.M. OCA IPI No. 05-2368-RTJ)

CARMEN EDAÑO, *complainant, vs.* **Judge FATIMA G. ASDALA, Regional Trial Court, Branch 87, Quezon City,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; JUDICIARY; JUDGES; REQUIRED TO DECIDE ALL CASES WITHIN THREE (3) MONTHS FROM DATE OF SUBMISSION; SUSTAINED. —** Section 15, Article VIII of the Constitution requires judges to decide all cases within three (3) months from the date of submission. This Constitutional policy is reiterated in Rule 1.02, Canon 1 of the Code of Judicial Conduct which states that a judge should administer justice impartially and *without delay*; and Rule 3.05, Canon 3 of the same Code provides that a judge shall dispose of the court's business *promptly* and decide cases *within the required periods.* In *Office of the Court Administrator v. Garcia-Blanco,* the Court held that the 90-day period is mandatory. Failure to decide cases within the reglementary period constitutes a ground for administrative liability except when there are valid reasons for the delay. We explained the *raison d'etre* behind the rule on mandatory compliance with the constitutionally prescribed periods in *Office of the Court Administrator v. Reyes:* The honor and integrity of the judiciary is measured not only by the fairness and correctness of the decisions rendered, but also by the efficiency with which disputes are resolved. Thus, judges must perform their official duties with utmost diligence if public confidence in the judiciary is to be preserved. There is no excuse for mediocrity in the performance of judicial functions. The position of judge exacts nothing less than faithful observance of the law and the Constitution in the discharge of official duties.

2. **REMEDIAL LAW; DISCIPLINE OF JUDGES; UNDUE DELAY IN RENDERING DECISION; IMPOSABLE PENALTY. —** In the present case, Civil Case No. Q-97-30576

had been submitted for decision on December 9, 2004; the decision was, therefore, due on March 9, 2005. The records do not show that the respondent judge asked for an extension to decide this case. Thus, when she decided the case on March 22, 2005, the 90-day reglementary period had already lapsed. The respondent judge's explanation that the complainant was not prejudiced by the delay is immaterial, as it is her constitutional duty to decide the case within three months from the date of submission. Under Rule 140, Section 9(1) of the Rules of Court, as amended by Administrative Matter No. 01-8-10-SC, the respondent judge's undue delay in rendering a decision is classified as a less serious offense. It is punishable by suspension from office without salary and other benefits for not less than one month nor more than three months or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. The OCA's recommendation of ₱10,000.00 fine is, therefore, in order. We point out that the respondent judge, in *Edaño v. Asdala*, had been dismissed from the service, with forfeiture of all salaries, benefits and leave credits to which she may be entitled. The Court, in its resolution of September 11, 2007, modified the dispositive portion of this decision and exempted from forfeiture her accrued leave credits. The Court, in another Resolution dated January 15, 2008, directed the Financial Management Office to release and pay the money value of the accrued leave credits of Judge Fatima G. Asdala, subject to the retention of ₱80,000.00. In light of these considerations, we thus deduct the ₱10,000.00 fine, imposed in this case, from the ₱80,000.00 which this Court withheld, pursuant to our January 15, 2008 Resolution.

3. ID.; ID.; ACTS OF JUDGES PERTAINING TO HIS JUDICIAL FUNCTIONS ARE NOT SUBJECT TO DISCIPLINARY ACTION; EXPLAINED. — The Court agrees with the OCA that the complainant's charges of misconduct and rendering an erroneous decision have no leg to stand on. The respondent judge's dismissal of the civil case for Support and her denial of the notice of appeal were done in the discharge of her judicial functions. Time and again, we have ruled that the acts of a judge, pertaining to his judicial functions, are not subject to disciplinary action, unless they are tainted with fraud, dishonesty, corruption or bad faith. As we explained in *Jabon v. Usman*: It must be stressed that an administrative complaint is not an

> appropriate remedy where judicial recourse is still available, such as a motion for reconsideration, an appeal, or a petition for *certiorari*, unless the assailed order or decision is tainted with fraud, malice or dishonesty. The remedy of the aggrieved party is to elevate the assailed decision or order to the higher court for review and correction. Thus, disciplinary proceedings and criminal actions against magistrates do not complement, supplement or substitute judicial remedies, whether ordinary or extraordinary. An inquiry into their civil, criminal and/or administrative liability may be made only after the available remedies have been exhausted and decided with finality. In fine, only judicial errors tainted with fraud, dishonesty, gross ignorance, bad faith, or deliberate intent to do an injustice will be administratively sanctioned. To hold, otherwise, would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.

D E C I S I O N

BRION, *J.*:

We resolve in this Decision the administrative complaint for violation of the Code of Judicial Ethics, misconduct, rendering an erroneous decision, and rendering a decision beyond the 90-day reglementary period filed by Carmen Edaño (*complainant*) against Judge Fatima G. Asdala (*respondent judge*).

In her letter-complaint,[1] the complainant alleged that she was the plaintiff in a civil case for Support with prayer for Support *Pendente Lite* (Civil Case No. Q-97-30576), entitled "*Carlo Edaño and Jay-ar Edaño, represented by Carmen Edano v. George F. Butler,*" pending before the Regional Trial Court, Branch 87, Quezon City, presided over by the respondent judge.

The complainant claimed that the respondent judge made it appear that Civil Case No. Q-97-30576 was decided on March 22, 2005, although the records show that she (respondent judge) still ruled on several motions relating to this case even after

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[1] *Rollo,* pp. 2-9.

that date. The complainant further alleged that the respondent judge erred in denying her notice of appeal.

The Office of the Court Administrator (*OCA*) required the respondent judge to comment on the complaint. In her comment,[2] the respondent judge maintained that she had rendered the decision on March 22, 2005, although it was mailed on a later date. Even assuming that there was delay in rendering the decision, the delay was not deliberate. She added that the complainant was not prejudiced by the delay as she continuously received support *pendente lite* from the defendant.

The respondent judge likewise explained that the orders she issued after March 22, 2005 did not touch on the merits of the case; they were orders directing the release of money deposited by the defendant as support *pendente lite*. According to her, she denied the complainant's notice of appeal because Section 1, Rule 41 of the Revised Rules of Court provides that no appeal may be taken from an order dismissing an action without prejudice. Finally, she explained that her dismissal of the subject civil case and the denial of the notice of appeal are not the proper subjects of an administrative case as they are acts pertaining to her judicial functions.

In her reply,[3] complainant maintained that the respondent judge violated the 90-day reglementary period for rendering decisions. She also revealed that the respondent judge made her sign a complaint against a Public Attorneys Office lawyer, to force the said lawyer to stay in her (respondent judge's) sala.

The OCA, in its Report[4] dated April 18, 2006, recommended that the respondent judge be fined in the amount of ₱10,000.00 for undue delay in rendering a decision, with a stern warning that a commission of similar acts in the future will be dealt with more severely.

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[2] *Id.* at 34-37.

[3] *Id.* at 41-42.

[4] *Id.* at 46-50.

THE COURT'S RULING

We agree with the finding of the OCA that the respondent judge is guilty of undue delay in rendering a decision. Section 15, Article VIII of the Constitution requires judges to decide all cases within three (3) months from the date of submission. This Constitutional policy is reiterated in Rule 1.02, Canon 1 of the Code of Judicial Conduct which states that a judge should administer justice impartially and *without delay*; and Rule 3.05, Canon 3 of the same Code provides that a judge shall dispose of the court's business *promptly* and decide cases *within the required periods*.

In *Office of the Court Administrator v. Garcia-Blanco*,[5] the Court held that the 90-day period is mandatory. Failure to decide cases within the reglementary period constitutes a ground for administrative liability except when there are valid reasons for the delay. We explained the *raison d'etre* behind the rule on mandatory compliance with the constitutionally prescribed periods in *Office of the Court Administrator v. Reyes*:[6]

> The honor and integrity of the judiciary is measured not only by the fairness and correctness of the decisions rendered, but also by the efficiency with which disputes are resolved. Thus, judges must perform their official duties with utmost diligence if public confidence in the judiciary is to be preserved. There is no excuse for mediocrity in the performance of judicial functions. The position of judge exacts nothing less than faithful observance of the law and the Constitution in the discharge of official duties.

In the present case, Civil Case No. Q-97-30576 had been submitted for decision on December 9, 2004; the decision was, therefore, due on March 9, 2005. The records do not show that the respondent judge asked for an extension to decide this

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[5] A.M. No. RTJ-05-1941 [formerly OCA I.P.I. No. 05-6-373-RTC], April 25, 2006, 488 SCRA 109, 120.

[6] A.M. No. RTJ-05-1892 [formerly A.M. No. 04-9-494-RTC], January 24, 2008, 542 SCRA 330, 338, citing *Petallar v. Pullos*, A.M. No. MTJ-03-1484, January 15, 2004, 419 SCRA 434.

case. Thus, when she decided the case on March 22, 2005, the 90-day reglementary period had already lapsed. The respondent judge's explanation that the complainant was not prejudiced by the delay is immaterial, as it is her constitutional duty to decide the case within three months from the date of submission.

Under Rule 140, Section 9(1) of the Rules of Court,[7] as amended by Administrative Matter No. 01-8-10-SC,[8] the respondent judge's undue delay in rendering a decision is classified as a less serious offense. It is punishable by suspension from office without salary and other benefits for not less than one month nor more than three months or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. The OCA's recommendation of ₱10,000.00 fine is, therefore, in order.

We point out that the respondent judge, in *Edaño v. Asdala*,[9] had been dismissed from the service, with forfeiture of all salaries, benefits and leave credits to which she may be entitled. The Court, in its resolution of September 11, 2007, modified the dispositive portion of this decision and exempted from forfeiture her accrued leave credits. The Court, in another Resolution dated January 15, 2008, directed the Financial Management Office to release and pay the money value of the accrued leave credits of Judge Fatima G. Asdala, subject to the retention of ₱80,000.00. In light of these considerations, we thus deduct the ₱10,000.00 fine, imposed in this case, from the ₱80,000.00 which this Court withheld, pursuant to our January 15, 2008 Resolution.

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[7] SEC. 9. *Less Serious Charges*. Less Serious Charges include:

1. Undue delay in rendering a decision or order, or in transmitting the records of a case[.]

[8] Re: Proposed Amendment to Rule 140 of the Rules of Court.

[9] A.M. No. RTJ-06-1974 [formerly OCA I.P.I. No. 05-2226-RTJ], July 26, 2007, 528 SCRA 212.

Other Charges

The Court agrees with the OCA that the complainant's charges of misconduct and rendering an erroneous decision have no leg to stand on. The respondent judge's dismissal of the civil case for Support and her denial of the notice of appeal were done in the discharge of her judicial functions. Time and again, we have ruled that the acts of a judge, pertaining to his judicial functions, are not subject to disciplinary action, unless they are tainted with fraud, dishonesty, corruption or bad faith.[10] As we explained in *Jabon v. Usman*:[11]

> It must be stressed that an administrative complaint is not an appropriate remedy where judicial recourse is still available, such as a motion for reconsideration, an appeal, or a petition for *certiorari*, unless the assailed order or decision is tainted with fraud, malice, or dishonesty. The remedy of the aggrieved party is to elevate the assailed decision or order to the higher court for review and correction. Thus, disciplinary proceedings and criminal actions against magistrates do not complement, supplement or substitute judicial remedies, whether ordinary or extraordinary. An inquiry into their civil, criminal and/or administrative liability may be made only after the available remedies have been exhausted and decided with finality. In fine, only judicial errors tainted with fraud, dishonesty, gross ignorance, bad faith, or deliberate intent to do an injustice will be administratively sanctioned. To hold, otherwise, would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.

WHEREFORE, premises considered, Judge Fatima G. Asdala is hereby found *GUILTY* of undue delay in rendering a decision. Accordingly, she is *FINED* Ten Thousand Pesos (₱10,000.00), to be deducted from the Eighty Thousand Pesos (₱80,000.00) which the Court withheld pursuant to its January 15, 2008 Resolution.

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[10] *Mariano v. Garfin*, A.M. No. RTJ-06-2024, [formerly OCA I.P.I. No. 06-2410-RTJ], October 17, 2006, 504 SCRA 605, 614.

[11] A.M. No. RTJ-02-1713 [formerly A.M. OCA I.P.I. No. 01-1257-RTJ], October 25, 2005, 474 SCRA 36, 61.

SO ORDERED.

Carpio Morales, Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

THIRD DIVISION

[G.R. No. 162943. December 6, 2010]

EMPLOYEES UNION OF BAYER PHILS., FFW and JUANITO S. FACUNDO, in his capacity as President, *petitioners, vs.* **BAYER PHILIPPINES, INC., DIETER J. LONISHEN (President), ASUNCION AMISTOSO (HRD Manager), AVELINA REMIGIO and ANASTACIA VILLAREAL,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; LABOR RELATIONS; INTRA-UNION DISPUTE; DEFINED; ENUMERATIONS; CASE AT BAR. — An intra-union dispute refers to any conflict between and among union members, including grievances arising from any violation of the rights and conditions of membership, violation of or disagreement over any provision of the union's constitution and by-laws, or disputes arising from chartering or disaffiliation of the union. Sections 1 and 2, Rule XI of Department Order No. 40-03, Series of 2003 of the DOLE enumerate the following circumstances as inter/intra-union disputes x x x. It is clear from the foregoing that the issues raised by petitioners do not fall under any of the aforementioned circumstances constituting an intra-union dispute. More importantly, the petitioners do not seek a determination of whether it is the Facundo group (EUBP) or the Remigio group (REUBP) which is the true set of union officers. Instead, the issue raised pertained only to the validity of the acts of management in light of the fact that it still has an existing CBA with EUBP.

2. ID.; ID.; ID.; COLLECTIVE BARGAINING AGREEMENT (CBA); AN EMPLOYER SHOULD NOT BE ALLOWED TO RESCIND UNILATERALLY ITS CBA; *RATIONALE*. – It must be remembered that a CBA is entered into in order to foster stability and mutual cooperation between labor and capital. An employer should not be allowed to rescind unilaterally its CBA with the duly certified bargaining agent it had previously contracted with, and decide to bargain anew with a different group if there is no legitimate reason for doing so and without first following the proper procedure. If such behavior would be tolerated, bargaining and negotiations between the employer and the union will never be truthful and meaningful, and no CBA forged after arduous negotiations will ever be honored or be relied upon. Article 253 of the Labor Code, as amended, plainly provides: ART. 253. *Duty to bargain collectively when there exists a collective bargaining agreement.* — **Where there is a collective bargaining agreement, the duty to bargain collectively shall also mean that neither party shall terminate or modify such agreement during its lifetime.** However, either party can serve a written notice to terminate or modify the agreement at least sixty (60) days prior to its expiration date. It shall be the duty of both parties to keep the *status quo* and to continue in full force and effect the terms and conditions of the existing agreement during the 60-day period and/or until a new agreement is reached by the parties. This is the reason why it is axiomatic in labor relations that a CBA entered into by a legitimate labor organization that has been duly certified as the exclusive bargaining representative and the employer becomes the law between them. Additionally, in the Certificate of Registration issued by the DOLE, it is specified that the registered CBA serves as the covenant between the parties and has the force and effect of law between them during the period of its duration. Compliance with the terms and conditions of the CBA is mandated by express policy of the law primarily to afford protection to labor and to promote industrial peace. Thus, when a valid and binding CBA had been entered into by the workers and the employer, the latter is behooved to observe the terms and conditions thereof bearing on union dues and representation. If the employer grossly violates its CBA with the duly recognized union, the former may be held administratively and criminally liable for unfair labor practice.

3. ID.; ID.; ID.; NATIONAL LABOR RELATIONS COMMISSION (NLRC); APPELLATE JURISDICTION OVER COMPLAINT AGAINST UNFAIR LABOR PRACTICE (ULP); EXPLAINED. — Indeed, in *Silva v. National Labor Relations Commission,* we explained the correlations of Article 248 (1) and Article 261 of the Labor Code to mean that for a ULP case to be cognizable by the Labor Arbiter, and for the NLRC to exercise appellate jurisdiction thereon, the allegations in the complaint must show *prima facie* the concurrence of two things, namely: (1) gross violation of the CBA; and (2) the violation pertains to the economic provisions of the CBA. This pronouncement in *Silva*, however, should not be construed to apply to violations of the CBA which can be considered as gross violations *per se*, such as utter disregard of the very existence of the CBA itself, similar to what happened in this case. When an employer proceeds to negotiate with a splinter union despite the existence of its valid CBA with the duly certified and exclusive bargaining agent, the former indubitably abandons its recognition of the latter and terminates the entire CBA.

4. ID.; ID.; ID.; LEGITIMATE LABOR ORGANIZATION; ABANDONMENT OF CLAIMS; MUST BE EXPRESSLY WAIVED OR COMPROMISED; SUSTAINED. — A legitimate labor organization cannot be construed to have abandoned its pending claim against the management/employer by returning to the negotiating table to fulfill its duty to represent the interest of its members, except when the pending claim has been expressly waived or compromised in its subsequent negotiations with the management. To hold otherwise would be tantamount to subjecting industrial peace to the precondition that previous claims that labor may have against capital must first be waived or abandoned before negotiations between them may resume. Undoubtedly, this would be against public policy of affording protection to labor and will encourage scheming employers to commit unlawful acts without fear of being sanctioned in the future.

5. CIVIL LAW; DAMAGES; MORAL DAMAGES; AS A GENERAL RULE, A CORPORATION CANNOT SUFFER NOR BE ENTITLED TO MORAL DAMAGES. — On the matter of damages prayed for by the petitioners, we have held that as a general rule, a corporation cannot suffer nor be entitled

to moral damages. A corporation, and by analogy a labor organization, being an artificial person and having existence only in legal contemplation, has no feelings, no emotions, no senses; therefore, it cannot experience physical suffering and mental anguish. Mental suffering can be experienced only by one having a nervous system and it flows from real ills, sorrows, and griefs of life — all of which cannot be suffered by an artificial, juridical person. *A fortiori*, the prayer for exemplary damages must also be denied. Nevertheless, we find it in order to award (1) nominal damages in the amount of ₱250,000.00 on the basis of our ruling in *De La Salle University v. De La Salle University Employees Association (DLSUEA-NAFTEU)* and Article 2221, and (2) attorney's fees equivalent to 10% of the monetary award.

APPEARANCES OF COUNSEL

Jose Sonny G. Matula for petitioners.

Angara Abello Concepcion Regala & Cruz for Bayer Phils., Inc.

Rafael Vicente P. Umali for Avelina Remigio & Anastacia Villareal.

D E C I S I O N

VILLARAMA, JR., *J.*:

This petition for review on *certiorari* assails the Decision[1] dated December 15, 2003 and Resolution[2] dated March 23, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 73813.

Petitioner Employees Union of Bayer Philippines[3] (EUBP) is the exclusive bargaining agent of all rank-and-file employees of Bayer Philippines (Bayer), and is an affiliate of the Federation of Free Workers (FFW). In 1997, EUBP, headed by its president

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[1] *Rollo*, pp. 221-237. Penned by Associate Justice Mercedes Gozo-Dadole, with Associate Justices Eugenio S. Labitoria and Rosmari D. Carandang, concurring.

[2] *Id.* at 239.

[3] With Registration No. NCR-10-165-88. See CA *rollo*, Vol. I, p. 183.

Juanito S. Facundo (Facundo), negotiated with Bayer for the signing of a collective bargaining agreement (CBA). During the negotiations, EUBP rejected Bayer's 9.9% wage-increase proposal resulting in a bargaining deadlock. Subsequently, EUBP staged a strike, prompting the Secretary of the Department of Labor and Employment (DOLE) to assume jurisdiction over the dispute.

In November 1997, pending the resolution of the dispute, respondent Avelina Remigio (Remigio) and 27 other union members, without any authority from their union leaders, accepted Bayer's wage-increase proposal. EUBP's grievance committee questioned Remigio's action and reprimanded Remigio and her allies. On January 7, 1998, the DOLE Secretary issued an arbitral award ordering EUBP and Bayer to execute a CBA retroactive to January 1, 1997 and to be made effective until December 31, 2001. The said CBA[4] was registered on July 8, 1998 with the Industrial Relations Division of the DOLE-National Capital Region (NCR).[5]

Meanwhile, the rift between Facundo's leadership and Remigio's group broadened. On August 3, 1998, barely six months from the signing of the new CBA, during a company-sponsored seminar,[6] Remigio solicited signatures from union members in support of a resolution containing the decision of the signatories to: (1) disaffiliate from FFW, (2) rename the union as Reformed Employees Union of Bayer Philippines (REUBP), (3) adopt a new constitution and by-laws for the union, (4) abolish all existing officer positions in the union and elect a new set of interim officers, and (5) authorize REUBP to administer the CBA between EUBP and Bayer.[7] The said resolution was signed by 147 of the 257 local union members. A subsequent resolution was also issued affirming the first resolution.[8]

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[4] *Rollo*, pp. 31-47.

[5] *Id.* at 48.

[6] *Id.* at 71, 136.

[7] *Id.* at 52.

[8] *Id.*

A tug-of-war then ensued between the two rival groups, with both seeking recognition from Bayer and demanding remittance of the union dues collected from its rank-and-file members. On September 8, 1998, Remigio's splinter group wrote Facundo, FFW and Bayer informing them of the decision of the majority of the union members to disaffiliate from FFW.[9] This was followed by another letter informing Facundo, FFW and Bayer that an interim set of REUBP executive officers and board of directors had been appointed, and demanding the remittance of all union dues to REUBP. Remigio also asked Bayer to desist from further transacting with EUBP. Facundo, meanwhile, sent similar requests to Bayer[10] requesting for the remittance of union dues in favor of EUBP and accusing the company of interfering with purely union matters.[11] Bayer responded by deciding not to deal with either of the two groups, and by placing the union dues collected in a trust account until the conflict between the two groups is resolved.[12]

On September 15, 1998, EUBP filed a complaint for unfair labor practice (first ULP complaint) against Bayer for non-remittance of union dues. The case was docketed as NLRC-NCR-Case No. 00-09-07564-98.[13]

EUBP later sent a letter dated November 5, 1998 to Bayer asking for a grievance conference.[14] The meeting was conducted by the management on November 11, 1998, with all REUBP officers including their lawyers present. Facundo did not attend the meeting, but sent two EUBP officers to inform REUBP and the management that a preventive mediation conference between the two groups has been scheduled on November 12,

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[9] *Id.* at 517-529.

[10] *Id.* at 551-553 and 556.

[11] *Id.* at 556.

[12] Letter dated October 30, 1998. *Id.* at 557-558.

[13] *Id.* at 531-534.

[14] *Id.* at 492.

1998 before the National Conciliation and Mediation Board (NCMB).[15]

Apparently, the two groups failed to settle their issues as Facundo again sent respondent Dieter J. Lonishen two more letters, dated January 14, 1999[16] and September 2, 1999,[17] asking for a grievance meeting with the management to discuss the failure of the latter to comply with the terms of their CBA. Both requests remained unheeded.

On February 9, 1999, while the first ULP case was still pending and despite EUBP's repeated request for a grievance conference, Bayer decided to turn over the collected union dues amounting to ₱254,857.15 to respondent Anastacia Villareal, Treasurer of REUBP.

Aggrieved by the said development, EUBP lodged a complaint[18] on March 4, 1999 against Remigio's group before the Industrial Relations Division of the DOLE praying for their expulsion from EUBP for commission of "acts that threaten the life of the union."

On June 18, 1999, Labor Arbiter Jovencio Ll. Mayor, Jr. dismissed the first ULP complaint for lack of jurisdiction.[19] The Arbiter explained that the root cause for Bayer's failure to remit the collected union dues can be traced to the intra-union conflict between EUBP and Remigio's group[20] and that the charges imputed against Bayer should have been submitted instead to voluntary arbitration.[21] EUBP did not appeal the said decision.[22]

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[15] *Id.* at 492 and 560.

[16] *Id.* at 68.

[17] *Id.* at 69-73.

[18] Docketed as Case No. OD-9903-004-IRD. See *rollo*, pp. 563-568.

[19] *Rollo*, pp. 535-549.

[20] *Id.* at 543-544.

[21] *Id.* at 546-548.

[22] *Id.* at 490.

On December 14, 1999, petitioners filed a second ULP complaint against herein respondents docketed as NLRC-RAB-IV Case No. 12-11813-99-L. Three days later, petitioners amended the complaint charging the respondents with unfair labor practice committed by organizing a company union, gross violation of the CBA and violation of their duty to bargain.[23] Petitioners complained that Bayer refused to remit the collected union dues to EUBP despite several demands sent to the management.[24] They also alleged that notwithstanding the requests sent to Bayer for a renegotiation of the last two years of the 1997-2001 CBA between EUBP and Bayer, the latter opted to negotiate instead with Remigio's group.[25]

On even date, REUBP and Bayer agreed to sign a new CBA. Remigio immediately informed her allies of the management's decision.[26]

In response, petitioners immediately filed an urgent motion for the issuance of a restraining order/injunction[27] before the National Labor Relations Commission (NLRC) and the Labor Arbiter against respondents. Petitioners asserted their authority as the exclusive bargaining representative of all rank-and-file employees of Bayer and asked that a temporary restraining order be issued against Remigio's group and Bayer to prevent the employees from ratifying the new CBA. Later, petitioners filed a second amended complaint[28] to include in its complaint the issue of gross violation of the CBA for violation of the contract bar rule following Bayer's decision to negotiate and sign a new CBA with Remigio's group.

Meanwhile, on January 26, 2000, the Regional Director of the Industrial Relations Division of DOLE issued a decision

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[23] *Id.* at 571.

[24] *Id.*

[25] *Id.*

[26] *Id.* at 574.

[27] Dated January 21, 2000. *Id.* at 575-584.

[28] Dated March 8, 2000. *Id.* at 81-87.

dismissing the issue on expulsion filed by EUBP against Remigio and her allies for failure to exhaust reliefs within the union and ordering the conduct of a referendum to determine which of the two groups should be recognized as union officers.[29] EUBP seasonably appealed the said decision to the Bureau of Labor Relations (BLR).[30] On June 16, 2000, the BLR reversed the Regional Director's ruling and ordered the management of Bayer to respect the authority of the duly-elected officers of EUBP in the administration of the prevailing CBA.[31]

Unfortunately, the said BLR ruling came late since Bayer had already signed a new CBA[32] with REUBP on February 21, 2000. The said CBA was eventually ratified by majority of the bargaining unit.[33]

On June 2, 2000, Labor Arbiter Waldo Emerson R. Gan dismissed EUBP's second ULP complaint for lack of jurisdiction.[34] The Labor Arbiter explained the dismissal as follows:

> All told, were it not for the fact that there were two (2) [groups] of employees, the Union led by its President Juanito Facundo and the members who decided to disaffiliate led by Ms. Avelina Remigio, claiming to be the rightful representative of the rank and file employees, the Company would not have acted the way it did and the Union would not have filed the instant case.
>
> Clearly then, as the case involves intra-union disputes, this Office is bereft of any jurisdiction pursuant to Article 226 of the Labor Code, as amended, which provides pertinently in part, thus:
>
> "Bureau of Labor Relations — The Bureau of Labor Relations and the Labor Relations Divisions in the regional offices of

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[29] *Id.* at 178.

[30] The appeal was docketed as BLR-A-TR-13-17-2-00. See *rollo*, p. 176.

[31] *Rollo*, p. 181.

[32] *Id.* at 585-614.

[33] *Id.* at 495.

[34] *Id.* at 615-624.

> the Department of Labor and Employment shall have original and exclusive authority to act, at their own initiative or upon request of either or both parties, on all inter-union and intra-union conflicts, and all disputes, grievances or problems arising from or affecting labor-management relations in all workplaces whether agricultural or non-agricultural, except those arising from the implementation or interpretation of collective bargaining agreements which shall be the subject of grievance procedure and/or voluntary arbitration."

Specifically, with respect to the union dues, the authority is the case of *Cebu Seamen's Association[,] Inc. vs. Ferrer-Calleja*, (212 SCRA 51), where the Supreme Court held that when the issue calls for the determination of which between the two groups within a union is entitled to the union dues, the same cannot be taken cognizance of by the NLRC.

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WHEREFORE, premises considered, the instant complaint is hereby DISMISSED on the ground of lack of jurisdiction.

SO ORDERED.[35]

On June 28, 2000, the NLRC resolved to dismiss[36] petitioners' motion for a restraining order and/or injunction stating that the subject matter involved an intra-union dispute, over which the said Commission has no jurisdiction.[37]

Aggrieved by the Labor Arbiter's decision to dismiss the second ULP complaint, petitioners appealed the said decision, but the NLRC denied the appeal.[38] EUBP's motion for reconsideration was likewise denied.[39]

Thus, petitioners filed a Rule 65 petition to the CA. On December 15, 2003, the CA sustained both the Labor Arbiter and the NLRC's rulings. The appellate court explained,

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[35] *Id.* at 623-624.

[36] *Id.* at 626-634.

[37] *Id.* at 633.

[38] NLRC Decision dated September 27, 2001. *Id.* at 185-215.

[39] NLRC Order dated June 21, 2002. *Id.* at 217-219.

A cursory reading of the three pleadings, to wit: the Complaint (Vol. I, *Rollo*, p[p]. 166-167); the *Amended Complaint* (Vol. I, *Rollo*[,] pp. 168-172) and the *Second Amended Complaint* dated March 8, 2000 (Vol. II, *Rollo*, pp. 219-225) will readily show that the instant case was brought about by the action of the Group of REM[I]GIO to disaffiliate from FFW and to organized (sic) REUBP under the tutelage of REM[I]GIO and VILLAREAL. At first glance of the case at bar, it involves purely an (sic) inter-union and intra-union conflicts or disputes between EUBP-FFW and REUBP which issue should have been resolved by the Bureau of Labor Relations under Article 226 of the Labor Code. However, since no less than petitioners who admitted that respondents committed gross violations of the CBA, then the BLR is divested of jurisdiction over the case and the issue should have been referred to the Grievance Machinery and Voluntary Arbitrator and not to the Labor Arbiter as what petitioners did in the case at bar. x x x

x x x x x x x x x

Furthermore, the CBA entered between BAYER and EUBP-FFW [has] a life span of only five years and after the said period, the employees have all the right to change their bargaining unit who will represent them. If there exist[s] two opposing unions in the same company, the remedy is not to declare that such act is considered unfair labor practice but rather they should conduct a certification election provided [that] it should be conducted within 60 days of the so[-]called freedom period before the expiration of the CBA.

WHEREFORE, premises considered, this Petition is **DENIED** and the assailed Decision dated September 27, 2001 as well as the Order dated June 21, 2002, denying the motion for reconsideration, by the National Labor Relations Commission, First Division, in **NLRC Case No. RAB-IV-12-11813-99-L**, are hereby **AFFIRMED** *in toto*. Costs against petitioners.

SO ORDERED.[40]

Undaunted, petitioners filed this Rule 45 petition before this Court. Initially, the said petition was denied for having been filed out of time and for failure to comply with the requirements provided in the 1997 Rules of Civil Procedure, as amended.[41]

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[40] *Id.* at 234-236.

[41] *Id.* at 469-470.

Upon petitioners' motion, however, we decided to reinstate their appeal.

The following are the issues raised by petitioners, to wit:

I. WHETHER OR NOT THE HONORABLE COURT OF APPEALS, IN ARRIVING AT THE DECISION PROMULGATED ON 15 DECEMBER 2003 AND RESOLUTION PROMULGATED ON 23 MARCH 2004, DECIDED THE CASE IN ACCORDANCE WITH LAW AND JURISPRUDENCE; AND

II. WHETHER OR NOT THE HONORABLE COURT OF APPEALS, IN ARRIVING AT THE DECISION PROMULGATED ON 15 DECEMBER 2003 AND RESOLUTION PROMULGATED ON 23 MARCH 2004, GRAVELY ABUSE[D] ITS DISCRETION IN ITS FINDINGS AND CONCLUSION THAT:

> THE ACTS OF ABETTING OR ASSISTING IN THE CREATION OF ANOTHER UNION, NEGOTIATING OR BARGAINING WITH SUCH UNION, WHICH IS NOT THE SOLE AND EXCLUSIVE BARGAINING AGENT, VIOLATING THE DUTY TO BARGAIN COLLECTIVELY, REFUSAL TO PROCESS GRIEVABLE ISSUES IN THE GRIEVANCE MACHINERY AND/OR REFUSAL TO DEAL WITH THE SOLE AND EXCLUSIVE BARGAINING AGENT ARE ACTS CONSTITUTING OR TANTAMOUNT TO UNFAIR LABOR PRACTICE.[42]

Respondents Bayer, Lonishen and Amistoso, meanwhile, identify the issues as follows:

I. WHETHER OR NOT THE UNIFORM FINDINGS OF THE COURT OF APPEALS, THE NLRC AND THE LABOR ARBITER ARE BINDING ON THIS HONORABLE COURT;

II. WHETHER OR NOT THE LABOR ARBITER AND THE NLRC HAVE JURISDICTION OVER THE INSTANT CASE;

III. WHETHER OR NOT THE INSTANT CASE INVOLVES AN INTRA-UNION DISPUTE;

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[42] *Id.* at 782.

IV. WHETHER OR NOT RESPONDENTS COMPANY, LONISHEN AND AMISTOSO COMMITTED AN ACT OF UNFAIR LABOR PRACTICE; AND

V. WHETHER OR NOT THE INSTANT CASE HAS BECOME MOOT AND ACADEMIC.[43]

Essentially, the issue in this petition is whether the act of the management of Bayer in dealing and negotiating with Remigio's splinter group despite its validly existing CBA with EUBP can be considered unfair labor practice and, if so, whether EUBP is entitled to any relief.

Petitioners argue that the subject matter of their complaint, as well as the subsequent amendments thereto, pertain to the unfair labor practice act of respondents Bayer, Lonishen and Amistoso in dealing with Remigio's splinter union. They contend that (1) the acts of abetting or assisting in the creation of another union is among those considered by the Labor Code, as amended, specifically under Article 248 (d)[44] thereof, as unfair labor practice; (2) the act of negotiating with such union constitutes a violation of Bayer's duty to bargain collectively; and (3) Bayer's unjustified refusal to process EUBP's grievances and to recognize the said union as the sole and exclusive bargaining agent are tantamount to unfair labor practice.[45]

Respondents Bayer, Lonishen and Amistoso, on the other hand, contend that there can be no unfair labor practice on

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[43] *Id.* at 731.

[44] Article 248 (d) of the Labor Code provides:

ART. 248. *Unfair labor practices of employers.* — It shall be unlawful for an employer to commit any of the following unfair labor practices:

x x x x x x x x x

(d) To initiate, dominate, assist or otherwise interfere with the formation or administration of any labor organization, including the giving of financial or other support to it or its organizers or supporters;

x x x x x x x x x

[45] *Rollo,* pp. 783-790.

their part since the requisites for unfair labor practice - *i.e.*, that the violation of the CBA should be gross, and that it should involve violation in the economic provisions of the CBA - were not satisfied. Moreover, they cite the ruling of the Labor Arbiter that the issues raised in the complaint should have been ventilated and threshed out before the voluntary arbitrators as provided in Article 261 of the Labor Code, as amended.[46] Respondents Remigio and Villareal, meanwhile, point out that the case should be dismissed as against them since they are not real parties in interest in the ULP complaint against Bayer,[47] and since there are no specific or material acts imputed against them in the complaint.[48]

The petition is partly meritorious.

An intra-union dispute refers to any conflict between and among union members, including grievances arising from any violation of the rights and conditions of membership, violation of or disagreement over any provision of the union's constitution and by-laws, or disputes arising from chartering or disaffiliation of the union.[49] Sections 1 and 2, Rule XI of Department Order No. 40-03, Series of 2003 of the DOLE enumerate the following circumstances as inter/intra-union disputes, *viz*:

RULE XI
INTER/INTRA-UNION DISPUTES AND
OTHER RELATED LABOR RELATIONS DISPUTES

SECTION 1. Coverage. — Inter/intra-union disputes shall include:

(a) cancellation of registration of a labor organization filed by its members or by another labor organization;

(b) conduct of election of union and workers' association officers/nullification of election of union and workers' association officers;

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[46] *Id.* at 734-740.

[47] *Id.* at 661-663.

[48] *Id.* at 675-676.

[49] C.A. Azucena, Jr., Vol. II, *THE LABOR CODE WITH COMMENTS AND CASES*, 2004 ed., p. 111.

(c) audit/accounts examination of union or workers' association funds;

(d) deregistration of collective bargaining agreements;

(e) validity/invalidity of union affiliation or disaffiliation;

(f) validity/invalidity of acceptance/non-acceptance for union membership;

(g) validity/invalidity of impeachment/expulsion of union and workers' association officers and members;

(h) validity/invalidity of voluntary recognition;

(i) opposition to application for union and CBA registration;

(j) violations of or disagreements over any provision in a union or workers' association constitution and by-laws;

(k) disagreements over chartering or registration of labor organizations and collective bargaining agreements;

(l) violations of the rights and conditions of union or workers' association membership;

(m) violations of the rights of legitimate labor organizations, except interpretation of collective bargaining agreements;

(n) such other disputes or conflicts involving the rights to self-organization, union membership and collective bargaining –

(1) between and among legitimate labor organizations;

(2) between and among members of a union or workers' association.

SECTION 2. Coverage. — Other related labor relations disputes shall include any conflict between a labor union and the employer or any individual, entity or group that is not a labor organization or workers' association. This includes: (1) cancellation of registration of unions and workers' associations; and (2) a petition for interpleader.

It is clear from the foregoing that the issues raised by petitioners do not fall under any of the aforementioned circumstances constituting an intra-union dispute. More importantly, the petitioners do not seek a determination of whether it is the Facundo group (EUBP) or the Remigio group (REUBP) which

is the true set of union officers. Instead, the issue raised pertained only to the validity of the acts of management in light of the fact that it still has an existing CBA with EUBP. Thus as to Bayer, Lonishen and Amistoso the question was whether they were liable for unfair labor practice, which issue was within the jurisdiction of the NLRC. The dismissal of the second ULP complaint was therefore erroneous.

However, as to respondents Remigio and Villareal, we find that petitioners' complaint was validly dismissed.

Petitioners' ULP complaint cannot prosper as against respondents Remigio and Villareal because the issue, as against them, essentially involves an intra-union dispute based on Section 1 (n) of DOLE Department Order No. 40-03. To rule on the validity or illegality of their acts, the Labor Arbiter and the NLRC will necessarily touch on the issues respecting the propriety of their disaffiliation and the legality of the establishment of REUBP — issues that are outside the scope of their jurisdiction. Accordingly, the dismissal of the complaint was validly made, but only with respect to these two respondents.

But are Bayer, Lonishen and Amistoso liable for unfair labor practice? On this score, we find that the evidence supports an answer in the affirmative.

It must be remembered that a CBA is entered into in order to foster stability and mutual cooperation between labor and capital. An employer should not be allowed to rescind unilaterally its CBA with the duly certified bargaining agent it had previously contracted with, and decide to bargain anew with a different group if there is no legitimate reason for doing so and without first following the proper procedure. If such behavior would be tolerated, bargaining and negotiations between the employer and the union will never be truthful and meaningful, and no CBA forged after arduous negotiations will ever be honored or be relied upon. Article 253 of the Labor Code, as amended, plainly provides:

ART. 253. *Duty to bargain collectively when there exists a collective bargaining agreement.* — **Where there is a collective**

bargaining agreement, the duty to bargain collectively shall also mean that neither party shall terminate or modify such agreement during its lifetime. However, either party can serve a written notice to terminate or modify the agreement at least sixty (60) days prior to its expiration date. It shall be the duty of both parties to keep the *status quo* and to continue in full force and effect the terms and conditions of the existing agreement during the 60-day period and/or until a new agreement is reached by the parties. (Emphasis supplied.)

This is the reason why it is axiomatic in labor relations that a CBA entered into by a legitimate labor organization that has been duly certified as the exclusive bargaining representative and the employer becomes the law between them. Additionally, in the Certificate of Registration[50] issued by the DOLE, it is specified that the registered CBA serves as the covenant between the parties and has the force and effect of law between them during the period of its duration. Compliance with the terms and conditions of the CBA is mandated by express policy of the law primarily to afford protection to labor[51] and to promote industrial peace. Thus, when a valid and binding CBA had been entered into by the workers and the employer, the latter is behooved to observe the terms and conditions thereof bearing on union dues and representation.[52] If the employer grossly violates its CBA with the duly recognized union, the former may be held administratively and criminally liable for unfair labor practice.[53]

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[50] *Rollo*, p. 48.

[51] *Del Monte Philippines, Inc. v. Saldivar*, G.R. No. 158620, October 11, 2006, 504 SCRA 192, 201.

[52] *De La Salle University v. De La Salle University Employees Association (DLSUEA-NAFTEU)*, G.R. No. 177283, 584 SCRA 592, 603.

[53] Article 248 of the Labor Code provides in part:

> ART. 248. *Unfair labor practices of employers.* — It shall be unlawful for an employer to commit any of the following unfair labor practices:
>
> x x x x x x x x x
>
> (i) To violate a collective bargaining agreement.

Respondents Bayer, Lonishen and Amistoso, contend that their acts cannot constitute unfair labor practice as the same did not involve gross violations in the economic provisions of the CBA, citing the provisions of Articles 248 (1) and 261[54] of the Labor Code, as amended.[55] Their argument is, however, misplaced.

Indeed, in *Silva v. National Labor Relations Commission*,[56] we explained the correlations of Article 248 (1) and Article 261 of the Labor Code to mean that for a ULP case to be cognizable by the Labor Arbiter, and for the NLRC to exercise appellate jurisdiction thereon, the allegations in the complaint must show *prima facie* the concurrence of two things, namely: (1) gross violation of the CBA; and (2) the violation pertains to the economic provisions of the CBA.[57]

This pronouncement in *Silva*, however, should not be construed to apply to violations of the CBA which can be considered as gross violations *per se*, such as utter disregard of the very existence of the CBA itself, similar to what happened in this case. When an employer proceeds to negotiate with a splinter union despite

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[54] Art. 261 of the Labor Code provides in part:

ART. 261. *Jurisdiction of Voluntary Arbitrators or panel of Voluntary Arbitrators.* — The Voluntary Arbitrator or panel of Voluntary Arbitrators shall have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies referred to in the immediately preceding article. **Accordingly, violations of a Collective Bargaining Agreement, except those which are gross in character, shall no longer be treated as unfair labor practice and shall be resolved as grievances under the Collective Bargaining Agreement. For purposes of this article, gross violations of a Collective Bargaining Agreement shall mean flagrant and/or malicious refusal to comply with the economic provisions of such agreement.** (Emphasis supplied.)

[55] *Rollo*, pp. 499-500.

[56] G.R. No. 110226, June 19, 1997, 274 SCRA 159.

[57] *Id.* at 173.

the existence of its valid CBA with the duly certified and exclusive bargaining agent, the former indubitably abandons its recognition of the latter and terminates the entire CBA.

Respondents cannot claim good faith to justify their acts. They knew that Facundo's group represented the duly-elected officers of EUBP. Moreover, they were cognizant of the fact that even the DOLE Secretary himself had recognized the legitimacy of EUBP's mandate by rendering an arbitral award ordering the signing of the 1997-2001 CBA between Bayer and EUBP. Respondents were likewise well-aware of the pendency of the intra-union dispute case, yet they still proceeded to turn over the collected union dues to REUBP and to effusively deal with Remigio. The totality of respondents' conduct, therefore, reeks with anti-EUBP *animus*.

Bayer, Lonishen and Amistoso argue that the case is already moot and academic following the lapse of the 1997-2001 CBA and their renegotiation with EUBP for the 2006-2007 CBA. They also reason that the act of the company in negotiating with EUBP for the 2006-2007 CBA is an obvious recognition on their part that EUBP is now the certified collective bargaining agent of its rank-and-file employees.[58]

We do not agree. First, a legitimate labor organization cannot be construed to have abandoned its pending claim against the management/employer by returning to the negotiating table to fulfill its duty to represent the interest of its members, except when the pending claim has been expressly waived or compromised in its subsequent negotiations with the management. To hold otherwise would be tantamount to subjecting industrial peace to the precondition that previous claims that labor may have against capital must first be waived or abandoned before negotiations between them may resume. Undoubtedly, this would be against public policy of affording protection to labor and will encourage scheming employers to commit unlawful acts without fear of being sanctioned in the future.

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[58] *Rollo*, pp. 752-753.

Second, that the management of Bayer decided to recognize EUBP as the certified collective bargaining agent of its rank-and-file employees for purposes of its 2006-2007 CBA negotiations is of no moment. It did not obliterate the fact that the management of Bayer had withdrawn its recognition of EUBP and supported REUBP during the tumultuous implementation of the 1997-2001 CBA. Such act of interference which is violative of the existing CBA with EUBP led to the filing of the subject complaint.

On the matter of damages prayed for by the petitioners, we have held that as a general rule, a corporation cannot suffer nor be entitled to moral damages. A corporation, and by analogy a labor organization, being an artificial person and having existence only in legal contemplation, has no feelings, no emotions, no senses; therefore, it cannot experience physical suffering and mental anguish. Mental suffering can be experienced only by one having a nervous system and it flows from real ills, sorrows, and griefs of life — all of which cannot be suffered by an artificial, juridical person.[59] *A fortiori*, the prayer for exemplary damages must also be denied.[60] Nevertheless, we find it in order to award (1) nominal damages in the amount of ₱250,000.00 on the basis of our ruling in *De La Salle University v. De La Salle University Employees Association (DLSUEA-NAFTEU)*[61] and Article 2221,[62] and (2) attorney's fees equivalent to 10%

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[59] *Flight Attendants and Stewards Association of the Philippines v. Philippine Airlines, Inc.*, G.R. No. 178083, July 22, 2008, 559 SCRA 252, 294.

[60] Article 2234 of the Civil Code provides in part:

> ART. 2234. While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. x x x

[61] *Supra* note 52 at 604.

[62] Article 2221 of the Civil Code provides:

> ART. 2221. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.

of the monetary award. The remittance to petitioners of the collected union dues previously turned over to Remigio and Villareal is likewise in order.

WHEREFORE, the petition for review on *certiorari* is *PARTLY GRANTED*. The Decision dated December 15, 2003 and the Resolution dated March 23, 2004 of the Court of Appeals in CA-G.R. SP No. 73813 are *MODIFIED* as follows:

1) Respondents Bayer Phils., Dieter J. Lonishen and Asuncion Amistoso are found *LIABLE* for Unfair Labor Practice, and are hereby *ORDERED* to remit to petitioners the amount of ₱254,857.15 representing the collected union dues previously turned over to Avelina Remigio and Anastacia Villareal. They are likewise *ORDERED* to pay petitioners nominal damages in the amount of ₱250,000.00 and attorney's fees equivalent to 10% of the monetary award; and

2) The complaint, as against respondents Remigio and Villareal is *DISMISSED* due to the lack of jurisdiction of the Labor Arbiter and the NLRC, the complaint being in the nature of an intra-union dispute.

No pronouncement as to costs.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Bersamin, and *Sereno, JJ.,* concur.

FIRST DIVISION

[G.R. No. 171624. December 6, 2010.]

BF HOMES, INC. and THE PHILIPPINE WATERWORKS AND CONSTRUCTION CORP., *petitioners*, *vs*. **MANILA ELECTRIC COMPANY,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; CONFERRED ONLY BY THE CONSTITUTION OR THE LAW; IN DETERMINING WHICH BODY HAS JURISDICTION OVER A CASE, THE NATURE OF THE ACTION THAT IS THE SUBJECT OF THE CONTROVERSY MUST ALSO BE CONSIDERED.— Settled is the rule that jurisdiction is conferred only by the Constitution or the law. *Republic v. Court of Appeals* also enunciated that only a statute can confer jurisdiction on courts and administrative agencies. Related to the foregoing and equally well-settled is the rule that the nature of an action and the subject matter thereof, as well as which court or agency of the government has jurisdiction over the same, are determined by the material allegations of the complaint in relation to the law involved and the character of the reliefs prayed for, whether or not the complainant/plaintiff is entitled to any or all of such reliefs. A prayer or demand for relief is not part of the petition of the cause of action; nor does it enlarge the cause of action stated or change the legal effect of what is alleged. In determining which body has jurisdiction over a case, the better policy is to consider not only the status or relationship of the parties but also the nature of the action that is the subject of their controversy.

2. MERCANTILE LAW; PUBLIC UTILITIES; ELECTRIC POWER INDUSTRY REFORM ACT OF 2001 (EPIRA); ENERGY REGULATORY COMMISSION (ERC); CREATED TO TAKE OVER THE POWERS AND FUNCTIONS OF THE ENERGY REGULATORY BOARD NOT INCONSISTENT WITH THE PROVISION OF THE EPIRA.— [O]n June 8, 2001, Republic Act No. 9136, known as the Electric Power Industry Reform Act of 2001 (EPIRA),

was enacted, providing a framework for restructuring the electric power industry. One of the avowed purposes of the EPIRA is to establish a strong and purely independent regulatory body. The Energy Regulatory Board (ERB) was abolished and its powers and functions not inconsistent with the provision of the EPIRA were expressly transferred to the ERC.

3. ID.; ID.; ID.; ID.; OFF-SETTING OF THE AMOUNT OF REFUND IS WITHIN THE PRIMARY JURISDICTION OF THE ERC; CASE AT BAR.— A careful review of the material allegations of BF Homes and PWCC in their Petition before the RTC reveals that the very subject matter thereof is the off-setting of the amount of refund they are supposed to receive from MERALCO against the electric bills they are to pay to the same company. This is squarely within the primary jurisdiction of the ERC. The right of BF Homes and PWCC to refund, on which their claim for off-setting depends, originated from the MERALCO Refund cases. In said cases, the Court (1) authorized MERALCO to adopt a rate adjustment in the amount of ₱0.017 per kilowatthour, effective with respect to its billing cycles beginning February 1994; and (2) ordered MERALCO to refund to its customers or credit in said customers' favor for future consumption ₱0.167 per kilowatthour, starting with the customers' billing cycles that begin February 1998, in accordance with the ERB Decision dated February 16, 1998. It bears to stress that in the MERALCO Refund cases, this Court only affirmed the February 16, 1998 Decision of the ERB (predecessor of the ERC) fixing the just and reasonable rate for the electric services of MERALCO and granting refund to MERALCO consumers of the amount they overpaid. Said Decision was rendered by the ERB in the exercise of its jurisdiction to determine and fix the just and reasonable rate of power utilities such as MERALCO.

4. ID.; ID.; ID.; ID.; THE REGULATORY AGENCY OF THE GOVERNMENT HAVING THE AUTHORITY AND SUPERVISION OVER MERALCO.— Presently, the ERC has original and exclusive jurisdiction under Rule 43(u) of the EPIRA over all cases contesting rates, fees, fines, and penalties imposed by the ERC in the exercise of its powers, functions and responsibilities, and over all cases involving disputes between and among participants or players in the energy sector. Section 4(o) of the EPIRA Implementing Rules and

Regulation provides that the ERC "shall also be empowered to issue such other rules that are essential in the discharge of its functions as in independent quasi-judicial body." Indubitably, the ERC is the regulatory agency of the government having the authority and supervision over MERALCO. Thus, the task to approve the guidelines, schedules, and details of the refund by MERALCO to its consumers, to implement the judgment of this Court in the MERALCO Refund cases, also falls upon the ERC. By filing their Petition before the RTC, BF Homes and PWCC intend to collect their refund without submitting to the approved schedule of the ERC, and in effect, enjoy preferential right over the other equally situated MERALCO consumers.

5. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; DOCTRINE OF PRIMARY JURISDICTION; COURTS CANNOT AND WILL NOT RESOLVE A CONTROVERSY INVOLVING A QUESTION WITHIN THE JURISDICTION OF AN ADMINISTRATIVE TRIBUNAL, ESPECIALLY WHEN THE QUESTION DEMANDS THE SOUND EXERCISE OF ADMINISTRATIVE DISCRETION REQUIRING SPECIAL KNOWLEDGE, EXPERIENCE AND SERVICES OF THE ADMINISTRATIVE TRIBUNAL TO DETERMINE TECHNICAL AND INTRICATE MATTERS OF FACT.— Administrative agencies, like the ERC, are tribunals of limited jurisdiction and, as such, could wield only such as are specifically granted to them by the enabling statutes. In relation thereto is the doctrine of primary jurisdiction involving matters that demand the special competence of administrative agencies even if the question involved is also judicial in nature. Courts cannot and will not resolve a controversy involving a question within the jurisdiction of an administrative tribunal, especially when the question demands the sound exercise of administrative discretion requiring special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact. The court cannot arrogate into itself the authority to resolve a controversy, the jurisdiction of which is initially lodged with the administrative body of special competence.

6. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; AN ANCILLARY AND PROVISIONAL REMEDY WHICH CANNOT EXIST EXCEPT ONLY AS

AN INCIDENT OF AN INDEPENDENT ACTION OR PROCEEDING; ERC, NOT THE REGIONAL TRIAL COURT, HAS THE AUTHORITY TO ACT ON THE APPLICATION FOR THE ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION.— Since the RTC had no jurisdiction over the Petition of BF Homes and PWCC in Civil Case No. 03-0151, then it was also devoid of any authority to act on the application of BF Homes and PWCC for the issuance of a writ of preliminary injunction contained in the same Petition. The ancillary and provisional remedy of preliminary injunction cannot exist except only as an incident of an independent action or proceeding. Incidentally, BF Homes and PWCC seemed to have lost sight of Section 8 of Executive Order No. 172 which explicitly vested on the ERB, as an incident of its principal function, the authority to grant provisional relief, thus: Section 8. *Authority to Grant Provisional Relief.* — The Board may, upon the filing of an application, petition or complaint or at any stage thereafter and without prior hearing, on the basis of supporting papers duly verified or authenticated, grant provisional relief on motion of a party in the case or on its own initiative, without prejudice to a final decision after hearing, should the Board find that the pleadings, together with such affidavits, documents and other evidence which may be submitted in support of the motion, substantially support the provisional order: *Provided*, That the Board shall immediately schedule and conduct a hearing thereon within thirty (30) days thereafter, upon publication and notice to all affected parties. The aforequoted provision is still applicable to the ERC as it succeeded the ERB, by virtue of Section 80 of the EPIRA. A writ of preliminary injunction is one such provisional relief which a party in a case before the ERC may move for.

7. ID.; ID.; JURISDICTION; JURISDICTION OVER THE SUBJECT MATTER; CONFERRED BY LAW AND CANNOT BE ACQUIRED THROUGH, OR WAIVED BY, ANY ACT OR OMISSION OF THE PARTIES; CASE AT BAR.— [T]he Court herein already declared that the RTC not only lacked the jurisdiction to issue the writ of preliminary injunction against MERALCO, but that the RTC actually had no jurisdiction at all over the subject matter of the Petition of BF Homes and PWCC in Civil Case No. 03-0151. Therefore, in addition to the dissolution of the writ of preliminary injunction

issued by the RTC, the Court also deems it appropriate to already order the dismissal of the Petition of BF Homes and PWCC in Civil Case No. 03-0151 for lack of jurisdiction of the RTC over the subject matter of the same. Although only the matter of the writ of preliminary injunction was brought before this Court in the instant Petition, the Court is already taking cognizance of the issue on the jurisdiction of the RTC over the subject matter of the Petition. The Court may *motu proprio* consider the issue of jurisdiction. The Court has discretion to determine whether the RTC validly acquired jurisdiction over Civil Case No. 03-0151 since, to reiterate, jurisdiction over the subject matter is conferred only by law. Jurisdiction over the subject matter cannot be acquired through, or waived by, any act or omission of the parties. Neither would the active participation of the parties nor estoppel operate to confer jurisdiction on the RTC where the latter has none over a cause of action. Indeed, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.

APPEARANCES OF COUNSEL

Reynaldo R. Princesa for petitioners.

Horatio Enrico M. Bona, Jose Reny T. Albarico and *Freddie M. Nojara* for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assails the Decision[1] dated October 27, 2005 of the Court of Appeals in CA-G.R. SP No. 82826, nullifying and setting aside (1) the Order[2] dated November 21, 2003 of the Regional Trial Court (RTC), Branch 202 of Las Piñas City, in Civil Case No. 03-0151, thereby dissolving the writ of injunction

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[1] *Rollo*, pp. 30-37; penned by Associate Justice Josefina Guevara-Salonga with Associate Justices Delilah Vidallon Magtolis and Fernanda Lampas Peralta, concurring.

[2] *Id.* at 59-62.

against respondent Manila Electric Company (MERALCO); and (2) the Resolution[3] dated February 7, 2006 of the Court of Appeals denying the Motion for Reconsideration of petitioners BF Homes, Inc. (BF Homes) and Philippine Waterworks and Construction Corporation (PWCC).

MERALCO is a corporation duly organized and existing under Philippine laws engaged in the distribution and sale of electric power in Metro Manila. On the other hand, BF Homes and PWCC are owners and operators of waterworks systems delivering water to over 12,000 households and commercial buildings in BF Homes subdivisions in Parañaque City, Las Piñas City, Caloocan City, and Quezon City. The water distributed in the waterworks systems owned and operated by BF Homes and PWCC is drawn from deep wells using pumps run by electricity supplied by MERALCO.

On June 23, 2003, BF Homes and PWCC filed a Petition [With Prayer for the Issuance of Writ of Preliminary Injunction and for the Immediate Issuance of Restraining Order] against MERALCO before the RTC, docketed as Civil Case No. 03-0151.

In their Petition before the RTC, BF Homes and PWCC invoked their right to refund based on the ruling of this Court in *Republic v. Manila Electric Company*[4]:

> 7. It is of judicial notice that on November 15, 2002, in G.R. No. 141314, entitled *Republic of the Philippines vs. Manila Electric Company*, and G.R. No. 141369, entitled *Lawyers Against Monopoly and Poverty (LAMP) et al. vs. Manila Electric Company (MERALCO),* (both cases shall hereafter be referred to as "MERALCO Refund cases," for brevity), the Supreme Court ordered MERALCO to refund its customers, which shall be credited against the customer's future consumption, the excess average amount of ₱0.167 per kilowatt hour starting with the customer's billing cycles beginning February 1998. The dispositive portion of the Supreme Court Decision in the MERALCO Refund cases reads:

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[3] *Id.* at 46-47.

[4] 440 Phil. 389 (2002).

> WHEREFORE, in view of the foregoing, the instant petitions are GRANTED and the decision of the Court of Appeals in C.A. G.R. SP No. 46888 is REVERSED. Respondent MERALCO is authorized to adopt a rate adjustment in the amount of ₱0.017 kilowatthour, effective with respect to MERALCO's billing cycles beginning February 1994. Further, in accordance with the decision of the ERB dated February 16, 1998, the excess average amount of ₱0.167 per kilowatt hour starting with the applicant's billing cycles beginning February 1998 is ordered to be refunded to MERALCO's customers or correspondingly credited in their favor for future consumption.
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> x x x x x x x x x.

8. The Motion for Reconsideration filed by MERALCO in the MERALCO Refund cases was DENIED WITH FINALITY (the uppercase letters were used by the Supreme Court) in the Resolution of the Supreme Court dated April 9, 2003.

9. The amount that MERALCO was mandated to refund to [BF Homes and PWCC] pursuant to the MERALCO Refund cases is in the amount of ₱11,834,570.91.[5]

BF Homes and PWCC then alleged in their RTC Petition that:

10. On May 20, 2003, without giving any notice whatsoever, MERALCO disconnected electric supply to [BF Homes and PWCC's] sixteen (16) water pumps located in BF Homes in Parañaque, Caloocan, and Quezon City, which thus disrupted water supply in those areas.

11. On June 4, 2003, [BF Homes and PWCC] received by facsimile transmission a letter from MERALCO, x x x, in which MERALCO demanded to [BF Homes and PWCC] the payment of electric bills amounting to ₱4,717,768.15.

12. [MERALCO] replied in a letter dated June 11, 2003, x x x, requesting MERALCO to apply the ₱4,717,768.15 electric bill against the ₱11,834,570.91 that MERALCO was ordered to refund to [BF Homes and PWCC] pursuant to the MERALCO Refund cases. x x x

13. Displaying the arrogance that has become its distinction, MERALCO, in its letter dated June 16, 2003, x x x, denied [BF Homes

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[5] *Rollo,* pp. 54-55.

and PWCC's] request alleging that it has not yet come up with the schedule for the refund of large amounts, such as those of [BF Homes and PWCC].

14. Even while MERALCO was serving its reply-letter to [BF Homes and PWCC], MERALCO, again, without giving any notice, cut off power supply to [BF Homes and PWCC's] five (5) water pumps located in BF Homes Parañaque and BF Resort Village, in Pamplona, Las Piñas City.

15. In its letter dated June 4, 2003 (Annex A), MERALCO threatened to cut off electric power connections to all of [BF Homes and PWCC's] water pumps if [BF Homes and PWCC] failed to pay their bills demanded by MERALCO by June 20, 2003.[6]

BF Homes and PWCC thus cited the following causes of action for their RTC Petition:

16. In refusing to apply [MERALCO's] electric bills against the amounts that it was ordered to refund to [BF Homes and PWCC] pursuant to the MERALCO Refund cases and in making the implementation of the refund ordered by the Supreme Court dependent upon its own will and caprice, MERALCO acted with utmost bad faith.

17. [BF Homes and PWCC] are clearly entitled to the remedies under the law to compel MERALCO to consider [BF Homes and PWCC's] electric bills fully paid by the amounts which MERALCO was ordered to refund to [BF Homes and PWCC] pursuant to the MERALCO Refund cases, to enjoin MERALCO to reconnect electric power to all of [BF Homes and PWCC's] water pumps, and to order MERALCO to desist from further cutting off power connection to [BF Homes and PWCC's] water pumps.

18. MERALCO's unjust and oppressive acts have cast dishonor upon [BF Homes and PWCC's] good name and besmirched their reputation for which [BF Homes and PWCC] should be indemnified by way of moral damages in the amount of not less than ₱1,000,000.00.

19. As an example for the public good, to dissuade others from emulating MERALCO's unjust, oppressive and mercenary conduct, MERALCO should be directed to pay [BF Homes and PWCC] exemplary damages of at least ₱1,000,000.00.

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[6] *Id.* at 55.

20. MERALCO's oppressive and inequitable conduct forced [BF Homes and PWCC] to engage the services of counsel to defend their rights and thereby incur litigation expenses in the amount of at least ₱500,000.00 for which [BF Homes and PWCC] should be indemnified.[7]

BF Homes and PWCC additionally prayed that the RTC issue a writ of preliminary injunction and restraining order considering that:

21. As indicated in its letter dated June 4, 2003 (Annex A), unless seasonably restrained, MERALCO will cut off electric power connections to all of [BF Homes and PWCC's] water pumps on June 20, 2003.

22. Part of the reliefs herein prayed for is to restrain MERALCO from cutting off electric power connections to [BF Homes and PWCC's] water pumps.

23. Unless MERALCO'S announced intention to cut off electric power connections to [BF Homes and PWCC's] water pumps is restrained, [BF Homes and PWCC] will suffer great and irreparable injury because they would not [be] able to supply water to their customers.

24. [BF Homes and PWCC] therefore pray that a writ for preliminary injunction be issued upon posting of a bond in an amount as will be determined by this Honorable Court.

25. [BF Homes and PWCC] further pray that, in the meantime and immediately upon the filing of the above captioned Petition, a restraining order be issued before the matter of preliminary injunction can be heard.[8]

On August 15, 2003, MERALCO filed before the RTC its Answer with Counterclaims and Opposition to the Application for Writ of Preliminary Injunction[9] of BF Homes and PWCC.

According to MERALCO:

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[7] *Id.* at 56.

[8] *Id.* at 56-57.

[9] CA *rollo*, pp. 72-85.

2.2. Both petitioners BF Homes, Incorporated and Philippine Waterworks Corporation are admittedly the registered customers of [MERALCO] by virtue of the service contracts executed between them under which the latter undertook to supply electric energy to the former for a fee. The following twenty-three (23) Service Identification Nos. (SINs) are registered under the name of BF Homes, Incorporated: x x x. While the following twenty-one (21) Service Identification Nos. (SINs) are registered under the name of Philippine Waterworks Construction Corporation: x x x

x x x x x x x x x

2.4. The service contracts as well as the terms and conditions of [MERALCO's] service as approved by BOE [Board of Energy], now ERC [Energy Regulatory Commission], provide in relevant parts, that [BF Homes and PWCC] agree as follows:

DISCONTINUANCE OF SERVICE:

> **The Company reserves the right to discontinue service in case the customer is in arrears in the payment of bills** or for failure to pay the adjusted bills in those cases where the meter stopped or failed to register the correct amount of energy consumed, or for failure to comply with any of these terms and conditions, or in case of or to prevent fraud upon the Company. Before disconnection is made in the case of, or to prevent fraud, the Company may adjust the bill of said customer accordingly and if the adjusted bill is not paid, the Company may disconnect the same." (Emphasis supplied)

2.5. This contractual right of [MERALCO] to discontinue electric service for default in the payment of its regular bills is sanctioned and approved by the rules and regulations of ERB (now the ERC). This right is necessary and reasonable means to properly protect and enable [MERALCO] to perform and discharge its legal and contractual obligation under its legislative franchise and the law. Cutting off service for non-payment by the customers of the regular monthly electric bills is the only practical way a public utility, such as [MERALCO], can ensure and maintain efficient service in accordance with the terms and conditions of its legislative franchise and the law.

x x x x x x x x x

2.14. Instead of paying their unpaid electric bills and before [MERALCO] could effect its legal and contractual right to disconnect

[BF Homes and PWCC's] electric services, [BF Homes and PWCC] filed the instant petition to avoid payment of [MERALCO's] valid and legal claim for regular monthly electric bills.

2.15. [BF Homes and PWCC's] unpaid regular bills totaled ₱6,551,969.55 covering the May and June 2003 electric bills. x x x

x x x x x x x x x

2.17. [BF Homes and PWCC] knew that [MERALCO] is already in the process of implementing the decision of the Supreme Court as to the refund case. But this refund has to be implemented in accordance with the guidelines and schedule to be approved by the ERC. Thus [BF Homes and PWCC's] filing of the instant petition is merely to evade payment of their unpaid electric bills to [MERALCO].[10]

Hence, MERALCO sought the dismissal of the RTC Petition of BF Homes and PWCC on the following grounds:

3.1 The Honorable Court has no jurisdiction to award the relief prayed for by [BF Homes and PWCC] because:

a) The petition is in effect preempting or defeating the power of the ERC to implement the decision of the Supreme Court.

b) [MERALCO] is a utility company whose business activity is wholly regulated by the ERC. The latter, being the regulatory agency of the government having the authority over the respondent, is the one tasked to approve the guidelines, schedules and details of the refund.

c) The decision of the Supreme Court, dated November 15, 2002, clearly states that respondent is directed to make the refund to its customers in accordance with the decision of the ERC (formerly ERB) dated February 16, 1998. Hence, [MERALCO] has to wait for the schedule and details of the refund to be approved by the ERC before it can comply with the Supreme Court decision.

3.2. [MERALCO] has the right to disconnect the electric service to [BF Homes and PWCC] in that:

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[10] *Id.* at 74-78.

a) The service contracts between [MERALCO] and [BF Homes and PWCC] expressly authorize the former to discontinue and disconnect electric services of the latter for their failure to pay the regular electric bills rendered.

b) It is [MERALCO's] legal duty as a public utility to furnish its service to the general public without arbitrary discrimination and, consequently, [MERALCO] is obligated to discontinue and disconnect electric services to [BF Homes and PWCC] for their refusal or failure to pay the electric energy actually used by them.[11]

For its compulsory counterclaims, MERALCO prayed that the RTC orders BF Homes and PWCC to pay MERALCO ₱6,551,969.55 as actual damages (representing the unpaid electric bills of BF Homes and PWCC for May and June 2003), ₱1,500,000.00 as exemplary damages, ₱1,500,000.00 as moral damages, and ₱1,000,000.00 as attorney's fees.

Lastly, MERALCO opposed the application for writ of preliminary injunction of BF Homes and PWCC because:

I

[MERALCO] HAS THE LEGAL AND CONTRACTUAL RIGHT TO DEMAND PAYMENT OF THE ELECTRIC BILLS AND, IN CASE OF NON-PAYMENT, TO DISCONTINUE THE ELECTRIC SERVICES OF [BF HOMES and PWCC]

II

[BF HOMES and PWCC] HAVE NO CLEAR RIGHT WHICH WARRANTS PROTECTION BY INJUNCTIVE PROCESS

After hearing,[12] the RTC issued an Order on November 21, 2003 granting the application of BF Homes and PWCC for the issuance of a writ of preliminary injunction. The RTC found that the records showed that all requisites for the issuance of said writ were sufficiently satisfied by BF Homes and PWCC. The RTC stated in its Order:

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[11] *Id.* at 78-79.

[12] Held on June 23, 2003; June 25, 2003; and July 3, 2003.

Albeit, this Court respects the right of a public utility company like MERALCO, being a grantee of a legislative franchise under Republic Act No. 9029, to collect overdue payments from its subscribers or customers for their respective consumption of electric energy, such right must, however, succumb to the paramount substantial and constitutional rights of the public to the usage and enjoyment of waters in their community. Thus, there is an urgent need for the issuance of a writ of preliminary injunction in order to prevent social unrest in the community for having been deprived of the use and enjoyment of waters flowing through [BF Homes and PWCC's] water pumps.[13]

The RTC decreed in the end:

WHEREFORE, in the light of the foregoing, [BF Homes and PWCC's] prayer for the issuance of a writ of preliminary injunction is hereby GRANTED. Respondent Manila Electric Company is permanently restrained from proceeding with its announced intention to cut-off electric power connection to [BF Homes and PWCC's] water pumps unless otherwise ordered by this Court. Further, [BF Homes and PWCC] are hereby ordered to post a bond in the amount of ₱500,000 to answer for whatever injury or damage that may be caused by reason of the preliminary injunction.[14]

The Motion for Reconsideration of MERALCO of the aforementioned Order was denied by the RTC in another Order issued on January 9, 2004.[15] The RTC reiterated its earlier finding that all the requisites for the proper issuance of an injunction had been fully complied with by BF Homes and PWCC, thus:

Records indubitably show that all the requisites for the proper issuance of an injunction have been fully complied with in the instant case.

It should be noted that a disconnection of power supply would obviously cause irreparable injury because the pumps that supply water to the BF community will be without electricity, thereby rendering said community without water. Water is a basic and endemic

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[13] *Rollo,* pp. 60 and 62.

[14] *Id.* at 62.

[15] *Id.* at 78-82.

necessity of life. This is why its enjoyment and use has been constitutionally safeguarded and protected. Likewise, a community without water might create social unrest, which situation this Court has the mandate to prevent. There is an urgent and paramount necessity for the issuance of the injunctive writ to prevent serious damage to the guaranteed rights of [BF Homes and PWCC] and the residents of the community to use and enjoy water.[16]

The RTC resolved the issue on jurisdiction raised by MERALCO, as follows:

As to the jurisdictional issue raised by respondent MERALCO, it can be gleaned from a re-evaluation and re-assessment of the records that this Court has jurisdiction to delve into the case. This Court gave both parties the opportunity to be heard as they introduced evidence on the propriety of the issuance of the injunctive writ. It is well-settled that no grave abuse of discretion could be attributed to its issuance where a party was not deprived of its day in court as it was heard and had exhaustively presented all its arguments and defenses. (*National Mines and Allied Workers Union vs. Valero, 132 SCRA 578, 1984.*)[17]

Aggrieved, MERALCO filed with the Court of Appeals a Petition for *Certiorari* under Rule 65 of the Rules of Court, docketed as CA-G.R. SP No. 82826. MERALCO sought the reversal of the RTC Orders dated November 21, 2003 and January 9, 2004 granting a writ of preliminary injunction in favor of BF Homes and PWCC. MERALCO asserted that the RTC had no jurisdiction over the application of BF Homes and PWCC for issuance of such a writ.

In its Decision dated October 27, 2005, the Court of Appeals agreed with MERALCO that the RTC had no jurisdiction to issue a writ of preliminary injunction in Civil Case No. 03-0151, as said trial court had no jurisdiction over the subject matter of the case to begin with. It ratiocinated in this wise:

For one, it cannot be gainsaid that the ERC has original and exclusive jurisdiction over the case. Explicitly, Section 43(u) of

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[16] *Id.* at 81.

[17] *Id.*

Republic Act No. 9136, otherwise known as the "*Electric Power Industry Reform Act,*" (RA 9136), states that the ERC shall have the original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed by the ERC in the exercise of its powers, functions and responsibilities and over all cases involving disputes between and among participants or players in the energy sector. Section 4(o) of Rule 3 of the Implementing Rules and Regulations of RA 9136 likewise provides that the ERC shall also be empowered to issue such other rules that are essential in the discharge of its functions as an independent quasi-judicial body.

For another, the respondent judge, instead of presiding over the case, should have dismissed the same and yielded jurisdiction to the ERC pursuant to the doctrine of primary jurisdiction. It is plain error on the part of the respondent judge to determine, preliminary or otherwise, a controversy involving a question which is within the jurisdiction of an administrative tribunal, especially so where the question demands the exercise of sound administrative discretion.

Needless to state, the doctrine of primary jurisdiction applies where the administrative agency, as in the case of ERC, exercises its quasi-judicial and adjudicatory function. Thus, in cases involving specialized disputes, the practice has been to refer the same to an administrative agency of special competence pursuant to the doctrine of primary jurisdiction. The courts will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact, and a uniformity of ruling is essential to comply with the premises of the regulatory statute administered.

Verily, the cause of action of [BF Homes and PWCC] against [MERALCO] originates from the Meralco Refund Decision as it involves the perceived right of the former to compel the latter to set-off or apply their refund to their present electric bill. The issue delves into the right of the private respondents to collect their refund without submitting to the approved schedule of the ERC, and in effect give unto themselves preferential right over other equally situated consumers of [MERALCO]. Perforce, the ERC, as can be gleaned from the afore-stated legal provisions, has primary, original and exclusive jurisdiction over the said controversy.

Indeed, the respondent judge glaringly erred in enjoining the right of [MERALCO] to disconnect its services to [BF Homes and PWCC] on the premise that the court has jurisdiction to apply the provisions on compensation or set-off in this case. Although [MERALCO] recognizes the right of [BF Homes and PWCC] to the refund as provided in the Meralco Refund Decision, it is the ERC which has the authority to implement the same according to its approved schedule, it being a dispute arising from the exercise of its jurisdiction.

Moreover, it bears to stress that the Meralco Refund Decision was brought into fore by the Decision dated 16 February 1998 of the ERC (then Energy Regulatory Board) granting refund to [MERALCO's] consumers. Being the agency of origin, the ERC has the jurisdiction to execute the same. Besides, as stated, it is empowered to promulgate rules that are essential in the discharge of its functions as an independent quasi-judicial body.[18]

The dispositive portion of the judgment of the appellate court reads:

WHEREFORE, the foregoing considered, the instant petition is hereby **GRANTED** and the assailed Orders **REVERSED** and **SET ASIDE**. Accordingly, the writ of injunction against [MERALCO] is hereby **DISSOLVED**. No costs.[19]

In a Resolution dated February 7, 2006, the Court of Appeals denied the Motion for Reconsideration of BF Homes and PWCC for failing to raise new and persuasive and meritorious arguments.

Now, BF Homes and PWCC come before this Court *via* the instant Petition, raising the following assignment of errors:

1. The Court of Appeals ERRED in saying that the respondent judge committed grave abuse of discretion by issuing the disputed writ of injunction pending the merits of the case including the issue of subject matter jurisdiction.

2. The Court of Appeals ERRED in saying that the ERC under the doctrine of primary jurisdiction has the original and

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[18] *Id.* at 34-36.

[19] *Id.* at 37.

EXCLUSIVE jurisdiction to take cognizance of a petition for injunction to prevent electrical disconnection to a customer entitled to a refund.

3. The Court of Appeals ERRED in NOT SAYING that the ERC as a quasi-judicial body under RA 9136 has no power to issue any injunctive relief or remedy to prevent disconnection.

4. The Court of Appeals ERRED in not resolving the issue as to the violation of MERALCO of a standing injunction order while the case remains undecided.[20]

At the core of the Petition is the issue of whether jurisdiction over the subject matter of Civil Case No. 03-0151 lies with the RTC or the Energy Regulatory Commission (ERC). If it is with the RTC, then the said trial court also has jurisdiction to issue the writ of preliminary injunction against MERALCO. If it is with the ERC, then the RTC also has no jurisdiction to act on any incidents in Civil Case No. 03-0151, including the application for issuance of a writ of preliminary injunction of BF Homes and PWCC therein.

BF Homes and PWCC argued that due to the threat of MERALCO to disconnect electric services, BF Homes and PWCC had no other recourse but to seek an injunctive remedy from the RTC under its general jurisdiction. The merits of Civil Case No. 03-0151 was not yet in issue, only the propriety of issuing a writ of preliminary injunction to prevent an irreparable injury. Even granting that the RTC has no jurisdiction over the subject matter of Civil Case No. 03-0151, the ERC by enabling law has no injunctive power to prevent the disconnection by MERALCO of electric services to BF Homes and PWCC.

The Petition has no merit.

Settled is the rule that jurisdiction is conferred only by the Constitution or the law.[21] *Republic v. Court of Appeals*[22] also

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[20] *Id.* at 17.

[21] *Civil Service Commission v. Albao*, G.R. No. 155784, October 13, 2005, 472 SCRA 548, 555.

[22] 331 Phil. 1070, 1076 (1996).

enunciated that only a statute can confer jurisdiction on courts and administrative agencies.

Related to the foregoing and equally well-settled is the rule that the nature of an action and the subject matter thereof, as well as which court or agency of the government has jurisdiction over the same, are determined by the material allegations of the complaint in relation to the law involved and the character of the reliefs prayed for, whether or not the complainant/plaintiff is entitled to any or all of such reliefs. A prayer or demand for relief is not part of the petition of the cause of action; nor does it enlarge the cause of action stated or change the legal effect of what is alleged. In determining which body has jurisdiction over a case, the better policy is to consider not only the status or relationship of the parties but also the nature of the action that is the subject of their controversy.[23]

In *Manila Electric Company v. Energy Regulatory Board*,[24] the Court traced the legislative history of the regulatory agencies which preceded the ERC, presenting a summary of these agencies, the statutes or issuances that created them, and the extent of the jurisdiction conferred upon them, *viz*:

1. The first regulatory body, the *Board of Rate Regulation (BRR)*, was created by virtue of *Act No. 1779*. Its regulatory mandate under Section 5 of the law was limited to fixing or regulating rates of every public service corporation.

2. In *1913, Act No. 2307* created the *Board of Public Utility Commissioners (BPUC)* to take over the functions of the BRR. By express provision of Act No. 2307, the BPUC was vested with jurisdiction, supervision and control over all public utilities and their properties and franchises.

3. On *November 7, 1936, Commonwealth Act (C.A.) No. 146, or the Public Service Act (PSA)*, was passed creating the *Public Service Commission (PSC)* to replace the BPUC. Like the BPUC, the PSC

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[23] *Villamaria, Jr. v. Court of Appeals*, G.R. No. 165881, April 19, 2006, 487 SCRA 571, 589.

[24] G.R. No. 145399, March 17, 2006, 485 SCRA 19.

was expressly granted jurisdiction, supervision and control over public services, with the concomitant authority of calling on the public force to exercise its power, to wit:

> "SEC. 13. Except as otherwise provided herein, the Commission shall have general supervision and regulation of, **jurisdiction and control over, all public utilities,** and also over their property, property rights, equipment, facilities and franchises so far as may be necessary for the purpose of carrying out the provisions of this Act, and in the exercise of its authority it shall have the necessary powers and the aid of the public force x x x."

Section 14 of C.A. No. 146 defines the term "*public service*" or "*public utility*" as including "every individual, copartnership, association, corporation or joint-stock company, . . . that now or hereafter may own, operate, manage or control within the Philippines, for hire or compensation, any common carrier, x x x, ***electric light***, heat, power, x x x, when owned, operated and managed ***for public use or service*** within the Philippines x x x." Under the succeeding Section 17(a), the PSC has the power even without prior hearing —

> (a) To investigate, upon its own initiative, or upon complaint in writing, any matter concerning any public service as regards matters under its jurisdiction; to require any public service to furnish safe, adequate and proper service as the public interest may require and warrant, to enforce compliance with any standard, rule, regulation, order or other requirement of this Act or of the Commission, x x x.

4. Then came *Presidential Decree (P.D.) No. 1*, reorganizing the national government and implementing the *Integrated Reorganization Plan*. Under the reorganization plan, jurisdiction, supervision and control over public services related to electric light, and power heretofore vested in the PSC were transferred to the *Board of Power and Waterworks (BOPW)*.

Later, *P.D. No. 1206* abolished the BOPW. Its powers and function relative to power utilities, including its authority to grant provisional relief, were transferred to the newly-created *Board of Energy (BOE)*.

5. On May 8, 1987, then President Corazon C. Aquino issued *E.O. No. 172* reconstituting the *BOE* into the *ERB*, transferring the former's functions and powers under P.D. No. 1206 to the latter

and consolidating in and entrusting on the ERB "*all the regulatory and adjudicatory functions covering the energy sector*." Section 14 of E.O. No. 172 states that "(T)he applicable provisions of [C.A.] No. 146, as amended, otherwise known as the 'Public Service Act'; x x x and [P.D.] No. 1206, as amended, creating the Department of Energy, shall continue to have full force and effect, except insofar as inconsistent with this Order."[25]

Thereafter, on June 8, 2001, Republic Act No. 9136, known as the Electric Power Industry Reform Act of 2001 (EPIRA), was enacted, providing a framework for restructuring the electric power industry. One of the avowed purposes of the EPIRA is to establish a strong and purely independent regulatory body. The Energy Regulatory Board (ERB) was abolished and its powers and functions not inconsistent with the provision of the EPIRA were expressly transferred to the ERC.[26]

The powers and functions of the ERB not inconsistent with the EPIRA were transferred to the ERC by virtue of Sections 44 and 80 of the EPIRA, which read:

Sec. 44. *Transfer of Powers and Functions.* — The powers and functions of the Energy Regulatory Board not inconsistent with the provisions of this Act are hereby transferred to the ERC. The foregoing transfer of powers and functions shall include all applicable funds and appropriations, records, equipment, property and personnel as may be necessary.

Sec. 80. *Applicability and Repealing Clause*. — The applicability provisions of Commonwealth Act No. 146, as amended, otherwise known as the "Public Service Act." Republic Act 6395, as amended, revising the charter of NPC; Presidential Decree 269, as amended, referred to as the National Electrification Decree; Republic Act 7638, otherwise known as the "Department of Energy Act of 1992"; Executive Order 172, as amended, creating the ERB; Republic Act 7832 otherwise known as the "Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994"; shall continue

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[25] *Id* at 28-30.

[26] *Freedom from Debt Coalition v. Energy Regulatory Commission*, 476 Phil. 134, 188 (2004).

to have full force and effect except insofar as they are inconsistent with this Act.

The provisions with respect to electric power of Section 11(c) of Republic Act 7916, as amended, and Section 5(f) of Republic Act 7227, are hereby repealed or modified accordingly.

Presidential Decree No. 40 and all laws, decrees, rules and regulations, or portions thereof, inconsistent with this Act are hereby repealed or modified accordingly.

In addition to the foregoing, the EPIRA also conferred new powers upon the ERC under Section 43, among which are:

SEC. 43. *Functions of the ERC*. — The ERC shall promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry. In appropriate cases, the ERC is authorized to issue cease and desist order after due notice and hearing. Towards this end, it shall be responsible for the following key functions in the restructured industry:

x x x x x x x x x

(f) In the public interest, establish and enforce a methodology for setting transmission and distribution wheeling rates and retail rates for the captive market of a distribution utility, taking into account all relevant considerations, including the efficiency or inefficiency of the regulated entities. The rates must be such as to allow the recovery of just and reasonable costs and a reasonable return on rate base (RORB) to enable the entity to operate viably. The ERC may adopt alternative forms of internationally-accepted rate-setting methodology as it may deem appropriate. The rate-setting methodology so adopted and applied must ensure a reasonable price of electricity. The rates prescribed shall be non-discriminatory. To achieve this objective and to ensure the complete removal of cross subsidies, the cap on the recoverable rate of system losses prescribed in Section 10 of Republic Act No. 7832, is hereby amended and shall be replaced by caps which shall be determined by the ERC based on load density, sales mix, cost of service, delivery voltage and other technical considerations it may promulgate. The ERC shall determine such form of rate-setting methodology, which shall promote efficiency. x x x.

x x x x x x x x x

(u) The ERC shall have the original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed by the ERC in the exercise of the abovementioned powers, functions and responsibilities and over all cases involving disputes between and among participants or players in the energy sector.

All notices of hearings to be conducted by the ERC for the purpose of fixing rates or fees shall be published at least twice for two successive weeks in two (2) newspapers of nationwide circulation.

A careful review of the material allegations of BF Homes and PWCC in their Petition before the RTC reveals that the very subject matter thereof is the off-setting of the amount of refund they are supposed to receive from MERALCO against the electric bills they are to pay to the same company. This is squarely within the primary jurisdiction of the ERC.

The right of BF Homes and PWCC to refund, on which their claim for off-setting depends, originated from the MERALCO Refund cases. In said cases, the Court (1) authorized MERALCO to adopt a rate adjustment in the amount of ₱0.017 per kilowatthour, effective with respect to its billing cycles beginning February 1994; and (2) ordered MERALCO to refund to its customers or credit in said customers' favor for future consumption ₱0.167 per kilowatthour, starting with the customers' billing cycles that begin February 1998, in accordance with the ERB Decision dated February 16, 1998.

It bears to stress that in the MERALCO Refund cases, this Court only affirmed the February 16, 1998 Decision of the ERB (predecessor of the ERC) fixing the just and reasonable rate for the electric services of MERALCO and granting refund to MERALCO consumers of the amount they overpaid. Said Decision was rendered by the ERB in the exercise of its jurisdiction to determine and fix the just and reasonable rate of power utilities such as MERALCO.

Presently, the ERC has original and exclusive jurisdiction under Rule 43(u) of the EPIRA over all cases contesting rates, fees, fines, and penalties imposed by the ERC in the exercise of its powers, functions and responsibilities, and over all cases

involving disputes between and among participants or players in the energy sector. Section 4(o) of the EPIRA Implementing Rules and Regulation provides that the ERC "shall also be empowered to issue such other rules that are essential in the discharge of its functions as in independent quasi-judicial body."

Indubitably, the ERC is the regulatory agency of the government having the authority and supervision over MERALCO. Thus, the task to approve the guidelines, schedules, and details of the refund by MERALCO to its consumers, to implement the judgment of this Court in the MERALCO Refund cases, also falls upon the ERC. By filing their Petition before the RTC, BF Homes and PWCC intend to collect their refund without submitting to the approved schedule of the ERC, and in effect, enjoy preferential right over the other equally situated MERALCO consumers.

Administrative agencies, like the ERC, are tribunals of limited jurisdiction and, as such, could wield only such as are specifically granted to them by the enabling statutes. In relation thereto is the doctrine of primary jurisdiction involving matters that demand the special competence of administrative agencies even if the question involved is also judicial in nature. Courts cannot and will not resolve a controversy involving a question within the jurisdiction of an administrative tribunal, especially when the question demands the sound exercise of administrative discretion requiring special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact. The court cannot arrogate into itself the authority to resolve a controversy, the jurisdiction of which is initially lodged with the administrative body of special competence.[27]

Since the RTC had no jurisdiction over the Petition of BF Homes and PWCC in Civil Case No. 03-0151, then it was also devoid of any authority to act on the application of BF Homes and PWCC for the issuance of a writ of preliminary injunction contained in the same Petition. The ancillary and provisional

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[27] *Longino v. General,* 491 Phil. 600, 618-619 (2005).

remedy of preliminary injunction cannot exist except only as an incident of an independent action or proceeding.[28]

Incidentally, BF Homes and PWCC seemed to have lost sight of Section 8 of Executive Order No. 172 which explicitly vested on the ERB, as an incident of its principal function, the authority to grant provisional relief, thus:

> Section 8. *Authority to Grant Provisional Relief.* — The Board may, upon the filing of an application, petition or complaint or at any stage thereafter and without prior hearing, on the basis of supporting papers duly verified or authenticated, grant provisional relief on motion of a party in the case or on its own initiative, without prejudice to a final decision after hearing, should the Board find that the pleadings, together with such affidavits, documents and other evidence which may be submitted in support of the motion, substantially support the provisional order: *Provided*, That the Board shall immediately schedule and conduct a hearing thereon within thirty (30) days thereafter, upon publication and notice to all affected parties.

The aforequoted provision is still applicable to the ERC as it succeeded the ERB, by virtue of Section 80 of the EPIRA. A writ of preliminary injunction is one such provisional relief which a party in a case before the ERC may move for.

Lastly, the Court herein already declared that the RTC not only lacked the jurisdiction to issue the writ of preliminary injunction against MERALCO, but that the RTC actually had no jurisdiction at all over the subject matter of the Petition of BF Homes and PWCC in Civil Case No. 03-0151. Therefore, in addition to the dissolution of the writ of preliminary injunction issued by the RTC, the Court also deems it appropriate to already order the dismissal of the Petition of BF Homes and PWCC in Civil Case No. 03-0151 for lack of jurisdiction of the RTC over the subject matter of the same. Although only the matter of the writ of preliminary injunction was brought before this Court in the instant Petition, the Court is already taking cognizance of the issue on the jurisdiction of the RTC over the subject

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[28] *Urbanes, Jr. v. Court of Appeals*, 407 Phil. 856, 870 (2001).

matter of the Petition. The Court may *motu proprio* consider the issue of jurisdiction. The Court has discretion to determine whether the RTC validly acquired jurisdiction over Civil Case No. 03-0151 since, to reiterate, jurisdiction over the subject matter is conferred only by law. Jurisdiction over the subject matter cannot be acquired through, or waived by, any act or omission of the parties. Neither would the active participation of the parties nor estoppel operate to confer jurisdiction on the RTC where the latter has none over a cause of action.[29] Indeed, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.[30]

WHEREFORE, the instant Petition for Review is *DENIED*. The Decision dated October 27, 2005 of the Court of Appeals in CA-G.R. SP No. 82826 is *AFFIRMED with the MODIFICATION* that the Regional Trial Court, Branch 202 of Las Piñas City, is *ORDERED* to dismiss the Petition [With Prayer for the Issuance of Writ of Preliminary Injunction and for the Immediate Issuance of Restraining Order] of BF Homes, Inc. and Philippine Waterworks and Construction Corporation in Civil Case No. 03-0151. Costs against BF Homes, Inc. and Philippine Waterworks and Construction Corporation.

SO ORDERED.

Corona, C.J. (Chairperson), del Castillo, Abad,[*] and *Perez, JJ.,* concur.

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[29] *Suarez v. Saul*, G.R. No. 166664, October 20, 2005, 473 SCRA 628, 637-638.

[30] *Katon v. Palanca, Jr.*, G.R. No. 151149, September 7, 2004, 437 SCRA 565, 575.

[*] Per Special Order No. 917 dated November 24, 2010.

THIRD DIVISION

[G.R. No. 172020. December 6, 2010]

TRADERS ROYAL BANK, *petitioner, vs.* **NORBERTO CASTAÑARES and MILAGROS CASTAÑARES,** *respondents.*

SYLLABUS

1. CIVIL LAW; MORTGAGE; "DRAGNET CLAUSE" IN A MORTGAGE CONTRACT; SUBSUMES ALL DEBTS OF PAST AND FUTURE ORIGINS.— The above stipulation is also known as "dragnet clause" or "blanket mortgage clause" in American jurisprudence that would subsume all debts of past and future origins. It has been held as a valid and legal undertaking, the amounts specified as consideration in the contracts do not limit the amount for which the pledge or mortgage stands as security, if from the four corners of the instrument, the intent to secure future and other indebtedness can be gathered. A pledge or mortgage given to secure future advancements is a continuing security and is not discharged by the repayment of the amount named in the mortgage until the full amount of all advancements shall have been paid. A "dragnet clause" operates as a convenience and accommodation to the borrowers as it makes available additional funds without their having to execute additional security documents, thereby saving time, travel, loan closing costs, costs of extra legal services, recording fees, *et cetera*. While a real estate mortgage may exceptionally secure future loans or advancements, these future debts must be sufficiently described in the mortgage contract. An obligation is not secured by a mortgage unless it comes fairly within the terms of the mortgage contract.

2. ID.; ID.; ID.; VALIDITY OF A MORTGAGE CONTRACT CONTAINING A "DRAGNET CLAUSE," UPHELD.— [A] reading of the afore-quoted provision of the REMs shows that its terms are broad enough to cover packing credits and export advances granted by the petitioner to respondents. That the respondents subsequently availed of letters of credit and export advances in various amounts as reflected in the promissory notes, buttressed the claim of petitioner that the amounts of ₱86,000.00 and ₱60,000.00 stated in the REMs merely

represent the maximum total loans which will be secured by the mortgage. This must be so as respondents confirmed that the mortgage was constituted for the purpose of obtaining additional capital as dictated by the needs of their export business. Significantly, no complaint was made by the respondents as to the non-release of ₱86,000.00 and ₱60,000.00, in full, simultaneous or immediately following the execution of the REMs — under a single promissory note each equivalent to the said sums — and no demand for the said *specific* amounts was ever made by the petitioner. Even the letter-complaint sent by respondents to the Central Bank almost a year *after* the extrajudicial foreclosure sale mentioned only the questioned entries in their passbook and the $4,220.00 telegraphic transfer. Considering that respondents deemed it a serious "banking malpractice" for petitioner not to release in full the loan amount stated in the REMs, it can only be inferred that respondents themselves understood that the ₱86,000.00 and ₱60,000.00 indicated in the REMs was intended merely to fix a ceiling for the loan accommodations which will be secured thereby and not the actual principal loan to be released at one time. Thus, the RTC did not err in upholding the validity of the REMs and ordering the respondents to pay the deficiency in the foreclosure sale to satisfy the remaining mortgage indebtedness.

3. ID.; ID.; ID.; ID.; BORROWER MAY NOT BE ALLOWED TO COMPLAIN THAT THE AMOUNTS THEY RECEIVED WERE UNRELATED TO THE MORTGAGE CONTRACT.— [R]espondents admitted they received all the amounts under the promissory notes presented by the petitioner. The consideration in the execution of the REMs consist of those credit accommodations to fund their export transactions. Respondents as an afterthought raised issue on the nature of the amounts of principal loan indicated in the REMs long after these obligations have matured and the mortgage foreclosed due to their failure to fully settle their outstanding accounts with petitioner. Having expressly agreed to the terms of the REMs which are phrased to secure *all such loans and advancements* to be obtained from petitioner, although the principal amount stated therein were not released at one time and under several, not just one, *subsequently issued* promissory notes, respondents may not be allowed to complain later that the amounts they received were unrelated to the REMs.

4. ID.; OBLIGATIONS; EXTINGUISHMENT; ELEMENTS OF CONVENTIONAL COMPENSATION, PRESENT.— [W]e hold that the CA erred in holding that petitioner had no authority to do so by way of compensation or set off. In this case, the parties stipulated on the manner of such set off in case of non-payment of the amount due under each promissory note. x x x Agreements for compensation of debts or any obligations when the parties are mutually creditors and debtors are allowed under Art. 1282 of the Civil Code even though not all the legal requisites for legal compensation are present. Voluntary or conventional compensation is not limited to obligations which are not yet due. The only requirements for conventional compensation are (1) that each of the parties can fully dispose of the credit he seeks to compensate, and (2) that they agree to the extinguishment of their mutual credits. Consequently, no error was committed by the trial court in holding that petitioner validly applied, by way of compensation, the $4,220.00 telegraphic transfer remitted by respondents' foreign client through the petitioner.

APPEARANCES OF COUNSEL

The Law Firm of Hermosisima Hermosisima & Hermosisima for petitioner.

Nelson B. Panares for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

Assailed in this petition for review under Rule 45 of the 1997 Rules of Civil Procedure, as amended, is the Decision[1] dated January 11, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 67257 which reversed the Joint Decision[2] dated August 26,

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[1] *Rollo*, pp. 32-43. Penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Ramon M. Bato, Jr. and Apolinario D. Bruselas, Jr.

[2] *Id.* at 94-106. Penned by Judge Meinrado P. Paredes.

1998 of the Regional Trial Court (RTC) of Cebu City, Branch 13 in Civil Case Nos. R-22608 and CEB-112.

The Facts

Respondent-spouses Norberto and Milagros Castañares are engaged in the business of exporting shell crafts and other handicrafts. Between 1977 and 1978, respondents obtained from petitioner Traders Royal Bank various loans and credit accommodations. Respondents executed two real estate mortgages (REMs) dated April 18, 1977 and January 25, 1978 covering their properties (TCT Nos. T-38346, T-37536, T-37535, T-37192 and T-37191). As evidenced by Promissory Note No. BD-77-113 dated May 10, 1977, petitioner released only the amount of ₱35,000.00 although the mortgage deeds indicated the principal amounts as ₱86,000.00 and ₱60,000.00.[3]

Respondents were further granted additional funds on various dates under promissory notes[4] they executed in favor of the petitioner:

Type of Loan	Date Granted	Amount
Packing Credit	May 10, 1977	₱19,000.00
Packing Credit	May 18, 1977	₱25,000.00
Packing Credit	June 23, 1977	₱12,500.00
Packing Credit	August 19, 1977	₱ 2,900.00
Packing Credit	April 4, 1978	₱18,000.00
Packing Credit	April 19, 1978	₱23,000.00

On June 22, 1977, petitioner transferred the amount of ₱1,150.00 from respondents' current account to their savings account, which was erroneously posted as ₱1,500.00 but later corrected to reflect the figure ₱1,150.00 in the savings account passbook. By the second quarter of 1978, the loans began to mature and the letters of credit against which the packing advances were granted started to expire. Meanwhile, on December 7, 1979, petitioner, without notifying the respondents,

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[3] Index of Exhibit for the Plaintiff (Civil Case No. R-22608), pp. 207, 228-229.

[4] *Id.* at 210, 213, 216, 219, 222 and 225.

applied to the payment of respondents' outstanding obligations the sum of $4,220.00 or ₱30,930.49 which was remitted to the respondents thru telegraphic transfer from AMROBANK, Amsterdam by one Richard Wagner. The aforesaid entries in the passbook of respondents and the $4,220.00 telegraphic transfer were the subject of respondents' letter-complaint[5] dated September 20, 1982 addressed to the Manager of the Regional Office of the Central Bank of the Philippines.

For failure of the respondents to pay their outstanding loans with petitioner, the latter proceeded with the extrajudicial foreclosure of the real estate mortgages.[6] Thereafter, a Certificate of Sale[7] covering all the mortgaged properties was issued by Deputy Sheriff Wilfredo P. Borces in favor of petitioner as the lone bidder for ₱117,000.00 during the auction sale conducted on November 24, 1981. Said certificate of sale was registered with the Office of the Register of Deeds on February 4, 1982.

On November 24, 1982, petitioner instituted Civil Case No. R-22608 for deficiency judgment, claiming that after applying the proceeds of foreclosure sale to the total unpaid obligations of respondents (₱200,397.78), respondents were still indebted to petitioner for the sum of ₱83,397.68.[8] Respondents filed their Answer With Counterclaim on December 27, 1982.[9]

On February 10, 1983, respondents filed Civil Case No. CEB-112 for the recovery of the sums of ₱2,584.27 debited from their savings account passbook and the equivalent amount of $4,220.00 telegraphic transfer, and in addition, $55,258.85 representing the damage suffered by the respondents from letters of credit left un-negotiated because of petitioner's refusal to pay the $4,220.00 demanded by the respondents.[10]

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[5] Records, pp. 7-9.

[6] *Supra* note 3 at 230-233.

[7] Records, pp. 48-50.

[8] *Id.* at 45-47; *supra* note 3 at 240.

[9] *Id.* at 56-63.

[10] *Id.* at 1-5.

The cases were consolidated before Branch 13, RTC of Cebu City.

Ruling of the RTC

In a Joint Decision[11] dated August 26, 1998, the RTC ruled in favor of the petitioner, as follows:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered in Civil Case No. R-22608 in favor of the plaintiff and against the defendants directing the defendants jointly and solidarily to pay plaintiff the sum of ₱83,397.68 with legal rate of interest to be computed from November 24, 1981 (the date of the auction sale) until full payment thereof. They are likewise directed to pay plaintiff attorney's fees in the sum of ₱10,000.00 plus litigation expenses in the amount of ₱2,500.00.
>
> With cost against defendants.
>
> In CEB-112, judgment is hereby rendered dismissing the complaint.
>
> With cost against the plaintiff.
>
> SO ORDERED.[12]

The trial court found that despite respondents' insistence that the REM covered only a separate loan for ₱86,000.00 which they believed petitioner committed to lend them, the evidence clearly shows that said REM was constituted as security for all the promissory notes. No separate demand was made for the amount of ₱86,000.00 stated in the REM, as the demand was limited to the amounts of the promissory notes. The trial court further noted that respondents never questioned the judgment for extrajudicial foreclosure, the certificate of sale and the deficiency in that case.[13]

With respect to the passbook entries, the trial court stated that no objection thereto was made by the respondents until

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[11] *Supra* note 2.

[12] *Id.* at 106.

[13] *Id.* at 100-102.

five years later when in a letter dated August 10, 1982, respondents' counsel asked petitioner to be enlightened on the matter. Neither did respondents protest the application of the balance (₱1,150.00) in the passbook to his account with petitioner. More important, respondent Norberto Castañares in his testimony admitted that the matter was already clarified to him by petitioner and that the latter had the right to apply his deposit to his loan accounts. Admittedly, his complaint has to do more with the lack of consent on his part and the non-issuance of official receipt. However, he did not follow up his request for official receipt as he did not want to be going back and forth to the bank.[14]

CA Ruling

With the trial court's denial of their motion for reconsideration, respondents appealed to the CA. Finding merit in respondents' arguments, the appellate court set aside the trial court's judgment under its Decision[15] dated January 11, 2006, thus:

> WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us GRANTING the appeal filed in this case and REVERSING AND SETTING ASIDE the Joint Decision dated August 26, 1998, Regional Trial Court, 7th Judicial Region, Branch 13, in Civil Case No. R-22608 and Civil Case No. CEB-112. With regard to Civil Case No. R-22608, the real estate mortgage dated April 18, 1977 is hereby DECLARED as valid in part as to the amount of ₱35,000.00 actually released in favor of appellants, while the real estate mortgage dated January 26, 1978 is hereby declared as null and void. Furthermore, in Civil Case No. CEB-112, TRB is hereby ordered to release the amount of US$4,220.90 to the appellants at its current rate of exchange. No pronouncement as to costs.
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> SO ORDERED.[16]

The CA held that the RTC overlooked the fact that there were no adequate evidence presented to prove that petitioner

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[14] *Id.* at 102-106.

[15] *Supra* note 1.

[16] *Id.* at 42.

released in full to the respondents the proceeds of the REM loan. Citing *Filipinas Marble Corporation v. Intermediate Appellate Court*[17] and *Naguiat v. Court of Appeals*,[18] the appellate court declared that where there was failure of the mortgagee bank to deliver the consideration for which the mortgage was executed, the contract of loan was invalid and consequently the accessory contract of mortgage is likewise null and void. In this case, only ₱35,000.00 out of the ₱86,000.00 stated in the REM dated April 18, 1977 was released to respondents, and hence the REM was valid only to that extent. For the same reason, the second REM was null and void since no actual loan proceeds were released to the respondents-mortgagors. The REMs are not connected to the subsequent promissory notes because these were signed by respondents for the sole purpose of securing packing credits and export advances. Further citing *Acme Shoe, Rubber and Plastic Corp. v. Court of Appeals*,[19] the CA stated that the rule is that a pledge, real estate mortgage or antichresis may exceptionally secure after-incurred obligations only as long as these debts are accurately described therein. In this case, neither of the two REMs accurately described or even mentioned the securing of future debts or obligations.[20]

The CA thus held that petitioner's remedy would be to file a collection case on the unpaid promissory notes which were not secured by the REMs.

As to the $4,220.00 telegraphic transfer, the CA ruled that petitioner had no basis for withholding and applying the said amount to respondents' loan account. Said transaction was separate and distinct from the contract of loan between petitioner and respondents. Petitioner had no authority to convert the said telegraphic transfer into cash since the participation of respondents was necessary to sign and indorse the disbursement

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[17] No. 68010, May 30, 1986, 142 SCRA 180.

[18] G.R. No. 118375, October 3, 2003, 412 SCRA 591.

[19] G.R. No. 103576, August 22, 1996, 260 SCRA 714.

[20] *Rollo,* pp. 38-40.

voucher and check. Moreover, petitioner was not transparent in its actions as it did not inform the respondents of its intention to apply the proceeds of the telegraphic transfer to their loan account and worse, it did not even present an official receipt to prove payment. Section 5 of Republic Act No. 6426, otherwise known as the Foreign Currency Deposit Act, provides that there shall be no restriction on the withdrawability by the depositor of his deposit or the transferability of the same abroad except those arising from contract between the depositor and the bank.[21]

The Petition

Petitioner raised the following grounds in the review of the CA decision:

I. THE COURT OF APPEALS ERRED IN HOLDING THAT THE REAL ESTATE MORTGAGE DATED 18 APRIL 1977 IS VALID ONLY IN PART TO THE EXTENT OF PHP35,000.00 WHICH IS ALLEGEDLY THE AMOUNT PROVED TO HAVE BEEN ACTUALLY RELEASED TO RESPONDENTS OUT OF THE SUM OF PHP86,000.00.

II. THE COURT OF APPEALS ERRED IN DECLARING AS NULL AND VOID THE REAL ESTATE MORTGAGE DATED 26 JANUARY 1978 IN THAT NO ACTUAL LOAN PROCEEDS WERE RELEASED IN FAVOR OF THE RESPONDENTS.

III. THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER HAD NO BASIS IN WITHHOLDING AND SUBSEQUENTLY APPLYING IN PAYMENT OF RESPONDENTS' OVERDUE ACCOUNT IN THE TELEGRAPHIC TRANSFER IN THE AMOUNT OF U.S.$4,220.00.[22]

Petitioner contends that the CA overlooked the specific stipulation in the REMs that the mortgage extends not only to the amounts specified therein but also to loans or credits subsequently granted, which include the packing credits and export advances obtained by the respondents. Moreover, the

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[21] *Id.* at 41-42.

[22] *Id.* at 16-17.

amounts indicated on the REMs need not exactly be the same amounts that should be released and covered by checks or credit memos, the same being only the maximum sum or "ceiling" which the REM secures, as explained by petitioner's witness, Ms. Blesy Nemeño. Her testimony does not prove that the proceeds of the loans were not released in full, as no credit memos in the specific amounts received by the respondents can be presented.

Petitioner argues that the rulings cited by the CA do not at all support its conclusion that the promissory notes were totally unrelated to the REMs. In the *Acme* case, the pronouncement was that the after-incurred obligations must, at the time they are contracted, only be accurately described in a proper instrument as in the case of a promissory note. The confusion was brought by the use in the CA decision of the word "therein" which is not found in the text of the *Acme* ruling. Besides, it is way too impossible that future loans can be accurately described, as the CA opined, at the time that a deed of real estate mortgage is executed. The CA's reliance on the case of *Filipinas Marble Corporation*, is likewise misplaced as it finds no application under the facts obtaining in the present case. The misappropriation by some individuals of the loan proceeds secured by petitioner was the consideration which compelled this Court to rule that there was failure on the part of DBP to deliver the consideration for which the mortgage was executed. Similarly, the case of *Naguiat* is inapplicable in that there was evidence that an agent of the creditor withheld from the debtor the checks representing the proceeds of the loan pending delivery of additional collateral.

Finally, petitioner reiterates that it had the right by way of set-off the telegraphic transfer in the sum of $4,220.00 against the unpaid loan account of respondents. Citing *Bank of the Philippine Islands v. Court of Appeals*,[23] petitioner asserts that they are bound principally as both creditors and debtors of each other, the debts consisting of a sum of money, both due, liquidated and demandable, and are not claimed by a third person. Hence,

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[23] G.R. No. 116792, March 29, 1996, 255 SCRA 571.

the RTC did not err in holding that petitioner validly applied the amount of ₱30,930.20 (peso equivalent of $4,220.00) to the loan account of the respondents.

Our Ruling

We rule for the petitioner.

The subject REMs contain the following provision:

> That, for and in consideration of certain loans, overdrafts and other credit accommodations obtained, from the Mortgagee by the Mortgagor and/or *SPS. NORBERTO V. CASTAÑARES & MILAGROS M. CASTAÑARES* and **to secure the payment of the same**, the principal of all of which is hereby fixed at EIGHTY-SIX THOUSAND PESOS ONLY – (₱86,000.00) Pesos, Philippine Currency, **as well as those that the Mortgagee may *hereafter* extend to the Mortgagor x x x, including interest and expenses or *any other obligation* owing to the Mortgagee, whether direct or indirect, principal or secondary, as appears in the accounts, books and records of the Mortgagee** x x x.[24] (Emphasis supplied.)

The above stipulation is also known as "dragnet clause" or "blanket mortgage clause" in American jurisprudence that would subsume all debts of past and future origins. It has been held as a valid and legal undertaking, the amounts specified as consideration in the contracts do not limit the amount for which the pledge or mortgage stands as security, if from the four corners of the instrument, the intent to secure future and other indebtedness can be gathered. A pledge or mortgage given to secure future advancements is a continuing security and is not discharged by the repayment of the amount named in the mortgage until the full amount of all advancements shall have been paid.[25]

A "dragnet clause" operates as a convenience and accommodation to the borrowers as it makes available additional funds without their having to execute additional security documents,

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[24] *Supra* note 3 at 228.

[25] *Republic Planters Bank v. Sarmiento*, G.R. No. 170785, October 19, 2007, 537 SCRA 303, 314.

thereby saving time, travel, loan closing costs, costs of extra legal services, recording fees, *et cetera*.[26] While a real estate mortgage may exceptionally secure future loans or advancements, these future debts must be sufficiently described in the mortgage contract. An obligation is not secured by a mortgage unless it comes fairly within the terms of the mortgage contract.[27]

In holding that the REMs were null and void, the CA opined that the full amount of the principal loan stated in the deed should have been released in full, sustaining the position of the respondents that the promissory notes were not secured by the mortgage and unrelated to it. However, a reading of the afore-quoted provision of the REMs shows that its terms are broad enough to cover packing credits and export advances granted by the petitioner to respondents. That the respondents subsequently availed of letters of credit and export advances in various amounts as reflected in the promissory notes, buttressed the claim of petitioner that the amounts of ₱86,000.00 and ₱60,000.00 stated in the REMs merely represent the maximum total loans which will be secured by the mortgage. This must be so as respondents confirmed that the mortgage was constituted for the purpose of obtaining additional capital as dictated by the needs of their export business. Significantly, no complaint was made by the respondents as to the non-release of ₱86,000.00 and ₱60,000.00, in full, simultaneous or immediately following the execution of the REMs — under a single promissory note each equivalent to the said sums — and no demand for the said *specific* amounts was ever made by the petitioner. Even the letter-complaint sent by respondents to the Central Bank almost a year *after* the extrajudicial foreclosure sale mentioned only the questioned entries in their passbook and the $4,220.00 telegraphic transfer. Considering that respondents deemed it a

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[26] *Prudential Bank v. Alviar*, G.R. No. 150197, July 28, 2005, 464 SCRA 353, 363, cited in *Union Bank of the Philippines v. Court of Appeals*, G.R. No. 164910, September 30, 2005, 471 SCRA 751, 759.

[27] *Cuyco v. Cuyco*, G.R. No. 168736, April 19, 2006, 487 SCRA 693, 706, citing *Philippine Bank of Communications v. Court of Appeals*, 323 Phil. 297, 313 (1996).

serious "banking malpractice" for petitioner not to release in full the loan amount stated in the REMs, it can only be inferred that respondents themselves understood that the ₱86,000.00 and ₱60,000.00 indicated in the REMs was intended merely to fix a ceiling for the loan accommodations which will be secured thereby and not the actual principal loan to be released at one time. Thus, the RTC did not err in upholding the validity of the REMs and ordering the respondents to pay the deficiency in the foreclosure sale to satisfy the remaining mortgage indebtedness.

The cases relied upon by the CA are all inapplicable to the present controversy. In *Filipinas Marble Corporation*, we held that pending the outcome of litigation between DBP which together with Bancom officers were alleged by the petitioner-mortgagor to have misspent and misappropriated the $5 million loan granted by DBP, the provisions of P.D. No. 385 prohibiting injunctions against foreclosures by government financial institutions, cannot be automatically applied. Foreclosure of the mortgaged properties for the whole amount of the loan was deemed prejudicial to the petitioner, its employees and their families since the true amount of the loan which was applied for the benefit of the petitioner can be determined only after a trial on the merits.[28] No such act of misappropriation by corporate officers appointed by the mortgagee is involved in this case. Besides, the respondents never denied receiving the amounts under the promissory notes which were all covered by the REMs and the very obligations subject of the extrajudicial foreclosure.

As to the ruling in *Naguiat*, we found therein no compelling reason to disturb the lower courts' finding that the lender did not remit and the borrower did not receive the proceeds of the loan. Hence, we held the mortgage contract, being just an accessory contract, as null and void for absence of consideration.[29] In this case, however, respondents admitted they received all the amounts under the promissory notes presented by the petitioner.

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[28] *Supra* note 17 at 185, 189-190.

[29] *Supra* note 18 at 599.

The consideration in the execution of the REMs consist of those credit accommodations to fund their export transactions. Respondents as an afterthought raised issue on the nature of the amounts of principal loan indicated in the REMs long after these obligations have matured and the mortgage foreclosed due to their failure to fully settle their outstanding accounts with petitioner. Having expressly agreed to the terms of the REMs which are phrased to secure *all such loans and advancements* to be obtained from petitioner, although the principal amount stated therein were not released at one time and under several, not just one, *subsequently issued* promissory notes, respondents may not be allowed to complain later that the amounts they received were unrelated to the REMs.

On the issue of the $4,220.00 telegraphic transfer which was applied by the petitioner to the loan account of respondents, we hold that the CA erred in holding that petitioner had no authority to do so by way of compensation or set off. In this case, the parties stipulated on the manner of such set off in case of non-payment of the amount due under each promissory note.

The subject promissory notes thus provide:

> In case of non-payment of this note or any installments thereof at maturity, I/We jointly and severally, agree to pay an additional amount equivalent to two percent (2%) per annum of the amount due and demandable as penalty and collection charges, in the form of liquidated damages, until fully paid; and the further sum of ten percent (10%) thereof in full, without any deduction, as and for attorney's fees whether actually incurred or not, exclusive of costs and judicial/extrajudicial expenses; moreover, I/We, jointly and severally, **further empower and authorize the TRADERS ROYAL BANK, at its option, and without notice, to set-off or to apply to the payment of this note any and all funds, which may be in its hands on deposit or otherwise belonging to anyone or all of us**, and to hold as security therefor any real or personal property, which may be in its possession or control by virtue of any other contract.[30] (Emphasis supplied.)

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[30] Index of Exhibit for the Plaintiff (Civil Case No. R-22608), pp. 207, 210, 213, 216, 219, 222 and 225.

Agreements for compensation of debts or any obligations when the parties are mutually creditors and debtors are allowed under Art. 1282 of the Civil Code even though not all the legal requisites for legal compensation are present. Voluntary or conventional compensation is not limited to obligations which are not yet due.[31] The only requirements for conventional compensation are (1) that each of the parties can fully dispose of the credit he seeks to compensate, and (2) that they agree to the extinguishment of their mutual credits.[32] Consequently, no error was committed by the trial court in holding that petitioner validly applied, by way of compensation, the $4,220.00 telegraphic transfer remitted by respondents' foreign client through the petitioner.

WHEREFORE, the petition is *GRANTED*. The Decision dated January 11, 2006 of the Court of Appeals in CA-G.R. CV No. 67257 is *REVERSED* and *SET ASIDE*. The Joint Decision dated August 26, 1998 of the Regional Trial Court of Cebu City, Branch 13 in Civil Case Nos. R-22608 and CEB-112 is *REINSTATED and UPHELD*.

No pronouncement as to costs.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Bersamin, and *Sereno, JJ.,* concur.

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[31] Arturo M. Tolentino, *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES*, Vol. IV, 1991 Ed., p. 373.

[32] See *CKH Industrial and Development Corp. v. Court of Appeals*, G.R No. 111890, May 7, 1997, 272 SCRA 333, 348, citing IV Tolentino, *CIVIL CODE OF THE PHILIPPINES*, 1985 ed., p. 368.

FIRST DIVISION

[G.R. No. 179044. December 6, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RODRIGUEZ LUCERO *y* PAW-AS *alias* "Kikit,"** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT.— Basic is the rule that the Supreme Court accords great respect and even finality to the findings of credibility of the trial court, more so if the same were affirmed by the CA, as in this case. Besides, upon our review of the records of this case, we find that both the trial court and the CA did not overlook or misunderstand any substance or fact which would have materially affected the outcome of this case.

2. ID.; ID.; ID.; ALLEGED INCONSISTENCIES REFERRED TO MINOR DETAILS.— [T]he alleged inconsistencies referred to by the defense indeed refer to minor details which are very inconsequential to the outcome of the case. According to the defense, "Maceda first testified that when the victim was about to leave, [appellant] came out and mauled the victim. However, he contradicted himself when he further testified that when [appellant] came out, the latter conversed with the victim and it was only after the victim and the [appellant] reached the distance of ten (10) meters that he saw the appellant [hack] the victim." This contention was satisfactorily debunked by the prosecution. We thus agree that whether the appellant immediately mauled the victim or he mauled him only after walking a distance of 10 meters does not deviate from the fact that appellant did indeed maul and hack the victim.

3. ID.; ID.; ID.; ABSENCE OF ILL MOTIVE TO FALSELY TESTIFY.— No ill motive could be attributed to Maceda for testifying against the appellant. In fact, appellant even admitted that he had no quarrel or previous misunderstanding or disagreement with Maceda. "Pertinently, the absence of such improper motive on the part of the witness for the prosecution strongly tends to sustain the conclusion that no such improper

motive exists and that [his] testimony is worthy of full faith and credit. x x x."

4. CRIMINAL LAW; MURDER; QUALIFIED BY TREACHERY.— [W]e agree with both the trial court and the CA that treachery attended the commission of the crime. Records show that appellant lulled the victim into believing that he was being pursued by somebody. Believing in the tale being spun by the appellant, the victim even offered appellant the security and protection of his house. However, appellant reciprocated the victim's trust and hospitality by suddenly hacking him on the head and stabbing him on the waist. "The settled rule is that treachery can exist even if the attack is frontal, as long as the attack is sudden and unexpected, giving the victim no opportunity to repel it or to defend himself. What is decisive is that the execution of the attack, without the slightest provocation from an unarmed victim, made it impossible for the victim to defend himself or to retaliate."

5. ID.; ID.; PENALTY.— Article 248 of the Revised Penal Code provides for the penalty of *reclusion perpetua* to death for the crime of murder. If no aggravating or mitigating circumstance attended the commission of the crime, the imposable penalty is *reclusion perpetua*. In this case, the qualifying circumstances of treachery and evident premeditation were both alleged in the Information. However, only the qualifying circumstance of treachery was found to have attended the commission of the crime which nevertheless qualified the killing to murder. There being no other aggravating or mitigating circumstances, both the trial court and the CA therefore correctly imposed upon the appellant the penalty of *reclusion perpetua*.

6. ID.; ID.; CIVIL LIABILITIES.— "Based on Article 100 of the Revised Penal Code, every person criminally liable for a felony is also civilly liable. Thus, when death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases. In cases of murder and homicide, civil indemnity of PhP75,000.00 and moral damages of PhP50,000.00 are awarded automatically. Indeed, such awards are mandatory

without need of allegation and proof other than the death of the victim, owing to the fact of the commission of murder or homicide." In the instant case, we note that the CA awarded the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱25,000.00 as exemplary damages, and ₱3,000.00 as actual damages. Thus, pursuant to prevailing jurisprudence, the award of ₱50,000.00 as civil indemnity must be increased to ₱75,000.00. The award of ₱25,000.00 as exemplary damages is likewise increased to ₱30,000.00. Anent the actual damages, we note that the CA awarded ₱3,000.00 representing the amount spent for the embalming as shown by the receipt. However, the prosecution also presented a list of expenses such as those spent for the coffin, *etc*., which were not duly covered by receipt. "Under Article 2224 of the Civil Code, temperate damages may be recovered, as it cannot be denied that the heirs of the victims suffered pecuniary loss although the exact amount was not proved." "The award of ₱25,000.00 as temperate damages in x x x murder cases is proper when no evidence of burial and funeral expenses is presented in the trial court." Thus, we delete the award of ₱3,000.00 as actual damages given by the CA. In lieu thereof, we hereby award to the heirs of the victim the amount of ₱25,000.00 as temperate damages.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

DEL CASTILLO, *J.*:

On appeal is the November 29, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00340 which affirmed with modifications the July 19, 2002 Decision[2] of the Regional

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[1] CA *rollo*, pp. 88-96; penned by Associate Justice Edgardo A. Carmelo and concurred in by Associate Justices Sixto C. Marella, Jr. and Mario V. Lopez.

[2] *Id.* at 17-21; penned by Acting Presiding Judge Romeo C. Buenaflor.

Trial Court of Bislig City, Surigao del Sur, Branch 29, finding appellant Rodriguez Lucero *y* Paw-as guilty beyond reasonable doubt of the crime of murder.

Factual Antecedents

On October 20, 1998, an Information[3] was filed charging appellant with the crime of murder committed as follows:

> That on or about 1:30 [a.m.] of July 21, 1998, at Purok 6, Barangay Sta. Cruz, Municipality of Tagbina, Province of Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with treachery and evident premeditation and with intent to kill, did then and there wil[l]fully, unlawfully and feloniously attack, assault and hack one Edgar Aydaon, a Barangay Kagawad, with the use of a bolo, thereby hitting the victim[']s head, which wound and injury caused the instantaneous death of the victim, to the damage and prejudice of the heirs of said Aydaon.
>
> CONTRARY TO LAW x x x

Appellant pleaded not guilty to the charge. Trial thereafter ensued.

Version of the Prosecution

The prosecution presented Leonito Maceda (Maceda), Rafael Ampis and SPO1 Daniel Barrios as witnesses. Based on their combined testimonies, the prosecution established the following:

At about midnight of July 20, 1998, Maceda went out of his house to get "*kasla*," a medicinal herb for his sick child. After getting the herb, he went to a waiting shed located about 10 meters away from his house as he saw a certain Linda Basalo (Basalo) thereat waiting for a ride. While at the waiting shed, the victim Edgar Aydaon passed by. But after a while, the victim returned and helped Basalo load the vegetables in the jeepney.

After the jeepney left, appellant arrived and called out the victim. Appellant pleaded that he be allowed by the victim to

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[3] *Id.* at 11.

go with him as he (appellant) was allegedly being pursued by a certain Pandeta. The victim acceded to the request and even invited appellant to sleep in his house. However, after walking a distance of about 10 meters, appellant suddenly hacked the victim at the left side of his head causing the victim to fall to the ground. In spite of the fact that the victim was already lying on the ground, appellant further stabbed him on his waist. Thereafter, appellant left the premises.

Version of the Defense

The defense presented appellant as its lone witness who could only offer denial and alibi. He claimed that on July 21, 1998, he was at his farm located at Nyholm, Agusan del Sur. He alleged that he had no prior disagreement with the victim or any of the prosecution witnesses. Hence, he could not understand why he was being implicated in the crime.

Ruling of the Regional Trial Court

The trial court found appellant guilty of murder qualified by treachery. It noted that appellant "beguiled [the victim by] pleading for help"[4] but after walking a distance of about 10 meters, suddenly hacked him on the head leaving him with no opportunity to defend himself.

The trial court however found that the qualifying circumstance of evident premeditation was not present. It noted that the prosecution failed to prove "(1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit clung to his determination; and (3) sufficient lapse of time between the determination and execution to allow him to reflect upon the consequences of his act."[5]

The trial court disregarded appellant's denial and alibi for being uncorroborated. Besides, appellant himself admitted that the distance between his farm and the scene of the crime is only 10 kilometers and could be traversed by motorcycle in

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[4] *Id.* at 19.

[5] *Id.*

one hour or even less. Thus, he failed to prove that it was physically impossible for him to be at the crime scene at the time it was committed. Besides, appellant's alibi could not stand scrutiny *vis-à-vis* the testimony of Maceda positively identifying appellant as the author of the crime.

Finally, the trial court found the inconsistencies in the testimony of Maceda only minor and trivial as they did not touch on the elements of the crime.

The dispositive portion of the Decision of the trial court reads:

> Wherefore, finding the accused RODRIGUEZ LUCERO *Y* PAW-AS *alias* "KIKIT" guilty beyond reasonable doubt of the crime of MURDER defined and penalized under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, this Court hereby sentences him to suffer the penalty of *Reclusion Perpetua* with all the accessory penalties provided for under Article 41 of the Revised Penal Code.
>
> To pay the heirs of the victim the sum of fifty thousand pesos (₱50,000.00) as [civil] indemnity and ten thousand pesos (₱10,000.00) as exemplary damages.
>
> To pay the costs.
>
> The accused shall serve his sentence at the National Penitentiary now New Bilibid Prisons, Muntinlupa City.
>
> SO ORDERED.[6]

Ruling of the Court of Appeals

The CA affirmed with modifications the Decision of the trial court, thus:

> FOR THE REASONS STATED, the appealed Decision convicting RODRIGUEZ LUCERO *Y* PAW-AS *alias* "[K]ikit of Murder is hereby AFFIRMED with the MODIFICATION[S] that he is ORDERED to pay the heirs of the victim ₱50,000.00 as indemnity, ₱25,000.00 as exemplary damages, ₱3,000.00 as actual damages and ₱50,000.00 as moral damages. *Costs de officio* (sic).

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[6] *Id.* at 21.

SO ORDERED.[7]

As did the trial court, the appellate court found the alleged inconsistencies adverted to by the appellant minor and did not impair the credibility of Maceda. According to the CA, there was no inconsistency in "the narration of the principal occurrence [or] the positive identification of the assailant."[8] Further, "minor inconsistencies, far from detracting from the veracity of the testimony, even enhance the credibility of the witnesses, for they remove any suspicion that the testimony was contrived or rehearsed."[9]

The appellate court also affirmed the findings of the trial court that treachery attended the commission of the crime. According to the CA, treachery was —

> clearly demonstrated when appellant suddenly attacked and stabbed the victim who offered the accused to sleep in his house and having conversation at that time, with absolutely no inkling of the impending danger as the accused suddenly and without warning, hacked and stabbed the victim, giving the victim no x x x chance to defend himself. x x x[10]

Hence, this appeal.

On October 15, 2007, we notified both parties that they may file their respective supplemental briefs. However, in separate manifestations, both parties opted not to file their briefs.

Assignment of Errors

Appellant raises the following assignment of errors:

I. THE COURT *A QUO* ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE INCONSISTENT TESTIMONY OF PROSECUTION WITNESS LEONITO MACEDA AND

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[7] *Id.* at 95-96.

[8] *Id* at 92.

[9] *Id*.

[10] *Id*. at 94.

IN DISREGARDING THE DEFENSE INTERPOSED BY THE ACCUSED-APPELLANT.

II. THE COURT *A QUO* ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[11]

Our Ruling

The appeal lacks merit.

The defense basically assails the credibility of prosecution eyewitness Maceda. As it did before the CA, the defense claims that credence should not have been given to the testimony of prosecution eyewitness Maceda as it bore several inconsistencies.

We find this contention untenable. Basic is the rule that the Supreme Court accords great respect and even finality to the findings of credibility of the trial court, more so if the same were affirmed by the CA, as in this case. Besides, upon our review of the records of this case, we find that both the trial court and the CA did not overlook or misunderstand any substance or fact which would have materially affected the outcome of this case.

Our ruling in *People v. Elarcosa*[12] is instructive, thus:

> In this regard, it should be noted that questions concerning the credibility of a witness are best addressed to the sound discretion of the trial court, since it is the latter which is in the best position to observe the demeanor and bodily movements of a witness. This becomes all the more compelling when the appellate court affirms the findings of the trial court. Thus, we generally defer to the trial court's assessment, unless there is a clear showing that such findings are tainted with arbitrariness, capriciousness or palpable error. x x x

Moreover, the alleged inconsistencies referred to by the defense indeed refer to minor details which are very inconsequential to the outcome of the case. According to the defense, "Maceda

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[11] *Id.* at 34.

[12] G.R. No. 186539, June 29, 2010.

first testified that when the victim was about to leave, [appellant] came out and mauled the victim. However, he contradicted himself when he further testified that when [appellant] came out, the latter conversed with the victim and it was only after the victim and the [appellant] reached the distance of ten (10) meters that he saw the appellant [hack] the victim."[13]

This contention was satisfactorily debunked by the prosecution. We thus agree that whether the appellant immediately mauled the victim or he mauled him only after walking a distance of 10 meters does not deviate from the fact that appellant did indeed maul and hack the victim. Moreover, the prosecution correctly argued that "appellant quoted x x x Maceda's testimony separately and took it out of context."[14] The records show that after making a general statement that appellant came out and mauled the victim, Maceda further explained when pressed for details that appellant hacked the victim after they conversed and walked the distance of about 10 meters.[15]

The defense also pointed out that Maceda was inconsistent whether he got the "*kasla*" in the morning or evening of July 20, 1998. However, whether Maceda got the "*kasla*" in the morning or evening has no bearing with the crime of murder committed by the appellant against the victim. The fact remains that Maceda positively identified appellant as the person who hacked the victim on the head and stabbed him on the waist. No ill motive could be attributed to Maceda for testifying against the appellant. In fact, appellant even admitted that he had no quarrel or previous misunderstanding or disagreement with Maceda. "Pertinently, the absence of such improper motive on the part of the witness for the prosecution strongly tends to sustain the conclusion that no such improper motive exists and that [his] testimony is worthy of full faith and credit. Indeed, there is no reason to deviate from the factual findings of the trial court."[16]

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[13] CA *rollo,* p. 42.

[14] *Id.* at 70.

[15] TSN, September 14, 1999, pp. 7-8.

[16] *People v. Elarcosa, supra* note 12.

Finally, we agree with both the trial court and the CA that treachery attended the commission of the crime. Records show that appellant lulled the victim into believing that he was being pursued by somebody. Believing in the tale being spun by the appellant, the victim even offered appellant the security and protection of his house. However, appellant reciprocated the victim's trust and hospitality by suddenly hacking him on the head and stabbing him on the waist. "The settled rule is that treachery can exist even if the attack is frontal, as long as the attack is sudden and unexpected, giving the victim no opportunity to repel it or to defend himself. What is decisive is that the execution of the attack, without the slightest provocation from an unarmed victim, made it impossible for the victim to defend himself or to retaliate."[17]

The Penalty

Article 248 of the Revised Penal Code provides for the penalty of *reclusion perpetua* to death for the crime of murder. If no aggravating or mitigating circumstance attended the commission of the crime, the imposable penalty is *reclusion perpetua.* In this case, the qualifying circumstances of treachery and evident premeditation were both alleged in the Information. However, only the qualifying circumstance of treachery was found to have attended the commission of the crime which nevertheless qualified the killing to murder. There being no other aggravating or mitigating circumstances, both the trial court and the CA therefore correctly imposed upon the appellant the penalty of *reclusion perpetua.*

The Damages

"Based on Article 100 of the Revised Penal Code, every person criminally liable for a felony is also civilly liable. Thus, when death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of

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[17] *Id.* citing *People v. Lacaden,* G.R. No. 187682, November 25, 2009, 605 SCRA 784.

litigation; and (6) interest, in proper cases. In cases of murder and homicide, civil indemnity of PhP75,000.00 and moral damages of PhP50,000.00 are awarded automatically. Indeed, such awards are mandatory without need of allegation and proof other than the death of the victim, owing to the fact of the commission of murder or homicide."[18]

In the instant case, we note that the CA awarded the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱25,000.00 as exemplary damages, and ₱3,000.00 as actual damages. Thus, pursuant to prevailing jurisprudence,[19] the award of ₱50,000.00 as civil indemnity must be increased to ₱75,000.00. The award of ₱25,000.00 as exemplary damages is likewise increased to ₱30,000.00.

Anent the actual damages, we note that the CA awarded ₱3,000.00 representing the amount spent for the embalming as shown by the receipt. However, the prosecution also presented a list of expenses such as those spent for the coffin, *etc*., which were not duly covered by receipt. "Under Article 2224 of the Civil Code, temperate damages may be recovered, as it cannot be denied that the heirs of the victims suffered pecuniary loss although the exact amount was not proved."[20] "The award of ₱25,000.00 as temperate damages in x x x murder cases is proper when no evidence of burial and funeral expenses is presented in the trial court."[21] Thus, we delete the award of ₱3,000.00 as actual damages given by the CA. In lieu thereof, we hereby award to the heirs of the victim the amount of ₱25,000.00 as temperate damages.

WHEREFORE, the appeal is *DENIED*. The November 29, 2006 Decision of the Court of Appeals in CA-G.R. CR-HC No. 00340 which affirmed with modifications the July 19, 2002

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[18] *Id*.

[19] *Id*.

[20] *People v. Gidoc,* G.R. No. 185162, April 24, 2009, 586 SCRA 825, 837.

[21] *Id*.

Decision of the Regional Trial Court of Bislig City, Surigao del Sur, Branch 29, finding appellant Rodriguez Lucero *y* Paw-as guilty beyond reasonable doubt of the crime of murder, is *AFFIRMED* with *MODIFICATIONS* that the awards of civil indemnity is increased to ₱75,000.00, exemplary damages is increased to ₱30,000.00; the award of ₱3,000.00 as actual damages is deleted and in lieu thereof, appellant is ordered to pay the heirs of the victim the amount of ₱25,000.00 as temperate damages.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Abad,[*] and *Perez, JJ.*, concur.

FIRST DIVISION

[G.R. No. 183709. December 6, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **MANUEL "AWIL" POJO,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT IMPAIRED BY THE DELAY IN REPORTING THE COMMISSION OF THE CRIME WHEN SUCH DELAY IS REASONABLE AND SATISFACTORILY EXPLAINED; CASE AT BAR.— We x x x find no merit in the contention of the defense that "AAA's" delay in reporting the incident should have cautioned the trial court from lending credibility to her testimony. According to the defense, it was only on November 17, 2003, or 27 days after the alleged commission

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[*] In lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 917 dated November 24, 2010.

of the rape, that "AAA" signed her affidavit. We consider a lapse of 27 days reasonable for "AAA" to prepare and sign her affidavit. In several cases where the delay consisted of years and months, we still considered the same reasonable and did not in any way diminish the credibility of the complaining witness. In the instant case, "AAA's" "delay" of 27 days did not diminish in any manner her credibility. Said "delay" was inconsequential and did not touch on the elements of the crime. It remains un-rebutted that on October 20, 2003, appellant had carnal knowledge of "AAA" through force and intimidation and without her consent. Also, "AAA" immediately reported the incident to her mother and sibling. On October 21, 2003, or merely a day after the rape was committed, the same was reported to the police authorities. Moreover, "AAA" satisfactorily explained the said "delay." She testified that she and her mother went to the police authorities several times but it was only on November 17, 2003 that she signed her affidavit.

2. ID.; ID.; ALIBI; NATURE.— [B]oth the trial court and the appellate court correctly disregarded appellant's alibi. Our ruling in *People v. Jimenez* is instructive, thus: "It is an established jurisprudential rule that a mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the victim of the identity and involvement of appellant in the crimes attributed to him. The defense of *alibi* is likewise unavailing. *Firstly, alibi* is the weakest of all defenses, because it is easy to concoct and difficult to disprove. Unless substantiated by clear and convincing proof, such defense is negative, self-serving, and undeserving of any weight in law. *Secondly, alibi* is unacceptable when there is a positive identification of the accused by a credible witness. *Lastly,* in order that alibi might prosper, it is not enough to prove that the accused has been somewhere else during the commission of the crime; it must also be shown that it would have been impossible for him to be anywhere within the vicinity of the crime scene." As correctly observed by the lower courts, appellant's claim that he was in Batangas on October 20, 2003 deserves scant consideration at all for being self-serving and for lack of any corroborative evidence to establish the same.

3. CRIMINAL LAW; RAPE; HOW COMMITTED; PENALTY.— The trial court, as affirmed by the CA, correctly found appellant

guilty of statutory rape. Under Article 266-A(1)(d) of the Revised Penal Code, "[r]ape is committed by a man who shall have carnal knowledge of a woman x x x when the offended party is under twelve (12) years of age x x x even though none of the circumstances mentioned above be present." In this case, we find that the prosecution satisfactorily established the fact that appellant had carnal knowledge of "AAA" who was only 10 years of age. Moreover, the courts below correctly imposed the penalty of *reclusion perpetua* on the appellant pursuant to Article 266-B(1st par.).

4. CIVIL LAW; DAMAGES; CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES; AWARDED IN CASE AT BAR.— The award of ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages in favor of the victim is in accordance with prevailing jurisprudence. In addition, however, "AAA" is entitled to an award of exemplary damages. The qualifying circumstance that appellant was the common-law spouse of "AAA's" mother was duly established during trial although it was not properly alleged in the Information. Although appellant may not be convicted of qualified rape, said circumstance however may be taken into account in the award of exemplary damages. Jurisprudence dictates that exemplary damages in the amount of ₱30,000.00 be further awarded to "AAA."

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

DEL CASTILLO, *J.*:

On appeal is the January 28, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 02502 which affirmed the

[1] CA *rollo*, pp. 93-98; penned by Associate Justice Agustin S. Dizon and concurred in by Associate Justices Amelita G. Tolentino and Lucenito N. Tagle.

September 4, 2006 Decision[2] of the Regional Trial Court of Calabanga, Camarines Sur, Branch 63, finding appellant Manuel "Awil" Pojo guilty beyond reasonable doubt of the crime of statutory rape.

Factual Antecedents

On March 16, 2004, an Information[3] was filed charging appellant with the crime of statutory rape committed as follows:

> That on or about the 20th day of October, 2003, at around three o'clock in the afternoon in x x x, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused willfully, unlawfully, and feloniously through force or intimidation [had] carnal knowledge [of] "AAA,"[4] ten years old, against her will, to her damage and prejudice.
>
> ACTS CONTRARY TO LAW.

On arraignment, appellant pleaded not guilty to the charge. Trial thereafter ensued.

Version of the Prosecution

"AAA" testified that appellant is the common-law husband of her mother. On October 20, 2003, at about three o'clock in the afternoon, her mother sent her to bring food to the appellant who was working at the *camote* plantation of a certain Tuason. While thereat, appellant made her lie on the ground which he covered with banana leaves. After ordering "AAA" to remove

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[2] *Id.* at 28-35; penned by Judge Freddie D. Balonzo.

[3] Records, p. 1.

[4] The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence Against Women and Their Children, effective November 5, 2004.

her shorts and panty, he also removed his undergarments and inserted his penis into the vagina of "AAA." However, appellant's penis failed to completely penetrate "AAA's" vagina but merely touched the same. However, "AAA" still felt pain in her private organ. After a while, appellant stood up and ordered "AAA" to go home. "AAA" however noticed a whitish substance coming out of appellant's private part.

Upon reaching their house, "AAA" immediately relayed the incident to her sibling and mother. Thereupon, they reported the incident to the police authorities and subjected "AAA" to medical examination.

Version of the Defense

Appellant admitted that "AAA" is the daughter of his common-law spouse. However, he denied raping her on October 20, 2003. He claimed that he left Camarines Sur on October 20, 2002. On October 20, 2003, he was in Batangas working in a sugarcane plantation of his cousin, Mariano Ate. He also claimed that "AAA's" motive in filing the rape charge against him was to force him to marry her mother.

Ruling of the Regional Trial Court

The trial court lent credence to the version of the prosecution. It noted that rape was consummated although there was no complete penetration considering the categorical statement of "AAA" that she felt the penis of the appellant touch her private part. "AAA" was only 10 years old when the rape incident transpired; and only 12 years old when placed on the witness stand. According to the trial court, "AAA" could not have concocted the rape incident if it did not actually transpire. Being a minor, she lacked the sophistication to fabricate the crime of rape against the appellant.

The trial court brushed aside the defense of denial of the appellant. It held that "AAA's" positive testimony that it was appellant who sexually assaulted her prevails over the bare denial of the appellant. It found that appellant's claim that he was in Batangas at the time the crime of rape was committed was self-

serving and uncorroborated. The defense did not present anyone who could testify that appellant was indeed in Batangas on October 20, 2003 and that he was working in a sugarcane plantation.

Finally, the trial court held that although the minority of the victim was proven by the presentation of her birth certificate, appellant could only be found liable of statutory rape. It noted that although it was proven during trial that appellant was the common-law husband of "AAA's" mother, such fact was not alleged in the Information.

The dispositive portion of the Decision of the trial court reads:

> WHEREFORE, in view of the foregoing, the prosecution having proven the guilt of the accused beyond reasonable doubt of the crime of statutory rape, accused is found guilty of the crime as charged. He is therefore, sentenced to suffer the penalty of *Reclusion Perpetua* and to pay the private complainant "AAA" the amount of ₱50,000.00 as civil liability, ₱50,000.00 as moral damages, and to pay the cost.
>
> SO ORDERED.[5]

Ruling of the Court of Appeals

The appellate court affirmed *in toto* the Decision of the trial court. It noted that the trial court correctly appreciated and evaluated the facts of the case. It also found unbelievable the appellant's claim that "AAA's" motive in filing the case was to force him to marry her mother. According to the CA, "AAA" was too young to be able to think of that elaborate scheme. Likewise, the appellate court held that appellant's alibi does not inspire belief as he failed to present any independent evidence to establish his whereabouts on October 20, 2003.

Hence, this appeal.

On September 3, 2008, we notified both parties that they may file their respective supplemental briefs. However, both parties manifested that they are no longer filing their briefs.

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[5] CA *rollo,* p. 35.

Our Ruling

The appeal lacks merit.

In its attempt to exonerate herein appellant, the defense tries to impute ill motive on the part of "AAA" in filing the instant case. The defense claims that "AAA" harbors ill feelings against the appellant because when the latter started living-in with "AAA's" mother, the latter no longer had time to take care of "AAA" as she devoted most of her time to appellant.

We are not persuaded. This line of reasoning totally contradicts the earlier theory adopted by the defense. It will be recalled that when the appellant testified before the trial court, he claimed that "AAA's" motive in filing the charge of rape was to force him to marry her mother. However, in its Appellant's Brief, the defense now argues that "AAA" harbored ill feelings towards the appellant because her mother devoted most of her time to the appellant thereby depriving "AAA" and her siblings the care and attention that they deserve from their mother. If indeed this is true, then instead of wanting the appellant to marry her mother, "AAA" would instead have wished for appellant to leave so that their mother could pay more attention to them.

We also find no merit in the contention of the defense that "AAA's" delay in reporting the incident should have cautioned the trial court from lending credibility to her testimony. According to the defense, it was only on November 17, 2003, or 27 days after the alleged commission of the rape, that "AAA" signed her affidavit. We consider a lapse of 27 days reasonable for "AAA" to prepare and sign her affidavit. In several cases where the delay consisted of years and months, we still considered the same reasonable and did not in any way diminish the credibility of the complaining witness. In the instant case, "AAA's" "delay" of 27 days did not diminish in any manner her credibility. Said "delay" was inconsequential and did not touch on the elements of the crime. It remains un-rebutted that on October 20, 2003, appellant had carnal knowledge of "AAA" through force and intimidation and without her consent. Also, "AAA" immediately reported the incident to her mother and sibling. On October

21, 2003, or merely a day after the rape was committed, the same was reported to the police authorities. Moreover, "AAA" satisfactorily explained the said "delay." She testified that she and her mother went to the police authorities several times but it was only on November 17, 2003 that she signed her affidavit.

Finally, both the trial court and the appellate court correctly disregarded appellant's alibi. Our ruling in *People v. Jimenez*[6] is instructive, thus:

> It is an established jurisprudential rule that a mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the victim of the identity and involvement of appellant in the crimes attributed to him. The defense of *alibi* is likewise unavailing. *Firstly*, *alibi* is the weakest of all defenses, because it is easy to concoct and difficult to disprove. Unless substantiated by clear and convincing proof, such defense is negative, self-serving, and undeserving of any weight in law. *Secondly*, *alibi* is unacceptable when there is a positive identification of the accused by a credible witness. *Lastly*, in order that alibi might prosper, it is not enough to prove that the accused has been somewhere else during the commission of the crime; it must also be shown that it would have been impossible for him to be anywhere within the vicinity of the crime scene.

As correctly observed by the lower courts, appellant's claim that he was in Batangas on October 20, 2003 deserves scant consideration at all for being self-serving and for lack of any corroborative evidence to establish the same.

The Penalty

The trial court, as affirmed by the CA, correctly found appellant guilty of statutory rape. Under Article 266-A(1)(d) of the Revised Penal Code, "[r]ape is committed by a man who shall have carnal knowledge of a woman x x x when the offended party is under twelve (12) years of age x x x even though none of the circumstances mentioned above be present." In this case, we

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[6] G.R. No. 170235, April 24, 2009, 586 SCRA 580, 597, citing *People v. Nieto,* G.R. No. 177756, March 3, 2008, 547 SCRA 511.

find that the prosecution satisfactorily established the fact that appellant had carnal knowledge of "AAA" who was only 10 years of age. Moreover, the courts below correctly imposed the penalty of *reclusion perpetua* on the appellant pursuant to Article 266-B(1st par.).

The Damages

The award of ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages in favor of the victim is in accordance with prevailing jurisprudence.[7] In addition, however, "AAA" is entitled to an award of exemplary damages.[8] The qualifying circumstance that appellant was the common-law spouse of "AAA's" mother was duly established during trial although it was not properly alleged in the Information. Although appellant may not be convicted of qualified rape, said circumstance however may be taken into account in the award of exemplary damages.[9] Jurisprudence[10] dictates that exemplary damages in the amount of ₱30,000.00 be further awarded to "AAA."

WHEREFORE, the appeal is *DENIED*. The January 28, 2008 Decision of the Court of Appeals in CA-G.R. CR No. 02502 which affirmed the September 4, 2006 Decision of the Regional Trial Court of Calabanga, Camarines Sur, Branch 63, finding appellant Manuel "Awil" Pojo guilty beyond reasonable doubt of the crime of statutory rape, and sentencing him to suffer the penalty of *reclusion perpetua* and to pay "AAA" the amounts of ₱50,000,00 as civil indemnity and ₱50,000.00 as moral damages, is *AFFIRMED* with modification that appellant is further ordered to pay "AAA" exemplary damages in the amount of ₱30,000.00.

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[7] *People v. Pabol*, G.R. No. 187084, October 12, 2009, 603 SCRA 522, 532.

[8] *Id.* at 532-533.

[9] *People v. Rante*, G.R. No. 184809, March 29, 2010.

[10] *Id*.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Abad,[*] and *Perez, JJ.,* concur.

THIRD DIVISION

[G.R. No. 188484. December 6, 2010]

SALUD GEPIGA *VDA. DE* SOCO, GENARO G. SOCO, ELENO G. SOCO, FRANCISCO G. SOCO, TRINIDAD S. MENDEZ, FLORA S. HONRADA, ANITA S. ILUSTRISIMO, JULITA S. JAVIER, and PATRICIO G. SOCO, *petitioners, vs.* **FERMINA SOCO *VDA. DE* BARBON,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; PREPONDERANCE OF EVIDENCE; IN CIVIL CASES, THE PARTY HAVING THE BURDEN OF PROOF MUST ESTABLISH ITS CLAIM OR CAUSE OF ACTION BY PREPONDERANCE OF EVIDENCE; CASE AT BAR.— In civil cases, the party having the burden of proof must establish its claim or cause of action by preponderance of evidence, "evidence which is of greater weight, or more convincing than that which is offered in opposition to it." Respondent relied chiefly on three documents in support of her claim — the May 15, 1962 Deed of Extra-Judicial Partition, the 1948 TD No. 06579 (listing Basilio as owner), and the document examiner's November 7, 2001 Questioned Document Report. Recall that respondent alleged that she acquired 1/3 of the property as her share in inheritance from Basilio. How Basilio became the owner of the property, there is no proof.

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[*] In lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 917 dated November 24, 2010.

Neither is there proof how respondent was an heir of Basilio nor how Juan is a cousin of respondent as she claims. In fact, during her cross-examination, respondent failed to define, at the very least, the relationship of Cornelio (husband of Telesfora) to Basilio. x x x Being unable to even delineate the relationship between Basilio (in whose name the 1948 TD was printed) and Cornelio (the alleged administrator appearing in the said TD), or for that matter to explain her relationship to Cornelio, respondent's assertion of being a cousin to Cornelio's son Juan – predecessor-in-interest of petitioners is far from a recognized fact. Respondent's failure to establish clear-cut blood ties to Cornelio whose wife Telesfora is, it bears repeating, admittedly the original owner of the property thus jeopardizes her claim as an heir to the property. Petitioners' submission that it was incumbent upon respondent to first prove that Basilio had acquired, and in what mode the Court hastens to add, the property from Telesfora after it was awarded to her in 1937 thus assumes merit.

2. CIVIL LAW; LAND REGISTRATION; PRESIDENTIAL DECREE 1529 (THE PROPERTY REGISTRATION DECREE); ORIGINAL TORRENS TITLE; MAY ONLY BE ATTACKED ON THE GROUND OF FRAUD, WITHIN ONE YEAR FROM THE DATE OF ISSUANCE OF THE DECREE OF REGISTRATION.— Petitioners' title to the property, upon the other hand, is rooted on the 1937 Decision of the Cebu CFI in *Expediente* No. 3, G.L.R.O. Record No. 4030 which awarded ownership thereof to their predecessor-in-interest's Juan's mother, Telesfora. The *original* copy of the said decision, consisting of 26 pages, which petitioners later presented on sur-rebuttal, remains in the custody of Marites Holsapple, the Cebu City RTC's custodian of cadastral and civil case records for the Mandaue and Cebu Cadastre. Despite attempts by respondent to cast doubts on the integrity of the 1937 Decision, its authenticity was, until respondent presented the Document Examiner in 2002, never challenged in more than half a century. At all events, since the OCT in Telesfora's name was issued in 1986, the same had already become vested with indefeasibility considering that respondent's challenge to petitioners' title was lodged only in 1995. The law permits an attack on the original torrens title only on the ground of fraud, within a period of one year from the date of issuance of the decree of registration by the Land Registration Commission.

APPEARANCES OF COUNSEL

Dionson & Cardenas Law Offices for petitioners.
Gica Del Socorro Espinosa Villarmia Fernandez & Tan for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

It appears that in an August 6, 1937 Decision[1] rendered by then Judge Alejo Labrador of the then Court of First Instance (CFI) of Cebu in *Expediente* No. G.L.R.O., Record No. 4030, ownership of a parcel of land located in Pacnaan, Mandaue City known as Lot No. 2393 containing 9,174 square meters of agricultural land (the property) was adjudicated to Telesfora Tikling (Telesfora), of which Salud Gepiga *Vda. de* Soco, *et al.* (petitioners) are heirs.

In a July 6, 1982 Order issued in Case No. 3, LRC Record No. 4030 by City Court of Mandaue, Branch II, Judge Lorenzo B. Barria, noting that, among other things, the Decision of Judge Labrador adjudicated the property to Telesfora, and that the decision had not been amended or set aside, albeit "as a consequence of . . . World War II, no decree of registration" was issued, directed the Land Registration Commission to issue a decree of registration of the property in favor of Telesfora.

Decree No. N-190930 was thus subsequently issued on November 26, 1985, and Original Certificate of Title (OCT) No. 0-701[2] covering the property was issued in the name of Telesfora on January 3, 1986. The OCT was later cancelled on April 3, 1986 by Transfer Certificate of Title (TCT) No. 22142[3] in the names of Telesfora's sons Pio (1/3 share)

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[1] Exhibits "3" to "3-A", records, pp. 201-203; Exhibits "15" to "15-Y" (sur-rebuttal), *id.* at 290-315.

[2] *Id.* at 26-29.

[3] *Id.* at 30-31.

and Juan Soco (2/3 share). TCT No. 22142 was in turn cancelled on September 30, 1987 by TCT No. 24534[4] on September 30, 1987 in the name of Juan Soco, married to petitioner Salud.

After Juan Soco passed away on August 12, 1988, his heirs-herein petitioners extra-judicially settled his estate[5] consisting of several parcels of land in Cebu including the property and declared themselves as owners thereof, with the exception of petitioner Salud who waived any interest therein. TCT No. 24534 was later cancelled on January 12, 1995 and, in its stead, TCT No. 36051[6] was issued in the names of petitioners except Salud.

On December 7, 1995, Fermina Soco *Vda. de* Barbon (respondent) filed before the Regional Trial Court (RTC) of Mandaue City a complaint[7] for damages, reconveyance and attorney's fees against petitioners, for recovery of a 3,093 square meter portion of the property which she alleged represented her one-third (1/3) share thereof. Respondent claimed that she acquired 1/3 portion of the property by inheritance in support of which she presented a Deed of Extra-Judicial Partition[8] dated May 15, 1962 executed by her and the children of Cornelio Soco (Cornelio), husband of Telesfora, namely Ignacia, Laureana, Pio, Pablo, and Juan (of which, it bears recalling, petitioners are heirs), wherein they agreed to partition the property. Under the Deed, the 2/3 portion of the property was adjudicated to Cornelio's heirs.

The Court notes *en passant* that not one of respondent's alleged co-heirs in the 1962 Deed appears to have been still alive at the time she filed the complaint for reconveyance in 1995.

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[4] *Id.* at 32-33.

[5] Deed of Extrajudicial Settlement of Estate dated March 31, 1992, *id.*, at 217-221.

[6] Exhibit "I", *id.* at 34-35.

[7] *Id.* at 1-10.

[8] Exhibit "B", a photocopy, *id.* at 13-14.

Respondent submitted Tax Declaration (TD) No. 06579[9] purportedly covering the property in the name of Basilio Soco (Basilio) as owner, with Telesfora's husband Cornelio as administrator.

Petitioners-heirs of Juan, in their Answer with Counterclaim,[10] denied any knowledge of the May 15, 1962 Deed of Extra-Judicial Partition, claiming that their predecessors-in-interest had been in actual, peaceful, open, continuous and adverse possession of the property.

At the trial, respondent presented, among other witnesses, Romeo Varona, a Document Examiner of the Philippine National Police (PNP) Crime Laboratory in Camp Cabahug, Cebu City who testified on alleged irregularities in the CFI August 6, 1937 Decision.

By Decision[11] of March 5, 2003, Branch 55 of the Mandaue RTC rendered judgment in favor of respondent, disposing as follows:

> WHEREFORE, premises considered, judgment is rendered in favor of plaintiff Fermina Soco *Vda. de* Barbon, and against defendants Salud Gepiga *Vda. de* Soco, Genaro G. Soco, Eleno G. Soco, Francisco G. Soco, Trinidad Soco-Mendez, Flora Soco-Honrada, Anita Soco-Ilustrisimo, Julita Soco-Javier and Patricio G. Soco, ordering the defendants to return to the plaintiff her land with an area of 3,053 sq. meters; declaring as null and void all titles and tax declarations in the name/s of the defendants covering said 3,053 sq. meters of land owned by the plaintiff; and condemning defendants, jointly and severally to pay plaintiff the following:
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> a) ₱100,000.00 moral damages;
> b) ₱50,000.00 exemplary damages;
> c) ₱20,000.00 litigation expenses; and
> d) ₱50,000.00 attorney's fees.
>
> SO ORDERED. (underscoring supplied)

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[9] Starting in the year 1948; Exhibit "A", *id.* at 11-12.

[10] *Id.* at 48-55.

[11] *Id.* at 364-379.

Citing preponderance of evidence, the trial court held that the May 15, 1962 Deed of Extra-Judicial Partition clearly established respondent's successional rights to the property as one of the "two heirs" of Basilio Soco, the other being Telesfora's husband Cornelio. It noted that TD No. 06579[12] issued in "1948" covered the property in the name of Basilio Soco as "owner," and Cornelio as "administrator."

The trial court brushed aside petitioners' reliance on the August 6, 1937 Decision of the Cebu City CFI as legal basis of Telesfora's claim of ownership of the property, absent conclusive proof that she had continued to retain ownership of the land until it was partitioned on May 15, 1962.

The trial court relied heavily on the testimony of the Document Examiner, *viz*:

x x x x x x x x x

FINDINGS:

Comparative examination and analysis of the questioned typewritten entries marked "Q-1" to "Q-3" inclusive reveal significant differences in typeface designs, defects and other individual characteristics.

CONCLUSION:

The typewritten entries in page 1 was (*sic*) prepared from another typewriter compared to page 23 and page 26 of the Court Decision dated 6 August 1937.

x x x x x x x x x[13]
(underscoring supplied)

It thus concluded that the CFI 1937 Decision was "spurious." It awarded damages and attorney's fees in favor of respondent, holding that the act of petitioners' predecessor-in-interest, Juan Soco, in securing title to the entire property in the name of his mother Telesfora, which resulted in the issuance of OCT

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[12] *Supra* note 9.

[13] Exhibit "P", records, p. 271.

No. 0-701, amounted to bad faith as it was clearly intended to deprive respondent of her rightful ownership of 1/3 of the property.

On appeal by petitioners, the Court of Appeals 20th Division, Cebu City, by Decision[14] of January 30, 2009, *affirmed* the decision of the trial court. And by Resolution[15] of May 28, 2009, it denied petitioners' motion for reconsideration.

Hence, the present petition.

Petitioners maintain that respondent never offered any proof that Basilio whose name appeared as "owner" in TD No. 06579 ever acquired it from Telesfora who was admittedly the original owner, hence, it was manifest error for the appellate court to validate respondent's ownership of 1/3 of the property on the mere basis of said TD which, as indicated earlier, started in **1948**. They stress that tax declarations — generally regarded as inferior proofs of ownership — cannot prevail over the CFI's August 6, **1937** Decision which was arrived at after due notice and hearing.

Petitioners further point out that respondent's payment of realty taxes should not be construed in her favor since taxes for the years 1975 up to 1994 were only paid on September 6, **1994**.[16]

Furthermore, petitioners contend that the appellate court's affirmance of the trial court's decision crediting the testimony of the Document Examiner — an ordinary witness, his being one such of the PNP Crime Laboratory notwithstanding, would set a dangerous precedent as it would overthrow the stability of judicial decisions rendered by courts of competent jurisdiction, like the 1937 CFI Decision which had long attained finality.

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[14] Penned by Associate Justice Francisco P. Acosta with the concurrence of Associate Justices Amy Lazaro-Javier and Rodil V. Zalameda; CA *rollo*, pp. 135-146.

[15] *Id.* at 159-161.

[16] *Rollo*, pp. 34-37.

Finally, petitioners contend that even granting that there exist significant differences between the typewriter imprints on page 1 and those on pages 23 and 26 of the 1937 Decision, the same hardly justifies the conclusion that the decision is spurious, absent any standard which the Document Examiner could point to as the genuine typeset.[17]

On the award of damages, petitioners contend at all events that, being mere forced heirs, they having inherited the property by operation of law, their predecessor-in-interest Juan should be held liable therefor since it was he who applied for the titling on June 23, 1982 of the property in the name of his mother Telesfora. They cite Article 2217 of the New Civil Code which allows the recovery of moral damages only where the same are the proximate result of the defendant's wrongful act or omission, an element sorely lacking in the present case.[18]

In the main, the issue is whether respondent has proved her cause of action, *i.e.*, whether the evidence she adduced bears out her claim of ownership of 1/3 of the property. The Court holds not.

In civil cases, the party having the burden of proof must establish its claim or cause of action by preponderance of evidence,[19] "evidence which is of greater weight, or more convincing than that which is offered in opposition to it."[20]

Respondent relied chiefly on three documents in support of her claim — the May 15, 1962 Deed of Extra-Judicial Partition, the 1948 TD No. 06579 (listing Basilio as owner), and the document examiner's November 7, 2001 Questioned Document Report. Recall that respondent alleged that she acquired 1/3 of the property as her share in inheritance from Basilio.

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[17] *Id.* at 30-34.

[18] *Id.* at 25-29.

[19] Section 1, Rule 133, Revised Rules of Court.

[20] *New Testament Church of God v. Court of Appeals*, G.R. No. 102297, July 14, 1995, 246 SCRA 266, 269; citing *Republic v. Court of Appeals*, November 21, 1991, 204 SCRA 160, 168.

How Basilio became the owner of the property, there is no proof. Neither is there proof how respondent was an heir of Basilio nor how Juan is a cousin of respondent as she claims.[21] In fact, during her cross-examination, respondent failed to define, at the very least, the relationship of Cornelio (husband of Telesfora) to Basilio. Consider her following testimony:

COURT TO THE WITNESS:

Q: You testified that the property in question was left by Basilio Soco and administered by Cornelio Soco, as evidenced by tax declaration No. 06579, for the year 1948. **How [is] this Cornelio Soco related to Basilio Soco?**

FERMINA SOCO:

A: **MAYBE they are brothers. I could not recall anymore. As far as I know the original owner of that land was Telesfora Tikling and this Cornelio Soco is the husband of Tikling.**

Q: I would like to be clarified on the relationship between Basilio Soco and Cornelio Soco?

A: **MAYBE they are brothers.**

ATTY. ELIAS ESPINOZA (respondent's counsel):

> I think your Honor there was a testimony of this witness during the direct that when this property was partitioned, Basilio and Cornelio were no longer around. In fact, the witnesses to the partition was (sic) the one mentioned in that document.

ATTY. CARLOS ALLAN CARDENAS (petitioners' counsel):

> We object to that manifestation. That is feeding information to the witness, your Honor. When the witness awhile ago was asked by this Honorable Court what was the relation between Basilio and Cornelio her answer was that she cannot tell. And there was additional answer of the witness that what she remember (sic) was that the original owner of the land was Telesfora Tikling.

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[21] TSN, October 3, 1996, p. 3.

COURT:

The parents of the defendants were?

ATTY. ESPINOZA:

Juan Soco.

COURT:

Juan Soco and Cornelio Soco are brothers?

ATTY. ESPINOZA:

No. Cornelio Soco is the father of Juan Soco.

COURT TO THE WITNESS:

Q: So you cannot therefore tell this court the relationship between Cornelio and Basilio?

A: **I do not know.**[22] (emphasis, capitalization and underscoring supplied)

Being unable to even delineate the relationship between Basilio (in whose name the 1948 TD was printed) and Cornelio (the alleged administrator appearing in the said TD), or for that matter to explain her relationship to Cornelio, respondent's assertion of being a cousin to Cornelio's son Juan — predecessor-in-interest of petitioners is far from a recognized fact.

Respondent's failure to establish clear-cut blood ties to Cornelio whose wife Telesfora is, it bears repeating, admittedly the original owner of the property thus jeopardizes her claim as an heir to the property. Petitioners' submission that it was incumbent upon respondent to first prove that Basilio had acquired, and in what mode the Court hastens to add, the property from Telesfora after it was awarded to her in 1937 thus assumes merit.

Petitioners' title to the property, upon the other hand, is rooted on the 1937 Decision of the Cebu CFI in *Expediente* No. 3, G.L.R.O. Record No. 4030 which awarded ownership thereof to their predecessor-in-interest's Juan's mother, Telesfora.

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[22] *Id.* at 28-30.

The *original* copy of the said decision, consisting of 26 pages,[23] which petitioners later presented on sur-rebuttal, remains in the custody of Marites Holsapple, the Cebu City RTC's custodian of cadastral and civil case records for the Mandaue and Cebu Cadastre.[24] Despite attempts by respondent to cast doubts on the integrity of the 1937 Decision, its authenticity was, until respondent presented the Document Examiner in 2002, never challenged in more than half a century.

At all events, since the OCT in Telesfora's name was issued in 1986, the same had already become vested with indefeasibility considering that respondent's challenge to petitioners' title was lodged only in 1995.[25] The law permits an attack on the original torrens title only on the ground of fraud, within a period of one year from the date of issuance of the decree of registration by the Land Registration Commission.[26]

WHEREFORE, the petition is *GRANTED*. The assailed Decision of the Court of Appeals, dated January 30, 2009, is hereby *REVERSED* and *SET ASIDE*. Respondent Fermina Soco's complaint in Civil Case No. MAN-2565 before the RTC of Mandaue City, Br. 55 is *DISMISSED*.

SO ORDERED.

Brion, Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

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[23] *Vide* note 1.

[24] TSN, July 30, 2002, pp. 2-12.

[25] Section 32 of Presidential Decree No. 1529 otherwise known as the Property Registration Decree.

[26] *Agasen v. Court of Appeals*, G.R. No. 115508, February 15, 2000, 325 SCRA 504, 515.

THIRD DIVISION

[G.R. No. 189311. December 6, 2010]

DENNIS R. MANZANAL and BAGUIO COUNTRY CLUB CORPORATION, *petitioners, vs.* **RAMON K. ILUSORIO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; CAUSE OF ACTION; DETERMINED FROM THE ALLEGATIONS IN THE COMPLAINT. — A cause of action is the act or omission by which a party violates the right of another, entitling the injured party to relief. **Its existence is determined from the allegations in the complaint.**

2. CIVIL LAW; HUMAN RELATIONS; PRINCIPLE OF ABUSE OF RIGHTS; ELUCIDATED. — Under the principle of *abuse of rights*, *Cebu Country Club, Inc. v. Elizagaque* expounds as follows: In *GF Equity, Inc. v. Valenzona*, we expounded Article 19 and correlated it with Article 21, thus: This article, known to contain what is commonly referred to as the principle of abuse of rights, sets certain standards which must be observed not only in the exercise of one's rights but also in the performance of one's duties. These standards are the following: to act with justice; to give everyone his due; and to observe honesty and good faith. The law, therefore, recognizes a primordial limitation on all rights; that in their exercise, the norms of human conduct set forth in Article 19 must be observed. A right, though by itself legal because recognized or granted by law as such, may nevertheless become the source of some illegality. When a right is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible. But while Article 19 lays down a rule of conduct for the government of human relations and for the maintenance of social order, it does not provide a remedy for its violation. Generally, an action for damages under Article 20 or Article 21 would be proper. Respondent cannot seek refuge.

APPEARANCES OF COUNSEL

Paris G. Real & Dennis R. Manzanal for petitioners.
MFV Jose Law Office for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

The only issue presented in this case is whether the complaint for damages filed by Ramon K. Ilusorio (respondent) against petitioners Dennis R. Manzanal and Baguio Country Club Corporation (BCCC) states a cause of action.

On July 7, 1994, a penthouse unit (PH-1) at the BCCC building in Baguio was assigned to respondent by one Felix Adolfo B. Lopez, Jr., with the conformity of BCCC.

By respondent's claim, he, for a period of five (5) years since the assignment, enjoyed the use of the unit and the club's facilities, along with his business colleagues and friends but that when conflict within the family arose in 1998 and escalated to great proportions, he was barred from using the unit and was almost expelled as member of the club. Hence, spawned his filing of multiple suits against BCCC before the courts and SEC.

Respondent sent a May 31, 2001 letter to BCCC requesting for his current statement of account. Replying, BCCC charged him the amount of ₱102,076.74 which he paid under protest. He, however, requested a breakdown of the amount which BCCC, thru Manzanal, complied with, via letter of November 26, 2001 to which was attached respondent's Statement of Account itemizing the amount which in fact totaled ₱2,928,223.26. The letter reads:

> Attached herewith please find Statement of Account with total amount of ₱2,928,223.26.
>
> Our records also show that from April 1995 to July 1999, you sponsored an estimated ninety-seven guests, many of whom are Multinational Investment Bancorporation partners and personnel,

Club charges for which amount to Two Million Four Hundred Thirty One thousand Pesos (₱2,431,000.00) for guest room charges exclusive of interest, guest fees and penalties.

This is also to follow-up payment due from you regarding our letter of December 20, 2000[1], copy attached herewith for your reference.

In light of the foregoing, please remit in full the amount of ₱2,928,223.26. to BCC within seven (7) days from receipt hereof, otherwise we shall be constrained to take the appropriate action and remedies to enforce payment of your obligation.[2]

BCCC subsequently sent a final demand letter dated December 19, 2001 to respondent for the immediate payment of the unpaid charges, failing which, BCCC stated, it "shall be constrained to take the necessary action available under the club's rules to protect the interests of the club."

Respondent questioned, by reply letter of January 18, 2002, Manzanal's authority as an Assistant Vice President, as well as the billing for ₱2,431,000 and ₱599,300 as bereft of bases, thus:

I understand you are one of the lawyers of my estranged siblings (Sylvia, Lin, and Max) and now you claim to be the Assistant Vice-President of Baguio Country Club. Under what authority are you holding the said position in the Club? Please present the proof of your authority.

You claim that I have incurred charges from April 1995 to July 1999 amounting to ₱2,431,000.00. There is no basis for your claim. It is highly irregular for a member to be billed for charges allegedly incurred 6 years ago.

With regard to your claim pertaining to the alleged Penthouse rectification works amounting to ₱599,300.00, the same has no basis in fact and in law.

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[1] It is inferred that the Letter of December 20, 2000 pertained to the amount representing the cost of rectification works in Ilusorio's unit as ordered by the Office of the City Fire Marshall, which shall become the basis of a collection suit against Ilusorio before the RTC of Baguio City.

[2] *Rollo*, p. 143.

It is obvious that you and your principals are using the Club to harass me. Please refrain from dragging the Club into the family feud.[3]

Taking the demand letters letter as a form of harassment from his family who was utilizing Manzanal and BCCC (petitioners) for that purpose, respondent filed in 2002 a complaint for damages against petitioners before the Makati Regional Trial Court (RTC), alleging:

x x x x x x x x x

FIRST CAUSE OF ACTION

20. The recent act of BCCC and MANZANAL to collect the amount of ₱2,928,223.26 is another form of harassment against the plaintiff. To be precise, it is part of the series of harassment, characterized with bad faith and malice, being done by BCCC, MANZANAL, and plaintiff's estranged siblings.

21. Plaintiff has no obligation to pay the amount of ₱2,928,223.26 to BCCC. It bears to note that under Article 1157 of the Civil Code of the Philippines, obligations arise from law; contracts; quasi-contracts; acts or omissions punished by law; and quasi-delicts. In the present case, it is quite clear that the collection of the amount of ₱2,928,223.26 is clearly without legal or factual basis. Corollary thereto, BCCC and MANZANAL have no right to collect the amount of ₱2,928,223.26 from the plaintiff.

22. Collecting room charges purportedly incurred as far as six (6) years ago, aside from the fact that it is baseless, is also dubious and scheming. As owner of the subject UNIT, plaintiff should not be held liable for its use and enjoyment considering that use and enjoyment of the UNIT are incidence of ownership.

23. Assuming without conceding that BCCC has the right to collect the amount of ₱2,928,223.26 from the plaintiff the same had already prescribed.

24. Assuming without conceding that BCC has the right to collect the amount ₱2,928,223.26 from the plaintiff, the latter is already guilty of laches and estoppel to effect collection thereof.

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[3] *Id.* at 144.

25. Moreover, it is improper for BCCC and MANZANAL to collect the amount pertaining to the rectification works regarding a purported encroachment on BCCC common areas because the matter is still subject of a pending case before the Regional Trial Court of Baguio City entitled "*Baguio Country Club vs. Ramon K. Ilusorio*" docketed as Civil Case No. 4750-R.

26. Under the foregoing circumstances, BCCC and MANZANAL should be enjoined from collecting from the plaintiff or in any way extra-judicially enforcing the payment of said claim or imposing any sanction against the plaintiff on account of said claim.

SECOND CAUSE OF ACTION

27. As a consequence of the unlawful act of MANZANAL and BCCC in initiating collection of the amount of ₱2,928,223.26 from the plaintiff, characterized with utter malice and gross and evident bad faith, plaintiff has suffered moral damages, consisting of mental anguish, social humiliation, anxiety and the like, which, considering his business and social standing in the community, is reasonably estimated in the amount of One Million Pesos (₱1,000,000.00).[4]

x x x x x x x x x

(emphasis and underscoring in the original)

Respondent averred that, *inter alia,* he should not be charged for the use of the unit as he, as owner, is entitled to its use and enjoyment. And he cast doubt on billing him for charges dating back to 1995.

In lieu of an Answer, Manzanal filed a Motion to Dismiss the complaint for failure to state a cause of action, he alleging that being merely an officer who signed on behalf of BCCC, he should not be personally liable. He explained that the act of sending a demand letter does not constitute a cause of action against the obligee/creditor. Alternatively, Manzanal claimed that respondent's asseverations against him and BCCC should be ventilated as a matter of defense in the collection suit filed against him.

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[4] Records, pp. 5-6.

BCCC also filed a Motion to Dismiss on the ground of *litis pendentia*, it having filed a collection suit against respondent before the RTC of Baguio City docketed as Civil Case No. 4750-R,[5] to recover the cost of removing illegal structures in his unit.

Branch 145 of RTC Makati to which respondent's complaint was raffled, dismissed the complaint, by Order of October 10, 2002 in this wise:

> x x x To sustain plaintiff ILUSORIO's assertions that this Complaint states a cause of action would be to rule that the act of sending a demand letter by itself constitutes a cause of action. When a creditor sends a demand letter to a debtor, according to plaintiff ILUSORIO's theory, that is already an actionable wrong, a cause of action. x x x[6]

On appeal, the Court of Appeals, by Decision of November 26, 2008,[7] **reversed** the RTC Makati and **ordered the reinstatement** of respondent's complaint, holding as follows.

> x x x In this case, if the allegations in the complaint that (1) the plaintiff-appellant [Ilusorio] is a member of the Baguio Country Club and an owner of one of the units of the Club's House Building, thereby entitling him to the possession and use of such unit subject to reasonable membership charges. (2) the defendants-appellees had been unreasonably charging him charges and bills for the use of his unit without factual and legal basis, and (3) despite his objections to the amount charges billed in his name, the defendants-appellees had threatened to enforce the said charges in the manner provided under the Club's rules are assumed to be true, then the plaintiff-

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[5] In the said case, BCCC alleged that Ilusorio constructed a mezzanine in his unit, violating BCCC's Deed of Restrictions. Upon inspection, the Office of the City Fire Marshall ordered BCCC to remove the constructed works as it obstructed a service manhole located at the fire exist stairwell. For the expenses it incurred in rectification works and for failure of Ilusorio to pay, BCCC filed a collection suit to enforce its claim.

[6] Records, pp. 159-161.

[7] Penned by Associate Justice Isaias Dicdican with the concurrence of Associate Justices Juan Q. Enriquez, Jr. and Marlene Gonzales-Sison, *rollo*, pp. 83-93.

appellant would be entitled to the relief demanded in his complaint.[8] (underscoring supplied)

Petitioners' motion for reconsideration was denied by Resolution of August 24, 2009. Hence, the filing of the present petition for review.

The petition is meritorious.

A cause of action is the act or omission by which a party violates the right of another, entitling the injured party to relief. **Its existence is determined from the allegations in the complaint**.[9]

The Court finds from the tenor of the demand letters, which respondent annexed to his complaint, that it did not deviate from the standard practice of pursuing the satisfaction of a club member's obligations. Respondent did not indicate in his complaint how tenuous petitioners' claim for unpaid charges is.[10] In his reply to petitioners' final letter of demand, he in fact did not contradict petitioners' statement that his work partners and employees used his unit, thereby admitting that he welched on his undertaking in the contract that only family members are allowed free usage.

As an exclusive organization which primarily derives life from membership fees and charges, BCCC is expected to enforce claims from members in default of their contractual obligations.

Even under the principle of *abuse of rights*, *Cebu Country Club, Inc. v. Elizagaque*[11] which expounds as follows:

In *GF Equity, Inc. v. Valenzona*, we expounded Article 19 and correlated it with Article 21, thus: This article, known to contain

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[8] *Id.* at 91.

[9] *Mactan-Cebu International Airport Authority (MCIAA) v. Heirs of Marcelina L. Sero,* G.R. No. 174672, April 16, 2008, 551 SCRA 633.

[10] *Vide St. Michael School of Cavite, Inc. v. Masaito Development Corporation,* G.R. No. 166301, February 29, 2008, 547 SCRA 263.

[11] G.R. No. 160273, January 18, 2008, 542 SCRA 65, 73.

what is commonly referred to as the principle of abuse of rights, sets certain standards which must be observed not only in the exercise of one's rights but also in the performance of one's duties. These standards are the following: to act with justice; to give everyone his due; and to observe honesty and good faith. The law, therefore, recognizes a primordial limitation on all rights; that in their exercise, the norms of human conduct set forth in Article 19 must be observed. A right, though by itself legal because recognized or granted by law as such, may nevertheless become the source of some illegality. When a right is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible. But while Article 19 lays down a rule of conduct for the government of human relations and for the maintenance of social order, it does not provide a remedy for its violation. Generally, an action for damages under Article 20 or Article 21 would be proper. (citation omitted, underscoring supplied),

respondent cannot seek refuge.

In fine, the RTC did not err in ordering the dismissal of the complaint against petitioners for lack of cause of action. It was thus error for the appellate court to set aside the RTC decision.

WHEREFORE, the petition is *GRANTED*. The Court of Appeals Decision of November 26, 2008 is *REVERSED* and *SET ASIDE*. The Order of the Regional Trial Court of Makati City, Branch 145 dated October 10, 2002 is *REINSTATED*.

SO ORDERED.

Brion, Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

EN BANC

[A.M. No. 10-5-7-SC. December 7, 2010]

JOVITO S. OLAZO, *complainant, vs.* **JUSTICE DANTE O. TINGA (Ret.),** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT OFFICIAL; WHEN A LAWYER WHO HOLDS A GOVERNMENT OFFICE MAY BE DISCIPLINED AS A MEMBER OF THE BAR FOR MISCONDUCT IN OFFICE. — Generally, a lawyer who holds a government office may not be disciplined as a member of the Bar for misconduct in the discharge of his duties as a government official. He may be disciplined by this Court as a member of the Bar only when his misconduct also constitutes a violation of his oath as a lawyer.

2. ID.; ID.; ID.; LAWYER IN PUBLIC OFFICE; RESPONSIBILITIES. — Canon 6 of the Code of Professional Responsibility highlights the continuing standard of ethical conduct to be observed by government lawyers in the discharge of their official tasks. In addition to the standard of conduct laid down under R.A. No. 6713 for government employees, a lawyer in the government service is obliged to observe the standard of conduct under the Code of Professional Responsibility. Since public office is a public trust, the ethical conduct demanded upon lawyers in the government service is more exacting than the standards for those in private practice. Lawyers in the government service are subject to constant public scrutiny under norms of public accountability. They also bear the heavy burden of having to put aside their private interest in favor of the interest of the public; their private activities should not interfere with the discharge of their official functions.

3. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; RESTRICTIONS ON A GOVERNMENT LAWYER; USING PUBLIC POSITION FOR THE LAWYER'S PRIVATE INTERESTS. — The first charge involves a violation of Rule 6.02 of the Code of Professional Responsibility. It imposes the following

restrictions in the conduct of a government lawyer: A lawyer in the government service shall not use his public position to promote or advance his private interests, nor allow the latter to interfere with his public duties. The above provision prohibits a lawyer from using his or her public position to: (1) promote private interests; (2) advance private interests; or (3) allow private interest to interfere with his or her public duties. We previously held that the restriction **extends to all government lawyers** who use their public offices to promote their private interests. In *Huyssen v. Gutierrez*, we defined promotion of private interest to include soliciting gifts or anything of monetary value in any transaction requiring the approval of his or her office, or may be affected by the functions of his or her office. In *Ali v. Bubong*, we recognized that private interest is not limited to direct interest, but extends to advancing the interest of relatives. We also ruled that private interest interferes with public duty when the respondent uses the office and his or her knowledge of the intricacies of the law to benefit relatives.

4. ID.; PRACTICE OF LAW; ELUCIDATED. — In *Cayetano v. Monsod*, we defined the practice of law as any activity, in and out of court, that requires the application of law, legal procedure, knowledge, training and experience. Moreover, we ruled that to engage in the practice of law is to perform those acts which are characteristics of the profession; to practice law is to give notice or render any kind of service, which device or service requires the use in any degree of legal knowledge or skill. x x x In *Borja, Sr. v. Sulyap, Inc.*, we specifically described private practice of law as one that contemplates a succession of acts of the same nature habitually or customarily holding one's self to the public as a lawyer.

5. ID.; CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES (RA 6713) AND CODE OF PROFESSIONAL RESPONSIBILITY; RESTRICTIONS ON GOVERNMENT LAWYERS TO ENGAGE IN PRIVATE PRACTICE DURING PUBLIC OFFICE AND AFTER SEPARATION THEREFROM; DISCUSSED. — Under the circumstances, the definition [on practice of law] should be correlated with R.A. No. 6713 and Rule 6.03 of the Code of Professional Responsibility which impose certain restrictions on government lawyers to engage in private practice after their separation from the service. Section 7(b)(2) of R.A. No. 6713 reads: ***Section 7. Prohibited***

Acts and Transactions. — x x x As a rule, government lawyers are not allowed to engage in the private practice of their profession during their incumbency. By way of exception, a government lawyer can engage in the practice of his or her profession under the following conditions; *first*, the private practice is authorized by the Constitution or by the law; and *second*, the practice will not conflict or tend to conflict with his or her official functions. The last paragraph of Section 7 provides an exception to the exception. In case of lawyers separated from the government service who are covered under subparagraph (b) (2) of Section 7 of R.A. No. 6713, a one-year prohibition is imposed to practice law *in connection with any matter before the office he used to be with.* Rule 6.03 of the Code of Professional Responsibility echoes this restriction and prohibits lawyers, after leaving the government service, to accept engagement or employment in connection with any matter in which he had intervened while in the said service. The keyword in Rule 6.03 of the Code of Professional Responsibility is the term "intervene" which we previously interpreted to include an act of a person who has the power to influence the proceedings. Otherwise stated, to fall within the ambit of Rule 6.03 of the Code of Professional Responsibility, the respondent must have accepted engagement or employment in a matter which, by virtue of his public office, he had previously exercised power to influence the outcome of the proceedings.

6. ID.; DISCIPLINE OF LAWYERS; COMPLAINANT HAS THE BURDEN TO PROVE HIS COMPLAINT OF THE LAWYER'S UNETHICAL INFRACTIONS. — [C]onsidering the serious consequences of the penalty of disbarment or suspension of a member of Bar, the burden rests on the complainant to present clear, convincing and satisfactory proof for the Court to exercise its disciplinary powers. The respondent generally is under no obligation to prove his/her defense, until the burden shifts to him/her because of what the complainant has proven. Where no case has in the first place been proven, nothing has to be rebutted in defense.

APPEARANCES OF COUNSEL

Brillantes Navarro Jumamil Arcilla Escolin & Martinez Law Offices for respondent.

D E C I S I O N

BRION, *J.*:

Before us is the disbarment case against retired Supreme Court Associate Justice Dante O. Tinga (*respondent*) filed by Mr. Jovito S. Olazo (*complainant*). The respondent is charged of violating Rule 6.02,[1] Rule 6.03[2] and Rule 1.01[3] of the Code of Professional Responsibility for representing conflicting interests.

Factual Background

In March 1990, the complainant filed a sales application covering a parcel of land situated in *Barangay* Lower Bicutan in the Municipality of Taguig. The land (*subject land*) was previously part of Fort Andres Bonifacio that was segregated and declared open for disposition pursuant to Proclamation No. 2476,[4] issued on January 7, 1986, and Proclamation No. 172,[5] issued on October 16, 1987.

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[1] A lawyer in the government service shall not use his public position to promote or advance his private interests, nor allow the latter to interfere with his public duties.

[2] A lawyer shall not, after leaving government service, accept engagement or employment in connection with any matter in which he had intervened while in said service.

[3] A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

[4] Excluding from the Operation of Proclamation No. 423 dated July 12, 1957, which Established the Military Reservation known as Fort William Mckinley (now Fort Andres Bonifacio), situated in the Municipalities of Pasig-Taguig and Parañaque, Province of Rizal, and Pasay City (now of Metropolitan Manila), a certain portion of land embraced therein known as Barangays Lower Bicutan, Upper Bicutan and Signal Village situated in the Municipality of Taguig, Metropolitan Manila, and Declaring the Same Open for Disposition under the Provisions of Republic Act Nos. 274 and 730.

[5] Excluding from the Operation of Proclamation No. 423 dated July 12, 1957, which Established the Military Reservation known as Fort William Mckinley (now Fort Andres Bonifacio) situated in the Municipalities of Pasig, Taguig, Pateros and Parañaque, Province of Rizal and Pasay City (now Metropolitan

To implement Proclamation No. 172, Memorandum No. 119 was issued by then Executive Secretary Catalino Macaraig, creating a Committee on Awards whose duty was to study, evaluate, and make a recommendation on the applications to purchase the lands declared open for disposition. The Committee on Awards was headed by the Director of Lands and the respondent was one of the Committee members, in his official capacity as the Congressman of Taguig and Pateros (from 1987 to 1998); the respondent's district includes the areas covered by the proclamations.

The First Charge: Violation of Rule 6.02

In the complaint,[6] the complainant claimed that the respondent abused his position as Congressman and as a member of the Committee on Awards when he unduly interfered with the complainant's sales application because of his personal interest over the subject land. The complainant alleged that the respondent exerted undue pressure and influence over the complainant's father, Miguel P. Olazo, for the latter to contest the complainant's sales application and claim the subject land for himself. The complainant also alleged that the respondent prevailed upon Miguel Olazo to accept, on various dates, sums of money as payment of the latter's alleged rights over the subject land. The complainant further claimed that the respondent brokered the transfer of rights of the subject land between Miguel Olazo and Joseph Jeffrey Rodriguez, who is the nephew of the respondent's deceased wife.

As a result of the respondent's abuse of his official functions, the complainant's sales application was denied. The conveyance

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Manila), as amended by Proclamation No. 2476 dated January 7, 1986, certain portions of land embraced therein known as Barangays Lower Bicutan, Upper Bicutan, Western Bicutan and Signal Village situated in the Municipality of Taguig, Metropolitan Manila and Declaring the Same Open for Disposition under the Provisions of Republic Act No. 274 and Republic Act No. 730 in relation to the Provisions of the Public Land Act, as amended; and Providing the Implementing Guidelines.

[6] Complaint, pp. 1-7.

of rights to Joseph Jeffrey Rodriguez and his sales application were subsequently given due course by the Department of Environment and Natural Resources (*DENR*).

The Second Charge: Violation of Rule 6.03

The second charge involves another parcel of land within the proclaimed areas belonging to Manuel Olazo, the complainant's brother. The complainant alleged that the respondent persuaded Miguel Olazo to direct Manuel to convey his rights over the land to Joseph Jeffrey Rodriguez. As a result of the respondent's promptings, the rights to the land were transferred to Joseph Jeffrey Rodriguez.

In addition, the complainant alleged that in May 1999, the respondent met with Manuel for the purpose of nullifying the conveyance of rights over the land to Joseph Jeffrey Rodriguez. The complainant claimed that the respondent wanted the rights over the land transferred to one Rolando Olazo, the *Barangay* Chairman of Hagonoy, Taguig. The respondent in this regard executed an "Assurance" where he stated that he was the lawyer of Ramon Lee and Joseph Jeffrey Rodriguez.

The Third Charge: Violation of Rule 1.01

The complainant alleged that the respondent engaged in unlawful conduct considering his knowledge that Joseph Jeffrey Rodriguez was not a qualified beneficiary under Memorandum No. 119. The complainant averred that Joseph Jeffrey Rodriguez is not a *bona fide* resident of the proclaimed areas and does not qualify for an award. Thus, the approval of his sales application by the Committee on Awards amounted to a violation of the objectives of Proclamation No. 172 and Memorandum No. 119.

The complainant also alleged that the respondent violated Section 7(b)(2) of the Code of Conduct and Ethical Standards for Public Officials and Employees or Republic Act (*R.A.*) No. 6713 since he engaged in the practice of law, within the one-year prohibition period, when he appeared as a lawyer for Ramon Lee and Joseph Jeffrey Rodriguez before the Committee on Awards.

In his Comment,[7] the respondent claimed that the present complaint is the third malicious charge filed against him by the complainant. The first one was submitted before the Judicial and Bar Council when he was nominated as an Associate Justice of the Supreme Court; the second complaint is now pending with the Office of the Ombudsman, for alleged violation of Section 3(e) and (i) of R.A. No. 3019, as amended.

With his own supporting documents, the respondent presented a different version of the antecedent events.

The respondent asserted that Miguel Olazo owned the rights over the subject land and he later conveyed these rights to Joseph Jeffrey Rodriguez. Miguel Olazo's rights over the subject land and the transfer of his rights to Joseph Jeffrey Rodriguez were duly recognized by the Secretary of the DENR before whom the conflict of rights over the subject land (between Miguel Olazo and Joseph Jeffrey Rodriguez, on one hand, and the complainant on the other hand) was brought. In its decision, the DENR found Joseph Jeffrey Rodriguez a qualified applicant, and his application over the subject land was given due course. The respondent emphasized that the DENR decision is now final and executory. It was affirmed by the Office of the President, by the Court of Appeals and by the Supreme Court.

The respondent also advanced the following defenses:

(1) He denied the complainant's allegation that Miguel Olazo told him (complainant) that the respondent had been orchestrating to get the subject land. The respondent argued that this allegation was without corroboration and was debunked by the affidavits of Miguel Olazo and Francisca Olazo, the complainant's sister.

(2) He denied the complainant's allegation that he offered the complainant ₱50,000.00 for the subject land and that he (the respondent) had exerted undue pressure and influence on Miguel Olazo to claim the rights over

[7] Comment, pp. 1-15.

the subject land. The respondent also denied that he had an inordinate interest in the subject land.

(3) He claimed that there was nothing wrong in signing as a witness in Miguel Olazo's affidavit where the latter asserted his rights over the subject land. The affidavit merely attested to the truth.

(4) He asserted that he and Miguel Olazo were cousins and that the latter decided to sell his rights over the subject land for the medical treatment of his heart condition and the illness of his daughter, Francisca Olazo. The respondent insisted that the money he extended to them was a form of loan.

(5) The respondent's participation in the transaction between Miguel Olazo and Joseph Jeffrey Rodriguez involved the payment of the loan that the respondent extended to Miguel Olazo.

(6) Manuel's belated and secondhand allegation in his *Sinumpaang Salaysay*, dated January 20, 2000, regarding what his father told him, cannot prevail over his earlier *Sinumpaang Salaysay* with Francisca Olazo, dated August 2, 1997. In the said *Sinumpaang Salaysay*, Manuel categorically asserted that his father Miguel Olazo, not the complainant, was the farmer-beneficiary. Manuel also expressed his agreement to the transfer of rights (*Pagpapatibay Sa Paglilipat Ng Karapatan*) in favor of Joseph Jeffrey Rodriguez, and the withdrawal of his father's application to give way to Joseph Jeffrey Rodriguez's application.

(7) The complainant's allegation that the respondent had pressured and influenced Miguel Olazo to sell the subject land was not sufficient as it was lacking in specificity and corroboration. The DENR decision was clear that the complainant had no rights over the subject land.

The respondent additionally denied violating Rule 1.01 of the Code of Professional Responsibility. He alleged that during

his third term as Congressman from 1995 to 1997, the conflicting applications of the complainant, Miguel Olazo and Joseph Jeffrey Rodriguez were not included in the agenda for deliberation of the Committee on Awards. Rather, their conflicting claims and their respective supporting documents were before the Office of the Regional Director, NCR of the DENR. This office ruled over the conflicting claims only on August 2, 2000. This ruling became the basis of the decision of the Secretary of the DENR.

Similarly, the respondent cannot be held liable under Rule 6.02 of the Code of Professional Responsibility since the provision applies to lawyers in the government service who are allowed by law to engage in private law practice and to those who, though prohibited from engaging in the practice of law, have friends, former associates and relatives who are in the active practice of law.[8] In this regard, the respondent had already completed his third term in Congress and his stint in the Committee on Awards when he represented Joseph Jeffrey Rodriguez on May 24, 1999.

Lastly, the respondent claimed that he cannot be held liable under Rule 6.03 of the Code of Professional Responsibility since he did not intervene in the disposition of the conflicting applications of the complainant and Joseph Jeffrey Rodriguez because the applications were not submitted to the Committee on Awards when he was still a member.

The Court's Ruling

Generally, a lawyer who holds a government office may not be disciplined as a member of the Bar for misconduct in the discharge of his duties as a government official.[9] He may be disciplined by this Court as a member of the Bar only when his misconduct also constitutes a violation of his oath as a lawyer.[10]

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[8] Citing Agpalo, Ruben, *Comments On The Code Of Professional Responsibility And The Code of Judicial Conduct*, p. 51.

[9] *Vitriolo v. Dasig*, A.C. No. 4984, April 1, 2003, 400 SCRA 172, 178.

[10] *Ibid.*

The issue in this case calls for a determination of whether the respondent's actions constitute a breach of the standard ethical conduct — first, while the respondent was still an elective public official and a member of the Committee on Awards; and second, when he was no longer a public official, but a private lawyer who represented a client before the office he was previously connected with.

After a careful evaluation of the pleadings filed by both parties and their respective pieces of evidence, we resolve to dismiss the administrative complaint.

Accountability of a government lawyer in public office

Canon 6 of the Code of Professional Responsibility highlights the continuing standard of ethical conduct to be observed by government lawyers in the discharge of their official tasks. In addition to the standard of conduct laid down under R.A. No. 6713 for government employees, a lawyer in the government service is obliged to observe the standard of conduct under the Code of Professional Responsibility.

Since public office is a public trust, the ethical conduct demanded upon lawyers in the government service is more exacting than the standards for those in private practice. Lawyers in the government service are subject to constant public scrutiny under norms of public accountability. They also bear the heavy burden of having to put aside their private interest in favor of the interest of the public; their private activities should not interfere with the discharge of their official functions.[11]

The first charge involves a violation of Rule 6.02 of the Code of Professional Responsibility. It imposes the following restrictions in the conduct of a government lawyer:

A lawyer in the government service shall not use his public position to promote or advance his private interests, nor allow the latter to interfere with his public duties.

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[11] Agpalo, *Legal and Judicial Ethics* (2002 edition), p. 88.

The above provision prohibits a lawyer from using his or her public position to: (1) promote private interests; (2) advance private interests; or (3) allow private interest to interfere with his or her public duties. We previously held that the restriction **extends to all government lawyers** who use their public offices to promote their private interests.[12]

In *Huyssen v. Gutierrez*,[13] we defined promotion of private interest to include soliciting gifts or anything of monetary value in any transaction requiring the approval of his or her office, or may be affected by the functions of his or her office. In *Ali v. Bubong*,[14] we recognized that private interest is not limited to direct interest, but extends to advancing the interest of relatives. We also ruled that private interest interferes with public duty when the respondent uses the office and his or her knowledge of the intricacies of the law to benefit relatives.[15]

In *Vitriolo v. Dasig*,[16] we found the act of the respondent (an official of the Commission on Higher Education) of extorting money from persons with applications or requests pending before her office to be a serious breach of Rule 6.02 of the Code of Professional Responsibility.[17] We reached the same conclusion in *Huyssen*, where we found the respondent (an employee of the Bureau of Immigration and Deportation) liable under Rule 6.02 of the Code of Professional Responsibility, based on the evidence showing that he demanded money from the complainant who had a pending application for visas before his office.[18]

Similarly, in *Igoy v. Soriano*[19] we found the respondent (a Court Attorney of this Court) liable for violating Rule 6.02 of

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[12] *Chan v. Go*, A.C. No. 7547, September 4, 2009, 598 SCRA 145, 155.

[13] A.C. No. 6707, March 24, 2006, 485 SCRA 244, 258.

[14] A.C. No. 4018, March 8, 2005, 453 SCRA 1, 14.

[15] *Ibid.*

[16] *Supra* note 9, at 179.

[17] *Ibid.*

[18] *Supra* note 13, at 257-258.

[19] A.M. No. 2001-9-SC, October 11, 2001, 367 SCRA 70, 79 and 81.

the Code of Professional Responsibility, after considering the evidence showing that he demanded and received money from the complainant who had a pending case before this Court.

Applying these legal precepts to the facts of the case, we find the absence of any concrete proof that the respondent abused his position as a Congressman and as a member of the Committee on Awards in the manner defined under Rule 6.02 of the Code of Professional Responsibility.

First, the records do not clearly show if the complainant's sales application was ever brought before the Committee on Awards. By the complaint's own account, the complainant filed a sales application in March 1990 before the Land Management Bureau. By 1996, the complainant's sales application was pending before the Office of the Regional Director, NCR of the DENR due to the conflicting claims of Miguel Olazo, and, subsequently, of Joseph Jeffrey Rodriguez. The records show that it was only on August 2, 2000 that the Office of the Regional Director, NCR of the DENR rendered its decision, or after the term of the respondent's elective public office and membership to the Committee on Awards, which expired in 1997.

These circumstances do not show that the respondent did in any way promote, advance or use his private interests in the discharge of his official duties. To repeat, since the sales application was not brought before the Committee on Awards when the respondent was still a member, no sufficient basis exists to conclude that he used his position to obtain personal benefits. We note in this regard that the denial of the complainant's sales application over the subject land was made by the DENR, not by the Committee on Awards.

Second, the complainant's allegation that the respondent "orchestrated" the efforts to get the subject land does not specify how the orchestration was undertaken. What appears clear in the records is the uncorroborated *Sinumpaang Salaysay* of Miguel Olazo, dated May 25, 2003,[20] categorically stating that the respondent had no interest in the subject land, and neither was

[20] Annex "9" of Comment.

he a contracting party in the transfer of his rights over the subject land. In the absence of any specific charge, Olazo's disclaimer is the nearest relevant statement on the respondent's alleged participation, and we find it to be in the respondent's favor.

Third, the other documents executed by Miguel Olazo, that the complainant presented to support his claim that the respondent exerted undue pressure and influence over his father (namely: the letter, dated June 22, 1996, to the DENR Regional Director-NCR;[21] the *Sinumpaang Salaysay* dated July 12, 1996;[22] and the *Sinumpaang Salaysay* dated July 17, 1996[23]), do not contain any reference to the alleged pressure or force exerted by the respondent over Miguel Olazo. The documents merely showed that the respondent helped Miguel Olazo in having his farm lots (covered by the proclaimed areas) surveyed. They also showed that the respondent merely acted as a witness in the *Sinumpaang Salaysay* dated July 17, 1996. To our mind, there are neutral acts that may be rendered by one relative to another, and do not show how the respondent could have influenced the decision of Miguel Olazo to contest the complainant's sales application. At the same time, we cannot give any credit to the *Sinumpaang Salaysay*, dated January 20, 2000, of Manuel. They are not only hearsay but are contrary to what Miguel Olazo states on the record. We note that Manuel had no personal knowledge, other than what Miguel Olazo told him, of the force allegedly exerted by the respondent against Miguel Olazo.

In turn, the respondent was able to provide a satisfactory explanation — backed by corroborating evidence — of the nature of the transaction in which he gave the various sums of money to Miguel Olazo and Francisca Olazo in the year 1995. In her affidavits dated May 25, 2003[24] and July 21, 2010,[25] Francisca

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[21] Annex "F" of the Complaint-Affidavit.

[22] Annex "G" of the Complaint-Affidavit.

[23] Annex "H" of the Complaint-Affidavit.

[24] Annex "C" of the Comment.

[25] Annex "7" of the Comment.

Olazo corroborated the respondent's claim that the sums of money he extended to her and Miguel Olazo were loans used for their medical treatment. Miguel Olazo, in his *Sinumpaang Salaysay* dated May 25, 2003, asserted that some of the money borrowed from the respondent was used for his medical treatment and hospitalization expenses.

The affidavit of Joseph Jeffrey Rodriguez further corroborated the respondent's claim that the latter's involvement was limited to being paid the loans he gave to Miguel Olazo and Francisca Olazo. According to Joseph Jeffrey Rodriguez, he and Miguel Olazo agreed that a portion of the loan would be directly paid by Joseph Jeffrey Rodriguez to the respondent and the amount paid would be considered as part of the purchase price of the subject land.[26]

It also bears stressing that a facial comparison of the documentary evidence, specifically the dates when the sums of money were extended by the respondent — on February 21, 1995, September 2, 1995 and October 17, 1995, and the date when the Deed of Conveyance[27] over the subject land was executed or on October 25, 1995, showed that the sums of money were extended prior to the transfer of rights over the subject land. These pieces of evidence are consistent with the respondent's allegation that Miguel Olazo decided to sell his rights over the subject land to pay the loans he obtained from the respondent and, also, to finance his continuing medical treatment.

Private practice of law after separation from public office

As proof that the respondent was engaged in an unauthorized practice of law after his separation from the government service, the complainant presented the *Sinumpaang Salaysay*, dated January 20, 2000, of Manuel and the document entitled "Assurance" where the respondent legally represented Ramon Lee and Joseph Jeffrey Rodriguez. Nevertheless, the foregoing

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[26] Annex "11" of the Comment.

[27] Annex "O" of the Complaint-Affidavit.

pieces of evidence fail to persuade us to conclude that there was a violation of Rule 6.03 of the Code of Professional Responsibility.

In *Cayetano v. Monsod*,[28] we defined the practice of law as any activity, in and out of court, that requires the application of law, legal procedure, knowledge, training and experience. Moreover, we ruled that to engage in the practice of law is to perform those acts which are characteristics of the profession; to practice law is to give notice or render any kind of service, which device or service requires the use in any degree of legal knowledge or skill.

Under the circumstances, the foregoing definition should be correlated with R.A. No. 6713 and Rule 6.03 of the Code of Professional Responsibility which impose certain restrictions on government lawyers to engage in private practice after their separation from the service.

Section 7(b)(2) of R.A. No. 6713 reads:

Section 7. Prohibited Acts and Transactions. — In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

x x x x x x x x x

(b) *Outside employment and other activities related thereto*. — Public officials and employees during their incumbency shall not:

x x x x x x x x x

(2) Engage in the private practice of their profession unless authorized by the Constitution or law, provided, that such practice will not conflict or tend to conflict with their official functions; x x x

These prohibitions shall continue to apply for a period of one (1) year after resignation, retirement, or separation from public office, except in the case of subparagraph (b) (2) above, but the professional concerned cannot practice his profession in connection with any

[28] G.R. No. 100113, September 3, 1991, 201 SCRA 210, 214.

matter before the office he used to be with, in which case the one-year prohibition shall likewise apply.

As a rule, government lawyers are not allowed to engage in the private practice of their profession during their incumbency.[29] By way of exception, a government lawyer can engage in the practice of his or her profession under the following conditions: *first*, the private practice is authorized by the Constitution or by the law; and *second*, the practice will not conflict or tend to conflict with his or her official functions.[30] The last paragraph of Section 7 provides an exception to the exception. In case of lawyers separated from the government service who are covered under subparagraph (b) (2) of Section 7 of R.A. No. 6713, a one-year prohibition is imposed to practice law *in connection with any matter before the office he used to be with.*

Rule 6.03 of the Code of Professional Responsibility echoes this restriction and prohibits lawyers, after leaving the government service, to accept engagement or employment in connection with any matter in which he had intervened while in the said service. The keyword in Rule 6.03 of the Code of Professional Responsibility is the term "intervene" which we previously interpreted to include an act of a person who has the power to influence the proceedings.[31] Otherwise stated, to fall within the ambit of Rule 6.03 of the Code of Professional Responsibility, the respondent must have accepted engagement or employment in a matter which, by virtue of his public office, he had previously exercised power to influence the outcome of the proceedings.

As the records show, no evidence exists showing that the respondent previously interfered with the sales application covering Manuel's land when the former was still a member of the

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[29] *Query of Atty. Karen M. Silverio-Buffe, Former Clerk of Court – Branch 81, Romblon, Romblon – On the Prohibition from Engaging in the Private Practice of Law*, A.M. No. 08-6-352-RTC, August 19, 2009, 596 SCRA 378, 390.

[30] *Id.* at 390-391.

[31] *Presidential Commission on Good Government v. Sandiganbayan*, G.R. Nos. 151809-12, April 12, 2005, 455 SCRA 526, 579.

Committee on Awards. The complainant, too, failed to sufficiently establish that the respondent was engaged in the practice of law. At face value, the legal service rendered by the respondent was limited only in the preparation of a single document. In *Borja, Sr. v. Sulyap, Inc.*,[32] we specifically described private practice of law as one that contemplates a succession of acts of the same nature habitually or customarily holding one's self to the public as a lawyer.

In any event, even granting that respondent's act fell within the definition of practice of law, the available pieces of evidence are insufficient to show that the legal representation was made before the Committee on Awards, or that the Assurance was intended to be presented before it. These are matters for the complainant to prove and we cannot consider any uncertainty in this regard against the respondent's favor.

Violation of Rule 1.01

Rule 1.01 prohibits a lawyer from engaging in unlawful, immoral or deceitful conduct. From the above discussion, we already struck down the complainant's allegation that respondent engaged in an unauthorized practice of law when he appeared as a lawyer for Ramon Lee and Joseph Jeffrey Rodriguez before the Committee on Awards.

We find that a similar treatment should be given to the complainant's claim that the respondent violated paragraph 4(1)[33] of Memorandum No. 119 when he encouraged the sales application of Joseph Jeffrey Rodriguez despite his knowledge that his nephew was not a qualified applicant. The matter of Joseph Jeffrey Rodriguez's qualifications to apply for a sales application over lots covered by the proclaimed areas has been resolved in the affirmative by the Secretary of the DENR in the decision dated April 3, 2004,[34] when the DENR gave due

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[32] G.R. No. 150718, March 26, 2003, 399 SCRA 601, 610.

[33] *Rollo*, p. 3.

[34] Annex "8" of the Comment.

course to his sales application over the subject land. We are, at this point, bound by this finding.

As pointed out by the respondent, the DENR decision was affirmed by the Office of the President, the Court of Appeals[35] and, finally, the Court, per our *Minute* Resolution, dated October 11, 2006, in G.R. No. 173453. In our Resolution, we dismissed the petition for review on *certiorari* filed by the complainant after finding, among others, that no reversible error was committed by the Court of Appeals in its decision.[36]

All told, considering the serious consequences of the penalty of disbarment or suspension of a member of the Bar, the burden rests on the complainant to present clear, convincing and satisfactory proof for the Court to exercise its disciplinary powers.[37] The respondent generally is under no obligation to prove his/her defense,[38] until the burden shifts to him/her because of what the complainant has proven. Where no case has in the first place been proven, nothing has to be rebutted in defense.[39]

With this in mind, we resolve to dismiss the administrative case against the respondent for the complainant's failure to prove by clear and convincing evidence that the former committed unethical infractions warranting the exercise of the Court's disciplinary power.

WHEREFORE, premises considered, we *DISMISS* the administrative case for violation of Rule 6.02, Rule 6.03 and Rule 1.01 of the Code of Professional Responsibility, filed against

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[35] Decision dated January 19, 2006 in CA-G.R. SP No. 89931, entitled "*Jovito Olazo v. Jeffrey Bernardo Rodriguez*; Annex "16" of the Comment.

[36] Annex "17" of the Comment.

[37] *Berbano v. Barcelano*, A.C. No. 6084, September 3, 2003, 410 SCRA 258, 264-265.

[38] *Boyboy v. Yabut, Jr.*, A.C. No. 5225, April 29, 2003, 401 SCRA 622, 628.

[39] *Borromeo-Garcia v. Pagayatan*, A.M. No. RTJ-08-2127, September 25, 2008, 566 SCRA 320, 329.

retired Supreme Court Associate Justice Dante O. Tinga, for lack of merit.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Nachura, Leonardo-de Castro, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, and *Sereno, JJ.,* concur.

Velasco, Jr.,[*] *J.,* on official leave.

EN BANC

[A.M. No. P-09-2638. December 7, 2010]
(Formerly A.M. No. 09-4-68-MTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JULIET C. BANAG, CLERK OF COURT and MS. EVELYN R. GALVEZ, INTERPRETER AND FORMER OFFICER-IN-CHARGE CLERK OF COURT, BOTH OF THE MUNICIPAL TRIAL COURT, PLARIDEL, BULACAN,** *respondents*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERKS OF COURT; DUTIES OF.— The Clerk of Court is an important officer in our judicial system. His office is the nucleus of all court activities, adjudicative and administrative. His administrative functions are as vital to the prompt and proper administration of justice as his judicial duties. The Clerk of Court performs a very delicate function. He or she is the custodian of the court's funds and revenues, records, property and premises. Being the custodian thereof, the Clerk of Court is liable for any loss, shortage, destruction

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[*] Per special order No. 916 dated November 24, 2010.

or impairment of said funds and property. Hence, Clerks of Court have always been reminded of their duty to immediately deposit the various funds received by them to the authorized government depositories, for they are not supposed to keep the funds in their custody. The same should be deposited immediately upon receipt thereof with the City, Municipal or Provincial Treasurer where the court is located.

2. ID.; ID.; ID.; RESPONSIBILITY AND ACCOUNTABILITY THEREOF FOR THE COLLECTED LEGAL FEES IN THEIR CUSTODY, EXPLAINED; DELAYED REMITTANCE OF CASH COLLECTIONS CONSTITUTES GROSS NEGLECT OF DUTY.— Delayed remittance of cash collections by Clerks of Court and cash clerks constitutes gross neglect of duty. The failure of a public officer to remit funds upon demand by an authorized officer shall be *prima facie* evidence that the public officer has put such missing funds or property to personal use. In *Office of the Court Administrator v. Fortaleza*, the Court stressed the responsibility and accountability of Clerks of Court for the collected legal fees in their custody, thus: Clerks of court are the chief administrative officers of their respective courts; with regard to the collection of legal fees, they perform a delicate function as judicial officers entrusted with the correct and effective implementation of regulations thereon. Even the undue delay in the remittances of amounts collected by them at the very least constitutes misfeasance. On the other hand, a vital administrative function of a judge is the effective management of his court and this includes control of the conduct of the court's ministerial officers. It should be brought home to both that the safekeeping of funds and collections is essential to the goal of an orderly administration of justice and no protestation of good faith can override the mandatory nature of the Circulars designed to promote full accountability for government funds.

3. ID.; ID.; ID.; OUGHT TO LIVE UP TO THE STRICTEST STANDARDS OF HONESTY AND INTEGRITY.— Those who work in the judiciary, such as Galvez and Banag, must adhere to high ethical standards to preserve the court's good name and standing. They should be examples of responsibility, competence and efficiency, and they must discharge their duties with due care and utmost diligence since they are officers of the court and agents of the law. Indeed, any conduct, act or

omission on the part of those who would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary shall not be countenanced. The conduct required of court personnel, from the presiding judge to the lowliest clerk, must always be beyond reproach and circumscribed with a heavy burden of responsibility. As forerunners in the administration of justice, they ought to live up to the strictest standards of honesty and integrity, considering that their positions primarily involve service to the public.

4. ID.; ID.; ID.; ADMINISTRATIVE CHARGES; SILENCE AND NON-PARTICIPATION IN THE ADMINISTRATIVE PROCEEDINGS, DESPITE DUE NOTICE AND DIRECTIVES, STRONGLY INDICATE GUILT; APPLIED TO CASE AT BAR.— The Court has already given Galvez more than enough opportunity to be heard. On two occasions, on July 27, 2009 and October 28, 2009, the Court granted Galvez's motions for extension of time to comply with the Resolution dated June 1, 2009 of this Court ordering her to submit her explanation, accounting, and receipts. Still, Galvez failed to submit said explanation during the extended period. Galvez's refusal to face head-on the charges against her is contrary to the principle that the first impulse of an innocent person, when accused of wrongdoing, is to express his/her innocence at the first opportune time. Galvez's silence and non-participation in the present administrative proceedings, despite due notice and directives of this Court for her to submit documents in her defense strongly indicate her guilt. It was only after the second extended period expired that Galvez partially complied with the directives of this Court in its June 1, 2009 Resolution by depositing the amount of ₱70,000.00 on March 18, 2010 to the Fiduciary Fund Account of the MTC, coursed through OIC-Clerk of Court Salazar.

5. ID.; ID.; ID.; CLERKS OF COURT; CHARGES OF DISHONESTY AND GROSS MISCONDUCT; HEAVY CASELOAD AND TIME CONSTRAINTS ARE NOT SUFFICIENT EXCUSES.— [T]he Court finds Banag's explanation unsatisfactory. Heavy caseload and time constraints are not sufficient excuses. These are problems most Clerks of Court all over the country must contend with. It is up to Banag to devise an effective and efficient system for her office so that it can attend to all the administrative matters of the MTC, including the deposit in due time of court collections.

6. ID.; ID.; ID.; FAILURE TO REMIT THE COURT FUNDS COLLECTED CONSTITUTES GROSS DISHONESTY AND GRAVE MISCONDUCT; PENALTY OF DISMISSAL, IMPOSED.— Given the results of the OCA audit and investigation, Galvez and Banag have evidently failed to live up to the high ethical standards expected of court employees. They violated the trust reposed in them as Clerks of Court and disbursement officers of the judiciary as shown by Galvez's failure to remit the amount of ₱660,072.35, representing shortages in the JDF, SAJF, STF, FF, Mediation Fund, and COCGF; and for Banag's non-remittance of ₱240,913.05, representing shortages in the JDF, SAJF, FF, and Mediation Fund. In *Re: Report on the Judicial and Financial Audit of RTC-Br. 4, Panabo, Davao Del Norte*, we held that the failure of the Clerk of Court to remit the court funds collected by the Municipal Treasurer constitutes gross neglect of duty, dishonesty and grave misconduct prejudicial to the best interest of the service. Under Rule IV, Section 52-A of the Civil Service Uniform Rules on Administrative Cases in the Civil Service, these are grave offenses punishable by dismissal even when committed for the first time. The Court, therefore, is left with no other recourse but to declare Galvez and Banag guilty of dishonesty and gross misconduct, which are grave offenses punishable by dismissal.

D E C I S I O N

***PER CURIAM*:**

This administrative case arose from the audit examination submitted by an Audit Team of the Office of the Court Administrator (OCA), containing the results of its financial audit of the Municipal Trial Court (MTC) of Plaridel, Bulacan, conducted on August 27, 2008 and sometime in July 2010. The financial audit covered the accountability period from May 2008 to August 2008 and from August 1, 2008 to August 31, 2009 of Evelyn R. Galvez (Galvez), Court Interpreter and former Officer-in-Charge (OIC)-Clerk of Court, and Juliet C. Banag (Banag), Clerk of Court, both of the MTC of Plaridel, Bulacan.

The OCA Audit Team made the following recommendations in its Report dated April 8, 2009:

This Office adopts the recommendation of the team and endorses the same for approval of the Honorable Court, to wit:

1. This report be docketed as a regular administrative complaint against Juliet C. Banag, Clerk of Court and Ms. Evelyn R. Galvez, Court Interpreter and former OIC-Clerk of Court, MTC, Plaridel, Bulacan;

2. Ms. Juliet C. Banag, Clerk of Court, be DIRECTED within fifteen (15) days from receipt of notice to:

    2.1 EXPLAIN in writing why she should not be administratively dealt with for committing the same infractions (except item letter "b"):

        a. why she has cash on hand representing accumulated collections for the period May 2008 to August 2008 amounting to ₱38,628.00 for various funds and deposited only when uncovered and directed by the team on August 28, 2008;

Fund	**Date of Collections**	**Amount**	**Date of Deposit**	**No. of Months/days Delayed**
Fiduciary	June 2008	₱ 2000.00	August 6-7,	1 mo. & 7 days
Fund (FF)	July 3-14, 2008	7000.00	2008	24 days
Total		**₱9000.00**		

Fund	**Date of Collections**	**Amount**	**Date of Deposit**	**No. of Months/days Delayed**
Special Allow for Judiciary Fund (SAJF)	May 2008	₱ 8,063.20	August 28, 2008	2 mos. & 28 days
	June 2008	5,164.40		1 mo. & 28 days
	July 2008	6,400.40		28 days
Total		**₱ 19,628.00**		

Mediation Fund	May 2008	₱ 3,500.00	August 28, 2008	2 mos. & 28 days
	June 2008	3,500.00		1 mo. & 28 days
	July 2008	2,000.00		28 days
Total		**₱ 9,000.00**		
Sheriff's Trust Fund (STF)	July 14, 2008	₱ 1,000.00	August 28, 2008	1 mo. & 14 days
Total		**₱ 1,000.00**		

a-1. the shortages found on the following funds which must be restituted and the copy of the machine validated deposit slips as proof of settlement to be submitted to the Fiscal Monitoring Division, FMO, OCA;

JDF	₱	4,762.35
SAJF		4.00
FF		0.05
Total	₱	4,766.40

b. why the duplicate/triplicate copies of Official Receipt with Serial Nos. 8076025, 8076028, 8076030, 8076031, 8076032, 8076033, 8076034 and 8076036 are not dated while original copies attached to their respective case folders are dated, considering that the official receipts provided by the court no longer require a carbon paper and/or carbonless.

2.2 VERIFY thoroughly all entries indicated in the established Statement of Unwithdrawn Fiduciary Fund (SUFF) and Statement of Unwithdrawn Sheriff's Trust Fund (SUSTF) and to RETURN the same to the Fiscal Monitoring Division, Court Management Office, OCA duly signed by the concerned signatories;

3. MS. EVELYN R. GALVEZ, former OIC-Clerk of Court, be DIRECTED within fifteen (15) days from receipt of notice to:

   3.1 SETTLE the following shortages and SUBMIT to the Fiscal Monitoring Division, FMO, OCA the copy of the machine validated deposit slips as proof of compliance:

JDF	₱	238,750.15	Schedule 1
SAJF		179,195.50	Schedule 2
STF		10,000.00	Schedule 3
FF		87,136.00	Schedule 4
Mediation		185,500.00	Schedule 5
COCGF		29,490.70	Schedule 6
Total	₱	730,072.35	

   3.2 EXPLAIN in writing why she should not be administratively dealt with for the above shortages and for tampering the machine validation of the deposit slips as provided below:

Fund	**Date of Deposit**	**Amount**	**Remarks**
Judiciary Development Fund	January 14, 2005	₱ 8,475.00	Tampered as to date
Judiciary Development Fund	January 14, 2005	10,586.10	Tampered as to date
Judiciary Development Fund	January 14, 2005	13,432.30	Tampered as to date
Judiciary Development Fund	January 13, 2005	2,832.00	Tampered as to date
Special Allow. for the Judiciary	Sept. 14, 2005	2,029.80	Tampered as to amount

4. MS. JULIET C. BANAG and EVELYN R. GALVEZ be placed under preventive suspension considering that the acts committed involve gross dishonesty and grave misconduct (for their violation/disregard of the circulars of the Court on the proper management of judiciary funds); and

5. Presiding Judge SHEILA MARIE S. GERONIMO-ORQUILLAS be DIRECTED to:

   5.1. STRICTLY MONITOR the financial transactions of MTC, Plaridel, Bulacan in strict adherence to the issuances of the Court to avoid the recurrence of violations committed by Ms. Juliet C. Banag and Ms. Evelyn R. Galvez and to institute reforms that will strengthen the internal control system in the management of judiciary funds;

   5.2 DESIGNATE new OIC, Clerk of Court vice Ms. Banag who will perform effectively his/her duties and responsibilities as Clerk of Court of MTC, Plaridel, Bulacan;

   5.3 PROVIDE the Fiscal Monitoring Division, Court Management Office, OCA with certified photocopies of the following Original Official Receipts:

Fiduciary Fund OR Number	**Case No.**
8076025	07-0709
8076028	08-0811
8076030	08-0813
8076031	08-0814
8076032	08-0790
8076033	08-0830
8076034	08-0830
8076036	08-0830[1]

On April 8, 2009, then Court Administrator, now Supreme Court Associate Justice Jose P. Perez, issued a Memorandum adopting and endorsing for approval by this Court the foregoing recommendations of the OCA Audit Team.

The Court, in a Resolution[2] dated June 1, 2009, approved and adopted the recommendations of the Court Administrator.

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[1] *Rollo,* pp. 1-4.

[2] *Id.* at 14-18.

Pursuant to said Resolution, Presiding Judge Sheila Marie S. Geronimo-Orquillas (Judge Geronimo-Orquillas) informed the Court that she had taken the following actions: 1) she designated as OIC Ms. Belinda E. Salazar (Salazar), Court Stenographer, to assume the duties and responsibilities of the Clerk of Court in view of Banag's preventive suspension; 2) she photocopied certain original official receipts; and 3) she devised means to further enhance the management of judiciary funds in close coordination with the designated Clerk of Court to prevent further violations.

Galvez filed on June 30, 2009 a Motion for Extension of Time in which she prayed that she be given an extension of at least 15 days from June 30, 2009 or until July 15, 2009 within which to file her answer, as she had to locate other documents for the preparation of the same. The extension was granted by the Court in a Resolution[3] dated July 27, 2009.

On July 21, 2009, Judge Geronimo-Orquillas requested for a detailed and complete listing of properties under the account of the MTC so she may determine and clarify the properties under Banag's accountability and avoid any question that might arise from the outcome of the administrative case. She also informed the Court that she, together with OIC-Clerk of Court Salazar, would conduct an inventory of the properties of the MTC, and thus requested for a representative from the Commission on Audit (COA) to witness the inventory. Also on July 21, 2009, Judge Geronimo-Orquillas asked that a special financial audit and examination of the MTC be conducted by the OCA to determine if there are any additional shortages in Judiciary funds from September 2008 (when the first financial audit was concluded) to June 17, 2009 (when Judge Geronimo-Orquillas received the Resolution dated June 1, 2009 of this Court).

In compliance with the directive of the Court, Banag submitted her Manifestation and Answer on July 27, 2009. She alleged that on August 27, 2008, prior to the arrival of the OCA Audit Team that same day, she had requested Court Aide Fidelito

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[3] *Id.* at 31-34.

Viquiera (Viquiera) to deposit the MTC collections amounting to ₱38,628.00 at the Land Bank of the Philippines, Malolos Branch, Bulacan, which is seven kilometers away from the court. The OCA Audit Team was already at the MTC at around 3:30 to 4:00 p.m. when Viquiera returned to inform Banag that he was not able to deposit the MTC collections. Viquiera encountered heavy flow of traffic on his way to Land Bank and the bank was already closed by the time he got there. Banag denied that she deposited the amount of ₱38,628.00 on August 28, 2009 only after she was directed to do so by the OCA Audit Team. Banag averred that she failed to deposit the accumulated collections of the MTC for the period of May to August 2008 in the bank due to work overload, time constraint, and multi-tasking she had to contend with everyday. In the meantime, the accumulated collections were kept in the vault.

Banag further claimed that there was no basis for the finding of the OCA Audit Team of fund shortage amounting to ₱4,766.40 for the periods of October to December 2001 and February to July 2008, as the same had been deposited in the bank as shown by the attached bank deposit slips.

As to the undated duplicate/triplicate copies of Official Receipts with serial numbers 8076025, 8076028, 8076030, 8076031, 8076032, 8076033, 8076034 and 8076036, Banag explained that the corresponding amounts were duly accounted for. Because of the heavy caseload of her office, she unintentionally failed to indicate the dates on the receipts.

Lastly, Banag pointed out that she could not verify the entries in the SUFF and SUSTF and return the said records to the Fiscal Monitoring Division, Court Management Office, OCA, duly signed by the concerned signatories, as these covered the collections for the period 2002 to January 2008 for which Galvez was responsible as OIC-Clerk of Court.

Professing honest inadvertence and human failure due to the heavy caseload of her office, and seeking humane consideration, Banag prays for the lifting of her preventive suspension.

In a Motion for Second Extension of Time to Submit Explanation, dated July 15, 2009 and received by the OCA on

August 4, 2009, Galvez sought another extension of 30 days within which to comply with the June 1, 2009 Resolution of this Court, as she needed ample time to produce the subject amount corresponding to the alleged shortages and to submit the explanation required pertaining to the alleged tampered machine validation of deposit slips. Said motion was granted by the Court in a Resolution dated October 28, 2009, provided that this would be the last extension. However, up until the resolution of the instant administrative case against her, Galvez has not complied with any of the resolutions of the Court.

Acting on Judge Geronimo-Orquillas' letter dated July 21, 2009, an OCA Audit Team conducted another field audit in July 2010. As a result of this recent field audit, the OCA Audit Team submitted to Court Administrator Jose Midas P. Marquez the following report on the books of account of Galvez and Banag:

3. Period of Accountability (August 1, 2008 to August 31, 2009)

	NAME	**PERIOD OF ACCOUNTABILITY**	POSITION	REMARKS
1	Ms. Juliet C. Banag	August 1, 2008 to June 16, 2009	Clerk of Court II	Suspended per A.M. No. P-09-2638
2	Ms. Belinda E. Salazar	June 17, 2009 to August 31, 2009 (Cut-off date of Audit	Court Stenographer I	Appointed as OIC-COC

4. For the Judiciary Development Fund (JDF)

Total collections, August 31, 2008 to August 31, 2009		₱170,405.15
Less: Remittances made for the same period		94,591.95
Balance of Accountabilities as of August 31, 2009 (Schedule 1)		₱ 75,813.20*
		==========

*Ms. Juliet Banag		
Balance from Prev. Audit	₱ 4,762.35	
Erroneous Footing	(31.15)	
Unremitted Collections	71,082.20	₱75,813.40
Ms. Belinda Salazar		
Erroneous Footing		(0.20)
Total		₱75,813.20
		========

5. For the Clerk of Court General Fund (COCGF)

Total Collections, August 1, 2008 to August 31, 2009	₱ 72,000.00
Less: Remittances made for the same period	72,000.00
Balance of Accountabilities as of August 31, 2009	₱ 0.00

6. For the Special Allowance for the Judiciary Fund (SAJF)

Total Collections, August 1, 2008 to August 31, 2009		₱214,621.40
Less: Remittances made for the same period		119,822.60
Balance of Accountabilities as of August 31, 2009 (Schedule 2)		₱ 94,798.80*
*Ms. Juliet C. Banag		
Balance from Prev. Audit	₱ 4.00	
Unremitted Collections	94,795.60	₱ 94,799.60
Ms. Belinda Salazar		
Erroneous Footing		(0.80)
Total		₱94,798.80

7. For the Sheriff's Trust Fund (STF)

Total Collections, August 1, 2008 to August 31, 2009	₱ 48,000.00
Less: Withdrawals made for the same period	1,000.00
Statement of Unwithdrawn Sheriff's Trust Fund As of August 31, 2009 (Annex "D")	47,000.00
Less: Adjusted Bank Balance as of August 31, 2009 (Annex "E")	37,000.00*
Balance of Accountability	₱ 10,000.00**

* Deposited to the Fiduciary Fund Account
** Unrestituted Shortage of Ms. Evelyn R. Galvez

8. For the Fiduciary Fund (FF)

Unwithdrawn Fiduciary Fund as of 7/31/08	₱2,082,459.00
Add: Total Collections, August 1, 2008 to August 31, 2009	634,000.00
Sub-total	₱2,716,459.00
Less: Withdrawals made for the same period	627,000.00
Unwithdrawn Fiduciary Fund as of May 31, 2009 (Annex "F")	₱2,089,459.00
Less: Adjusted Bank Balance as of 8/31/09 (Refer to Annex "E")	1,974,462.92
Balance of Accountability (Schedule 3)	₱ 114,996.08*

*Unaccounted Deposits			(₱ 1,639.97)
Shortages:			
Ms. Belinda Salazar	₱	700.00**	
Ms. Juliet C. Banag		28,800.05	
Ms. Evelyn R. Galvez		87,136.00***	116.636.05
Total			₱ 114,996.08
			==========

** Cost of Checkbook, deposited back to FF Account on 10/1/09 (Annex "G").

*** Restituted the amount of ₱70,000.00 on 3/18/2010.

7-a. Interests earned on Fiduciary deposits for the period August 1, 2008 to August 31, 2009 were remitted to the JDF and COCGF Accounts (Annex "H") amounting to ₱47,523.86.

9. For the Mediation Fund

Total Collections, August 1, 2008 to August 31, 2009	₱ 77,000.00
Less: Remittances made for the same period	35,500.00
Balance of Accountabilities as of August 31, 2009 (Schedule 4)	₱ 41,500.00*
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*Shortages of Ms. Juliet C. Banag

10. Summary of Shortages

Clerk of Court/OIC	Fund	Amount	Remarks
Ms. Juliet Banag	Judiciary Development Fund	75,813.40	These includes unrestituted shortages from previous audits
	Special Allow. for the Judiciary	94,799.60	
	Mediation Fund	41,500.00	
	Fiduciary Fund	28,800.05	
Ms. Belinda Salazar	Fiduciary Fund	700.00	Restituted on 10/1/09 (Cost of Checkbook)
TOTAL		**₱241,613.05** =========	

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The person who should likewise be dealt with severely, for the loses/shortages incurred in the MTC, Plaridel, Bulacan, was former OIC-Clerk of Court Evelyn R. Galvez, who was designated as Officer-in-Charge, vice Ms. Juliet C. Banag for the period February 1, 2002 to January 31, 2008. During Ms. Galvez's accountability period, there were deposit slips which were found to be tampered as to amount and/or date of deposit and also incurred the following shortages:

JDF	₱	238,750.15	Schedule 5
SAJF		179,195.50	Schedule 6
STF		10,000.00	Schedule 7
FF		87,136.00	Schedule 8
Mediation		185,500.00	Schedule 9
COCGF		29,490.70	Schedule 10
Total	₱	730,072.35	
		========	

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The above extension of forty-five (45) days granted by the Court has already lapsed when Ms. Galvez partially complied with the directive of the Court. As per letter of Judge Sheila Marie S. Geronimo-Orquillas, Presiding Judge of Municipal Trial Court, Plaridel, Bulacan, dated April 14, 2010, respondent Galvez deposited the amount of Seventy Thousand Pesos (₱70,000.00) on March 18, 2010 to the Fiduciary Fund Account of Municipal Trial Court, Plaridel, Bulacan, coursed through the present OIC-Clerk of Court, Ms. Belinda E. Salazar (Annex R). Thus, the total amount of unrestituted shortage of Ms. Galvez as of date is computed as follows:

JDF	₱	238,750.15.
SAJF		179,195.50
STF		10,000.00
FF		17,136.00
Mediation		185,500.00
COCGF		29,490.70
Total	₱	660,072.35[4]
		========

The OCA Audit Team made the following recommendations in its Report dated July 27, 2010.

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[4] *Id.* at 144-150.

This Office adopts the recommendation of the team and endorses the same for approval of the Honorable Court, to wit:

A. MS. JULIET C. BANAG AND MS. EVELYN R. GALVEZ be DISMISSED from the service for gross dishonesty and grave misconduct with forfeiture of all benefits including the money value of accrued leave credits to answer for the shortages incurred dispensing with the usual documentary requirements and with prejudice to re-employment in any branch or instrumentality of the government including government owned or controlled corporation;

B. The FINANCIAL MANAGEMENT OFFICE, OFFICE OF THE COURT ADMINISTRATOR be DIRECTED to:

1. PROCESS the money value of computed Terminal Leave Benefits of Ms. Juliet C. Banag and Ms. Evelyn R. Galvez and to COMPUTE the withheld salaries and/or allowances of Ms. Evelyn R. Galvez and thereafter APPLY the value to the shortages found on their books of accounts in the order of priority as follows:

For Ms. Juliet C. Banag:

FF	₱ 28,800.05	Schedule 1
SAJF	94,799.60	Schedule 2
JDF	75,813.40	Schedule 3
Mediation	41,500.00	Schedule 4
Total	₱ 240,913.05	
	=========	

For Ms. Evelyn R. Galvez:

JDF	₱ 238,750.15	Schedule 5
SAJF	179,195.50	Schedule 6
STF	10,000.00	Schedule 7
FF	17,136.00	Schedule 8
Mediation	185,500.00	Schedule 9
COCGF	29,490.70	Schedule 10
Total	₱ 660,072.35	
	========	

2. to RELEASE the amounts pertaining to Fiduciary Fund and Sheriff's Trust Fund to Ms. Belinda E. Salazar, Officer-in-Charge, MTC, Plaridel, Bulacan

for deposit to the Fiduciary Fund Account and inform her to submit to the Fiscal Monitoring Division, CMO, OCA the copy of the machine validated deposit slips as proof of deposit; and

3. to INFORM the Fiscal Monitoring Division, Court Management Office, Office of the Court Administrator on the action taken thereon;

C. MS. EVELYN R. GALVEZ and MS. JULIET C. BANAG, former Officer-in-Charge and Clerk of Court, respectively, be DIRECTED within fifteen (15) days from receipt of notice to:

1. SETTLE the remaining shortages incurred on their books of accounts, if any, after deducting the money value of Terminal Leave Benefits and withheld salaries as provided in B.1 above; and

2. SUBMIT to the Fiscal Monitoring Division, FMO-OCA the copies of the machine validated deposit slips.

D. The NATIONAL BUREAU OF INVESTIGATION be DIRECTED to CAUSE the arrest of Ms. Evelyn R. Galvez and Ms. Juliet C. Banag and to detain them until they have complied with the directives in letter C hereof;

E. ISSUE a HOLD DEPARTURE ORDER against MS. JULIET C. BANAG and MS. EVELYN R. GALVEZ to prevent them from leaving the country pending resolution of this administrative matter;

F. MS. BELINDA E. SALAZAR, OIC-Clerk of Court, MTC-Plaridel, Bulacan, be CLEARED from her financial accountability for the period June 17, 2009 to August 31, 2009 is concerned;

G. Presiding Judge SHEILA MARIE S. GERONIMO-ORQUILLAS be DIRECTED to STRICTLY MONITOR the financial transactions of Municipal Trial Court, Plaridel, Bulacan in strict adherence to the issuances of the Court otherwise she will be held equally liable for the infractions committed by the employees under her command/supervision and to avoid the occurrence of malversation of public funds committed by Ms. Banag and Ms. Galvez; and

H. LEGAL OFFICE, OFFICE OF THE COURT ADMINISTRATOR be DIRECTED to file appropriate criminal charges against Ms. Juliet C. Banag and Ms. Evelyn R. Galvez.[5]

Through a Report of the same date, the OCA adopted and endorsed the recommendations of its Audit Team for the approval of this Court.

After a thorough review of the records of this case, the Court agrees in the recommendations of the OCA.

On November 15, 2010, the Court issued a Hold Departure Order against Galvez and Banag pending resolution of this administrative case.

Galvez and Banag are being held liable herein for their acts and omissions as OIC-Clerk of Court (from February 2002 to January 2008) and Clerk of Court (from August 2008 to June 2009), respectively.

The Clerk of Court is an important officer in our judicial system. His office is the nucleus of all court activities, adjudicative and administrative. His administrative functions are as vital to the prompt and proper administration of justice as his judicial duties.[6]

The Clerk of Court performs a very delicate function. He or she is the custodian of the court's funds and revenues, records, property and premises. Being the custodian thereof, the Clerk of Court is liable for any loss, shortage, destruction or impairment of said funds and property.[7] Hence, Clerks of Court have always been reminded of their duty to immediately deposit the various

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[5] *Id.* at 120-122.

[6] *Re: Report on the Financial Audit Conducted in the RTC, Br. 34, Balaoan, La Union*, 480 Phil. 484, 493 (2004), citing *Dizon v. Bawalan*, 453 Phil. 125, 133 (2003).

[7] *Office of the Court Administrator v. Fortaleza*, 434 Phil. 511, 522 (2002), citing *Office of the Court Administrator v. Bawalan*, A.M. No. P-93-945, 24 March 1994, 231 SCRA 408, 411.

funds received by them to the authorized government depositories, for they are not supposed to keep the funds in their custody.[8] The same should be deposited immediately upon receipt thereof with the City, Municipal or Provincial Treasurer where the court is located.

Section B(4) of Supreme Court Circular No. 50-95, on the collection and deposit of court fiduciary funds, mandates that:

> (4) All collections from bail bonds, rental deposits, and other fiduciary collections shall be deposited within twenty-four (24) hours by the Clerk of Court concerned, upon receipt thereof, with the Land Bank of the Philippines.

Supreme Court Circular Nos. 13-92 and 5-93 provide the guidelines for the proper administration of court funds.

Supreme Court Circular No. 13-92 commands that all fiduciary collections "shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized government depository bank." Section 4 of Supreme Court Circular No. 5-93 designates the Land Bank of the Philippines (LBP) as the depository bank for the Judiciary Development Fund.

Other provisions of Supreme Court Circular No. 5-93 give more explicit instructions on how Clerks of Court and OICs should handle court funds:

> 3. *Duty of the Clerks of Court, Officers-in-Charge or accountable officers*. — The Clerks of Court, Officers-in-Charge of the Office of the Clerk of Court, or their accountable duly authorized representatives designated by them in writing, who must be accountable officers, shall receive the Judiciary Development Fund collections, issue the proper receipt therefor, maintain a separate cash book properly marked x x x, deposit such collections in the manner herein prescribed, and render the proper Monthly Report of Collections for said Fund.
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> x x x x x x x x x

[8] *Office of the Court Administrator v. Fortaleza, id.*, citing *Office of the Court Administrator v. Galo*, 373 Phil. 483, 491 (1999).

5. Systems and Procedures:

x x x x x x x x x

c. *In the RTC, SDC, MeTC, MTCC, MTC, MCTC and SCC*. — The daily collections for the Fund in these courts shall be deposited every day with the local or nearest LBP branch "For the account of the Judiciary Development Fund, Supreme Court, Manila — Savings Account No. 159-01163-1; or if depositing daily is not possible, deposits for the Fund shall be every second and third Fridays and at the end of every month, provided, however, that whenever collections for the Fund reach ₱500.00, the same shall be deposited immediately even before the days before indicated.

Where there is no LBP branch at the station of the judge concerned, the collections shall be sent by postal money order payable to the Chief Accountant of the Supreme Court, at the latest before 3:00 P.M. of that particular week.

x x x x x x x x x

d. Rendition of Monthly Report. — Separate "Monthly Report of Collections" shall be regularly prepared for the Judiciary Development Fund, which shall be submitted to the Chief Accountant of the Supreme Court *within ten (10) days after the end of every month*, together with the duplicate of the official receipts issued during such month covered and validated copy of the Deposit Slips.

The aggregate total of the Deposit Slips for any particular month should always equal to, and tally with, the total collections for that month as reflected in the Monthly Report of Collections.

If no collection is made during any month, notice to that effect should be submitted to the Chief Accountant of the Supreme Court by way of a formal letter within ten (10) days after the end of every month.

Delayed remittance of cash collections by Clerks of Court and cash clerks constitutes gross neglect of duty.[9] The failure of a public officer to remit funds upon demand by an authorized officer shall be *prima facie* evidence that the public officer has put such missing funds or property to personal use.[10]

In *Office of the Court Administrator v. Fortaleza*,[11] the Court stressed the responsibility and accountability of Clerks of Court for the collected legal fees in their custody, thus:

> Clerks of court are the chief administrative officers of their respective courts; with regard to the collection of legal fees, they perform a delicate function as judicial officers entrusted with the correct and effective implementation of regulations thereon. Even the undue delay in the remittances of amounts collected by them at the very least constitutes misfeasance. On the other hand, a vital administrative function of a judge is the effective management of his court and this includes control of the conduct of the court's ministerial officers. It should be brought home to both that the safekeeping of funds and collections is essential to the goal of an orderly administration of justice and no protestation of good faith can override the mandatory nature of the Circulars designed to promote full accountability for government funds.

In *Navallo v. Sandiganbayan*,[12] the Court held that an accountable officer may be convicted of malversation even in the absence of direct proof of misappropriation as long as there is evidence of shortage in his accounts which he is unable to explain.[13]

Those who work in the judiciary, such as Galvez and Banag, must adhere to high ethical standards to preserve the court's

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[9] *Soria v. Oliveros*, A.M. No. P-00-1372, May 16, 2005, 458 SCRA 410, 423.

[10] *Office of the Court Administrator v. Besa*, 437 Phil. 372, 380 (2002).

[11] *Supra* note 7 at 522.

[12] G.R. No. 97214, July 18, 1994, 234 SCRA 175, 185*; People v. Hipol*, 454 Phil. 679, 690 (2003).

[13] *Judge Sollesta v. Mission*, 497 Phil. 55, 67 (2005).

good name and standing. They should be examples of responsibility, competence and efficiency, and they must discharge their duties with due care and utmost diligence since they are officers of the court and agents of the law. Indeed, any conduct, act or omission on the part of those who would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary shall not be countenanced.[14]

The conduct required of court personnel, from the presiding judge to the lowliest clerk, must always be beyond reproach and circumscribed with a heavy burden of responsibility. As forerunners in the administration of justice, they ought to live up to the strictest standards of honesty and integrity, considering that their positions primarily involve service to the public.[15]

The Court has already given Galvez more than enough opportunity to be heard. On two occasions, on July 27, 2009 and October 28, 2009, the Court granted Galvez's motions for extension of time to comply with the Resolution dated June 1, 2009 of this Court ordering her to submit her explanation, accounting, and receipts. Still, Galvez failed to submit said explanation during the extended period. Galvez's refusal to face head-on the charges against her is contrary to the principle that the first impulse of an innocent person, when accused of wrongdoing, is to express his/her innocence at the first opportune time.[16] Galvez's silence and non-participation in the present administrative proceedings, despite due notice and directives of this Court for her to submit documents in her defense strongly indicate her guilt. It was only after the second extended period

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[14] *Re: Report on the Financial Audit Conducted in the MTCC-OCC, Angeles City*, A.M. No. P-06-2140, June 26, 2006, 492 SCRA 469, 482.

[15] *Report on the Financial Audit Conducted at the Municipal Trial Courts of Bani, Alaminos, and Lingayen, in Pangasinan*, A.M. No. 01-2-18-MTC, December 5, 2003, 417 SCRA 106, 112-113.

[16] *Re: Report on the Financial Audit Conducted in the Regional Trial Court, Branch 34, Balaoan, La Union, supra* note 6; *Office of the Court Administrator v. Bernardino*, 490 Phil. 500, 531 (2005).

expired that Galvez partially complied with the directives of this Court in its June 1, 2009 Resolution by depositing the amount of ₱70,000.00 on March 18, 2010 to the Fiduciary Fund Account of the MTC, coursed through OIC-Clerk of Court Salazar.

On the other hand, the Court finds Banag's explanation unsatisfactory. Heavy caseload and time constraints are not sufficient excuses. These are problems most Clerks of Court all over the country must contend with. It is up to Banag to devise an effective and efficient system for her office so that it can attend to all the administrative matters of the MTC, including the deposit in due time of court collections.

Given the results of the OCA audit and investigation, Galvez and Banag have evidently failed to live up to the high ethical standards expected of court employees. They violated the trust reposed in them as Clerks of Court and disbursement officers of the judiciary as shown by Galvez's failure to remit the amount of ₱660,072.35, representing shortages in the JDF, SAJF, STF, FF, Mediation Fund, and COCGF; and for Banag's non-remittance of ₱240,913.05, representing shortages in the JDF, SAJF, FF, and Mediation Fund.

In *Re: Report on the Judicial and Financial Audit of RTC-Br. 4, Panabo, Davao Del Norte*,[17] we held that the failure of the Clerk of Court to remit the court funds collected by the Municipal Treasurer constitutes gross neglect of duty, dishonesty and grave misconduct prejudicial to the best interest of the service. Under Rule IV, Section 52-A of the Civil Service Uniform Rules on Administrative Cases in the Civil Service, these are grave offenses punishable by dismissal even when committed for the first time.

The Court, therefore, is left with no other recourse but to declare Galvez and Banag guilty of dishonesty and gross misconduct, which are grave offenses punishable by dismissal.[18]

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[17] 351 Phil. 1 (1998).

[18] Rule IV of the Uniform Rules on Administrative Cases in the Civil Service (Resolution No. 9-1936, which took effect on September 27, 1999) provides:

WHEREFORE, the Court finds respondent Evelyn R. Galvez and Juliet C. Banag, former OIC-Clerk of Court and Clerk of Court, respectively, of the Municipal Trial Court of Plaridel, Bulacan, *GUILTY* of gross dishonesty, grave misconduct, and continuous absence without leave; and imposes on them the penalty of *DISMISSAL* from the service with forfeiture of all their leave credits and retirement benefits, with prejudice to re-employment in any government agency, including government-owned and -controlled corporations. The Civil Service Commission is ordered to cancel their civil service eligibility, if any, in accordance with Section 9, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292.

The Court further orders:

A. The FINANCIAL MANAGEMENT OFFICE, OFFICE OF THE COURT ADMINISTRATOR to:

1. PROCESS the money value of computed Terminal Leave Benefits of Ms. Juliet C. Banag and Ms. Evelyn R. Galvez and to COMPUTE the withheld salaries and/or allowances of Ms. Evelyn R. Galvez and Ms. Juliet C. Banag and thereafter APPLY the value to the shortages found on their books of accounts in the order of priority as follows:

For Ms. Evelyn R. Galvez:

JDF	₱	238,750.15	Schedule 5
SAJF		179,195.50	Schedule 6
STF		10,000.00	Schedule 7
FF		17,136.00	Schedule 8
Mediation		185,500.00	Schedule 9
COCGF		29,490.70	Schedule 10
Total	₱	660,072.35	

Section 52. *Classification of Offenses*. — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

A. The following are grave offenses with their corresponding penalties:
1. Dishonesty – 1st Offense – Dismissal
2. Gross Neglect of Duty – 1st Offense – Dismissal
3. Grave Misconduct – 1st Offense – Dismissal

For Ms. Juliet C. Banaag:

FF	₱ 28,800.25	Schedule 1
SAJF	94,799.60	Schedule 2
JDF	75,813.40	Schedule 3
Mediation	41,500.00	Schedule 4
Total	₱ 240,913.05	

2. to RELEASE the amounts pertaining to Fiduciary Fund and Sheriff's Trust Fund to Ms. Belinda E. Salazar, Officer-in-Charge, MTC, Plaridel, Bulacan for deposit to the Fiduciary Fund Account and inform her to submit to the Fiscal Monitoring Division, CMO, OCA the copy of the machine validated deposit slips as proof of deposit; and

3. to INFORM the Fiscal Monitoring Division, Court Management Office, Office of the Court Administrator on the action taken thereon;

B. MS. EVELYN R. GALVEZ and MS. JULIET C. BANAG, former Officer-in-Charge-Clerk of Court and Clerk of Court, respectively, within fifteen (15) days from receipt of notice to:

1. SETTLE the remaining shortages incurred on their books of accounts, if any, after deducting the money value of Terminal Leave Benefits and withheld salaries as provided in A.1 above; and

2. SUBMIT to the Fiscal Monitoring Division, CMO-OCA the copies of the machine validated deposit slips.

C. The NATIONAL BUREAU OF INVESTIGATION TO CAUSE the arrest of Ms. Evelyn R. Galvez and Ms. Juliet C. Banag and to detain them until they have complied with the directives in letter B hereof;

D. CLEARED MS. BELINDA E. SALAZAR, OIC-Clerk of Court, MTC, Plaridel, Bulacan, from her financial

accountability for the period June 17, 2009 to August 31, 2009 is concerned;

E. Presiding Judge SHEILA MARIE S. GERONIMO-ORQUILLAS to STRICTLY MONITOR the financial transactions of the Municipal Trial Court, Plaridel, Bulacan in strict adherence to the issuances of the Court otherwise she will be held equally liable for the infractions committed by the employees under her command/supervision and to avoid the occurrence of malversation of public funds committed by Ms. Banag and Ms. Galvez; and

F. The LEGAL OFFICE, OFFICE OF THE COURT ADMINISTRATOR to file appropriate criminal charges against Ms. Juliet C. Banag and Ms. Evelyn R. Galvez.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Nachura, Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Mendoza, and *Sereno, JJ.,* concur.

Perez, J., no part.

Velasco, Jr., J., on official leave.

EN BANC

[A.M. No. P-10-2825.* December 7, 2010]

DEVELOPMENT BANK OF THE PHILIPPINES, represented by Atty. Benilda A. Tejada, *petitioner, vs.* **Clerk of Court VI LUNINGNING Y. CENTRON and Sheriff IV ALEJANDRO L. TOBILLO, Regional Trial Court, Branch 39, Calapan City, Oriental Mindoro,** *respondents.*

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* Formerly OCA I.P.I. No. 09-3100-P.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORECLOSURE OF MORTGAGE; CONDUCT OF; TWO-BIDDER RULE IS NO LONGER APPLICABLE IN EXTRAJUDICIAL FORECLOSURE; DUTY TO EXAMINE THE APPLICATIONS FOR EXTRAJUDICIAL FORECLOSURE OF MORTGAGES IS NOW VESTED WITH THE CLERK OF COURT.— Regarding the conduct of extrajudicial foreclosures, this Court, as early as January 30, 2001, issued a resolution amending paragraph 5 of A.M. 99-10-05-0 explicitly dispensing with the "two-bidder rule." Administrative Order No. 3, Series of 1984, which vested sheriffs with the duty to examine if the application for extrajudicial foreclosure of real estate mortgage had complied with the requirements under Act 3135, was amended on January 22, 2002 by Circular No. 7-2002. The amendment made it the specific duty of the Clerk of Court to examine applications for extrajudicial foreclosure of mortgages. xxx

2. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFFS; INSISTENCE ON AN OLD AND OBSOLETE RULE CONSTITUTES BREACH OF THE SWORN DUTY TO UPHOLD THE MAJESTY OF THE LAW AND THE INTEGRITY OF THE JUSTICE SYSTEM, AMOUNTING TO GROSS NEGLECT OF DUTY.— Previously, in *Legaspi v. Tobillo*, Tobillo was administratively charged with Grave Neglect of Duty for his alleged refusal to implement a duly issued writ of possession despite the winning party's follow-ups and, more importantly, despite the trial court's subsequent order specifically directing the continuance of the implementation of the same writ of possession. In said case, he was found guilty of gross neglect of duty and fined ₱20,000.00 with a warning that "a commission of the same offense or a similar act in the future will be dealt with more severely." xxx. After that previous case of his, Tobillo was expected to faithfully observe the rules. As it turned out, however, he ignored the reminders and committed the same infraction. This is clearly reflective of his incorrigible character. In his insistence on an old and obsolete rule, he breached his sworn duty to uphold the majesty of the law and the integrity of the justice system. His actuations amounted to no less than Gross Neglect of Duty.

3. ID.; ID.; ID.; ID.; GROSS NEGLECT OF DUTY, DEFINED; PENALTY OF DISMISSAL IMPOSED FOR GROSS NEGLECT OF DUTY.— Neglect of duty is one's failure to give appropriate attention to a task which is expected, signifying a disregard to duty either from carelessness or indifference; while gross neglect is "such neglect from the gravity of the case, or the frequency of instances, becomes so serious in its character as to endanger or threaten the public welfare." Considering that this is not his first transgression, the Court is constrained to impose upon him the prescribed penalty of dismissal under Rule IV, Section 52 (A) (2) of the Uniform Rules on Administrative Cases in the Civil Service, to assure the people's faith in the judiciary and to ensure the speedy administration of justice.

4. ID.; ID.; ID.; CLERK OF COURT; ADVISED TO CLOSELY SUPERVISE THE SUBORDINATES IN THE DISCHARGE OF THEIR DUTIES.— [T]he Court takes note of Atty. Centron's submission that she immediately summoned Tobillo and even issued a directive to the latter to perform his duties with dispatch as shown in her letter to Tobillo dated December 22, 2008. In her January 23, 2009 letter, addressed to the lawyer of DBP, Atty. Centron reiterated the actions she took in reeling in the obstinate and unyielding Tobillo. xxx. The Court agrees that this remained short of that standard of responsibility expected of Atty. Centron. Considering that this is the first time that a complaint of this nature has been filed against her and that no evidence was adduced to show that she participated in, or condoned, Tobillo's procrastinations, the Court absolves her of any liability. She is, however, advised to perform her sworn duty of closely supervising her subordinates in the discharge of their duties.

APPEARANCES OF COUNSEL

Benilda A. Tejada for petitioner.

D E C I S I O N

***PER CURIAM*:**

This is a complaint against respondents Atty. Luningning Y. Centron *(Atty. Centron),* Clerk of Court VI, and Alejandro L.

Tobillo *(Tobillo)*, Sheriff IV, both of the Regional Trial Court, Branch 39, Calapan City, Oriental Mindoro, for Grave Misconduct, Dereliction of Duty and Conduct Prejudicial to the Best Interest of the Government, filed by the Development Bank of the Philippines *(DBP)*.

It appears that DBP filed a petition for extrajudicial foreclosure against RMC Telecommunications Consultants, Inc. *(RMC)*. Subsequently, a notice of auction sale was issued by Tobillo setting the date of the auction sale on December 23, 2008 with an alternative date of January 23, 2009. Before the scheduled date on December 23, 2008, Tobillo informed the head of DBP Calapan Branch that the auction sale might be postponed if the "two-bidder rule" would not be observed. The DBP's lawyer for Southern Tagalog wrote Tobillo as well as Atty. Centron to remind them that the "two-bidder rule" was no longer being observed following this Court's Resolution of January 30, 2001, amending paragraph 5 of A.M. No. 99-10-05-0.[1]

The DBP Head of Calapan Branch showed up on the first scheduled date for the auction sale. Tobillo refused to proceed. Instead of furnishing DBP with a copy of the Minutes of the Auction stating the reasons for the postponement, he simply verbally informed the DBP Head that DBP's application for foreclosure of real estate and chattel mortgages should be covered by separate petitions.[2]

On January 19, 2009, DBP's lawyer for Southern Tagalog wrote Atty. Centron asking her assistance to ensure that the auction sale would proceed without delay on the alternative date, January 23, 2009. Tobillo, in a letter to DBP's lawyer dated January 21, 2009, insisted on the "two-bidder rule" and on the requirement of two separate petitions for the foreclosure of RMC's real estate mortgage and chattel mortgage.[3]

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[1] *Rollo*, pp. 4-5 and 215.

[2] *Id.*

[3] *Id.* at 5-6 and 216.

On January 23, 2009, DBP was represented and ready to bid but no auction sale was conducted because Tobillo failed to appear.[4]

In his Comment, Tobillo admitted that he did inform DBP that he would observe the "two-bidder rule." He added that he asked DBP's lawyer to furnish him a copy of the amendments to A.M. No. 99-10-05-0 so that he could refer the matter to Atty. Centron. Tobillo argued that the postponement of the auction sale set on January 23, 2009 was proper not because of the non-observance of the "two-bidder rule," but on the ground that the foreclosure proceedings involving chattel and real estate should have been covered by separate petitions; that the subject chattel was still not in his custody or control; and that there was no pending civil case on the same subject matters before Branch 39. On his being absent on January 23, 2009 for the auction sale, Tobillo explained that he served summons in another case,[5] since he had already apprised DBP in his January 21, 2009 letter that the forthcoming auction sale would be cancelled.

In her Comment, Atty. Centron claimed that as soon as she found out about the conflict regarding the subject auction sale, she immediately summoned Tobillo and directed him to perform his duties with dispatch, as evidenced by her letter dated December 22, 2008 and received by Tobillo on the same day. In the said letter, she gave specific instructions to Tobillo to proceed with the auction sale,[6] and reminded him that the "two bidder rule" was no longer observed.

The Office of the Court Administrator (OCA), based on its evaluation and report, offered the following recommendations:

1. That the instant administrative complaint be RE DOCKETED as a regular administrative matter;

2. That respondent Sheriff IV Alejandro L. Tobillo be found GUILTY of Gross Neglect of Duty and, accordingly, be

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[4] *Id* at 6 and 216.

[5] *Id.* at 100-101 and 216.

[6] *Id.* at 91-92.

DISMISSED from the service immediately with FORFEITURE of all benefits except accrued leave benefits; and

3. That Clerk of Court VI Luningning Y. Centron be found GUILTY of Simple Neglect of Duty, and, accordingly be SUSPENDED WITHOUT PAY immediately from office for a period of three (3) months, with a STERN WARNING that a repetition of the same or similar offense will be dealt with more severely.[7]

After seriously evaluating the case, the Court finds merit in the complaint and agrees with the findings and recommendations of the OCA except in the case of Atty. Centron.

Regarding the conduct of extrajudicial foreclosures, this Court, as early as January 30, 2001, issued a resolution amending paragraph 5 of A.M. 99-10-05-0 explicitly dispensing with the "two-bidder rule."

Administrative Order No. 3, Series of 1984, which vested sheriffs with the duty to examine if the application for extrajudicial foreclosure of real estate mortgage had complied with the requirements under Act 3135, was amended on January 22, 2002 by Circular No. 7-2002. The amendment made it the specific duty of the Clerk of Court to examine applications for extrajudicial foreclosure of mortgages.[8] In his letter to DBP, dated January 21, 2009, Tobillo categorically stated:

a) x x x. It is my position that it is our policy and rule based on Paragraph 5 of the Circular A.M. No. 99-10-05-0 provides: No auction sale shall be held unless there are at least two (2) participating bidders otherwise the sale shall be postponed to another date. If on the new date set for the sale there shall not be at least two (2) bidders, the sale shall then proceed. x x x.

b) x x x. Although it was filed with the Office of the Clerk of Court and *Ex-officio* sheriff which examined whether the applicant

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[7] *Id.* at 219.

[8] *Paguyo v. Gatbunton*, A.M. No. P-06-2135, May 25, 2007, 523 SCRA 156, 161-164.

has complied with all requirements, it remains my duty as sheriff to check whether the requirements have been complied with as to application of petition with two (2) different and separate actions. x x x.

From Tobillo's own words, there is no denying that he has not apprised himself of the current developments in the rules concerning his very function and duty as a sheriff with respect to extrajudicial foreclosures. This is unacceptable for it is clearly his responsibility, nay, duty to do so. This is made even more reprehensible when his erroneous stubborn reliance on the old rule resulted in the unwarranted postponement of the auction sale to the prejudice of the DBP.

Previously, in *Legaspi v. Tobillo*,[9] Tobillo was administratively charged with Grave Neglect of Duty for his alleged refusal to implement a duly issued writ of possession despite the winning party's follow-ups and, more importantly, despite the trial court's subsequent order specifically directing the continuance of the implementation of the same writ of possession. In said case, he was found guilty of gross neglect of duty and fined ₱20,000.00 with a warning that "a commission of the same offense or a similar act in the future will be dealt with more severely." The admonition to him was very clear. Thus:

> All employees in the judiciary should be examples of responsibility, competence, and efficiency. As officers of the court and agents of the law, they must discharge their duties with due care and utmost diligence. Any conduct they exhibit tending to diminish the faith of the people in the judiciary will not be condoned.
>
> Time and again we have ruled that high standards are expected of sheriffs who play an important role in the administration of justice. This was further expounded in the case of *Vda. De Abellera v. Dalisay*:
>
> > "At the grassroots of our judicial machinery, sheriffs and deputy sheriffs are indispensable in close contact with the litigants, hence, their conduct should be geared towards

[9] A.M. No. P-05-1978, March 31, 2005, 454 SCRA 228.

> maintaining the prestige and integrity of the court, for the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel; hence, it becomes the imperative sacred duty of each and everyone in the court to maintain its good name and standing as a temple of justice."

In serving court writs and processes and in implementing court orders, they cannot afford to procrastinate without affecting the efficiency of court processes and the administration of justice. Given their important functions as frontline representatives of the justice system, they should be imbued with a sense of professionalism in the performance of their duties. When they lose the people's trust, they diminish the people's faith in the judiciary. (previous citations omitted) [10]

After that previous case of his, Tobillo was expected to faithfully observe the rules. As it turned out, however, he ignored the reminders and committed the same infraction. This is clearly reflective of his incorrigible character. In his insistence on an old and obsolete rule, he breached his sworn duty to uphold the majesty of the law and the integrity of the justice system. His actuations amounted to no less than Gross Neglect of Duty.

Neglect of duty is one's failure to give appropriate attention to a task which is expected, signifying a disregard to duty either from carelessness or indifference;[11] while gross neglect is "such neglect from the gravity of the case, or the frequency of instances, becomes so serious in its character as to endanger or threaten the public welfare."[12]

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[10] *Id.* at 239.

[11] *Escobar Vda. De Lopez v. Luna*, A.M. No. P-04-1786, February 13, 2006, 482 SCRA 265, 278.

[12] Report on the alleged Spurious Bailbonds and Release Orders Issued by the RTC, Br. 27, Sta. Cruz, Laguna, A.M. No. 04-6-332-RTC, April 5, 2006, 486 SCRA 500, 518.

Considering that this is not his first transgression, the Court is constrained to impose upon him the prescribed penalty of dismissal under Rule IV, Section 52 (A) (2) of the Uniform Rules on Administrative Cases in the Civil Service, to assure the people's faith in the judiciary and to ensure the speedy administration of justice.

As to Atty. Centron, she is also charged with "Dereliction of Duty and Conduct Prejudicial to the Best Interests of the Service and the Government." After an evaluation, the OCA found Atty. Centron guilty of Simple Neglect of Duty and recommended that she be suspended for three months without pay.

As earlier mentioned in the decision, the examination of applications for extrajudicial foreclosure of mortgages is now vested with the Clerk of Court by virtue of Circular No. 7-2002. Thus, and as pointed out by the OCA, it was incumbent on Atty. Centron to determine any irregularity in DBP's petition to spare the latter from "speculating too much on the probability of proceeding with the auction sale as originally or alternatively scheduled."[13] On the other hand, the Court takes note of Atty. Centron's submission that she immediately summoned Tobillo and even issued a directive to the latter to perform his duties with dispatch as shown in her letter to Tobillo dated December 22, 2008. In her January 23, 2009 letter, addressed to the lawyer of DBP, Atty. Centron reiterated the actions she took in reeling in the obstinate and unyielding Tobillo.

> She (referring to Atty. Centron herself) even advised him to read and study carefully the guidelines/ procedures in the Extra-judicial Foreclosure of Mortgage as Amended and proceed with the Auction Sale of the questioned petition/ foreclosure if and when he believes that the same is in accordance with the said guidelines without further delay.[14]

The Court agrees that this remained short of that standard of responsibility expected of Atty. Centron. Considering that this

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[13] *Rollo*, p. 219.

[14] Atty. Centron's letter to DBP dated January 23, 2009.

is the first time that a complaint of this nature has been filed against her and that no evidence was adduced to show that she participated in, or condoned, Tobillo's procrastinations, the Court absolves her of any liability. She is, however, advised to perform her sworn duty of closely supervising her subordinates in the discharge of their duties.

WHEREFORE, finding respondent Alejandro L. Tobillo, Sheriff IV, guilty of gross neglect of duty, the Court hereby imposes the penalty of *DISMISSAL* from service with *FORFEITURE* of all benefits except accrued leave benefits.

Atty. Luningning Y. Centron, Clerk of Court VI, of the Regional Trial Court, Branch 39, Calapan City, Oriental Mindoro, is hereby *ADMONISHED* to faithfully perform her sworn duty of closely supervising the activities of her subordinates with *WARNING* that a repetition of the same would be dealt with more severely.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Nachura, Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, and *Sereno, JJ.,* concur.

Velasco, Jr., J., on official leave.

EN BANC

[G.R. No. 155832. December 7, 2010]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **SANDIGANBAYAN (Fourth Division) and IMELDA R. MARCOS,** *respondents.*

SYLLABUS

1. POLITICAL LAW; PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG); VESTED WITH THE POWER TO DETERMINE THE EXISTENCE OF A *PRIMA FACIE* CASE AS AN INCIDENT TO ITS INVESTIGATORY POWERS; EFFECT OF THE ABSENCE OF SUCH PRIOR DETERMINATION ON THE SEQUESTRATION ORDER, EXPLAINED IN CASE AT BAR. — Under Section 26, Article XVIII of the Constitution, an order of sequestration may only issue upon a showing "of a *prima facie* case" that the properties are ill-gotten wealth under Executive Orders 1 and 2. When a court nullifies an order of sequestration for having been issued without a *prima facie* case, the Court does not substitute its judgment for that of the PCGG but simply applies the law. In *Bataan Shipyard & Engineering Co, Inc. v. PCGG,* the Court held that a *prima facie* factual foundation that the properties sequestered are "ill-gotten wealth" is required. The power to determine the existence of a *prima facie* case has been vested in the PCGG as an incident to its investigatory powers. The two-commissioner rule is obviously intended to assure a collegial determination of such fact. Here, it is clear that the PCGG did not make a prior determination of the existence of a *prima facie* case that would warrant the sequestration of the Olot Resthouse. The Republic presented no evidence before the Sandiganbayan that shows differently. Nor did the Republic demonstrate that the two PCGG representatives were given the quasi-judicial authority to receive and consider evidence that would warrant such a *prima facie* finding. Parenthetically, the Republic's supposed evidence does not show how the Marcoses acquired the sequestered property, what makes it "ill-gotten wealth," and how former President Marcos intervened in its acquisition. Taking the foregoing view, the resolution of the issue surrounding the character of the property sequestered — whether or not it could *prima facie* be considered ill-gotten — should be necessary.

2. ID.; ID.; ID.; EXERCISE OF QUASI-JUDICIAL FUNCTIONS CANNOT BE DELEGATED. — In *PCGG v. Judge Peña,* the Court held that the powers, functions and duties of the PCGG amount to the exercise of quasi-judicial functions, and the exercise of such functions cannot be delegated by the

Commission to its representatives or subordinates or task forces because of the well established principle that judicial or quasi-judicial powers may not be delegated.

3. REMEDIAL LAW; EVIDENCE; CONCLUSIVE PRESUMPTION; DOCTRINE OF ESTOPPEL; A VOID ORDER PRODUCES NO EFFECT AND CANNOT BE VALIDATED; APPLICATION IN CASE AT BAR. — A void order produces no effect and cannot be validated under the doctrine of estoppel. For the same reason, the Court cannot accept petitioner's view that Mrs. Marcos should have first sought the lifting of the sequestration order through a motion to quash filed with the PCGG. Being void, the Sandiganbayan has the power to strike it down on sight. Besides, the lifting of the sequestration order will not necessarily be fatal to the main case since it does not follow from such lifting that the sequestered properties are not ill-gotten wealth. Such lifting simply means that the government may not act as conservator or may not exercise administrative or housekeeping powers over the property. Indeed, the Republic can be protected by a notice of *lis pendens*.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Robert A.C. Sison and *Ponce Enrile Reyes Manalastas Law Office* for private respondent.

D E C I S I O N

ABAD, *J.*:

This case involves the validity of a sequestration order signed, not by the Presidential Commission on Good Government (PCGG) Commissioners, but by designated agents and issued prior to the effectivity of the PCGG Rules and Regulations.

The Facts and the Case

On February 28, 1986, immediately after assuming power, President Corazon C. Aquino issued Executive Order 1, creating the PCGG. She empowered the PCGG to recover all ill-gotten

wealth allegedly amassed by former President Ferdinand E. Marcos, his family, and close associates during his 20-year regime.

On March 13, 1986 PCGG Commissioner Raul Daza gave lawyers Jose Tan Ramirez (Ramirez) and Ben Abella (Abella), PCGG Region VIII Task Force Head and Co-Deputy, respectively, written authority to sequester any property, documents, money, and other assets in Leyte, belonging to former First Lady Imelda R. Marcos (Mrs. Marcos), Benjamin Romualdez, Alfredo Romualdez, and their agents.

On March 18, 1986, acting on the authority given them, Attys. Ramirez and Abella issued a sequestration order against the Marcoses' Olot, Tolosa, Leyte property (Olot Resthouse), a 17-room affair sitting on 42 hectares of beachfront land, with a golf course, swimming pool, cottages, a pelota court, and a pavilion.

On July 16, 1987 petitioner Republic of the Philippines, represented by the PCGG, filed a complaint for recovery of ill-gotten wealth against President Marcos and his wife, respondent Mrs. Marcos, before the Sandiganbayan, docketed as Civil Case 0002, which complaint was amended a number of times.[1] Mrs. Marcos then filed her answer to the third amended complaint.[2]

On August 10, 2001 Mrs. Marcos filed a motion to quash the March 18, 1986 sequestration order against the Olot Resthouse,[3] claiming that such order, issued only by Attys. Ramirez and Abella, was void for failing to observe Sec. 3 of the PCGG Rules and Regulations.[4] The rules required the signatures of at least two PCGG Commissioners. The Republic

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[1] *Rollo*, Vol. I, pp. 86-122.

[2] *Id.* at 157-195.

[3] *Id.* at 196-202.

[4] **Sec. 3. Who may issue.** — A writ of sequestration or a freeze or hold order may be issued by the Commission upon the authority of at least two Commissioners, based on the affirmation or complaint of an interested party or *motu proprio* when the Commission has reasonable grounds to believe that the issuance thereof is warranted.

opposed[5] the motion, claiming that Mrs. Marcos was estopped from questioning the sequestration order since by her acts, like seeking PCGG permission to repair the resthouse and entertain guests there, she had conceded the validity of the sequestration; that she failed to exhaust administrative remedies by first seeking its lifting as provided in the PCGG rules; that the rule requiring the signatures of at least two PCGG Commissioners did not yet exist when the Olot Resthouse was sequestered; and that she intended her motion to quash to delay the proceedings against her.

Mrs. Marcos filed a Supplement[6] to her earlier motion, claiming no *prima facie* evidence that the Olot Resthouse constituted ill-gotten wealth. She pointed out that the property is the ancestral home of her family.

On February 28, 2002 the Sandiganbayan issued the assailed Resolution,[7] granting the motion to quash and ordering the full restoration of the Olot Resthouse to Mrs. Marcos. The Sandiganbayan ruled that the sequestration order was void because it was signed, not by PCGG Commissioners, but by mere PCGG agents. Although the sequestration order preceded the passage of the PCGG Rules, it remained that the law empowered only the PCGG to issue sequestration orders.[8] Besides, under the law,[9] the PCGG is the sole entity charged with the responsibility of recovering ill-gotten wealth. Its representatives or agents do not have such power. The Republic moved for reconsideration of the resolution but the Sandiganbayan denied it on August 28, 2002.[10] Thus, the Republic filed the present petition for *certiorari*.

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[5] *Rollo*, Vol. I, pp. 205-226.

[6] *Id.* at 230-236.

[7] *Id.* at 58-84; penned by Associate Justice Narciso S. Nario, and concurred in by Associate Justices Rodolfo G. Palattao and Nicodemo T. Ferrer.

[8] *Republic of the Philippines v. Sandiganbayan (Dio Island Resort, Inc.)*, 328 Phil. 210, 219 (1996).

[9] Executive Orders 1 and 2.

[10] *Rollo*, Vol. I, p. 85.

The Issue Presented

The sole issue presented is whether or not the March 18, 1986 sequestration order against the Olot Resthouse, issued by PCGG agents before the enactment of the PCGG rules, was validly issued.

The Court's Ruling

Under Section 26, Article XVIII of the Constitution, an order of sequestration may only issue upon a showing "of a *prima facie* case" that the properties are ill-gotten wealth under Executive Orders 1 and 2.[11]

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[11] **EXECUTIVE ORDER 1 — CREATING THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT.** WHEREAS, vast resources of the government have been amassed by former President Ferdinand E. Marcos, his immediate family, relatives, and close associates both here and abroad;

x x x x x x x x x

Sec. 2. The Commission shall be charged with the task of assisting the President in regard to the following matters:

(a) The recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship.

x x x x x x x x x

EXECUTIVE ORDER 2. — REGARDING THE FUNDS, MONEYS, ASSETS, AND PROPERTIES ILLEGALLY ACQUIRED OR MISAPPROPRIATED BY FORMER PRESIDENT FERDINAND E. MARCOS, MRS. IMELDA ROMUALDEZ MARCOS, THEIR CLOSE RELATIVES, SUBORDINATES, BUSINESS ASSOCIATES, DUMMIES, AGENTS, OR NOMINEES.

x x x x x x x x x

NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Philippines, hereby:

(1) Freeze all assets and properties in the Philippines in which former President Marcos and/or his wife, Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents, or nominees have any interest or participation; x x x

When a court nullifies an order of sequestration for having been issued without a *prima facie* case, the Court does not substitute its judgment for that of the PCGG but simply applies the law.[12]

In *Bataan Shipyard & Engineering Co, Inc. v. PCGG*,[13] the Court held that a *prima facie* factual foundation that the properties sequestered are "ill-gotten wealth" is required. The power to determine the existence of a *prima facie* case has been vested in the PCGG as an incident to its investigatory powers. The two-commissioner rule is obviously intended to assure a collegial determination of such fact.[14]

Here, it is clear that the PCGG did not make a prior determination of the existence of a *prima facie* case that would warrant the sequestration of the Olot Resthouse. The Republic presented no evidence before the Sandiganbayan that shows differently. Nor did the Republic demonstrate that the two PCGG representatives were given the quasi-judicial authority to receive and consider evidence that would warrant such a *prima facie* finding.

Parenthetically, the Republic's supposed evidence does not show how the Marcoses acquired the sequestered property, what makes it "ill-gotten wealth," and how former President Marcos intervened in its acquisition. Taking the foregoing view, the resolution of the issue surrounding the character of the property sequestered — whether or not it could *prima facie* be considered ill-gotten — should be necessary.

The issue in this case is not new. The facts are substantially identical to those in the case of *Republic v. Sandiganbayan (Dio Island Resort, Inc.)*.[15] There, the same Atty. Ramirez

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[12] *Presidential Commission on Good Government v. Tan*, G.R. Nos. 173553-56, December 7, 2007, 539 SCRA 464, 479-480.

[13] 234 Phil. 180, 214 (1987).

[14] *Republic of the Philippines v. Sandiganbayan*, 355 Phil. 181, 195 (1998).

[15] *Supra* note 8.

issued a sequestration order on April 14, 1986 against Dio Island Resort, Inc. and all its assets and properties which were thought to be part of the Marcoses' ill-gotten wealth. Alerted by a challenge to his action, the PCGG passed a resolution "to confirm, ratify and adopt as its own all the Writs of Sequestration" that Attys. Ramirez and Abella issued "to remove any doubt as to the validity and enforceability" of their writs. Still, the Court struck them down as void:

x x x It is indubitable that under no circumstances can a sequestration or freeze order be validly issued by one not a Commissioner of the PCGG.

The invalidity of the sequestration order was made more apparent by the fact that Atty. Ramirez did not even have any specific authority to act on behalf of the Commission at the time he issued the said sequestration order. x x x

x x x x x x x x x

Even assuming arguendo that Atty. Ramirez had been given prior authority by the PCGG to place Dio Island Resort under sequestration, nevertheless, the sequestration order he issued is still void since PCGG may not delegate its authority to sequester to its representatives and subordinates, and any such delegation is invalid and ineffective.

Under Executive Order Nos. 1 and 2, PCGG is the sole entity primarily charged with the responsibility of recovering ill-gotten wealth. x x x The power to sequester, therefore, carries with it the corollary duty to make a preliminary determination of whether there is a reasonable basis for sequestering a property alleged to be ill-gotten. After a careful evaluation of the evidence adduced, the PCGG clearly has to use its own judgment in determining the existence of a *prima facie* case.

x x x x x x x x x

The absence of a prior determination by the PCGG of a *prima facie* basis for the sequestration order is, unavoidably, a fatal defect which rendered the sequestration of respondent corporation and its properties void *ab initio*. Being void *ab*

***initio*, it is deemed non-existent, as though it had never been issued, x x x.**[16]

The Court is maintaining its above ruling in this case.

Although the two PCGG lawyers issued the sequestration order in this case on March 18, 1986, before the passage of Sec. 3 of the PCGG Rules, such consideration is immaterial following our above ruling.

In *PCGG v. Judge Peña*,[17] the Court held that the powers, functions and duties of the PCGG amount to the exercise of quasi-judicial functions, and the exercise of such functions cannot be delegated by the Commission to its representatives or subordinates or task forces because of the well established principle that judicial or quasi-judicial powers may not be delegated.

It is the Republic's theory of course that Commissioner Daza's letter, directing Attys. Ramirez and Abella to search and sequester all properties, documents, money and other assets of respondents, should be considered as the writ of sequestration while the order issued by Attys. Ramirez and Abella should be treated merely as an implementing order.

But the letter did not have the tenor of a sequestration order covering specific properties that the lawyers were ordered to seize and hold for the PCGG. Actually, that letter is of the same kind issued to Attys. Ramirez and Abella in *Dio Island Resort*. Consequently, there is no reason to depart from the Court's ruling in the latter case where it said:

The invalidity of the sequestration order was made more apparent by the fact that Atty. Ramirez did not even have any specific authority to act on behalf of the Commission at the time he issued the said sequestration order. Thus, the respondent Court noted:

> **"Contrary to plaintiff's representation, nothing exists to support its contention that the Task Force had been given**

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[16] *Id.* at 218-219, 222.

[17] 243 Phil. 93 (1988).

prior authority to place DIO under PCGG control. On the contrary, as the text of the above letters clearly show, Attys. Jose Tan Ramirez and Ben Abella, had acted on broad and non-specific powers: 'By authority of the commission and the powers vested in it. x x x.'"[18]

Petitioner Republic argues that Mrs. Marcos should be deemed estopped from questioning the sequestration of her Olot Resthouse by her actions in regard to the same. But a void order produces no effect and cannot be validated under the doctrine of estoppel. For the same reason, the Court cannot accept petitioner's view that Mrs. Marcos should have first sought the lifting of the sequestration order through a motion to quash filed with the PCGG. Being void, the Sandiganbayan has the power to strike it down on sight.

Besides, the lifting of the sequestration order will not necessarily be fatal to the main case since it does not follow from such lifting that the sequestered properties are not ill-gotten wealth. Such lifting simply means that the government may not act as conservator or may not exercise administrative or housekeeping powers over the property.[19] Indeed, the Republic can be protected by a notice of *lis pendens*.

WHEREFORE, the Court *DISMISSES* the petition for lack of merit and *AFFIRMS* the challenged resolutions of the Fourth Division of the Sandiganbayan dated February 28, 2002 and August 28, 2002 in Civil Case 0002, which granted respondent Imelda R. Marcos' Motion to Quash the March 18, 1986 Sequestration Order covering the Olot Resthouse.

Further, the Court *DIRECTS* the Register of Deeds of Leyte to immediately annotate a notice of *lis pendens* on the certificate of title of the Olot Resthouse with respect to the Republic of the Philippines' claim over the same in Civil Case 0002 of the Sandiganbayan.

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[18] *Republic of the Philippines v. Sandiganbayan, supra* note 8, at 218.

[19] *Presidential Commission on Good Government v. Sandiganbayan,* 418 Phil. 8, 20 (2001).

No pronouncement as to costs.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Nachura, Leonardo-de Castro, Brion, Bersamin, Del Castillo, Villarama, Jr., Perez, Mendoza, and *Sereno, JJ.,* concur.

Peralta, J., no part. Justice Fernanda Lampas-Peralta acted as Assistant Solicitor General.

Velasco, Jr., J., on official leave.

EN BANC

[G.R. No. 191998. December 7, 2010]

WALDEN F. BELLO and LORETTA ANN P. ROSALES, *petitioners, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

[G.R. No. 192769. December 7, 2010]

LIZA L. MAZA and SATURNINO C. OCAMPO, *petitioners, vs.* **COMMISSION ON ELECTIONS and JUAN MIGUEL "MIKEY" ARROYO,** *respondents.*

[G.R. No. 192832. December 7, 2010]

BAYAN MUNA PARTY-LIST, represented by TEODORO CASIÑO, *petitioner, vs.* **COMMISSION ON ELECTIONS and JUAN MIGUEL "MIKEY" ARROYO of Ang Galing Pinoy Party-List,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; REQUIREMENT. — For a writ of *mandamus* to issue (in **G.R. No. 191998**), the *mandamus* petitioners must comply with Section 3 of Rule 65 of the Rules of Court, which provides: SEC. 3. *Petition for mandamus*. — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, **and there is no other plain, speedy and adequate remedy in the ordinary course of law**, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

2. POLITICAL LAW; LEGISLATIVE DEPARTMENT; PARTY LIST REPRESENTATIVES; PETITION FOR DISQUALIFICATION; WHEN PROPER. — Under Section 2, in relation with Section 4, of COMELEC Resolution No. 8807 (quoted below), any interested party may file with the COMELEC a petition for disqualification against a party-list nominee: Section 2. *Grounds for Disqualification*. — Any nominee (a) who does not possess all the qualifications of a nominee as provided for by the Constitution, existing laws or (b) who commits any act declared by law to be grounds for disqualification may be disqualified from continuing as a nominee. Section 4. *When to file Petition*. — The petition under item (a) of Section 2 shall be filed five (5) days after the last day for filing of the list of nominees, while under item (b) thereof shall be filed any day not later than the date of proclamation.

3. ID.; ID.; ID.; CANCELLATION FOR REGISTRATION; GROUNDS. — Under Section 6 of RA 7941, any interested party may file a verified complaint for cancellation of registration of a party-list organization: SEC. 6. *Refusal and/or Cancellation of Registration*. — The COMELEC may *motu*

proprio or upon verified complaint of any interested party, remove or cancel, after due notice and hearing, the registration of any national, regional or sectoral party, organization or coalition on any of the following grounds: (1) It is a religious sect or denomination, organization or association organized for religious purposes; (2) It advocates violence or unlawful means to seek its goal; (3) It is a foreign party or organization; (4) It is receiving support from any foreign government, foreign political party, foundation, organization, whether directly or through any of its officers or members or indirectly through third parties for partisan election purposes; (5) **It violates or fails to comply with laws, rules or regulations relating to elections;** (6) It declares untruthful statements in its petition; (7) It has ceased to exist for at least one (1) year; or (8) It fails to participate in the last two (2) preceding elections or fails to obtain at least two per centum (2%) of the votes cast under the party-list system in the two (2) preceding elections for the constituency in which it has registered. These provisions effectively provide the "plain, speedy and adequate remedy" that the *mandamus* petitioners should have taken. Specifically, they should have filed the proper petition for disqualification, pursuant to Section 2(b) of Resolution No. 8807, any day not later than the date of proclamation. As to the remedy of filing a complaint for cancellation of registration, we note that neither Section 6 of RA 7941 nor Section 8, Rule 32 of the COMELEC Rules of Procedure specifies the period within which a complaint for cancellation of registration should be filed.

4. ID.; ID.; ID.; HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL; JURISDICTION TO PASS UPON THE QUALIFICATIONS OF PARTY LIST NOMINEES AFTER THEIR PROCLAMATION AND ASSUMPTION OF OFFICE; SUSTAINED. — The consistent judicial holding is that the HRET has jurisdiction to pass upon the qualifications of party-list nominees after their proclamation and assumption of office; they are, for all intents and purposes, "elected members" of the House of Representatives although the entity directly voted upon was their party. x x x The Court also held in the same case that: In the cases before the Court, those who challenged the qualifications of petitioners Abayon and Palparan claim that the two do not belong to the marginalized and underrepresented sectors that they ought to represent. The

Party-List System Act provides that a nominee must be a "*bona fide* member of the party or organization which he seeks to represent." It is for the HRET to interpret the meaning of this particular qualification of a nominee — the need for him or her to be a *bona fide* member or a representative of his party-list organization—in the context of the facts that characterize petitioners Abayon and Palparan's relation to *Aangat Tayo* and *Bantay*, respectively, and the marginalized and underrepresented interests that they presumably embody. x x x What is inevitable is that Section 17, Article VI of the Constitution provides that the HRET shall be the sole judge of all contests relating to, among other things, the qualifications of the members of the House of Representatives. Since, as pointed out above, party-list nominees are "**elected members**" of the House of Representatives no less than the district representatives are, the HRET has jurisdiction to hear and pass upon their qualifications. By analogy with the cases of district representatives, once the party or organization of the party-list nominee has been proclaimed and the nominee has taken his oath and assumed office as member of the House of Representatives, the COMELEC's jurisdiction over election contests relating to his qualifications ends and the HRET's own jurisdiction begins. Similarly applicable is our ruling in *Perez v. Commission on Elections* where we acknowledged that the Court does not have jurisdiction to pass upon the eligibility of the private respondent who was already a member of the House of Representatives. We said: As already stated, the petition for disqualification against private respondent was decided by the First Division of the COMELEC on May 10, 1998. The following day, May 11, 1998, the elections were held. Notwithstanding the fact that private respondent had already been proclaimed on May 16, 1998 and had taken his oath of office on May 17, 1998, petitioner still filed a motion for reconsideration on May 22, 1998, which the COMELEC *en banc* denied on June 11, 1998. Clearly, this could not be done. Sec. 6 of R.A. No. 6646 authorizes the continuation of proceedings for disqualification even after the elections if the respondent has not been proclaimed. The COMELEC *en banc* had no jurisdiction to entertain the motion because the proclamation of private respondent barred further consideration of petitioner's action. **In the same vein, considering that at the time of the filing of this petition on June 16, 1998,**

private respondent was already a member of the House of Representatives, this Court has no jurisdiction over the same. Pursuant to Art. VI, §17 of the Constitution, the House of Representatives Electoral Tribunal has the exclusive original jurisdiction over the petition for the declaration of private respondent's ineligibility. As this Court held in *Lazatin v. House of Representatives Electoral Tribunal*: The use of the word "sole" emphasizes the exclusive character of the jurisdiction conferred. The exercise of the power by the Electoral Commission under the 1935 Constitution has been described as "intended to be as complete and unimpaired as if it had remained originally in the legislature." Earlier, this grant of power to the legislature was characterized by Justice Malcolm "as full, clear and complete." Under the amended 1935 Constitution, the power was unqualifiedly reposed upon the Electoral Tribunal and it remained as full, clear and complete as that previously granted the legislature and the Electoral Commission. The same may be said with regard to the jurisdiction of the Electoral Tribunals under the 1987 Constitution. In the present case, it is not disputed that Arroyo, AGPP's first nominee, has already been proclaimed and taken his oath of office as a Member of the House of Representatives. We take judicial notice, too, of the filing of two (2) petitions for *quo warranto* against Arroyo, now pending before the HRET. Thus, following the lead of *Abayon* and *Perez*, we hold that the Court has no jurisdiction over the present petitions and that the HRET now has the exclusive original jurisdiction to hear and rule upon Arroyo's qualifications as a Member of the House of Representatives.

5. ID.; ADMINISTRATIVE LAW; EXHAUSTION OF ADMINISTRATIVE REMEDIES; CONSTRUED. — The rule on exhaustion of administrative remedies provides that a party must exhaust all administrative remedies to give the administrative agency an opportunity to decide and thus prevent unnecessary and premature resort to the courts. While this is not an ironclad rule as it admits of exceptions, the *mandamus* petitioners failed to show that any of the exceptions apply. The filing of a petition for *mandamus* with this Court, therefore, was premature. It bears stressing that *mandamus*, as an extraordinary remedy, may be used only in cases of extreme necessity where the ordinary forms of procedure are powerless to afford relief.

6. REMEDIAL LAW; ACTIONS; MOOT CASE; DEFINED. — The prohibition issue has been rendered moot since there is nothing now to prohibit in light of the supervening events. A moot case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon (in this case, the prevention of the specified acts) can no longer be done. Under the circumstances, we have to recognize the futility of the petition and to dismiss it on the ground of mootness since we cannot provide the *mandamus* petitioners any substantial relief.

APPEARANCES OF COUNSEL

Ma. Lenina A. Alisuag for Bayan Muna Party List.
Alnie G. Foja for Liza L. Maza, *et al.*
Ibarra M. Gutierrez III and *Rosselynn Jaye G. De La Cruz* for Walden F. Bello, *et al.*
The Solicitor General for public respondent.
Edgardo Carlo L. Vistan II and *Romulo B. Macalintal* for private respondent.

R E S O L U T I O N

BRION, *J.*:

We resolve the three (3) consolidated[1] special civil actions for *certiorari*, *mandamus* and prohibition that commonly aim to disqualify respondent Juan Miguel "Mikey" Arroyo as the nominee of the *Ang Galing Pinoy Party-List* (*AGPP*) in the May 10, 2010 elections.

The Factual Antecedents

The common factual antecedents, gathered from the pleadings, are briefly summarized below.

On November 29, 2009, AGPP filed with the Commission on Elections (*COMELEC*) its Manifestation of Intent to Participate in the May 10, 2010 elections. Subsequently, on March 23,

[1] Per our October 12, 2010 Resolution.

2010, AGPP filed its Certificate of Nomination together with the Certificates of Acceptance of its nominees.[2]

On March 25, 2010, the COMELEC issued Resolution No. 8807[3] which prescribed the rules of procedure applicable to petitions to disqualify a party-list nominee for purposes of the May 10, 2010 elections.[4]

Section 6 of the Resolution provides that the party-list group and the nominees must submit documentary evidence[5] to duly prove that the nominees truly belong to the marginalized and underrepresented sector/s, and to the sectoral party, organization, political party or coalition they seek to represent. It likewise provides that the COMELEC Law Department shall require

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[2] *Rollo* (G.R. No. 192769), p. 106.

[3] Rules on Disqualification Cases Against Nominees of Party-List Groups/ Organizations Participating in the May 10, 2010 Automated National and Local Elections.

[4] *Rollo* (G.R. No. 192769), p. 107.

[5] Which may include but not limited to the following:

a. Track record of the party-list group/organization showing active participation of the nominee/s in the undertakings of the party-list group/organization for the advancement of the marginalized and underrepresented sector/s, the sectoral party, organization, political party or coalition they seek to represent;

b. Proofs that the nominee/s truly adheres to the advocacies of the party-list group/organizations (prior declarations, speeches, written articles, and such other positive actions on the part of the nominee/ s showing his/her adherence to the advocacies of the party-list group/ organizations);

c. Certification that the nominee/s is/are a *bona fide* member of the party-list group/ organization for at least ninety (90) days prior to the election; and

d. In case of a party-list group/organization seeking representation of the marginalized and underrepresented sector/s, proof that the nominee/ s is not only an advocate of the party-list/organization but is/are also a *bona fide* member/s of said marginalized and underrepresented sector.

party-list groups and nominees to make the required documentary submissions, if not already complied with prior to the effectivity of the Resolution, not later than three (3) days from the last day of filing of the list of nominees.[6]

Under Section 10 of the same Resolution, the COMELEC may *motu proprio* effect the disqualification of party-list nominees who violate any of the limitations mentioned in Section 7 of the Resolution.[7] Section 8 of Rule 32 of the COMELEC Rules of Procedure also states that the COMELEC may cancel *motu proprio* the registration of any party registered under the party-list system for failure to comply with applicable laws, rules or regulations of the Commission. Pursuant to COMELEC Resolution No. 8646,[8] in relation to Section 6 of Resolution No. 8807, the deadline for submitting the requirements mentioned in Section 6 of the latter Resolution was on March 29, 2010.[9]

On March 25, 2010, petitioners Liza L. Maza, Saturnino C. Ocampo, and Bayan Muna Party-List, represented by Teodoro Casiño, (collectively referred to as *certiorari petitioners*) filed with the COMELEC a petition for disqualification[10] against

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[6] COMELEC Resolution No. 8646 provides that March 26, 2010 is the last day for party-list groups to submit the names of the party's nominees.

[7] Section 7. *Limitations to party-list nominations.* — The following are the limitations to the list of nominees filed by a registered party.

1. A person may be nominated by one (1) party in one (1) list only;
2. Only persons who have given their consent in writing and under oath may be named in the list;
3. The list shall not include any candidate for any elective office in the same election, or has lost his bid for an elective office in the immediately-preceding election; and
4. No change of name or alteration of the order of nominees shall be allowed after the list has been submitted to the Commission, except in valid substitution.

[8] Calendar of Activities and Periods of Prohibited Acts in Connection with the May 10, 2010 National and Local Elections.

[9] *Supra* note 6.

[10] Docketed as SPA No. 10-001 (DCN).

Arroyo, pursuant to Resolution No. 8696,[11] in relation with Sections 2 and 9 of Republic Act (*RA*) No. 7941[12] (the Party-List System Act).[13]

The *certiorari* petitioners argued that not only must the party-list organization factually and truly represent the marginalized and the underrepresented; the nominee must as well be a Filipino citizen belonging to the marginalized and underrepresented sectors, organizations and parties, citing in this regard the case of *Ang Bagong Bayani-OFW Labor Party v. COMELEC*.[14] On this basis, the *certiorari* petitioners concluded that Arroyo cannot be considered a member of the marginalized and underrepresented sector, particularly, the sector which the AGPP represents – tricycle drivers and security guards – because he is not only a member of the First Family, but is also (a) an incumbent member of the House of Representatives; (b) the Chairman of the House's Energy Committee; and, (c) a member of key committees in the House, namely: Natural Resources, Aquaculture, Fisheries Resources, Ethics and Privileges, Justice, National Defense and Security, Public Works and Highways, Transportation and Ways and Means.[15]

In his Answer, Arroyo counter-argued that the COMELEC had no jurisdiction over issues involving the qualifications of party-list nominees; Section 9 of RA 7941 merely requires that the party-list nominee must be a *bona fide* member of the party or organization which he seeks to represent at least ninety (90) days preceding the day of the election.[16]

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[11] Rules on Disqualification Cases Filed in Connection with the May 10, 2010 Automated National and Local Elections, promulgated on November 11, 2009.

[12] Entitled "An Act Providing for the Election of Party-List Representatives through the Party-List System, and Appropriating Funds Therefor."

[13] *Rollo* (G.R. No.192769), p. 38.

[14] G.R. Nos. 147589 and 147613, June 26, 2001, 359 SCRA 698.

[15] *Rollo* (G.R. No. 192769), p. 38.

[16] *Id.* at 39.

When the COMELEC published on March 26, 2010 its initial "List of Political Parties/Sectoral Organizations/Coalitions Participating in the May 10, 2010 elections with their respective Nominees," Arroyo was listed as AGPP's first nominee.

On March 30, 2010, the petitioner Bayan Muna Party-List, represented by Neri Colmenares, filed with the COMELEC another petition for disqualification against Arroyo.[17] It alleged that Arroyo is not qualified to be a party-list nominee because he (a) does not represent or belong to the marginalized and underrepresented sector; (b) has not been a *bona fide* member of AGPP ninety (90) days prior to the May 10, 2010 elections; (c) is a member of the House of Representatives; and that (d) AGPP is not a legitimate and qualified party-list group and has no authority to nominate him.[18]

In his Answer, Arroyo reiterated that the COMELEC does not have jurisdiction over cases involving the qualifications of party-list nominees. He stated as well that he is a *bona fide* member of AGPP at least ninety (90) days prior to the elections.[19]

Meanwhile, on April 6, 2010, petitioners Walden F. Bello and Loretta Ann P. Rosales (*mandamus petitioners*) wrote the COMELEC Law Department a letter requesting for a copy of the documentary evidence submitted by AGPP, in compliance with Section 6 of Resolution No. 8807. On the same day, the COMELEC Law Department replied that as of that date, the AGPP had not yet submitted any documentary evidence required by Resolution No. 8807.[20]

Through a letter dated April 7, 2010, the *mandamus* petitioners requested the COMELEC and its Law Department to act, consistently with Section 10 of Resolution No. 8807, and declare the disqualification of the nominees of AGPP for their failure

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[17] Docketed as SPA No. 10-003 (DCN).

[18] *Rollo* (G.R. No. 192832), pp. 55-56.

[19] *Id.* at 56.

[20] *Rollo* (G.R. No. 191998), p. 6.

to comply with the requirements of Section 6 of Resolution No. 8807.[21] They also wrote the COMELEC on April 20, 2010, reiterating their letter-request dated April 7, 2010. The COMELEC failed to respond to both letters.[22]

The COMELEC Second Division Ruling

In its May 7, 2010 Joint Resolution, the COMELEC Second Division dismissed the petitions for disqualification against Arroyo.[23] It noted that Section 9 of RA 7941 merely requires the nominee to be "a *bona fide* member [of the party or organization which he seeks to represent for] at least ninety (90) days preceding the day of the elections."[24] It found that Arroyo (a) became a member of the party on November 20, 2009; (b) actively participated in the undertakings of AGPP and adhered to its advocacies; and, (c) actively supported and advanced the projects and programs of the AGPP by regularly attending its meetings, livelihood and skills program, and farmers' day activities.[25]

The COMELEC *en banc* Ruling

The COMELEC *en banc* refused to reconsider the Second Division's ruling in its July 19, 2010 consolidated resolution.[26] It held, among others, that a Filipino citizen, in order to qualify as a party-list nominee, only needs to be a *bona fide* member of the party or organization which he seeks to represent, for at least ninety (90) days preceding the day of the election, and

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[21] *Ibid.*

[22] *Id.* at 6-7.

[23] *Rollo* (G.R. No. 192769), pp. 37-43.

[24] *Id.* at 41-42.

[25] *Id.* at 42-43.

[26] *Id.* at 60-88. The Consolidated Resolution was penned by Commissioner Nicodemo Ferrer; and concurred in by Commissioners Elias R. Yusoph, Lucenito N. Tagle and Armando C. Velasco; while Commissioners Rene V. Sarmiento and Gregorio Y. Larrazabal dissented. Chairman Jose A.R. Melo, on the other hand, abstained from voting.

must likewise be at least twenty-five (25) years of age on the day of the election.[27] The COMELEC *en banc* also held that Section 6 of Resolution No. 8807 is *ultra vires*, since the requirement that a nominee belong to the marginalized and underrepresented sector he seeks to represent is not found in RA 7941.[28] Thus, it concluded that Arroyo possessed all the requirements mandated by Section 9 of RA 7941.[29]

On May 7, 2010, the *mandamus* petitioners filed with this Court their Petition for *Mandamus* and Prohibition with Application for Temporary Restraining Order and/or Preliminary Injunction,[30] docketed as **G.R. No. 191998**.[31] They sought to compel the COMELEC to disqualify *motu proprio* the AGPP nominees for their failure to comply with Section 6 of Resolution No. 8807, and to enjoin the COMELEC from giving due course to the AGPP's participation in the May 10, 2010 elections.

On July 23 and 29, 2010, the *certiorari* petitioners elevated their case to this Court *via* two (2) separate petitions for *certiorari*,[32] docketed as **G.R. Nos. 192769**[33] and **192832**,[34] to annul the COMELEC Second Division's May 7, 2010 joint resolution and the COMELEC *en banc's* July 19, 2010 consolidated resolution that dismissed their petitions for disqualification against Arroyo as AGPP's nominee.

In the interim, AGPP obtained in the May 10, 2010 elections the required percentage of votes sufficient to secure a single

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[27] *Id.* at 71.

[28] *Ibid.*

[29] *Id.* at 72.

[30] Under Rule 65 of the Rules of Court.

[31] *Rollo* (G.R. No. 191998), pp. 3-15.

[32] Under Rule 64 of the Rules of Court.

[33] *Rollo* (G.R. No. 192769), pp. 3-34.

[34] *Rollo* (G.R. No. 192832), pp. 3-50.

seat. This entitled Arroyo, as AGPP's first nominee, to sit in the House of Representatives.[35]

On July 21, 2010, the COMELEC, sitting as the National Board of Canvassers, proclaimed Arroyo as AGPP's duly-elected party-list representative in the House of Representatives.[36] On the same day, Arroyo took his oath of office, as AGPP's Representative,[37] before Court of Appeals Presiding Justice Andres B. Reyes. His name was, thereafter, entered in the Roll of Members of the House of Representatives.[38]

On July 28 and 29, 2010, two (2) separate petitions for *quo warranto*[39] were filed with the House of Representatives Electoral Tribunal (*HRET*) questioning Arroyo's eligibility as AGPP's representative in the House of Representatives. On September 7, 2010, the HRET took cognizance of the petitions by issuing a Summons directing Arroyo to file his Answer to the two petitions.[40]

The Petitions

The *mandamus* petitioners in **G.R. No. 191998** argue that the COMELEC committed grave abuse of discretion (a) in failing to order the *motu proprio* disqualification of AGPP despite its

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[35] *Rollo* (G.R. No. 192769), p. 125. Proclamation dated July 21, 2010, Annex "1" of Arroyo's Comment.

[36] On May 31, 2010, the COMELEC issued NBC Resolution No. 10-009, proclaiming AGPP as one of the winning party-list organizations in the May 10, 2010 elections, having obtained 269,009 votes and entitled to one (1) seat in the House of Representatives. See http://comelec.files.wordpress.com/2010/07/nbc_res_10-009.pdf (last visited November 19, 2010).

[37] *Id.* at 126. Oath of Office dated July 21, 2010, Annex "2" of Arroyo's Comment.

[38] *Id.* at 127. Certification dated July 21, 2010, Annex "3" of Arroyo's Comment.

[39] *Id.* at 108. HRET Case No. 10-060, entitled "*Risa Hontiveros-Baraquel, Petitioner v. Juan Miguel 'Mikey' Arroyo, Respondent,*" and HRET Case No. 10-061, entitled "*Danilo Antipasado, Petitioner v. Juan 'Mikey' Arroyo and Ang Galing Pinoy, Respondents.*"

[40] *Ibid.*

failure to comply with the mandatory requirements under Section 6 of Resolution No. 8807; and, (b) in giving due course to the participation of AGPP and its nominees in the May 10, 2010 elections.

On the other hand, the *certiorari* petitioners in **G.R. Nos. 192769** and **192832** contend in common that the COMELEC *en banc* gravely abused its discretion in failing to disqualify Arroyo as AGPP's nominee since: (1) he does not belong to the marginalized and underrepresented sector he claims to represent; (2) he is not a *bona fide* AGPP member for at least ninety (90) days preceding the May 10, 2010 elections; (3) in light of these preceding reasons, he would not be able to contribute to the formulation and enactment of appropriate legislations for the sector he seeks to represent; and (4) his nomination and acceptance of nomination as AGPP's nominee violate AGPP's continuing undertaking upon which its petition for registration and accreditation was based and granted.

In **G.R. No. 192832**, the petitioner Bayan Muna Party-List also prays that the Court: (a) direct the COMELEC *en banc* to review all its decisions in cases for disqualification of nominees and cancellation of registration of party-list groups filed in the May 10, 2010 elections, as well as those which have not been resolved, in line with the eight-point guidelines set forth in *Ang Bagong Bayani;*[41] and (b) order Commissioners Nicodemo T. Ferrer, Lucenito N. Tagle, Armando C. Velasco and Elias R. Yusoph to explain why they should not be cited in contempt for their open defiance of the Court's Decisions in *Ang Bagong Bayani*[42] and *Barangay Association for National Advancement and Transparency v. COMELEC*.[43]

The Case for the Respondents

In **G.R. Nos. 192769** and **192832**, Arroyo counter-argues that the petitions should be dismissed outright because upon

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[41] *Supra* note 14.

[42] *Ibid.*

[43] G.R. No. 179295, April 21, 2009, 586 SCRA 211.

his proclamation, oath and assumption to office as a duly elected member of the House of Representatives, the jurisdiction over issues relating to his qualifications now lies with the HRET as the sole judge of all contests relating to the election, returns, and qualifications of members of the House of Representatives.

Similarly, the COMELEC, through the Office of the Solicitor General (*OSG*), prays for the dismissal of the petitions in **G.R. Nos. 192769** and **192832** for lack of jurisdiction in view of Arroyo's proclamation and assumption to office as a Member of the House of Representatives.

Despite notice, the OSG failed to comment on the **G.R. No. 191998** petition.

We deemed the case ready for resolution on the basis of the parties' submissions.

Issues

The core issues boil down to (1) whether *mandamus* lies to compel the COMELEC to disqualify AGPP's nominees *motu proprio* or to cancel AGPP's registration; (2) whether the COMELEC can be enjoined from giving due course to AGPP's participation in the May 10, 2010 elections, the canvassing of AGPP's votes, and proclaiming it a winner; and (3) whether the HRET has jurisdiction over the question of Arroyo's qualifications as AGPP's nominee after his proclamation and assumption to office as a member of the House of Representatives.

Our Ruling

We dismiss the petitions.

For a writ of *mandamus* to issue (in **G.R. No. 191998**), the *mandamus* petitioners must comply with Section 3 of Rule 65 of the Rules of Court, which provides:

SEC. 3. *Petition for mandamus*. — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the

use and enjoyment of a right or office to which such other is entitled, **and there is no other plain, speedy and adequate remedy in the ordinary course of law**, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

In the present case, the *mandamus* petitioners failed to comply with the condition that there be "no other plain, speedy and adequate remedy in the ordinary course of law."

Under Section 2, in relation with Section 4, of COMELEC Resolution No. 8807 (quoted below), any interested party may file with the COMELEC a petition for disqualification against a party-list nominee:

Section 2**.** *Grounds for Disqualification*. — Any nominee (a) who does not possess all the qualifications of a nominee as provided for by the Constitution, existing laws or **(b) who commits any act declared by law to be grounds for disqualification may be disqualified from continuing as a nominee**.

Section 4**.** *When to file Petition***.** — The petition under item (a) of Section 2 shall be filed **five (5) days after the last day for filing of the list of nominees**, while under item (b) thereof shall be filed **any day not later than the date of proclamation**.

Furthermore, under Section 6 of RA 7941, any interested party may file a verified complaint for cancellation of registration of a party-list organization:

SEC. 6**.** *Refusal and/or Cancellation of Registration*. — The COMELEC may *motu proprio* or upon verified complaint of any interested party, remove or cancel, after due notice and hearing, the registration of any national, regional or sectoral party, organization or coalition on any of the following grounds:

(1) It is a religious sect or denomination, organization or association organized for religious purposes;

(2) It advocates violence or unlawful means to seek its goal;

(3) It is a foreign party or organization;

(4) It is receiving support from any foreign government, foreign political party, foundation, organization, whether directly or through any of its officers or members or indirectly through third parties for partisan election purposes;

(5) It violates or fails to comply with laws, rules or regulations relating to elections;

(6) It declares untruthful statements in its petition;

(7) It has ceased to exist for at least one (1) year; or

(8) It fails to participate in the last two (2) preceding elections or fails to obtain at least two per centum (2%) of the votes cast under the party-list system in the two (2) preceding elections for the constituency in which it has registered.

These provisions effectively provide the "plain, speedy and adequate remedy" that the *mandamus* petitioners should have taken. Specifically, they should have filed the proper petition for disqualification, pursuant to Section 2(b) of Resolution No. 8807, any day not later than the date of proclamation.

As to the remedy of filing a complaint for cancellation of registration, we note that neither Section 6 of RA 7941 nor Section 8, Rule 32 of the COMELEC Rules of Procedure specifies the period within which a complaint for cancellation of registration should be filed. Whether or not the *mandamus* petitioners can still file a petition for cancellation of AGPP's registration at this point in time, however, is a question we are not prepared to rule upon; in fact, we need not resolve this question since it is not raised here and has not been argued by the parties.

We note that in lieu of filing the above formal petition that Resolution No. 8807 and RA 7941 provide, the *mandamus* petitioners opted to confine themselves to writing letters to ask the COMELEC to act in accordance with Section 10 of Resolution No. 8807. While these moves are technically objections to Arroyo and to the AGPP's registration, they cannot in any way be considered formal petitions for disqualification, unlike the present petition which is a formal petition (whose clear intent is similarly to disqualify Arroyo). Unfortunately for the *mandamus* petitioners, a petition for *mandamus* is not the correct remedy under the circumstances as the immediately applicable remedy is a petition

for disqualification or for cancellation filed with the COMELEC, as pointed out above.

In filing the present petition, the *mandamus* petitioners also violated the rule on the exhaustion of administrative remedies. The rule on exhaustion of administrative remedies provides that a party must exhaust all administrative remedies to give the administrative agency an opportunity to decide and thus prevent unnecessary and premature resort to the courts.[44] While this is not an ironclad rule as it admits of exceptions,[45] the *mandamus* petitioners failed to show that any of the exceptions apply. The filing of a petition for *mandamus* with this Court, therefore, was premature. It bears stressing that *mandamus*, as an extraordinary remedy, may be used only in cases of extreme necessity where the ordinary forms of procedure are powerless to afford relief.[46]

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[44] *Republic of the Phils. v. Express Telecommunication Co., Inc.*, 424 Phil. 372, 399 (2002).

[45] These exceptions are:

1. when there is a violation of due process;
2. when the issue involved is purely a legal question;
3. when the administrative action is patently illegal amounting to lack or excess of jurisdiction;
4. when there is estoppel on the part of the administrative agency concerned;
5. when there is irreparable injury;
6. when the respondent is a department secretary whose acts as an alter ego of the President bears the implied and assumed approval of the latter;
7. when to require exhaustion of administrative remedies would be unreasonable;
8. when it would amount to a nullification of a claim;
9. when the subject matter is a private land in land case proceedings;
10. when the rule does not provide a plain, speedy and adequate remedy; and
11. when there are circumstances indicating the urgency of judicial intervention. (*Buston-Arendain v. Gil*, G.R. No. 172585, June 26, 2008, 555 SCRA 561, 573.)

[46] *ACWS, Ltd. v. Dumlao*, 440 Phil. 787, 803 (2002).

Thus, we find the *mandamus* aspect of **G.R. No. 191998** improperly filed under the standards of Section 3, Rule 65 of the Rules of Court.

Even the substantive merits of the *mandamus* petition in **G.R. No. 191998**, *i.e.*, its patent intent to disqualify Arroyo, fail to persuade for the reasons more fully discussed below, in relation with the *certiorari* petitions in **G.R. Nos. 192769** and **192832**.

As to the *prohibition aspect* of **G.R. No. 191998** — *i.e.*, to prevent the COMELEC from canvassing AGPP's votes, and from proclaiming it a winner — we find that this has been mooted by the supervening participation, election and proclamation of AGPP after it secured the required percentage of votes in the May 10, 2010 elections. The prohibition issue has been rendered moot since there is nothing now to prohibit in light of the supervening events. A moot case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon (in this case, the prevention of the specified acts) can no longer be done. Under the circumstances, we have to recognize the futility of the petition and to dismiss it on the ground of mootness since we cannot provide the *mandamus* petitioners any substantial relief.[47]

We move on to the principal issue raised by the *certiorari* petitions in **G.R. Nos. 192769** and **192832** — whether jurisdiction over Arroyo's qualifications as AGPP nominee should now properly be with the HRET since Arroyo has been proclaimed and has assumed office as Member of the House of Representatives.

This issue is far from novel and is an issue previously ruled upon by this Court. The consistent judicial holding is that the HRET has jurisdiction to pass upon the qualifications of party-list nominees after their proclamation and assumption of office; they are, for all intents and purposes, "elected members" of the House of Representatives although the entity directly voted

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[47] *Quizon v. Commission on Elections*, G.R. No. 177927, February 15, 2008, 545 SCRA 635, 640.

upon was their party. In *Abayon v. House of Representatives Electoral Tribunal*,[48] the Court said:

> But, although it is the party-list organization that is voted for in the elections, it is not the organization that sits as and becomes a member of the House of Representatives. Section 5, Article VI of the Constitution, identifies who the "members" of that House are:
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> **Sec. 5. (1). The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and those who, as provided by law, shall be elected through a partylist system of registered national, regional, and sectoral parties or organizations.** (Underscoring supplied)

Clearly, the members of the House of Representatives are of two kinds: "members x x x who shall be elected from legislative districts" and "**those who x x x shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations.**" This means that, from the Constitution's point of view, it is the party-list representatives who are "elected" into office, not their parties or organizations. These representatives are elected, however, through that peculiar party-list system that the Constitution authorized and that Congress by law established where the voters cast their votes for the organizations or parties to which such party-list representatives belong.

Once elected, both the district representatives and the party-list representatives are treated in like manner. They have the same deliberative rights, salaries, and emoluments. They can participate in the making of laws that will directly benefit their legislative districts or sectors. They are also subject to the same term limitation of three years for a maximum of three consecutive terms.

It may not be amiss to point out that the Party-List System Act itself recognizes party-list nominees as "members of the House of Representatives," thus:

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[48] G.R. No. 189466, February 11, 2010.

> **Sec. 2. Declaration of Policy. — The State shall promote proportional representation in the election of representatives to the House of Representatives through a party-list system of registered national, regional and sectoral parties or organizations or coalitions thereof, which will enable Filipino citizens belonging to the marginalized and underrepresented sectors, organizations and parties, and who lack well-defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole, to become members of the House of Representatives. Towards this end, the State shall develop and guarantee a full, free and open party system in order to attain the broadest possible representation of party, sectoral or group interests in the House of Representatives by enhancing their chances to compete for and win seats in the legislature, and shall provide the simplest scheme possible.** (Underscoring supplied)

As this Court also held in *Bantay Republic Act or BA-RA 7941 v. Commission on Elections*, a party-list representative is in every sense "an elected member of the House of Representatives." Although the vote cast in a party-list election is a vote for a party, such vote, in the end, would be a vote for its nominees, who, in appropriate cases, would eventually sit in the House of Representatives.

The Court also held in the same case that:

In the cases before the Court, those who challenged the qualifications of petitioners Abayon and Palparan claim that the two do not belong to the marginalized and underrepresented sectors that they ought to represent. The Party-List System Act provides that a nominee must be a "*bona fide* member of the party or organization which he seeks to represent."

It is for the HRET to interpret the meaning of this particular qualification of a nominee — the need for him or her to be a *bona fide* member or a representative of his party-list organization—in the context of the facts that characterize petitioners Abayon and Palparan's relation to *Aangat Tayo* and *Bantay*, respectively, and the marginalized and underrepresented interests that they presumably embody.

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What is inevitable is that Section 17, Article VI of the Constitution provides that the HRET shall be the sole judge of all contests relating to, among other things, the qualifications of the members of the House of Representatives. Since, as pointed out above, party-list nominees are "**elected members**" of the House of Representatives no less than the district representatives are, the HRET has jurisdiction to hear and pass upon their qualifications. By analogy with the cases of district representatives, once the party or organization of the party-list nominee has been proclaimed and the nominee has taken his oath and assumed office as member of the House of Representatives, the COMELEC's jurisdiction over election contests relating to his qualifications ends and the HRET's own jurisdiction begins.

Similarly applicable is our ruling in *Perez v. Commission on Elections*[49] where we acknowledged that the Court does not have jurisdiction to pass upon the eligibility of the private respondent who was already a member of the House of Representatives. We said:

As already stated, the petition for disqualification against private respondent was decided by the First Division of the COMELEC on May 10, 1998. The following day, May 11, 1998, the elections were held. Notwithstanding the fact that private respondent had already been proclaimed on May 16, 1998 and had taken his oath of office on May 17, 1998, petitioner still filed a motion for reconsideration on May 22, 1998, which the COMELEC *en banc* denied on June 11, 1998. Clearly, this could not be done. Sec. 6 of R.A. No. 6646 authorizes the continuation of proceedings for disqualification even after the elections if the respondent has not been proclaimed. The COMELEC *en banc* had no jurisdiction to entertain the motion because the proclamation of private respondent barred further consideration of petitioner's action. **In the same vein, considering that at the time of the filing of this petition on June 16, 1998, private respondent was already a member of the House of Representatives, this Court has no jurisdiction over the same. Pursuant to Art. VI, §17 of the Constitution, the House of**

[49] 375 Phil. 1106 (1999).

Representatives Electoral Tribunal has the exclusive original jurisdiction over the petition for the declaration of private respondent's ineligibility. As this Court held in *Lazatin v. House of Representatives Electoral Tribunal*:

> The use of the word "sole" emphasizes the exclusive character of the jurisdiction conferred. The exercise of the power by the Electoral Commission under the 1935 Constitution has been described as "intended to be as complete and unimpaired as if it had remained originally in the legislature." Earlier, this grant of power to the legislature was characterized by Justice Malcolm "as full, clear and complete." Under the amended 1935 Constitution, the power was unqualifiedly reposed upon the Electoral Tribunal and it remained as full, clear and complete as that previously granted the legislature and the Electoral Commission. The same may be said with regard to the jurisdiction of the Electoral Tribunals under the 1987 Constitution.[50]

In the present case, it is not disputed that Arroyo, AGPP's first nominee, has already been proclaimed and taken his oath of office as a Member of the House of Representatives. We take judicial notice, too, of the filing of two (2) petitions for *quo warranto* against Arroyo, now pending before the HRET. Thus, following the lead of *Abayon* and *Perez*, we hold that the Court has no jurisdiction over the present petitions and that the HRET now has the exclusive original jurisdiction to hear and rule upon Arroyo's qualifications as a Member of the House of Representatives.

In light of these conclusions, we see no need to further discuss the other issues raised in the *certiorari* petitions.

WHEREFORE, we *RESOLVE* to *DISMISS* the petition in **G.R. No. 191998** for prematurity and mootness. The petitions in **G.R. Nos. 192769** and **192832** are likewise *DISMISSED* for lack of jurisdiction. No pronouncement as to costs.

SO ORDERED.

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[50] *Id.* at 1115-1116.

Corona, C.J., Carpio, Carpio Morales, Nachura, Leonardo-de Castro, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, and *Sereno, JJ.,* concur.

Velasco, Jr., J., on official leave, per Special Order No. 916 dated November 24, 2010.

EN BANC

[G.R. No. 192935. December 7, 2010]

LOUIS "BAROK" C. BIRAOGO, *petitioner, vs.* **THE PHILIPPINE TRUTH COMMISSION OF 2010,** *respondent.*

[G.R. No. 193036. December 7, 2010]

REP. EDCEL C. LAGMAN, REP. RODOLFO B. ALBANO, JR., REP. SIMEON A. DATUMANONG, and REP. ORLANDO B. FUA, SR., *petitioners, vs.* **EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR. and DEPARTMENT OF BUDGET AND MANAGEMENT SECRETARY FLORENCIO B. ABAD,** *respondents.*

SYLLABUS

1. POLITICAL LAW; OFFICE OF THE PRESIDENT; PHILIPPINE TRUTH COMMISSION; AN *AD HOC* BODY FORMED THEREUNDER.— As can be gleaned from the above-quoted provisions, the Philippine Truth Commission *(PTC*) is a mere *ad hoc* body formed under the Office of the President with the primary task to investigate reports of graft and corruption committed by third-level public officers and employees, their co-principals, accomplices and accessories during the previous administration, and thereafter to submit

its finding and recommendations to the President, Congress and the Ombudsman. Though it has been described as an "independent collegial body," it is essentially an entity within the Office of the President Proper and subject to his control. Doubtless, it constitutes a public office, as an *ad hoc* body is one.

2. ID.; ID.; ID.; ID.; POWERS.— To accomplish its task, the PTC shall have all the powers of an investigative body under Section 37, Chapter 9, Book I of the Administrative Code of 1987. It is not, however, a quasi-judicial body as it cannot adjudicate, arbitrate, resolve, settle, or render awards in disputes between contending parties. All it can do is gather, collect and assess evidence of graft and corruption and make recommendations. It may have subpoena powers but it has no power to cite people in contempt, much less order their arrest. Although it is a fact-finding body, it cannot determine from such facts if probable cause exists as to warrant the filing of an information in our courts of law. Needless to state, it cannot impose criminal, civil or administrative penalties or sanctions.

3. ID.; JUDICIARY; POWER OF JUDICIAL REVIEW; SUBJECT TO LIMITATIONS.— Like almost all powers conferred by the Constitution, the power of judicial review is subject to limitations, to wit: (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have the standing to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.

4. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; LEGAL STANDING; LEGISLATORS HAVE LEGAL STANDING TO ASSAIL EXECUTIVE ORDER NO. 1; CASE AT BAR.— The Court disagrees with the OSG in questioning the legal standing of the petitioners-legislators to assail Executive Order No. 1. Evidently, their petition primarily invokes usurpation of the power of the Congress as a body to which they belong as members. This certainly justifies their resolve to take the cudgels for Congress as an institution

and present the complaints on the usurpation of their power and rights as members of the legislature before the Court. As held in *Philippine Constitution Association v. Enriquez*, To the extent the powers of Congress are impaired, so is the power of each member thereof, since his office confers a right to participate in the exercise of the powers of that institution. An act of the Executive which injures the institution of Congress causes a derivative but nonetheless substantial injury, which can be questioned by a member of Congress. In such a case, any member of Congress can have a resort to the courts. Indeed, legislators have a legal standing to see to it that the prerogative, powers and privileges vested by the Constitution in their office remain inviolate. Thus, they are allowed to question the validity of any official action which, to their mind, infringes on their prerogatives as legislators.

5. ID.; ID.; ID.; ID.; RULE THEREON IS A MATTER OF PROCEDURE, HENCE, CAN BE RELAXED WHEN PUBLIC INTEREST SO REQUIRES; CASE AT BAR.— As correctly pointed out by the OSG, Biraogo has not shown that he sustained, or is in danger of sustaining, any personal and direct injury attributable to the implementation of Executive Order No. 1. Nowhere in his petition is an assertion of a clear right that may justify his clamor for the Court to exercise judicial power and to wield the axe over presidential issuances in defense of the Constitution. x x x Notwithstanding, the Court leans on the doctrine that "the rule on standing is a matter of procedure, hence, can be relaxed for nontraditional plaintiffs like ordinary citizens, taxpayers, and legislators when the public interest so requires, such as when the matter is of ***transcendental importance,*** of overreaching significance to society, or of paramount public interest." Thus, in *Coconut Oil Refiners Association, Inc. v. Torres*, the Court held that in cases of paramount importance where serious constitutional questions are involved, the standing requirements may be relaxed and a suit may be allowed to prosper even where there is no direct injury to the party claiming the right of judicial review. In the first *Emergency Powers Cases*, ordinary citizens and taxpayers were allowed to question the constitutionality of several executive orders although they had only an indirect and general interest shared in common with the public. The OSG claims that the determinants of transcendental importance laid down in *CREBA v. ERC and Meralco* are non-existent in this case.

The Court, however, finds reason in Biraogo's assertion that the petition covers matters of transcendental importance to justify the exercise of jurisdiction by the Court. There are constitutional issues in the petition which deserve the attention of this Court in view of their seriousness, novelty and weight as precedents. Where the issues are of transcendental and paramount importance not only to the public but also to the Bench and the Bar, they should be resolved for the guidance of all. Undoubtedly, the Filipino people are more than interested to know the status of the President's first effort to bring about a promised change to the country.

6. POLITICAL LAW; OFFICE OF THE PRESIDENT; THE PHILIPPINE TRUTH COMMISSION; NOT BORNE OUT OF A RESTRUCTURING OF THE OFFICE OF THE PRESIDENT UNDER SECTION 31, REVISED ADMINISTRATIVE CODE; CASE AT BAR.— The question, therefore, before the Court is this: Does the creation of the PTC fall within the ambit of the power to reorganize as expressed in Section 31 of the Revised Administrative Code? Section 31 contemplates "reorganization" as limited by the following functional and structural lines: (1) restructuring the internal organization of the Office of the President Proper by abolishing, consolidating or merging units thereof or transferring functions from one unit to another; (2) transferring any function under the Office of the President to any other Department/Agency or vice versa; or (3) transferring any agency under the Office of the President to any other Department/ Agency or vice versa. Clearly, the provision refers to reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions. These point to situations where a body or an office is already existent but a modification or alteration thereof has to be effected. The creation of an office is nowhere mentioned, much less envisioned in said provision. Accordingly, the answer to the question is in the negative. To say that the PTC is borne out of a restructuring of the Office of the President under Section 31 is a misplaced supposition, even in the plainest meaning attributable to the term "restructure" — an "alteration of an existing structure." Evidently, the PTC was not part of the structure of the Office of the President prior to the enactment of Executive Order No. 1.

7. ID.; ID.; ID.; CREATION THEREOF IS NOT JUSTIFIED BY THE PRESIDENT'S POWER OF CONTROL.— In the same vein, the creation of the PTC is not justified by the President's power of control. Control is essentially the power to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former with that of the latter. Clearly, the power of control is entirely different from the power to create public offices. The former is inherent in the Executive, while the latter finds basis from either a valid delegation from Congress, or his inherent duty to faithfully execute the laws.

8. ID.; ID.; ID.; REORGANIZATION DURING MARTIAL RULE; P.D. No. 1416 NOT A JUSTIFICATION FOR CREATION OF THE PHILIPPINE TRUTH COMMISSION.— The Court, however, declines to recognize P.D. No. 1416 as a justification for the President to create a public office. Said decree is already stale, anachronistic and inoperable. P.D. No. 1416 was a delegation to then President Marcos of the authority to reorganize the administrative structure of the national government including the power to create offices and transfer appropriations pursuant to one of the purposes of the decree, embodied in its last "Whereas" clause: WHEREAS, the ***transition*** towards the *parliamentary form of government* will necessitate flexibility in the organization of the national government. Clearly, as it was only for the purpose of providing manageability and resiliency during the interim, P.D. No. 1416, as amended by P.D. No. 1772, became *functus oficio* upon the convening of the First Congress, as expressly provided in Section 6, Article XVIII of the 1987 Constitution.

9. ID.; ID.; ID.; POWER TO CREATE *AD HOC* COMMITTEES FLOWS FROM PRESIDENT'S CONSTITUTIONAL DUTY TO ENSURE THAT LAWS ARE FAITHFULLY EXECUTED; CASE AT BAR.— The power to create a truth commission cannot pass muster on the basis of P.D. No. 1416 as amended by P.D. No. 1772, the creation of the PTC finds justification under Section 17, Article VII of the Constitution, imposing upon the President the duty to ensure that the laws are faithfully executed. Section 17 reads: Section 17. The President shall have control of all the executive departments, bureaus, and offices. **He shall ensure that the laws be faithfully executed**. As correctly pointed out by the respondents, the allocation of

power in the three principal branches of government is a grant of all powers inherent in them. The President's power to conduct investigations to aid him in ensuring the faithful execution of laws — in this case, fundamental laws on public accountability and transparency — is inherent in the President's powers as the Chief Executive. That the authority of the President to conduct investigations and to create bodies to execute this power is not explicitly mentioned in the Constitution or in statutes does not mean that he is bereft of such authority.

10. ID.; ID.; ID.; WILL NOT SUPPLANT THE OMBUDSMAN OR THE DOJ; FUNCTION OF DETERMINING PROBABLE CAUSE FOR THE FILING OF THE APPROPRIATE COMPLAINTS BEFORE THE COURTS REMAINS TO BE WITH THE DOJ AND THE OMBUDSMAN.— Contrary to petitioners' apprehension, the PTC will not supplant the Ombudsman or the DOJ or erode their respective powers. If at all, the investigative function of the commission will complement those of the two offices. As pointed out by the Solicitor General, the recommendation to prosecute is but a consequence of the overall task of the commission to conduct a fact-finding investigation. The actual prosecution of suspected offenders, much less adjudication on the merits of the charges against them, is certainly not a function given to the commission. The phrase, "when in the course of its investigation," under Section 2(g), highlights this fact and gives credence to a contrary interpretation from that of the petitioners. The function of determining probable cause for the filing of the appropriate complaints before the courts remains to be with the DOJ and the Ombudsman. At any rate, the Ombudsman's power to investigate under R.A. No. 6770 is not exclusive but is shared with other similarly authorized government agencies.

11. POLITICAL LAW; CONSTITUTIONAL LAW; RIGHTS OF THE ACCUSED; EQUAL PROTECTION OF THE LAWS; EMBRACED IN THE CONCEPT OF DUE PROCESS.— One of the basic principles on which this government was founded is that of the equality of right which is embodied in Section 1, Article III of the 1987 Constitution. The equal protection of the laws is embraced in the concept of due process, as every unfair discrimination offends the requirements of justice and fair play. It has been embodied in a separate clause,

however, to provide for a more specific guaranty against any form of undue favoritism or hostility from the government. Arbitrariness in general may be challenged on the basis of the due process clause. But if the particular act assailed partakes of an unwarranted partiality or prejudice, the sharper weapon to cut it down is the equal protection clause. "According to a long line of decisions, equal protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed."

12. ID.; ID.; ID.; ID.; REQUISITES FOR A VALID CLASSIFICATION.— The Equal Protection Clause, however, does not require the universal application of the laws to all persons or things without distinction. What it simply requires is equality among equals as determined according to a valid classification, Indeed, the equal protection clause permits classification. Such classification, however, to be valid must pass the test of ***reasonableness***. The test has four requisites; (1) The classification rests on substantial distinctions; (2) It is germane to the purpose of the law; (3) It is not limited to existing conditions only; and (4) It applies equally to all members of the same class. "Superficial differences do not make for a valid classification."

13. ID.; ID.; ID.; ID.; ID.; MUST INCLUDE OR EMBRACE ALL PERSONS WHO NATURALLY BELONG TO THE CLASS.— For a classification to meet the requirements of constitutionality, it must include or embrace all persons who naturally belong to the class. "The classification will be regarded as invalid if all the members of the class are not similarly treated, both as to rights conferred and obligations imposed. It is not necessary that the classification be made with absolute symmetry, in the sense that the members of the class should possess the same characteristics in equal degree. Substantial similarity will suffice; and as long as this is achieved, all those covered by the classification are to be treated equally. The mere fact that an individual belonging to a class differs from the other members, as long as that class is substantially distinguishable from all others, does not justify the non-application of the law to him."

14. ID.; ID.; ID.; ID.; ID.; ID.; MUST BE OF SUCH A NATURE AS TO EMBRACE ALL THOSE WHO MAY THEREAFTER BE IN SIMILAR CIRCUMSTANCES AND

CONDITIONS.— The classification must not be based on existing circumstances only, or so constituted as to preclude addition to the number included in the class. It must be of such a nature as to embrace all those who may thereafter be in similar circumstances and conditions. It must not leave out or "underinclude" those that should otherwise fall into a certain classification.

15. ID.; ID.; ID.; ID.; ID.; ID.; ID.; EXECUTIVE ORDER NO. 1 IS VIOLATIVE OF THE EQUAL PROTECTION CLAUSE; NOT TO INCLUDE PAST ADMINISTRATIONS ASIDE FROM THE ARROYO ADMINISTRATION SIMILARLY SITUATED CONSTITUTES ARBITRARINESS.— Applying these precepts to this case, Executive Order No. 1 should be struck down as violative of the equal protection clause. The clear mandate of the envisioned truth commission is to investigate and find out the truth "concerning the reported cases of graft and corruption during the *previous administration*" only. The intent to single out the previous administration is plain, patent and manifest. Mention of it has been made in at least three portions of the questioned executive order. x x x In this regard, it must be borne in mind that the Arroyo administration is but just a member of a class, that is, a class of past administrations. It is not a class of its own. Not to include past administrations similarly situated constitutes arbitrariness which the equal protection clause cannot sanction. Such discriminating differentiation clearly reverberates to label the commission as a vehicle for vindictiveness and selective retribution. Though the OSG enumerates several differences between the Arroyo administration and other past administrations, these distinctions are not substantial enough to merit the restriction of the investigation to the "previous administration" only. The reports of widespread corruption in the Arroyo administration cannot be taken as basis for distinguishing said administration from earlier administrations which were also blemished by similar widespread reports of impropriety. They are not inherent in, and do not inure solely to, the Arroyo administration. As Justice Isagani Cruz put it, "Superficial differences do not make for a valid classification."

16. ID.; CONSTITUTION; THE FUNDAMENTAL LAW OF THE NATION; EXECUTIVE ORDER NO. 1, TO SURVIVE, MUST CONFORM TO THE CONSTITUTION.— It could be argued

that considering that the PTC is an *ad hoc* body, its scope is limited. The Court, however, is of the considered view that although its focus is restricted, the constitutional guarantee of equal protection under the laws should not in any way be circumvented. The Constitution is the fundamental and paramount law of the nation to which all other laws must conform and in accordance with which all private rights determined and all public authority administered. Laws that do not conform to the Constitution should be stricken down for being unconstitutional. While the thrust of the PTC is specific, that is, for investigation of acts of graft and corruption, Executive Order No. 1, to survive, must be read together with the provisions of the Constitution. To exclude the earlier administrations in the guise of "substantial distinctions" would only confirm the petitioners' lament that the subject executive order is only an "adventure in partisan hostility."

17. ID.; ID.; ID.; ID.; "MERE UNDERINCLUSIVENESS," NOT FATAL TO VALIDITY OF A LAW; CASE AT BAR.— The Court is not unaware that "mere underinclusiveness is not fatal to the validity of a law under the equal protection clause." "Legislation is not unconstitutional merely because it is not all-embracing and does not include all the evils within its reach." It has been written that a regulation challenged under the equal protection clause is not devoid of a rational predicate simply because it happens to be incomplete. In several instances, the underinclusiveness was not considered a valid reason to strike down a law or regulation where the purpose can be attained in future legislations or regulations. These cases refer to the "step by step" process. "With regard to equal protection claims, a legislature does not run the risk of losing the entire remedial scheme simply because it fails, through inadvertence or otherwise, to cover every evil that might conceivably have been attacked." In Executive Order No. 1, however, there is no inadvertence. That the previous administration was picked out was deliberate and intentional as can be gleaned from the fact that it was underscored at least three times in the assailed executive order. It must be noted that Executive Order No. 1 does not even mention any particular act, event or report to be focused on unlike the investigative commissions created in the past. "The equal protection clause is violated by purposeful and intentional discrimination."

18. ID.; ID.; ID.; ID.; ID.; COURT IS NOT IMPOSING ITS OWN WILL UPON A CO-EQUAL BODY BUT RATHER SIMPLY MAKING SURE THAT ANY ACT OF GOVERNMENT IS CONSTITUTIONAL.— Thus, the Court, in exercising its power of judicial review, is not imposing its own will upon a co-equal body but rather simply making sure that any act of government is done in consonance with the authorities and rights allocated to it by the Constitution. And, if after said review, the Court finds no constitutional violations of any sort, then, it has no more authority of proscribing the actions under review. Otherwise, the Court will not be deterred to pronounce said act as void and unconstitutional.

19. ID.; ID.; ID.; ID.; ID.; ID.; JUDICIARY MOST INTERESTED IN KNOWING THE TRUTH; SEARCH FOR TRUTH MUST BE WITHIN CONSTITUTIONAL BOUNDS.— Lest it be misunderstood, this is not the death knell for a truth commission as nobly envisioned by the present administration. Perhaps **a revision of the executive issuance so as to include the earlier past administrations would allow it to pass the test of reasonableness and not be an affront to the Constitution.** Of all the branches of the government, it is the judiciary which is the most interested in knowing the truth and so it will not allow itself to be a hindrance or obstacle to its attainment. It must, however, be emphasized that the search for the truth must be within constitutional bounds for "ours is still a government of laws and not of men."

CORONA*, J., separate concurring opinion:*

POLITICAL LAW; EXECUTIVE ORDER NO. 1 (CREATING THE PHILIPPINE TRUTH COMMISSION); SUGAR-COATING THE DESCRIPTION OF THE TRUTH COMMISSION'S PROCESSES AND FUNCTIONS AS TO MAKE IT "SOUND HARMLESS" FALLS SHORT OF CONSTITUTIONAL REQUIREMENTS; CASE AT BAR. — The nature of the powers and functions allocated by the President to the Truth Commission by virtue of E.O. No. 1 is investigatory, with the purposes of determining probable cause of the commission of "graft and corruption under pertinent applicable laws" and referring such finding and evidence to the proper authorities for prosecution. The respondents pass off these powers and functions as merely fact-finding, short

of investigatory. I do not think so. Sugar-coating the description of the Truth Commission's processes and functions so as to make it "sound harmless" falls short of constitutional requirements. It has in its hands the vast arsenal of the government to intimidate, harass and humiliate its perceived political enemies outside the lawful prosecutorial avenues provided by law in the Ombudsman or the Department of Justice. The scope of the investigatory powers and functions assigned by the President to the Truth Commission encompasses all "public officers and employees, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration." There is no doubt in my mind that what the President granted the Truth Commission is the **authority** to conduct preliminary investigation of complaints of graft and corruption against his immediate predecessor ad her associates. The respondents see nothing wrong with that. They believe that, pursuant to his power of control and general supervision under Article VII of the Constitution, the President can create an *ad hoc* committee like the Truth Commission to investigate graft and corruption cases. And the President can endow it with authority parallel to that of the Ombudsman to conduct preliminary investigations. x x x However, although pursuant to his power of control the President may supplant and directly exercise the investigatory functions of departments and agencies within the executive department, his power of control under the Constitution and the Administrative Code is confined only to the executive department. **Without any law authorizing him,** the President cannot legally create a committee to extend his investigatory reach across the boundaries of the executive department to "public officers and employees, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration" without setting apart those who are still in the executive department from those who are not. Only the Ombudsman has the investigatory jurisdiction over them under Article XI, Section 13. There is no law granting to the President the authority to create a committee with concurrent investigatory jurisdiction of this nature.

LEONARDO–DE CASTRO, *J.*, *concurring opinion*:

1. POLITICAL LAW; PUBLIC OFFICE; TRUTH COMMISSION, ITS CREATION UNDER EXECUTIVE ORDER NO. 1:

VALIDITY THEREOF; IF IT IS AN OFFICE INDEPENDENT OF THE PRESIDENT, THEN ITS CREATION BY EXECUTIVE FIAT IS UNCONSTITUTIONAL. — Verily, the creation of the Philippine Truth Commission and its naming as such were done as a deliberate reference to the tradition of independent truth commissions as they are conceived in international law, albeit adapted to a particular factual situation in this jurisdiction. If this Philippine Truth Commission is an office independent of the President and not subject to the latter's control and supervision, then the creation of the Commission must be done by legislative action and not by executive order. It is undisputed that under our constitutional framework only Congress has the power to create public offices and grant to them such functions and powers as may be necessary to fulfill their purpose. Even in the international sphere, the creation of the more familiar truth commissions has been done by an act of legislature. Neither can the creation of the Commission be justified as an exercise of the delegated legislative authority of the President to reorganize his office and the executive department under Section 31, Chapter 10, Title III, Book III of the Administrative Code of 1987. x x x There is nothing in EO No. 1 that indicates that the Commission is a part of the executive department or of the Office of the President Proper. Indeed, it is Justice Carpio who suggests that the President may appoint the commissioners of the Philippine Truth Commission as presidential special assistants or advisers in order that the Commission be subsumed in the Office of the President Proper and to clearly place EO No. 1 within the ambit of Section 31. To my mind, the fact that the commissioners are proposed to be appointed as presidential advisers is an indication that the Philippine Truth Commission was initially planned to be independent of the President and the subsequent appointment of the commissioners as presidential advisers will be merely curative of the patent defect in the creation of the Commission by an Executive Order, as an independent body. I agree with Justice Brion that what EO No. 1 sought to accomplish was not a mere reorganization under the delegated legislative authority of the President. The creation of the Philippine Truth Commission did not involve any restructuring of the Office of the President Proper nor the transfer of any function or office from the Office of the President to the various executive

departments and vice-versa. The Commission is an entirely new specie of public office which, as discussed in the concurring opinions, is not exercising inherently executive powers or functions but infringing on functions reserved by the Constitution and our laws to other offices.

2. ID.; ID.; ID.; ID.; EXECUTIVE ORDER NO. 1 IS REPLETE WITH PROVISIONS INDICATING THAT THE EXISTENCE AND OPERATIONS OF THE COMMISSION WILL BE DEPENDENT ON THE OFFICE OF THE PRESIDENT. — Indeed, EO No. 1 itself is replete with provisions that indicate that the existence and operations of the Commission will be dependent on the Office of the President. Its budget shall be provided by the Office of the President and therefore it has no fiscal autonomy. The reports of the Commission shall be published upon the directive of the President. Further, if we follow the legal premises of our dissenting colleagues to their logical conclusion, then the Commission as a body created by executive order may likewise be abolished (if it is part of the Presidential Special Assistants/Advisers System of the Office of the President Proper) or restructured by executive order. EO No. 1 may be amended, modified, and repealed all by executive order. More importantly, if the Commission is subject to the power of control of the President, he may reverse, revise or modify the actions of the Commission or even substitute his own decision for that of the Commission. Whether by name or by nature, the Philippine Truth Commission cannot be deemed politically "neutral" so as to assure a completely impartial conduct of its purported fact-finding mandate. I further concur with Chief Justice Corona that attempts to "sugar coat" the Philippine Truth Commission's function as "harmless" deserve no credence.

3. ID.; ID.; ID.; ID.; ID.; PURPORTED FUNCTIONS OF THE COMMISSION WILL SUBVERT THE FUNCTIONS OF THE OMBUDSMAN AND THE CONSTITUTIONAL AND STATUTORY DEVELOPED CRIMINAL JUSTICE SYSTEM. — Second, the functions of the Commission, although ostensibly only recommendatory, are basically prosecutorial in nature and not confined to objective fact finding. x x x I agree with Justice Perez that the aforementioned functions [E.O. No. 1 empowers the Commission] run counter to the very purpose for the creation of the Office of the Ombudsman,

to constitutionalize a politically independent office responsible for public accountability as a response to the negative experience with presidential commissions. x x x I likewise find compelling Justice Brion's presentation regarding the Commission's "truth-telling" function's potential implications on due process rights and the right to a fair trial and the likelihood of duplication of, or interference with, the investigatory or adjudicatory functions of the Ombudsman and the courts.

4. ID.; CONSTITUTION; JUDICIAL DEPARTMENT; COURT'S POWER AND DUTY OF JUDICIAL REVIEW; IMPELS JUSTICES OF THE SUPREME COURT TO VOTE WITHIN THE BOUNDS OF THE CONSTITUTION; EXECUTIVE ORDER NO. 1 (CREATION OF THE TRUTH COMMISSION) ISSUED IN SUPPORT OF THE PRESENT ADMINISTRATION'S INITIATIVES ON TRANSPARENCY AND ACCOUNTABILITY FAILS THIS ULTIMATE LEGAL LITMUS TEST. — The constitutional mandate for public accountability and the present administration's noble purpose to curb graft and corruption simply cannot justify trivializing individual rights equally protected under the Constitution. This Court cannot place its stamp of approval on executive action that is constitutionally abhorrent even if for a laudable objective, and even if done by a President who has the support of popular opinion in his side. For the decisions of the Court to have value as precedent, we cannot decide cases on the basis of personalities nor on something as fickle and fleeting as public sentiment. It is worth repeating that our duty as a Court is to uphold the rule of law and not the rule of men. Undeniably, from [Sec. 1, Article VIII of the 1987 Constitution] judicial review is not only a power but a **constitutional duty** of the courts. The framers of our Constitution found an imperative need to provide for an expanded scope of review in favor of the "non-political" courts as a vital check against possible abuses by the political branches of government. For this reason, I cannot subscribe to Justice Maria Lourdes Sereno's view that the Court's exercise of its review power in this instance is tantamount to supplanting the will of the electorate. A philosophical view that the exercise of such power by the Judiciary may from a certain perspective be "undemocratic" is not legal authority for this Court to abdicate its role and duty under the Constitution. It also ignores the fact that it is

the people by the ratification of the Constitution who has given this power and duty of review to the Judiciary. x x x Needless to say, this Court will fully support the present administration's initiatives on transparency and accountability if implemented within the bounds of the Constitution and the laws that the President professes he wishes to faithfully execute. Unfortunately, in this instance, EO No. 1 fails this ultimate legal litmus test.

BRION, *J., separate opinion:*

1.POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICE; CREATION OF THE PHILIPPINE TRUTH COMMISSION (TRUTH COMMISSION) UNDER EXECUTIVE ORDER (EO) NO. 1; NATURE THEREOF.— The Philippine Truth Commission (*Truth Commission or Commission)* is a body "*created*" by the President of the Philippines by way of an Executive Order (*EO 1 or EO*) entitled "Executive Order No. 1, Creating the Philippine Truth Commission of 2010." The Truth Commission's express and avowed purpose is – "to **seek and find the truth** on, and toward this end, **investigate reports of graft and corruption** of such scale and magnitude that shock and offend the moral and ethical sensibilities of the people, **committed by public officials and employees**, their co-principals, accomplices and accessories from the private sector, if any, **during the previous administration,** and thereafter **recommend the appropriate action** to be taken thereon to ensure that the full measure of justice shall be served without fear or favor." Under these terms and by the Solicitor General's admissions and representations, the Truth Commission has three basic functions, namely, *fact-finding, policy recommendation,* and *truth-telling,* all with respect to reported massive graft and corruption committed by officials and employees of the previous administration. The EO defines the Truth Commission as an "independent collegial body" with a Chairman and four members; and provides for the staff, facilities and budgetary support it can rely on, all of which are sourced from or coursed through the Office of the President. It specifically empowers the Truth Commission to "collect, receive, review and evaluate evidence." It defines how the Commission will operate and how its proceedings will be conducted. *Notably, its hearings shall be open to the public,*

except only when they are held in executive sessions for reasons *of national security, public safety* or when demanded by witnesses' *personal security* concerns. It is tasked to submit its findings and recommendations on graft and corruption to the President, Congress and the Ombudsman, and submit special interim reports and a comprehensive final report which shall be published. Witnesses or resource persons are given the right to counsel, as well as security protection to be provided by government police agencies. The Rules of Procedure of the Philippine Truth Commission of 2010 (*Rules)*, promulgated pursuant to Section 2(j) of EO 1, further flesh out the operations of the Commission. Section 4 assures that "due process shall at all times be observed in the application of the Rules." It provides for formal complaints that may be filed before it, and that after evaluation, the parties who appear responsible under the complaints shall be provided copies of the complaints and supporting documents, and be required to comment on or file counter-affidavits within ten (10) days. The Rules declare that *the Commission is not bound by the technical rules of evidence*, reiterate the protection afforded to witnesses provided under the EO, and confirm that hearings shall be open to the public.

2. ID.; ID.; ID.; ID.; ID.; TRUTH-TELLING FUNCTION OF THE COMMISSION VIOLATES DUE PROCESS.— The first problem of the EO is its use of the title "Truth Commission" and its objective of truth-telling; these assume that what the Truth Commission speaks of is the "truth" because of its title and of its truth-telling function; thus, anything other than what the Commission reports would either be a distortion of the truth, or may even be an "untruth." This problem surfaced during the oral arguments on queries about the effect of the title "Truth Commission" on the authority of the duly constituted tribunals that may thereafter rule on the matters that the Commission shall report on. Since the Commission's report will constitute the "truth," any subsequent contrary finding by the Ombudsman would necessarily be suspect as an "untruth"; it is up then to the Ombudsman to convince the public that its findings are true. To appreciate the extent of this problem, it must be considered that the hearings or proceedings, where charges of graft and corruption shall be aired, shall be open to the public. The Commission's report shall likewise be published. These

features cannot but mean full media coverage. x x x To fully appreciate the potential prejudicial effects of truth-telling on the judicial system, the effects of media exposure — from the point of view of *what transpires* and *the circumstances present* under truth-telling and under the present justice system — deserve examination. Under the present justice system, the media may fully report, as they do report, all the details of a reported crime and may even give the suspects detailed focus. These reports, however, are *not branded as the "truth"* but as matters that will soon be brought to the appropriate public authorities for proper investigation and prosecution, if warranted. In the courts, cases are handled on the basis of the rules of evidence and with due respect for the constitutional rights of the accused, and are reported based on actual developments, subject only to judicial requirements to ensure orderly proceedings and the observance of the rights of the accused. Only after the courts have finally spoken shall there be any conclusive narrative report of what actually transpired and how accused individuals may have participated in committing the offense charged. At this point, any public report and analysis of the findings can no longer adversely affect the constitutional rights of the accused as they had been given all the opportunities to tell their side in court under the protective guarantees of the Constitution. In contrast, the circumstances that underlie Commission reports are different. The "truth" that the Commission shall publicize shall be based on "facts" that have not been tested and admitted according to the rules of evidence; by its own express rules, the technical rules of evidence do not apply to the Commission. The reported facts may have also been secured under circumstances violative of the rights of the persons investigated under the guarantees of the Constitution. Thus, *what the Commission reports might not at all pass the tests of guilt that apply under the present justice system, yet they will be reported with the full support of the government as the "truth" to the public.* As fully discussed below, these circumstances all work to the active prejudice of the investigated persons whose reputations, at the very least, are blackened once they are reported by the Commission as participants in graft and corruption, even if the courts subsequently find them innocent of these charges. Viewed from the above perspectives, what becomes plainly evident is an EO that, as a means of fighting graft and corruption,

will effectively and prejudicially affect the parties inter-acting with the Truth Commission. The EO will *erode the authority and even the integrity of the Ombudsman and the courts* in acting on matters brought before them under the terms of the Constitution; its premature and "truthful" report of guilt will *condition the public's mind* to reject any finding other than those of the Commission. Under this environment, the findings or results of the ***second forum*** described above overwhelm the processes and whatever may be the findings or results of the ***first forum***. In other words, the findings or results of the ***second forum*** - obtained without any assurance of the observance of constitutional guarantees - would not only create heightened expectations and exert unwanted pressure, but even induce changed perceptions and bias in the processes of the ***first forum*** in the manner analogous to what Justice Cardozo described above. The first casualties, of course, are the investigated persons and their basic rights, as fully explained elsewhere in this Opinion. While EO 1 may, therefore, serve a laudable anti-graft and corruption purpose and may have been launched by the President in good faith and with all sincerity, ***its truth-telling function, undertaken in the manner outlined in the EO and its implementing rules, is not a means that this Court can hold as reasonable and valid, when viewed from the prism of due process.***

3. ID.; CONSTITUTION; JUDICIARY; CRIMINAL JUSTICE SYSTEM; THE EO AND ITS TRUTH-TELLING FUNCTION MUST BE STRUCK DOWN AS THEY DISTORT THE CONSTITUTIONAL AND STATUTORY PLAN OF THE CRIMINAL JUSTICE SYSTEM WITHOUT THE AUTHORITY OF LAW AND WITH AN UNCONSTITUTIONAL IMPACT ON THE SYSTEM.— The EO and its truth-telling function must also be struck down as they distort the constitutional and statutory plan of the criminal justice system *without the authority of law* and *with an unconstitutional impact on the system.* x x x The Constitution has given the country a well-laid out and balanced division of powers, distributed among the legislative, executive and judicial branches, with specially established offices geared to accomplish specific objectives to strengthen the whole constitutional structure. The Legislature is provided, in relation with the dispensation of justice, the authority to create courts with defined jurisdictions below the level of the Supreme Court;

to define the required qualifications for judges; to define what acts are criminal and what penalties they shall carry; and to provide the budgets for the courts. The Executive branch is tasked with the enforcement of the laws that the Legislature shall pass. In the dispensation of justice, the Executive has the prerogative of appointing justices and judges, and the authority to investigate and prosecute crimes through a Department of Justice constituted in accordance the Administrative Code. Specifically provided and established by the Constitution, *for a task that would otherwise fall under the Executive's investigatory and prosecutory authority*, is an independent Ombudsman for the purpose of acting on, investigating and prosecuting allegedly criminal acts or omissions of public officers and employees in the exercise of their functions. While the Ombudsman's jurisdiction is not exclusive, it is primary; it takes precedence and overrides any investigatory and prosecutory action by the Department of Justice. The Judiciary, on the other hand, is given the task of standing in judgment over the criminal cases brought before it, either at the first instance through the municipal and the regional trial courts, or on appeal or *certiorari*, through the appellate courts and ultimately to the Supreme Court. An exception to these generalities is the *Sandiganbayan*, a special statutorily-created court with the exclusive jurisdiction over criminal acts committed by public officers and employees in the exercise of their functions. Underlying all these is the Supreme Court's authority to promulgate the rules of procedure applicable to courts and their proceedings, to appoint all officials and employees of the Judiciary other than judges, and to exercise supervision over all courts and judiciary employees. In the usual course, an act allegedly violative of our criminal laws may be brought to the attention of the police authorities for *unilateral* fact-finding investigation. If a basis for a complaint exists, then the matter is brought before the prosecutor's office for formal investigation, through an inquest or a preliminary investigation, to determine if probable cause exists to justify the filing of a formal complaint or information before the courts. Aside from those initiated at the instance of the aggrieved private parties, the fact-finding investigation may be made at the instance of the President or of senior officials of the Executive branch, to be undertaken by police authorities, by the investigatory agencies of the Department of Justice, or

by specially constituted or delegated officials or employees of the Executive branch; the preliminary investigation for the determination of probable cause is a task statutorily vested in the prosecutor's office. Up to this point, these activities lie within the Executive branch of government and may be called its *extrajudicial participation in the justice system*. By specific authority of the Constitution and the law, a deviation from the above general process occurs in the case of acts allegedly committed by public officers and employees in the performance of their duties where, as mentioned above, the Ombudsman has primary jurisdiction. While the Executive branch itself may undertake a unilateral fact-finding, and the prosecutor's office may conduct preliminary investigation for purposes of filing a complaint or information with the courts, the Ombudsman's primary jurisdiction gives this office precedence and dominance once it decides to take over a case. Whether a complaint or information emanates from the prosecutor's office or from the Ombudsman, jurisdiction to hear and try the case belongs to the courts, mandated to determine – under the formal rules of evidence of the Rules of Court and with due observance of the constitutional rights of the accused – the guilt or innocence of the accused. A case involving criminal acts or omissions of public officers and employees in the performance of duties falls at the first instance within the exclusive jurisdiction of the Sandiganbayan, subject to higher recourse to the Supreme Court. This is the *strictly judicial aspect of the criminal justice system*. Under the above processes, our laws have delegated the handling of criminal cases to the justice system and there the handling should solely lie, supported by all the forces the law can muster, until the disputed matter is fully resolved. The proceedings — whether before the Prosecutor's Office, the Ombudsman, or before the courts — are open to the public and are thereby made transparent; freedom of information and of the press guarantee media participation, consistent with the justice system's orderly proceedings and the protection of the rights of parties. The extrajudicial intervention of the Commission, as provided in the EO, even for the avowed purpose of "assisting" the Ombudsman, directly disrupts the established order, as *the Constitution and the law do not envision a situation where fact-finding recommendations,* ***already labelled as "true,"***

would be submitted to the Ombudsman by an entity within the Executive branch. This arrangement is simply not within the dispensation of justice scheme, as the determination of whether probable cause exists cannot be *defeated, rendered suspect,* or *otherwise eroded* by any prior process whose results are represented to be the "truth" of the alleged criminal acts. The Ombudsman may be bound by the findings of a court, particularly those of this Court, but not of any other body, most especially a body outside the regular criminal justice system. Neither can the strictly judicial aspect of the justice system be saddled with this type of fact-finding, as the determination of the guilt or innocence of an accused lies strictly and solely with the courts. Nor can the EO cloak its intent of undercutting the authority of the designated authorities to rule on the merits of the alleged graft and corruption through a statement that its findings are recommendatory; as has been discussed above, this express provision is negated in actual application by the title Truth Commission and its truth-telling function. A necessary consequence of the deviation from the established constitutional and statutory plan is the extension of the *situs* of the justice system from its constitutionally and statutorily designated locations (equivalent to the above-described ***first forum***), since the Commission will investigate matters that are bound to go to the justice system. In other words, the Commission's activities, including its truth-telling function and the ***second forum*** this function creates, become the preclude to the entry of criminal matters into the Ombudsman and into the strictly judicial aspect of the system. In practical terms, this extension undermines the established order in the judicial system by directly bringing in considerations that are extraneous to the adjudication of criminal cases, and by co-mingling and confusing these with the standards of the criminal justice system. The result, unavoidably, is a *qualitative changes* in the criminal justice system that is based, not on a legislative policy change, but on an executive fiat.

4. ID.; ID.; EXECUTIVE DEPARTMENT; THE PRESIDENT CANNOT, UNDER THE PRESENT CONSTITUTION AND IN THE GUISE OF "EXECUTING THE LAWS," PERFORM AN ACT THAT WOULD IMPINGE ON CONGRESS' EXCLUSIVE POWER TO CREATE LAWS, INCLUDING THE POWER TO CREATE A PUBLIC OFFICE.— Under

the 1987 Constitution, the authority to create offices is lodged exclusively in Congress. This is a necessary implication of its "*plenary* legislative power." Thus, except as otherwise provided by the Constitution or statutory grant, no public office can be created except by Congress; any unauthorized action in this regard ***violates the doctrine of separation of powers.*** In essence, according to Father Joaquin Bernas, "separation of powers means that legislation belongs to Congress, execution to the executive, settlement of legal controversies to the judiciary." This means *that the President cannot, under the present Constitution and in the guise of "executing the laws," perform an act that would impinge on Congress' exclusive power to create laws, including the power to create a public office.* In the present case, the exclusive authority of Congress in creating a public office is not questioned. The issue raised regarding the President's power to create the Truth Commission boils down to whether the Constitution allows the creation of the Truth Commission by the President or by an act of Congress. x x x Specifically, while admitting that the Truth Commission is a "creation" of the President under his office pursuant to the latter's authority under the Administrative Code of 1987, the Solicitor General incongruously claimed that the Commission is "independent" of the Office of the President and is not under his control. x x x Truth to tell (no pun intended), the Solicitor General appears under these positions to be playing ***a game of smoke and mirrors*** with the Court. x x x All these necessarily lead to the question: can the President really create an office within the Executive branch that is independent of his control? The short answer is he cannot, and the short reason again is the constitutional plan. The execution and implementation of the laws have been placed by the Constitution on the shoulders of the President and on none other. He cannot delegate his executive powers to any person or entity outside the Executive department except by authority of the Constitution or the law (which authority in this case he does not have), nor can he delegate his authority to undertake fact-finding as an incident of his executive power, and at the same time take the position that he has no responsibility for the fact-finding because it is independent of him and his office. Under the constitutional plan, the creation of this kind of office with this kind of independence is lodged only in the Legislature. For example, it is only the Legislature which can create a body

like the National Labor Relations Commission whose decisions are final and are neither appealable to the President nor to his alter ego, the Secretary of Labor. Yet another example, President Corazon Aquino herself, because the creation of an *independent* commission was outside her executive powers, deemed it necessary to act pursuant to a legislative fiat in constituting the first Davide Commission of 1989. Apparently, the President wanted to create a separate, distinct and **independent** Commission because he wants to continuously impress upon the public—*his audience in the* ***second forum*** — that this Commission can tell the "truth" without any control or prompting from the Office of the President and *without need of waiting for definitive word from those constitutionally-assigned to undertake this task.* Here, truth-telling again rears its ugly head and is unmasked for what it really is — an attempt to bypass the constitutional plan on how crimes are investigated and resolved with finality. x x x It encroaches into Congress' authority to create an office. This consequence must necessarily be fatal for the arrangement is inimical to the doctrine of separation of powers whose purpose, according to Father Joaquin Bernas, is: to prevent concentration of powers in one department and thereby to avoid tyranny.

5. ID.; ID.; BILL OF RIGHTS; TRUTH COMMISSION; TRUTH-TELLING REPORT OF THE TRUTH COMMISSION CAUSES VIOLATIONS OF RIGHTS OF INVESTIGATED PERSONS.— Separately from the above effects, truth-telling as envisioned under the EO, carries prejudicial effects on the persons it immediately targets, namely: the officials, employees and private individuals alleged to have committed graft and corruption during the previous administration. This consequence proceeds from the above discussed truth-telling premise that – whether the Commission reports (recommending the charging of specific individuals) are proven or not in the appropriate courts – the Commission's function of truth-telling function would have been served and the Commission would have effectively acted against the charged individuals. The most obvious prejudicial effect of the truth-telling function on the persons investigated is on their persons, reputation and property. Simply being singled out as "charged" in a truth-telling report will inevitably mean disturbance of one's routines, activities and relationships; the preparation for a defense that will cost money, time and energy; changes in personal, job and business

relationships with others; and adverse effects on jobs and businesses. Worse, reputations can forever be tarnished after one is labelled as a participant in massive graft and corruption. x x x The essence of the due process guarantee in a criminal case, as provided under Section 14(1) of the Constitution, is the right to a fair trial. What is fair depends on compliance with the express guarantees of the Constitution, and on the circumstances of each case. When the Commission's report itself is characterized, prior to trial, and held out by the government to be the true story of the graft and corruption charged, the chances of individuals to have a fair trial in a subsequent criminal case cannot be very great. Consider on this point that not even the main actors in the criminal justice system – the Ombudsman, the Sandiganbayan and even this Court – can avoid the cloud of "untruth" and a doubtful taint in their integrity after the government has publicized the Commission's findings as the truth. If the rulings of these constitutional bodies themselves can be suspect, individual defenses for sure cannot rise any higher. Where the government simply wants to tell its story, already labelled as true, well ahead of any court proceedings, and judicial notice is taken of the kind of publicity and the ferment in public opinion that news of government scandals generate, it does not require a leap of faith to conclude that an accused brought to court against overwhelming public opinion starts his case with a less than equal chance of acquittal. The ***presumption of innocence*** notwithstanding, the playing field cannot but be uneven in a criminal trial when the accused enters trial with a government-sponsored badge of guilt on his forehead. **The presumption of innocence *in law* cannot serve an accused in a *biased atmosphere* pointing to guilt in *fact* because the government and public opinion have spoken against the accused.**

6. ID.; ID.; ID.; ID.; ID.; TRUTH COMMISSION INVESTIGATION VIOLATES EQUAL PROTECTION CLAUSE; NO VALID AND REASONABLE CLASSIFICATION FOR DISPARATE TREATMENT OF OFFICIALS OF THE PREVIOUS ADMINISTRATION, BOTH FROM THE FOCUS GIVEN TO THEM IN RELATION, WITH ALL OTHER OFFICIALS AND IN THE TRUTH TELLING TREATMENT ACCORDED TO THEM BY THE COMMISSION.— In EO 1, for the first time in Philippine history, the Executive created a public office

to address the "reports of graft and corruption of such magnitude that shock and offend the moral and ethical sensibilities of the people, committed…during the previous administration" through *fact-finding, policy formulation* and *truth-telling*. While fact-finding has been undertaken by previous investigative commissions for purposes of possible prosecution and policy-formulation, a first for the current Truth Commission is its task of truth-telling. The Commission not only has to investigate reported graft and corruption; it also has the authority to announce to the public the "truth" regarding alleged graft and corruption committed during the previous administration. EO 1's problem with the equal protection clause lies in the truth-telling function it gave the Truth Commission. As extensively discussed earlier in this Opinion, truth-telling is not an ordinary task, as the Commission's reports to the government and the public are already given the imprimatur of truth way before the allegations of graft and corruption are ever proven in court. This feature, by itself, is a unique differential treatment that cannot but be considered in the application of the jurisprudential equal protection clause requirements. Equally unique is the focus of the Commission's investigation — it solely addresses alleged graft and corruption committed during the past administration. This focus is further narrowed down to "third level public officers and higher, their co-principal, accomplices and accessories from the private sector, if any, during the previous administration." Under these terms, the subject of the EO is limited only to a very select group – the highest officials, not any ordinary government official at the time. Notably excluded under these express terms are third level and higher officials of other previous administrations who can still be possibly be charged of similar levels of graft and corruption they might have perpetrated during their incumbency. Likewise excepted are the third level officials of the present administration who may likewise commit the same level of graft and corruption during the term of the Commission. Thus, from the points of truth-telling and the focus on the people to be investigated, at least a double layer of differential treatment characterizes the Truth Commission's investigation. Given these disparate treatment, the equal protection question that arises is: does the resulting classification and segregation of third level officials of the previous administration and their differential treatment rest on substantial distinctions? x x x It

is noteworthy that the terms of the EO itself do not provide any specific reason why, for purposes of conveying a message against graft and corruption, the focus should be on officials of the previous administration under the EO's special truth - telling terms. x x x Interestingly, the EO itself partly provides the guiding spirit that might have moved the Executive to its intended expose as it unabashedly points to the President's promise made in the last election — "*Kung walang corrupt, walang mahirap*." There, too, is the Solicitor General's very calculated statement that truth-telling is an end in itself that the EO wishes to achieve. Juxtaposing these overt indicators with the EO's singleness of focus on the previous administration, what emerges in bold relief is the conclusion that the EO was issued largely for political ends: the President wants his election promise fulfilled in a dramatic and unforgettable way; none could be more so than criminal convictions, or at least, exposure of the "truth" that would forever mark his political opponents; thus, the focus on the previous administration and the stress on establishing their corrupt ways as the "truth." Viewed in these lights, the political motivation behind the EO becomes inescapable. Political considerations, of course, cannot be considered a legitimate state purpose as basis for proper classification. They may be specially compelling but only for the point of view of a political party or interest, not from the point of view of an equality-sensitive State. In sum, no sufficient and compelling state interest appears to be served by the EO to justify the differential treatment of the past administration's officials. In fact, exposure of the sins of the previous administration through truth-telling should not even be viewed as "least restrictive" as it is in fact a means with pernicious effects on government and on third parties. For these reasons, the conclusion that the EO violates the equal protection clause is unavoidable.

PERALTA*, J., separate concurring opinion:*

1.POLITICAL LAW; CONSTITUTION; EXECUTIVE DEPARTMENT; AUTHORITY OF THE PRESIDENT TO CREATE *AD HOC* COMMITTEES BASED ON HIS POWER OF CONTROL; TRUTH COMMISSION, NOT IN THE NATURE OF AN *AD HOC* INVESTIGATING BODY.— Albeit

the President has the power to create *ad hoc committees* to investigate or inquire into matters for the guidance of the President to ensure that the laws be faithfully executed, I am of the view that the Truth Commission was not created in the nature of the aforementioned *ad hoc* investigating/fact-finding bodies. The Truth Commission was created more in the nature of a public office. Based on the creation of *ad hoc* investigating bodies in ***Department of Health v. Camposano*** and ***Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto***, the members of an *ad hoc* investigative body are heads and representatives of existing government offices, depending on the nature of the subject matter of the investigation. The *ad hoc* investigating body's functions are primarily fact-finding/ investigative and recommendatory in nature.

2. ID.; ID.; ID.; ID.; ID.; CREATION OF THE TRUTH COMMISSION WAS MORE IN THE NATURE OF A PUBLIC OFFICE; THE PRESIDENT CANNOT BE ALLOWED TO ENCROACH ON OR USURP THE LAW-MAKING POWER OF THE LEGISLATURE IN THE CREATION OF SUCH INVESTIGATIVE BODIES.— In this case, the members of the Truth Commission are not officials from existing government offices. Moreover, the Truth Commission has been granted powers of an independent office as follows: 1. Engage or contract the services of resource persons, professionals and other personnel determined by it as necessary to carry out its mandate; 2. Promulgate its rules and regulations or rules of procedure it deems necessary to effectively and efficiently carry out the objectives of this Executive Order and to ensure the orderly conduct of its investigations, proceedings and hearings, including the presentation of evidence; 3. The Truth Commission shall have the power to engage the services of experts as consultants or advisers as it may deem necessary to accomplish its mission. In addition, the Truth Commission has coercive powers such as the power to subpoena witnesses. Any government official or personnel who, without lawful excuse, fails to appear upon subpoena issued by the Commission or who, appearing before the Commission refuses to take oath or affirmation, give testimony or produce documents for inspection, when required, shall be subject to administrative disciplinary action. Any private person who does the same may be dealt with in accordance

with law. Apparently, the grant of such powers to the Truth Commission is no longer part of the executive power of the President, as it is part of law-making, which legislative power is vested in Congress. x x x Although the President may create investigating bodies to help him in his duty to ensure that the laws are faithfully executed, he cannot be allowed to encroach on or usurp the law-making power of the Legislature in the creation of such investigative bodies.

3. ID.; ID.; LEGISLATIVE DEPARTMENT; DELEGATION OF LEGISLATIVE POWER TO THE EXECUTIVE; TWO INSTANCES WHEN THIS MAY BE GRANTED — EMERGENCY POWERS AND TAXATION.— There are only two instances in the Constitution wherein Congress may delegate its law-making authority to the President: "Article VI, Section 23. (1) The Congress, by a vote of two-thirds of both houses in joint session assembled, voting separately, shall have the sole power to declare the existence of a state of war. (2) **In times of war or other national emergency, the Congress may, by law, authorize the President, for a limited period and subject to such restrictions as it may prescribe, to exercise powers necessary and proper to carry out a declared national policy. Unless sooner withdrawn by resolution of the Congress, such powers shall cease upon the next adjournment thereof.** Article VI, Sec. 28. (1) The rule of taxation shall be uniform and equitable. The Congress shall evolve a progressive system of taxation. **(2) The Congress may, by law, authorize the President to fix within specified limits, and subject to such limitations and restrictions as it may impose, tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts within the framework of the national development program of the government.**

4. ID.; ID.; OFFICE OF THE PRESIDENT; TRUTH COMMISSION; THE CREATION OF THE TRUTH COMMISSION WILL MERELY BE A WASTE OF MONEY, SINCE IT DUPLICATES THE FUNCTION OF THE OFFICE OF THE OMBUDSMAN TO INVESTIGATE REPORTED CASES OF GRAFT AND CORRUPTION.— Moreover, the Truth Commission's function is questioned on the ground that it duplicates, if not supersedes, the function of the Office of

the Ombudsman. The OSG avers that the Ombudsman's power to investigate is not exclusive, but is shared with other similarly authorized agencies, citing ***Ombudsman v. Galicia.*** Based on Section 2 of E.O. No. 1, the powers and functions of the Truth Commission do not supplant the powers and functions of the Ombudsman. Nevertheless, what is the use of the Truth Commission if its power is merely recommendatory? Any finding of graft and corruption by the Truth Commission is still subject to evaluation by the Office of the Ombudsman, as it is only the Office of the Ombudsman that is empowered to conduct preliminary investigation, determine the existence of probable cause and prosecute the case. Hence, the creation of the Truth Commission will merely be a waste of money, since it duplicates the function of the Office of the Ombudsman to investigate reported cases of graft and corruption.

5. ID.; ID.; BILL OF RIGHTS; GUARANTEE OF EQUAL PROTECTION OF THE LAWS; INVESTIGATION BY THE TRUTH COMMISSION VIOLATES THE EQUAL PROTECTION CLAUSE BECAUSE IT COVERS ONLY THIRD LEVEL PUBLIC OFFICERS AND HIGHER OF THE ARROYO ADMINISTRATION.— Further, E.O. No. 1 violates that equal protection clause enshrined in the Constitution. The guarantee of equal protection of the laws means that no person or class of persons shall be denied the same protection of laws which is enjoyed by other persons or other classes in like circumstances. In this case, investigation by the Truth Commission covers only third level public officers and higher, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration of former President Gloria Macapagal-Arroyo.

6. ID.; ID.; ID.; ID.; ID.; IN THE ABSENCE OF THE EXERCISE OF JUDGMENT BY THE PRESIDENT THAT THE TRUTH COMMISSION SHALL ALSO CONDUCT INVESTIGATION OF REPORTED CASES OF GRAFT AND CORRUPTION DURING PRIOR ADMINISTRATIONS, E.O. NO. 1 COVERS ONLY THIRD LEVEL PUBLIC OFFICERS AND HIGHER OF THE ARROYO ADMINISTRATION.— The OSG, however, counters in its Memorandum that the equal protection clause of the Constitution is not violated, because although E.O. No. 1 names the previous administration as the initial subject of the

investigation of cases of graft and corruption, it is not confined to the said administration, since E.O. No. 1 clearly speaks of the President's power to expand its coverage to prior administrations as follows: "**SECTION 17. Special Provision Concerning Mandate.—** *If and when* in the judgment of the President there is a need to expand the mandate of the Commission as defined in Section 1 hereof to include the investigation of cases and instances of graft and corruption during the prior administrations, such mandate may be so extended accordingly by way of a supplemental Executive Order." As provided above, the mandate of the Truth Commission may be expanded to include the investigation of cases of graft and corruption during prior administrations, but it is subject to the "judgment" or discretion of the President and it may be so extended by way of a supplemental Executive Order. In the absence of the exercise of judgment by the President that the Truth Commission shall also conduct investigation of reported cases of graft and corruption during prior administrations, and in the absence of the issuance of a supplemental executive order to that effect, E.O. No. 1 covers only third level public officers and higher, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration of former President Gloria Macapagal-Arroyo.

7. ID.; ID.; ID.; ID.; REQUISITES FOR A VALID CLASSIFICATION; LIMITING THE INVESTIGATION OF THE TRUTH COMMISSION TO REPORTED CASES OF GRAFT AND CORRUPTION OF PUBLIC OFFICERS OF THE PREVIOUS ADMINISTRATION VIOLATES THE EQUAL PROTECTION CLAUSE.— Indeed, the equal protection clause of the Constitution allows classification. If the classification is reasonable, the law may operate only on some and not all of the people without violating the equal protection clause. To be valid, it must conform to the following requirements: (1) It must be based on substantial distinctions; (2) it must be germane to the purposes of the law; (3) it must not be limited to existing conditions only; and (4) it must apply equally to all members of the class. x x x The distinctions cited by the OSG are not substantial to separate the previous administration as a distinct class from prior administrations as subject matter for investigation for the purpose of ending

graft and corruption. As stated by the *ponencia*, the reports of widespread corruption in the previous administration cannot be taken as a substantial distinction, since similar reports have been made in earlier administrations. Moreover, a valid classification must rest upon material differences between the persons, or activities or thing included and excluded. Reasonable grounds must exist for making a distinction between those who fall within the class and those who do not. There is no substantial distinction cited between public officers who may be involved in reported cases of graft and corruption during the *previous* administration *and* public officers who may be involved in reported cases of graft and corruption during *prior* administrations in relation to the purpose of ending graft and corruption. To limit the investigation to public officers of the previous administration is violative of the equal protection clause.

BERSAMIN, *J., separate opinion:*

1.REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; *LOCUS STANDI*; INCUMBENT MEMBERS OF THE HOUSE OF REPRESENTATIVES HAVE THE REQUISITE LEGAL STANDING TO CHALLENGE E.O. NO. 1 AS AN INTRUSION OF THE EXECUTIVE INTO THE DOMAIN OF THE LEGISLATURE.— In particular reference to the petitioners in G.R. No. 193036, I think that their being *incumbent* Members of the House of Representatives gave them the requisite legal standing to challenge E. O. No. 1 as an impermissible intrusion of the Executive into the domain of the Legislature. Indeed, to the extent that the powers of Congress are impaired, so is the power of *each* Member, whose office confers a right to participate in the exercise of the powers of that institution; consequently, an act of the Executive that injures the institution of Congress causes a derivative but nonetheless substantial injury that a Member of Congress can assail. Moreover, any intrusion of one Department in the domain of another Department diminishes the enduring idea underlying the incorporation in the Fundamental Law of the time-honored republican concept of separation of powers.

2. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICE; POWER TO CREATE A PUBLIC OFFICE IS

ESSENTIALLY LEGISLATIVE.— A public office may be created only through any of the following modes, namely: (*a*) by the Constitution; or (*b*) by statute enacted by Congress; or (*c*) by authority of law (through a valid delegation of power). The power to create a public office is essentially legislative, and, therefore, it belongs to Congress. It is not shared by Congress with the President, until and unless Congress enacts legislation that delegates a part of the power to the President, or any other officer or agency.

3. ID.; ID.; ID.; ID.; PRESIDENT'S CREATION OF THE TRUTH COMMISSION, INVALID; IT IS AN ENTIRELY NEW OFFICE AND NOT THE RESULT OF A REORGANIZATION IN THE OFFICE OF THE PRESIDENT; CASE AT BAR.— The Solicitor General contends that the legal basis for the President's creation of the Truth Commission through E. O. No. 1 is Section 31, Chapter 10, Book III, of the *Administrative Code of* 1987. x x x Nowhere in Section 31, Chapter 10, Book III, of the *Administrative Code of* 1987 refers to the creation of a public office by the President. On the contrary, only a little effort is needed to know from reading the text of the provision that what has been granted is limited to an authority for reorganization through any of the modes expressly mentioned in the provision. The Truth Commission has not existed before E. O. No. 1 gave it life on July 30, 2010. Without a doubt, it is a new office, something we come to know from the plain words of Section 1 of E. O. No. 1 itself x x x: If the Truth Commission is an entirely new office, then it is not the result of any reorganization undertaken pursuant to Section 31, Chapter 10, Book III, of the *Administrative Code of* 1987. Thus, the contention of the Solicitor General is absolutely unwarranted.

4. ID.; ID.; ID.; ID.; ID.; NOT IN PURSUANCE OF THE PRESIDENT'S DUTY TO ENSURE THAT THE LAWS ARE FAITHFULLY EXECUTED; CASE AT BAR.— Neither may the creation of the Truth Commission be made to rest for its validity on the fact that the Constitution, through its Section 17, Article VII, invests the President with the duty to ensure that the laws are faithfully executed. In my view, the duty of faithful execution of the laws necessarily presumes the *prior existence* of a law or rule to execute on the part of the President. But,

here, there is no law or rule that the President has based his issuance of E. O. No. 1.

5. ID.; ID.; ID.; ID.; ID.; NOT TRACEABLE TO THE PRESIDENT'S POWER OF CONTROL OVER THE EXECUTIVE DEPARTMENT, CASE AT BAR.— I cannot also bring myself to accept the notion that the creation of the Truth Commission is traceable to the President's power of control over the Executive Department. It is already settled that the President's power of control can only mean "the power of an officer to alter, modify, or set aside what a subordinate officer had done in the performance of his duties, and to substitute the judgment of the former for that of the latter." As such, the creation by the President of a public office like the Truth Commission, without either a provision of the Constitution or a proper law enacted by Congress authorizing such creation, is not an act that the power of control includes.

6. ID.; CONSTITUTIONAL LAW; OFFICE OF THE OMBUDSMAN; TRUTH COMMISSION REPLICATES AND USURPS THE DUTIES AND FUNCTIONS OF THE OFFICE OF THE OMBUDSMAN.— I find that the Truth Commission replicates and usurps the duties and functions of the Office of the Ombudsman. Hence, the Truth Commission is superfluous and may erode the public trust and confidence in the Office of the Ombudsman. The Office of the Ombudsman is a constitutionally-created quasi-judicial body established to investigate and prosecute illegal acts and omissions of those who serve in the Government. Section 5, Article XI of the 1987 Constitution enumerates the powers, functions, and duties of the Office of the Ombudsman x x x. The Framers of the Constitution, particularly those of them who composed the Committee on Accountability of Public Officers, intended the Office of the Ombudsman to be strong and effective, in order to enable the Office of the Ombudsman to carry out its mandate as the Protector of the People against the inept, abusive, and corrupt in the Government. x x x A comparison between the objectives of the Office of the Ombudsman and the Truth Commission quickly reveals that the Truth Commission is superfluous, because it *replicates* or *imitates* the work of the Office of the Ombudsman. The result is that the Truth Commission can even usurp the functions, duties, and responsibilities of the Office of the Ombudsman. That

usurpation is not a desirable result, considering that the public faith and trust in the Office of the Ombudsman, as a constitutionally-created office imbued with specific powers and duties to investigate and prosecute graft and corruption, may be eroded.

PEREZ, *J., separate concurring opinion:*

1. POLITICAL LAW; CONSTITUTION; EXECUTIVE DEPARTMENT; EXECUTIVE ORDER NO. 1 (CREATION OF THE PHILIPPINE TRUTH COMMISSION); THE PRESIDENT CREATED AN OMBUDSMAN-LIKE BODY WHILE THERE STANDS ESTABLISHED AN OMBUDSMAN, CONSTITUTIONALLY CREATED INDEPENDENT FROM PRESIDENTIAL PREROGATIVE.— Verily, the Philippine Truth Commission is a defiance of the constitutional wisdom that established the politically independent Ombudsman for one of its reasons for being is the very campaign battlecry of the President "*kung walang corrupt, walang mahirap.*" Not that there is anything wrong with the political slogan. What is wrong is the pursuit of the pledge outside the limits of the Constitution. What is wrong is the creation by the President himself of an Ombudsman-like body while there stands established an Ombudsman, constitutionally created especially because of unsuccessful presidential antecedents, and thus made independent from presidential prerogative. A simple comparison will show that likeness of the Philippine Truth Commission with the Ombudsman. No such likeness is permitted by the Constitution. It can easily be seen that the powers of the Truth Commission to: 1) identify and determine the reported cases of graft and corruption which it will investigate; and 2) collect, receive, review and evaluate evidence related to or regarding the cases of large scale corruption which it has chosen to investigate, are the same as the power of the Ombudsman to investigate any illegal, unjust, improper, or inefficient act or omission of any public official, employee, office or agency. The authority of the Truth Commission to require any agency, official or employee of the Executive Branch to produce documents, books, records and other papers mirrors the authority of the Ombudsman to direct concerned government officials to furnish it with

copies of documents relating to contracts or transactions entered into by the latter's office involving the disbursement or use of public funds or properties. Likewise, the right to obtain information and documents from the Senate, the House of Representatives and the courts, granted by Executive Order No. 1 to the Truth Commission, is analogous to the license of the Ombudsman to request any government agency for assistance and information and to examine pertinent records and documents. And, the powers of the Truth Commission to invite or subpoena witnesses, take their testimonies, administer oaths and impose administrative disciplinary action for refusal to obey subpoena, take oath or give testimony are parallel to the powers to administer oaths, issue subpoena, take testimony and punish for contempt or subject to administrative disciplinary action any officer or employee who delays or refuses to comply with a referral or directive granted by Republic Act (RA) 6770 to the Ombudsman.

2. ID.; ID.; ID.; ID.; ID.; IF EXECUTIVE ORDER NO. 1 IS ALLOWED, THERE WILL BE A VIOLATION OF SECTION 7 OF ARTICLE XI, THE ESSENCE OF WHICH IS THAT THE FUNCTION AND POWERS (ENUMERATED IN SECTION 13 OF ARTICLE XI) CONFERRED ON THE OMBUDSMAN CREATED UNDER THE 1987 CONSTITUTION CANNOT BE REMOVED OR TRANSFERRED BY LAW.— If Executive Order No. 1 is allowed, there will be a violation of Section 7 of Article XI, the essence of which is that the function and powers (enumerated in Section 13 of Article XI) conferred on the Ombudsman created under the 1987 Constitution cannot be removed or transferred by law. Section 7 states: Section 7. The existing Tanodbayan shall hereafter be known as the Office of the Special Prosecutor. It shall continue to function and exercise its powers as now or hereafter may be provided by law, except those conferred on the Office of the Ombudsman created under this Constitution. There is a self-evident reason for the shield against legislation provided by Section 7 in protection of the functions conferred on the Office of the Ombudsman in Section 13. The Ombudsman is a constitutional office; its enumerated functions are constitutional powers. So zealously guarded are the constitutional functions of the Ombudsman that the prohibited assignment of the conferred powers was mentioned in Section 7

in relation to the authority of the Tanodbayan which, while renamed as Office of the Special Prosecutor, remained constitutionally recognized and allowed to "continue to function and exercise its powers as now or hereafter may be provided by law."

NACHURA, *J., concurring and dissenting opinion:*

1. POLITICAL LAW; CONSTITUTION; EQUAL PROTECTION; TESTS FOR VALID CLASSIFICATION; WHEN THE COURT RESOLVES AN EQUAL PROTECTION CHALLENGE AGAINST A LEGISLATIVE OR EXECUTIVE ACT, IT DOES NOT INQUIRE WHETHER THE CHALLENGED ACT IS WISE OR DESIRABLE, BUT WHETHER THE LINE CHOSEN BY THE LEGISLATURE OR THE EXECUTIVE IS WITHIN CONSTITUTIONAL LIMITATIONS. — It is noteworthy that, in a host of cases, this Court has recognized the applicability of the foregoing tests. Among them are *City of Manila v. Laguio, Jr.*, *Central Bank Employees Association v. Bangko Sentral ng Pilipinas*, and *British American Tobacco v. Camacho, et al.*, in all of which the Court applied the minimum level of scrutiny, or the *rational basis* test. It is important to remember that when this Court resolves an equal protection challenge against a legislative or executive act, "[w]e do not inquire whether the [challenged act] is wise or desirable x x x. Misguided laws may nevertheless be constitutional. Our task is merely to determine whether there is 'some rationality in the nature of the class singled out.'" Laws classify in order to achieve objectives, but the classification may not perfectly achieve the objective. Thus, in *Michael M. v. Supreme Court of Sonoma County*, the U.S. Supreme Court said that the relevant inquiry is not whether the statute is drawn as precisely as it might have been, but whether the line chosen [by the legislature] is within constitutional limitations. The equal protection clause does not require the legislature to enact a statute so broad that it may well be incapable of enforcement.

2. ID.; ID.; ID.; ID.; ID.; EXECUTIVE ORDER NO. 1 (CREATION OF THE PHILIPPINE TRUTH COMMISSION), VALIDITY THEREOF; THE PRESIDENT'S PURSUING A SYSTEM OF PRIORITIES DOES NOT TRANSLATE TO SUSPECT CLASSIFICATION RESULTING IN VIOLATION OF THE

EQUAL PROTECTION CLAUSE; CASE AT BAR. — An executive order is an act of the President providing for rules in implementation or execution of constitutional or statutory powers. From this definition, it can easily be gleaned that E.O. No. 1 is intended to implement a number of constitutional provisions, among others, Article XI, Section 1. In fact, E.O. No. 1 is prefaced with the principle that "public office is a public trust" and "public officers and employees, who are servants of the people, must at all times be accountable to the latter, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives." What likewise comes to mind, albeit not articulated therein, is Article II, Section 27, of the 1987 Constitution, which declares that "[t]he State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption." In addition, the immediately following section provides: "[s]ubject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest." There is also Article XI, Section 1, which sets the standard of conduct of public officers, mandating that "[p]ublic officers and employees must, **at all times**, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency; act with patriotism and justice, and lead modest lives." There is, therefore, no gainsaying that the enforcement of these provisions, *i.e.*, the fight against corruption, is a compelling state interest. Not only does the Constitution oblige the President to ensure that all laws be faithfully executed, but he has also taken an oath to preserve and defend the Constitution. In this regard, the President's current approach to restore public accountability in government service may be said to involve a process, starting with the creation of the Truth Commission. x x x The initial categorization of the issues and reports which are to be the subject of the Truth Commission's investigation is the President's call. Pursuing a system of priorities does not translate to suspect classification resulting in violation of the equal protection guarantee.

CARPIO*, J., dissenting opinion:*

1.POLITICAL LAW; LEGISLATIVE DEPARTMENT; CREATION OF A PUBLIC OFFICE; WHILE THE POWER

TO CREATE A PUBLIC OFFICE IS LEGISLATIVE, THE LEGISLATURE MAY DELEGATE TO THE PRESIDENT THE POWER TO CREATE A PUBLIC OFFICE WITHIN THE OFFICE OF THE PRESIDENT PROPER.— The power to create a public office is undeniably a legislative power. There are two ways by which a public office is created: (1) by law, or (2) by delegation of law, as found in the President's authority to reorganize his Office. The President as the Executive does not inherently possess the power to reorganize the Executive branch. However, the Legislature has delegated to the President the power to create public offices within the Office of the President Proper, as provided in Section 31(1), Chapter 10, Title III, Book III of EO 292.

2. ID.; ADMINISTRATIVE LAW; EXECUTIVE ORDER NO. 292 (THE ADMINISTRATIVE CODE OF 1987); OFFICE OF THE PRESIDENT; THE CONTINUING AUTHORITY OF THE PRESIDENT TO REORGANIZE HIS OFFICE NECESSARILY INCLUDES THE POWER TO CREATE OFFICES WITHIN THE OFFICE OF THE PRESIDENT PROPER.— On 30 July 2010, President Aquino issued EO 1 pursuant to Section 31, Chapter 10, Title III, Book III of Executive Order no. 292 (EO 292). x x x The law expressly grants the President the **"continuing authority to *reorganize* the administrative structure of the Office of the President,"** which necessarily includes the power to create offices within the Office of the President Proper. The power of the President to reorganize the Office of the President Proper cannot be disputed as this power is expressly granted to the President by law. Pursuant to this power to reorganize, all Presidents under the 1987 Constitution have created, abolished or merged offices or units within the Office of the President Proper, EO 1 being the most recent instance.

3. ID.; ID.; ID.; ID.; ID.; THUS, THE PRESIDENT CAN CREATE THE TRUTH COMMISSION AS A PUBLIC OFFICE IN HIS OFFICE PURSUANT TO HIS POWER TO REORGANIZE THE OFFICE OF THE PRESIDENT PROPER.— Thus, the President can create the Truth Commission as a public office in his Office pursuant to his power to reorganize the Office of the President Proper. In such a case, the President is exercising his delegated power to create a public office within the Office of the President

Proper. There is no dispute that the President possesses this delegated power.

4. ID.; EXECUTIVE DEPARTMENT; THE PRESIDENT IS MANDATED NOT ONLY TO EXECUTE THE LAW, BUT ALSO TO EXECUTE *FAITHFULLY* THE LAW.— Section 1, Article VI of the 1987 Constitution states that **"[t]he executive power is vested in the President of the Philippines."** Section 17, Article VII of the 1987 Constitution states that "[t]he President shall have control of all the executive departments, bureaus and offices. **He shall ensure that the laws be faithfully executed.**" x x x Executive power is vested **exclusively** in the President. Neither the Judiciary nor the Legislature can execute the law. As ***the*** Executive, the President is mandated not only to execute the law, but also to execute ***faithfully*** the law. To execute f***aithfully*** the law, the President must first know the facts that justify or require the execution of the law. To know the facts, the President may have to conduct fact-finding investigations. **Otherwise, without knowing the facts, the President may be blindly or negligently, and not faithfully and intelligently, executing the law.** Due to time and physical constraints, the President cannot obviously conduct by himself the fact-finding investigations. The President will have to delegate the fact-finding function to one or more subordinates. Thus, the President may appoint a single fact-finding investigator, or a collegial body or committee.

5. ID.; ID.; ID.; THE POWER TO CONDUCT FACT-FINDING INVESTIGATIONS IS INHERENT IN THE PRESIDENT'S POWER TO EXECUTE FAITHFULLY THE LAW.— The power to find facts, or to conduct fact-finding investigations, is **necessary and proper**, and thus ***inherent*** in the President's power to execute faithfully the law. Indeed, the power to find facts is inherent not only in Executive power, but also in Legislative as well as Judicial power. The Legislative cannot sensibly enact a law without knowing the factual milieu upon which the law is to operate. Likewise, the courts cannot render justice without knowing the facts of the case if the issue is not purely legal. x x x. Being an inherent power, there is no need to confer explicitly on the President, in the Constitution or in the statutes, the power to find facts.

6. ID.; ID.; ID.; ID.; THE PRESIDENT CAN CREATE THE TRUTH COMMISSION AS AN *AD HOC* BODY TO CONDUCT A

FACT-FINDING INVESTIGATION.—The President can also create the Truth Commission as an *ad hoc* body to conduct a fact-finding investigation pursuant to the President's inherent power to find facts as basis to execute faithfully the law. The creation of such *ad hoc* fact-finding body is indisputably **necessary and proper** for the President to execute faithfully the law. In such a case, members of the Truth Commission may be appointed as Special Assistants or Advisers of the President, and then assigned to conduct a fact-finding investigation. The President can appoint as many Special Assistants or Advisers as he may need. There is no public office created and members of the Truth Commission are incumbents already holding public office in government. These incumbents are given an assignment by the President to be members of the Truth Commission. Thus, the Truth Commission is merely an *ad hoc* body assigned to conduct a fact-finding investigation.

7. ID.; ID.; ID.; ID.; ID.; THE CREATION OF SUCH AN *AD HOC* INVESTIGATING BODY DOES NOT RESULT IN THE CREATION OF A PUBLIC OFFICE.— The creation of *ad hoc* fact-finding bodies is a ***routine occurrence*** in the Executive and even in the Judicial branches of government. Whenever there is a complaint against a government official or employee, the Department Secretary, head of agency or head of a local government unit usually creates a fact-finding body whose members are incumbent officials in the same department, agency or local government unit. This is also true in the Judiciary, where this Court routinely appoints a fact-finding investigator, drawn from incumbent Judges or Justices (or even retired Judges or Justices who are appointed consultants in the Office of the Court Administrator), to investigate complaints against incumbent officials or employees in the Judiciary. The creation of such *ad hoc* investigating bodies, as well as the appointment of *ad hoc* investigators, does not result in the creation of a public office. In creating *ad hoc* investigatory bodies or appointing *ad hoc* investigators, executive and judicial officials do not create public offices but merely exercise a power inherent in their primary constitutional or statutory functions, which may be to execute the law, to exercise disciplinary authority, or both. These fact-finding bodies and investigators are not permanent bodies or functionaries, unlike public offices or their occupants. There is no separate compensation, other

than *per diems* or allowances, for those designated as members of *ad hoc* investigating bodies or as *ad hoc* investigators.

8. ID.; ID.; ID.; ID.; ID.; THERE IS NO USURPATION OF CONGRESS' POWER TO APPROPRIATE FUNDS.— Petitioners Lagman, *et al*. argue that EO 1 usurps the exclusive power of Congress to appropriate funds because it gives the President the power to appropriate funds for the operations of the Truth Commission. Petitioners Lagman, *et al.* add that no particular source of funding is identified and that the amount of funds to be used is not specified. Congress is exclusively vested with the "power of the purse," recognized in the constitutional provision that "no money shall be paid out of the Treasury except in pursuance of an appropriation made by law." The specific purpose of an appropriation law is to authorize the release of unappropriated public funds from the National Treasury. Section 11 of EO 1 merely states that "the Office of the President shall provide the necessary funds for the Commission to ensure that it can exercise its powers, execute its functions, and perform its duties and responsibilities as effectively, efficiently, and expeditiously as possible." Section 11 does not direct the National Treasurer to release unappropriated funds in the National Treasury to finance the operations of the Truth Commission. x x x Under EO 1, the funds to be spent for the operations of the Truth Commission have already been appropriated by Congress to the Office of the President under the current General Appropriations Act. The budget for the Office of the President under the annual General Appropriations Act always contains a Contingent Funds that can fund the operations of *ad hoc* investigating bodies like the Truth Commission. In this case, there is no appropriation but merely a disbursement by the President of funds that Congress had already appropriated for the Office of the President.

9. ID.; ID.; ID.; ID.; ID.; THE TRUTH COMMISSION IS NOT A QUASI- JUDICIAL BODY.—There is no language in EO 1 granting the Truth Commission quasi-judicial power, ***whether expressly or impliedly***, because the Truth Commission is not, and was never intended to be, a quasi-judicial body. x x x The exercise of quasi-judicial functions involves the determination, with respect to the matter in controversy, of what the law is, what the legal rights and obligations of the contending parties

are, and based thereon and the facts obtaining, **the adjudication of the respective rights and obligations of the parties.** The tribunal, board or officer exercising quasi-judicial functions must be clothed with the power to pass judgment on the controversy. x x x Under EO 1, the Truth Commission primarily investigates reports of graft and corruption and recommends the appropriate actions to be taken. Thus, Section 2 of EO 1 states that the Truth Commission is "***primarily tasked to conduct a thorough fact-finding investigation*** **of reported cases of graft and corruption and thereafter** ***submit its findings and recommendations to the President, Congress and the Ombudsman***." The President, Congress and the Ombudsman are bound by the findings and recommendations of the Truth Commission. Neither are the parties subject of the fact-finding investigation bound by the findings and recommendations of the Truth Commission. Clearly, the function of the Truth Commission is merely **investigative** and **recommendatory** in nature. The Truth Commission has no power to adjudicate the rights and obligations of the persons who come before it. **Nothing whatsoever in EO 1 gives the Truth Commission quasi-judicial power, expressly or impliedly.**

10. ID.; ID.; ID.; ID.; ID.; THERE IS NO USURPATION OF THE POWERS OF THE OMBUDSMAN.— The Ombudsman has "**primary jurisdiction over cases *cognizable* by the Sandiganbayan**." The cases cognizable by the Sandiganbayan are criminal cases as well as quasi-criminal cases like the forfeiture of unexplained wealth. "[I]n the exercise of this primary jurisdiction" over cases cognizable by the Sandiganbayan, the Ombudsman "may take over x x x the investigation of such cases" from any investigatory agency of the Government. **The cases covered by the "*primary jurisdiction*" of the Ombudsman are criminal or quasi-criminal cases but not administrative cases.** Administrative cases, such as administrative disciplinary cases, are not cognizable by the Sandiganbayan. With more reason, purely fact-finding investigations conducted by the Executive branch are not cognizable by the Sandiganbayan. Purely fact-finding investigations to improve administrative procedures and efficiency, to institute administrative measures to prevent corruption, to provide the President with policy options, to

recommend to Congress remedial legislation, and even to determine whether there is basis to file a formal administrative charge against a government official or employee, do not fall under the "primary jurisdiction" of the Ombudsman. **These fact-finding investigations do not involve criminal or quasi-criminal cases cognizable by the Sandiganbayan.**

11. ID.; ID.; ID.; ID.; ID.; THE PUBLIC WILL NOT BE DECEIVED THAT FINDINGS OF THE TRUTH COMMISSION ARE FINAL.— The fear that the public will automatically perceive the findings of the Truth Commission as the "truth," and any subsequent contrary findings by the Ombudsman or Sandiganbayan as the "untruth," is misplaced. *First*, EO 1 is unequivocally clear that the findings of the Truth Commission are neither final nor binding on the Ombudsman, more so on the Sandiganbayan which is not even mentioned in EO 1. No one reading EO 1 Can possibly be deceived or misled that the Ombudsman or the Sandiganbayan are bound by the findings of the Truth Commission. *Second*, even if the Truth Commission is renamed the "Fact-Finding Commission," the same argument can also be raised— that the public may automatically perceive the findings of the Fact-Findings Commission as the unquestionable "facts," and any subsequent contrary findings by the Ombudsman or Sandiganbayan as "non-factual." This argument is bereft of merit because the public can easily read and understand what EO 1 expressly says— that the findings of the Truth Commission are not final or binding but merely recommendatory.

CARPIO MORALES, *J., dissenting opinion:*

1. POLITICAL LAW; CONSTITUTION; EQUAL PROTECTION OF THE LAWS; TEST OF REASONABLENESS; CASE AT BAR.— The *ponencia* holds that the previous administration has been denied equal protection of the laws. To it, "[t]o restrict the scope of the commission's investigation to said particular administration constitutes arbitrariness which the equal protection clause cannot sanction." I find nothing arbitrary or unreasonable in the Truth Commission's defined scope of investigation. In issues involving the equal protection clause, the test developed by jurisprudence is that of **reasonableness**, which has four requisites: (1) The classification rests on

substantial distinctions; (2) It is germane to the purposes of the law; (3) It is not limited to existing conditions only; and (4) It applies equally to all members of the same class.

2. ID.; ID.; ID.; ID.; CREATION OF THE TRUTH COMMISSION UNDER EXECUTIVE ORDER (EO) NO. 1, NOT VIOLATIVE THEREOF; CLASSIFICATION RESTS ON SUBSTANTIAL DISTINCTION; CASE AT BAR.— Reasonableness should consider the nature of the truth commission which, as found by the *ponencia*, emanates from the power of the President to conduct investigations to aid him in ensuring the faithful execution of laws. The *ponencia* explains that the Executive Department is given much leeway in ensuring that our laws are faithfully executed. x x x **This Court could not, in any way, determine or dictate what information the President would be needing in fulfilling the duty to ensure the faithful execution of laws on public accountability.** This sweeping directive of the *ponencia* to include all past administrations in the probe tramples upon the prerogative of a co-equal branch of government. The group or class, from which to elicit the needed information, rests on substantial distinction that sets the class apart. x x x Fairly recent events like the exigencies of transition and the reported large-scale corruption explain the determined need to focus on no other period but the tenure of the previous administration. The proximity and magnitude of particular contemporary events like the Oakwood mutiny and Maguindanao massacre similarly justified the defined scope of the Feliciano Commission and the Zenarosa Commission, respectively. As applied to the two commissions whose objective the *ponencia* itself recognizes, the same test of reasonableness rejects the absurd proposition to widen their respective scopes to include *all* incidents of rebellion/mutiny and election-related violence since the First Republic. Certainly, it is far removed not just from the present time but also from logic and experience. x x x The Executive Department's determination of the futility or redundancy of investigating other administrations should be accorded respect. Respondents having manifested that pertinent and credible data are already in their hands or in the archives, petitioners' idea of an all-encompassing *de novo* inquiry becomes tenuous as it goes beyond what the Executive Department needs. The exclusion of other past administrations from the scope of

investigation by the Truth Commission is justified by the substantial distinction that complete and definitive reports covering their respective periods have already been rendered. The same is not true with the immediate past administration. There is thus no undue favor or unwarranted partiality. To include everybody all over again is to insist on a useless act.

3. ID.; ID.; ID.; ID.; ID.; ID.; THE DISTINCTION IS NOT DISCRIMINATORY; CASE AT BAR.— Far from being discriminatory, E.O No. 1 permits the probing of current administration officials who may have had a hand in the reported graft and corruption committed during the previous administration, regardless of party affiliation. The classification notably rests not on personalities but on period, as shown by the repeated use of the phrase "during the previous administration." The *ponencia* treats adventures in "partisan hostility" as a form of undue discrimination. Without defining what it is, the *ponencia* gives life to a political creature and transforms it into a legal animal. By giving legal significance to a mere say-so of "partisan hostility," it becomes unimaginable how the Court will refuse to apply this novel doctrine in the countless concerns of the inherently political branches of government under an invocation of equal protection. And to think, the present matter only involves the gathering of information. To knowingly classify *per se* is not synonymous to intentional discrimination.

4. ID.; ID.; ID.; ID.; ID.; ID.; THE CLASSIFICATION IS GERMANE TO THE PURPOSE OF THE LAW; CASE AT BAR.— I entertain no doubt that respondents consciously and deliberately decided to focus on the corrupt activities reportedly committed during the previous administration. For respondents to admit that the selection was inadvertent is worse. The *ponencia*, however, is quick to ascribe intentional discrimination from the mere fact that the classification was intentional. Good faith is presumed. I find it incomprehensible how the *ponencia* overturns that presumption. Citing an array of foreign jurisprudence, the *ponencia*, in fact, recognizes that mere under-inclusiveness or incompleteness is not fatal to the validity of a law under the equal protection clause. x x x Most enlightening as to how the classification is germane to the purpose of the law is knowing first what is the purpose of the law. According to the *ponencia*, the objective of E.O.

No. 1 is the "stamping out [of] acts of graft and corruption." I differ. The purpose of E.O. No. 1 is the gathering of needed information to aid the President in the implementation of public accountability laws. Briefly stated, E.O. No. 1 aims to provide data for the President. x x x The long-term goal of the present administration must not be confused with what E.O. No. 1 intends to achieve within its short life. The opening clauses and provisions of E.O No. 1 are replete with phrases like "an urgent call for the determination of the truth," "dedicated solely to investigating and finding out the truth," and "primarily seek and find the truth." The *purpose of E.O. No. 1* is to produce a report which, insofar as the Truth Commission is concerned, is the end in itself. The *purpose of the report* is another matter which is already outside the control of E.O. No. 1. Once the report containing the needed information is completed, the Truth Commission is dissolved *functus officio*. At that point, the endeavor of data-gathering is accomplished, and E.O No. 1 has served its purpose. It cannot be said, however, that it already eradicated graft and corruption. The report would still be passed upon by government agencies. Insofar as the Executive Department is concerned, the report assimilates into a broader database that advises and guides the President in law enforcement. To state that the purpose of E.O. No. 1 is to stamp out acts of graft and corruption leads to the fallacious and artificial conclusion that respondents are stamping out corrupt acts of the previous administration only, as if E.O. No. 1 represents the entire anti-corruption efforts of the Executive Department. To state that the purpose of E.O. No. 1 is to eradicate graft and corruption begs the question. What is there to eradicate in the first place, if claims of graft and corruption are yet to be verified by the Truth Commission? Precisely, by issuing E.O. No. 1, respondents saw the need to verify raw data before initiating the law enforcement mechanism, if warranted.

5. ID.; ID.; ID.; ID.; ID.; ID.; THE CLASSIFICATION IS NOT LIMITED TO EXISTING CONDITIONS ONLY; CASE AT BAR.— The Truth Commission is an *ad hoc* body formed under the Office of the President. The nature of an *ad hoc* body is that it is limited in scope. *Ad hoc* means for the particular end or case at hand without consideration of wider application. An *ad hoc* body is inherently temporary. E.O. No. 1 provides that the Truth Commission "shall accomplish its mission on

or before December 31, 2012." That the classification should not be limited to existing conditions only, as applied in the present case, does not mean the inclusion of future administrations. Laws that are limited in duration (*e.g.*, general appropriations act) do not circumvent the guarantee of equal protection by not embracing all that may, in the years to come, be in similar conditions even beyond the effectivity of the law. The requirement not to limit the classification to existing conditions goes into the operational details of the law. The law cannot, in fine print, enumerate extant items that exclusively compose the classification, thereby excluding soon-to-exist ones that may also fall under the classification. In the present case, the circumstance of available reports of large-scale anomalies that fall under the classification (*i.e.*, committed during the previous administration) makes one an "existing condition." Those not yet reported or unearthed but likewise fall under the same class must not be excluded from the application of the law. There is no such exclusionary clause in E.O. No. 1.

6. ID.; ID.; ID.; ID.; ID.; ID.; THE CLASSIFICATION APPLIES EQUALLY TO ALL MEMBERS OF THE SAME CLASS; CASE AT BAR.— Petitioners' only insistent contention, as sustained by the *ponencia*, is that all prior administrations belong to the same class, citing that equal protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed. Petitioners do not espouse the view that no one should be investigated. What they advocate is that all administrations should be investigated or, more accurately, all reports of large-scale graft and corruption during the tenure of past administrations should be subjected to investigation. Discrimination presupposes prejudice. I find none. x x x Petitioners do not seek the lifting of *their own* obligations or the granting of *their own* rights that E.O. No. 1 imposes or disallows. As earlier expounded, petitioner-legislators cannot plausibly invoke the equal protection claims of other persons, while petitioner Biraogo did not invoke it at all.

ABAD*, J., separate dissenting opinion:*

POLITICAL LAW; CONSTITUTIONAL LAW; EQUAL PROTECTION CLAUSE; TRUTH COMMISSION;

ABSOLUTE EQUALITY IN TREATING MATTERS NOT REQUIRED; LIMITING THE TRUTH COMMISSION'S INVESTIGATION TO THE 9 YEARS OF THE PREVIOUS ADMINISTRATION WITHOUT INCLUDING THE 66 YEARS OF THE 12 OTHER ADMINISTRATIONS MAKES FOR A SUBSTANTIAL DIFFERENCE THAT IS RELEVANT TO THE PURPOSE OF EXECUTIVE ORDER 1.— Here, the issue I address is whether or not President P-Noy's decision to focus the Truth Commission's investigation solely on the reported corruption during the previous administration, implicitly excluding the corruption during the administrations before it, violates the equal protection clause. Since absolute equality in treating matters is not required, the ultimate issue in this case is whether or not the President has reasonable grounds for making a distinction between corruptions committed in the recent past and those committed in the remote past. As a rule, his grounds for making a distinction would be deemed reasonable if they are germane or relevant to the purpose for which he created the Truth Commission. x x x The majority holds that picking on the "previous administration" and not the others before it makes the Commission's investigation an "adventure in partisan hostility." To be fair, said the majority, the search for truth must include corrupt acts not only during the previous administration but also during the administrations before it where the "same magnitude of controversies and anomalies" has been reported. x x x It should be remembered that the right of the State to recover properties unlawfully acquired by public officials does not prescribe. So, if the majority's advice were to be literally adopted, the Truth Commission's investigation to be fair to all should go back 75 years to include the administrations of former Presidents Arroyo, Estrada, Ramos, Aquino, Marcos, Macapagal, Garcia, Magsaysay, Quirino, Roxas, Osmeña, Laurel, and Quezon. As it happens, President P-Noy limited the Truth Commission's investigation to the 9 years of the previous administration. He did not include the 66 years of the 12 other administrations before it. The question, as already stated, is whether the distinction between the recent past and the remote past makes for a substantial difference that is relevant to the purpose of Executive Order 1. That the distinction makes for a substantial difference is the first point in this dissent. **1. The Right to Equal Protection**

Feasibility of success. Time erodes the evidence of the past. The likelihood of finding evidence needed for conviction diminishes with the march of time. Witnesses, like everyone else, have short memories. And they become scarce, working overseas, migrating, changing addresses, or just passing away. x x x Limiting the Truth Commission's investigation to the 9 years of the previous administration gives it the best chance of yielding the required proof needed for successful action against the offenders. x x x **Neutralization of Presidential bias.** The Court can take judicial notice of the fact that President P-noy openly attacked the previous administration for its alleged corruption in the course of his election campaign. In a sense, he has developed a bias against it. Consequently, his creation of the Truth Commission, consisting of a former Chief Justice, two former Associate Justices of the Supreme Court, and two law professors serves to neutralize such bias and ensure fairness. x x x **Matching task to size.** The Truth Commission is a collegial body of just five members with no budget or permanent staffs of its own. It simply would not have the time and resources for examining hundreds if not thousands of anomalous government contracts that may have been entered into in the past 75 years up to the time of President Quezon. You cannot order five men to pull a train that a thousand men cannot move. **Good housekeeping.** Directing the investigation of reported corrupt acts committed during the previous administration is, as the Solicitor General pointed out, consistent with good housekeeping. x x x It is reasonable for President P-Noy to cause the investigation of the anomalies reportedly committed during the previous administration to which he succeeded. **2. The President's Judgment as against the Court's** x x x The second point is that the Court needs to stand within the limits of its power to review the actions of a co-equal branch, like those of the President, within the sphere of its constitutional authority. Since, as the majority concedes, the creation of the Truth Commission is within the constitutional powers of President P-Noy to undertake, then to him, not to the Court, belongs the discretion to define the limits of the investigation as he deems fit. x x x Only when the President's actions are plainly irrational and arbitrary even to the man on the street can the Court step in from Mount Olympus and stop such actions.

SERENO, *J., dissenting opinion:*

1. POLITICAL LAW; CONSTITUTION; EQUAL PROTECTION; TESTS FOR VALID CLASSIFICATION; EXECUTIVE ORDER NO. 1 (CREATION OF THE PHILIPPINE TRUTH COMMISSION), VALIDITY THEREOF; THE MAJORITY DECISION INDIRECTLY ADMITS THAT THE "REASONABLE TEST" HAS BEEN SATISFIED IN THE SAME BREATH THAT IT REQUIRES THE PUBLIC TO LIVE WITH AN UNREAL WORLD VIEW.— In an earlier portion, I discussed the findings of the majority Decision regarding the mandate of President Aquino from the electorate and the vast expanse of his powers to investigate and ensure the faithful execution of the laws. The majority concedes the reasonableness of the purpose of EO 1, but, as shown in the above excerpts, it contests the manner by which President Aquino proposes to achieve his purpose. The very discussion above, however, demonstrates the self-contradiction and unreality of the majority Decision's worldview. x x x The majority creates an argument for the invalidity of EO 1 by quoting only from general principles of case law and ignoring specific applications of the constitutional tests for valid classification. Instead of drawing from real-world experiences of classification decided in the past by the Court, the Decision relies on general doctrinal statements normally found in cases, but divorces these doctrinal statements from their specific contextual setting and thereby imposes unrealistic standards for presidential action. The law has always been that a class can be validly distinguished from others if there is a reasonable basis for the distinction. The reasonableness of the classification in EO1 was amply demonstrated by the Solicitor General, but the majority simply responds dismissively that the distinctions are superficial, specious and irrelevant, without clearly explaining why they are so. Contrary to the conclusion of the majority, jurisprudence bear out the substantial and reasonable nature of the distinction.

2. ID.; ID.; ID.; ID.; ID.; THE MAJORITY DECISION GRIEVOUSLY OMITTED THE ANALYTICAL PROCESS REQUIRED OF THIS COURT IN EQUAL PROTECTION CLAIMS.— A judicial analysis must not stop at reciting legal doctrines which are its mere beginning points, but, especially

in equal protection claims, it must move forward to examine the facts and the context of the controversy. Had the majority taken pains to examine its own cited cases, it would have discovered that the cases, far from condemning EO 1, would actually support the constitutionality of the latter.

3. ID.; ID.; ID.; ID.; ID.; THE EXECUTIVE IS PRESUMED TO UNDERTAKE CRIMINAL PROSECUTION "IN GOOD FAITH AND NONDISCRIMINATORY FASHION"; MERE FAILURE TO PROSECUTE ALL OFFENDERS NOT A GROUND FOR CLAIM OF A DENIAL OF EQUAL PROTECTION.— In fulfilling its duty to execute the laws and bring violators thereof to justice, the Executive is presumed to undertake criminal prosecution "in good faith and in a nondiscriminatory fashion." The government has broad discretion over decision to initiate criminal prosecutions and whom to prosecute. Indeed, the fact that the general evil will only be partially corrected may serve to justify the limited application of criminal law without violating the equal protection clause. Mere laxity in the enforcement of laws by public officials is not a denial of equal protection. Although such discretion is broad, it is not without limit. In order to constitute denial of equal protection, selective enforcement must be deliberately based on unjustifiable or arbitrary classification; the mere failure to prosecute all offenders is no ground for the claim of a denial of equal protection.

4. ID.; ID.; ID.; ID.; ID.; ID.; SELECTIVE PROSECUTION, WHEN VIOLATIVE OF EQUAL PROTECTION; CASE AT BAR.— To support a claim of selective prosecution, a defendant must establish a violation of equal protection and show that the prosecution (1) had a **discriminatory effect** and (2) was motivated by a **discriminatory purpose**. *First*, he must show that "he has been singled out for prosecution while other similarly situated generally have not been proceeded against for the type of conduct forming the basis of the charge against him." *Second*, he must prove that his selection for prosecution was invidious or in bad faith and was "**based on impermissible consideration such as race, religion, or the desire to prevent the exercise of constitutional rights." x x x** In the instant case, the fact that other administrations are not the subject of the PTC's investigative aim is not a case of selective prosecution that violates equal protection. The Executive is given broad

discretion to initiate criminal prosecution and enjoys clear presumption of regularity and good faith in the performance thereof. For petitioners to evercome that presumption, they must carry the burden of showing that the PTC is a preliminary step to selective prosecution, and that it is laden with a discriminatory effect and a discriminatory purpose. However, petitioner has sorely failed in discharging that burden. The presumption of good faith must be observed, especially when the action taken is pursuant to a constitutionally enshrined state policy such as the taking of positive and effective measures against graft and corruption. For this purpose, the President created the PTC. If a law neither burdens a fundamental right nor targets a suspect class, the Court must uphold the classification, as long as it bears a rational relationship to some legitimate government end.

5. ID.; ID.; EXECUTIVE AND JUDICIAL DEPARTMENTS; COURT'S POWER OF JUDICIAL REVIEW *VIS A VIS* THE PRESIDENT'S EXERCISE OF EXECUTIVE POWER; INVALIDATING EXECUTIVE ORDER NO. 1 (CREATING THE PHILIPPINE TRUTH COMMISSION) IS AN UNCONSTITUTIONAL DENIAL OF THE LEGITIMATE EXERCISE OF EXECUTIVE POWER AND A STINGING REPROACH AGAINST THE PEOPLE'S SOVEREIGN RIGHT.— In the seminal book "*The Least Dangerous Branch: The Supreme Court at the Bar of Politics,"* Alexander M. Bickel expounded on the "counter-majoritarian difficulty" of judicial review exercised by an unelected court to declare null and void an act of the legislature or an elected executive in this wise: The root difficulty is that judicial review is a counter-majoritarian force in our system. x x x when the Supreme Court declares unconstitutional a legislative act or the action of an elected executive, it thwarts the will of representatives of the actual people of the here and now; it exercises control, not in behalf of the prevailing majority, but against it. That, without mystic overtones, is what actually happens. It is an altogether different kettle of fish, and it is the reason the charge can be made that judicial review is undemocratic. Bickel's "counter-majoritarian difficulty" is met by the argument that the Court's duty is to uphold the Constitution, that in determining the "boundaries of the great departments of government" is not to assert superiority over them but merely to assert its

solemn and sacred obligation to determine conflicting claims of authority under the Constitution. If the Court is to avoid illegitimacy in its actions as suggested by Professor Bickel, then it must ensure that its discharge of the duty to prevent abuse of the President's executive power does not translate to striking down as invalid even a legitimate exercise thereof, especially when the exercise is in keeping with the will of the people. Invalidating the PTC is an unconstitutional denial of the legitimate exercise of executive power and a stinging reproach against the people's sovereign right. Sadly, there is a wide fissure between the public's hunger for governance justice through the successful delivery by President Aquino of his promise to get behind the stories on corruption of the former administration, and the Court's confirmation of an alleged violation of former President Arroyo's equal protection right. To emphasize, it is not even former President Arroyo who is officially raising this matter before the Court. Rather than exercise judicial restraint, the majority has pushed the boundaries of judicial activism bordering on what former Chief Justice Puno once described as an imperial judiciary.

APPEARANCES OF COUNSEL

Lagman Lagman and Mones Law Firm for petitioners in G.R. No. 193036.

D E C I S I O N

MENDOZA, *J.*:

When the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them.

— Justice Jose P. Laurel[1]

[1] *Angara v. The Electoral Commission*, 63 Phil. 139, 158 (1936).

The role of the Constitution cannot be overlooked. It is through the Constitution that the fundamental powers of government are established, limited and defined, and by which these powers are distributed among the several departments.[2] The Constitution is the basic and paramount law to which all other laws must conform and to which all persons, including the highest officials of the land, must defer.[3] Constitutional doctrines must remain steadfast no matter what may be the tides of time. It cannot be simply made to sway and accommodate the call of situations and much more tailor itself to the whims and caprices of government and the people who run it.[4]

For consideration before the Court are two consolidated cases[5] both of which essentially assail the validity and constitutionality of Executive Order No. 1, dated July 30, 2010, entitled *"Creating the Philippine Truth Commission of 2010."*

The first case is G.R. No. 192935, a special civil action for prohibition instituted by petitioner Louis Biraogo *(Biraogo)* in his capacity as a citizen and taxpayer. Biraogo assails Executive Order No. 1 for being violative of the legislative power of Congress under Section 1, Article VI of the Constitution[6] as it usurps the constitutional authority of the legislature to create a public office and to appropriate funds therefor.[7]

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[2] Bernas, *The 1987 Constitution of the Republic of the Philippines; A Commentary*, 1996 ed., p. xxxiv, citing Miller, *Lectures on the Constitution of the United States* 64 (1893); 1 Schwartz, *The Powers of Government 1* (1963).

[3] Cruz, *Philippine Political law*, 2002 ed. p. 12.

[4] *Id.*

[5] Resolution dated August 24, 2010 consolidating G.R. No. 192935 with G.R. No. 193036, *rollo*, pp. 87-88.

[6] Section 1. The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum.

[7] Biraogo Petition, p. 5, *rollo*, p. 7.

The second case, G.R. No. 193036, is a special civil action for *certiorari* and prohibition filed by petitioners Edcel C. Lagman, Rodolfo B. Albano Jr., Simeon A. Datumanong, and Orlando B. Fua, Sr. *(petitioners-legislators)* as incumbent members of the House of Representatives.

The genesis of the foregoing cases can be traced to the events prior to the historic May 2010 elections, when then Senator Benigno Simeon Aquino III declared his staunch condemnation of graft and corruption with his slogan, *"Kung walang corrupt, walang mahirap."* The Filipino people, convinced of his sincerity and of his ability to carry out this noble objective, catapulted the good senator to the presidency.

To transform his campaign slogan into reality, President Aquino found a need for a special body to investigate reported cases of graft and corruption allegedly committed during the previous administration.

Thus, at the dawn of his administration, the President on July 30, 2010, signed Executive Order No. 1 establishing the *Philippine Truth Commission of 2010 (Truth Commission).* Pertinent provisions of said executive order read:

EXECUTIVE ORDER NO. 1

CREATING THE PHILIPPINE TRUTH COMMISSION OF 2010

WHEREAS, Article XI, Section 1 of the 1987 Constitution of the Philippines solemnly enshrines the principle that a public office is a public trust and mandates that public officers and employees, who are servants of the people, must at all times be accountable to the latter, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives;

WHEREAS, corruption is among the most despicable acts of defiance of this principle and notorious violation of this mandate;

WHEREAS, corruption is an evil and scourge which seriously affects the political, economic, and social life of a nation; in a very special way it inflicts untold misfortune and misery on the poor, the marginalized and underprivileged sector of society;

WHEREAS, corruption in the Philippines has reached very alarming levels, and undermined the people's trust and confidence in the Government and its institutions;

WHEREAS, there is an urgent call for the determination of the truth regarding certain reports of large scale graft and corruption in the government and to put a closure to them by the filing of the appropriate cases against those involved, if warranted, and to deter others from committing the evil, restore the people's faith and confidence in the Government and in their public servants;

WHEREAS, the President's battlecry during his campaign for the Presidency in the last elections "*kung walang corrupt, walang mahirap*" expresses a solemn pledge that if elected, he would end corruption and the evil it breeds;

WHEREAS, there is a need for a separate body dedicated solely to investigating and finding out the truth concerning the reported cases of graft and corruption during the previous administration, and which will recommend the prosecution of the offenders and secure justice for all;

WHEREAS, Book III, Chapter 10, Section 31 of Executive Order No. 292, otherwise known as the Revised Administrative Code of the Philippines, gives the President the continuing authority to reorganize the Office of the President.

NOW, THEREFORE, I, BENIGNO SIMEON AQUINO III, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

SECTION 1. Creation of a Commission. — There is hereby created the PHILIPPINE TRUTH COMMISSION, hereinafter referred to as the "COMMISSION," which shall primarily seek and find the truth on, and toward this end, investigate reports of graft and corruption of such scale and magnitude that shock and offend the moral and ethical sensibilities of the people, committed by public officers and employees, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration; and thereafter recommend the appropriate action or measure to be taken thereon to ensure that the full measure of justice shall be served without fear or favor.

The Commission shall be composed of a Chairman and four (4) members who will act as an independent collegial body.

SECTION 2. Powers and Functions. — The Commission, which shall have all the powers of an investigative body under Section 37, Chapter 9, Book I of the Administrative Code of 1987, is primarily tasked to conduct a thorough fact-finding investigation of reported cases of graft and corruption referred to in Section 1, involving third level public officers and higher, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration and thereafter submit its finding and recommendations to the President, Congress and the Ombudsman.

In particular, it shall:

a) Identify and determine the reported cases of such graft and corruption which it will investigate;

b) Collect, receive, review and evaluate evidence related to or regarding the cases of large scale corruption which it has chosen to investigate, and to this end require any agency, official or employee of the Executive Branch, including government-owned or controlled corporations, to produce documents, books, records and other papers;

c) Upon proper request or representation, obtain information and documents from the Senate and the House of Representatives records of investigations conducted by committees thereof relating to matters or subjects being investigated by the Commission;

d) Upon proper request and representation, obtain information from the courts, including the Sandiganbayan and the Office of the Court Administrator, information or documents in respect to corruption cases filed with the Sandiganbayan or the regular courts, as the case may be;

e) Invite or subpoena witnesses and take their testimonies and for that purpose, administer oaths or affirmations as the case may be;

f) Recommend, in cases where there is a need to utilize any person as a state witness to ensure that the ends of justice be fully served, that such person who qualifies as a state witness under the Revised Rules of Court of the Philippines be admitted for that purpose;

g) Turn over from time to time, for expeditious prosecution, to the appropriate prosecutorial authorities, by means of a special or *interim* report and recommendation, all evidence on corruption of public officers and employees and their private sector co-principals,

accomplices or accessories, if any, when in the course of its investigation the Commission finds that there is reasonable ground to believe that they are liable for graft and corruption under pertinent applicable laws;

h) Call upon any government investigative or prosecutorial agency such as the Department of Justice or any of the agencies under it, and the Presidential Anti-Graft Commission, for such assistance and cooperation as it may require in the discharge of its functions and duties;

i) Engage or contract the services of resource persons, professionals and other personnel determined by it as necessary to carry out its mandate;

j) Promulgate its rules and regulations or rules of procedure it deems necessary to effectively and efficiently carry out the objectives of this Executive Order and to ensure the orderly conduct of its investigations, proceedings and hearings, including the presentation of evidence;

k) Exercise such other acts incident to or are appropriate and necessary in connection with the objectives and purposes of this Order.

SECTION 3. Staffing Requirements. — x x x.

SECTION 4. Detail of Employees. — x x x.

SECTION 5. Engagement of Experts. — x x x

SECTION 6. Conduct of Proceedings. — x x x.

SECTION 7. Right to Counsel of Witnesses/Resource Persons. — x x x.

SECTION 8. Protection of Witnesses/Resource Persons. — x x x.

SECTION 9. Refusal to Obey Subpoena, Take Oath or Give Testimony. — Any government official or personnel who, without lawful excuse, fails to appear upon subpoena issued by the Commission or who, appearing before the Commission refuses to take oath or affirmation, give testimony or produce documents for inspection, when required, shall be subject to administrative disciplinary action. Any private person who does the same may be dealt with in accordance with law.

SECTION 10. Duty to Extend Assistance to the Commission. — x x x.

SECTION 11. Budget for the Commission. — The Office of the President shall provide the necessary funds for the Commission to ensure that it can exercise its powers, execute its functions, and perform its duties and responsibilities as effectively, efficiently, and expeditiously as possible.

SECTION 12. Office. — x x x.

SECTION 13. Furniture/Equipment. — x x x.

SECTION 14. Term of the Commission. — The Commission shall accomplish its mission on or before December 31, 2012.

SECTION 15. Publication of Final Report. — x x x.

SECTION 16. Transfer of Records and Facilities of the Commission. — x x x.

SECTION 17. Special Provision Concerning Mandate. If and when in the judgment of the President there is a need to expand the mandate of the Commission as defined in Section 1 hereof to include the investigation of cases and instances of graft and corruption during the prior administrations, such mandate may be so extended accordingly by way of a supplemental Executive Order.

SECTION 18. Separability Clause. If any provision of this Order is declared unconstitutional, the same shall not affect the validity and effectivity of the other provisions hereof.

SECTION 19. Effectivity. — This Executive Order shall take effect immediately.

DONE in the City of Manila, Philippines, this 30th day of July 2010.

(SGD.) BENIGNO S. AQUINO III

By the President:

(SGD.) PAQUITO N. OCHOA, JR.
Executive Secretary

Nature of the Truth Commission

As can be gleaned from the above-quoted provisions, the Philippine Truth Commission *(PTC)* is a mere *ad hoc* body formed under the Office of the President with the primary task to investigate reports of graft and corruption committed by third-level public officers and employees, their co-principals, accomplices and accessories during the previous administration, and thereafter to submit its finding and recommendations to the President, Congress and the Ombudsman. Though it has been described as an "independent collegial body," it is essentially an entity within the Office of the President Proper and subject to his control. Doubtless, it constitutes a public office, as an *ad hoc* body is one.[8]

To accomplish its task, the PTC shall have all the powers of an investigative body under Section 37, Chapter 9, Book I of the Administrative Code of 1987. It is not, however, a quasi-judicial body as it cannot adjudicate, arbitrate, resolve, settle, or render awards in disputes between contending parties. All it can do is gather, collect and assess evidence of graft and corruption and make recommendations. It may have subpoena powers but it has no power to cite people in contempt, much less order their arrest. Although it is a fact-finding body, it cannot determine from such facts if probable cause exists as to warrant the filing of an information in our courts of law. Needless to state, it cannot impose criminal, civil or administrative penalties or sanctions.

The PTC is different from the truth commissions in other countries which have been created as official, transitory and non-judicial fact-finding bodies "to establish the facts and context of serious violations of human rights or of international humanitarian law in a country's past."[9] They are usually established

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[8] *Salvador Laurel v. Hon. Desierto,* G.R. No. 145368, April 12, 2002, citing F.R. Mechem, *A Treatise On The Law of Public Offices and Officers.*

[9] International Center for Transitional Justice, <http://www.ictj.org/en/tj/138.html> visited November 20, 2010.

by states emerging from periods of internal unrest, civil strife or authoritarianism to serve as mechanisms for transitional justice.

Truth commissions have been described as bodies that share the following characteristics: (1) they examine only past events; (2) they investigate patterns of abuse committed over a period of time, as opposed to a particular event; (3) they are temporary bodies that finish their work with the submission of a report containing conclusions and recommendations; and (4) they are officially sanctioned, authorized or empowered by the State.[10] "Commission's members are usually empowered to conduct research, support victims, and propose policy recommendations to prevent recurrence of crimes. Through their investigations, the commissions may aim to discover and learn more about past abuses, or formally acknowledge them. They may aim to prepare the way for prosecutions and recommend institutional reforms."[11]

Thus, their main goals range from retribution to reconciliation. The Nuremburg and Tokyo war crime tribunals are examples of a retributory or vindicatory body set up to try and punish those responsible for crimes against humanity. A form of a reconciliatory tribunal is the Truth and Reconciliation Commission of South Africa, the principal function of which was to heal the wounds of past violence and to prevent future conflict by providing a cathartic experience for victims.

The PTC is a far cry from South Africa's model. The latter placed more emphasis on reconciliation than on judicial retribution, while the marching order of the PTC is the identification and punishment of perpetrators. As one writer[12] puts it:

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[10] Freeman, *The Truth Commission and Procedural Fairness*, 2006 Ed., p. 12, citing Hayner, *UnspeakableTruths: Facing the Challenge of Truth Commissions*.

[11] International Center for Transitional Justice, *supra* note 9.

[12] *Armando Doronila, Philippine Daily Inquirer,* August 2, 2010.

<http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20100802-284444/Truth-body-told-Take-no prisoners> visited November 9, 2010.

The order ruled out reconciliation. It translated the Draconian code spelled out by Aquino in his inaugural speech: "To those who talk about reconciliation, if they mean that they would like us to simply forget about the wrongs that they have committed in the past, we have this to say: There can be no reconciliation without justice. When we allow crimes to go unpunished, we give consent to their occurring over and over again."

The Thrusts of the Petitions

Barely a month after the issuance of Executive Order No. 1, the petitioners asked the Court to declare it unconstitutional and to enjoin the PTC from performing its functions. A perusal of the arguments of the petitioners in both cases shows that they are essentially the same. The petitioners-legislators summarized them in the following manner:

(a) E.O. No. 1 violates the separation of powers as it arrogates the power of the Congress to create a public office and appropriate funds for its operation.

(b) The provision of Book III, Chapter 10, Section 31 of the Administrative Code of 1987 cannot legitimize E.O. No. 1 because the delegated authority of the President to structurally reorganize the Office of the President to achieve economy, simplicity and efficiency does not include the power to create an entirely new public office which was hitherto inexistent like the "Truth Commission."

(c) E.O. No. 1 illegally amended the Constitution and pertinent statutes when it vested the "Truth Commission" with quasi-judicial powers duplicating, if not superseding, those of the Office of the Ombudsman created under the 1987 Constitution and the Department of Justice created under the Administrative Code of 1987.

(d) E.O. No. 1 violates the equal protection clause as it selectively targets for investigation and prosecution officials and personnel of the previous administration as if corruption is their peculiar species even as it excludes those of the other administrations, past and present, who may be indictable.

(e) The creation of the "Philippine Truth Commission of 2010" violates the consistent and general international practice of four decades wherein States constitute truth commissions to exclusively investigate human rights violations, which customary practice forms

part of the generally accepted principles of international law which the Philippines is mandated to adhere to pursuant to the Declaration of Principles enshrined in the Constitution.

(f) The creation of the "Truth Commission" is an exercise in futility, an adventure in partisan hostility, a launching pad for trial/conviction by publicity and a mere populist propaganda to mistakenly impress the people that widespread poverty will altogether vanish if corruption is eliminated without even addressing the other major causes of poverty.

(g) The mere fact that previous commissions were not constitutionally challenged is of no moment because neither laches nor estoppel can bar an eventual question on the constitutionality and validity of an executive issuance or even a statute."[13]

In their Consolidated Comment,[14] the respondents, through the Office of the Solicitor General *(OSG)*, essentially questioned the legal standing of petitioners and defended the assailed executive order with the following arguments:

1] E.O. No. 1 does not arrogate the powers of Congress to create a public office because the President's executive power and power of control necessarily include the inherent power to conduct investigations to ensure that laws are faithfully executed and that, in any event, the Constitution, Revised Administrative Code of 1987 (E.O. No. 292), [15] Presidential Decree (P.D.) No. 1416[16] (as amended by P.D. No. 1772), R.A. No. 9970,[17] and settled jurisprudence that authorize the President to create or form such bodies.

2] E.O. No. 1 does not usurp the power of Congress to appropriate funds because there is no appropriation but a mere allocation of funds already appropriated by Congress.

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[13] Lagman Petition, pp. 50-52, *rollo*, pp. 58-60.

[14] *Rollo*, pp. 111-216.

[15] Otherwise known as the Administrative Code of 1987.

[16] Granting Continuing Authority To The President Of The Philippines To Reorganize The National Government.

[17] Otherwise known as the General Appropriations Act of 2010.

3] The Truth Commission does not duplicate or supersede the functions of the Office of the Ombudsman *(Ombudsman)* and the Department of Justice *(DOJ)*, because it is a fact-finding body and not a quasi-judicial body and its functions do not duplicate, supplant or erode the latter's jurisdiction.

4] The Truth Commission does not violate the equal protection clause because it was validly created for laudable purposes.

The OSG then points to the continued existence and validity of other executive orders and presidential issuances creating similar bodies to justify the creation of the PTC such as Presidential Complaint and Action Commission *(PCAC)* by President Ramon B. Magsaysay, Presidential Committee on Administrative Performance Efficiency *(PCAPE)* by President Carlos P. Garcia and Presidential Agency on Reform and Government Operations *(PARGO)* by President Ferdinand E. Marcos.[18]

From the petitions, pleadings, transcripts, and memoranda, the following are the principal issues to be resolved:

1. Whether or not the petitioners have the legal standing to file their respective petitions and question Executive Order No. 1;

2. Whether or not Executive Order No. 1 violates the principle of separation of powers by usurping the powers of Congress to create and to appropriate funds for public offices, agencies and commissions;

3. Whether or not Executive Order No. 1 supplants the powers of the Ombudsman and the DOJ;

4. Whether or not Executive Order No. 1 violates the equal protection clause; and

5. Whether or not petitioners are entitled to injunctive relief.

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[18] OSG Consolidated Comment, p. 33, *rollo*, p. 153, citing *Uy v. Sandiganbayan*, G.R. Nos. 105965-70, March 20, 2001, 354 SCRA 651, 660-661.

Essential requisites for judicial review

Before proceeding to resolve the issue of the constitutionality of Executive Order No. 1, the Court needs to ascertain whether the requisites for a valid exercise of its power of judicial review are present.

Like almost all powers conferred by the Constitution, the power of judicial review is subject to limitations, to wit: (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have the standing to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.[19]

Among all these limitations, only the legal standing of the petitioners has been put at issue.

Legal Standing of the Petitioners

The OSG attacks the legal personality of the petitioners-legislators to file their petition for failure to demonstrate their personal stake in the outcome of the case. It argues that the petitioners have not shown that they have sustained or are in danger of sustaining any personal injury attributable to the creation of the PTC. Not claiming to be the subject of the commission's investigations, petitioners will not sustain injury in its creation or as a result of its proceedings.[20]

The Court disagrees with the OSG in questioning the legal standing of the petitioners-legislators to assail Executive Order No. 1. Evidently, their petition primarily invokes usurpation of

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[19] *Senate of the Philippines v. Ermita*, G.R. No. 169777, April 20, 2006, 488 SCRA 1, 35; and *Francisco v. House of Representatives*, 460 Phil. 830, 842 (2003).

[20] OSG Memorandum, p. 29, *rollo*, p. 348.

the power of the Congress as a body to which they belong as members. This certainly justifies their resolve to take the cudgels for Congress as an institution and present the complaints on the usurpation of their power and rights as members of the legislature before the Court. As held in *Philippine Constitution Association v. Enriquez*,[21]

> To the extent the powers of Congress are impaired, so is the power of each member thereof, since his office confers a right to participate in the exercise of the powers of that institution.
>
> An act of the Executive which injures the institution of Congress causes a derivative but nonetheless substantial injury, which can be questioned by a member of Congress. In such a case, any member of Congress can have a resort to the courts.

Indeed, legislators have a legal standing to see to it that the prerogative, powers and privileges vested by the Constitution in their office remain inviolate. Thus, they are allowed to question the validity of any official action which, to their mind, infringes on their prerogatives as legislators.[22]

With regard to Biraogo, the OSG argues that, as a taxpayer, he has no standing to question the creation of the PTC and the budget for its operations.[23] It emphasizes that the funds to be used for the creation and operation of the commission are to be taken from those funds already appropriated by Congress. Thus, the allocation and disbursement of funds for the commission will not entail congressional action but will simply be an exercise of the President's power over contingent funds.

As correctly pointed out by the OSG, Biraogo has not shown that he sustained, or is in danger of sustaining, any personal and direct injury attributable to the implementation of Executive Order No. 1. Nowhere in his petition is an assertion of a clear right that may justify his clamor for the Court to exercise judicial

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[21] G.R. No. 113105, August 19, 1994, 235 SCRA 506, 520.

[22] *Supra* note 19, citing *Pimentel Jr. v. Executive Secretary*, G.R. No. 158088, July 6, 2005, 462 SCRA 623, 631-632.

[23] OSG Memorandum, p. 30, *rollo*, p. 349.

power and to wield the axe over presidential issuances in defense of the Constitution. The case of *David v. Arroyo*[24] explained the deep-seated rules on *locus standi*. Thus:

Locus standi is defined as "a right of appearance in a court of justice on a given question." In private suits, standing is governed by the "real-parties-in interest" rule as contained in Section 2, Rule 3 of the 1997 Rules of Civil Procedure, as amended. It provides that "**every action must be prosecuted or defended in the name of the real party in interest**." Accordingly, the "real-party-in interest" is "the party who stands to be benefited or injured by the judgment in the suit or the party entitled to the avails of the suit." Succinctly put, the plaintiff's standing is based on his own right to the relief sought.

The difficulty of determining *locus standi* arises in public suits. Here, the plaintiff who asserts a "public right" in assailing an allegedly illegal official action, does so as a representative of the general public. He may be a person who is affected no differently from any other person. He could be suing as a "stranger," or in the category of a "citizen," or 'taxpayer." In either case, he has to adequately show that he is entitled to seek judicial protection. In other words, he has to make out a sufficient interest in the vindication of the public order and the securing of relief as a "citizen" or "taxpayer.

Case law in most jurisdictions now allows both "citizen" and "taxpayer" standing in public actions. The distinction was first laid down in *Beauchamp v. Silk*, where it was held that the plaintiff in a taxpayer's suit is in a different category from the plaintiff in a citizen's suit. In the former, the plaintiff is affected by the expenditure of public funds, while in the latter, he is but the mere instrument of the public concern. As held by the New York Supreme Court in *People ex rel Case v. Collins*: "In matter of mere public right, however…the people are the real parties…It is at least the right, if not the duty, of every citizen to interfere and see that a public offence be properly pursued and punished, and that a public grievance be remedied." With respect to taxpayer's suits, *Terr v. Jordan* held that "the right of a citizen and a taxpayer to maintain an action in courts to restrain the unlawful use of public funds to his injury cannot be denied."

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[24] G.R. No. 171396, May 3, 2006, 489 SCRA 160, 216-218.

However, to prevent just about any person from seeking judicial interference in any official policy or act with which he disagreed with, and thus hinders the activities of governmental agencies engaged in public service, the United State Supreme Court laid down the more stringent "**direct injury**" **test** in *Ex Parte Levitt*, later reaffirmed in *Tileston v. Ullman.* The same Court ruled that for a private individual to invoke the judicial power to determine the validity of an executive or legislative action, **he must show that he has sustained a direct injury as a result of that action, and it is not sufficient that he has a general interest common to all members of the public.**

This Court adopted the **"direct injury" test** in our jurisdiction. In *People v. Vera*, it held that the person who impugns the validity of a statute must have "**a personal and substantial interest in the case such that he has sustained, or will sustain direct injury as a result**." The *Vera* doctrine was upheld in a litany of cases, such as, *Custodio v. President of the Senate*, *Manila Race Horse Trainers' Association v. De la Fuente*, *Pascual v. Secretary of Public Works* and *Anti-Chinese League of the Philippines v. Felix.* [Emphases included. Citations omitted]

Notwithstanding, the Court leans on the doctrine that "the rule on standing is a matter of procedure, hence, can be relaxed for nontraditional plaintiffs like ordinary citizens, taxpayers, and legislators when the public interest so requires, such as when the matter is of ***transcendental importance***, of overreaching significance to society, or of paramount public interest."[25]

Thus, in *Coconut Oil Refiners Association, Inc. v. Torres*,[26] the Court held that in cases of paramount importance where serious constitutional questions are involved, the standing requirements may be relaxed and a suit may be allowed to prosper even where there is no direct injury to the party claiming the right of judicial review. In the first *Emergency Powers Cases*,[27]

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[25] *Social Justice Society (SJS) v. Dangerous Drugs Board and Philippine Drug Enforcement Agency*, G.R. No. 157870, November 3, 2008, 570 SCRA 410, 421; *Tatad v. Secretary of the Department of Energy*, 346 Phil. 321 (1997); *De Guia v. COMELEC*, G.R. No. 104712, May 6, 1992, 208 SCRA 420, 422.

[26] G.R. No. 132527, July 29, 2005, 465 SCRA 47, 62.

[27] 84 Phil. 368, 373 (1949).

ordinary citizens and taxpayers were allowed to question the constitutionality of several executive orders although they had only an indirect and general interest shared in common with the public.

The OSG claims that the determinants of transcendental importance[28] laid down in *CREBA v. ERC and Meralco*[29] are non-existent in this case. The Court, however, finds reason in Biraogo's assertion that the petition covers matters of transcendental importance to justify the exercise of jurisdiction by the Court. There are constitutional issues in the petition which deserve the attention of this Court in view of their seriousness, novelty and weight as precedents. Where the issues are of transcendental and paramount importance not only to the public but also to the Bench and the Bar, they should be resolved for the guidance of all.[30] Undoubtedly, the Filipino people are more than interested to know the status of the President's first effort to bring about a promised change to the country. The Court takes cognizance of the petition not due to overwhelming political undertones that clothe the issue in the eyes of the public, but because the Court stands firm in its oath to perform its constitutional duty to settle legal controversies with overreaching significance to society.

Power of the President to Create the Truth Commission

In his memorandum in G.R. No. 192935, Biraogo asserts that the Truth Commission is a public office and not merely an adjunct body of the Office of the President.[31] Thus, in order

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[28] "(1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and, (3) the lack of any other party with a more direct and specific interest in the questions being raised."

[29] G.R. No. 174697, July 8, 2010.

[30] *Kilosbayan,Inc. v. Guingona, Jr.*, G.R. No. 113375, May 5, 1994, 232 SCRA 110, 139.

[31] Biraogo Memorandum, p. 7, *rollo*, p. 69.

that the President may create a public office he must be empowered by the Constitution, a statute or an authorization vested in him by law. According to petitioner, such power cannot be presumed[32] since there is no provision in the Constitution or any specific law that authorizes the President to create a truth commission.[33] He adds that Section 31 of the Administrative Code of 1987, granting the President the continuing authority to reorganize his office, cannot serve as basis for the creation of a truth commission considering the aforesaid provision merely uses verbs such as "reorganize," "transfer," "consolidate," "merge," and "abolish."[34] Insofar as it vests in the President the plenary power to reorganize the Office of the President to the extent of creating a public office, Section 31 is inconsistent with the principle of separation of powers enshrined in the Constitution and must be deemed repealed upon the effectivity thereof.[35]

Similarly, in G.R. No. 193036, petitioners-legislators argue that the creation of a public office lies within the province of Congress and not with the executive branch of government. They maintain that the delegated authority of the President to reorganize under Section 31 of the Revised Administrative Code: 1) does not permit the President to create a public office, much less a truth commission; 2) is limited to the reorganization of the administrative structure of the Office of the President; 3) is limited to the restructuring of the internal organs of the Office of the President Proper, transfer of functions and transfer of agencies; and 4) only to achieve simplicity, economy and efficiency.[36] Such continuing authority of the President to reorganize his office is limited, and by issuing Executive Order No. 1, the President overstepped the limits of this delegated authority.

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[32] *Id.* at 6, *rollo*, p. 68.

[33] *Id.* at 9, *rollo*, p. 71.

[34] *Id.* at 10, *rollo*, p. 72.

[35] *Id.* at 10-11, *rollo* pp. 72-73.

[36] Lagman Memorandum, G.R. No. 193036, pp. 10-11, *rollo*, pp. 270-271.

The OSG counters that there is nothing exclusively legislative about the creation by the President of a fact-finding body such as a truth commission. Pointing to numerous offices created by past presidents, it argues that the authority of the President to create public offices within the Office of the President Proper has long been recognized.[37] According to the OSG, the Executive, just like the other two branches of government, possesses the inherent authority to create fact-finding committees to assist it in the performance of its constitutionally mandated functions and in the exercise of its administrative functions.[38] This power, as the OSG explains it, is but an adjunct of the plenary powers wielded by the President under Section 1 and his power of control under Section 17, both of Article VII of the Constitution.[39]

It contends that the President is necessarily vested with the power to conduct fact-finding investigations, pursuant to his duty to ensure that all laws are enforced by public officials and employees of his department and in the exercise of his authority to assume directly the functions of the executive department, bureau and office, or interfere with the discretion of his officials.[40] The power of the President to investigate is not limited to the exercise of his power of control over his subordinates in the executive branch, but extends further in the exercise of his other powers, such as his power to discipline subordinates,[41] his power for rule making, adjudication and licensing purposes[42] and in order to be informed on matters which he is entitled to know.[43]

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[37] OSG Memorandum, p. 32, *rollo*, p. 351.

[38] *Id.* at 33, *rollo*, p. 352.

[39] OSG Consolidated Comment, p. 24, *rollo*, p. 144.

[40] OSG Memorandum, pp. 38-39, *rollo*, pp. 357-358.

[41] Citing *Department of Health v. Camposano*, G.R. No. 157684, April 27, 2005, 457 SCRA 438, 450.

[42] Citing *Evangelista v. Jarencio*, G.R. No. L-27274, November 27, 1975, 68 SCRA 99, 104.

[43] Citing *Rodriguez v. Santos Diaz*, G.R. No. L-19553, February 29, 1964, 10 SCRA 441, 445.

The OSG also cites the recent case of *Banda v. Ermita*,[44] where it was held that the President has the power to reorganize the offices and agencies in the executive department in line with his constitutionally granted power of control and by virtue of a valid delegation of the legislative power to reorganize executive offices under existing statutes.

Thus, the OSG concludes that the power of control necessarily includes the power to create offices. For the OSG, the President may create the PTC in order to, among others, put a closure to the reported large scale graft and corruption in the government.[45]

The question, therefore, before the Court is this: Does the creation of the PTC fall within the ambit of the power to reorganize as expressed in Section 31 of the Revised Administrative Code? Section 31 contemplates "reorganization" as limited by the following functional and structural lines: (1) restructuring the internal organization of the Office of the President Proper by abolishing, consolidating or merging units thereof or transferring functions from one unit to another; (2) transferring any function under the Office of the President to any other Department/ Agency or vice versa; or (3) transferring any agency under the Office of the President to any other Department/Agency or vice versa. Clearly, the provision refers to reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions. These point to situations where a body or an office is already existent but a modification or alteration thereof has to be effected. The creation of an office is nowhere mentioned, much less envisioned in said provision. Accordingly, the answer to the question is in the negative.

To say that the PTC is borne out of a restructuring of the Office of the President under Section 31 is a misplaced supposition, even in the plainest meaning attributable to the term "restructure"— an "alteration of an existing structure." Evidently, the PTC was not part of the structure of the Office of the

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[44] G.R. No. 166620, April 20, 2010.

[45] Consolidated Comment, p. 45, *rollo*, p. 165.

President prior to the enactment of Executive Order No. 1. As held in *Buklod ng Kawaning EIIB v. Hon. Executive Secretary*,[46]

> But of course, the list of legal basis authorizing the President to reorganize any department or agency in the executive branch does not have to end here. We must not lose sight of the very source of the power - that which constitutes an express grant of power. Under Section 31, Book III of Executive Order No. 292 (otherwise known as the Administrative Code of 1987), "the President, subject to the policy in the Executive Office and in order to achieve simplicity, economy and efficiency, shall have the continuing authority to reorganize the administrative structure of the Office of the President." For this purpose, he may transfer the functions of other Departments or Agencies to the Office of the President. *In Canonizado v. Aguirre* [323 SCRA 312 (2000)], we ruled that reorganization "involves the reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions." **It takes place when there is an alteration of the existing structure of government offices or units therein, including the lines of control, authority and responsibility between them.** The EIIB is a bureau attached to the Department of Finance. It falls under the Office of the President. Hence, it is subject to the President's continuing authority to reorganize. [Emphasis Supplied]

In the same vein, the creation of the PTC is not justified by the President's power of control. Control is essentially the power to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former with that of the latter.[47] Clearly, the power of control is entirely different from the power to create public offices. The former is inherent in the Executive, while the latter finds basis from either a valid delegation from Congress, or his inherent duty to faithfully execute the laws.

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[46] G.R. Nos. 142801-802, July 10, 2001, 360 SCRA 718, also cited in *Banda, supra*.

[47] *The Veterans Federation of the Philippines v. Reyes*, G.R. No. 155027, February 28, 2006, 483 SCRA 526, 564; *DOTC v. Mabalot*, 428 Phil. 154, 164-165 (2002); *Mondano v. Silvosa*, 97 Phil. 143 (1955).

The question is this, is there a valid delegation of power from Congress, empowering the President to create a public office?

According to the OSG, the power to create a truth commission pursuant to the above provision finds statutory basis under P.D. 1416, as amended by P.D. No. 1772.[48] The said law granted the President the continuing authority to reorganize the national government, including the power to group, consolidate bureaus and agencies, to abolish offices, to transfer functions, to create and classify functions, services and activities, transfer appropriations, and to standardize salaries and materials. This decree, in relation to Section 20, Title I, Book III of E.O. 292 has been invoked in several cases such as *Larin v. Executive Secretary*.[49]

The Court, however, declines to recognize P.D. No. 1416 as a justification for the President to create a public office. Said decree is already stale, anachronistic and inoperable. P.D. No. 1416 was a delegation to then President Marcos of the authority to reorganize the administrative structure of the national government including the power to create offices and transfer appropriations pursuant to one of the purposes of the decree, embodied in its last "Whereas" clause:

> WHEREAS, the ***transition*** towards the *parliamentary form of government* will necessitate flexibility in the organization of the national government.

Clearly, as it was only for the purpose of providing manageability and resiliency during the interim, P.D. No. 1416, as amended by P.D. No. 1772, became *functus oficio* upon the convening of the First Congress, as expressly provided in Section 6, Article XVIII of the 1987 Constitution. In fact, even the Solicitor General agrees with this view. Thus:

> ASSOCIATE JUSTICE CARPIO: Because P.D. 1416 was enacted was the last whereas clause of

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[48] OSG Memorandum, p. 56, *rollo*, p. 375.

[49] G.R. No. 112745, October 16, 1997, 280 SCRA 713, 730.

> P.D. 1416 says "it was enacted to prepare the transition from presidential to parliamentary. Now, in a parliamentary form of government, the legislative and executive powers are fused, correct?
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> SOLICITOR GENERAL CADIZ: Yes, Your Honor.
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> ASSOCIATE JUSTICE CARPIO: That is why, that P.D. 1416 was issued. Now would you agree with me that P.D. 1416 should not be considered effective anymore upon the promulgation, adoption, ratification of the 1987 Constitution.
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> SOLICITOR GENERAL CADIZ: Not the whole of P.D. [No.] 1416, Your Honor.
>
> ASSOCIATE JUSTICE CARPIO: The power of the President to reorganize the entire National Government is deemed repealed, at least, upon the adoption of the 1987 Constitution, correct.
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> SOLICITOR GENERAL CADIZ: Yes, Your Honor.[50]

While the power to create a truth commission cannot pass muster on the basis of P.D. No. 1416 as amended by P.D. No. 1772, the creation of the PTC finds justification under Section 17, Article VII of the Constitution, imposing upon the President the duty to ensure that the laws are faithfully executed. Section 17 reads:

> Section 17. The President shall have control of all the executive departments, bureaus, and offices. **He shall ensure that the laws be faithfully executed.** (Emphasis supplied).

As correctly pointed out by the respondents, the allocation of power in the three principal branches of government is a

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[50] TSN, September 28, 2010, pp. 205-207.

grant of all powers inherent in them. The President's power to conduct investigations to aid him in ensuring the faithful execution of laws — in this case, fundamental laws on public accountability and transparency — is inherent in the President's powers as the Chief Executive. That the authority of the President to conduct investigations and to create bodies to execute this power is not explicitly mentioned in the Constitution or in statutes does not mean that he is bereft of such authority.[51] As explained in the landmark case of *Marcos v. Manglapus:*[52]

> x x x. The 1987 Constitution, however, brought back the presidential system of government and restored the separation of legislative, executive and judicial powers by their actual distribution among three distinct branches of government with provision for checks and balances.
>
> It would not be accurate, however, to state that "executive power" is the power to enforce the laws, for the President is head of state as well as head of government and whatever powers inhere in such positions pertain to the office unless the Constitution itself withholds it. Furthermore, the Constitution itself provides that the execution of the laws is only one of the powers of the President. It also grants the President other powers that do not involve the execution of any provision of law, *e.g.*, his power over the country's foreign relations.
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> On these premises, we hold the view that although the 1987 Constitution imposes limitations on the exercise of **specific** powers of the President, it maintains intact what is traditionally considered as within the scope of "executive power." Corollarily, the powers of the President cannot be said to be limited only to the specific powers enumerated in the Constitution. In other words, executive power is more than the sum of specific powers so enumerated.
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> It has been advanced that whatever power inherent in the government that is neither legislative nor judicial has to be executive. x x x.

Indeed, the Executive is given much leeway in ensuring that our laws are faithfully executed. As stated above, the powers of the President are not limited to those specific powers under

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[51] OSG Memorandum, p. 37, *rollo*, p. 356.

[52] G.R. No. 88211, September 15, 1989, 177 SCRA 688.

the Constitution.[53] One of the recognized powers of the President granted pursuant to this constitutionally-mandated duty is the power to create *ad hoc* committees. This flows from the obvious need to ascertain facts and determine if laws have been faithfully executed. Thus, in ***Department of Health v. Camposano***,[54] the authority of the President to issue Administrative Order No. 298, creating an investigative committee to look into the administrative charges filed against the employees of the Department of Health for the anomalous purchase of medicines was upheld. In said case, it was ruled:

> **The Chief Executive's power to create the *Ad hoc* Investigating Committee cannot be doubted**. Having been constitutionally granted full control of the Executive Department, to which respondents belong, the President has the obligation to ensure that all executive officials and employees faithfully comply with the law. With AO 298 as mandate, the legality of the investigation is sustained. Such validity is not affected by the fact that the investigating team and the PCAGC had the same composition, or that the former used the offices and facilities of the latter in conducting the inquiry. [Emphasis supplied]

It should be stressed that the purpose of allowing *ad hoc* investigating bodies to exist is to allow an inquiry into matters which the President is entitled to know so that he can be properly advised and guided in the performance of his duties relative to the execution and enforcement of the laws of the land. And if history is to be revisited, this was also the objective of the investigative bodies created in the past like the PCAC, PCAPE, PARGO, the Feliciano Commission, the Melo Commission and the Zenarosa Commission. There being no changes in the government structure, the Court is not inclined to declare such executive power as non-existent just because the direction of the political winds have changed.

On the charge that Executive Order No. 1 transgresses the power of Congress to appropriate funds for the operation of a public office, suffice it to say that there will be no appropriation

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[53] *Id.* at 691.

[54] 496 Phil. 886, 896-897 (2005).

but only an allotment or allocations of existing funds already appropriated. Accordingly, there is no usurpation on the part of the Executive of the power of Congress to appropriate funds. Further, there is no need to specify the amount to be earmarked for the operation of the commission because, in the words of the Solicitor General, "whatever funds the Congress has provided for the Office of the President will be the very source of the funds for the commission."[55] Moreover, since the amount that would be allocated to the PTC shall be subject to existing auditing rules and regulations, there is no impropriety in the funding.

Power of the Truth Commission to Investigate

The President's power to conduct investigations to ensure that laws are faithfully executed is well recognized. It flows from the *faithful-execution clause* of the Constitution under Article VII, Section 17 thereof.[56] As the Chief Executive, the president represents the government as a whole and sees to it that all laws are enforced by the officials and employees of his department. He has the authority to directly assume the functions of the executive department.[57]

Invoking this authority, the President constituted the PTC to primarily investigate reports of graft and corruption and to recommend the appropriate action. As previously stated, no quasi-judicial powers have been vested in the said body as it cannot adjudicate rights of persons who come before it. It has been said that "Quasi-judicial powers involve the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by law itself in enforcing and administering the same law."[58] In simpler terms, judicial discretion is involved in the

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[55] Consolidated Comment, p. 48; *rollo*, p. 168.

[56] Section 17. The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.

[57] *Ople v. Torres*, 354 Phil. 948, 967 (1998).

[58] *Smart Communications, Inc., et al. v. National Telecommunications Commission*, 456 Phil. 145, 156 (2003).

exercise of these quasi-judicial power, such that it is exclusively vested in the judiciary and must be clearly authorized by the legislature in the case of administrative agencies.

The distinction between the power to investigate and the power to adjudicate was delineated by the Court in *Cariño v. Commission on Human Rights*.[59] Thus:

> *"Investigate,"* commonly understood, means to examine, explore, inquire or delve or probe into, research on, study. The dictionary definition of "investigate" is "to observe or study closely: inquire into systematically: "to search or inquire into: x x x to subject to an official probe x x x: to conduct an official inquiry." The purpose of investigation, of course, is to discover, to find out, to learn, obtain information. Nowhere included or intimated is the notion of settling, deciding or resolving a controversy involved in the facts inquired into by application of the law to the facts established by the inquiry.
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> The legal meaning of "investigate" is essentially the same: "(t)o follow up step by step by patient inquiry or observation. To trace or track; to search into; to examine and inquire into with care and accuracy; to find out by careful inquisition; examination; the taking of evidence; a legal inquiry"; "to inquire; to make an investigation," "investigation" being in turn described as "(a)n administrative function, the exercise of which ordinarily does not require a hearing. 2 Am J2d Adm L Sec. 257; x x x an inquiry, judicial or otherwise, for the discovery and collection of facts concerning a certain matter or matters."
>
> *"Adjudicate,"* commonly or popularly understood, means to adjudge, arbitrate, judge, decide, determine, resolve, rule on, settle. The dictionary defines the term as "to settle finally (the rights and duties of the parties to a court case) on the merits of issues raised: x x x to pass judgment on: settle judicially: x x act as judge." And "adjudge" means "to decide or rule upon as a judge or with judicial or quasi-judicial powers: x x x to award or grant judicially in a case of controversy x x x."
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> In the legal sense, "adjudicate" means: "To settle in the exercise of judicial authority. To determine finally. Synonymous with *adjudge* in its strictest sense"; and "adjudge" means: "To pass on judicially,

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[59] G.R. No. 96681, December 2, 1991, 204 SCRA 483.

to decide, settle or decree, or to sentence or condemn. x x x. Implies a judicial determination of a fact, and the entry of a judgment." [Italics included. Citations Omitted]

Fact-finding is not adjudication and it cannot be likened to the judicial function of a court of justice, or even a quasi-judicial agency or office. The function of receiving evidence and ascertaining therefrom the facts of a controversy is not a judicial function. To be considered as such, the act of receiving evidence and arriving at factual conclusions in a controversy must be accompanied by the authority of applying the law to the factual conclusions to the end that the controversy may be decided or resolved authoritatively, finally and definitively, subject to appeals or modes of review as may be provided by law.[60] Even respondents themselves admit that the commission is bereft of any quasi-judicial power.[61]

Contrary to petitioners' apprehension, the PTC will not supplant the Ombudsman or the DOJ or erode their respective powers. If at all, the investigative function of the commission will complement those of the two offices. As pointed out by the Solicitor General, the recommendation to prosecute is but a consequence of the overall task of the commission to conduct a fact-finding investigation.[62] The actual prosecution of suspected offenders, much less adjudication on the merits of the charges against them,[63] is certainly not a function given to the commission. The phrase, "when in the course of its investigation," under Section 2(g), highlights this fact and gives credence to a contrary interpretation from that of the petitioners. The function of determining probable cause for the filing of the appropriate complaints before the courts remains to be with the DOJ and the Ombudsman.[64]

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[60] *Id.* at 492.

[61] TSN, September 28, 2010, pp. 39-44**;** and OSG Memorandum, p. 67, *rollo*, p. 339.

[62] OSG Consolidated Comment, p. 55, *rollo*, p. 175.

[63] *Id.* at 56, *rollo*, p. 176.

[64] *Id*.

At any rate, the Ombudsman's power to investigate under R.A. No. 6770 is not exclusive but is shared with other similarly authorized government agencies. Thus, in the case of *Ombudsman v. Galicia*,[65] it was written:

> This power of investigation granted to the Ombudsman by the 1987 Constitution and The Ombudsman Act **is not exclusive but is shared with other similarly authorized government agencies** such as the PCGG and judges of municipal trial courts and municipal circuit trial courts. The power to conduct preliminary investigation on charges against public employees and officials is likewise concurrently shared with the Department of Justice. Despite the passage of the Local Government Code in 1991, the Ombudsman retains concurrent jurisdiction with the Office of the President and the local *Sanggunians* to investigate complaints against local elective officials. [Emphasis supplied].

Also, Executive Order No. 1 cannot contravene the power of the Ombudsman to investigate criminal cases under Section 15 (1) of R.A. No. 6770, which states:

> (1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has **primary jurisdiction** over cases cognizable by the Sandiganbayan and, in the exercise of its primary jurisdiction, **it may take over, at any stage, from any investigatory agency of government, the investigation of such cases.** [Emphases supplied]

The act of investigation by the Ombudsman as enunciated above contemplates the conduct of a preliminary investigation or the determination of the existence of probable cause. This is categorically out of the PTC's sphere of functions. Its power to investigate is limited to obtaining facts so that it can advise and guide the President in the performance of his duties relative to the execution and enforcement of the laws of the land. In this regard, the PTC commits no act of usurpation of the Ombudsman's primordial duties.

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[65] G.R. No. 167711, October 10, 2008, 568 SCRA 327, 339.

The same holds true with respect to the DOJ. Its authority under Section 3 (2), Chapter 1, Title III, Book IV in the Revised Administrative Code is by no means exclusive and, thus, can be shared with a body likewise tasked to investigate the commission of crimes.

Finally, nowhere in Executive Order No. 1 can it be inferred that the findings of the PTC are to be accorded conclusiveness. Much like its predecessors, the Davide Commission, the Feliciano Commission and the Zenarosa Commission, its findings would, at best, be recommendatory in nature. And being so, the Ombudsman and the DOJ have a wider degree of latitude to decide whether or not to reject the recommendation. These offices, therefore, are not deprived of their mandated duties but will instead be aided by the reports of the PTC for possible indictments for violations of graft laws.

Violation of the Equal Protection Clause

Although the purpose of the Truth Commission falls within the investigative power of the President, the Court finds difficulty in upholding the constitutionality of Executive Order No. 1 in view of its apparent transgression of the equal protection clause enshrined in Section 1, Article III (Bill of Rights) of the 1987 Constitution. Section 1 reads:

> Section 1. No person shall be deprived of life, liberty, or property without due process of law, **nor shall any person be denied the equal protection of the laws.**

The petitioners assail Executive Order No. 1 because it is violative of this constitutional safeguard. They contend that it does not apply equally to all members of the same class such that the intent of singling out the "previous administration" as its sole object makes the PTC an "adventure in partisan hostility."[66] Thus, in order to be accorded with validity, the commission must also cover reports of graft and corruption in virtually all administrations previous to that of former President Arroyo.[67]

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[66] Lagman Petition, pp. 43, 50-52, *rollo*, pp. 51, 50-60.

[67] Lagman Memorandum, G.R. No. 193036, pp. 28-29, *rollo*, pp. 347-348.

The petitioners argue that the search for truth behind the reported cases of graft and corruption must encompass acts committed not only during the administration of former President Arroyo but also during prior administrations where the "same magnitude of controversies and anomalies"[68] were reported to have been committed against the Filipino people. They assail the classification formulated by the respondents as it does not fall under the recognized exceptions because *first*, "there is no substantial distinction between the group of officials targeted for investigation by Executive Order No. 1 and other groups or persons who abused their public office for personal gain; and *second*, the selective classification is not germane to the purpose of Executive Order No. 1 to end corruption."[69] In order to attain constitutional permission, the petitioners advocate that the commission should deal with "graft and grafters prior and subsequent to the Arroyo administration with the strong arm of the law with equal force."[70]

Position of respondents

According to respondents, while Executive Order No. 1 identifies the "previous administration" as the initial subject of the investigation, following Section 17 thereof, the PTC will not confine itself to cases of large scale graft and corruption solely during the said administration.[71] Assuming *arguendo* that the commission would confine its proceedings to officials of the previous administration, the petitioners argue that no offense is committed against the equal protection clause for "the segregation of the transactions of public officers during the previous administration as possible subjects of investigation is a valid classification based on substantial distinctions and is germane to the evils which the Executive Order seeks to correct."[72] To

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[68] Lagman Petition, p. 31, *rollo*, p. 39.

[69] *Id.* at 28-29, *rollo*, pp. 36-37.

[70] *Id.* at 29, *rollo*, p. 37.

[71] OSG Memorandum, p. 88; *rollo*, p. 407.

[72] OSG Consolidated Comment. p. 68, *rollo*, p. 188.

distinguish the Arroyo administration from past administrations, it recited the following:

First. E.O. No. 1 was issued in view of *widespread reports of large scale graft and corruption* in the previous administration which have eroded public confidence in public institutions. There is, therefore, an urgent call for the determination of the truth regarding certain reports of large scale graft and corruption in the government and to put a closure to them by the filing of the appropriate cases against those involved, if warranted, and to deter others from committing the evil, restore the people's faith and confidence in the Government and in their public servants.

Second. The segregation of the preceding administration as the object of fact-finding is warranted by the reality that unlike with administrations long gone, the current administration will most likely bear the immediate consequence of the policies of the previous administration.

Third. The classification of the previous administration as a separate class for investigation lies in the reality that the *evidence* of possible criminal activity, the evidence that could lead to recovery of public monies illegally dissipated, the policy lessons to be learned to ensure that anti-corruption laws are faithfully executed, are *more easily established* in the regime that immediately precede the current administration.

Fourth. Many administrations subject the transactions of their predecessors to investigations to provide closure to issues that are pivotal to national life or even as a routine measure of due diligence and good housekeeping by a nascent administration like the Presidential Commission on Good Government (PCGG), created by the late President Corazon C. Aquino under Executive Order No. 1 to pursue the recovery of ill-gotten wealth of her predecessor former President Ferdinand Marcos and his cronies, and the *Saguisag* Commission created by former President Joseph Estrada under Administrative Order No. 53, to form an *ad-hoc* and independent citizens' committee to investigate all the facts and circumstances surrounding "Philippine Centennial projects" of his predecessor, former President Fidel V. Ramos.[73] [Emphases supplied]

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[73] OSG Memorandum, pp. 90-93, *rollo*, pp. 409-412.

Concept of the Equal Protection Clause

One of the basic principles on which this government was founded is that of the equality of right which is embodied in Section 1, Article III of the 1987 Constitution. The equal protection of the laws is embraced in the concept of due process, as every unfair discrimination offends the requirements of justice and fair play. It has been embodied in a separate clause, however, to provide for a more specific guaranty against any form of undue favoritism or hostility from the government. Arbitrariness in general may be challenged on the basis of the due process clause. But if the particular act assailed partakes of an unwarranted partiality or prejudice, the sharper weapon to cut it down is the equal protection clause.[74]

"According to a long line of decisions, equal protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed."[75] It "requires public bodies and institutions to treat similarly situated individuals in a similar manner."[76] "The purpose of the equal protection clause is to secure every person within a state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statue or by its improper execution through the state's duly constituted authorities."[77] "In other words, the concept of equal justice under the law requires the state to govern impartially, and it may not draw distinctions between individuals solely on

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[74] *The Philippine Judges Association v. Hon. Pardo*, G.R. No. 105371, November 11, 1993, 227 SCRA 703, 711.

[75] *Id.* at 712, citing *Ichong v. Hernandez*, 101 Phil. 1155 (1957); *Sison, Jr. v. Ancheta*, G.R. No. 59431, July 25, 1984, 130 SCRA 654; *Association of Small Landowners in the Philippines v. Secretary of Agrarian Reform*, G.R. No. 78742, July 14, 1989, 175 SCRA 343, 375.

[76] *Guino v. Senkowski,* 54 F 3d 1050 (2d. Cir. 1995) cited in Am. Jur, 2d, Vol. 16 (b), p. 302.

[77] *Edward Valves, Inc. v. Wake Country*, 343 N.C. 426 cited in Am. Jur. 2d, Vol. 16 (b), p. 303.

differences that are irrelevant to a legitimate governmental objective."[78]

The equal protection clause is aimed at all official state actions, not just those of the legislature.[79] Its inhibitions cover all the departments of the government including the political and executive departments, and extend to all actions of a state denying equal protection of the laws, through whatever agency or whatever guise is taken. [80]

It, however, does not require the universal application of the laws to all persons or things without distinction. What it simply requires is equality among equals as determined according to a valid classification. Indeed, the equal protection clause permits classification. Such classification, however, to be valid must pass the test of ***reasonableness.*** The test has four requisites: (1) The classification rests on substantial distinctions; (2) It is germane to the purpose of the law; (3) It is not limited to existing conditions only; and (4) It applies equally to all members of the same class.[81] "Superficial differences do not make for a valid classification."[82]

For a classification to meet the requirements of constitutionality, it must include or embrace all persons who naturally belong to the class.[83] "The classification will be regarded as invalid if all the members of the class are not similarly treated, both as to rights conferred and obligations imposed. It is not necessary that the classification be made with absolute symmetry, in the

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[78] *Lehr v. Robertson*, 463 US 248, 103 cited in Am. Jur. 2d, Vol. 16 (b), p. 303.

[79] See *Columbus Bd. of Ed. v. Penick,* 443 US 449 cited Am. Jur. 2d, Vol. 16 (b), pp. 316-317.

[80] See *Lombard v. State of La.,* 373 US 267 cited in Am. Jur. 2d, Vol. 16 (b), p. 316.

[81] *Beltran v. Secretary of Health,* 512 Phil. 560, 583 (2005).

[82] Cruz, *Constitutional Law*, 2003 ed., p. 128.

[83] *McErlain v. Taylor*, 207 Ind. 240 cited in Am. Jur. 2d, Vol. 16 (b), p. 367.

sense that the members of the class should possess the same characteristics in equal degree. Substantial similarity will suffice; and as long as this is achieved, all those covered by the classification are to be treated equally. The mere fact that an individual belonging to a class differs from the other members, as long as that class is substantially distinguishable from all others, does not justify the non-application of the law to him."[84]

The classification must not be based on existing circumstances only, or so constituted as to preclude addition to the number included in the class. It must be of such a nature as to embrace all those who may thereafter be in similar circumstances and conditions. It must not leave out or "underinclude" those that should otherwise fall into a certain classification. As elucidated in *Victoriano v. Elizalde Rope Workers' Union*[85] and reiterated in a long line of cases,[86]

> The guaranty of equal protection of the laws is not a guaranty of equality in the application of the laws upon all citizens of the state. It is not, therefore, a requirement, in order to avoid the constitutional prohibition against inequality, that every man, woman and child should be affected alike by a statute. Equality of operation of statutes does

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[84] Cruz, *Constitutional Law*, 2003 ed., pp. 135-136.

[85] G.R. No. L-25246, 59 SCRA 54, 77-78 (September 12, 1974).

[86] *Basa v. Federacion Obrera de la Industria Tabaquera y Otros Trabajadores de Filipinas (FOITAF)*, G.R. No. L-27113, November 19, 1974, 61 SCRA 93, 110-111; *Anuncension v. National Labor Union*, G.R. No. L-26097, November 29, 1977, 80 SCRA 350, 372-373; *Villegas v. Hiu Chiong Tsai Pao Ho*, G.R. No. L-29646, November 10, 1978, 86 SCRA 270, 275; *Dumlao v. Comelec*, G.R. No. 52245, January 22, 1980, 95 SCRA 392, 404; *Ceniza v. Comelec*, G.R. No. 52304, January 28, 1980, 95 SCRA 763, 772-773; *Himagan v. People*, G.R. No. 113811, October 7, 1994, 237 SCRA 538; *The Conference of Maritime Manning Agencies, Inc. v. POEA*, G.R. No. 114714, April 21, 1995, 243 SCRA 666, 677; *JMM Promotion and Management, Inc. v. Court of Appeals*, G.R. No. 120095, August 5, 1996, 260 SCRA 319, 331–332; and *Tiu v. Court of Appeals*, G.R. No. 127410, January 20, 1999, 301 SCRA 278, 288-289. *See also Ichong v. Hernandez*, G.R. No. L-7995, 101 Phil. 1155 (1957); *Vera v. Cuevas*, G.R. Nos. L-33693-94, May 31, 1979, 90 SCRA 379, 388; and *Tolentino v. Secretary of Finance*, G.R. Nos. 115455, 115525, 115543, 115544, 115754, 115781, 115852, 115873, and 115931, August 25, 1994, 235 SCRA 630, 684.

not mean indiscriminate operation on persons merely as such, but on persons according to the circumstances surrounding them. It guarantees equality, not identity of rights. The Constitution does not require that things which are different in fact be treated in law as though they were the same. The equal protection clause does not forbid discrimination as to things that are different. It does not prohibit legislation which is limited either in the object to which it is directed or by the territory within which it is to operate.

The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences, that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class. This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary. [Citations omitted]

Applying these precepts to this case, Executive Order No. 1 should be struck down as violative of the equal protection clause. The clear mandate of the envisioned truth commission is to investigate and find out the truth "concerning the reported cases of graft and corruption during the *previous administration*"[87] only. The intent to single out the previous administration is plain, patent and manifest. Mention of it has been made in at least three portions of the questioned executive order. Specifically, these are:

WHEREAS, there is a need for a separate body dedicated solely to investigating and finding out the truth concerning the reported cases of graft and corruption during the **previous administration**, and

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[87] 7th Whereas clause, Executive Order No. 1.

which will recommend the prosecution of the offenders and secure justice for all;

SECTION 1. Creation of a Commission. — There is hereby created the PHILIPPINE TRUTH COMMISSION, hereinafter referred to as the "COMMISSION," which shall primarily seek and find the truth on, and toward this end, investigate reports of graft and corruption of such scale and magnitude that shock and offend the moral and ethical sensibilities of the people, committed by public officers and employees, their co-principals, accomplices and accessories from the private sector, if any, during the **previous administration**; and thereafter recommend the appropriate action or measure to be taken thereon to ensure that the full measure of justice shall be served without fear or favor.

SECTION 2. Powers and Functions. — The Commission, which shall have all the powers of an investigative body under Section 37, Chapter 9, Book I of the Administrative Code of 1987, is primarily tasked to conduct a thorough fact-finding investigation of reported cases of graft and corruption referred to in Section 1, involving third level public officers and higher, their co-principals, accomplices and accessories from the private sector, if any, during the **previous administration** and thereafter submit its finding and recommendations to the President, Congress and the Ombudsman. [Emphases supplied]

In this regard, it must be borne in mind that the Arroyo administration is but just a member of a class, that is, a class of past administrations. It is not a class of its own. Not to include past administrations similarly situated constitutes arbitrariness which the equal protection clause cannot sanction. Such discriminating differentiation clearly reverberates to label the commission as a vehicle for vindictiveness and selective retribution.

Though the OSG enumerates several differences between the Arroyo administration and other past administrations, these distinctions are not substantial enough to merit the restriction of the investigation to the "previous administration" only. The reports of widespread corruption in the Arroyo administration cannot be taken as basis for distinguishing said administration from earlier administrations which were also blemished by similar widespread reports of impropriety. They are not inherent in,

and do not inure solely to, the Arroyo administration. As Justice Isagani Cruz put it, "Superficial differences do not make for a valid classification."[88]

The public needs to be enlightened why Executive Order No. 1 chooses to limit the scope of the intended investigation to the previous administration only. The OSG ventures to opine that "to include other past administrations, at this point, may unnecessarily overburden the commission and lead it to lose its effectiveness."[89] The reason given is specious. It is without doubt irrelevant to the legitimate and noble objective of the PTC to stamp out or "end corruption and the evil it breeds."[90]

The probability that there would be difficulty in unearthing evidence or that the earlier reports involving the earlier administrations were already inquired into is beside the point. Obviously, deceased presidents and cases which have already prescribed can no longer be the subjects of inquiry by the PTC. Neither is the PTC expected to conduct simultaneous investigations of previous administrations, given the body's limited time and resources. "The law does not require the impossible" *(Lex non cogit ad impossibilia)*.[91]

Given the foregoing physical and legal impossibility, the Court logically recognizes the unfeasibility of investigating almost a century's worth of graft cases. However, the fact remains that Executive Order No. 1 suffers from arbitrary classification. The PTC, to be true to its mandate of searching for the truth, must not exclude the other past administrations. The PTC must, at least, have the authority to investigate all past administrations. While **reasonable prioritization** is permitted, it should not be arbitrary lest it be struck down for being unconstitutional. In the often quoted language of *Yick Wo v. Hopkins*,[92]

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[88] Cruz, *Constitutional Law*, 2003 ed., p. 128.

[89] OSG, Memorandum, p. 89, *rollo*, p. 408.

[90] 6th Whereas clause, Executive Order No. 1

[91] Lee, *Handbook of Legal Maxims*, 2002 Ed., p.

[92] *118 US 357*, http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=118&invol=35 <accessed on December 4, 2010>.

Though the law itself be fair on its face and impartial in appearance, yet, if applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, ***the denial of equal justice is still within the prohibition of the constitution.*** [Emphasis supplied]

It could be argued that considering that the PTC is an *ad hoc* body, its scope is limited. The Court, however, is of the considered view that although its focus is restricted, the constitutional guarantee of equal protection under the laws should not in any way be circumvented. The Constitution is the fundamental and paramount law of the nation to which all other laws must conform and in accordance with which all private rights determined and all public authority administered.[93] Laws that do not conform to the Constitution should be stricken down for being unconstitutional.[94] While the thrust of the PTC is specific, that is, for investigation of acts of graft and corruption, Executive Order No. 1, to survive, must be read together with the provisions of the Constitution. To exclude the earlier administrations in the guise of "substantial distinctions" would only confirm the petitioners' lament that the subject executive order is only an "adventure in partisan hostility." In the case of *US v. Cyprian*,[95] it was written: "A rather limited number of such classifications have routinely been held or assumed to be arbitrary; those include: race, national origin, gender, *political activity or membership in a political party*, union activity or membership in a labor union, or more generally the exercise of first amendment rights."

To reiterate, in order for a classification to meet the requirements of constitutionality, it must include or embrace all persons who naturally belong to the class.[96] "Such a classification

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[93] *Macalintal v. COMELEC*, G.R. No. 157013, July 10, 2003, 405 SCRA 614, pp. 631-632; *Manila Prince Hotel vs. GSIS*, 335 Phil. 82, 101 (1997).

[94] *Id.* at 632.

[95] 756 F. Supp. 388, N.. D. Ind., 1991, Jan. 30, 1991, Crim No. HCR 90-42; also http://in.findacase.com/research/wfrmDocViewer.aspx/xq/fac.19910130_0000002.NIN.htm/qx <accessed December 5, 2010>

[96] *McErlain v. Taylor*, 207 Ind. 240 cited in Am. Jur. 2d, Vol. 16 (b), p. 367.

must not be based on existing circumstances only, or so constituted as to preclude additions to the number included within a class, but must be of such a nature as to embrace all those who may thereafter be in similar circumstances and conditions. Furthermore, all who are in situations and circumstances which are relative to the discriminatory legislation and which are indistinguishable from those of the members of the class must be brought under the influence of the law and treated by it in the same way as are the members of the class."[97]

The Court is not unaware that "mere underinclusiveness is not fatal to the validity of a law under the equal protection clause."[98] "Legislation is not unconstitutional merely because it is not all-embracing and does not include all the evils within its reach."[99] It has been written that a regulation challenged under the equal protection clause is not devoid of a rational predicate simply because it happens to be incomplete.[100] In several instances, the underinclusiveness was not considered a valid reason to strike down a law or regulation where the purpose can be attained in future legislations or regulations. These cases refer to the "step by step" process.[101] "With regard to equal protection claims, a legislature does not run the risk of losing the entire remedial scheme simply because it fails, through inadvertence or otherwise, to cover every evil that might conceivably have been attacked."[102]

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[97] *Martin v. Tollefson*, 24 Wash. 2d 211 cited in Am. Jur. 2d, Vol. 16 (b), pp. 367-368 .

[98] *Nixon v. Administrator of General Services*, 433 US 425 cited in Am. Jur. 2d, Vol. 16 (b), p. 371.

[99] *Hunter v. Flowers*, 43 So 2d 435 cited in Am. Jur. 2d, Vol. 16 (b), p. 370.

[100] *Clements v. Fashing*, 457 US 957.

[101] See Am. Jur. 2d, Vol. 16 (b), pp. 370-371, as footnote (A state legislature may, consistently with the Equal Protection Clause, address a problem one step at a time, or even select one phase of one field and apply a remedy there, neglecting the others. [*Jeffeson v. Hackney*, 406 US 535].

[102] *McDonald v. Board of Election Com'rs of Chicago*, 394 US 802 cited in Am Jur 2d, Footnote No. 9.

In Executive Order No. 1, however, there is no inadvertence. That the previous administration was picked out was deliberate and intentional as can be gleaned from the fact that it was underscored at least three times in the assailed executive order. It must be noted that Executive Order No. 1 does not even mention any particular act, event or report to be focused on unlike the investigative commissions created in the past. "The equal protection clause is violated by purposeful and intentional discrimination."[103]

To disprove petitioners' contention that there is deliberate discrimination, the OSG clarifies that the commission does not only confine itself to cases of large scale graft and corruption committed during the previous administration.[104] The OSG points to Section 17 of Executive Order No. 1, which provides:

> SECTION 17. *Special Provision Concerning Mandate*. If and when in the judgment of the President there is a need to expand the mandate of the Commission as defined in Section 1 hereof to include the investigation of cases and instances of graft and corruption during the prior administrations, such mandate may be so extended accordingly by way of a supplemental Executive Order.

The Court is not convinced. Although Section 17 allows the President the discretion to expand the scope of investigations of the PTC so as to include the acts of graft and corruption committed in other past administrations, it does not guarantee that they would be covered in the future. Such expanded mandate of the commission will still depend on the whim and caprice of the President. If he would decide not to include them, the section would then be meaningless. This will only fortify the fears of the petitioners that the Executive Order No. 1 was "crafted to tailor-fit the prosecution of officials and personalities of the Arroyo administration."[105]

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[103] *Ricketts v. City of Hardford*, 74 F. 3d 1397 cited in Am. Jur. 2d, Vol. 16 (b), p. 303.

[104] OSG Consolidated Comment, p. 66, *rollo*, p.186.

[105] Lagman Memorandum, p. 30; *rollo*, p. 118.

The Court tried to seek guidance from the pronouncement in the case of *Virata v. Sandiganbayan*,[106] that the "PCGG Charter (composed of Executive Orders Nos. 1, 2 and 14) does not violate the equal protection clause." The decision, however, was devoid of any discussion on how such conclusory statement was arrived at, the principal issue in said case being only the sufficiency of a cause of action.

A final word

The issue that seems to take center stage at present is — whether or not the Supreme Court, in the exercise of its constitutionally mandated power of Judicial Review with respect to recent initiatives of the legislature and the executive department, is exercising undue interference. Is the Highest Tribunal, which is expected to be the protector of the Constitution, itself guilty of violating fundamental tenets like the doctrine of separation of powers? Time and again, this issue has been addressed by the Court, but it seems that the present political situation calls for it to once again explain the legal basis of its action lest it continually be accused of being a hindrance to the nation's thrust to progress.

The Philippine Supreme Court, according to Article VIII, Section 1 of the 1987 Constitution, is vested with Judicial Power that "includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave of abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government."

Furthermore, in Section 4(2) thereof, it is vested with the power of judicial review which is the power to declare a treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation unconstitutional. This power also includes the duty to rule on the constitutionality of the application, or operation of presidential

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[106] G.R. No. 86926, October 15, 1991; 202 SCRA 680.

decrees, proclamations, orders, instructions, ordinances, and other regulations. These provisions, however, have been fertile grounds of conflict between the Supreme Court, on one hand, and the two co-equal bodies of government, on the other. Many times the Court has been accused of asserting superiority over the other departments.

To answer this accusation, the words of Justice Laurel would be a good source of enlightenment, to wit: "And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them."[107]

Thus, the Court, in exercising its power of judicial review, is not imposing its own will upon a co-equal body but rather simply making sure that any act of government is done in consonance with the authorities and rights allocated to it by the Constitution. And, if after said review, the Court finds no constitutional violations of any sort, then, it has no more authority of proscribing the actions under review. Otherwise, the Court will not be deterred to pronounce said act as void and unconstitutional.

It cannot be denied that most government actions are inspired with noble intentions, all geared towards the betterment of the nation and its people. But then again, it is important to remember this ethical principle: "The end does not justify the means." No matter how noble and worthy of admiration the purpose of an act, but if the means to be employed in accomplishing it is simply irreconcilable with constitutional parameters, then it cannot still be allowed.[108] The Court cannot just turn a blind eye and simply let it pass. It will continue to uphold the Constitution and its enshrined principles.

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[107] *Angara v. Electoral Commission*, 63 Phil. 139, 158 (1936).

[108] Cruz, *Philippine Political Law*, 2002 ed., pp. 12-13.

"The Constitution must ever remain supreme. All must bow to the mandate of this law. Expediency must not be allowed to sap its strength nor greed for power debase its rectitude."[109]

Lest it be misunderstood, this is not the death knell for a truth commission as nobly envisioned by the present administration. Perhaps **a revision of the executive issuance so as to include the earlier past administrations would allow it to pass the test of reasonableness and not be an affront to the Constitution.** Of all the branches of the government, it is the judiciary which is the most interested in knowing the truth and so it will not allow itself to be a hindrance or obstacle to its attainment. It must, however, be emphasized that the search for the truth must be within constitutional bounds for "ours is still a government of laws and not of men."[110]

WHEREFORE, the petitions are *GRANTED*. Executive Order No. 1 is hereby declared UNCONSTITUTIONAL insofar as it is violative of the equal protection clause of the Constitution.

As also prayed for, the respondents are hereby ordered to cease and desist from carrying out the provisions of Executive Order No. 1.

SO ORDERED.

Del Castillo and *Villarama, Jr., JJ.,* concur.

Corona, C.J., Leonardo-de Castro, Brion, Peralta, Bersamin, and *Perez, JJ.,* see separate concurring opinions.

Velasco Jr., J., C.J. Corona certifies that Justice Velasco left his concurring vote.

Nachura, J., see concurring and dissenting opinion.

Carpio, Carpio Morales, Abad, and *Sereno, JJ.,* see separate dissenting opinions.

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[109] *Id*.

[110] *Republic v. Southside Homeowners Association,* G.R. No. 156951, September 22, 2006.

SEPARATE OPINION

CORONA, *C.J.*:

OF TRUTH AND TRUTH COMMISSIONS

The fundamental base upon which a truth commission is created is the *right to the truth*.[1] While the right to the truth is yet to be established as a right under customary law[2] or as a general principle of international law,[3] it has nevertheless emerged as a "legal concept at the national, regional and international levels, and relates to the obligation of the state to provide information to victims or to their families or even society as a whole about the circumstances surrounding serious violations of human rights."[4]

A truth commission has been generally defined[5] as a "body set up to investigate a past history of violations of human rights in a particular country ...,"[6] and includes four elements:

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[1] PROMOTION AND PROTECTION OF HUMAN RIGHTS (Study on the Right to the Truth): Report of the Office of the United Nations High Commissioner for Human Rights, United Nations Economic and Social Council (E/CN.4/2006/91), 8 February 2006.

[2] See Yasmin Naqvi, *The Right to the Truth in International Law: Fact or Fiction?, International Review of the Red Cross* (2006), 88:862:254-268.

[3] *Ibid.,* 268.

[4] *Ibid.,* 245.

[5] But see Eric Brahm, *What is a Truth Commission and Why Does it Matter?*, Peace and Conflict Review (Spring 2009), 3:2:1-14, which proposes that "Mark Freeman's (2006) typology of human rights investigations as the definition offering the most analytical clarity and the strongest potential to move the field forward." Freeman [*Truth Commissions and Procedural Fairness* (2006), New York: Cambridge University Press; E.H.R.L.R., 2008, 2, 294-297] defines a truth commission as an "*ad hoc*, autonomous, and victim-centered commission of inquiry set up in and authorized by a state for the primary purposes of (1) investigating and reporting on the principal causes and consequences of broad and relatively recent patterns of severe violence or repression that occurred in the state during determinate periods of abusive rule or conflict, and (2) making recommendations for their redress and future prevention."

[6] Priscilla B. Hayner, *Fifteen Truth Commissions – 1974 to 1994: A Comparative Study*, Human Rights Quarterly (Nov. 1994), 16:4:600.

... First, a truth commission focuses on the past. Second, a truth commission is not focused on a specific event, but attempts to paint the overall picture of certain human rights abuses, or violations of international humanitarian law, over a period of time. Third, a truth commission usually exists temporarily and for a pre-defined period of time, ceasing to exist with the submission of a report of its findings. Finally, a truth commission is always vested with some sort of authority, by way of its sponsor, that allows it greater access to information, greater security or protection to dig into sensitive issues, and a greater impact with its report.[7]

As reported by Amnesty International,[8] there are at least 33 truth commissions established in 28 countries from 1974 to 2007 and this includes the Philippines, which created the Presidential Committee on Human Rights (PCHR) in 1986 under the post-Marcos administration of Pres. Corazon C. Aquino.

THE PHILIPPINE EXPERIENCE

Notably, Pres. Corazon C. Aquino created not one but two truth commissions.[9] Aside from the PCHR, which was created to address human rights violations, the Presidential Commission on Good Government or PCGG was also established. The PCGG was tasked with assisting the President in the "recovery of all in-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence,

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[7] *Ibid.*, 604.

[8] http://www.amnesty.org/en/library/asset/POL30/009/2007/en/7988f852-d38a-11dd-a329-2f46302a8cc6/pol300092007en.html, viewed on 9 November 2010.

[9] Ruben Carranza, *Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes?*, The International Journal of Transitional Justice, Vol. 2, 2008, 322.

connections or relationship," among others.[10] Unlike the present embattled and controversial Truth Commission, however, the PCGG was created by Pres. Corazon C. Aquino pursuant to her legislative powers under Executive Order No. 1,[11] which in turn, was sanctioned by Proclamation No. 3.[12]

And unlike the PCGG, the present Truth Commission suffers from both legal and constitutional infirmities and must be struck down as unconstitutional.

POWER TO CREATE PUBLIC OFFICES: INHERENTLY LEGISLATIVE

The separation of powers is a fundamental principle in our system of government.[13] This principle is one of the cornerstones of our constitutional democracy and it cannot be eroded without endangering our government.[14] The 1987 Constitution divides governmental power into three co-equal branches: the executive, the legislative and the judicial. It delineates the powers of the three branches: the legislature is generally limited to the enactment of laws, the executive department to the enforcement of laws and the judiciary to their interpretation and application to cases and controversies.[15] Each branch is independent and supreme within its own sphere and the encroachment by one branch on another is to be avoided at all costs.

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[10] *Bataan Shipyard & Engineering Co., Inc. v. Presidential Commission on Good Government*, G.R. No. 75885, May 27, 1987, 150 SCRA 181, 202.

[11] Promulgated on February 28, 1986, creating the Presidential Commission on Good Government.

[12] Promulgated on March 25, 1986, promulgating the Provisional Constitution (also known as the Freedom Constitution). Article II, Section 1 thereof stated that the President shall continue to exercise legislative power until a legislature is elected and convened under a new constitution x x x.

[13] *Angara v. Electoral Commission*, 68 Phil. 139, 156 (1936).

[14] *Secretary of Justice v. Lantion*, G.R. No. 139465, 17 October 2000.

[15] *Anak Mindanao Party-List Group v. The Executive Secretary*, G.R. No. 166052, 29 August 2007.

The power under scrutiny in this case is the creation of a public office. It is settled that, except for the offices created by the Constitution, the creation of a public office is primarily a legislative function. The legislature decides what offices are suitable, necessary or convenient for the administration of government.[16]

The question is whether Congress, by law, has delegated to the Chief Executive this power to create a public office.

In creating the Truth Commission, Executive Order No. 1 (E.O. No. 1) points to Section 31, Chapter 10, Book III of E.O. No. 292 or the Administrative Code of 1987 as its legal basis:

> Section 31. *Continuing Authority of the President to Reorganize his Office*. — The President, subject to the policy in the Executive Office and in order **to achieve simplicity, economy and efficiency**, shall have continuing authority to reorganize the administrative structure of the Office of the President. For this purpose, he may take any of the following actions:
>
> (1) Restructure the internal organization of the Office of the President Proper, including the immediate Offices, the Presidential Special Assistants/Advisers System and the Common Staff Support System, by abolishing, consolidating, or merging units thereof or transferring functions from one unit to another;
>
> (2) Transfer any function under the Office of the President to any other Department or Agency as well as transfer functions to the Office of the President from other Departments and Agencies; and
>
> (3) Transfer any agency under the Office of the President to any other department or agency as well as transfer agencies to the Office of the President from other departments or agencies. (Emphasis supplied)

This provision pertains to the President's continuing delegated power to reorganize the Office of the President. The well-settled principle is that the President has the power to reorganize

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[16] *Eugenio v. Civil Service Commission*, 312 Phil. 1145, 1152 (1995) citing AM JUR 2d on Public Officers and Employees.

the offices and agencies in the executive department in line with his constitutionally granted power of control over executive offices and by virtue of his delegated legislative power to reorganize them under existing statutes.[17] Needless to state, such power must always be in accordance with the Constitution, relevant laws and prevailing jurisprudence.[18]

In creating the Truth Commission, did the President merely exercise his continuing authority to reorganize the executive department? No.

Considering that the President was exercising a delegated power, his actions should have conformed to the standards set by the law, that is, that the reorganization be in the interest of "simplicity, economy and efficiency." Were such objectives met? They were not. The Truth Commission clearly duplicates and supplants the functions and powers of the Office of the Ombudsman and/or the Department of Justice, as will be discussed in detail later. How can the creation of a new commission with the same duplicative functions as those of already existing offices result in economy or a more efficient bureaucracy?[19] Such a creation becomes even more questionable considering that the 1987 Constitution itself mandates the Ombudsman to investigate graft and corruption cases.[20]

THE TRUTH COMMISSION IN THE LIGHT OF THE EQUAL PROTECTION CLAUSE

Equal protection is a fundamental right guaranteed by the Constitution. Section 1, Article III of the 1987 Constitution reads:

... nor shall any person be denied the equal protection of the laws.

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[17] *Banda v. Ermita*, G.R. No. 166620, April 20, 2010.

[18] *Ibid.*

[19] *Buklod ng Kawaniang EIIB v. Sec. Zamora*, 413 Phil. 281, 295.

[20] *Office of the Ombudsman v. Samaniego*, G.R. No. 175573, 11 September 2008.

It is a right afforded every man. The right to equal protection does not require a universal application of the laws to all persons or things without distinction.[21] It requires simply that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed.[22]

In certain cases, however, as when things or persons are different in fact or circumstance, they may be treated in law differently.[23] In *Victoriano vs. Elizalde Rope Workers Union*,[24] the Court declared:

> The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences, that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class. This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary.

Thus, for a classification to be valid it must pass the test of reasonableness,[25] which requires that:

(1) it be based on substantial distinctions;
(2) it must be germane to the purpose of the law;

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[21] *Chamber of Real Estate and Builders' Associations, Inc. v. Executive Secretary Alberto Romulo* (G.R. No. 160756, 2010).

[22] *Quinto v. Comelec* (G.R. No. 189698, 2009).

[23] *Abakada Guro v. Hon. Cesar V. Purisima* (G.R. No. 166715, 2008).

[24] 59 SCRA 54, 1974.

[25] *League of Cities of the Philippines v. COMELEC* (G.R. No. 176951; G.R. No. 177499; 2008; G.R. No. 178056, 2008).

(3) it must not be limited to present conditions; and
(4) it must apply equally to all members of the same class.

All four requisites must be complied with for the classification to be valid and constitutional.

The constitutionality of E. O. No. 1 is being attacked on the ground that it violates the equal protection clause.

Petitioners argue that E.O. No. 1 violates the equal protection clause as it deliberately vests the Truth Commission with jurisdiction and authority to solely target officials and employees of the Arroyo Administration.[26] Moreover, they claim that there is no substantial distinction of graft reportedly committed under the Arroyo administration and graft committed under previous administrations to warrant the creation of a Truth Commission which will investigate for prosecution officials and employees of the past administration.[27]

Respondents, on the other hand, argue that the creation of the Truth Commission does not violate the equal protection clause. According to them, while E.O. No. 1 names the previous administration as the initial subject of the investigation, it does not confine itself to cases of graft and corruption committed solely during the past administration. Section 17 of E.O. No. 1 clearly speaks of the President's power to expand its coverage to previous administrations. Moreover, respondents argue that the segregation of the transactions of public officers during the previous administration as possible subjects of investigation is a valid classification based on substantial distinctions and is germane to the evils which the executive order seeks to correct.[28]

On its face, E.O. No. 1 clearly singles out the previous administration as the Truth Commission's sole subject of investigation.

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[26] Par. 69, Lagman, *et al's* Petition

[27] Par. 67, Lagman, *et al's* Petition

[28] OSG Memorandum, pp. 88-90.

Section 1. Creation of a Commission — There is hereby created the PHILIPPINE TRUTH COMMISSION, hereinafter referred to as the "COMMISSION," which shall ***primarily*** seek and find the truth on, and toward this end, investigate reports of graft and corruption of such scale and magnitude that shock and offend the moral and ethical sensibilities of the people committed by public officers and employees, their co-principals, accomplices and accessories from the private sector, if any during the ***previous administration***; and thereafter recommend the appropriate action to be taken to ensure that the full measure of justice shall be served without fear or favor.

Section 2. Powers and Functions. — The Commission, which shall have the powers of an investigative body under Section 37, Chapter 9, Book I of the Administrative Code of 1987, is ***primarily*** tasked to conduct a thorough fact-finding investigation of reported cases of graft and corruption referred to in Section 1, involving third level public officers and higher, their co-principals, accomplices and accessories from the private sector, if any during the ***previous administration*** and thereafter submit its findings and recommendations to the President, Congress and the Ombudsman. x x x (Emphasis supplied)

Notwithstanding Section 17, which provides:

If and when in the judgment of the President there is a need to expand the mandate of the Commission as defined in Section 1 hereof to include the investigation of cases and instances of graft and corruption during the prior administration, such mandate may be so extended accordingly by way of supplemental Executive Order." (Emphasis supplied),

such expanded mandate of the Truth Commission will still depend on the whim and caprice of the President. If the President decides not to expand the coverage of the investigation, then the Truth Commission's sole directive is the investigation of officials and employees of the Arroyo administration.

Given the indubitably clear mandate of E.O. No. 1, does the identification of the Arroyo administration as the subject of the Truth Commission's investigation pass the jurisprudential test of reasonableness? Stated differently, does the mandate of E.O. No. 1 violate the equal protection clause of the Constitution? Yes.

I rule in favor of petitioners.

(1) No Substantial Distinction —

There is no substantial distinction between the corruption which occurred during the past administration and the corruption of the administrations prior to it. Allegations of graft and corruption in the government are unfortunately prevalent regardless of who the President happens to be. Respondents' claim of widespread systemic corruption is not unique only to the past administration.

(2) Not Germane to the Purpose of the Law —

The purpose of E.O. No. 1 (to put an end to corruption in the government) is stated clearly in the preamble of the aforesaid order:

> WHEREAS, the President's battle-cry during his campaign for the Presidency in the last elections *"kung walang corrupt, walang mahirap"* expresses a solemn pledge that if elected, he would end corruption and the evil it breeds; x x x

In the light of the unmistakable purpose of E.O. No. 1, the classification of the past regime as separate from the past administrations is not germane to the purpose of the law. Corruption did not occur only in the past administration. To stamp out corruption, we must go beyond the façade of each administration and investigate all public officials and employees alleged to have committed graft in any previous administration.

(3) E.O. No. 1 does Not Apply to Future Conditions —

As correctly pointed out by petitioners, the classification does not even refer to present conditions, much more to future conditions *vis-a-vis* the commission of graft and corruption. It is limited to a particular past administration and not to all past administrations.[29]

We go back to the text of the executive order in question.

x x x x x x x x x

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[29] Par. 73, Lagman, *et al*'s Petition

Whereas, there is a need for a separate body dedicated solely to investigating and finding out the truth concerning the reported cases if graft and corruption during the ***previous administration***, and which will recommend the prosecution of the offenders and secure justice for all;

x x x x x x x x x

Section 1. Creating of a Commission. — There is hereby created the PHILIPPINE TRUTH COMMISSION, hereinafter referred to as the "COMMISSION", which shall primarily seek and find the truth on, and toward this end investigate reports of graft and corruption, x x x if any, during the ***previous administration***; x x x

Section 2. Power and Functions. Powers and Functions. — The Commission, which shall have all the powers of an investigative body under Section 37, Chapter 9, Book I of the Administrative Code of 1987, is primarily tasked to conduct a thorough fact-finding investigation of reported cases of graft and corruption x x x, if any, during the ***previous administration*** and thereafter submit its findings and recommendations to the President, Congress and the Ombudsman. x x x

The above-quoted provisions show that the *sole* subject of the investigation will be public officers and employees of the previous administration only, that is, until such time if and when the President decides to expand the Truth Commission's mandate to include other administrations (if he does so at all).

(4) E.O. No. 1 Does Not Apply to the Same Class —

Lastly, E.O. No. 1 does not apply to all of those belonging to the same class for it only applies to the public officers and employees of the past administration. It excludes from its purview the graft and the grafters of administrations prior to the last one. Graft is not exclusive to the previous presidency alone, hence there is no justification to limit the scope of the mandate only to the previous administration.

FACT-FINDING OR INVESTIGATION?

The nature of the powers and functions allocated by the President to the Truth Commission by virtue of E.O. No. 1 is

investigatory,[30] with the purposes of determining probable cause of the commission of "graft and corruption under pertinent applicable laws" and referring such finding and evidence to the proper authorities for prosecution.[31]

The respondents pass off these powers and functions as merely fact-finding, short of investigatory. I do not think so. Sugar-coating the description of the Truth Commission's processes and functions so as to make it "sound harmless" falls short of constitutional requirements. It has in its hands the vast arsenal of the government to intimidate, harass and humiliate its perceived political enemies outside the lawful prosecutorial avenues provided by law in the Ombudsman or the Department of Justice.

The scope of the investigatory powers and functions assigned by the President to the Truth Commission encompasses all "public officers and employees, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration."[32]

There is no doubt in my mind that what the President granted the Truth Commission is the **authority** to conduct preliminary investigation of complaints of graft and corruption against his immediate predecessor and her associates.

The respondents see nothing wrong with that. They believe that, pursuant to his power of control and general supervision

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[30] Section 2. xxx b) Collect, receive, review and evaluate evidence related to or regarding the cases of large scale corruption which it has chosen to investigate, and to this end require any agency, official or employee of the Executive Branch, including government-owned or controlled corporations, to produce documents, books, records and other papers xxx.

[31] Section 2. xxx g) Turn over from time to time, for expeditious prosecution, to the appropriate prosecutorial authorities, by means of a special or interim report and recommendation, all evidence on corruption of public officers and employees and their private sector co-principals, accomplices or accessories, if any, when in the course of its investigation the Commission finds that there is reasonable ground to believe that they are liable for graft and corruption under pertinent applicable laws xxx.

[32] *Id*.

under Article VII of the Constitution,[33] the President can create an *ad-hoc* committee like the Truth Commission to investigate graft and corruption cases. And the President can endow it with authority parallel to that of the Ombudsman to conduct preliminary investigations. Citing *Ombudsman v. Galicia*[34] the power of the Ombudsman to conduct preliminary investigations is not exclusive but shared with other similarly authorized government agencies.

I take a different view. The operative word is "authorized."

Indeed, the power of control and supervision of the President includes the power to discipline which in turn implies the power to investigate.[35] No Congress or Court can derogate from that power[36] but the Constitution itself may set certain limits.[37] And the Constitution has in fact carved out the preliminary investigatory aspect of the control power and allocated the same to the following:

(a) to Congress over presidential appointees who are impeachable officers (Article XI, Sections 2 and 3);
(b) to the Supreme Court over members of the courts and the personnel thereof (Article VIII, Section 6); and
(c) to the Ombudsman over any other public official, employee, office or agency (Article XI, Section 13 (1)).

However, even as the Constitution has granted to the Ombudsman the power to investigate other public officials and employees, such power is not absolute and exclusive. Congress has the power to further define the powers of the Ombudsman

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[33] Section 17. The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.

[34] 568 SCRA 327 (2008).

[35] *Joson v. Executive Secretary, et al.*, G.R. No. 131255, May 20, 1998; *Villaluz v. Zaldivar, et al.* (*En Banc*), G.R. No. L-22754, December 31, 1965.

[36] *Rufino v. Endriga*, G.R. No. 139554, July 21, 2006.

[37] *Ang-Angco v. Hon. Natalio Castillo, et al.*, G.R. No. L-17169, November 30, 1963.

and, impliedly, to authorize other offices to conduct such investigation over their respective officials and personnel.[38]

The Constitution has vested in Congress alone the power to grant to any office concurrent jurisdiction with the Ombudsman to conduct preliminary investigation of cases of graft and corruption.

In a myriad of cases, this Court has recognized the concurrent jurisdiction of other bodies *vis-à-vis* the Ombudsman to conduct preliminary investigation of complaints of graft and corruption as **authorized by law**, meaning, for any other person or agency to be able to conduct such investigations, there must be a law authorizing him or it to do so.

In *Ombudsman v. Galicia* (cited in the *ponencia*) as well as *Ombudsman v. Estandarte*,[39] the Court recognized the concurrent jurisdiction of the Division School Superintendent *vis-à-vis* the Ombudsman to conduct preliminary investigation of complaints of graft and corruption committed by public school teachers. Such concurrent jurisdiction of the Division School Superintendent was granted by law, specifically RA 4670 or the *Magna Carta* for Public School Teachers.[40]

Likewise, in *Ombudsman v. Medrano*[41] the Court held that by virtue of RA 4670 the Department of Education Investigating

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[38] Article XI states:

Section 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

x x x x x x x x x

(8) x x x exercise such other powers or perform such functions or duties as may be provided by law.

[39] G.R. No. 168670, April 13, 2007, 521 SCRA 155.

[40] See also *Emin v. De Leon* (G.R. No. 139794, February 27, 2002, 378 SCRA 143) on the concurrent authority of the Civil Service Commission and the DEPED Investigating Committee under RA 4670. See further *Puse v. Santos-Puse* (G.R. No. 183678, March 15, 2010) where the Court held that the concurrent jurisdiction of the DEPED and CSC to cause preliminary investigation is also shared by the Board of Professional Teachers under RA 7836 or Philippine Teachers Professionalization Act of 1994.

[41] G.R. No. 177580, October 17, 2008.

Committee has concurrent jurisdiction with the Ombudsman to conduct a preliminary investigation of complaints against public school teachers.

Even the *Sangguniang Panlungsod* has concurrent jurisdiction with the Ombudsman to look into complaints against the *punong barangay*.[42] Such concurrent authority is found in RA 7160 or the Local Government Code.

The Department of Justice is another agency with jurisdiction concurrent with the Ombudsman to conduct preliminary investigation of public officials and employees.[43] Its concurrent jurisdiction is based on the 1987 Administrative Code.

Certainly, there is a law, the Administrative Code, which authorized the Office of the President to exercise jurisdiction concurrent with the Ombudsman to conduct preliminary investigation of graft and corruption cases. However, the scope and focus of its preliminary investigation are restricted. Under the principle that the power to appoint includes the power to remove, each President has had his or her own version of a presidential committee to investigate graft and corruption, the last being President Gloria Macapagal Arroyo's Presidential Anti-Graft Commission (PAGC) under E.O. No. 268. The PAGC exercised concurrent authority with the Ombudsman to investigate complaints of graft and corruption against presidential appointees who are not impeachable officers and non-presidential appointees in conspiracy with the latter. It is in this light that *DOH v. Camposano, et al*.[44] as cited in the *ponencia* should be understood. At that time, the PCAGC (now defunct) had no investigatory power over non-presidential appointees; hence the President created an *ad-hoc* committee to investigate both the

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[42] See *Ombudsman v. Rolson Rodriguez*, G.R. No. 172700, July 23, 2010 citing *Laxina, Sr. v.Ombudsman*, G.R. No. 153155, 30 September 2005, 471 SCRA 542.

[43] *Sevilla Decin v. SPO1 Melzasar Tayco, et al*., G.R. No. 149991, February 14, 2007; *Honasan II v. The Panel of Investigating Prosecutors of the Department of Justice*, G.R. No. 159747, April 13, 2004.

[44] G.R. No. 157684. April 27, 2005.

principal respondent who was a presidential appointee and her co-conspirators who were non-presidential appointees. The PAGC (now also defunct), however, was authorized to investigate both presidential appointees and non-presidential appointees who were in conspiracy with each other.

However, although pursuant to his power of control the President may supplant and directly exercise the investigatory functions of departments and agencies within the executive department,[45] his power of control under the Constitution and the Administrative Code is confined only to the executive department.[46] **Without any law authorizing him**, the President cannot legally create a committee to extend his investigatory reach across the boundaries of the executive department to "public officers and employees, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration" without setting apart those who are still in the executive department from those who are not. Only the Ombudsman has the investigatory jurisdiction over them under Article XI, Section 13. There is no law granting to the President the authority to create a committee with concurrent investigatory jurisdiction of this nature.

The President acted in violation of the Constitution and without authority of law when he created a Truth Commission under E.O. No. 1 to exercise concurrent jurisdiction with the Ombudsman to conduct the preliminary investigation of complaints of graft and corruption against public officers and employees, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration.

INVESTIGATION OR QUASI-ADJUDICATION?

Respondents argue that the Truth Commission is merely an investigative and fact-finding body tasked to gather facts, draw

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[45] See *Review Center Association of the Philippines v. Executive Secretary Eduardo Ermita, et al.*, G.R. No. 180046, April 2, 2009; *Bermudez v. Executive Secretary*, G.R. No. 131429, August 4, 1999.

[46] *KMU v. Director General, et al.*, G.R. No. 167798, April 19, 2006.

conclusions therefrom and recommend the appropriate actions or measures to be taken. Petitioners, however, argue that the Truth Commission is vested with quasi-judicial powers. Offices with such awesome powers cannot be legally created by the President through mere executive orders.

Petitioners are correct.

The definition of investigation was extensively discussed in *Cariño v. Commission on Human Rights*:[47]

"*Investigate,*" commonly understood, means to examine, explore, inquire or delve or probe into, research on, study. The dictionary definition of "investigate" is "to observe or study closely: inquire into systematically: "to search or inquire into: . . . to subject to an official probe . . .: to conduct an official inquiry." The purpose of investigation, of course, is to discover, to find out, to learn, obtain information. Nowhere included or intimated is the notion of settling, deciding or resolving a controversy involved in the facts inquired into by application of the law to the facts established by the inquiry.

The legal meaning of "investigate" is essentially the same: "(t)o follow up step by step by patient inquiry or observation. To trace or track; to search into; to examine and inquire into with care and accuracy; to find out by careful inquisition; examination; the taking of evidence; a legal inquiry;" "to inquire; to make an investigation," "investigation" being in turn described as "(a)n administrative function, the exercise of which ordinarily does not require a hearing. 2 Am J2d Adm L Sec. 257; . . . an inquiry, judicial or otherwise, for the discovery and collection of facts concerning a certain matter or matters."[48] (Italics in the original)

The exercise of quasi-judicial power goes beyond mere investigation and fact-finding. Quasi-judicial power has been defined as

… the power of the administrative agency **to adjudicate the rights** of persons before it. It is the power to hear and determine questions of fact to which the legislative policy is to apply and **to decide in**

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[47] G.R. No. 96681, 2 December 1991, 204 SCRA 483.

[48] *Id.,* pp. 495-496.

accordance with the standards laid down by the law itself in enforcing and administering the same law. The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act which is essentially of an executive or administrative nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it. In carrying out their quasi-judicial functions the administrative officers or bodies are required **to investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature**.[49] (Emphasis supplied)

Despite respondents' denial that the Truth Commission is infused with quasi-judicial powers, it is patent from the provisions of E.O. No. 1 itself that such powers are indeed vested in the Truth Commission, particularly in Section 2, paragraphs (b) and (g):

b) Collect, receive, review, and **evaluate evidence** related to or regarding the cases of large scale corruption which it has chosen to investigate, …

x x x x x x x x x

g) Turn over from time to time, for expeditious prosecution, to the appropriate prosecutorial authorities, by means of a special or *interim* report and recommendation, all evidence on corruption of public officers and employees and their private sector co-principals, accomplices or accessories, if any, when in the course of its **investigation the Commission finds that there is reasonable ground to believe they are liable for graft and corruption under pertinent applicable laws**;

x x x x x x x x x

The powers to "evaluate evidence" and "find reasonable ground to believe that someone is liable for graft and corruption" are not merely fact-finding or investigatory. These are quasi-judicial in nature because they actually go into the weighing of evidence,

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[49] *Dole Philippines, Inc. v. Esteva*, G.R. No. 161115, 30 November 2006, 509 SCRA 332, 369-370.

drawing up of legal conclusions from them as basis for their official action and the exercise of discretion of a judicial or quasi-judicial nature.

The evaluation of the sufficiency of the evidence is a quasi-judicial/judicial function. It involves an assessment of the evidence which is an exercise of judicial discretion. We have defined discretion

> as the ability to make decisions which represent a responsible choice and for which an understanding of what is lawful, right or wise may be presupposed.[50]

It is the "the act or the liberty to decide, according to the principles of justice and one's ideas of what is right and proper under the circumstances, without willfulness or favor."[51]

Likewise, the power to establish if there is reasonable ground to believe that certain persons are liable for graft and corruption under pertinent applicable laws is quasi-judicial in nature because it is akin to the discretion exercised by a prosecutor in the determination of probable cause during a preliminary investigation. It involves a judicial (or quasi-judicial) appraisal of the facts for the purpose of determining if a violation has in fact been committed.

Although such a preliminary investigation is not a trial and is not intended to usurp the function of the trial court, it is not a casual affair. The officer conducting the same investigates or inquires into the facts concerning the commission of the crime with the end in view of determining whether or not an information may be prepared against the accused. **Indeed, a preliminary investigation is in effect a realistic judicial appraisal of the merits of the case.** Sufficient proof of the guilt of the accused must be adduced so that when the case is tried, the trial court may not be bound as a matter of law to order an acquittal. **A preliminary investigation has then been called a judicial inquiry. It is a judicial proceeding.** An act

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[50] *Manotoc v. Court of Appeals*, G.R. No. 130974, 16 August 2006.

[51] *Philippine Long Distance Telephone Co., Inc. v. Manggagawa ng Komunikasyon sa Pilipinas*, G.R. No. 162783, 14 July 2005.

becomes judicial when there is opportunity to be heard and for, the production and weighing of evidence, and a decision is rendered thereon.

The authority of a prosecutor or investigating officer duly empowered to preside or to conduct a preliminary investigation is no less than that of a municipal judge or even a regional trial court judge. **While the investigating officer, strictly speaking is not a "judge," by the nature of his functions he is and must be considered to be a quasi judicial officer**.[52]

Hence, the Truth Commission is vested with quasi-judicial discretion in the discharge of its functions.

As a mere creation of the executive and without a law granting it the power to investigate person and agencies outside the executive department, the Truth Commission can only perform administrative functions, not quasi-judicial functions. "Administrative agencies are not considered courts; they are neither part of the judicial system nor are they deemed judicial tribunals."[53]

Executive Order No. 1 and the Philippine Truth Commission of 2010, being contrary to the Constitution, should be nullified.

I therefore vote that the petitions be **GRANTED**.

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[52] *Cojuangco, Jr. v. Presidential Commission on Good Government,* G.R. Nos. 92319-20, 2 October 2, 1990. This is an *En Banc* case that had been reiterated in two other *En Banc* cases, namely, *Olivas v. Office of the Ombudsman* (G.R. No. 102420, 20 December 1994) and *Uy v. Office of the Ombudsman* (G.R. Nos. 156399-400, 27 June 2008, 556 SCRA 73). Thus it cannot be said to have been overturned by *Balangauan v. Court of Appeals, Special Nineteenth Division, Cebu City* (G.R. No. 174350, 13 August 2008, 562 SCRA 184) a decision of the Court through the Third Division wherein the Court declared: "It must be remembered that a preliminary investigation is not a quasi-judicial proceeding…. (p. 203)"

[53] *Meralco v. Energy Regulatory Board*, G.R. No. 145399, 17 March 2006.

CONCURRING OPINION

LEONARDO-DE CASTRO, *J.*:

I concur in the result of the *ponencia* of Justice Jose Catral Mendoza and join the separate opinions of my colleagues, Chief Justice Renato C. Corona, Justice Arturo D. Brion and Justice Jose Portugal Perez. I vote to declare Executive Order No. 1 (EO No. 1) unconstitutional, as a well-intentioned, but ill-devised, presidential issuance that transgresses the boundaries of executive power and responsibility set by the Constitution and our laws.

While I agree with the majority consensus that equal protection is an issue that must be resolved in these consolidated petitions, the weightier legal obstacles to the creation of the Philippine Truth Commission (the Commission) by executive order deserve greater attention in this discussion.

If the Commission created by EO No. 1 were a living person, it would be suffering from the most acute identity crisis. Is it an independent body? Is it a mere *ad hoc* fact-finding body under the control of the President? And in either case, what legal repercussion does its creation have on our constitutionally and statutorily developed system for investigating and prosecuting graft and corruption cases?

Indeed, from the answers to these questions, it becomes evident that those who have designed this constitutional anomaly designated as a "truth commission" have painted themselves into a legal corner with no escape.

If the Commission is an office independent of the President, then its creation by executive fiat is unconstitutional.

The concept of a "truth commission" in other jurisdictions has a primordial characteristic — independence. As a body created to investigate and report on the "truth" of historical events (ordinarily involving State violations of human rights *en masse*) in a country in transition from an authoritarian regime to a democratic one or from a conflict situation to one of peace,

the freedom of the members of the truth commission from any form of influence is paramount to ensure the credibility of any findings it may make.

Thus, "truth commissions" have been described in this wise:

> Truth commissions are **non-judicial, independent panels of inquiry** typically set up to establish the facts and context of serious violations of human rights or of international humanitarian law in a country's past. Commissions' members are usually empowered to conduct research, support victims, and propose policy recommendations to prevent recurrence of crimes. Through their investigations, the commissions may aim to discover and learn more about past abuses, or formally acknowledge them. They may aim to prepare the way for prosecutions and recommend institutional reforms. Most commissions focus on victims' needs as a path toward reconciliation and reducing conflict about what occurred in the past.[1] (Emphases supplied.)

Notably, the Office of the United Nations High Commissioner for Human Rights likewise lists operational independence as one of the core principles in the establishment of a truth commission:

> The legitimacy and public confidence that are essential for a successful truth commission process depend on the commission's **ability to carry out its work without political interference**. Once established, the commission should operate **free of direct influence or control by the Government, including in its research and investigations, budgetary decision-making, and in its report and recommendations**. Where financial oversight is needed, operational independence should be preserved. Political authorities should give clear signals that the commission will be operating independently.[2] (Emphases supplied.)

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[1] From the website of the International Center for Transitional Justice, http://ictj.org/en/tj/138.html, accessed on December 6, 2010.

[2] *Rule-of-Law Tools for Post-Conflict States: Truth Commissions*, Office of the United Nations High Commissioner for Human Rights, United Nations, New York and Geneva (2006) at p. 6.

With due respect, I disagree with Justice Antonio T. Carpio's opinion that the naming of the body created by EO No. 1 as the "Philippine Truth Commission" was a mere attempt to be novel, to depart from the tired and repetitious scheme of naming a commission after its appointed head/leader or of calling it a "fact-finding" body. Obviously, the title given to the Commission is meant to convey the message that it is independent of the Office of the President.

Those who dissent from the majority position gloss over the fact that EO No. 1 itself expressly states that the Commission's members shall "act as an independent collegial body."[3] During oral arguments, the Solicitor General confirmed that what EO No. 1 intended is for the Commission to be an independent body over which the President has no power of control.[4] The Solicitor General further claimed that one of the functions of the Commission is "truth-telling." Verily, the creation of the Philippine Truth Commission and its naming as such were done as a deliberate reference to the tradition of independent truth commissions as they are conceived in international law, albeit adapted to a particular factual situation in this jurisdiction.

If this Philippine Truth Commission is an office independent of the President and not subject to the latter's control and supervision, then the creation of the Commission must be done by legislative action and not by executive order. It is undisputed that under our constitutional framework only Congress has the power to create public offices and grant to them such functions and powers as may be necessary to fulfill their purpose. Even in the international sphere, the creation of the more familiar truth commissions has been done by an act of legislature.[5]

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[3] Section 1, EO No. 1.

[4] TSN, September 28, 2010, pp. 209-215, cited in the Separate Opinion of Justice Brion.

[5] To cite a few examples: The South African "Truth and Reconciliation Commission" was established under the Promotion of National Unity and Reconciliation Act 34 of 1995 passed by that country's parliament. The "National Unity and Reconciliation Commission" in Rwanda was officially set up in 1999 by an act of the Transitional National Assembly.

Neither can the creation of the Commission be justified as an exercise of the delegated legislative authority of the President to reorganize his office and the executive department under Section 31, Chapter 10, Title III, Book III of the Administrative Code of 1987. The acts of reorganization authorized under said provision are limited to the following:

> SEC. 31. Continuing Authority of the President to Reorganize his Office. The President, subject to the policy in the Executive Office and in order to achieve simplicity, economy and efficiency, ***shall have continuing authority to reorganize the administrative structure of the Office of the President***. For this purpose, he may take any of the following actions:
>
> (1) **Restructure the internal organization of the Office of the President Proper**, including the immediate Offices, the Presidential Special Assistants/Advisers System and the Common Support System, **by abolishing, consolidating or merging units thereof or transferring functions from one unit to another**;
>
> (2) Transfer any function under the Office of the President to any other Department or Agency as well as ***transfer functions to the Office of the President from other Departments and Agencies;*** and
>
> (3) Transfer any agency under the Office of the President to any other department or agency as well as ***transfer agencies to the Office of the President from other Departments or Agencies.*** (Emphases supplied.)

There is nothing in EO No. 1 that indicates that the Commission is a part of the executive department or of the Office of the President Proper. Indeed, it is Justice Carpio who suggests that the President may appoint the commissioners of the Philippine Truth Commission as presidential special assistants or advisers in order that the Commission be subsumed in the Office of the President Proper and to clearly place EO No. 1 within the ambit of Section 31. To my mind, the fact that the commissioners are proposed to be appointed as presidential advisers is an indication that the Philippine Truth Commission was initially planned to be independent of the President and the subsequent appointment of the commissioners as presidential advisers will

be merely curative of the patent defect in the creation of the Commission by an Executive Order, as an independent body.

I agree with Justice Brion that what EO No. 1 sought to accomplish was not a mere reorganization under the delegated legislative authority of the President. The creation of the Philippine Truth Commission did not involve any restructuring of the Office of the President Proper nor the transfer of any function or office from the Office of the President to the various executive departments and vice-versa. The Commission is an entirely new specie of public office which, as discussed in the concurring opinions, is not exercising inherently executive powers or functions but infringing on functions reserved by the Constitution and our laws to other offices.

If the Commission is under the control and supervision of the President, and not an independent body, the danger that the Commission may be used for partisan political ends is real and not imagined.

For the sake of argument, let us accept for the moment the propositions of our dissenting colleagues that:

(a) The Commission is not a separate public office independent of the President;

(b) The Commission is an executive body (or a part of the Office of the President Proper) that may be created by the President through an executive order under Section 31; and

(c) The Commission is merely an *ad hoc* fact-finding body intended to apprise the President of facts that will aid him in the fulfillment of his duty to ensure the faithful execution of the laws.

If the foregoing statements are true, then what EO No. 1 created is a body under the control and supervision of the President. In fact, if the commissioners are to be considered special advisers to the President, the Commission would be a body that serves at the pleasure of the President. Proponents who support the

creation of the Commission in the manner provided for under EO No. 1 should drop all arguments regarding the purported independence and objectivity of the proceedings before it.

Indeed, EO No. 1 itself is replete with provisions that indicate that the existence and operations of the Commission will be dependent on the Office of the President. Its budget shall be provided by the Office of the President[6] and therefore it has no fiscal autonomy. The reports of the Commission shall be published upon the directive of the President.[7] Further, if we follow the legal premises of our dissenting colleagues to their logical conclusion, then the Commission as a body created by executive order may likewise be abolished (if it is part of the Presidential Special Assistants/Advisers System of the Office of the President Proper) or restructured by executive order. EO No. 1 may be amended, modified, and repealed all by executive order. More importantly, if the Commission is subject to the power of control of the President, he may reverse, revise or modify the actions of the Commission or even substitute his own decision for that of the Commission.

Whether by name or by nature, the Philippine Truth Commission cannot be deemed politically "neutral" so as to assure a completely impartial conduct of its purported fact-finding mandate. I further concur with Chief Justice Corona that attempts to "sugar coat" the Philippine Truth Commission's functions as "harmless" deserve no credence.

The purported functions to be served by the Commission, as the concurring opinions vividly illustrate, will subvert the functions of the Ombudsman and the constitutional and statutory developed criminal justice system.

First, it is apparent on the face of EO No. 1 that in general "it is primarily tasked to conduct a thorough fact-finding

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[6] Section 11 of EO No. 1.

[7] Section 15 of EO No. 1.

investigation of reported cases of graft and corruption [of such scale and magnitude that shock and offend the moral and ethical sensibilities of the people], involving third level public officers and higher, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration."[8] I agree with the Chief Justice's proposition that there is no law authorizing the President to create a body to investigate persons outside the executive department in relation to graft and corruption cases, concurrently with the Office of the Ombudsman which has such express legal authority. Indeed, even in jurisprudence, the instances when the power of the President to investigate and create *ad hoc* committees for that purpose were upheld have been usually related to his power of control and discipline over his subordinates or his power of supervision over local government units.

In *Ganzon v. Kayanan*,[9] a case involving the investigation of a mayor, we held that the power of the President to remove any official in the government service under the Revised Administrative Code and his constitutional power of supervision over local governments were the bases for the power of the President to order an investigation of any action or the conduct of any person in the government service, and to designate the official committee, or person by whom such investigation shall be conducted.

In *Larin v. Executive Secretary*,[10] where the petitioner subject of the investigation was an Assistant Commissioner in the Bureau of Internal Revenue, we held that:

Being a presidential appointee, **he comes under the direct disciplining authority of the President.** This is in line with the well settled principle that the "power to remove is inherent in the power to appoint" conferred to the President by Section 16, Article VII of the Constitution. **Thus, it is ineluctably clear that Memorandum Order No. 164, which created a committee to**

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[8] Section 2, EO No. 1 with phrase in brackets supplied from Section 1.

[9] 104 Phil. 483 (1958).

[10] 345 Phil. 962 (1997).

investigate the administrative charge against petitioner, was issued pursuant to the power of removal of the President. x x x.[11] (Emphases supplied.)

In a similar vein, it was ruled in *Joson v. Executive Secretary*,[12] that:

> The power of the President over administrative disciplinary cases against elective local officials is derived from his power of general supervision over local governments. Section 4, Article X of the 1987 Constitution provides:
>
> > Sec. 4. The President of the Philippines shall exercise general supervision over local governments. Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component *barangays* shall ensure that the acts of their component units are within the scope of their prescribed powers and functions."
>
> The **power of supervision means "overseeing or the authority of an officer to see that the subordinate officers perform their duties.** If the subordinate officers fail or neglect to fulfill their duties, the official may take such action or step as prescribed by law to make them perform their duties. The **President's power of general supervision means no more than the power of ensuring that laws are faithfully executed, or that subordinate officers act within the law.** Supervision is not incompatible with discipline. **And the power to discipline and ensure that the laws be faithfully executed must be construed to authorize the President to order an investigation of the act or conduct of local officials when in his opinion the good of the public service so requires**.[13] (Emphases ours.)

Still on the same point, *Department of Health v. Camposano*[14] likewise discussed that:

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[11] *Id.* at 974.

[12] 352 Phil. 888 (1998).

[13] *Id.* at 913-914.

[14] 496 Phil. 886 (2005).

The Chief Executive's **power to create the *Ad Hoc* Investigating Committee** cannot be doubted. **Having been constitutionally granted full control of the Executive Department**, to which respondents belong, **the President has the obligation to ensure that all executive officials and employees faithfully comply with the law.** With AO 298 as mandate, the legality of the investigation is sustained. Such validity is not affected by the fact that the investigating team and the PCAGC had the same composition, or that the former used the offices and facilities of the latter in conducting the inquiry.[15] (Emphases supplied.)

Second, the functions of the Commission, although ostensibly only recommendatory, are basically prosecutorial in nature and not confined to objective fact finding. EO No. 1 empowers the Commission to, among others:

SECTION 2. x x x.

x x x x x x x x x

(b) Collect, receive, review and evaluate evidence related to or regarding the cases of large scale corruption which it has chosen to investigate, and to this end require any agency, official or employee of the Executive Branch, including government-owned or controlled corporations, to produce documents, books, records and other papers;

x x x x x x x x x

(g) Turn over from time to time, for **expeditious prosecution** to the appropriate prosecutorial authorities, by means of a special or *interim* report and recommendation, all evidence on corruption of public officers and employees and their private sector co-principals, accomplices or accessories, if any, when in the course of its investigation the Commission finds that there is reasonable ground to believe that they are liable for graft and corruption under pertinent applicable laws. (Emphasis ours.)

I agree with Justice Perez that the aforementioned functions run counter to the very purpose for the creation of the Office of the Ombudsman, to constitutionalize a politically independent office responsible for public accountability as a response to the negative experience with presidential commissions. His discussion

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[15] *Id.* at 896-897.

on the constitutional history of the Office of the Ombudsman and the jurisprudential bases for its primary jurisdiction over cases cognizable by the Sandiganbayan (*i.e.*, specific offenses, including graft and corruption, committed by public officials as provided for in Presidential Decree No. 1606, as amended) is *apropos* indeed.

I likewise find compelling Justice Brion's presentation regarding the Commission's "truth-telling" function's potential implications on due process rights and the right to a fair trial and the likelihood of duplication of, or interference with, the investigatory or adjudicatory functions of the Ombudsman and the courts. I need not repeat Justice Brion's comprehensive and lucid discussion here. However, I do find it fitting to echo here former Chief Justice Claudio Teehankee, Sr.'s dissenting opinion in *Evangelista v. Jarencio*,[16] the oft-cited authority for the President's power to investigate, where he stated that:

> The thrust of all this is that **the State** with its overwhelming and vast powers and resources **can and must ferret out and investigate wrongdoing, graft and corruption and at the same time respect the constitutional guarantees of the individual's right to privacy, silence and due process and against self-incrimination** and unreasonable search and seizure. x x x.[17] (Emphases ours.)

The constitutional mandate for public accountability and the present administration's noble purpose to curb graft and corruption simply cannot justify trivializing individual rights equally protected under the Constitution. This Court cannot place its stamp of approval on executive action that is constitutionally abhorrent even if for a laudable objective, and even if done by a President who has the support of popular opinion on his side. For the decisions of the Court to have value as precedent, we cannot decide cases on the basis of personalities nor on something as fickle and fleeting as public sentiment. It is worth repeating that our duty as a Court is to uphold the rule of law and not the rule of men.

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[16] 160-A Phil. 753 (1975).

[17] *Id.* at 776.

Concluding Statement

Section 1, Article VIII of the 1987 Constitution provides:

> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

Undeniably, from the foregoing, judicial review is not only a power but a **constitutional duty** of the courts. The framers of our Constitution found an imperative need to provide for an expanded scope of review in favor of the "non-political" courts as a vital check against possible abuses by the political branches of government. For this reason, I cannot subscribe to Justice Maria Lourdes Sereno's view that the Court's exercise of its review power in this instance is tantamount to supplanting the will of the electorate. A philosophical view that the exercise of such power by the Judiciary may from a certain perspective be "undemocratic" is not legal authority for this Court to abdicate its role and duty under the Constitution. It also ignores the fact that it is the people by the ratification of the Constitution who has given this power and duty of review to the Judiciary.

The insinuations that the members of the majority are impelled by improper motives, being countermajoritarian and allowing graft and corruption to proliferate with impunity are utterly baseless. Not only are these sort of *ad hominem* attacks and populist appeals to emotion fallacious, they are essentially non-legal arguments that have no place in a debate regarding constitutionality. At the end of the day, Justices of this Court must vote according to their conscience and their honest belief of what the law is in a particular case. That is what gives us courage to stand by our actions even in the face of the harshest criticism. Those who read our opinions, if they are truly discerning, will be able to determine if we voted on points of law and if any one of us was merely pandering to the appointing power.

Needless to say, this Court will fully support the present administration's initiatives on transparency and accountability if implemented within the bounds of the Constitution and the laws that the President professes he wishes to faithfully execute. Unfortunately, in this instance, EO No. 1 fails this ultimate legal litmus test.

SEPARATE OPINION

BRION, *J.*:

I concur, through this Separate Opinion, with the conclusion that the Executive Order No. 1 (*EO 1 or EO*) creating the Truth Commission is fatally defective and thus should be struck down.

I base my conclusion:

(1) On *due process grounds*;

(2) On the *unconstitutional impact of the EO on the established legal framework of the criminal justice system;*

(3) On *the violation of the rule on separation of powers*;

(4) On the *violations of the personal rights of the investigated persons* and *their constitutional right to a fair trial;*[1] *and*

(5) On *the violation of the equal protection clause*.

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[1] CONSTITUTION, Article III, Section 1 and 14, which states:

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Section 14. (1) No person shall be held to answer for a criminal offense without due process of law.

(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.

Two inter-related features of the EO primarily contribute to the resulting violations. The ***first*** is the use of the title Truth Commission, which, as used in the EO, is fraught with hidden and prejudicial implications beyond the seemingly simple truth that purportedly characterizes the Commission. The ***second*** relates to the truth-telling function of the Truth Commission under the terms of the EO. Together, these features radiate outwards with prejudicial effects, resulting in the above violations.

The full disclosure of the truth about irregular and criminal government activities, *particularly about graft and corruption*, is a very worthy ideal that those in government must fully support; the ideal cannot be disputed, sidetracked or much less denied. It is a matter that the Constitution itself is deeply concerned about as shown by Article XI on Accountability of Public Officers.

This concern, however, co-exists with many others and is not the be-all and end-all of the Charter. The means and manner of addressing this constitutional concern, for example, rate very highly in the hierarchy of constitutional values, particularly their effect on the structure and operations of government and the rights of third parties.

The working of government is based on a well-laid and purposeful constitutional plan, essentially based on the doctrine of separation of powers, that can only be altered by the ultimate sovereign — the people. Short of this sovereign action, not one of the departments of government — neither the Executive, nor the Legislature, and nor the Judiciary — can modify this constitutional plan, whether directly or indirectly.

Concern for the individual is another overriding constitutional value. Significantly, the Constitution does not distinguish between the guilty and the innocent in its coverage and grant of rights and guarantees. In fact, it has very specific guarantees for all accused based on its general concern for every Filipino's life, liberty, security and property. The Constitution, too, ensures that persons of the same class, whether natural or juridical, are treated equally, and that the government does not discriminate in its actions.

All these, this Court must zealously guard. We in the Court cannot ever allow a disturbance of the equilibrium of the constitutional structure in favour of one or the other branch, especially in favour of the Judiciary. *Much less can we pre-judge any potential accused, even in the name of truth-telling, retribution, national healing or social justice.* The justice that the Constitution envisions is largely expressed and embodied in the Constitution itself and this concept of justice, more than anything else, the Judiciary must serve and satisfy. In doing this, the Judiciary must stand as a *neutral and apolitical judge* and *cannot be an advocate* other than for the primacy of the Constitution.

These, in brief, reflect the underlying reasons for the cited grounds for the invalidity of E.O. 1.

I. THE EO AND THE "TRUTH" COMMISSION.

A. THE TERMS OF THE EO AND THE RULES; NATURE OF THE "TRUTH COMMISSION"

The Philippine Truth Commission (*Truth Commission or Commission*) is a body "*created*" by the President of the Philippines by way of an Executive Order (*EO 1 or EO*) entitled "Executive Order No. 1, Creating the Philippine Truth Commission of 2010." The Truth Commission's express and avowed purpose is — [2]

"to **seek and find the truth** on, and toward this end, **investigate reports of graft and corruption** of such scale and magnitude that shock and offend the moral and ethical sensibilities of the people, **committed by public officials and employees**, their co-principals, accomplices and accessories from the private sector, if any, **during the previous administration**, and thereafter **recommend the appropriate action** to be taken thereon to ensure that the full measure of justice shall be served without fear or favor."

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[2] Executive Order No. 1, "Creating the Philippine Truth Commission of 2010," Section 1.

Under these terms and by the Solicitor General's admissions and representations, the Truth Commission has three basic functions, namely, *fact-finding*,[3] *policy recommendation*,[4] and *truth-telling*,[5] all with respect to reported massive graft and corruption committed by officials and employees of the previous administration.

The EO defines the Truth Commission as an "independent collegial body" with a Chairman and four members;[6] and provides for the staff,[7] facilities[8] and budgetary support[9] it can rely on, all of which are sourced from or coursed through the Office of the President. It specifically empowers the Truth Commission to "collect, receive, review and evaluate evidence."[10] It defines how the Commission will operate and how its proceedings will be conducted.[11] *Notably, its hearings shall be open to the public*, ***except only*** when they are held in executive sessions for reasons of *national security*, *public safety* or when demanded by witnesses' *personal security* concerns.[12] It is tasked to submit its findings and recommendations on graft and corruption to the President, Congress and the Ombudsman,[13] and submit special interim reports and a comprehensive final report which shall be published.[14] Witnesses or resource persons are given

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[3] TSN, September 28, 2010, pp. 23, 39-40, 52, 60, 73-75, 123-126.

[4] *Id.* at 182.

[5] *Id.* at 58-60.

[6] EO 1, Section 1, par. 2.

[7] *Id.*, Section 2, paragraphs H and I; Sections 3, 4 and 5.

[8] *Id.*, Sections 12, 13.

[9] *Id.*, Section 11.

[10] *Id.*, Section 2 (b).

[11] *Id.*, Sections 2 (c), (d), (e), (f), (g), (h), (i) and 6.

[12] *Id.*, Section 6.

[13] *Id.*, Section 2.

[14] *Id.*, Section 15.

the right to counsel,[15] as well as security protection to be provided by government police agencies.[16]

The Rules of Procedure of the Philippine Truth Commission of 2010 (*Rules*), promulgated pursuant to Section 2(j) of EO 1, further flesh out the operations of the Commission.[17] Section 4 assures that "due process shall at all times be observed in the application of the Rules." It provides for formal complaints that may be filed before it,[18] and that after evaluation, the parties who appear responsible under the complaints shall be provided copies of the complaints and supporting documents, and be required to comment on or file counter-affidavits within ten (10) days.[19] The Rules declare that *the Commission is not bound by the technical rules of evidence*,[20] reiterate the protection afforded to witnesses provided under the EO,[21] and confirm that hearings shall be open to the public.[22]

B. THE TITLE "TRUTH COMMISSION" AND DUE PROCESS

Both the parties' memoranda dwelt on the origins and nature of the term "Truth Commission," with both using their reading of the term's history and usages to support their respective positions.[23] What comes across in available literature is that no nation has a lock on the meaning of the term; there is only a long line of practice that attaches the term to a body established

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[15] *Id.*, Section 7.

[16] *Id.*, Section 8.

[17] Resolution 001, "Rules of Procedure of the Philippine Truth Commission," September 20, 2010.

[18] Rules, Rule 4, Section 1(b).

[19] *Id.*, Rule 4, Section 1(b), paragraph 2.

[20] Rules, Rule 4, Section 2.

[21] EO 1, Section 8.

[22] Rules, Rule 5.

[23] Petitioner Lagman's Petition for *Certiorari*, *rollo*, pp. 34-43; Respondents' Memorandum, *id*. at 322-323.

upon restoration of democracy after a period of massive violence and repression.[24] The term truth commission has been specifically used as a title for the body investigating the *human rights violations*[25] that attended *past violence and repression*,[26] and in some instances for a body working for reconciliation in society.[27]

The traditional circumstances that give rise to the use of a truth commission along the lines of established international practice are not present in the Philippine setting. The Philippines has a new democratically-elected President, whose election has been fully accepted without protest by all presidential candidates and by the people. A peaceful transition of administration took place, where Congress harmoniously convened, with the past President now sitting as a member of the House of Representatives. While charges of human rights violations may have been lodged against the government during the past administration, these charges are not those addressed by EO 1.[28] Rather, *EO 1 focuses entirely on graft and corruption*. Significantly, *reconciliation does not appear to be a goal* — either in the EO, in the pleadings filed by the parties, or in the oral arguments — thus, removing a justification for any massive

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[24] See Mark Freeman, *Truth Commissions and Procedural Fairness* (2006).

[25] Freeman, *supra* note 24 at 12-13 *citing* Priscilla Hayner, *Unspeakable Truths: Facing the Challenge of Truth Commissions* (2nd ed., 2004), p. 14.

[26] Freeman, *supra* note 24 at 14 [Freeman points out that Hayner omitted the element in the definition that "truth commissions *focus on severe acts of violence or repression*." He stated further that "[s]uch acts may take many forms, ranging from arbitrary detention to torture to enforced disappearance to summary execution."

[27] Theresa Klosterman, *The Feasibility and Propriety of a Truth Commission in Cambodia: Too Little? Too Late?* 15 ARIZ. J. INT'L & COMP. L. 833, 843-844 (1998). *See also* Priscilla Hayner, *Fifteen Truth Commissions 1974 to 1994: A Comparative Study*, 16 HUM. RTS. Q. 597, 600, 607 (1994).

[28] An attempt has been made during the oral arguments to characterize massive graft and corruption as a violation of human rights, but this characterization does not appear to be based on the settled definition of human rights (TSN, Sept. 7, 2010, pp. 83-84).

information campaign aimed at healing divisions that may exist in the nation.

As a matter of law, that a body called a Truth Commission is tasked to investigate past instances of graft and corruption would not *per se* be an irregularity that should cause its invalidation. The use of the word "truth" is not *ordinarily* a ground for objection. Not even the Constitution itself defines or tells us what truth is; the Charter, fleshed out by the statutes, can only outline the process of arriving at the truth. After the Constitution and the statutes, however, have laid down the prescribed procedure, then that procedure must be observed in securing the truth. Any deviation could be a violation depending on the attendant circumstances.

No international law can also prevent a sovereign country from using the term as the title of a body tasked to investigate graft and corruption affecting its citizens within its borders. At the same time, international law cannot be invoked as a source of legitimacy for the use of the title when it is not based on the internationally-recognized conditions of its use.

No local law likewise specifically prohibits or regulates the use of the term "truth commission." Apart from the procedural "deviation" above adverted to, what may render the use of the term legally objectionable is the *standard of reason*, applicable to all government actions, as applied to the attendant circumstances surrounding the use in the EO of the title Truth Commission.[29] The use of this standard is unavoidable since the title Truth Commission is used in a public instrument that defines the Commission's functions and affects both the government and private parties.[30] The Commission's work affects

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[29] See *Villanueva v. CA*, G.R. No. 110921, January 28, 1998, 285 SCRA 180; *Fabia v. IAC*, G.R. No. 66101, November 21, 1984, 133 SCRA 364; *Lacoste v. Hernandez*, G.R. Nos. 63796-97, May 21, 1984, 129 SCRA 373; *Lu v. Yorkshire Insurance*, 43 Phil. 633 (1922); *People v. Macasinag*, G.R. No. L-18779, August 18, 1922, 43 Phil. 674 (1922); *Correa v. Mateo*, 55 Phil. 79 (1930); *People v. Macasinag*, 43 Phil. 674 (1922).

[30] See Joaquin G. Bernas, S.J. *The 1987 Constitution Of The Republic Of The Philippines: A Commentary* (2009 ed.), p. 118.

third parties as it is specifically tasked to investigate and prosecute officials and employees of the previous administration. This line of work effectively relates it to the processes of the criminal justice system.

In the simplest due process terms, the EO – as a governmental action – must have a *reasonable objective* and must use equally *reasonable means* to achieve this objective.[31] When the EO — viewed from the prism of its title and its truth-telling function — is considered a means of achieving the objective of fighting graft and corruption, it would be invalid if it unreasonably or oppressively affects parties, whether they be government or private.

C. THE COMMISSION'S FUNCTIONS

As worded, the EO establishes the Commission as an investigative body tasked to act on cases of graft and corruption committed during the previous administration. This is an area that the law has assigned to the primary jurisdiction of the Ombudsman to investigate and prosecute.[32] If probable cause

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[31] See *Id*. at 119, citing *U.S. v. Toribio*, 15 Phil. 85 (1910), which quoted *Lawton v. Steel*:

> *[T]he State may interfere wherever the public interests demand it, and in this particular a large discretion is necessarily vested in the legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests*. (*Barbier vs. Connolly*, 113 U.S. 27; *Kidd vs. Pearson*, 128 U.S. 1.) To justify the State in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the court.

[32] Republic Act No. 6770, Section 15, par.1, November 17, 1989, "An Act Providing For the Functional and Structural Organization of the Office

exists, these same cases fall under the exclusive jurisdiction of the Sandiganbayan[33] whose decisions are appealable to the Supreme Court.[34]

Whether a Commission can engage in fact-finding, whose input can aid the President in policy formulation, is not a disputed issue. What is actively disputed is whether the Truth Commission shall undertake its tasks in a purely investigative fact-finding capacity or in the exercise of quasi-judicial powers. This issue impacts on the level of fairness that should be observed (and the standard of reason that should apply), and thus carries due process implications. *Equally important to the issue of due process are the function of truth-telling and the effects of this function when considered with the title "Truth Commission."*

C.1. The Truth-Telling Function

The Solicitor General fully verbalized the ***truth-telling function*** when he declared that it is *a means of letting the people know the truth in the allegations of graft and corruption against the past administration*.[35] The Solicitor General, in response to the questions of *J*. Sereno, said:

Justice Sereno: . . .I go now to the truth-telling part of the commission. In other words, can you describe to us the truth telling and truth seeking part of the commission?

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of the Ombudsman, and For Other Purposes," See also *Ombudsman v. Enoc*, G.R. Nos. 145957-68, January 25, 2002, 374 SCRA 691. *See also Ombudsman v. Breva*, G.R. No. 145938, February 10, 2006, 482 SCRA 182.

[33] Presidential Decree No. 1606, December 10, 1978, "Revising Presidential Decree No. 1486, Creating a Special Court to be known as Sandiganbayan and for other purposes," as amended by Republic Act No. 8249, February 5, 1997, "An Act Further Defining the Jurisdiction of the Sandiganbayan, Amending For The Purpose Presidential Decree No. 1606, As Amended, Providing Funds Therefor, And For Other Purposes." *See also PCGG v. Hon. Emmanuel G. Peña, etc., et al.*, G.R. No. 77663, April 12, 1988, 159 SCRA 556.

[34] *Id.* at 561-562, citing Presidential Decree No. 1606, Section 7, which provides that "decisions and final orders [of the Sandiganbayan] shall be subject of review on *certiorari* by the Supreme Court in accordance with Rule 45 of the Rules of Court."

[35] TSN, September 28, 2010, pp. 58–60, 147.

Solicitor General Cadiz: Your Honor, of course our people will find closure if aside from the truth finding of facts, **those who have been found by the body to have committed graft and corruption will be prosecuted** by the Ombudsman. It is. . .Your Honor, there is a crime committed and therefore punishment must be meted out. However, Your Honor, **truth-telling part, the mere narration of facts, the telling of the truth, will likewise I think to a certain degree, satisfy our people**.

Justice Sereno: Are you saying therefore the truth-telling, that the narration like the other narrations in the past commissions has an independent value apart from the recommendations to indict which particular persons?

Solicitor General Cadiz: I agree Your Honor. And it is certainly, as the EO says, it's a Truth Commission **the narration of facts by the members of the Commission, I think, will be appreciated by the people independent of the indictment that is expected likewise**. [Emphasis supplied.]

His statement is justified by the EO's mandate to seek and find the truth under Section 1; the opening to the public of the hearing and proceedings under Section 6; and the publication of the Commission's final report under Section 15 of the EO.[36]

C.2. Legal Implications of Truth-Telling

Truth-telling, as its name connotes, does not exist solely for the sake of "truth"; the ***"telling" side*** is equally important as the Solicitor General impressed upon this Court during the oral arguments.[37] Thus, *to achieve its objectives, truth-telling needs an audience to whom the truth shall be told.*[38] This requirement opens up the reality that EO 1 really speaks in two forums.

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[36] The Dissent of *J.* Sereno itself echoes and reechoes with the truth-telling intent of the Truth Commission and even speaks of "the need to shape collective memory as a way for the public to confront injustice and move towards a more just society" (p. 27, dissent). It proceeds to claim that this Separate Opinion "eliminates the vital role of the Filipino people in constructing collective memories of injustices as basis for redress." J. Sereno's Dissenting Opinion, pp. 27-28.

[37] TSN, September 28, 2010, pp. 146-147.

[38] See *e.g.* Bilbija, *et al.*, eds., *The Art of Truth Telling About Authoritarian Rule* (2005), p. 14.

The **first forum**, as expressly provided in the EO, is composed of the persons to be investigated and the recipients of the Commission's reports who are expected to act on these reports, specifically, the President (who needs investigative and policy formulation assistance); Congress (who may use the Commission's information for its own legislative purposes); and the Ombudsman as the investigative and prosecutory constitutional office[39] to which, under the EO, the Commission must forward its interim and final reports. The Commission's hearings and proceedings are important venues for this forum, as this is where the investigated persons can defend themselves against the accusations made. The element of policy formulation, on the other hand, is present through the Commission's *interim* and final reports from which appropriate remedial policy measures can be distilled. The element of truth-telling — in the sense of communicating to the public the developments as they happen and through the *interim* and final reports — exists but only plays a secondary role, as the public is not a direct participant in this forum.

The **second forum** — not as explicitly defined as the first but which must implicitly and necessarily be there — is that shared with *the general public as the audience to whom the President (through the EO and the Truth Commission) wishes to tell the story of the allegedly massive graft and corruption during the previous administration.* This is the distinct domain of truth-telling as the Solicitor General himself impliedly admits in his quoted arguments.[40] Section 6 of the EO fully supports truth-telling, as it opens up the Commission's hearings or proceedings to the public (and hence, to the mass media), subject only to an executive session "where matters of national security or public safety are involved or when the personal safety of the witness warrants the holding of such executive or closed-door session hearing."

These separate forums are not distinguished merely for purposes of academic study; they are there, plainly from the terms of the

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[39] CONSTITUTION, Article XI, Sections 12 and 13.

[40] *Supra* note 35.

EO, and carry clear distinctions from which separate legal consequences arise.

Both forums involve third parties, either as persons to be investigated or as part of the general public (in whose behalf criminal complaints are nominally brought and who are the recipients of the Commission's truth-telling communications) so that, at the very least, standards of fairness must be observed.[41] In the investigative function, the standard depends on whether the tasks performed are purely investigative or are quasi-judicial, but this distinction is not very relevant to the discussions of this opinion. In truth-telling, on the other hand, the level of the required fairness would depend on the objective of this function and the level of finality attained with respect to this objective.[42]

In the ***first forum***, no element of finality characterizes the Commission's reports since — from the perspective of the EO's express purposes of prosecution and policy formulation — they are merely recommendatory and are submitted for the President's, Congress' and the Ombudsman's consideration. Both the President and Congress may reject the reports for purposes of their respective policy formulation activities; the Ombudsman may likewise theoretically and nominally reject them (although with possibly disastrous results as discussed below).

In the ***second forum***, *a very high element of finality* exists as the information communicated through the hearings, proceedings and the reports are directly "told" the people as the "truth" of the graft and corruption that transpired during the previous administration. In other words, *the Commission's outputs are already the end products, with the people as the direct consumers.* In this sense, the *element of fairness* that must exist in the second forum must approximate the rights of an accused in a criminal trial as the consequence of truth-telling is no less than a final "conviction" before the bar of public opinion based on the "truth" the Commission "finds." Thus, if the Commission is to observe the rights of due process as Rule 1, Section 4 of

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[41] See Freeman, *supra* note 24, pp. 88-155.

[42] See Freeman, *id.* at 88.

its Rules guarantees, then the right of investigated persons to cross-examine witnesses against them,[43] the right against self-incrimination,[44] and all the rights attendant to a fair trial must be observed. The rights of persons under investigation under Section 12 of the Bill of Rights of the Constitution[45] must likewise be respected.

II. THE EO'S LEGAL INFIRMITIES.

A. THE TITLE "TRUTH COMMISSION" + THE TRUTH-TELLING FUNCTION = VIOLATION OF DUE PROCESS

A.1. The Impact of the Commission's "Truth"

The first problem of the EO is its use of the title "Truth Commission" and its objective of truth-telling; these assume that what the Truth Commission speaks of is the "truth" because of its title and of its truth-telling function; thus, anything other than what the Commission reports would either be a distortion of the truth, or may even be an "untruth."

This problem surfaced during the oral arguments on queries about the effect of the title "Truth Commission" on the authority of the duly constituted tribunals that may thereafter rule on the matters that the Commission shall report on.[46] Since the Commission's report will constitute the "truth," any subsequent contrary finding by the Ombudsman[47] would necessarily be suspect as an "untruth"; it is up then to the Ombudsman to convince the public that its findings are true.

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[43] CONSTITUTION, Article III, Section 14 (2), *supra* note 1.

[44] CONSTITUTION, Article III, Section 17.

[45] CONSTITUTION, Article III, Section 12.

[46] TSN, September 28, 2010, pp. 149-151.

[47] The Commission is bound to furnish the Ombudsman a copy of its partial and final reports for the Ombudsman's consideration and action, under Sec. 2 of the EO.

To appreciate the extent of this problem, it must be considered that the hearings or proceedings, where charges of graft and corruption shall be aired, shall be open to the public. The Commission's report shall likewise be published.[48] These features cannot but mean full media coverage.

Based on common and usual Philippine experience with its very active media exemplified by the recent taking of Chinese and Canadian hostages at the Luneta, a full opening to the media of the Commission's hearings, proceedings and reports means a veritable media feast that, in the case of the Truth Commission, shall occur on small but detailed daily doses, from the naming of all the persons under investigation all the way up to the Commission's final report. By the time the Commission report is issued, or even before then, the public shall have been saturated with the details of the charges made through the publicly-aired written and testimonial submissions of witnesses, variously viewed from the vantage points of *straight reporting*, *three-minute TV news clips,* or *the slants and personal views of media opinion writers and extended TV coverage.* All these are highlighted as **the power of the media and the environment that it creates can never be underestimated. Hearing the same "truth" on radio and television and seeing it in print often enough can affect the way of thinking and the perception, *even of those who are determined, in their conscious minds, to avoid bias*.**[49]

As expected, this is a view that those supporting the validity of the EO either dismisses as an argument that merely relies on a replaceable name,[50] or with more general argument couched under the question "Who Fears the Truth."[51]

The dismissive argument, to be sure, would have been meritorious if only the name Truth Commission had not been

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[48] EO 1, Section 16.

[49] See generally Malcolm Gladwell, *Blink* (2005); see also, Cardozo, *The Nature of the Judicial Process*, pp. 167-180, and as quoted elsewhere in this Separate Opinion, *infra* note 55.

[50] *J.* Carpio's Dissenting Opinion, pp. 19-211.

[51] *J.* Sereno's Dissenting Opinion, pp. 25- 29.

supported by the Commission's truth-telling function; or, if the name "Truth Commission" were a uniquely Filipino appellation that does not carry an established meaning under international practice and usage. Even if it were to be claimed that the EO's use of the name is unique because the Philippines' version of the Truth Commission addresses past graft and corruption and not violence and human rights violations as in other countries, the name Truth Commission, however, cannot simply be dissociated from its international usage. The term connotes abuses of untold proportions in the past by a repressive undemocratic regime — a connotation that may be applicable to the allegations of graft and corruption, but is incongruous when it did not arise from a seriously troubled regime; even the present administration cannot dispute that it assumed office in a peaceful transition of power after relatively clean and peaceful elections.

The "Who Fears the Truth?" arguments, on the other hand, completely miss the point of this Separate Opinion. *This Opinion does not dispute that past graft and corruption must investigated and fully exposed*; any statement to the contrary in the Dissent are unfounded rhetoric written solely for its own partisan audience. What this Opinion clearly posits as legally objectionable is the government's manner of "telling;" any such action *by government* must be made according to the norms and limits of the Constitution to which all departments of government — including the Executive — are subject. Specifically, the Executive cannot be left unchecked when its methods grossly violate the Constitution. This matter is discussed in full below.

A.2. Truth-telling and the Ombudsman

To return to the scenario described above, it is this scenario that will confront the Ombudsman when the Commission's report is submitted to it. At that point, there would have been a full and extended public debate *heavily influenced* by the Commission's "truthful" conclusions. Thus, when and if the Ombudsman finds the evidence from the report unconvincing or below the level that probable cause requires, it stands to incur the public ire, as the public shall have by then been fully

informed of the "facts" and the "truth" in the Commission's report that the Ombudsman shall appear to have disregarded.

This consequence does not seem to be a serious concern for the framers and defenders of the EO, as the Commission's truth-telling function by then would have been exercised and fully served. In the Solicitor General's words "*Your Honor, there is crime committed and therefore punishment must be meted out. However, your Honor, truth-telling part, the mere narration of facts, the telling of the truth, will likewise I think to a certain degree satisfy our people*." On the question of whether truth-telling has an independent value separate from the indictment — he said: "*And it is certainly, as the EO says, it's a Truth Commission* ***the narration of facts by the members of the Commission****, I think,* ***will be appreciated by the people independent of the indictment that is expected likewise.***"[52]

In other words, faced with the findings of the Commission, the Ombudsman who enters a contrary ruling effectively carries the burden of proving that its findings, not those of the Commission, are correct. To say the least, this resulting reversal of roles is legally strange since the Ombudsman is the body officially established and designated by the Constitution to investigate graft and other crimes committed by public officers, while the Commission is a mere "creation" of the Executive Order. The Ombudsman, too, by statutory mandate has primary jurisdiction over the investigation and prosecution of graft and corruption, while the Commission's role is merely recommendatory.

Thus, what the EO patently expresses as a primary role for the Commission is negated in actual application by the title Truth Commission and its truth-telling function. Expressed in terms of the forums the EO spawned, the EO's principal intent to use the Truth Commission as a ***second forum*** instrument is unmasked; the ***first forum*** — the officially sanctioned forum for the prosecution of crimes — becomes merely a convenient cover for the ***second forum***.

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[52] TSN, September 28, 2010, p. 59.

A.3. Truth-telling and the Courts

The effects of truth-telling could go beyond those that affect the Ombudsman. If the Ombudsman concurs with the Commission and brings the recommended graft and corruption charges before the Sandiganbayan — a constitutionally-established court — this court itself would be subject to the same truth-telling challenge if it decides to acquit the accused. *For that matter, even this Court, will be perceived to have sided with an "untruth" when and if it goes against the Commission's report.* Thus, the authority, independence, and even the integrity of these constitutional bodies — the Ombudsman, the Sandiganbayan, and the Supreme Court — would have been effectively compromised, to the prejudice of the justice system. All these, of course, begin with the premise that the Truth Commission has the mandate to find the "truth," as it name implies, and has a truth-telling function that it can fully exercise through its own efforts and through the media.

A.4. Truth-telling and the Public.

A.4.1. Priming and Other Prejudicial Effects.

At this point in the political development of the nation, the public is already a very critical audience who can examine announced results and can form its own conclusions about the culpability or innocence of the investigated persons, irrespective of what conclusions investigative commissions may arrive at. This is a reality that cannot be doubted as the public has been exposed in the past to these investigative commissions.

The present Truth Commission operating under the terms of the EO, however, introduces a ***new twist*** that the public and the country have not met before. For the first time, a Truth Commission, tasked with a truth-telling function, shall speak on the "truth" of what acts of graft and corruption were actually committed and who the guilty parties are. This official communication from a governmental body — the Truth Commission — whose express mandate is to find and "tell the truth" cannot but make a difference in the public perception.

At the very least, the widely-publicized conclusions of the Truth Commission shall serve as a mechanism for ***"priming"***[53] ***the public,*** *even* the Ombudsman and the courts, to the Commission's way of thinking. Pervasively repeated as an official government pronouncement, ***the Commission's influence can go beyond the level of priming and can affect the public environment as well as the thinking of both the decision makers in the criminal justice system and the public in general***.

Otherwise stated, the Commission's publicly announced conclusions cannot but assume the appearance of truth once they penetrate and effectively color the public's perception, through repetition without significant contradiction as official government findings. These conclusions thus graduate to the level of "truth" in self-fulfillment of the name the Commission bears; *the subtle manipulation of the Commission's name and functions, fades in the background or simply becomes explainable incidents that cannot defeat the accepted truth*.

A very interesting related material about the effect of core beliefs on the decision-making of judges is the point raised by United States Supreme Court Associate Justice Benjamin N. Cardozo[54] in his book *The Nature of the Judicial Process*[55] where he said:

> … Of the power of favour or prejudice in any sordid or vulgar or evil sense, I have found no trace, not even the faintest, among the judges whom I have known. But every day there is borne in on me a new conviction of the inescapable relation between the ***truth without us and the truth within.*** The spirit of the age, as it is revealed to each of us, is too often only the spirit of the group in which the accidents of birth or education or occupation or fellowship have given us place. No effort or revolution of the mind will overthrow

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[53] See Gladwell, *supra* note 49, pp. 49-73.

[54] Born May 24, 1870, New York; died July 9, 1938, Port Chester, NY. US Supreme Court – 1932-1938. He was also a Judge of NY Court of Appeals from 1914 to 1932, and was its Chief Judge in the last 6 years of his term with the Court of Appeals. See http://www.courts.state.ny.us/history/cardozo.htm [last visited December 2, 2010].

[55] Benjamin N. Cardozo, *The Nature of the Judicial Process*, (1921).

utterly and at all times the empire of the subconscious loyalties. "Our beliefs and opinions," says James Harvey Robinson, "like our standards of conduct come to us insensibly as products of our companionship with our fellow men, not as results of our personal experience and the inferences we individually make from our own observations. We are constantly misled by our extraordinary faculty of 'rationalizing' — that is, of devising plausible arguments by accepting what is imposed upon us by the traditions of the group to which we belong. We are abjectly credulous by nature, and instinctively accept the verdict of the group. We are suggestible not merely when under the spell of an excited mob, or a fervent revival, but we are ever and always listening to the still small voice of the herd, and are ever ready to defend and justify the instructions and warnings, and accept them as the mature results of our own reasoning." ***This was written, not of judges specially, but of men and women of all classes.***[56] [Emphasis supplied]

Thus, Justice Cardozo accepted that "subconscious loyalties" to the "spirit" of the group, *i.e.*, the core beliefs within, is a major factor that affects the decision of a judge. In the context of EO 1, that "spirit" or core belief is what a generally trusted government's[57] repeated invocation of "truth" apparently aims to reach. This goal assumes significance given the Solicitor General's statement that truth-telling is an end in itself. Read with what Justice Cardozo said, this goal translates to the more concrete and currently understandable aim — **to establish the "truth" as part of the *accepted public belief***; the EO's aim is achieved irrespective of what the pertinent adjudicatory bodies may conclude, as even they could be influenced by the generally accepted "truth."

Further on, Justice Cardozo, speaking in the context of the development of case law in common law, went on to say, quoting Henderson:[58]

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[56] *Id.* at 175-176.

[57] According to a recent SWS Survey conducted from October 20-29, 2010 http://www.mb.com.ph/articles/287833/80-filipinos-still-trust-aquino-despite-ratings-dip [last visited November 17, 2010].

[58] *Supra* note 55, pp. 178-179, citing *Foreign Corporations in American Constitutional Law*, p. 164 cf. Powell "*The Changing Law of Foreign Corporations*," 33 Pol. Science Quarterly, p. 569.

> When an adherent to a systematic faith is brought continuously in touch with influences and exposed to desires inconsistent with that faith, a process of unconscious cerebration may take place, by which a growing store of hostile mental inclinations may accumulate, strongly motivating action and decision, but seldom emerging clearly into consciousness. In the meantime, the formulas of the old faith are retained and repeated by force of habit, until one day the realization comes that conduct and sympathies and fundamental desires have become so inconsistent with the logical framework that it must be discarded. Then begins the task of building up and rationalizing a new faith.

Although written in another context, this statement — relating to how one's belief is supplanted by another — runs parallel to how the belief system of an individual judge can be subtly affected by inconsistent influences and how he ultimately succumbs to a new belief.

Without doubt, the process of converting to a new belief is an unavoidable and continuous process that every decision maker undergoes as the belief system he started with, changes and evolves through in-court experiences and exposure to outside influences. Such exposure cannot be faulted, particularly when brought on by the media working pursuant to its exercise of the freedoms of the press and speech, and speaking in the course of the clash of ideas in the public forum. The same exposure, however, is not as neutral and fault-free when it is precipitated by the government acting as a *catalytic agent to hasten the achievement of its own ends,* in this case, the disclosure of the *"truth"* regarding the alleged graft and corruption during the previous regime.

In the context of the EO, the Executive can investigate within the limits of its legal parameters and can likewise publicize the results of its investigations to the full limit of allowable transparency. But in so doing, it cannot act as catalyst by labelling the action of the Commission it has created as officially-sanctioned and authoritative truth-telling before the officially-designated bodies — the Ombudsman and the courts — have spoken. While the emergence of truth is a basic and necessary component of the justice system, the truth-seeking and truth-

finding processes cannot be speeded up through steps that shortcut and bypass processes established by the Constitution and the laws. As heretofore mentioned, the international experiences that gave rise to the title Truth Commission were transitional situations where, for peculiar reasons (such as the temporary absence of an established judicial system or the need to speed up the transition to democratic rule), the use of *ad hoc* commissions were called for. In the Philippine setting, the closest similar situation would be the immediate aftermath of the 1986 EDSA Revolution as the country struggled in the transition from authoritarian martial law regime into a full-fledged democracy. To be sure, ***the shortcut to the emergence of truth, fashioned under the terms of EO 1, finds no justification after the 1987 Constitution and its rights, freedoms and guarantees have been fully put in place.***

A.4.2. The Effects on the Judicial System

To fully appreciate the potential prejudicial effects of truth-telling on the judicial system, the effects of media exposure — from the point of view of *what transpires* and *the circumstances present* under truth-telling and under the present justice system — deserve examination.

Under the present justice system, the media may fully report, as they do report, all the details of a reported crime and may even give the suspects detailed focus. These reports, however, are *not branded as the "truth"* but as matters that will soon be brought to the appropriate public authorities for proper investigation and prosecution, if warranted. In the courts, cases are handled on the basis of the rules of evidence and with due respect for the constitutional rights of the accused, and are reported based on actual developments, subject only to judicial requirements to ensure orderly proceedings and the observance of the rights of the accused. Only after the courts have finally spoken shall there be any conclusive narrative report of what actually transpired and how accused individuals may have participated in committing the offense charged. At this point, any public report and analysis of the findings can no longer adversely affect the constitutional rights of the accused as they

had been given all the opportunities to tell their side in court under the protective guarantees of the Constitution.

In contrast, the circumstances that underlie Commission reports are different. The "truth" that the Commission shall publicize shall be based on "facts" that have not been tested and admitted according to the rules of evidence; by its own express rules, the technical rules of evidence do not apply to the Commission.[59] The reported facts may have also been secured under circumstances violative of the rights of the persons investigated under the guarantees of the Constitution. Thus, *what the Commission reports might not at all pass the tests of guilt that apply under the present justice system, yet they will be reported with the full support of the government as the "truth" to the public.* As fully discussed below, these circumstances all work to the active prejudice of the investigated persons whose reputations, at the very least, are blackened once they are reported by the Commission as participants in graft and corruption, even if the courts subsequently find them innocent of these charges.

A.5. Truth-telling: an unreasonable means to a reasonable objective.

Viewed from the above perspectives, what becomes plainly evident is an EO that, as a means of fighting graft and corruption, will effectively and prejudicially affect the parties inter-acting with the Truth Commission. The EO will *erode the authority and even the integrity of the Ombudsman and the courts* in acting on matters brought before them under the terms of the Constitution; its premature and "truthful" report of guilt will *condition the public's mind* to reject any finding other than those of the Commission.

Under this environment, the findings or results of the ***second forum*** described above overwhelm the processes and whatever may be the findings or results of the ***first forum***. In other words, the findings or results of the ***second forum*** — obtained without any assurance of the observance of constitutional

[59] Rules, Rule 4, Section 2.

guarantees — would not only create heightened expectations and exert unwanted pressure, but even induce changed perceptions and bias in the processes of the ***first forum*** in the manner analogous to what Justice Cardozo described above. The first casualties, of course, are the investigated persons and their basic rights, as fully explained elsewhere in this Opinion.

While EO 1 may, therefore, serve a laudable anti-graft and corruption purpose and may have been launched by the President in good faith and with all sincerity, ***its truth-telling function, undertaken in the manner outlined in the EO and its implementing rules, is not a means that this Court can hold as reasonable and valid, when viewed from the prism of due process.*** From this vantage point, the Commission is not only a mislabelled body but one whose potential outputs must as well be discarded for being unacceptable under the norms of the Constitution.

B. DISTORTION OF EXISTING LEGAL FRAMEWORK

The EO and its truth-telling function must also be struck down as they distort the constitutional and statutory plan of the criminal justice system *without the authority of law* and *with an unconstitutional impact on the system*.

B.1. The Existing Legal Framework

The Constitution has given the country a well-laid out and balanced division of powers, distributed among the legislative, executive and judicial branches, with specially established offices geared to accomplish specific objectives to strengthen the whole constitutional structure.

The Legislature is provided, in relation with the dispensation of justice, the authority to create courts with defined jurisdictions below the level of the Supreme Court;[60] to define the required qualifications for judges;[61] to define what acts are criminal and

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[60] CONSTITUTION, Article VIII, Section 2. See also Bernas, *supra* note 30, p. 959.

[61] *Id.*, Article VIII, Section 7 (2).

what penalties they shall carry;[62] and to provide the budgets for the courts.[63]

The Executive branch is tasked with the enforcement of the laws that the Legislature shall pass. In the dispensation of justice, the Executive has the prerogative of appointing justices and judges,[64] and the authority to investigate and prosecute crimes through a Department of Justice constituted in accordance the Administrative Code.[65] Specifically provided and established by the Constitution, *for a task that would otherwise fall under the Executive's investigatory and prosecutory authority,* is an independent Ombudsman for the purpose of acting on, investigating and prosecuting allegedly criminal acts or omissions of public officers and employees in the exercise of their functions. While the Ombudsman's jurisdiction is not exclusive, it is primary; it takes precedence and overrides any investigatory and prosecutory action by the Department of Justice.[66]

The Judiciary, on the other hand, is given the task of standing in judgment over the criminal cases brought before it, either at the first instance through the municipal and the regional trial courts, or on appeal or *certiorari*, through the appellate courts and ultimately to the Supreme Court.[67] An exception to these generalities is the *Sandiganbayan*, a special statutorily-created court with the exclusive jurisdiction over criminal acts committed

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[62] *People v. Maceren,* G.R. No. L-32166 October 18, 1977, 79 SCRA 450, 461 citing 1 Am. Jur. 2nd, sec. 127, p. 938; *Texas Co. v. Montgomery*, 73 F. Supp. 527: It has been held that "to declare what shall constitute a crime and how it shall be punished is a power vested exclusively in the legislature, and it may not be delegated to any other body or agency."

[63] CONSTITUTION, Article VIII, Section 5.

[64] CONSTITUTION, Article VIII, Section 8.

[65] REVISED ADMINISTRATIVE CODE, Book II, Chapter II, Section 22.

[66] *Honasan II v. The Panel of Investigating Prosecutors of the Department of Justice*, G.R. No. 159747, April 13, 2004, 427 SCRA 46. *See* also *Ombudsman v. Enoc, supra* note 32.

[67] See *Batas Pambansa Blg. 129*, "An Act Reorganizing the Judiciary, Appropriating Funds Therefor, and For Other Purposes."

by public officers and employees in the exercise of their functions.[68] Underlying all these is the Supreme Court's authority to promulgate the rules of procedure applicable to courts and their proceedings,[69] to appoint all officials and employees of the Judiciary other than judges,[70] and to exercise supervision over all courts and judiciary employees.[71]

In the usual course, an act allegedly violative of our criminal laws may be brought to the attention of the police authorities for *unilateral* fact-finding investigation. If a basis for a complaint exists, then the matter is brought before the prosecutor's office for formal investigation, through an inquest or a preliminary investigation, to determine if probable cause exists to justify the filing of a formal complaint or information before the courts. Aside from those initiated at the instance of the aggrieved private parties, the fact-finding investigation may be made at the instance of the President or of senior officials of the Executive branch, to be undertaken by police authorities, by the investigatory agencies of the Department of Justice, or by specially constituted or delegated officials or employees of the Executive branch; the preliminary investigation for the determination of probable cause is a task statutorily vested in the prosecutor's office.[72] Up to this point, these activities lie within the Executive branch of government and may be called its *extrajudicial participation in the justice system*.

By specific authority of the Constitution and the law, a deviation from the above general process occurs in the case of acts allegedly committed by public officers and employees in the performance of their duties where, as mentioned above, the Ombudsman has primary jurisdiction. While the Executive branch itself may undertake a unilateral fact-finding, and the

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[68] Republic Act No. 8249, *supra* note 33, Section 4.

[69] CONSTITUTION, Article VIII, Section 5 (5).

[70] *Id.*, Article VIII, Section 5 (6).

[71] *Id.*, Article VIII, Section 6.

[72] REVISED ADMINISTRATIVE CODE, Chapter I, Title III, Book IV. See also *Honasan II v. Panel of Investigators*, *supra* note 66.

prosecutor's office may conduct preliminary investigation for purposes of filing a complaint or information with the courts, the Ombudsman's primary jurisdiction gives this office precedence and dominance once it decides to take over a case.[73]

Whether a complaint or information emanates from the prosecutor's office or from the Ombudsman, jurisdiction to hear and try the case belongs to the courts, mandated to determine — under the formal rules of evidence of the Rules of Court and with due observance of the constitutional rights of the accused — the guilt or innocence of the accused. A case involving criminal acts or omissions of public officers and employees in the performance of duties falls at the first instance within the exclusive jurisdiction of the Sandiganbayan,[74] subject to higher recourse to the Supreme Court. This is the *strictly judicial aspect of the criminal justice system*.

Under the above processes, our laws have delegated the handling of criminal cases to the justice system and there the handling should solely lie, supported by all the forces the law can muster, until the disputed matter is fully resolved. The proceedings — whether before the Prosecutor's Office, the Ombudsman, or before the courts — are open to the public and are thereby made transparent; freedom of information[75] and of the press[76] guarantee media participation, consistent with the justice system's orderly proceedings and the protection of the rights of parties.

The extrajudicial intervention of the Commission, as provided in the EO, even for the avowed purpose of "assisting" the Ombudsman, directly disrupts the established order, as *the Constitution and the law do not envision a situation where fact-finding recommendations, **already labelled as "true,"** would be submitted to the Ombudsman by an entity within the Executive*

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[73] *Ibid.* See Section 15, par. 1, Republic Act No. 6770.

[74] For officials in Salary Grade 27 and beyond.

[75] CONSTITUTION, Article III, Section 7.

[76] *Id.*, Article III, Section 4.

branch. This arrangement is simply not within the dispensation of justice scheme, as the determination of whether probable cause exists cannot be *defeated*, *rendered suspect*, or *otherwise eroded* by any prior process whose results are represented to be the "truth" of the alleged criminal acts. The Ombudsman may be bound by the findings of a court, particularly those of this Court, but not of any other body, most especially a body outside the regular criminal justice system. Neither can the strictly judicial aspect of the justice system be saddled with this type of fact-finding, as the determination of the guilt or innocence of an accused lies strictly and solely with the courts. Nor can the EO cloak its intent of undercutting the authority of the designated authorities to rule on the merits of the alleged graft and corruption through a statement that its findings are recommendatory; as has been discussed above, this express provision is negated in actual application by the title Truth Commission and its truth-telling function.

A necessary consequence of the deviation from the established constitutional and statutory plan is the extension of the *situs* of the justice system from its constitutionally and statutorily designated locations (equivalent to the above-described ***first forum***), since the Commission will investigate matters that are bound to go to the justice system. In other words, the Commission's activities, including its truth-telling function and the ***second forum*** this function creates, become the prelude to the entry of criminal matters into the Ombudsman and into the strictly judicial aspect of the system.

In practical terms, this extension undermines the established order in the judicial system by directly bringing in considerations that are extraneous to the adjudication of criminal cases, and by co-mingling and confusing these with the standards of the criminal justice system. The result, unavoidably, is a *qualitative change* in the criminal justice system that is based, not on a legislative policy change, but on an executive fiat.

Because of truth-telling and its consequence of actively bringing in public opinion as a consideration, standards and usages other than those strictly laid down or allowed by the Constitution, by the laws and by the Rules of Court will play a part in the criminal

justice system. For example, public comments *on the merits* of cases that are still *sub judice* may become rampant as comments on a truth commission's findings, not on the cases pending before the courts. The commission's "truthful" findings, made without respect for the rules on evidence and the rights of the accused, would become the standards of public perception of and reaction to cases, not the evidence as found by the courts based on the rules of evidence.

Once the door is opened to the Truth Commission approach and public opinion enters as a consideration in the judicial handling of criminal cases, then the rules of judging would have effectively changed; reliance on the law, the rules and jurisprudence would have been weakened to the extent that judges are on the lookout, not only for what the law and the rules say, but also for what the public feels about the case. In this eventuality, even a noisy minority can change the course of a case simply because of their noise and the media attention they get. (Such tactics have been attempted in the immediate past where pressure has been brought to bear on this Court through street demonstrations bordering on anarchy, the marshalling of opinions locally and internationally, and highly partisan media comments.) The primacy of public opinion may, without doubt, appeal to some but this is simply not the way of a Judiciary constitutionally-designed to follow the rule of law.

Another consequent adverse impact could be erosion of what the Constitution has very carefully fashioned to be a system where the interpretation of the law and the dispensation of justice are to be administered ***apolitically*** by the Judiciary. Politics always enters the picture once public opinion begins to be a significant consideration. At this point, even politicians — ever attuned to the public pulse — may register their own statements in the public arena *on the merits* of the cases even while matters are *sub judice*. The effects could be worse where the case under consideration carries its own political dimensions, as in the present case where the target involves the misdeeds of the previous administration.

Whether the Judiciary shall involve, or be involved, in politics, or whether it should consider, or be affected by, political

considerations in adjudication, has been firmly decided by the Constitution and our laws in favour of ***insulation*** through provisions on the independence of the Judiciary — the unelected branch of government whose standard of action is the rule of law rather than the public pulse. This policy has not been proven to be unsound. Even if it is unsound, any change will have to be effected through legitimate channels — *through the sovereignty that can change the Constitution*, to the extent that the Judiciary's and the Ombudsman's independence and the exercise of judicial discretion are concerned, and *through the Congress of the Philippines*, with respect to other innovations that do not require constitutional changes.

To be sure, *the President of the Philippines, through an executive or administrative order and without authority of law*, cannot introduce changes or innovations into the justice system and significantly water down the authoritative power of the courts and of duly designated constitutional bodies in dispensing justice. The nobility of the President's intentions is not enough to render his act legal. As has been said often enough, *ours is a government of laws, not of men.*

C. LIMITS OF THE EXERCISE OF EXECUTIVE POWER IN THE JUSTICE SYSTEM

While the Executive participates in the dispensation of justice under our constitutional and statutory system through its investigatory and prosecutory arms and has every authority in law to ensure that the law is enforced and that violators are prosecuted, even these powers have limits.

The independence of the Ombudsman and its freedom from interference from all other departments of government in the performance of its functions is a barrier that cannot be breached, directly or indirectly, except only as the Constitution and the laws may allow. No such exception has been allowed or given to the President other than through the prosecution the Department of Justice may undertake[77] when the Ombudsman has not asserted

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[77] *Honasan II v. Panel of Investigators*, *supra* note 66.

its primary jurisdiction. The concurrent jurisdiction given to the Department of Justice to prosecute criminal cases, incidentally, is a grant specific to that office,[78] not to any other office that the Executive may create through an executive order.

The Executive can, without doubt, recommend that specific violators be prosecuted and the basis for this recommendation need not even come from the Department of Justice; the basis may be the findings of the Office of the President itself independently of its Department of Justice. Notably, the other branches of government may also, and do in fact, make recommendations to the Ombudsman in the way that Congress, in the course of its fact-finding for legislative purposes, unearths anomalies that it reports to the Ombudsman. Even the Supreme Court recommends that Judiciary officials and employees found administratively liable be also criminally prosecuted.

The Executive can also designate officials and employees of the Executive Department (or even appoint presidential assistants or consultants)[79] to undertake fact-finding investigation for its use pursuant to the vast powers and responsibilities of the Presidency, but *it cannot create a separate body, in the way and under the terms it created the Truth Commission, without offending the Constitution.*

The following indicators, however, show that the President was not simply appointing presidential assistants or assistants when he constituted the Truth Commission as an investigating or fact-finding body.

First, the President "created" the Truth Commission; the act of creation goes beyond the mere naming, designation or appointment of assistants and consultants. There is no need to "create" — *i.e.,* to constitute or establish something out of

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[78] See *Honasan II v. Panel of Investigators, supra* note 66. *See also* RULES OF COURT, Rule 112, Sections 2 and 4.

[79] REVISED ADMINISTRATIVE CODE, Chapter 9 (D), Title II, Book III.

nothing, or to establish for the first time[80] — if only the designation or appointment of a presidential assistant or consultant is intended. To "create" an office, too, as the petitioners rightfully claim, is a function of the Legislature under the constitutional division of powers.[81] Note in this regard, and as more fully discussed below, that what the Revised Administrative Code, through its Section 31, allows the President is to "reorganize," not to create a public office within the Executive department.

Second, the Truth Commission, as created by the EO, appears to be a separate body[82] that is clearly beyond being merely a group of people tasked by the President to accomplish a specific task *within his immediate office*; its members do not operate in the way that presidential assistants and consultants usually do.

It is not insignificant that the Commission has its own Rules of Procedure that it issued on its own on the authority of the EO. Note that these are *not the rules of the Office of the President* but of another body, although one constituted by the President.

The Commission has its own complete set of officers, beginning from the Chair and members of the Commission; it has its own consultants, experts, and employees, although the latter are merely drawn from the Executive department;[83] and it even has provisions for its own budget, although these funds ride on and are to be drawn from the budget of the Office of the President.

Third, the Commission has its own identity, separate and distinct from the Office of the President, although it still falls within the structural framework of that office. The Commission

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[80] *BLACK'S LAW DICTIONARY* (5th ed., 1979), p. 330.

[81] *Buklod ng Kawaning EIIB v. Executive Secretary*, G.R. Nos. 142801-802, July 10, 2001, 360 SCRA 718, 726, citing Isagani Cruz, *The Law on Public Officers* (1999 ed.), p. 4.

[82] EO 1, Section 1.

[83] EO 1, Sections 3 and 5.

undertakes its own "independent" investigation[84] that, according to the Solicitor General, will not be controlled by the Office of the President;[85] and it communicates on its own, under its own name, to other branches of government outside of the Executive branch.

Lastly, the Commission as an office has been vested with functions that not even the Office of the President possesses by authority of law, and which the President, consequently, cannot delegate. Specifically, the Commission has its truth-telling function, because it has been given the task to disclose the "truth" by the President, thus giving its report the *imprimatur* of truth well ahead of any determination in this regard by the constitutional bodies authorized to determine the existence of probable cause and the guilt or culpability of individuals.

If the President cannot give the official label of truth independently of the courts in a fact-finding in a criminal case, either by himself or through the Department of Justice, it only follows that he cannot delegate this task to any assistant, consultant, or subordinate, even granting that he can order a fact-finding investigation based on the powers of his office. This truth-telling function differentiates the Truth Commission from other commissions constituted in the past such as the Agrava, Feliciano and Melo Commissions; the pronouncements of the latter bodies did not carry the *imprimatur* of truth, and were mere preliminary findings for the President's consideration. An exact recent case to drive home this point is the Chinese hostage incident where the Office of the President modified the Report submitted by a duly-constituted group headed by Secretary Leila de Lima.[86] Apparently, the findings of the De Lima committee did not carry the imprimatur of truth and were merely recommendatory; otherwise the Office of the President would not have modified its findings and recommendations.

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[84] EO 1, Section 1.

[85] TSN, September 28, 2010, p. 166.

[86] See http://www.gmanews.tv/story/201465/full-text-iirc-report-on-august-23-2010-rizal-park-hostage-taking-incident, [last visited November 17, 2010].

Still on the point of the President's authority to delegate tasks to a body he has constituted, in no case can the President order a fact-finding whose results will operate to undercut the authority and integrity of the Ombudsman in a reported violation of the criminal laws by a public servant. The President's authority — outside of the instance when the Department of Justice acts in default of the Ombudsman — is *to bring to the attention of, or make recommendations to, the Ombudsman* violations of the law that the Executive branch uncovers in the course of law enforcement. This authority should be no different from that which Congress and the Supreme Court exercise on the same point.

Given all the possibilities open to the President for a legitimate fact-finding intervention — *namely,* through fact-finding by the Department of Justice or by the Office of the President itself, utilizing its own officials, employees, consultants or assistants — the President is not wanting in measures within the parameters allowed by law to fight graft and corruption and to address specific instances that come to his attention. To be sure, the Philippine situation right now is far from the situations in South Africa, Rwanda, and South America,[87] where quick transitional justice[88] had to be achieved because these countries were coming from a period of non-democratic rule and their desired justice systems were not yet fully in place. This reality removes any justification for the President to resort to extralegal (or even illegal) measures and to institutions and mechanisms outside of those already in place, in proceeding against grafters in the previous administration.

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[87] See Jonathan Horowitz, *Racial (Re) Construction: The Case of the South African Truth and Reconciliation Commission,* 17 NAT'L BLACK L.J. 67 (2003); Evelyn Bradley, *In Search for Justice – A Truth and Reconciliation Commission for Rwanda,* 7 J. INT'L L. & PRAC. 129 (1998).

[88] See *Catherine O'Rourke, The Shifting Signifier of "Community in Transitional Justice: A Feminist Analysis*¸ 23 WIS. J.L. GENDER & SOC'Y 269 (2008) *citing Transitional Justice and Rule of Law Interest Group, American Society of International Law, Statement of Purpose,* http://www.asil.org/interest-groups-view.cfm?groupid=32.

If the President and Congress are dissatisfied with the Ombudsman's performance of duty, the constitutionally-provided remedy is to impeach the Ombudsman based on the constitutionally-provided grounds for removal. *The remedy is not through the creation of a parallel office that either duplicates or renders ineffective the Ombudsman's actions. By the latter action, the President already situates himself and the Executive Department into the justice system in a manner that the Constitution and the law do not allow.*

D. THE PRESIDENT HAS NO AUTHORITY EITHER UNDER THE CONSTITUTION OR UNDER THE LAWS TO CREATE THE TRUTH COMMISSION.

Under the 1987 Constitution, the authority to create offices is lodged exclusively in Congress. This is a necessary implication[89] of its "*plenary* legislative power."[90] Thus, except as otherwise provided by the Constitution or statutory grant, no public office can be created except by Congress; any unauthorized action in this regard ***violates the doctrine of separation of powers***.

In essence, according to Father Joaquin Bernas, "separation of powers means that legislation belongs to Congress, execution to the executive, settlement of legal controversies to the judiciary."[91] This means *that the President cannot, under the present Constitution and in the guise of "executing the laws," perform an act that would impinge on Congress' exclusive power to create laws, including the power to create a public office.*

In the present case, the exclusive authority of Congress in creating a public office is not questioned. The issue raised regarding

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[89] Isagani Cruz, *Philippine Political Law* (1998 ed.) p. 79. See also *Bernas*, *supra* note 30, pp. 676-677, stating: "Thus, any power, deemed to be legislative by usage and tradition, is necessarily possessed by Congress."

[90] *Ibid.* See also *Canonizado v. Aguirre*, G.R. No. 133132, January 25, 2000, 323 SCRA 312; *Buklod ng Kawaning EIIB v. Zamora*, G.R. Nos. 142801-802, July 10, 2001, 360 SCRA 718.

[91] Bernas, *supra* note 30, p. 678.

the President's power to create the Truth Commission boils down to whether the Constitution allows the creation of the Truth Commission by the President or by an act of Congress.

D.1 The Section 31 Argument.

EO 1, by its express terms,[92] is premised on *"Book III, Chapter 10, Section 31 of Executive Order No. 292,* otherwise known as the Revised Administrative Code of the Philippines, which gives the President the continuing authority to reorganize the Office of the President. The Solicitor General, of course, did not steadfastly hold on to this view; in the course of the oral arguments and in his Memorandum, he invoked other bases for the President's authority to issue EO 1. In the process, he likewise made various claims, not all of them consistent with one another, on the nature of the Truth Commission that EO 1 created.

Section 31 shows that it is a very potent presidential power, as it empowers him to (1) to re-organize his own internal office; (2) transfer any function or office from the Office of the President to the various executive departments; and (3) transfer any function or office from the various executive departments to the Office of the President.

To reorganize presupposes that *an office is or offices are already existing* and that (1) a reduction is effected, either of staff or of its functions, for transfer to another or for abolition because of redundancy; (2) offices are merged resulting in the retention of one as the dominant office; (3) two offices are abolished resulting in the emergence of a new office carrying the attributes of its predecessors as well as their responsibilities; or (4) a new office is created by dividing the functions and staff of an existing office. *Buklod ng Kawaning EIIB v. Hon. Executive Secretary* addresses this point when it said:

> [R]eorganization involves the reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions. It takes place when there is an alteration of the existing

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[92] EO 1, 8th and last Whereas Clause.

structure of government offices or units therein, including the lines of control, authority and responsibility between them.[93]

These traditional concepts of reorganization do not appear to have taken place in the establishment of the Truth Commission. As heretofore mentioned, by its plain terms, it was "created" and did not simply emerge from the functions or the personality of another office, whether within or outside the Office of the President. Thus, it is a completely new body that the President constituted, not a body that appropriated the powers of, or derived its powers from, the investigatory and prosecutory powers of the Department of Justice or any other investigatory body within the Executive branch.

From the Solicitor General's Memorandum, it appears that the inspiration for the EO came from the use and experiences of truth commissions in other countries that were coming from "determinate periods of abusive rule or conflict" for purposes of making "recommendations for [the] redress and future prevention"[94] of similar abusive rule or conflict. It is a body to establish the "truth of what abuses actually happened in the past"; the Solicitor General even suggests that the "doctrine of separation of powers and the extent of the powers of co-equal branches of government should not be so construed as to restrain the Executive from uncovering the truth about betrayals of public trust, from addressing their enabling conditions, and from preventing their recurrence."[95] By these perorations, the Solicitor General unwittingly strengthens the view that no reorganization ever took place when the Truth Commission was created; what the President "created" was a *new office* that does not trace its roots to any existing office or function from the Office of the President or from the executive departments and agencies he controls.

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[93] *Buklod ng Kawaning EIIB v. Hon. Executive Secretary*, *supra* note 81.

[94] Solicitor General's Memorandum, *rollo*, p. 332.

[95] *Id.* at 324.

Thus, the President cannot legally invoke Section 31 to create the Truth Commission. The requirements for the application of this Section are simply not present; any insistence on the use of this Section can only lead to the invalidity of EO 1.

D.2. The PD 1416 and Residual Powers Argument

Independently of the EO's express legal basis, the Solicitor-General introduced a new basis of authority, theorizing that "the power of the President to reorganize the executive branch" is justifiable under Presidential Decree (*PD*) No. 1416, as amended by PD No. 1772, based on the President's residual powers under Section 20, Title I, Book III of E.O. No. 292." He cites in this regard the case of *Larin v. Executive Secretary*[96] and according to him:

> x x x This provision speaks of such other powers vested in the President under the law. What law then which gives him the power to reorganize? It is Presidential Decree No. 1772 which amended Presidential Decree No. 1416. These decrees expressly grant the President of the Philippines the continuing authority to reorganize the national government, which includes the power to group, consolidate bureaus and agencies, to abolish offices, to transfer functions, to create and classify functions, services and activities and to standardize salaries and materials. The validity of these two decrees are unquestionable. *The 1987 Constitution clearly provides that "all laws, decrees, executive orders, proclamations, letters of instructions and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed or revoked."- So far, there is yet no law amending or repealing said decrees.*[97] [Emphasis supplied]

Unfortunately, even the invocation of the transitory clause of the 1987 Constitution (regarding the validity of laws and decrees not inconsistent with the Constitution) cannot save EO 1, as PD 1416 is a legislation that has long lost its potency.

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[96] G.R. No. 112745, October 16, 1997, 280 SCRA 713.

[97] Solicitor General's Consolidated Comment, *rollo*, pp. 148-149.

Contemporary history teaches us that PD 1416 was passed under completely different factual and legal milieus that are not present today, thus rendering this presidential decree an anachronism that can no longer be invoked.

Prior to the EDSA Revolution of 1986 (and the 1987 Constitution), President Marcos exercised legislative powers and issued PD 1416, as amended by PD 1772, which, by its express terms, allowed the President to reorganize and/or create offices within the National Government. This was sanctioned in the exercise of the President's martial law powers and on the basis of Article XVII, Section 3(2) of the 1973 Constitution.[98]

Upon the adoption of the 1987 Constitution, and the re-introduction of the presidential form of government, the "separation of legislative and executive powers"[99] was restored. Similarly recognized were the limits on the exercise of the carefully carved-out and designated powers of each branch of government. *Thus, Congress regained the exclusive power to create public offices*; PD 1416, as amended by PD 1776 — a creation of the legal order under President Marcos — lost its authority as a justification for the creation of an office by the President.

That PD 1416, as amended by PD 1776, has been overtaken and rendered an obsolete law, is not a new position taken within this Court. In his separate concurring opinion in *Banda v. Executive Secretary*,[100] Justice Antonio T. Carpio pointedly posited that the ruling in *Larin v. Executive Secretary*[101] (reiterated in *Buklod ng Kawaning EIIB v. Hon. Sec. Zamora*[102] and *Tondo Medical Center Employees Association v. Court of Appeals*[103]),

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[98] *Aquino v. COMELEC*, G.R. No. L-40004, January 31, 1975, 62 SCRA 275.

[99] *Gonzales v. PAGCOR*, G. R. No. 144891, May 27, 2004, 429 SCRA 533,545.

[100] G.R. No. 166620, April 20, 2010.

[101] *Supra* note 96.

[102] *Supra* note 81.

[103] G.R. No. 167324, July 17, 2007, 527 SCRA 746.

which relied on Section 20, Chapter 7, Book II of the Administrative Code of 1987 in relation with P.D. 1416, cannot validate Executive Order No. 378 assailed in that case because "P.D. 1416, as amended, with its blending of legislative and executive powers, is a vestige of an autrocratic era, totally anachronistic to our present-day constitutional democracy." [104]

Thus, the present and firmly established legal reality is that under the 1987 Constitution and the Revised Administrative Code, the President cannot create a public office except to the extent that he is allowed by Section 31, Chapter 10, Book III of the Revised Administrative Code. As discussed above, even this narrow window cannot be used as the President did not comply with the requirements of Section 31.

D.3. The Authority of the President under the Faithful Execution Clause

Article VII, Section 17 of the 1987 Constitution directs and authorizes the President to faithfully execute the laws and the potency of this power cannot be underestimated. Owing perhaps to the latitude granted to the President under this constitutional provision, the Solicitor General posited that the President's power to create the Truth Commission may be justified under this general grant of authority. In particular, the Solicitor General argues that the "President's power to conduct investigations to aid him in ensuring the faithful execution of laws — in this case, fundamental laws on public accountability and transparency — is inherent in the President's powers as the Chief Executive."[105] The Solicitor General further argues: "That the authority of the President to conduct investigations and to create bodies to execute this power is not explicitly mentioned in the Constitution or in statutes does not mean he is bereft of such authority."[106]

That the President cannot, in the absence of any statutory justification, refuse to execute the laws when called for is a

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[104] *J.* Carpio's Separate Concurring Opinion. *Supra* note 100.

[105] Solicitor General's Consolidated Comment, *rollo,* p. 160.

[106] *Id.* at 41.

principle fully recognized by jurisprudence. In *In re Neagle,* the US Supreme Court held that the faithful execution clause is "not limited to the enforcement of acts of Congress according to their express terms."[107] According to Father Bernas, *Neagle* "saw as law that had to be faithfully executed not just formal acts of the legislature but any duty or obligation inferable from the Constitution or from statutes."[108]

Under his broad powers to execute the laws, the President can undoubtedly create *ad hoc* bodies for purposes of investigating reported crimes. The President, however, has to observe the limits imposed on him by the constitutional plan: he must respect the separation of powers and the independence of other bodies which have their own constitutional and statutory mandates, as discussed above. Contrary to what J. Antonio Eduardo B. Nachura claims in his Dissent, the President cannot claim the right to create a public office in the course of implementing the law, as this power lodged exclusively in Congress. An investigating body, furthermore, must operate within the Executive branch; the President cannot create an office outside the Executive department.

These legal realities spawned the problems that the Solicitor General created for himself when he made conflicting claims about the Truth Commission during the oral arguments. For accuracy, the excerpts from the oral arguments are best quoted verbatim.[109]

Associate Justice Nachura: Mr. Solicitor General, most of my questions have actually been asked already and there are few things that I would like to be clarified on. Well, following the questions asked by Justice Carpio, I would like a clarification from you, a definite answer, is the Truth Commission a public office?

Solicitor General Cadiz: No, Your Honor.

Associate Justice Nachura: Ah, you mean it is not a public office?

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[107] 135 U.S. 1, 59 (1890).

[108] Bernas, *supra* note 30, p. 895.

[109] TSN, September 28, 2010, pp. 209-214.

Solicitor General Cadiz: It is not a public office in the concept that it has to be created by Congress, Your Honor.

Associate Justice Nachura: Oh, come on, I agree with you that the President can create public offices, that was what, ah, one of the questions I asked Congressman Lagman.

Solicitor General Cadiz: Thank you, your Honor.

Associate Justice Nachura: Because he was insisting that only Congress could create public office although, he said, the President can create public offices but only in the context of the authority granted under the Administrative Code of 1987. So, it is a public office?

Solicitor General Cadiz: Yes, Your Honor.

Associate Justice Nachura: This is definite, categorical. You are certain now that Truth Commission (interrupted)

Solicitor General Cadiz: Yes, Your Honor, under the Office of the President Proper, yes, Your Honor.

Associate Justice Nachura: Again?

Solicitor General Cadiz: That this Truth Commission is a public office, Your Honor, created under the Office of the President.

Associate Justice Nachura: Okay, created under the Office of the President, because it is the President who created it. And the President can create offices only within the executive department. He cannot create a public office outside of the executive department, alright.

Solicitor General Cadiz: Yes, Your Honor.

Associate Justice Nachura: Okay. So, the Commissioners who are appointed are what, Presidential Assistants? Are they Presidential Assistants?

Solicitor General Cadiz: They are Commissioners, Your Honor.

Associate Justice Nachura: They are, therefore, alter-egos of the President?

Solicitor General Cadiz: No, Your Honor. There is created a Truth Commission, and Commissioners are appointed and it so stated here that they are independent.

Associate Justice Nachura: Aha, okay.

Solicitor General Cadiz: Of the Office of the President.

Associate Justice Nachura: Are you saying now that the Commissioners are not under the power and control of the President of the Philippines?

Solicitor General Cadiz: It is so stated in the Executive Order, Your Honor.

Associate Justice Nachura: Aha, alright. So, the Truth Commission is not an office within the executive department, because it is not under the power of control of the President, then, Section 17 of Article VII would not apply to them, is that it?

Solicitor General Cadiz: Your Honor, the President has delineated his power by creating an Executive Order which created the Commission, which says, that this is an independent body, Your Honor.

Associate Justice Nachura: Okay. So, what you are saying is, this is a creation of the President, it is under the President's power of control, but the President has chosen not to exercise the power of control by declaring that it shall be an independent body?

Solicitor General Cadiz: Yes, Your Honor.

Associate Justice Nachura: That is your position. I would like you to place that in your memorandum and see. I would like to see how you will develop that argument.

The Solicitor General, despite his promise to respond through his Memorandum, never bothered to explain point-by-point his unusual positions and conclusions during the oral arguments, responding only with generalities that were not responsive or in point.[110]

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[110] Part of the argument the Solicitor General relied upon was *Department of Health v. Campasano*, (G.R. No. 157684. April 27, 2005, 457 SCRA 438) Solicitor General's Consolidated Comment, *rollo*, pp. 145-146. Reliance on this case, however, is misplaced. In *Campasano*, the Court upheld the power of the President to create an *ad hoc* investigating committee in the Department of Health on the basis of the President's constitutional power of control over the Executive Department as well as his obligation under the faithful execution clause to ensure that all executive officials and employees faithfully comply with the law. The Court's ruling in *Campasano* is not determinative of the present case as the **Truth Commission is claimed to be a body entirely**

Specifically, while admitting that the Truth Commission is a "creation" of the President under his office pursuant to the latter's authority under the Administrative Code of 1987, the Solicitor General incongruously claimed that the Commission is "independent" of the Office of the President and is not under his control. Mercifully, J. Nachura suggested that the President may have created a body under his control but has chosen not to exercise the power of control by declaring that it is an independent body, *to which the Solicitor General fully agreed.*

Truth to tell (no pun intended), the Solicitor General appears under these positions to be playing ***a game of smoke and mirrors*** with the Court. For purposes of the creation of the Truth Commission, he posits that the move is fully within the President's authority and in the performance of his executive functions. This claim, of course, must necessarily be based on the premise that execution is by the President himself or by people who are within the Executive Department and within the President's power of supervision and control, as the President cannot delegate his powers beyond the Executive Department. At the same time, he claims that the Commissioners (whom he refuses to refer to as Presidential Assistants or as alter egos of the President)[111] are independent of the President, apparently because the President has waived his power of control over them.

All these necessarily lead to the question: can the President really create an office within the Executive branch that is independent of his control? The short answer is he cannot, and the short reason again is the constitutional plan. The execution and implementation of the laws have been placed by the Constitution on the shoulders of the President and on none

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distinct and independent from the Office of the President. This conclusion is bolstered by the Solicitor General's own admission during oral arguments that the Truth Commission, particularly the Commissioners are not under the power of control by the President. In fact, the Solicitor General went as far as to admit that the President has in fact relinquished the power of control over the Commission to underscore its independence.

[111] TSN, September 28, 2010, p. 214.

other.[112] He cannot delegate his executive powers to any person or entity outside the Executive department except by authority of the Constitution or the law (which authority in this case he does not have), nor can he delegate his authority to undertake fact-finding as an incident of his executive power, and at the same time take the position that he has no responsibility for the fact-finding because it is independent of him and his office.

Under the constitutional plan, the creation of this kind of office with this kind of independence is lodged only in the Legislature.[113] For example, it is only the Legislature which can create a body like the National Labor Relations Commission whose decisions are final and are neither appealable to the President nor to his alter ego, the Secretary of Labor.[114] Yet another example, President Corazon Aquino herself, because the creation of an *independent* commission was outside her executive powers, deemed it necessary to act pursuant to a legislative fiat in constituting the first Davide Commission of 1989.[115]

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[112] CONSTITUTION, Article VII, Section 1: 'The Executive Power shall be vested in the President of the Philippines." See *Bernas, supra* note 30, p. 820: "With the 1987 Constitution, the constitutional system returns to the presidential model of the 1935 Constitution: executive power is vested in the President." Father Bernas further states: "In vesting executive power in one person rather than in a plural executive, the evident intention was to invest the power holder with energy."

[113] CONSTITUTION, Article VI, Section 1: "The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum." See *Vera v. Avelino*, 77 Phil. 192, 212 (1946): "any power, deemed to be legislative by usage and tradition, is necessarily possessed by Congress x x x" cited in Bernas, *supra* note 30, pp. 676-677.

[114] Even in the case of the NLRC, however, presidential control cannot be avoided as the NLRC is part of the Executive branch and the President, through his Secretary of Labor, sets the policies on labor and employment (expressed through rules and regulations and interpretation) that, consistent with the existing laws and jurisprudence, must be followed.

[115] Republic Act 6832, otherwise known as "An Act Creating A Commission To Conduct A Thorough Fact-Finding Investigation Of The Failed *Coup D'État* Of December 1989, Recommend Measures To Prevent The Occurrence Of

Apparently, the President wanted to create a separate, distinct and **independent** Commission because he wants to continuously impress upon the public – *his audience in the* ***second forum*** — that this Commission can tell the "truth" without any control or prompting from the Office of the President and *without need of waiting for definitive word from those constitutionally-assigned to undertake this task.* Here, truth-telling again rears its ugly head and is unmasked for what it really is — an attempt to bypass the constitutional plan on how crimes are investigated and resolved with finality.

Otherwise stated, if indeed the President can create the Commission as a fact-finding or investigating body, the Commission must perforce be an entity that is within the Executive branch and as such is subject to the control and supervision of the President. In fact, the circumstances surrounding the existence of the Commission — already outlined above in terms of its processes, facilities, budget and staff — cannot but lead to control. Likewise, if indeed the Truth Commission is under the control of the President who issued the EO with openly-admitted political motivation,[116] then the Solicitor General's representation about the Commission's independently-arrived "truth" may fall under the classification of a smoke and mirror political move. Sad to state, the Solicitor General chose to aim for the best of all worlds in making representations about the creation and the nature of the Commission. We cannot allow this approach to pass unnoticed and without the observations it deserves.

If the President wants a truly independent Commission, then that Commission must be created through an act of

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Similar Attempts At A Violent Seizure Of Power, And For Other Purposes." Its Section 1 provides:

Section 1. Creation, Objectives and Powers. — There is hereby created an **independent Commission** which shall investigate all the facts and circumstances of the failed *coup d'état* of December 1989, and recommend measures to prevent similar attempts at a violent seizure of power. [Emphasis supplied]

[116] See 6th Whereas Clause, EO 1.

Congress; otherwise, that independent Commission will be an unconstitutional body. Note as added examples in this regard that previous presidential fact-finding bodies, created either by Executive or Administrative Orders (*i.e.*, Feliciano, Melo, Zeñarosa and IIRC Commissions), were all part of the Executive department and their findings, even without any express representation in the orders creating them, were necessarily subject to the power of the President to review, alter, modify or revise according to the best judgment of the President. That the President who received these commissions' reports did not alter the recommendations made is not an argument that the President can create an "independent" commission, as the Presidents receiving the commissions' reports could have, but simply did not, choose to interfere with these past commissions' findings.

In sum, this Court cannot and should not accept an arrangement where: (1) the President creates an office pursuant to his constitutional power to execute the laws and to his Administrative Code powers to reorganize the Executive branch, and (2) at the same time or thereafter allow the President to disavow any link with the created body or its results through a claim of independence and waiver of control. This arrangement bypasses and mocks the constitutional plan on the separation of powers; among others, it encroaches into Congress' authority to create an office. This consequence must necessarily be fatal for the arrangement is inimical to the doctrine of separation of powers whose purpose, according to Father Joaquin Bernas, is:

> to prevent concentration of powers in one department and thereby to avoid tyranny. But the price paid for the insurance against tyranny is the risk of a degree of inefficiency and even the danger of gridlock. As Justice Brandeis put it, "the doctrine of separation of powers was adopted…not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was not to avoid friction, but, by means of the inevitable friction incident to the distribution of governmental powers among the three departments, to save the people from autocracy."[117]

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[117] Bernas, *supra* note 30, p. 678.

Indeed, to allow one department of government, without the authority of law or the Constitution, to be granted the authority to bestow an *advanced imprimatur of "truth"* bespeaks of a concentration of power that may well overshadow any initiative to combat graft and corruption; in its own way, this grant itself is an open invitation to the very evils sought to be avoided.

E. VIOLATIONS OF THE RIGHTS OF INVESTIGATED PERSONS

E.1 Violation of Personal Rights

Separately from the above effects, truth-telling as envisioned under the EO, carries prejudicial effects on the persons it immediately targets, namely: the officials, employees and private individuals alleged to have committed graft and corruption during the previous administration. This consequence proceeds from the above discussed truth-telling premise that — whether the Commission reports (recommending the charging of specific individuals) are proven or not in the appropriate courts — the Commission's function of truth-telling function would have been served and the Commission would have effectively acted against the charged individuals.

The most obvious prejudicial effect of the truth-telling function on the persons investigated is on their persons, reputation and property. Simply being singled out as "charged" in a truth-telling report will inevitably mean disturbance of one's routines, activities and relationships; the preparation for a defense that will cost money, time and energy; changes in personal, job and business relationships with others; and adverse effects on jobs and businesses. Worse, reputations can forever be tarnished after one is labelled as a participant in massive graft and corruption.

Conceivably, these prejudicial effects may be dismissed as speculative arguments that are not justified by any supporting evidence and, hence, cannot effectively be cited as factual basis for the invalidity of the EO. Evidence, however, is hardly necessary where the prejudicial effects are self-evident, *i.e.,* given that the announced and undisputed government position that truth-telling *per se,* in the manner envisioned by the EO and its

implementing rules, is an independent objective the government wants to achieve. When the government itself has been heard on the "truth," the probability of prejudice for the individual charged is not only a likelihood; it approaches the level of certainty.

In testing the validity of a government act or statute, such potential for harm suffices to invalidate the challenged act; evidence of actual harm is not necessary in the way it is necessary for a criminal conviction or to justify an award for damages. In plainer terms, the certainty of consequent damage requires no evidence or further reasoning when the government itself declares that for as long as the "story" of the allegedly massive graft and corruption during the past administration is told, the Commission would have fulfilled one of its functions to satisfaction; under this *reckless approach*, it is self-evident that the mistaken object of the "truth" told must necessarily suffer.

In the context of this effect, the government statement translates to the message: **forget the damage the persons investigated may suffer on their persons and reputation; forget the rights they are entitled to under the Constitution; give primacy to the story told.** This kind of message, of course, is unacceptable under a Constitution that establishes the strongest safeguards, through the Bill of Rights, in favor of the individual's right to life, security and property against the overwhelming might of the government.

E.2 Denial of the right to a fair criminal trial.

The essence of the due process guarantee in a criminal case, as provided under Section 14(1) of the Constitution, is the right to a fair trial. What is fair depends on compliance with the express guarantees of the Constitution, and on the circumstances of each case.

When the Commission's report itself is characterized, prior to trial, and held out by the government to be the true story of the graft and corruption charged, the chances of individuals to have a fair trial in a subsequent criminal case cannot be very great.

Consider on this point that not even the main actors in the criminal justice system – the Ombudsman, the Sandiganbayan and even this Court — can avoid the cloud of "untruth" and a doubtful taint in their integrity after the government has publicized the Commission's findings as the truth. If the rulings of these constitutional bodies themselves can be suspect, individual defenses for sure cannot rise any higher.

Where the government simply wants to tell its story, already labelled as true, well ahead of any court proceedings, and judicial notice is taken of the kind of publicity and the ferment in public opinion that news of government scandals generate, it does not require a leap of faith to conclude that an accused brought to court against overwhelming public opinion starts his case with a less than equal chance of acquittal. The ***presumption of innocence*** notwithstanding, the playing field cannot but be uneven in a criminal trial when the accused enters trial with a government-sponsored badge of guilt on his forehead.[118] **The presumption of innocence *in law* cannot serve an accused in a *biased atmosphere* pointing to guilt *in fact* because the government and public opinion have spoken against the accused.**

Viewed from the perspective of its cause, the prejudicial publicity, that adversely affects the chances of an accused for a fair trial after the EO has done its job, is not the kind that occurs solely because of the identity of the individual accused.

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[118] See *e.g. Allenet de Ribemont v. France*, February 10, 1995, 15175/89 [1995] ECHR 5, where the European Court of Human Rights held that the right to presumption of innocence may be "infringed not only by a judge or court but also by other public authorities." The ECHR likewise held:

> The presumption of innocence enshrined in paragraph 2 of Article 6 (Art. 6-2) is one of the elements of the fair criminal trial that is required by paragraph 1 (Art. 6-1) (see, among other authorities, the *Deweer v. Belgium* judgment, of 27 February 1980, Series A no. 35, p. 30, para. 56, and the Minelli judgment previously cited, p. 15, para. 27). It will be violated if a judicial decision concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law. It suffices, **even in the absence of any formal finding, that there is some reasoning suggesting that the court regards the accused as guilty** (see the Minelli judgment previously cited, p. 18, para. 37). [emphasis supplied]

This prejudice results from a cause systemic to the EO because of its truth-telling feature that allows the government to call its proceedings and reports a process of truth-telling where the tales cannot but be true. This kind of systemic aberration has no place in the country's dispensation of criminal justice system and should be struck down as invalid before it can fully work itself into the criminal justice system as an acceptable intervention.

F. THE TRUTH COMMISSION AND THE EQUAL PROTECTION CLAUSE

The guarantee of equal protection of the law is a branch of the right to due process embodied in Article III, Section 1 of the Constitution. It is rooted in the same concept of fairness that underlies the due process clause. In its simplest sense, it requires equal treatment, *i.e.*, the absence of discrimination, for all those under the same situation. An early case, *People v. Cayat*,[119] articulated the requisites determinative of valid and reasonable classification under the equal protection clause, and stated that it must

(1) rest on substantial distinctions;

(2) be germane to the purpose of the law;

(3) not be limited to existing conditions only; and

(4) apply equally to all members of the same class.

In our jurisdiction, we mainly decide equal protection challenges using a **"rational basis"** test, coupled with a "deferential" scrutiny of legislative classifications and a reluctance to invalidate a law unless there is a showing of a clear and unequivocal breach of the Constitution.[120] Our views on the matter, however, have not remained static, and have been attuned to the jurisprudential developments in the United States on the levels of scrutiny that

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[119] 68 Phil. 12 (1939).

[120] *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, G.R. No. 148208, December 15, 2004, 446 SCRA 299, 370.

are applied to determine the acceptability of any differences in treatment that may result from the law.[121]

Serrano v. Gallant Maritime Services, Inc.[122] summarizes the three tests employed in this jurisdiction as follows:

> There are three levels of scrutiny at which the Court reviews the constitutionality of a classification embodied in a law: a) the deferential or **rational basis scrutiny** in which the challenged classification needs only be shown to be rationally related to serving a legitimate state interest; b) **the middle-tier or intermediate scrutiny** in which the government must show that the challenged classification serves an important state interest and that the classification is at least substantially related to serving that interest; and c) **strict judicial scrutiny in which a legislative classification which impermissibly interferes with the exercise of a fundamental right** or operates to the peculiar disadvantage of a suspect class **is presumed unconstitutional**, and the **burden is upon the government to prove that the classification is necessary to achieve a *compelling state interest*** and that it is the ***least restrictive means*** to protect such interest. [Emphasis supplied]

The most exacting of the three tests is evidently the *strict scrutiny test*, which requires the government to show that the challenged classification serves a ***compelling state interest*** and that the classification is necessary to serve that interest.[123] Briefly stated, the strict scrutiny test is applied when the challenged statute either:

(1) classifies on the basis of an inherently suspect characteristic; or

(2) **infringes fundamental constitutional rights**.

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[121] See *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas, id.*, where the Court expanded the concept of suspect classification; See also *Serrano v. Gallant Maritime Services, Inc., infra* where the Court applied the strict scrutiny test.

[122] G.R. No. 167614, March 24 2009, 582 SCRA 254, 277-278.

[123] *Supra* note 30, pp. 139-140.

In these situations, the usual presumption of constitutionality is reversed, and **it falls upon the government to demonstrate that its classification has been narrowly tailored to further compelling governmental interests**; otherwise, the law shall be declared unconstitutional for violating the equal protection clause.[124]

In EO 1, for the first time in Philippine history, the Executive created a public office to address the "reports of graft and corruption of such magnitude that shock and offend the moral and ethical sensibilities of the people, committed….during the previous administration" through *fact-finding, policy formulation* and *truth-telling*.[125] While fact-finding has been undertaken by previous investigative commissions for purposes of possible prosecution and policy-formulation, a first for the current Truth Commission is its task of truth-telling. The Commission not only has to investigate reported graft and corruption; it also has the authority to announce to the public the "truth" regarding alleged graft and corruption committed during the previous administration.

EO 1's problem with the equal protection clause lies in the truth-telling function it gave the Truth Commission.

As extensively discussed earlier in this Opinion, truth-telling is not an ordinary task, as the Commission's reports to the government and the public are already given the imprimatur of truth way before the allegations of graft and corruption are ever proven in court. This feature, by itself, is a unique differential treatment that cannot but be considered in the application of the jurisprudential equal protection clause requirements.

Equally unique is the focus of the Commission's investigation — it solely addresses alleged graft and corruption committed during the past administration. This focus is further narrowed down to "third level public officers and higher, their co-principal, accomplices and accessories from the private sector, if any,

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[124] *J.* Carpio Morales' Dissenting Opinion. *Supra* note 120, p. 485.

[125] See Item I (c) of this Concurring Opinion, p. 8.

during the previous administration."[126] Under these terms, the subject of the EO is limited only to a very select group — the highest officials, not any ordinary government official at the time. Notably excluded under these express terms are third level and higher officials of other previous administrations who can still be possibly be charged of similar levels of graft and corruption they might have perpetrated during their incumbency. Likewise excepted are the third level officials of the present administration who may likewise commit the same level of graft and corruption during the term of the Commission.

Thus, from the points of truth-telling and the focus on the people to be investigated, at least a double layer of differential treatment characterizes the Truth Commission's investigation. Given these disparate treatment, the equal protection question that arises is: does the resulting classification and segregation of third level officials of the previous administration and their differential treatment rest on substantial distinctions? ***Stated more plainly, is there reasonable basis to differentiate the officials of the previous administration, both from the focus given to them in relation with all other officials as pointed out above, and in the truth-telling treatment accorded to them by the Commission?***

Still a deeper question to be answered is: what level of scrutiny should be given to the patent discrimination in focus and in treatment that the EO abets? Although this question is stated last, it should have been the initial consideration, as its determination governs the level of scrutiny to be accorded; if the strict scrutiny test is appropriate, the government, not the party questioning a classification, carries the burden of showing that permissible classification took place. This critical consideration partly accounts, too, for the relegation to the last, among the EO's cited grounds for invalidity, of the equal protection clause violation; the applicable level of scrutiny may depend on the prior determination of whether, as held in *Serrano*, the disparate treatment is attended by infringement of fundamental constitutional rights.

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[126] EO 1, Section 2.

"Fundamental rights" whose infringement leads to strict scrutiny under the equal protection clause are those basic liberties explicitly or implicitly guaranteed in the Constitution. Justice Carpio-Morales, although in dissent in *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*,[127] elaborated on this point when she said:

> Most fundamental rights cases decided in the United States require equal protection analysis because these cases would involve a review of statutes which classify persons and impose differing restrictions on the ability of a certain class of persons to exercise a fundamental right. **Fundamental rights include only those basic liberties explicitly or implicitly guaranteed by the U.S. Constitution. And precisely because these statutes affect fundamental liberties, any experiment involving basic freedoms which the legislature conducts must be critically examined under the lens of Strict Scrutiny.**
>
> **Fundamental rights which give rise to Strict Scrutiny include the right of procreation, the right to marry, the right to exercise First Amendment freedoms such as free speech, political expression, press, assembly, and so forth, the right to travel, and the right to vote.** [Emphasis supplied]

In the present case, as shown by the previously cited grounds for the EO's invalidity, **EO No. 1 infringes the personal due process rights of the investigated persons, as well as their constitutional right to a fair trial.** Indisputably, both these rights — one of them guaranteed under Section 1, Article III, and under Section 14 of the same Article — are, by jurisprudential definition, fundamental rights. With these infringements, the question now thus shifts to the application of the strict scrutiny test — an exercise not novel in this jurisdiction.

In the above-cited *Central Bank Employees Association, Inc.* case,[128] we stated:

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[127] *Supra* note 120, pp. 495-496.

[128] *Id.* at 387, 390.

> Congress retains its wide discretion in providing for a valid classification, and its policies should be accorded recognition and respect by the courts of justice except when they run afoul of the Constitution. **The deference stops where the classification violates a fundamental right, or prejudices persons accorded special protection by the Constitution.** When these violations arise, this Court must discharge its primary role as the vanguard of constitutional guaranties, **and require a stricter and more exacting adherence to constitutional limitations.** Rational basis should not suffice.
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> x x x x x x x x x
>
> **But if the challenge to the statute is premised on the denial of a fundamental right, or the perpetuation of prejudice against persons favored by the Constitution with special protection, judicial scrutiny ought to be more strict.** A weak and watered down view would call for the abdication of this Court's solemn duty to strike down any law repugnant to the Constitution and the rights it enshrines. This is true whether the actor committing the unconstitutional act is a private person or the government itself or one of its instrumentalities. Oppressive acts will be struck down regardless of the character or nature of the actor. [Underscoring supplied]

Stripped of the usual deference accorded to it, the government must show that a compelling state interest exists to justify the differential treatment that EO 1 fosters.

Serrano v. Gallant Maritime Services, Inc.[129] helpfully tells us the compelling state interest that is critical in a strict scrutiny examination:

> What constitutes compelling state interest is measured by the scale of rights and powers arrayed in the Constitution and calibrated by history. It is akin to the paramount interest of the state for which some individual liberties must give way, such as the public interest in safeguarding health or maintaining medical standards, or in maintaining access to information on matters of public concern.

In this same cited case, the Court categorically ruled that "the burden is upon the government to prove that the classification

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[129] *Supra* note 120, p. 296.

is necessary to achieve a ***compelling state interest*** and that it is the ***least restrictive means*** to protect such interest."[130]

On its face, the compelling state interest the EO cites is the *"urgent call for the determination of the truth regarding certain reports of large scale graft and corruption in the government and to put a closure to them by the filing of the appropriate cases against those involved if warranted, and to deter others from committing the evil, restore the people's faith and confidence in the Government and in their public servants*."[131] Under these terms, what appears important to the government as means or mediums in its fight against graft and corruption are **(1) to expose the graft and corruption the past administration committed; (2) to prosecute the malefactors, if possible; and (3) to set an example for others.** Whether a compelling State interest exists can best be tested through the prism of the means the government has opted to utilize.

In the usual course and irrespective of who the malefactors are and when they committed their transgressions, grafters and corruptors ought to be prosecuted. *This is not only a goal but a duty of government.* Thus, by itself, the prosecution that the EO envisions is not any different from all other actions the government undertakes day to day under the criminal justice system in proceeding against the grafters and the corrupt. In other words, expressed as a duty, the compelling drive to prosecute must be the same irrespective of the administration under which the graft and corruption were perpetrated. If indeed this is so, what compelling reasons can there be to drive the government to use the EO and its unusual terms in proceeding against the officials of the previous administration?

If the EO's terms are to be the yardstick, the basis for the separate focus is the "extent and magnitude" of the reported graft and corruption which "shock and offend the moral and ethical sensibilities of the people." What this "*extent and*

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[130] *Id.* at 278 citing *Grutter v. Bollinger*,539 US 306 (2003); *Bernal v. Fainter*, 467 US 216 (1984).

[131] EO 1, 5th Whereas Clause.

magnitude" is or what *specific incidents* of massive graft are referred to, however, have been left vague. Likewise, no explanation has been given on why special measures — *i.e.*, the special focus on the targeted officials, the creation of a new office, and the grant of truth-telling authority — have been taken.

Effectively, by acting as he did, the President simply gave the Commission the license to an open hunting season to tell the "truth" against the previous administration; the Commission can investigate an alleged single billion-peso scam, as well as transactions during the past administration that, collectively, may reach the same amount. Only the Commission, in its wisdom, is to judge what allegations or reports of graft and corruption to cover for as long as these were during the past administration. In the absence of any specific guiding principle or directive, indicative of its rationale, the conclusion is unavoidable that the EO carries no special compelling reason to single out officials of the previous administration; what is important is that the graft be attributed to the previous administration. In other words, the real reason for the EO's focus lies elsewhere, not necessarily in the nature or extent of the matters to be investigated.

If, as strongly hinted by the Solicitor General, dissatisfaction exists regarding the Ombudsman's zeal, efforts, results, and lack of impartiality, these concerns should be addressed through the remedies provided under the Constitution and the laws, not by bypassing the established remedies under these instruments. Certainly, the remedy is not through the creation of new public office without the authority of Congress.

Every successful prosecution of a graft and corruption violation ought to be an opportunity to set an example and to send a message to the public that the government seriously intends to discharge its duties and responsibilities in the area of graft and corruption. To be sure, the conviction of a third level officer is a high profile accomplishment that the government can and should announce to all as evidence of its efforts and of the lesson that the conviction conveys. This government's accomplishment, however, does not need to be against an official

or officials of the previous administration in order to be a lesson; it can be any third level or higher official from any administration, including the present. ***In fact, the present administration's serious intent in fighting graft may all the more be highlighted if it will also proceed against its own people***.

It is noteworthy that the terms of the EO itself do not provide any specific reason why, for purposes of conveying a message against graft and corruption, the focus should be on officials of the previous administration under the EO's special truth-telling terms. As mentioned above, the extent of the alleged graft and corruption during the previous administration does not appear to be a sufficient reason for distinction under the EO's vague terms. Additionally, if a lesson for the public is really intended, the government already has similar successful prosecutions to its credit and can have many more graphic examples to draw from; it does not need to be driven to unusual means to show the graft and corruption committed under the previous administration. The host of examples and methodologies already available to the government only demonstrate that the focus on, and differential treatment of, specific officials for public lesson purposes involves a classification unsupported by any special overriding reason.

Given the lack of sufficiently compelling reasons to use two (2) of the three (3) objectives or interests the government cited in EO 1, what is left of these expressed interests is simply the desire to expose the graft and corruption the previous administration might have committed. Interestingly, the EO itself partly provides the guiding spirit that might have moved the Executive to its intended expose as it unabashedly points to the President's promise made in the last election — "*Kung walang corrupt, walang mahirap.*"[132] There, too, is the Solicitor General's very calculated statement that truth-telling is an end in itself that the EO wishes to achieve.

Juxtaposing these overt indicators with the EO's singleness of focus on the previous administration, what emerges in bold

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[132] EO 1, 6th Whereas Clause.

relief is the conclusion that the EO was issued largely for political ends: the President wants his election promise fulfilled in a dramatic and unforgettable way; none could be more so than criminal convictions, or at least, exposure of the "truth" that would forever mark his political opponents; thus, the focus on the previous administration and the stress on establishing their corrupt ways as the "truth."

Viewed in these lights, the political motivation behind the EO becomes inescapable. Political considerations, of course, cannot be considered a legitimate state purpose as basis for proper classification.[133] They may be specially compelling but only for the point of view of a political party or interest, not from the point of view of an equality-sensitive State.

In sum, no sufficient and compelling state interest appears to be served by the EO to justify the differential treatment of the past administration's officials. In fact, exposure of the sins of the previous administration through truth-telling should not even be viewed as "least restrictive" as it is in fact a means with pernicious effects on government and on third parties.

For these reasons, the conclusion that the EO violates the equal protection clause is unavoidable.

G. A FEW LAST WORDS

Our ruling in this case should not in any way detract from the concept that the Judiciary is the least dangerous branch of government. The Judiciary has no direct control over policy nor over the national purse, in the way that the Legislature does. Neither does it implement laws nor exercise power over those who can enforce laws and national policy. All that it has is the power to safeguard the Constitution in a manner independent of the two other branches of government. Ours is merely the power to check and ensure that constitutional powers and guarantees are observed, and constitutional limits are not violated.

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[133] *Carbonaro v. Reeher*, 392 F. Supp. 753 (E.D. Pa. 1975).

Under this constitutional arrangement, the Judiciary offers the least threat to the people and their rights, and the least threat, too, to the two other branches of government. If we rule against the other two branches of government at all in cases properly brought before us, we do so only to exercise our sworn duty under the Constitution. We do not prevent the two other branches from undertaking their respective constitutional roles; we merely confine them to the limits set by the Constitution.

This is how we view our present action in declaring the invalidity of EO 1. We do not thereby impugn the nobility of the Executive's objective of fighting graft and corruption. We simply tell the Executive to secure this objective within the means and manner the Constitution ordains, perhaps in a way that would enable us to fully support the Executive.

To be sure, no cause exists *to even impliedly use* the term "imperial judiciary"[134] in characterizing our action in this case.

This Court, by constitutional design and for good reasons, is not an elective body and, as already stated above, has neither reason nor occasion to delve into politics — the realm already occupied by the two other branches of government. It cannot exercise any ascendancy over the two other branches of government as it is, in fact, dependent on these two branches in many ways, most particularly for its budget, for the laws and policies that are the main subjects for its interpretation, and for the enforcement of its decisions. While it has the power to

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[134] See then Associate Justice Reynato S. Puno's Concurring and Dissenting Opinion in *Francisco, Jr. v. Nagmamalasakit na mga Manananggol ng mga Manggagawang Pilipino, Inc.*, G.R. No. 160261, November 10, 2003, 415 SCRA 44, 211, where former Chief Justice Puno spoke of an "imperial judiciary," *viz*:

> The 1987 Constitution expanded the parameters of judicial power, but that by no means is a justification for the errant thought that the Constitution created an imperial judiciary. An imperial judiciary composed of the unelected, whose sole constituency is the blindfolded lady without the right to vote, is counter-majoritarian, hence, inherently inimical to the central ideal of democracy. We cannot pretend to be an imperial judiciary for in a government whose cornerstone rests on the doctrine of separation of powers, we cannot be the repository of all remedies.

interpret the Constitution, the Judiciary itself, however, is subject to the same Constitution and, for this reason, must in fact be very careful and zealous in ensuring that it respects the very instrument it is sworn to safeguard. We are aware, too, that we "cannot be the repository of all remedies"[135] and cannot presume that we can cure all the ills of society through the powers the Constitution extended to us. Thus, this Court — by its nature and functions — cannot be in any way be "imperial," nor has it any intention to be so. Otherwise, we ourselves shall violate the very instrument we are sworn to uphold.

As evident in the way this Court resolved the present case, it had no way but to declare EO invalid for the many reasons set forth above. The cited grounds are neither flimsy nor contrived; they rest on solid legal bases. Unfortunately, no other approach exists in constitutional interpretation except to construe the assailed governmental issuances in their best possible lights or to reflect these effects in a creative way where these approaches are at all possible. Even construction in the best lights or a creative interpretation, however, cannot be done where the cited grounds are major, grave and affect the very core of the contested issuance — the situation we have in the present case.

Nor can this Court be too active or creative in advocating a position for or against a cause without risking its integrity in the performance of its role as the middle man with the authority to decide disputed constitutional issues. The better (and safer) course for democracy is to have a Court that holds on to traditional values, departing from these values only when these values have become inconsistent with the spirit and intent of the Constitution.

In the present case, as should be evident in reading the *ponencia* and this Separate Opinion, we have closely adhered to traditional lines. If this can be called activism at all, we have been an activist for tradition. Thereby, we invalidated the act of the Executive without however foreclosing or jeopardizing his opportunity to work for the same objective in some future, more legally reasoned, and better framed course of action.

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[135] *Ibid.*

SEPARATE CONCURRING OPINION

PERALTA, *J.*:

On July 30, 2010, President Benigno Simeon C. Aquino III issued Executive Order (E.O.) No. 1 creating the Philippine Truth Commission of 2010 (Truth Commission), which is "primarily tasked to conduct a thorough fact-finding investigation of reported cases of graft and corruption x x x involving third level public officers and higher, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration and thereafter submit its findings and recommendations to the President, Congress and the Ombudsman."

Petitioners filed their respective petitions questioning the constitutionality of E.O. No. 1. In G.R. No. 193036, petitioners, as members of the House of Representatives, have legal standing to impugn the validity of E.O. No. 1, since they claim that E.O. No. 1 infringes upon their prerogatives as legislators.[1] In G.R. No. 192935, petitioner, who filed his petition as a taxpayer, may also be accorded standing to sue, considering that the issues raised are of transcendental importance to the public.[2] The people await the outcome of the President's effort to implement his pledge to find out the truth and provide closure to the reported cases of graft and corruption during the previous administration. The constitutional issues raised by petitioners seek the determination of whether or not the creation of the Truth Commission is a valid exercise by the President of his executive power.

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[1] See *David v. Macapagal-Arroyo*, G.R. No. 171396, May 3, 2006, 489 SCRA 160.

[2] *Kilosbayan Incorporated v. Guingona, Jr.*, G.R. No. 113375, May 5, 1994, 232 SCRA 110.

Petitioners contend that E.O. No. 1 is unconstitutional, because only Congress may create a public office, pursuant to Section 1, Article VI of the Constitution.[3]

Respondents, through the Office of the Solicitor General (OSG), counter that the issuance of E.O. No. 1 is mainly supported by Section 17, Article VII of the Constitution,[4] Section 31, Title III, Book III of E.O. No. 292, and Presidential Decree (P.D.) No. 1416, as amended by P.D. No. 1772.

Quoted in E.O. No. 1 as the legal basis for its creation is Section 31, Title III, Book III of E.O. No. 292, otherwise known as the *Revised Administrative Code of 1987*, which provides:

> SEC. 31. ***Continuing Authority of the President to Reorganize his Office***. — The President, subject to the policy in the Executive Office and in order to achieve simplicity, economy and efficiency, shall have continuing authority to reorganize the administrative structure of the Office of the President. For this purpose, he may take any of the following actions:
>
> (1) Restructure the internal organization of the Office of the President Proper, including the immediate Offices, the Presidential Special Assistants/Advisers System and the Common Staff Support System, by abolishing, consolidating or merging units thereof or transferring functions from one unit to another;
>
> (2) Transfer any function under the Office of the President to any other Department or Agency as well as transfer functions to the Office of the President from other Departments and Agencies; and
>
> (3) Transfer any agency under the Office of the President to any other department or agency as well as transfer agencies to the Office of the President from other departments and agencies.

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[3] Sec. 1. The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum.

[4] Sec. 17. The President shall have control of all executive departments, bureaus and offices. He shall ensure that the laws be faithfully executed.

In ***Bagaoisan v. National Tobacco Administration***,[5] the Court held that the first sentence of the law is an express grant to the President of a continuing authority to reorganize the administrative structure of the Office of the President. **Section 31(1)** of Executive Order No. 292 specifically refers to the President's power to restructure the internal organization of the Office of the President Proper, by *abolishing, consolidating or merging units thereof or transferring functions* from one unit to another.[6] **Section 31(2) and (3)** concern executive offices outside the Office of the President Proper allowing the President to *transfer any function* under the Office of the President to any other department or agency and *vice-versa*, and the *transfer of any agency* under the Office of the President to any other department or agency and *vice-versa*.[7]

Thus, the reorganization in Section 31 involves abolishing, consolidating or merging units in the Office of the President Proper or transferring functions from one unit to another in the Office of the President Proper, and the transfer of any function or any agency under the Office of the President to any other department or agency and vice-versa. Nowhere is it stated that the President can create an office like the Truth Commission, which does not result from any reorganization under Section 31. Hence, the said section cannot be used to justify the creation of the Truth Commission.

Moreover, in its Comment, the OSG stated that one of the bases for the creation of E.O. No. 1 is P.D. No. 1416, as amended by P.D. No. 1772, which amendment was enacted by President Ferdinand E. Marcos on January 15, 1981.

P.D. No. 1416, as amended, is inapplicable as basis in the creation of the Truth Commission, since it was intended by President Ferdinand E. Marcos to promote efficiency and flexibility in the organization of the *national* government to strengthen the government bureaucracy *when the government was in the*

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[5] G.R. No. 152845, August 5, 2003, 408 SCRA 337.

[6] *Id.* (Emphasis supplied.)

[7] *Id.* (Emphasis supplied.)

transition from presidential to the parliamentary form of government. This is evident in the preamble of P.D. No. 1416,[8] which states:

> WHEREAS, the *transition* toward the *parliamentary form of government* will necessitate flexibility in the organization of the *national government*; x x x[9]

The OSG admitted during the oral argument[10] that the 1987 Constitution ended the power of the President to reorganize the *national* government. It is noted that President Ferdinand E. Marcos exercised legislative power concurrently with the *interim* Batasang Pambansa (1976) and, subsequently, with the *regular* Batasang Pambansa (1984).[11] After the February 1986 revolution, President Corazon C. Aquino assumed revolutionary legislative power, and issued Proclamation No. 3, the Provisional Freedom Constitution. Section 3, Article I of Proclamation No. 3 abolished the Batasang Pambansa, while Section 1, Article II of the said Proclamation vested legislative power in the President until a legislature would be elected and convened under a new Constitution. Thus, Section 6, Article XVIII (Transitory Provisions) of the 1987 Constitution provides that "[t]he incumbent President (President Corazon Aquino) shall continue to exercise legislative powers until the first Congress is convened."[12]

In view of the foregoing, the decision in ***Larin v. Executive Secretary***[13] insofar as P.D. No. 1416, as amended by P.D. No. 1772, is cited as a law granting the President the power to reorganize, needs to be re-examined.

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[8] Enacted on June 9, 1978.

[9] Emphasis supplied.

[10] Conducted on September 28, 2010.

[11] Joaquin G. Bernas, S.J., *The Constitution of the Republic of the Philippines, A Commentary*, Vol. II, First edition, pp. 70-73, citing *Legaspi v. Minister of Finance*, 115 SCRA 418. (1982).

[12] *Id.* at 73.

[13] G.R. No. 112745, October 16, 1997, 280 SCRA 713.

Assuming that P.D. No. 1416, as amended, is still a valid law, it cannot be the basis of the creation of the Truth Commission, because all the cases, from ***Larin v. Executive Secretary***;[14] ***Buklod ng Kawaning EIIB v. Zamora***;[15] ***Secretary of the Department of Transportation and Communications v. Mabalot***;[16] ***Bagaoisan v. National Tobacco Administration***;[17] ***Department of Environment and Natural Resources v. DENR Region 12 Employees***;[18] ***Tondo Medical Center Employees Association v. Court of Appeals***;[19] ***Malaria Employees and Workers Association of the Philippines, Inc. (MEWAP) v. Romulo***[20] to ***Banda v. Ermita***,[21] which cited P.D. No. 1416, as amended, as a basis to reorganize, involved reorganization or streamlining of an agency of the Executive Department. However, the Truth Commission was not created for streamlining purposes.

The purpose of reorganization under P.D. No. 1416, as amended by P.D. No. 1772, is to "promote simplicity, economy and efficiency in the government to enable it to pursue programs consistent with national goals for accelerated social and economic development, and to improve upon the services of the government in the transaction of the public business."

The creation of the Truth Commission, however, is not to promote simplicity, economy and efficiency in the government. The Truth Commission is primarily tasked to conduct fact-finding investigation of reported cases of graft and corruption involving third level public officers and higher, their co-principals,

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[14] *Id*.

[15] G.R. Nos. 142801-802, July 10, 2001, 360 SCRA 718.

[16] G.R. No. 138200, February 27, 2002, 378 SCRA 128.

[17] *Supra* note 5.

[18] G.R. No. 149724, August 19, 2003, 409 SCRA 359.

[19] G.R. No. 167324, July 17, 2007, 527 SCRA 746.

[20] G.R. No. 160093, July 31, 2007, 528 SCRA 673.

[21] G.R. No. 166620, April 20, 2010.

accomplices and accessories from the private sector, if any, during the previous administration of President Gloria Macapagal-Arroyo, which separate investigative body, as stated in the preamble, "will recommend the prosecution of the offenders and secure justice for all." It is, in part, the implementation of the pledge of President Benigno Aquino, Jr. during the last election that if elected, he would end corruption and the evil it breeds.

In its Memorandum, the OSG justifies the power of the President to create the Truth Commission based on his authority to create *ad hoc* fact-finding committees or offices within the Office of the President, which authority is described as an adjunct of his plenary executive power under Section 1 and his power of control under Section 17, both of Article VII of the Constitution.[22] It cited the case of ***Department of Health v. Camposano***,[23] which held:

> The Chief Executive's power to create the *Ad Hoc* Investigating Committee cannot be doubted. Having been constitutionally granted full control of the Executive Department, to which respondents belong, the President has the obligation to ensure that all executive officials and employees faithfully comply with the law. With AO 298 as mandate, the legality of the investigation is sustained. Such validity is not affected by the fact that the investigating team and the PCAGC had the same composition, or that the former used the offices and facilities of the latter in conducting the inquiry.

To clarify, the power of control is "the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter";[24] hence, it cannot be the basis of creating the Truth Commission.

The *ponencia* justifies the creation of the Truth Commission based on the President's duty to ensure that the laws be faithfully executed under Section 17, Article VII of the Constitution, thus:

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[22] OSG Memorandum, p. 43.

[23] 496 Phil. 886, 896-897 (2005).

[24] *Secretary of the Department of Transportation and Communications v. Mabalot, supra* note 16.

Sec. 17. The President shall have control of all executive departments, bureaus and offices. **He shall ensure that the laws be faithfully executed**.[25]

According to the *ponencia*, to ascertain if laws are faithfully executed, the President has the power to create *ad hoc* investigating committees, which power has been upheld in ***Department of Health v. Camposano***.[26] In the said case, some concerned employees of the Department of Health (DOH)-National Capital Region (NCR) filed a complaint before the DOH Resident against certain officers of the DOH arising from alleged anomalous purchase of medicines. The Resident Ombudsman submitted an investigation report to the Secretary of Health recommending the filing of a formal administrative charge of Dishonesty and Grave Misconduct against the respondents. Subsequently, the Secretary of Health filed a formal charge against the respondents for Grave Misconduct, Dishonesty, and Violation of Republic Act No. 3019. Thereafter, the Executive Secretary issued Administrative Order No. 298, creating an *ad hoc* committee to investigate the administrative case filed against the DOH-NCR employees. The said Administrative Order was indorsed to the Presidential Commission Against Graft and Corruption (PCAGC), which found the respondents guilty as charged and recommended their dismissal from the government. However, the Court overturned the dismissal of respondents by the Secretary of DOH, because respondents were denied due process, but it declared valid the creation of the *ad hoc* committee, thus:

x x x The investigation was authorized under Administrative Order No. 298 dated October 25, 1996, which had created an *Ad Hoc* Committee to look into the administrative charges filed against Director Rosalinda U. Majarais, Priscilla G. Camposano, Horacio D. Cabrera, Imelda Q. Agustin and Enrique L. Perez.

The Investigating Committee was composed of all the members of the PCAGC: Chairman Eufemio C. Domingo, Commissioner Dario

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[25] Emphasis supplied.

[26] *Supra* note 23.

C. Rama and Commissioner Jaime L. Guerrero. The Committee was directed by AO 298 to "follow the procedure prescribed under Section 38 to 40 of the Civil Service Law (PD 807), as amended." It was tasked to "forward to the Disciplining Authority the entire records of the case, together with its findings and recommendations, as well as the draft decision for the approval of the President."

The Chief Executive's power to create the *Ad Hoc* Investigating Committee cannot be doubted. Having been constitutionally granted full control of the Executive Department, to which respondents belong, the President has the obligation to ensure that all executive officials and employees faithfully comply with the law. With AO 298 as mandate, the legality of the investigation is sustained. Such validity is not affected by the fact that the investigating team and the PCAGC had the same composition, or that the former used the offices and facilities of the latter in conducting the inquiry.[27]

The *ponencia* stressed that the purpose of allowing *ad hoc* investigating bodies to exist is to allow inquiry into matters which the President is entitled to know so that he can be properly advised and guided in the performance of his duties relative to the execution and enforcement of the laws of the land. The *ponencia* stated that this was also the objective of investigative bodies created in the past like the PCAC, PCAPE, PARGO, the Feliciano Commission, the Melo Commission and the Zenarosa Commission. Hence, the *ponencia* held that the President's power to create investigative bodies cannot be denied.

Albeit the President has the power to create *ad hoc committees* to investigate or inquire into matters for the guidance of the President to ensure that the laws be faithfully executed, I am of the view that the Truth Commission was not created in the nature of the aforementioned *ad hoc* investigating/fact-finding bodies. The Truth Commission was created more in the nature of a public office.

Based on the creation of *ad hoc* investigating bodies in ***Department of Health v. Camposano*** and ***Presidential Ad Hoc***

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[27] *Department of Health v. Camposano*, *supra* note 23.

Fact-Finding Committee on Behest Loans v. Desierto,[28] the members of an *ad hoc* investigative body are heads and representatives of existing government offices, depending on the nature of the subject matter of the investigation. The *ad*

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[28] G.R. No. 145184, March 14, 2008, 548 SCRA 295. In this case, President Fidel V. Ramos issued on October 8, 1992, Administrative Order No. 13 creating the Presidential *Ad Hoc* Fact-Finding Committee on Behest Loans (Committee), which reads:

> WHEREAS, Sec. 28, Article II of the 1987 Constitution provides that "Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all transactions involving public interest";
>
> WHEREAS, Sec. 15, Article XI of the 1987 Constitution provides that "The right of the state to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches or estoppel";
>
> WHEREAS, there have been allegations of loans, guarantees, or other forms of financial accommodation granted, directly or indirectly, by government owned and controlled bank or financial institutions, at the behest, command or urging by previous government officials to the disadvantage and detriment of the Philippine government and the Filipino people;
>
> ACCORDINGLY, an "*Ad-Hoc* FACT FINDING COMMITTEE ON BEHEST LOANS" is hereby created to be composed of the following:
>
> Chairman of the Presidential Commission on Good Government - Chairman
> The Solicitor General - Vice-Chairman
> Representative from the Office of the Executive Secretary - Member
> Representative from the Department of Finance - Member
> Representative from the Department of Justice - Member
> Representative from the Development Bank of the Philippines - Member
> Representative from the Philippine National Bank - Member
> Representative from the Asset Privatization Trust - Member
> Government Corporate Counsel - Member

hoc investigating body's functions are primarily fact-finding/ investigative and recommendatory in nature.[29]

In this case, the members of the Truth Commission are not officials from existing government offices. Moreover, the Truth Commission has been granted powers of an independent office as follows:

1. Engage or contract the services of resource persons, professionals and other personnel determined by it as necessary to carry out its mandate;[30]
2. Promulgate its rules and regulations or rules of procedure it deems necessary to effectively and efficiently carry out the objectives of this Executive Order and to ensure the orderly conduct of its investigations, proceedings and hearings, including the presentation of evidence.[31]

Representative from the
Philippine Export and Foreign
Loan Guarantee Corporation - Member

The *Ad Hoc* Committee shall perform the following functions:

1. Inventory all behest loans; identify the lenders and borrowers, including the principal officers and stockholders of the borrowing firms, as well as the persons responsible for granting the loans or who influenced the grant thereof;
2. Identify the borrowers who were granted "friendly waivers," as well as the government officials who granted these waivers; determine the validity of these waivers;
3. Determine the courses of action that the government should take to recover those loans, and to recommend appropriate actions to the Office of the President within sixty (60) days from the date hereof.

The Committee is hereby empowered to call upon any department, bureau, office, agency, instrumentality or corporation of the government, or any officer or employee thereof, for such assistance as it may need in the discharge of its function.

[29] See Footnote 28.

[30] E.O. No. 1, Section 2 (i).

[31] E.O. No. 1, Section 2 (j).

3. The Truth Commission shall have the power to engage the services of experts as consultants or advisers as it may deem necessary to accomplish its mission.[32]

In addition, the Truth Commission has coercive powers such as the power to subpoena witnesses.[33] Any government official or personnel who, without lawful excuse, fails to appear upon subpoena issued by the Commission or who, appearing before the Commission refuses to take oath or affirmation, give testimony or produce documents for inspection, when required, shall be subject to administrative disciplinary action.[34] Any private person who does the same may be dealt with in accordance with law.[35] Apparently, the grant of such powers to the Truth Commission is no longer part of the executive power of the President, as it is part of law-making, which legislative power is vested in Congress.[36] There are only two instances in the Constitution wherein Congress may delegate its law-making authority to the President:[37]

Article VI, Section 23. (1) The Congress, by a vote of two-thirds of both houses in joint session assembled, voting separately, shall have the sole power to declare the existence of a state of war.

(2) **In times of war or other national emergency, the Congress may, by law, authorize the President, for a limited period and subject to such restrictions as it may prescribe, to exercise powers necessary and proper to carry out a declared national policy. Unless sooner withdrawn by resolution of the Congress, such powers shall cease upon the next adjournment thereof.**

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[32] E.O. No. 1, Section 5.

[33] E.O. No. 1, Section 2 (e).

[34] E.O. No. 1. Section 9.

[35] *Id*.

[36] The Constitution, Article VI, Section 1. The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum.

[37] Joaquin G. Bernas, S.J., *The Constitution of the Republic of the Philippines, A Commentary*, Vol. II, *supra* note 11, at 70, 140-141, 161.

Article VI, Sec. 28. (1) The rule of taxation shall be uniform and equitable. The Congress shall evolve a progressive system of taxation.

(2) The Congress may, by law, authorize the President to fix within specified limits, and subject to such limitations and restrictions as it may impose, tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts within the framework of the national development program of the government.[38]

Although the President may create investigating bodies to help him in his duty to ensure that the laws are faithfully executed, he cannot be allowed to encroach on or usurp the law-making power of the Legislature in the creation of such investigative bodies.

Moreover, the Truth Commission's function is questioned on the ground that it duplicates, if not supersedes, the function of the Office of the Ombudsman. The OSG avers that the Ombudsman's power to investigate is not exclusive, but is shared with other similarly authorized agencies, citing ***Ombudsman v. Galicia***.[39]

Based on Section 2 of E.O. No. 1, the powers and functions of the Truth Commission do not supplant the powers and functions of the Ombudsman.[40] Nevertheless, what is the use of the Truth Commission if its power is merely recommendatory? Any finding of graft and corruption by the Truth Commission is still subject to evaluation by the Office of the Ombudsman,

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[38] Emphasis supplied.

[39] G.R. No. 167711, October 10, 2008, 568 SCRA 327, 339.

[40] Republic Act No. 6770, Section 15. *Powers, Functions and Duties*.— The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases x x x.

as it is only the Office of the Ombudsman that is empowered to conduct preliminary investigation, determine the existence of probable cause and prosecute the case. Hence, the creation of the Truth Commission will merely be a waste of money, since it duplicates the function of the Office of the Ombudsman to investigate reported cases of graft and corruption.

Further, E.O. No. 1 violates that equal protection clause enshrined in the Constitution. The guarantee of equal protection of the laws means that no person or class of persons shall be denied the same protection of laws which is enjoyed by other persons or other classes in like circumstances.[41]

In this case, investigation by the Truth Commission covers only third level public officers and higher, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration of former President Gloria Macapagal-Arroyo.[42]

The OSG, however, counters in its Memorandum that the equal protection clause of the Constitution is not violated, because although E.O. No. 1 names the previous administration as the initial subject of the investigation of cases of graft and corruption, it is not confined to the said administration, since E.O. No. 1 clearly speaks of the President's power to expand its coverage to prior administrations as follows:

SECTION 17. Special Provision Concerning Mandate.— *If and when* in the judgment of the President there is a need to expand the mandate of the Commission as defined in Section 1 hereof to

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[41] *City of Manila v. Laguio, Jr.*, G.R. No. 118127, April 12, 2005, 455 SCRA 308.

[42] E.O. No. 1, Section 2. *Powers and functions*.— The Commission, which shall have all the powers of an investigative body under Section 37, Chapter 9, Book I of the Administrative Code of 1987, is primarily tasked to conduct a thorough fact-finding investigation of reported cases of graft and corruption referred to in Section 1, ***involving third level public officers and higher, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration*** x x x. (Emphasis supplied.)

include the investigation of cases and instances of graft and corruption during the prior administrations, such mandate may be so extended accordingly by way of a supplemental Executive Order.[43]

As provided above, the mandate of the Truth Commission may be expanded to include the investigation of cases of graft and corruption during prior administrations, but it is subject to the "judgment" or discretion of the President and it may be so extended by way of a supplemental Executive Order. In the absence of the exercise of judgment by the President that the Truth Commission shall also conduct investigation of reported cases of graft and corruption during prior administrations, and in the absence of the issuance of a supplemental executive order to that effect, E.O. No. 1 covers only third level public officers and higher, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration of former President Gloria Macapagal-Arroyo. This is admitted by the OSG in its Memorandum[44] as it explains that "to include the past administrations, at this point, may unnecessarily overburden the Commission and lead it to lose its effectiveness." The OSG's position shows more consideration for the burden that the investigation may cause to the Commission, while losing sight of the equal protection clause of the Constitution.

The OSG further states that even if the Truth Commission would solely concern itself with graft and corruption, if there be any, of the previous administration, there is still no violation of the equal protection clause. It submits that the segregation of the transactions of public officers during the previous administration as possible subjects of investigation is a valid classification based on substantial distinctions and is germane to the evils which the E.O. seeks to correct. The distinctions cited are:

1) E.O No. 1 was issued in view of widespread reports of large scale graft and corruption in the previous

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[43] Emphasis supplied.

[44] Memorandum, p. 89.

administration which have eroded public confidence in public institutions.

2) The segregation of the preceding administration as the object of fact-finding investigations is warranted by the reality that the current administration will most likely bear the immediate consequences of the policies of the previous administration, unlike those of the administrations long gone.

3) The classification of the previous administration as a separate class for investigation lies in the reality that the evidence of possible criminal activity, the evidence that could lead to recovery of public monies illegally dissipated, the policy lessons to be learned to ensure that anti-corruption laws are faithfully executed, are more easily established in the regime that immediately precedes the current administration.

4) Many administrations subject the transactions of their predecessors to investigations to provide closure to issues that are pivotal to national life or even as a routine measure of due diligence and good housekeeping by a nascent administration.

Indeed, the equal protection clause of the Constitution allows classification.[45] If the classification is reasonable, the law may operate only on some and not all of the people without violating the equal protection clause.[46] To be valid, it must conform to the following requirements: (1) It must be based on substantial distinctions; (2) it must be germane to the purposes of the law; (3) it must not be limited to existing conditions only; and (4) it must apply equally to all members of the class.[47]

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[45] *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, G.R. No. 148208, December 15, 2004, 446 SCRA 299, citing *Victoriano v. Elizalde Rope Workers' Union*, 59 SCRA 54. (1974).

[46] *City of Manila v. Laguio, Jr.*, G.R. No. 118127, April 12, 2005, 455 SCRA 308, 348.

[47] *Id.* at 348-349.

Peralta v. Commission on Elections[48] held:

> The equal protection clause does not forbid all legal classifications. What [it] proscribes is a classification which is arbitrary and unreasonable. It is not violated by a reasonable classification based upon substantial distinctions, where the classification is germane to the purpose of the law and applies equally to all those belonging to the same class. The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class, and reasonable grounds exist for making a distinction between those who fall within the class and those who do not. There is, of course, no concise or easy answer as to what an arbitrary classification is. No definite rule has been or can be laid down on the basis of which such question may be resolved. The determination must be made in accordance with the facts presented by the particular case. The general rule, which is well-settled by the authorities, is that a classification, to be valid, must rest upon material differences between the persons, activities or things included and those excluded. There must, in other words, be a basis for distinction. Furthermore, such classification must be germane and pertinent to the purpose of the law. And, finally, the basis of classification must, in general, be so drawn that those who stand in substantially the same position with respect to the law are treated alike.

The distinctions cited by the OSG are not substantial to separate the previous administration as a distinct class from prior administrations as subject matter for investigation for the purpose of ending graft and corruption. As stated by the *ponencia*, the reports of widespread corruption in the previous administration cannot be taken as a substantial distinction, since similar reports have been made in earlier administrations.

Moreover, a valid classification must rest upon material differences between the persons, or activities or thing included and excluded.[49] Reasonable grounds must exist for making a distinction between those who fall within the class and those who do not.[50] There is no substantial distinction cited between

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[48] G.R. No. L-47771, March 11, 1978, 82 SCRA 30.

[49] *Peralta v. Commission on Elections, supra.*

[50] *Id.*

public officers who may be involved in reported cases of graft and corruption during the *previous* administration *and* public officers who may be involved in reported cases of graft and corruption during *prior* administrations in relation to the purpose of ending graft and corruption. To limit the investigation to public officers of the previous administration is violative of the equal protection clause.

I vote, therefore, to **GRANT** the petitions as Executive Order No. 1 is unconstitutional since it violates the equal protection clause of the Constitution and encroaches on the law-making power of Congress under Section 1, Article VI of the Constitution.

SEPARATE OPINION

BERSAMIN, *J.*:

I register my full concurrence with the Majority's well reasoned conclusion to strike down Executive Order No. 1 (E.O. No. 1) for its incurable unconstitutionality.

I share and adopt the perspectives of my colleagues in the Majority on why the issuance has to be struck down. I render this Separate Opinion only to express some thoughts on a few matters.

I
Locus Standi of Petitioners

I hold that the petitioners have *locus standi*.

In particular reference to the petitioners in G.R. No. 193036, I think that their being *incumbent* Members of the House of Representatives gave them the requisite legal standing to challenge E. O. No. 1 as an impermissible intrusion of the Executive into the domain of the Legislature. Indeed, to the extent that the powers of Congress are impaired, so is the power of *each* Member, whose office confers a right to participate in the exercise of the powers of that institution; consequently, an act of the Executive that injures the institution of Congress causes a derivative but nonetheless substantial injury that a Member of

Congress can assail.[1] Moreover, any intrusion of one Department in the domain of another Department diminishes the enduring idea underlying the incorporation in the Fundamental Law of the time-honored republican concept of separation of powers.

Justice Mendoza's main opinion, which well explains why the petitioners have *locus standi*, is congruent with my view on the matter that I expressed in *De Castro v. Judicial and Bar Council, et al.*,[2] *viz*:

> Black defines *locus standi* as "a right of appearance in a court of justice on a given question." In public or constitutional litigations, the Court is often burdened with the determination of the *locus standi* of the petitioners due to the ever-present need to regulate the invocation of the intervention of the Court to correct any official action or policy in order to avoid obstructing the efficient functioning of public officials and offices involved in public service. It is required, therefore, that the petitioner must have a personal stake in the outcome of the controversy, for, as indicated in *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*:
>
> > The question on legal standing is whether such parties have "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." Accordingly, it has been held that the interest of a person assailing the constitutionality of a statute must be direct and personal. He must be able to show, not only that the law or any government act is invalid, but also that he sustained or is in imminent danger of sustaining some direct injury as a result of its enforcement, and not merely that he suffers thereby in some indefinite way. It must appear that the person complaining has been or is about to be denied some right or privilege to which he is lawfully entitled or that he is about to be subjected to some burdens or penalties by reason of the statute or act complained of.

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[1] *Philippine Constitution Association v. Hon. Enriquez*, G.R. Nos. 113105, 113174, 113766 and 113888, August 19, 1994, 235 SCRA 506.

[2] G.R. Nos. 191002, 191032, 191057, 191149, 191342 and 191420, and A.M. No. 10-2-5-SC, March 17, 2010.

It is true that as early as in 1937, in *People v. Vera*, the Court adopted the *direct injury test* for determining whether a petitioner in a public action had *locus standi*. There, the Court held that the person who would assail the validity of a statute must have "a personal and substantial interest in the case such that he has sustained, or will sustain direct injury as a result." *Vera* was followed in *Custodio v. President of the Senate, Manila Race Horse Trainers' Association v. De la Fuente, Anti-Chinese League of the Philippines v. Felix,* and *Pascual v. Secretary of Public Works.*

Yet, the Court has also held that the requirement of *locus standi*, being a mere procedural technicality, can be waived by the Court in the exercise of its discretion. For instance, in 1949, in *Araneta v. Dinglasan*, the Court liberalized the approach when the cases had "transcendental importance." Some notable controversies whose petitioners did not pass the *direct injury test* were allowed to be treated in the same way as in *Araneta v. Dinglasan.*

In the 1975 decision in *Aquino v. Commission on Elections*, this Court decided to resolve the issues raised by the petition due to their "far-reaching implications," even if the petitioner had no personality to file the suit. The liberal approach of *Aquino v. Commission on Elections* has been adopted in several notable cases, permitting ordinary citizens, legislators, and civic organizations to bring their suits involving the constitutionality or validity of laws, regulations, and rulings.

However, the assertion of a public right as a predicate for challenging a supposedly illegal or unconstitutional executive or legislative action rests on the theory that the petitioner represents the public in general. Although such petitioner may not be as adversely affected by the action complained against as are others, it is enough that he sufficiently demonstrates in his petition that he is entitled to protection or relief from the Court *in the vindication of a public right*.

Quite often, as here, the petitioner in a public action sues as a *citizen* or *taxpayer* to gain *locus standi*. That is not surprising, for even if the issue may appear to concern only the public in general, such capacities nonetheless equip the petitioner with adequate interest to sue. In *David v. Macapagal-Arroyo,* the Court aptly explains why:

> Case law in most jurisdictions now allows both "citizen" and "taxpayer" standing in public actions. The distinction was

> first laid down in *Beauchamp v. Silk*, where it was held that the plaintiff in a taxpayer's suit is in a different category from the plaintiff in a citizen's suit. In the former, the plaintiff is affected by the expenditure of public funds, while in the latter, he is but the mere instrument of the public concern. As held by the New York Supreme Court in *People ex rel Case v. Collins*: "In matter of mere public right, however…the people are the real parties…It is at least the right, if not the duty, of every citizen to interfere and see that a public offence be properly pursued and punished, and that a public grievance be remedied." With respect to taxpayer's suits, *Terr v. Jordan* held that "the right of a citizen and a taxpayer to maintain an action in courts to restrain the unlawful use of public funds to his injury cannot be denied."
>
> x x x x x x x x x

In any event, the Court retains the broad discretion to waive the requirement of legal standing in favor of any petitioner when the matter involved has transcendental importance, or otherwise requires a liberalization of the requirement.

Yet, if any doubt still lingers about the *locus standi* of any petitioner, we dispel the doubt now in order to remove any obstacle or obstruction to the resolution of the essential issue squarely presented herein. We are not to shirk from discharging our solemn duty by reason alone of an obstacle more technical than otherwise. In *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*, we pointed out: "Standing is a peculiar concept in constitutional law because in some cases, suits are not brought by parties who have been personally injured by the operation of a law or any other government act but by concerned citizens, taxpayers or voters who actually sue in the public interest." But even if, strictly speaking, the petitioners "are not covered by the definition, it is still within the wide discretion of the Court to waive the requirement and so remove the impediment to its addressing and resolving the serious constitutional questions raised."

II

The President Has No Power to Create A Public Office

A public office may be created only through any of the following modes, namely: (*a*) by the Constitution; or (*b*) by statute enacted

by Congress; or (*c*) by authority of law (through a valid delegation of power).[3]

The power to create a public office is essentially legislative, and, therefore, it belongs to Congress. It is not shared by Congress with the President, until and unless Congress enacts legislation that delegates a part of the power to the President, or any other officer or agency.

Yet, the Solicitor General contends that the legal basis for the President's creation of the Truth Commission through E. O. No. 1 is Section 31, Chapter 10, Book III, of the *Administrative Code of* 1987.

Section 31, Chapter 10, Book III, of the *Administrative Code of* 1987, which reads:

> Section 31. *Continuing Authority of the President to Reorganize his Office.* — The President, subject to the policy in the Executive Office and in order to achieve simplicity, economy and efficiency, shall have continuing authority to reorganize the administrative structure of the Office of the President. For this purpose, he may take any of the following actions:
>
> 1. Restructure the internal organization of the Office of the President Proper, including the immediate Offices, the Presidential Special Assistants/Advisers System, by abolishing, consolidating or merging units thereof or transferring functions from one unit to another;
>
> 2. Transfer any function under the Office of the President to any other Department or Agency as well as transfer functions to the Office of the President from other Departments and Agencies; and
>
> 3. Transfer any agency under the Office of the President to any other department or agency as well as transfer agencies to the Office of the President from other departments or agencies.

nowhere refers to the creation of a public office by the President. On the contrary, only a little effort is needed to know from

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[3] *Secretary of the Department of Transportation and Communications v. Malabot*, G.R. No. 138200, February 27, 2002, 378 SCRA 128.

reading the text of the provision that what has been granted is limited to an authority for reorganization through any of the modes expressly mentioned in the provision.

The Truth Commission has not existed before E. O. No. 1 gave it life on July 30, 2010. Without a doubt, it is a new office, something we come to know from the plain words of Section 1 of E. O. No. 1 itself, to wit:

> **Section 1. Creation of a Commission. —** There is hereby created the **PHILIPPINE TRUTH COMMISSION**, hereinafter referred to as the **"COMMISSION,"** which shall primarily seek and find the truth on, and toward this end, investigate reports of graft and corruption of such scale and magnitude that shock and offend the moral and ethical sensibilities of the people, committed by public officers and employees, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration; and thereafter recommend the appropriate action or measure to be taken thereon to ensure that the full measure of justice shall be served without fear or favor.
>
> The Commission shall be composed of a Chairman and four (4) members who will act as an independent collegial body.

If the Truth Commission is an entirely new office, then it is not the result of any reorganization undertaken pursuant to Section 31, Chapter 10, Book III, of the *Administrative Code of* 1987. Thus, the contention of the Solicitor General is absolutely unwarranted.

Neither may the creation of the Truth Commission be made to rest for its validity on the fact that the Constitution, through its Section 17, Article VII, invests the President with the duty to ensure that the laws are faithfully executed. In my view, the duty of faithful execution of the laws necessarily presumes the *prior existence* of a law or rule to execute on the part of the President. But, here, there is no law or rule that the President has based his issuance of E. O. No. 1.

I cannot also bring myself to accept the notion that the creation of the Truth Commission is traceable to the President's power of control over the Executive Department. It is already settled

that the President's power of control can only mean "the power of an officer to alter, modify, or set aside what a subordinate officer had done in the performance of his duties, and to substitute the judgment of the former for that of the latter."[4] As such, the creation by the President of a public office like the Truth Commission, without either a provision of the Constitution or a proper law enacted by Congress authorizing such creation, is not an act that the power of control includes.

III
Truth Commission Replicates and Usurps the Duties and Functions of the Office of the Ombudsman

I find that the Truth Commission replicates and usurps the duties and functions of the Office of the Ombudsman. Hence, the Truth Commission is superfluous and may erode the public trust and confidence in the Office of the Ombudsman.

The Office of the Ombudsman is a constitutionally-created quasi-judicial body established to investigate and prosecute illegal acts and omissions of those who serve in the Government. Section 5, Article XI of the 1987 Constitution enumerates the powers, functions, and duties of the Office of the Ombudsman, including the power to:

> (1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.
>
> x x x x x x x x x
>
> (5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.
>
> x x x x x x x x x
>
> (7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make

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[4] *Mondano v. Silvosa*, 97 Phil. 143.

recommendations for their elimination and the observance of high standards of ethics and efficiency.

The Framers of the Constitution, particularly those of them who composed the Committee on Accountability of Public Officers, intended the Office of the Ombudsman to be strong and effective, in order to enable the Office of the Ombudsman to carry out its mandate as the Protector of the People against the inept, abusive, and corrupt in the Government. This intent is clear from the proceedings on the establishment of the Office of the Ombudsman, as follows:

> SPONSORSHIP SPEECH
> OF COMMISSIONER MONSOD
>
> MR. MONSOD. Madam President, the Committee on Accountability of Public Officers is respectfully submitting its proposed Article in the Constitution, and we would just want to make a few remarks on the articles and sections that we have included.
>
> x x x x x x x x x
>
> With respect to the Sandiganbayan and the Tanodbayan, the Committee decided to make a distinction between the purely prosecutory function of the Tanodbayan and the function of a pure Ombudsman who will use the prestige and persuasive powers of his office. **To call the attention of government officials to any impropriety, misconduct or injustice, we conceive the Ombudsman as a champion of the citizens** x x x The concept of the Ombudsman here is admittedly a little bit different from the 1973 concept x x x **The idea here is to address ourselves to the problem that those who have unlawfully benefitted from the acquisition of public property over the years, through technicalities or practice, have gained immunity** and that, therefore, the right of the people to recover should be respected x x x.[5]
>
> x x x x x x x x x

[5] Record of the Deliberation of the 1986 Constitutional Commission, R.C.C. No. 40, Saturday, July 26, 1986, p. 265.

SPONSORSHIP SPEECH
OF COMMISSIONER COLAYCO

MR. COLAYCO. Thank you, Madam President.

The Committee is proposing the **creation of an office which can act in a quick, inexpensive and effective manner on complaints against the administrative inaction, abuse and arbitrariness of government officials and employees in dealing with the people.** x x x.

x x x x x x x x x

[W]e have proposed as briefly as possible in our resolution an office which will not require any formal condition for the filing of a complaint. Under our proposal, a person can file a complaint even by telephone and without much ado, the office of the Ombudsman is under obligation to see to it that the complaint is acted upon, not merely attended to but acted upon. x x x. If the employee admits that there was reason behind the complaint, he is told to do what the complainant wanted him to do without much ado. And then that is followed up by the corresponding report to the department of the government which has supervision over the employee at fault, with the proper recommendation.

x x x x x x x x x

Under our proposal, the Ombudsman is empowered to investigate, to inquire into and to demand the production of documents involving transactions and contracts of the government where disbursement of public funds is reported. x x x [t]he main thrust is action; the disciplinary and punitive remedy is secondary. On a higher level then, the Ombudsman is going to be the eyes and ears of the people. Where administrative action demanded is not forthcoming x x x he (Ombudsman) is authorized to make public the nature of the complaint and the inaction of the official concerned, x x x.[6]

x x x x x x x x x

[6] *Id.*, at 265-266.

SPONSORSHIP SPEECH
OF COMMISSIONER NOLLEDO

MR. NOLLEDO. Thank you, Madam President.

x x x x x x x x x

Madam President, the creation of an Ombudsman x x x is in answer to the crying need of our people for an honest and responsive government. The office of the Ombudsman as proposed by the Committee on Accountability of Public Officers x x x **is really an institution primarily for the citizens as against the malpractices and corruption in the government. As an official critic, the Ombudsman will study the law, the procedure and practice in the government, and make appropriate recommendations for a more systematic operation of the governmental machinery, free from bureaucratic inconveniences.** As a mobilizer, the Ombudsman will see to it that there be a steady flow of services to the individual consumers of government. **And as a watchdog, the Ombudsman will look after the general, as well as specific performances of all government officials and employees so that the law may not be administered with an evil eye or an uneven hand**.[7]

On the other hand, E. O. No. 1 enumerates the objectives of the creation of the Truth Commission, thus:

EXECUTIVE ORDER NO. 1

CREATING THE PHILIPPINE TRUTH COMMISSION OF 2010

WHEREAS, Article XI, Section 1 of the 1987 Constitution of the Philippines solemnly enshrines the principle that a public office is a public trust and mandates that **public officers and employees, who are servants of the people, must at all times be accountable to the latter, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives**;

x x x x x x x x x

WHEREAS, there is an urgent call for the **determination of the truth regarding certain reports of large scale graft and corruption in the government** and **to put a closure to them by**

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[7] *Id.*, at 267.

the filing of the appropriate cases against those involved, if warranted, and to deter others from committing the evil, restore the people's faith and confidence in the Government and in their public servants;

WHEREAS, there is **a need for a separate body dedicated solely to investigating and finding out the truth concerning the reported cases of graft and corruption during the previous administration, and which will recommend the prosecution of the offenders and secure justice for all**;

WHEREAS, Book III, Chapter 10, Section 31 of Executive Order No. 292, otherwise known as the Revised Administrative Code of the Philippines, gives the President the continuing authority to reorganize the Office of the President.

NOW, THEREFORE, I, BENIGNO SIMEON AQUINO III, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

SECTION 1. Creation of a Commission. — There is hereby created the PHILIPPINE TRUTH COMMISSION, hereinafter referred to as the "COMMISSION," **which shall primarily seek and find the truth on, and toward this end, investigate reports of graft and corruption of such scale and magnitude that shock and offend the moral and ethical sensibilities of the people, committed by public officers and employees, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration; and thereafter recommend the appropriate action or measure to be taken thereon to ensure that the full measure of justice shall be served without fear or favor**.

x x x x x x x x x

A comparison between the aforequoted objectives of the Office of the Ombudsman and the Truth Commission quickly reveals that the Truth Commission is superfluous, because it *replicates* or *imitates* the work of the Office of the Ombudsman. The result is that the Truth Commission can even usurp the functions, duties, and responsibilities of the Office of the Ombudsman. That usurpation is not a desirable result, considering that the public faith and trust in the Office of the Ombudsman, as a

constitutionally-created office imbued with specific powers and duties to investigate and prosecute graft and corruption, may be eroded.

ACCORDINGLY, I vote to grant the petitions.

SEPARATE OPINION

PEREZ, *J.*:

Executive Order No. 1 of President Benigno S. Aquino III Creating the Philippine Truth Commission of 2010 violates Article XI, Section 5 and Section 7 together with Section 13(1) and (7) and related provisions in Paragraphs (2), (3), (4), (5) and (6) of the same Section 7, all of the Philippine Constitution.

Particularized, the presidential issuance offends against the independence of the Office of the Ombudsman; defies the protection against legislation of the mandates of the Ombudsman; and defiles the bestowal of these mandates by their reappointment to the lesser body. The presidential creation, if unchecked, would, under the layer of good intentions, sully the integrity of the organic act which, for law to rule, can be touched by no one except the sovereign people and only by the way and manner they have ordained. This is a democratic original. The sovereign people can, of course, choose to cut the essential ties, scatter the existing entirety and slay the standing system. That did not happen. The sovereign elected to stay put; to stay in the present ordinance. Everyone must honor the election. And there can be no permissible disregard, even in part, of the free and deliberate choice.

The proposition is truly significant in this study of the questioned executive order. The country has had a historic revolution that gave the people the chance to right the wrong that shoved the nation on the verge. A new charter was written. But the topic of Executive Order No. 1, accountability of public officers, was rewritten and as the same constitutional heading. The injunction that public office is a public trust, including its meaning and import, was copied from the otherwise discarded document. And having adopted the objective of the old, the new law assumed

likewise the means for the end which are the anti-graft institutions of 1973, to wit, the special graft court named Sandiganbayan and the Ombudsman, the corruption investigator and prosecutor then known as the Tanodbayan both of which were, in the 1973 Charter, ordered created by legislation.

The transplant of idea and mechanism, the adoption of the ends and the assumption of the means of 1973 leads to the definite conclusion that the present Constitution is an affirmance that, driven by the breadth of corruption in public office needing enduring solutions, there must be no less than a constitutionally secured institution with impregnable authority to combat corruption. This is the Ombudsman.

Uy vs. Sandiganbayan,[1] chronicled the origins of the Ombudsman. It was there recounted that:

> In the advent of the 1973 Constitution, the members of the Constitutional Convention saw the need to constitutionalize the office of the Ombudsman, to give it political independence and adequate powers to enforce its recommendations. The 1973 Constitution mandated the legislature to create an office of the Ombudsman to be known as Tanodbayan. Its powers shall not be limited to receiving complaints and making recommendations, but shall also include the filing and prosecution of criminal, civil or administrative case before the appropriate body in case of failure of justice. Section 6, Article XIII of the 1973 Constitution read:
>
> > Section 6. The Batasang Pambansa shall create an office of the Ombudsman, to be known as Tanodbayan, which shall receive and investigate complaints relative to public office, including those in government-owned or controlled corporations, make appropriate recommendations, and *in case of failure of justice as defined by law, file and prosecute the corresponding criminal, civil or administrative case before the proper court of body*.

Uy went on to enumerate the implementing presidential decrees, issued as legislation, namely Presidential Decree No. 1487 creating the Office of the Ombudsman known as the Tanodbayan;

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[1] G.R. Nos. 105965-70, 354 SCRA 651, 661.

Presidential Decree No. 1607 broadening the authority of the Tanodbayan to investigate administrative acts of administrative agencies; Presidential Decree 1630 reorganizing the Office of the Tanodbayan and vesting the powers of the Special Prosecutor in the Tanodbayan himself.

The events at and following the ratification of the 1987 Constitution, as likewise historified in *Uy*, must be made part of this writer's position:

> With the ratification of the 1987 Constitution, a new Office of the Ombudsman was created. The present Ombudsman, as protector of the people, is mandated to act promptly on complaints filed in any form or manner against public officials or employees of the government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and to notify the complainants of the action taken and the result thereof. He possesses the following powers, functions and duties:
>
> 1. Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient;
>
> 2. Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent and correct any abuse or impropriety in the performance of duties.
>
> 3. Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.
>
> 4. Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursements or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action.

5. Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.

6. Publicize matters covered by its investigation when circumstances so warrant and with due prudence.

7. Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.

8. Promulgate its rules or procedure and exercise such other powers or perform such functions or duties as may be provided by law.

As a new Office of the Ombudsman was established, the then existing Tanodbayan became the Office of the Special Prosecutor which continued to function and exercise its powers as provided by law, except those conferred on the Office of the Ombudsman created under the 1987 Constitution.

The frameworks for the Office of the Ombudsman and the Office of the Special Prosecutor were laid down by President Corazon Aquino in Executive Order (EO) 243 and EO 244, both passed on July 24, 1987.

In September 1989, Congress passed RA 6770 providing for the functional and structural organization of the Office of the Ombudsman. As in the previous laws on the Ombudsman, RA 6770 gave the present Ombudsman not only the duty to receive and relay the people's grievances, but also the duty to investigate and prosecute for and in their behalf, civil, criminal and administrative offenses committed by government officers and employees as embodied in Sections 15 and 11 of the law.[2]

Clear then from the chronicle, that, as it was at the time of its constitutionalization in 1973, the power of the Ombudsman "shall not be limited to receiving complaints and making recommendations, but shall also include the filing and prosecution of criminal x x x cases before the appropriate body x x x." More importantly, the grant of political independence to the

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[2] *Id.* at 664-665.

Ombudsman which was the spirit behind the 1973 provisions was specifically stated in the 1987 Constitution. Thus:

> Section 5. There is hereby created the independent Office of the Ombudsman, composed of the Ombudsman to be known as Tanodbayan, one overall Deputy, and at least one Deputy each for Luzon, Visayas and Mindanao. A separate Deputy for the Military establishment may likewise be appointed. (Underscoring supplied.)

Of direct relevance and application to the case at bar is the reason behind the constitutionalization of the Ombudsman. Again, we refer to Uy[3] citing *Cortez, Redress of Grievance and the Philippine Ombudsman* (Tanodbayan):

> In this jurisdiction, several Ombudsman-like agencies were established by past Presidents to serve as the people's medium for airing grievances and seeking redress against abuses and misconduct in the government. These offices were conceived with the view of raising the standard in public service and ensuring integrity and efficiency in the government. In May 1950, President Elpidio Quirino created the Integrity Board charged with receiving complaints against public officials for acts of corruption, dereliction of duty and irregularity in office, and conducting a thorough investigation of these complaints. The Integrity Board was succeeded by several other agencies which performed basically the same functions of complaints-handling and investigation. These were the Presidential Complaints and Action Commission under President Ramon Magsaysay, the Presidential Committee on Administration Performance Efficiency under President Carlos Garcia, the Presidential Anti-Graft Committee under President Diosdado Macapagal, and the Presidential Agency on Reform and Government Operations and the Office of the Citizens counselor, both under President Ferdinand Marcos. It was observed, however, that these agencies failed to realize their objective for they did not enjoy the political independence necessary for the effective performance of their function as government critic. Furthermore, their powers extended to no more than fact-finding and recommending.

The lack of political independence of these presidential commissions, to which was attributed their failure to realize

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[3] *Id.* at 660-661.

their objectives, was clarified during the deliberations of the Constitutional Commission on what is now Article XI of the Constitution with, as already observed, the same heading used in 1973, "Accountability of Public Officials." The Commissioners also alluded to the unsuccessful presidential attempts.

In his sponsorship speech, Commissioner Colayco, Vice-Chairman of the Committee on Accountability of Public Officers, articulated:

> In 1950, for instance, President Quirino created the Integrity Board in an attempt to formalize the procedure for executive direction and control of the bureaucracy. This Board lasted for six months. When President Magsaysay took over the reins of government in 1953, he created the Presidential Complaints and Action Committee. The primary purpose of this Committee was to expedite action on complaints received by the Office of the President against the manner in which the officials of the executive departments and offices were performing the duties entrusted to them by law, or against their acts, conduct or behavior. . . . . But again politics came in — this office did not last long. Two months after President Magsaysay's death, the office was abolished.
>
> Next, President Garcia created his own Presidential Committee on Administration, Performance and Efficiency [PCAPE]. Again this office did not last long and was replaced by the Presidential Agency on Reforms and Government Operations or PARGO under the regime of President Marcos.[4]

As Commissioner Colayco pointed out in the continuation of his sponsorship speech: although these programs were "good *per se*," the succeeding Presidents discarded them — as the incoming Presidents generally tend to abandon the policies and programs of their predecessors — a political barrier to the eventual success of these bodies. He concluded by saying that "[t]he intention, therefore, of our proposal is to constitutionalize the office so that it cannot be touched by the Presidents as they come and go."

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[4] Records of the Constitutional Commission, Vol. II, 26 July 1986, p. 267.

It may thus be said that the 1987 Constitution completed the Ombudsman's constitutionalization which was started in 1973. The past Constitution mandated the creation by the legislature, the National Security Assembly, later the Batasang Pambansa, of an office of the Ombudsman, which mandate, incidentally, was given also for the creation of a special court, the Sandiganbayan. The present Constitution, while allowing the continuation of the Sandiganbayan and leaving its functions and jurisdiction to provisions "by law," itself created "the independent Office of the Ombudsman" and itself determined its powers, functions and duties. The independence of the Ombudsman is further underscored by the constitutional orders that the Ombudsman and his Deputies shall be appointed by the President from a list prepared by the Judicial and Bar Council which appointments shall require no confirmation; that the Ombudsman and his Deputies shall have the rank of Chairman and Members, respectively, of the Constitutional Commissions, and they shall receive the same salary, which shall not be decreased during their term of office; that the Office of the Ombudsman shall enjoy fiscal autonomy and its approved annual appropriations shall be automatically and regularly released; and that the Ombudsman may only be removed from office by impeachment.[5]

It is with the ground and setting just described that Executive Order No. 1 created the Philippine Truth Commission. Naturally, the Order had to state that the Philippine Truth Commission was created by the President of the Republic of the Philippines further describing the act as the exercise of his "continuing authority to reorganize the Office of the President." The Order specified that the budget of the Commission shall be provided by the Office of the President and even its furniture and equipment will come from the Office of the President. More significantly, a basic premise of the creation is the President's battlecry during his campaign for the Presidency in the last elections "*kung walang corrupt, walang mahirap*," which is considered a "solemn pledge that if elected, he would end corruption and the evil it breeds." So much so that the issuance states that "a comprehensive final

[5] Sec. 9, Sec. 10, Sec. 14 and Sec. 2 of Article XI, 1987 Constitution.

report shall be published upon directive of the President" upon whose directive likewise, interim reports may issue from time to time.

The Philippine Truth Commission anchored itself on the already constitutionalized principle that public office is a public trust. It adopted the already defined goal to circle and contain corruption, an enemy of the good state already identified way back in 1973. What Executive Order No. 1 did was to shorten the sight and set it from the incumbent's standpoint. Therefrom, it fixed its target at "reported cases of graft and corruption involving third level public officers and higher, their co-principals, accomplice and accessories from the private sector" and further pinpointed the subjects as "third level public officers during the previous administration." For this commission, the Philippine Truth Commission was presidentially empowered as an "investigative body" for a thorough fact finding investigation, thereafter to:

> g) Turn over from time to time, for expeditious prosecution, to the appropriate prosecutional authorities, by means of a special or *interim* report and recommendation, all evidence on corruption of public officers and employees and their private sector co-principals, accomplice or accessories, if any, when in the course of its investigation the Commission finds that there is reasonable ground to believe that they are liable for graft and corruption under pertinent applicable laws.

Having thus taken account of the foregoing, this writer takes the following position:

1. In light of the constitutionally declared and amply underscored independence of the Office of the Ombudsman, which declaration is winnowed wisdom from the experienced inherent defects of presidential creations, so real and true that the Ombudsman's constitutionalization was adopted to completion even if from the charter of an overthrown regime, Executive Order No. 1 cannot pass the present constitutional test. Executive Order No. 1 is unconstitutional precisely because it was issued by the President. As articulated by Commissioner Colayco of the Commission that resurrected the Ombudsman, "our proposal is to constitutionalize the office so that it cannot be touched by

the Presidents as they come and go." And as this Court stated, repeating the observation regarding the erstwhile presidential anti-graft commissions, such commissions failed to realize their objective because they did not enjoy the political independence necessary for the effective performance of a government critic.

Relevant too are the words of Commissioner Regalado:

> It is said here that the Tanodbayan or the Ombudsman would be a toothless or a paper tiger. That is not necessarily so. If he is toothless, then let us give him a little more teeth by making him independent of the Office of the President because it is now a constitutional creation, so that the insidious tentacles of politics, as has always been our problem, even with PARGO, PCAPE and so forth, will not deprive him of the opportunity to render service to Juan dela Cruz.[6]

Verily, the Philippine Truth Commission is a defiance of the constitutional wisdom that established the politically independent Ombudsman for one of its reasons for being is the very campaign battlecry of the President "*kung walang corrupt, walang mahirap*." Not that there is anything wrong with the political slogan. What is wrong is the pursuit of the pledge outside the limits of the Constitution. What is wrong is the creation by the President himself of an Ombudsman-like body while there stands established an Ombudsman, constitutionally created especially because of unsuccessful presidential antecedents, and thus made independent from presidential prerogative.

2. A simple comparison will show that likeness of the Philippine Truth Commission with the Ombudsman. No such likeness is permitted by the Constitution.

It can easily be seen that the powers of the Truth Commission to: 1) identify and determine the reported cases of graft and corruption which it will investigate; and 2) collect, receive, review and evaluate evidence related to or regarding the cases of large scale corruption which it has chosen to investigate,[7] are the same as the power of the Ombudsman to investigate any illegal,

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[6] Records of the Constitutional Commission, Vol. II, 26 July 1986, p. 296.

[7] Section 2 (a) and (b), respectively, E.O. No. 1, dated 30 July 2010.

unjust, improper, or inefficient act or omission of any public official, employee, office or agency.[8]

The authority of the Truth Commission to require any agency, official or employee of the Executive Branch to produce documents, books, records and other papers[9] mirrors the authority of the Ombudsman to direct concerned government officials to furnish it with copies of documents relating to contracts or transactions entered into by the latter's office involving the disbursement or use of public funds or properties.[10]

Likewise, the right to obtain information and documents from the Senate, the House of Representatives and the courts,[11] granted by Executive Order No. 1 to the Truth Commission, is analogous to the license of the Ombudsman to request any government agency for assistance and information and to examine pertinent records and documents.[12]

And, the powers of the Truth Commission to invite or subpoena witnesses, take their testimonies, administer oaths[13] and impose administrative disciplinary action for refusal to obey subpoena, take oath or give testimony[14] are parallel to the powers to administer oaths, issue subpoena, take testimony and punish for contempt or subject to administrative disciplinary action any officer or employee who delays or refuses to comply with a referral or directive granted by Republic Act (RA) 6770[15] to the Ombudsman.

If Executive Order No. 1 is allowed, there will be a violation of Section 7 of Article XI, the essence of which is that the

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[8] Article XI, Section 13 (1), 1987 Constitution.

[9] Section 2 (b), E.O. No. 1, *supra* note 7.

[10] Article XI, Section 13 (4), 1987 Constitution.

[11] Section 2 (c) and (d), E.O. No. 1, *supra*.

[12] Article XI, Section 13(5), 1987 Constitution.

[13] Section 2 (e), E.O. No. 1, *supra*.

[14] *Id.*, Section 9.

[15] The Ombudsman Act of 1989, Section 15 (8) and (9) and Section 26 (4).

function and powers (enumerated in Section 13 of Article XI) conferred on the Ombudsman created under the 1987 Constitution cannot be removed or transferred by law. Section 7 states:

> Section 7. The existing Tanodbayan shall hereafter be known as the Office of the Special Prosecutor. It shall continue to function and exercise its powers as now or hereafter may be provided by law, except those conferred on the Office of the Ombudsman created under this Constitution.

There is a self-evident reason for the shield against legislation provided by Section 7 in protection of the functions conferred on the Office of the Ombudsman in Section 13. The Ombudsman is a constitutional office; its enumerated functions are constitutional powers.

So zealously guarded are the constitutional functions of the Ombudsman that the prohibited assignment of the conferred powers was mentioned in Section 7 in relation to the authority of the Tanodbayan which, while renamed as Office of the Special Prosecutor, remained constitutionally recognized and allowed to "continue to function and exercise its powers as now or hereafter may be provided by law."

The position of the Office of the Special Prosecutor, as a continuing office with powers "as may be provided by law" *vis-à-vis* the Ombudsman created by the 1987 Constitution would be unraveled by subsequent law and jurisprudence. Most apt is *Zaldivar vs. Sandiganbayan*,[16] which said:

> Under the 1987 Constitution, the Ombudsman (as distinguished from the incumbent Tanodbayan) is charged with the duty to:
>
> Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

The Constitution likewise provides that:

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[16] G.R. Nos. 79660-707, 27 April 1988, 160 SCRA 843, 846-847.

The existing Tanodbayan shall hereafter be known as the Office of the Special Prosecutor. It shall continue to function and exercise its powers as now or hereafter may be provided by law, except those conferred on the Office of the Ombudsman created under this Constitution.

Now then, inasmuch as the aforementioned duty is given to the Ombudsman, the incumbent Tanodbayan (called Special Prosecutor under the 1987 Constitution and who is supposed to retain powers and duties NOT GIVEN to the Ombudsman) is clearly without authority to conduct preliminary investigations and to direct the filing of criminal cases with the Sandiganbayan, except upon orders of the Ombudsman. This right to do so was lost effective February 2, 1987. From that time, he has been divested of such authority.

Under the present Constitution, the Special Prosecutor (Raul Gonzalez) is a mere subordinate of the Tanodbayan (Ombudsman) and can investigate and prosecute cases only upon the latter's authority or orders. The Special Prosecutor cannot initiate the prosecution of cases but can only conduct the same if instructed to do so by the Ombudsman. Even his original power to issue subpoena, which he still claims under Section 10(d) of PD 1630, is now deemed transferred to the Ombudsman, who may, however, retain it in the Special Prosecutor in connection with the cases he is ordered to investigate. (Underscoring supplied.)

The ruling was clear: the duty to investigate contained in Section 13(1) having been conferred on the Office of the Ombudsman, left the then Tanodbayan without authority to conduct preliminary investigation except upon orders of the Ombudsman. The message was definite. The conferment of plenary power upon the Ombudsman to investigate "any act or omission of any public official xxx when such act or omission appears to be illegal, unjust, improper or inefficient" cannot, after 1987 and while the present Constitution remains, be shared even by the body previously constitutionalized as vested with such authority, even if there is such assignment "by law."

Indeed, the subsequent law obeyed Section 7 as correctly read in *Zaldivar*. Thus, in Republic Act No. 6770, an Act Providing for the Functional and Structural Organization of the Office of the Ombudsman and for Other Purposes, it was made clear in

Section 11(3) second sentence that "the Office of the Special Prosecutor shall be an organic component of the Office of the Ombudsman and shall be under the supervision and control of the Ombudsman."

Constitutional history, specific constitutional provisions, jurisprudence and current statute combine to say that after the ratification of the Constitution in 1987, no body can be given "by law" any of the powers, functions and duties already conferred on the Ombudsman by Section 13, Article XI of the Constitution. As already shown, the Truth Commission insofar as concerns the mentioned third level officers or higher of the previous administration appropriates, not just one but virtually, all of the powers constitutionally enumerated for the Ombudsman. The violation of Section 7 in relation to Section 13 of Article XI of the Constitution is evident.

3. No comfort is given to the respondents by the fact that, as mentioned in *Honasan II vs. Panel of Investigating Prosecutors of the Department of Justice*,[17] there are "jurisprudential declarations" that the Ombudsman and the Department of Justice (DOJ) have concurrent jurisdiction. Concurrence of jurisdiction does not allow concurrent exercise of such jurisdiction. Such is so that the Ombudsman Act specifically states in Section 15 that the Ombudsman has primary jurisdiction over cases cognizable by the Sandiganbayan — precisely the kind of cases covered by the Philippine Truth Commission — and proceeds to define "primary jurisdiction" by again, specifically, stating that the Ombudsman "may take over, at any stage, from any investigation of such cases." This primary jurisdiction was the premise when a majority of the Court in *Honasan* discussed the relevance of OMB-DOJ Joint Circular No. 95-001 (which provides that the preliminary investigation and prosecution of offenses committed by public officers in relation to office filed with the Office of the Prosecutor shall be "under the control and supervision of the Office of the Ombudsman") in relation to Sections 2 and 4, Rule 112 of the Revised Rules on Criminal

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[17] G.R. No. 159747, 13 April 2004, 427 SCRA 46.

Procedure on Preliminary Investigation, which concerns the review of the resolution of the investigating prosecutor in such cases. *Honasan* would conclude that the authority of the DOJ prosecutors to conduct preliminary investigation of offenses within the original jurisdiction of the Sandiganbayan is subject to the qualification:

> xxx that in offenses falling within the original jurisdiction of the Sandiganbayan, the prosecutor shall, after their investigation, transmit the records and their resolutions to the Ombudsman or his deputy for appropriate action. Also, the prosecutor cannot dismiss the complaint without prior written authority of the Ombudsman or his deputy, nor can the prosecutor file an Information with the Sandiganbayan without being deputized by, and without prior written authority of the Ombudsman, or his deputy.[18] (Underscoring in the original)

Three separate opinions, two of which were dissents were submitted in *Honasan*. Justice Vitug said that the investigating fiscal must be particularly deputized by the Ombudsman and the investigation must be conducted under the supervision and control of the Ombudsman;[19] Justice Ynares-Santiago discussed at length the concept of primary jurisdiction and took the position that:[20]

> Where the concurrent authority is vested in both the Department of Justice and the Office of the Ombudsman, the doctrine of primary jurisdiction should operate to restrain the Department of Justice from exercising its investigative authority if the case will likely be cognizable by the Sandiganbayan. In such cases, the Office of the Ombudsman should be the proper agency to conduct the preliminary investigation over such an offense, it being vested with the specialized competence and undoubted probity to conduct the investigation.

Justice Sandoval-Gutierrez was more straightforward:[21]

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[18] *Id.* at 74.

[19] *Id.* at 77-78.

[20] *Id.* at 86.

[21] *Id.* at 92.

> While the DOJ has a broad general jurisdiction over crimes found in the Revised Penal Code and special laws, however, this jurisdiction is not plenary or total. Whenever the Constitution or statute vests jurisdiction over the investigation and prosecution of certain crimes in an office, the DOJ has no jurisdiction over those crimes. In election offenses, the Constitution vests the power to investigate and prosecute in the Commission on Elections. In crimes committed by public officers in relation to their office, the Ombudsman is given by both the Constitution and the statute the same power of investigation and prosecution. These powers may not be exercised by the DOJ. xxx

At the very least, therefore, the prosecutor, in Sandiganbayan cases must, after investigation transmit the records and their resolution to the Ombudsman whose prior written authority is needed before the prosecutor can dismiss a complaint or file an information in which latter instance, a deputization of the fiscal is additionally needed. Even as this writer submits that the position of the minority in *Honasan* hews far better to the Constitution since, as already observed, the Ombudsman's authority excludes even the Tanodbayan which used to be the constitutionally recognized holder of the power, the further submission is that the majority ruling to the effect that the Ombudsman is the supervisor of the prosecutor who investigates graft in high places, nonetheless illegalizes the Philippine Truth Commission.

Respondent's main reliance is that —

> Unlike that of the OMB or DOJ which conducts formal investigation as a result of criminal complaints filed before them, or upon reports, the Truth Commission conducts fact-finding investigation preliminary to the filing of a complaint that could lead to a criminal investigation.[22]

If the Philippine Truth Commission would, indeed, conduct only fact-finding investigations preliminary to a criminal investigation, then the foregoing discussion would truly be irrelevant. The fact, however, is that the Philippine Truth Commission is, to use the Solicitor General's phrase a "criminal investigator" or one who conducts a preliminary investigation for the prosecution of a criminal case.

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[22] Memorandum for Respondent, p. 79.

Detailing the powers and functions of the Philippine Truth Commission, Section 2 of Executive Order No. 1 says that the Commission shall identify and determine the reported cases of such graft and corruption which it will investigate (Section 2 [a]) and collect, receive, review and evaluate evidence related to or regarding the cases of large scale corruption which it has chosen to investigate (Sec. 2 [b]). As aforenoted, the Philippine Truth Commission's power to investigate graft and corruption is no different from the constitutional power of the Ombudsman to investigate any act of any public official when such act appears to be illegal, unjust, improper, or inefficient. The Philippine Truth Commission cannot avoid the comparison by differentiating "formal investigation" or "criminal investigation" which it says is conducted by the Ombudsman or the DOJ, from the "fact-finding investigation" of the Philippine Truth Commission. Let us go back to *Zaldivar*. There it was as much as stated that the power to investigate mentioned in Section 13 (1) of the 1987 Constitution is the authority to conduct preliminary investigation which authority was removed from the *Tanodbayan* called Special Prosecutor when it was given to the Ombudsman. This equivalence was affirmed in *Acop vs. Office of the Ombudsman*,[23] where it was stated:

> In view of the foregoing, it is evident that the petitioners have not borne out any distinction between "the duty to investigate" and "the power to conduct preliminary investigations"; neither have the petitioners established that the latter remains with the Tanodbayan, now the Special Prosecutor. Thus, this Court can only reject the petitioners' first proposition.

Such established definition of "investigation" of graft and corruption cases, especially for the purpose of determining the authority of one body in relation to another, which is exactly one of the issues in this case, must be read into Executive Order No. 1. No source citation is needed for the generally accepted rule that the words used in a legal document, indeed one which is intended to be a law, has the meaning that is established at

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[23] G.R. No. 120422, 248 SCRA 566, 579.

the time of the law's promulgation. "Investigation" in Section 1 (a) of Executive Order No. 1 is the same as preliminary investigation and its conduct by the Truth Commission cannot be independent of the Ombudsman. The Truth Commission cannot exist outside the Ombudsman. Executive Order No. 1 so places the Truth Commission and, is, therefore unconstitutional.

Indeed, Executive Order No. 1 itself pronounces that what it empowers the Philippine Truth Commission with is the authority of preliminary investigation. Section 2 (g) of the executive order states:

> Turn over from time to time, for expeditious prosecution, to the appropriate prosecutional authorities, by means of a special or *interim* report and recommendation, all evidence on corruption of public officers and employees and their private sector co-principals, accomplice or accessories, if any, when in the course of its investigation the Commission finds that there is reasonable ground to believe that they are liable for graft and corruption under pertinent applicable laws. (Underscoring supplied.)

Investigation to find reasonable ground to believe "that they are liable for graft and corruption under applicable laws" is preliminary investigation as defined in Rule 112, Section 1 of the Rules of Criminal Procedure, which states:

> Section 1. *Preliminary investigation defined; when required.* — Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.

Moreover, as clearly stated in Section 2 (g) of Executive Order No. 1, the Philippine Truth Commission will be more powerful than the DOJ prosecutors who are required, after their investigation, to transmit the records and their resolution for appropriate action by the Ombudsman or his deputy, which action is taken only after a review by the Ombudsman. Section 4 of Rule 112 states that:

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No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy.

Where the investigating prosecutor recommends the dismissal of the complaint but his recommendation is disapproved by the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy on the ground that a probable cause exists, the latter may, by himself, file the information against the respondent, or direct another assistant prosecutor or state prosecutor to do so without conducting another preliminary investigation.

If upon petition by a proper party under such rules as the Department of Justice may prescribe or *motu proprio*, the Secretary of Justice reverses or modifies the resolution of the provincial or city prosecutor or chief state prosecutor, he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties. The same Rule shall apply in preliminary investigations conducted by the officers of the Office of the Ombudsman.

In other words, under existing Rule which follows the statutorily defined primary jurisdiction of the Ombudsman in obeisance to the constitutional conferment of authority, the Ombudsman reviews and may reverse or modify the resolution of the investigating prosecutor. In the case of the Philippine Truth Commission, the Ombudsman not only shares its constitutional power but, over and above this, it is divested of any and all investigatory power because the Philippine Truth Commission's finding of "reasonable ground" is final and unreviewable and is turned over to the Ombudsman solely for "expeditious prosecution."

4. There is an attempt by the Solicitor General to read around the explicitness of Section 2 (g) of Executive Order No. 1. Thus, skirting the words "for expeditious prosecution" and their obvious meanings as just discussed, the respondents argue that:

The Truth Commission will submit its recommendation to, among others, the OMB and to the "appropriate prosecutorial authorities" which then shall exercise their constitutional and statutory powers and jurisdiction to evaluate the recommendation or endorsements

of the Truth Commission. While findings of the Truth Commission are recommendatory, the facts gathered by the Commission will decisively aid prosecutorial bodies in supporting possible indictments for violations of anti-graft laws. Moreover, the policy recommendations to address corruption in government will be invaluable to the Executive's goal to realize its anti-corruption policies.[24]

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The Reports of the Truth Commission will serve as bases for possible prosecutions and as sources of policy options xxx.

Fact gathering as basis for preliminary investigation and not as preliminary investigation itself and basis for prosecution, is, seemingly, the function respondents want to attribute to the Philippine Truth Commission to escape the obvious unconstitutional conferment of Ombudsman power. That is no route out of the bind. Fact gathering, fact finding, indeed truth finding is, as much as investigation as preliminary investigation, also constitutionally conferred on the Ombudsman. Section 12 of Article XI states:

Section 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

The Ombudsman on its own investigates any act or omission of any public official when such act or omission appears to be illegal (Section 13(1), Article XI of the Constitution). The power is broad enough, if not specially intended, to cover fact-finding of the tenor that was given to the Philippine Truth Commission by Executive Order No. 1 which is:

b) Collect, receive, review and evaluate evidence related to or regarding the cases of large scale corruption which it has chosen to investigate xxx.

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[24] Memorandum for Respondents, pp. 73-74.

And, the objective of the Philippine Truth Commission pointed to by the Solicitor General which is to make findings for "policy recommendations to address corruption in government" and to serve as "sources of policy options" is exactly the function described for and ascribed to the Ombudsman in Section 13 (7), Art. XI of the Constitution:

> (7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.

Moreover, as at the outset already pointed out, the power of the Philippine Truth Commission to obtain information and documents from the Congress and the Judiciary [Section 2 (c) and (d) of Executive Order No. 1] is a reproduction of the Ombudsman powers provided for in Section 13 (4) and (5), Article XI of the Constitution.

Virtually, another Ombudsman is created by Executive Order No. 1. That cannot be permitted as long as the 1987 Constitution remains as the fundamental law.

5. To excuse the existence of the presidentially created, manned, funded and equipped Truth Commission side-by-side with the Constitutionally created and empowered Ombudsman, the Solicitor General provides the very argument against the proposition. In page 75 of his memorandum, the Solicitor General says that:

> The concerned agencies need not wait until the completion of the investigation of the Truth Commission before they can proceed with their own investigative and prosecutorial functions. Moreover, the Truth Commission will, from time to time, publish special interim reports and recommendations, over and above the comprehensive final report. If any, the preliminary reports may aid the concerned agencies in their investigations and eventually, in the filing of a complaint or information. (Underscoring supplied)

Apparently, the statement proceeds from the position that "the power of the OMB to investigate offenses involving public officers or employees is not exclusive but is concurrent with

other similarly authorized agencies of the government." [25] Without cutting off from the discussions that the concurrence of jurisdiction of the Ombudsman with any other body should be read to mean that at the very least any finding by any other body is reviewable by the Ombudsman and that in full obedience to the Constitution, graft cases against high officials should be investigated alone by or under the aegis of the Ombudsman, it need only be repeated that concurrence of jurisdiction does not allow concurrent exercise of jurisdiction. This is the reason why we have the rule that excludes any other concurrently authorized body from the body first exercising jurisdiction. This is the reason why forum shopping is malpractice of law.

The truth is, in the intensely political if not partisan matter of "reports of graft and corruption x x x committed by public officers x x x, if any, during the previous administration," there can only be one finding of truth. Any addition to that one finding would result in din and confusion, a babel not needed by a nation trying to be one. And this is why all that fall under the topic accountability of public officers have been particularized and gathered under one authority — The Ombudsman. This was done by the Constitution. It cannot be undone as the nation now stands and remains.

WHEREFORE, I vote for the grant of the petition and the declaration of Executive Order No. 1 as unconstitutional.

CONCURRING AND DISSENTING OPINION

NACHURA, *J.*:

Before us are two (2) consolidated petitions:

1. G.R. No. 192935 is a petition for prohibition filed by petitioner Louis Biraogo (Biraogo), in his capacity as a citizen and taxpayer, assailing Executive Order (E.O.) No. 1, entitled "Creating the Philippine Truth Commission of 2010" for violating Section 1, Article VI of the 1987 Constitution; and

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[25] Memorandum for Respondents, p. 82.

2. G.R. No. 193036 is a petition for *certiorari* and prohibition filed by petitioners Edcel C. Lagman, Rodolfo B. Albano, Jr., Simeon A. Datumanong, and Orlando B. Fua, Sr., in their capacity as members of the House of Representatives, similarly bewailing the unconstitutionality of E.O. No. 1.

First, the all too familiar facts leading to this *cause celebre*.

On May 10, 2010, Benigno Simeon C. Aquino III was elected President of the Philippines. Oft repeated during his campaign for the presidency was the uncompromising slogan, "*Kung walang corrupt, walang mahirap.*"

Barely a month after his assumption to office, and intended as fulfillment of his campaign promise, President Aquino, on July 30, 2010, issued Executive Order No. 1, to wit:

EXECUTIVE ORDER NO. 1
CREATING THE PHILIPPINE
TRUTH COMMISSION OF 2010

WHEREAS, Article XI, Section 1 of the 1987 Constitution of the Philippines solemnly enshrines the principle that a public office is a public trust and mandates that public officers and employees, who are servants of the people, must at all times be accountable to the latter, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives;

WHEREAS, corruption is among the most despicable acts of defiance of this principle and notorious violation of this mandate;

WHEREAS, corruption is an evil and scourge which seriously affects the political, economic, and social life of a nation; in a very special way it inflicts untold misfortune and misery on the poor, the marginalized and underprivileged sector of society;

WHEREAS, corruption in the Philippines has reached very alarming levels, and undermined the people's trust and confidence in the Government and its institutions;

WHEREAS, there is an urgent call for the determination of the truth regarding certain reports of large scale graft and corruption in the government and to put a closure to them by the filing of the appropriate cases against those involved, if warranted, and to deter

others from committing the evil, restore the people's faith and confidence in the Government and in their public servants;

WHEREAS, the President's battlecry during his campaign for the Presidency in the last elections "*kung walang corrupt, walang mahirap*" expresses a solemn pledge that if elected, he would end corruption and the evil it breeds;

WHEREAS, there is a need for a separate body dedicated solely to investigating and finding out the truth concerning the reported cases of graft and corruption during the previous administration, and which will recommend the prosecution of the offenders and secure justice for all;

WHEREAS, Book III, Chapter 10, Section 31 of Executive Order No. 292, otherwise known as the Revised Administrative Code of the Philippines, gives the President the continuing authority to reorganize the Office of the President.

NOW, THEREFORE, I, BENIGNO SIMEON AQUINO III, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

SECTION 1. Creation of a Commission. — There is hereby created the PHILIPPINE TRUTH COMMISSION, hereinafter referred to as the "COMMISSION," which shall primarily seek and find the truth on, and toward this end, investigate reports of graft and corruption of such scale and magnitude that shock and offend the moral and ethical sensibilities of the people, committed by the public officers and employees, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration; and thereafter recommend the appropriate action or measure to be taken thereon to ensure that the full measure of justice shall be served without fear or favor.

The Commission shall be composed of a Chairman and four (4) members who will act as an independent collegial body.

SECTION 2. Powers and Functions. — The Commission, which shall have all the powers of an investigative body under Section 37, Chapter 9, Book I of the Administrative Code of 1987, is primarily tasked to conduct a thorough fact-finding investigation of reported cases of graft and corruption referred to in Section 1, involving third level public officers and higher, their co-principals, accomplices and accessories from the private sector, if any, during the previous

administration and thereafter submit its finding and recommendation to the President, Congress and the Ombudsman. In particular, it shall:

a) Identify and determine the reported cases of such graft and corruption which it will investigate;

b) Collect, receive, review and evaluate evidence related to or regarding the cases of large scale corruption which it has chosen to investigate, and to this end require any agency, official or employee of the Executive Branch, including government-owned or controlled corporation, to produce documents, books, records and other papers;

c) Upon proper request and representation, obtain information and documents from the Senate and the House of Representatives records of investigations conducted by committees thereof relating to matters or subjects being investigated by the Commission;

d) Upon proper request and representation, obtain information from the courts, including the Sandiganbayan and the Office of the Court Administrator, information or documents in respect to corruption cases filed with the Sandiganbayan or the regular courts, as the case may be;

e) Invite or subpoena witnesses and take their testimonies and for that purpose, administer oaths or affirmations as the case may be;

f) Recommend, in cases where there is a need to utilize any person as a state witness to ensure that the ends of justice be fully served, that such person who qualifies as a state witness under the Revised Rules of Court of the Philippines be admitted for that purpose;

g) Turn over from time to time, for expeditious prosecution, to the appropriate prosecutorial authorities, by means of a special or *interim* report and recommendation, all evidence on corruption of public officers and employees and their private sector co-principals, accomplices or accessories, if any, when in the course of its investigation the Commission finds that there is reasonable ground to believe that they are liable for graft and corruption under pertinent applicable laws;

h) Call upon any government investigative or prosecutorial agency such as the Department of Justice or any of the agencies under it, and the Presidential Anti-Graft Commission, for such assistance and cooperation as it may require in the discharge of its functions and duties;

i) Engage or contract the services of resource person, professional and other personnel determined by it as necessary to carry out its mandate;

j) Promulgate its rules and regulations or rules of procedure it deems necessary to effectively and efficiently carry out the objectives of this Executive Order and to ensure the orderly conduct of its investigations, proceedings and hearings, including the presentation of evidence;

k) Exercise such other acts incident to or are appropriate and necessary in connection with the objectives and purposes of this Order.

SECTION 3. Staffing Requirements. — The Commission shall be assisted by such assistants and personnel as may be necessary to enable it to perform its functions, and shall formulate and establish its organization structure and staffing pattern composed of such administrative and technical personnel as it may deem necessary to efficiently and effectively carry out its functions and duties prescribed herein, subject to the approval of the Department of Budget and Management. The officials of the Commission shall in particular include, but not limited to, the following:

a. General Counsel
b. Deputy General Counsel
c. Special Counsel
d. Clerk of the Commission

SECTION 4. Detail of Employees. — The President, upon recommendation of the Commission, shall detail such public officers or personnel from other department or agencies which may be required by the Commission. The detailed officers and personnel may be paid honoraria and/or allowances as may be authorized by law, subject to pertinent accounting and auditing rules and procedures.

SECTION 5. Engagement of Experts. — The Truth Commission shall have the power to engage the services of experts as consultants or advisers as it may deem necessary to accomplish its mission.

SECTION 6. Conduct of Proceedings. — The proceedings of the Commission shall be in accordance with the rules promulgated by the Commission. Hearings or proceedings of the Commission shall be open to the public. However, the Commission, *motu propio*, or upon the request of the person testifying, hold an executive or closed-door hearing where matters of national security or public safety are

involved or when the personal safety of the witness warrants the holding of such executive or closed-door hearing. The Commission shall provide the rules for such hearing.

SECTION 7. Right to Counsel of Witnesses/Resources Persons. — Any person called to testify before the Commission shall have the right to counsel at any stage of the proceedings.

SECTION 8. Protection of Witnesses/Resource Persons. — The Commission shall always seek to assure the safety of the persons called to testify and, if necessary make arrangements to secure the assistance and cooperation of the Philippine National Police and other appropriate government agencies.

SECTION 9. Refusal to Obey Subpoena, Take Oath or Give Testimony. — Any government official or personnel who, without lawful excuse, fails to appear upon subpoena issued by the Commission or who, appearing before the Commission refuses to take oath or affirmation, give testimony or produce documents for inspection, when required, shall be subject to administrative disciplinary action. Any private person who does the same may be dealt with in accordance with law.

SECTION 10. Duty to Extend Assistance to the Commission. — The departments, bureaus, offices, agencies or instrumentalities of the Government, including government-owned and controlled corporations, are hereby directed to extend such assistance and cooperation as the Commission may need in the exercise of its powers, execution of its functions and discharge of its duties and responsibilities with the end in vies of accomplishing its mandate. Refusal to extend such assistance or cooperation for no valid or justifiable reason or adequate cause shall constitute a ground for disciplinary action against the refusing official or personnel.

SECTION 11. Budget for the Commission. — The Office of the President shall provide the necessary funds for the Commission to ensure that it can exercise its powers, execute its functions, and perform its duties and responsibilities as effectively, efficiently, and expeditiously as possible.

SECTION 12. Office. — The Commission may avail itself of such office space which may be available in government buildings accessible to the public space after coordination with the department or agencies in control of said building or, if not available, lease such space as it may require from private owners.

SECTION 13. Furniture/Equipment. — The Commission shall also be entitled to use such equipment or furniture from the Office of the President which are available. In the absence thereof, it may request for the purchase of such furniture or equipment by the Office of the President.

SECTION 14. Term of the Commission. — The Commission shall accomplish its mission on or before December 31, 2012.

SECTION 15. Publication of Final Report. — On or before December 31, 2012, the Commission shall render a comprehensive final report which shall be published upon the directive of the president. Prior thereto, also upon directive of the President, the Commission may publish such special *interim* reports it may issue from time to time.

SECTION 16. Transfer of Records and Facilities of the Commission. — Upon the completion of its work, the records of the Commission as well as its equipment, furniture and other properties it may have acquired shall be returned to the Office of the President.

SECTION 17. Special Provision Concerning Mandate. — If and when in the judgment of the President there is a need to expand the mandate of the Commission as defined in Section 1 hereof to include the investigation of cases and instances of graft and corruption during the prior administrations, such mandate may be so extended accordingly by way of a supplemental Executive Order.

SECTION 18. Separability Clause. — If any provision of this Order is declared unconstitutional, the same shall not affect the validity and effectivity of the other provisions hereof.

Section 19. Effectivity. — This Executive Order shall take effect immediately.

DONE in the City of Manila, Philippines, this 30th day of July 2010.

(SGD.) BENIGNO S. AQUINO III

By the President:

(SGD.) PAQUITO N. OCHOA, JR.
Executive Secretary

Without delay, petitioners Biraogo and Congressmen Lagman, Albano, Datumanong, and Fua filed their respective petitions decrying the constitutionality of the Truth Commission, primarily, for being a usurpation by the President of the legislative power to create a public office.

In compliance with our Resolution, the Office of the Solicitor General (OSG) filed its Consolidated Comment to the petitions. *Motu proprio*, the Court heard oral arguments on September 7 and 28, 2010, where we required the parties, thereafter, to file their respective memoranda.

In his Memorandum, petitioner Biraogo, in the main, contends that E.O. No. 1 violates Section 1, Article VI of the 1987 Constitution because it creates a public office which only Congress is empowered to do. Additionally, "considering certain admissions made by the OSG during the oral arguments," the petitioner questions the alleged intrusion of E.O. No. 1 into the independence of the Office of the Ombudsman mandated in, and protected under, Section 5, Article XI of the 1987 Constitution.

Holding parallel views on the invalidity of the E.O., petitioner Members of the House of Representatives raise the following issues:

I.

EXECUTIVE ORDER NO. 1 CREATING THE PHILIPPINE TRUTH COMMISSION OF 2010 VIOLATES THE PRINCIPLE OF SEPARATION OF POWERS BY USURPING THE POWERS OF THE CONGRESS (1) TO CREATE PUBLIC OFFICES, AGENCIES AND COMMISSIONS; AND (2) TO APPROPRIATE PUBLIC FUNDS.

II.

EXECUTIVE ORDER NO. 1 VIOLATES THE EQUAL PROTECTION CLAUSE OF THE 1987 CONSTITUTION BECAUSE IT LIMITS THE JURISDICTION OF THE PHILIPPINE TRUTH COMMISSION TO OFFICIALS AND EMPLOYEES OF THE "PREVIOUS ADMINISTRATION" (THE ADMINISTRATION OF FORMER PRESIDENT GLORIA MACAPAGAL-ARROYO).

III.

EXECUTIVE ORDER NO. 1 SUPPLANTS THE CONSTITUTIONALLY MANDATED POWERS OF THE OFFICE OF THE OMBUDSMAN AS PROVIDED IN THE 1987 CONSTITUTION AND SUPPLEMENTED BY REPUBLIC ACT NO. 6770 OR THE "OMBUDSMAN ACT OF 1989."

Expectedly, in its Memorandum, the OSG traverses the contention of petitioners and upholds the constitutionality of E.O. No. 1 on the strength of the following arguments:

I.

PETITIONERS HAVE NOT AND WILL NOT SUFFER DIRECT PERSONAL INJURY WITH THE ISSUANCE OF EXECUTIVE ORDER NO. 1. PETITIONERS DO NOT HAVE LEGAL STANDING TO ASSAIL THE CONSTITUTIONALITY OF EXECUTIVE ORDER NO. 1.

II.

EXECUTIVE ORDER NO. 1 IS CONSTITUTIONAL AND VALID. EXECUTIVE ORDER NO. 1 DOES NOT ARROGATE THE POWERS OF CONGRESS TO CREATE A PUBLIC OFFICE AND TO APPROPRIATE FUNDS FOR ITS OPERATIONS.

III.

THE EXECUTIVE CREATED THE TRUTH COMMISSION PRIMARILY AS A TOOL FOR NATION-BUILDING TO INDEPENDENTLY DETERMINE THE PRINCIPAL CAUSES AND CONSEQUENCES OF CORRUPTION AND TO MAKE POLICY RECOMMENDATIONS FOR THEIR REDRESS AND FUTURE PREVENTION. ALTHOUGH ITS INVESTIGATION MAY CONTRIBUTE TO SUBSEQUENT PROSECUTORIAL EFFORTS, THE COMMISSION WILL NOT ENCROACH BUT COMPLEMENT THE POWERS OF THE OMBUDSMAN AND THE DOJ IN INVESTIGATING CORRUPTION.

IV.

EXECUTIVE ORDER NO. 1 IS VALID AND CONSTITUTIONAL. IT DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE. THE TRUTH COMMISSION HAS LEGITIMATE AND LAUDABLE PURPOSES.

In resolving these issues, the *ponencia*, penned by the learned Justice Jose Catral Mendoza, concludes that:

1. Petitioners have legal standing to file the instant petitions; petitioner Biraogo only because of the transcendental importance of the issues involved, while petitioner Members of the House of Representatives have standing to question the validity of any official action which allegedly infringes on their prerogatives as legislators;

2. The creation of the Truth Commission by E. O. No. 1 is not a valid exercise of the President's power to reorganize under the Administrative Code of 1987;

3. However, the President's power to create the herein assailed Truth Commission is justified under Section 17,[1] Article VII of the Constitution, albeit what may be created is merely an *ad hoc* Commission;

4. The Truth Commission does not supplant the Ombudsman or the Department of Justice (DOJ) nor erode their respective powers; and

5. Nonetheless, E.O. No. 1 is unconstitutional because it transgresses the equal protection clause enshrined in Section 1, Article III of the Constitution.

I agree with the *ponencia* that, given our liberal approach in *David v. Arroyo*[2] and subsequent cases, petitioners have *locus standi* to raise the question of constitutionality of the Truth Commission's creation. I also concur with Justice Mendoza's conclusion that the Truth Commission will not supplant the Office of the Ombudsman or the DOJ, nor impermissibly encroach upon the latter's exercise of constitutional and statutory powers.

I agree with the *ponencia* that the President of the Philippines can create an *ad hoc* investigative body. But more than that, I believe that, necessarily implied from his power of control

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[1] SEC. 17. The President shall have control of all the executive departments, bureau and offices. He shall ensure that the laws be faithfully executed.

[2] G.R. No. 171396, May 3, 2006, 489 SCRA 160.

over all executive departments and his constitutional duty to faithfully execute the laws, as well as his statutory authority under the Administrative Code of 1987, the President may create a public office.

However, I find myself unable to concur with Justice Mendoza's considered opinion that E.O. No. 1 breaches the constitutional guarantee of equal protection of the laws.

Let me elucidate.

The Truth Commission is a Public Office

The first of two core questions that confront the Court in this controversy is whether the President of the Philippines can create a public office. A corollary, as a consequence of statements made by the Solicitor General during the oral argument, is whether the Truth Commission is a public office.

A public office is defined as the right, authority, or duty, created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some sovereign power of government to be exercised by him for the benefit of the public.[3] Public offices are created either by the Constitution, by valid statutory enactments, or by authority of law. A person who holds a public office is a public officer.

Given the powers conferred upon it, as spelled out in E.O. No. 1, there can be no doubt that the Truth Commission is a public office, and the Chairman and the Commissioners appointed thereto, public officers.

As will be discussed hereunder, it is my respectful submission that the President of the Philippines has ample legal authority to create a public office, in this case, the Truth Commission. This authority flows from the President's constitutional power of control in conjunction with his constitutional duty to ensure that laws be faithfully executed, coupled with provisions of a

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[3] *Fernandez v. Sto. Tomas,* 312 Phil. 235, 247 (1995).

valid statutory enactment, E.O. No. 292, otherwise known as the Administrative Code of 1987.

E. O. No. 1 and the Executive Power

Central to the resolution of these consolidated petitions is an understanding of the "lines of demarcation" of the powers of government, *i.e.*, the doctrine of separation of powers. The landmark case of *Government of the Philippine Islands v. Springer*[4] has mapped out this legal doctrine:

> The Government of the Philippine Islands is an agency of the Congress of the United States. The powers which the Congress, the principal, has seen fit to entrust to the Philippine Government, the agent, are distributed among three coordinate departments, the executive, the legislative, and the judicial. It is true that the Organic Act contains no general distributing clause. But the principle is clearly deducible from the grant of powers. It is expressly incorporated in our Administrative Code. It has time and again been approvingly enforced by this court.
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> No department of the government of the Philippine Islands may legally exercise any of the powers conferred by the Organic Law upon any of the others. Again it is true that the Organic Law contains no such explicit prohibitions. But it is fairly implied by the division of the government into three departments. The effect is the same whether the prohibition is expressed or not. It has repeatedly been announced by this court that each of the branches of the Government is in the main independent of the others. The doctrine is too firmly imbedded in Philippine institutions to be debatable.
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> It is beyond the power of any branch of the Government of the Philippine islands to exercise its functions in any other way than that prescribed by the Organic Law or by local laws which conform to the Organic Law. The Governor-General must find his powers and duties in the fundamental law. An Act of the Philippine Legislature must comply with the grant from Congress. The jurisdiction of this court and other courts is derived from the constitutional provisions.
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[4] 50 Phil. 259 (1927).

The Organic Act vests "the supreme executive power" in the Governor-General of the Philippine Islands. In addition to specified functions, he is given "general supervisions and control of all the departments and bureaus of the government of the Philippine Islands as far is not inconsistent with the provisions of this Act." He is also made "responsible for the faithful execution of the laws of the Philippine islands and of the United States operative within the Philippine Islands." The authority of the Governor-General is made secure by the important proviso "that all executive functions of Government must be directly under the governor-General or within one of the executive departments under the supervision and control of the governor-general." By the Administrative Code, "the governor-general, as Chief executive of the islands, is charged with the executive control of the Philippine Government, to be exercised in person or through the Secretaries of Departments, or other proper agency, according to law."

These "lines of demarcation" have been consistently recognized and upheld in all subsequent Organic Acts applied to the Philippines, including the present fundamental law, the 1987 Constitution.

Section 1, Article VII of the 1987 Constitution[5] vests executive power in the President of the Philippines. On the nature of the executive power, Justice Isagani A. Cruz writes:

> Executive power is briefly described as the power to enforce and administer the laws, but it is actually more than this. In the exercise of this power, the President of the Philippines assumes a plenitude of authority, and the corresponding awesome responsibility, that makes him, indeed, the most influential person in the land.[6]

In *National Electrification Administration v. Court of Appeals*,[7] this Court said that, as the administrative head of the government, the President is vested with the power to execute, administer and carry out laws into practical operation. Impressed upon

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[5] Section 1. The executive power shall be vested in the President of the Philippines.

[6] Cruz, *Philippine Political Law* (2005 ed.), p. 182.

[7] G.R. No. 143481, February 15, 2002.

us, then, is the fact that executive power is the power of carrying out the laws into practical operation and enforcing their due observance.

Relevant to this disquisition are two specific powers that flow from this "plenitude of authority." Both are found in Section 17, Article VII of the Constitution.[8] They are commonly referred to as *the power of control* and *the take care clause.*

Section 17 is a self-executing provision. The President's power of control is derived directly from the Constitution and not from any implementing legislation.[9] On the other hand, the power to take care that the laws be faithfully executed makes the President a dominant figure in the administration of the government. The law he is supposed to enforce includes the Constitution itself, statutes, judicial decisions, administrative rules and regulations and municipal ordinances, as well as the treaties entered into by our government.[10] At almost every cusp of executive power is the President's power of control and his constitutional obligation to ensure the faithful execution of the laws.

Demonstrating the *mirabile dictu* of presidential power and obligation, we declared in *Ople v. Torres*:[11]

> As head of the Executive Department, the President is the Chief Executive. He represents the government as a whole and sees to it that all laws are enforced by the officials and employees of his department. He has control over the executive department, bureaus and offices. This means that he has the authority to assume directly the functions of the executive department, bureau and office, or interfere with the discretion of its officials. Corollary to the power of control, the President also has the duty of supervising the enforcement of laws for the maintenance of general peace and public order. Thus, he is granted *administrative power* over bureaus and

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[8] Sec. 17. The President shall have control of all the executive departments, bureaus and offices. He shall ensure that the laws be faithfully executed.

[9] Cruz, *Philippine Political Law* (2005 ed.), p. 213.

[10] *Id.* at 216.

[11] 354 Phil. 948 (1998).

offices under his control to enable him to discharge his duties effectively.

Mondano v. Silvosa,[12] defines the power of control as "the power of an officer to alter, modify, or set aside what a subordinate officer had done in the performance of his duties, and to substitute the judgment of the former for that of the latter." It includes the authority to order the doing of an act by a subordinate, or to undo such act or to assume a power directly vested in him by law.[13]

In this regard, *Araneta v. Gatmaitan*[14] is instructive:

> If under the law the Secretary of Agriculture and Natural Resources has authority to regulate or ban fishing by trawl, then the President of the Philippines may exercise the same power and authority because of the following: (a) The President shall have control of all the executive departments, bureaus or offices pursuant to Section 10(1), Article VII, of the Constitution; (b) Executive Orders may be issued by the President under Section 63 of the Revised Administrative Code: governing the general performance of duties by public employees or disposing of issues of general concern; and (c) Under Section 74 of the Revised Administrative Code, "All executive functions of the Government of the Republic of the Philippines shall be directly under the Executive Department, subject to the supervision and control of the President of the Philippines in matters of general policy."

Our ruling in *City of Iligan v. Director of Lands*[15] echoes the same principle in this wise:

> Since it is the Director of Lands who has direct executive control among others in the lease, sale or any form of concession or disposition of the land of the public domain subject to the immediate control of the Secretary of Agriculture and Natural Resources, and considering that under the Constitution the President of the

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[12] 97 Phil. 143 (1955).

[13] Cruz, *Philippine Political Law* (2005 ed.), pp. 211-212.

[14] 101 Phil. 328 (1957).

[15] G.R. No.L-30852, February 26, 1988, 158 SCRA 158.

Philippines has control over all executive departments, bureaus and offices, *etc*., the President of the Philippines has therefore the same authority to dispose of the portions of the public domain as his subordinates, the Director of Lands, and his alter-ego the Secretary of Agriculture and Natural Resources.

From these cited decisions, it is abundantly clear that the overarching framework in the President's power of control enables him to assume directly the powers of any executive department, bureau or office. Otherwise stated, whatever powers conferred by law upon subordinate officials within his control are powers also vested in the President of the Philippines. In contemplation of law, he may directly exercise the powers of the Secretary of Foreign Affairs, the Secretary of National Defense, the Commissioner of Customs, or of any subordinate official in the executive department. Thus, he could, for example, take upon himself the investigatory functions of the Department of Justice, and personally conduct an investigation. If he decides to do so, he would be at liberty to delegate a portion of this investigatory function to a public officer, or a panel of public officers, within his Office and under his control. There is no principle of law that proscribes his doing so. In this context, the President may, therefore, create an agency within his Office to exercise the functions, or part of the functions, that he has assumed for himself. Even the *ponencia* admits that this can be done.

When this power of control is juxtaposed with the constitutional duty to ensure that laws be faithfully executed, it is obvious that, for the effective exercise of the *take care clause*, it may become necessary for the President to create an office, agency or commission, and charge it with the authority and the power that he has chosen to assume for himself. It will not simply be an exercise of the power of control, but also a measure intended to ensure that laws are faithfully executed.

To reiterate, the *take care clause* is the constitutional mandate for the President to ensure that laws be faithfully executed. Dean Vicente G. Sinco observed that the President's constitutional obligation of ensuring the faithful execution of the laws "is a fundamental function of the executive head [involving] a two-

fold task, [*i.e.*,] the enforcement of laws by him and the enforcement of laws by other officers under his direction."[16]

As adverted to above, the laws that the President is mandated to execute include the Constitution, statutes, judicial decisions, administrative rules and regulations and municipal ordinances. Among the constitutional provisions that the President is obliged to enforce are the following General Principles and State Policies of the 1987 Philippine Constitution:

Section 4, Article II: The prime duty of government is to serve and protect the people x x x

Section 5, Article II: The maintenance of peace and order, the protection of life, liberty and property, and promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy.

Section 9, Article II: The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.

Section 13, Article II: The State values the dignity of every human person and guarantees full respect for human rights.

Section 27, Article II: The State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption.

Section 28, Article II: Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.

Closer to home, as head of the biggest bureaucracy in the country, the President must also see to the faithful execution of Section 1, Article XI of the Constitution, which reads: *"Public office is a public trust. Public officers and employees must at all times be accountable to the people; serve them with utmost responsibility, integrity, loyalty and efficiency; act with patriotism and justice; and lead modest lives."*

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[16] Sinco, *Philippine Political Law* (10th ed.), p. 260.

These are constitutional provisions the enforcement of which is inextricably linked to the spirit and objective of E.O. No. 1.

Although only Section 1, Article XI, is cited in the *Whereas* clauses of E. O. No. 1, the President is obliged to execute the other constitutional principles as well. Absent any law that provides a specific manner in which these constitutional provisions are to be enforced, or prohibits any particular mode of enforcement, the President could invoke the *doctrine of necessary implication, i.e.*, that the express grant of the power in Section 17, Article VII, for the President to faithfully execute the laws, carries with it the grant of all other powers necessary, proper, or incidental to the effective and efficient exercise of the expressly granted power.[17] Thus, if a Truth Commission is deemed the necessary vehicle for the faithful execution of the constitutional mandate on public accountability, then the power to create the same would necessarily be implied, and reasonably derived, from the basic power granted in the Constitution. Accordingly, the *take care clause,* in harmony with the President's power of control, along with the pertinent provisions of the Administrative Code of 1987, would justify the issuance of E. O. No. 1 and the creation of the Truth Commission.

Further to this discussion, it is cogent to examine the administrative framework of Executive Power, as outlined in the Administrative Code.

Quite logically, the power of control and the take care clause precede all others in the enumeration of the Powers of the President. Section 1, Book III, Title I simply restates the constitutional provision, to wit:

> SECTION 1. *Power of Control*.— The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.

Next in the enumeration is the ordinance power of the President which defines executive orders, thus:

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[17] See *Marcos v. Manglapus*, G.R. No. 88211, September 15, 1989, 178 SCRA 760.

SEC. 2. *Executive Orders*. — Acts of the President providing for rules of a general or permanent character in implementation or execution of constitutional or statutory powers shall be promulgated in executive orders.

At the bottom of the list are the *other powers* (Chapter 7, Book III of the Code) of the President, which include the *residual power, viz:*

SEC. 19. *Powers Under the Constitution*.—The President shall exercise such other powers as are provided for in the Constitution.

SEC. 20. *Residual Powers*.—Unless Congress provides otherwise, the president shall exercise such other powers and functions vested in the President which are provided for under the laws and which are not specifically enumerated above, or which are not delegated by the President in accordance with law.

In addition, pursuant to the organizational structure of the Executive Department,[18] one of the powers granted to the President is his continuing authority to reorganize his Office:[19]

SEC. 31. *Continuing Authority of the President to Reorganize his Office*.— The President, subject to the policy in the Executive Office and in order to achieve simplicity, economy and efficiency, shall have continuing authority to reorganize the administrative structure of the Office of the President. For this purpose, he may take any of the following actions:

(1) Restructure the internal organization of the Office of the President Proper, including the immediate Offices, the Presidential Special Assistants/Advisers System and the Common staff Support System, by abolishing, consolidating or merging units thereof or transferring functions from one unit to another;

(2) Transfer any function under the Office of the President to any other Department or Agency as well as transfer functions to the Office of the President from other Departments and Agencies; and

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[18] See Chapter 8, Title II, Book III of the Administrative Code.

[19] Section 31, Chapter 10, Title III, Book III of the Administrative Code.

(3) Transfer any agency under the Office of the President to any other department or agency as well as transfer agencies to the Office of the President from other departments or agencies.

Consistent therewith, the Administrative Code provides in Section 1, Chapter 1, Book IV (The Executive Branch) that "[t]he Executive Branch shall have such Departments as are necessary for the functional distribution of the work of the President and for the performance of their functions." Hence, the primary articulated policy in the Executive Branch is the organization and maintenance of the Departments to insure their capacity to plan and implement programs in accordance with established national policies.[20]

With these Administrative Code provisions in mind, we note the triptych function of the Truth Commission, namely: (1) gather facts; (2) investigate; and (3) recommend, as set forth in Section 1 of E.O. No. 1:

SECTION 1. Creation of a Commission.— There is hereby created the PHILIPPINE TRUTH COMMISSION, hereinafter referred to as the "COMMISSION," which shall [1] **primarily seek and find the truth on**, and toward this end, [2] **investigate reports of graft and corruption** of such scale and magnitude that shock and offend the moral and ethical sensibilities of the people, committed by the public officers and employees, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration; and thereafter [3] **recommend the appropriate action or measure to be taken thereon** to ensure that the full measure of justice shall be served without fear or favor. (emphasis and numbering supplied)

It is plain to see that the Truth Commission's fact-finding and investigation into "reports of large scale corruption by the previous administration" involve policy-making on issues of fundamental concern to the President, primarily, corruption and its linkage to the country's social and economic development.

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[20] Section 2, Chapter 1, Book IV of the 1987 Administrative Code.

On this point, I differ from the *ponencia*, as it reads the President's power to reorganize in a different light, *viz*:

> The question, therefore, before the Court is this: Does the creation of the Truth Commission fall within the ambit of the power to reorganize as expressed in Section 31 of the Revised Administrative Code? Section 31 contemplates "reorganization" as limited by the following functional and structural lines: (1) restructuring the internal organization of the Office of the President Proper by abolishing, consolidating or merging units thereof or transferring functions from one unit to another; (2) transferring any function under the Office of the President to any other Department/Agency or vice versa; or (3) transferring any agency under the Office of the President to any other Department/Agency or vice versa. Clearly, the provision refers to reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions. These point to situations where a body or an office is already existent by a modification or alteration thereof has to be effected. The creation of an office is nowhere mentioned, much less envisioned in said provision. Accordingly, the answer is in the negative.
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> x x x x x x x x x
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> xxx [T]he creation of the Truth Commission is not justified by the president's power of control. Control is essentially the power to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former with that of the latter. Clearly, the power of control is entirely different from the power to create public offices. The former is inherent in the Executive, while the latter finds basis from either a valid delegation from Congress, or his inherent duty to faithfully execute the laws.

I am constrained to disagree because, contrary to the *ponencia's* holding, the President's power to reorganize is not limited by the enumeration in Section 31 of the Administrative Code.

As previously discussed, the President's power of control, in conjunction with his constitutional obligation to faithfully execute the laws, allows his direct assumption of the powers and functions of executive departments, bureaus and offices.[21]

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[21] *Ople v. Torres*, 354 Phil. 949 (1998).

To repeat, the overarching framework in the President's power of control enables him to assume directly the functions of an executive department. On the macro level, the President exercises his power of control by directly assuming *all* the functions of executive departments, bureaus or offices. On the micro level, the President may directly assume *certain or specific*, *not all*, functions of a Department. In the milieu under which the Truth Commission is supposed to operate, pursuant to E. O. No. 1, only the investigatory function of the DOJ for certain crimes is directly assumed by the President, then delegated to the Truth Commission. After all, it is axiomatic that the grant of broad powers includes the grant of a lesser power; in this case, to be exercised — and delegated — at the President's option.

My conclusion that the transfer of functions of a Department to the Office of the President falls within the President's power of reorganization is reinforced by jurisprudence.

In *Larin v. Executive Secretary*,[22] the Court sustained the President's power to reorganize under Section 20, Book III of E.O. 292, in relation to PD No. 1416, as amended by PD No. 1772:

> Another legal basis of E.O. No. 132 is Section 20, Book III of E.O. No. 292 which states:
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> "Sec. 20. *Residual Powers.*—Unless Congress provides otherwise, the President shall exercise *such other powers and functions vested in the President which are provided for under the laws* and which are not specifically enumerated above or which are not delegated by the President in accordance with law.
>
> This provision speaks of such other powers vested in the president under the law. What law then gives him the power to reorganize? It is Presidential decree No. 1772 which amended Presidential Decree no. 1416. These decrees expressly grant the President of the Philippines the continuing authority to reorganize the national government, which includes the power to group, consolidate bureaus and agencies, to abolish offices, to transfer functions, to create and classify functions, services and activities and to standardize salaries

[22] G.R. No. 112745, October 16, 1997, 280 SCRA 713.

and materials. The validity of these two decrees are unquestionable. The 1987 Constitution clearly provides that "all laws, decrees, executive orders, proclamations, letters of instructions and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed or revoked." So far, there is yet not law amending or repealing said decrees.

Subsequently, *Buklod ng Kawaning EIIB v. Zamora*,[23] affirmed the holding in *Larin* and explicitly recognized the President's authority to transfer functions of other Departments or Agencies to the Office of the President, consistent with his powers of reorganization, to wit:

> But of course, the list of legal basis authorizing the President to reorganize any department or agency in the executive branch does not have to end here. We must not lose sight of the very sources of the power—that which constitutes an express grant of power. Under Section 31, Book III of Executive Order No. 292 (otherwise known as the *Administrative Code of 1987*), *"the President, subject to the policy in the Executive Office and in order to achieve simplicity, economy and efficiency, shall have the continuing authority to reorganize the administrative structure of the Office of the president."* **For this purpose, he may transfer the functions of other Departments or Agencies to the Office of the President.** In *Canonizado v. Aguirre*, we ruled that reorganization "*involves the reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions."* It takes place when there is an alteration of the existing structure of government or units therein, including the lines of control, authority and responsibility between them. xxx (emphasis supplied)

Then, and quite significantly, in *Bagaoisan v. National Tobacco Administration*,[24] this Court clarified the nature of the grant to the President of the power to reorganize the administrative structure of the Office of the President, thus:

> In the recent case of *Rosa Ligaya C. Domingo, et al. v. Hon. Ronaldo D. Zamora, in his capacity as the Executive Secretary,*

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[23] G.R Nos. 142801-142802, July 10, 2001, 360 SCRA 718.

[24] G.R. No. 152845, August 5, 2003, 408 SCRA 337.

et al., this Court has had occasion to also delve on the President's power to reorganize the Office of the President under Section 31 (2) and (3) of Executive Order No. 292 and the power to reorganize the Office of the President *Proper*. The Court has there observed:

"x x x. Under Section 31(1) of E.O. 292, the President can reorganize the Office of the President *Proper* by abolishing, consolidating or merging units, or by transferring functions from one unit to another. In contrast, under Section 31(2) and (3) of EO 292, the President's power to reorganize offices outside the Office of the President *Proper* but still within the Office of the President is limited to merely transferring functions or agencies from the Office of the President to Departments or Agencies, and *vice versa*."

The provisions of Section 31, Book III, Chapter 10, of Executive Order No. 292 (Administrative code of 1987), above-referred to, reads thusly:

> Sec. 31. Continuing Authority of the President to Reorganize his Office. — The President, subject to the policy in the Executive Office and in order to achieve simplicity, economy and efficiency, shall have continuing authority to reorganize the administrative structure of the Office of the President. For this purpose, he may take any of the following actions:
>
> (1) Restructure the internal organization of the Office of the President Proper, including the immediate Offices, the Presidential Special Assistants/Advisers System and the Common staff Support System, by abolishing, consolidating or merging units thereof or transferring functions from one unit to another;
>
> (2) Transfer any function under the Office of the President to any other Department or Agency as well as transfer functions to the Office of the President from other Departments and Agencies; and
>
> (3) Transfer any agency under the Office of the President to any other department or agency as well as transfer agencies to the Office of the President from other departments or agencies.

The first sentence of the law is an express grant to the President of *a continuing authority to reorganize the administrative structure*

of the Office of the President. **The succeeding numbered paragraphs are not in the nature of *provisos* that unduly limit the aim and scope of the grant to the President of the power to reorganize but are to be viewed in consonance therewith**. Section 31(1) of Executive order No. 292 specifically refers to the President's power to restructure the internal organization of the Office of the President *Proper*, by abolishing, consolidating or merging units hereof or transferring functions from unit to another, **while Section 31(2) and (3) concern executive offices outside the Office of the President *Proper* allowing the President to transfer any function under the Office of the President to any other Department or Agency and *vice versa*, and the transfer of any agency under the Office of the President to any other department or agency and *vice versa*.** (Emphasis supplied)

Notably, based on our ruling in *Bagaoisan*, **even if we do not consider P.D. No. 1416, as amended by P.D. No. 1772,** the abstraction of the Truth Commission, as fortified by the President's power to reorganize found in paragraph 2, Section 31 of the Administrative Code, is demonstrably permitted.

That the Truth Commission is a derivative of the reorganization of the Office of the President should brook no dissent. The President is not precluded from transferring and re-aligning the fact-finding functions of the different Departments regarding certain and specific issues, because ultimately, the President's authority to reorganize is derived from the power-and-duty nexus fleshed out in the two powers granted to him in Section 17, Article VII of the Constitution.[25]

I earnestly believe that, even with this Court's expanded power of judicial review, we still cannot refashion, and dictate on, the policy determination made by the President concerning what function, of whichever Department, regarding specific issues, he may choose to directly assume and take cognizance of. To do so would exceed the boundaries of judicial authority and encroach on an executive prerogative. It would violate the principle of separation of powers, the constitutional guarantee that no branch of government should arrogate unto itself those

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[25] Sinco, *Philippine Political Law*, p. 261.

functions and powers vested by the Constitution in the other branches.[26]

In fine, it is my submission that the Truth Commission is a public office validly created by the President of the Philippines under authority of law, *as an adjunct of the Office of the President* — to which the President has validly delegated the fact-finding and investigatory powers [of the Department of Justice] which he had chosen to personally assume. Further, it is the product of the President's exercise of the power to reorganize the Office of the President granted under the Administrative Code.

This conclusion inevitably brings to the threshold of our discussion the matter of the "independence" of the Truth Commission, subject of an amusing exchange we had with the Solicitor General during the oral argument, and to which the erudite Justice Arturo D. Brion devoted several pages in his Separate Concurring Opinion. The word "independent," as used in E. O. No. 1, cannot be understood to mean total separateness or full autonomy from the Office of the President. Being a creation of the President of the Philippines, it cannot be totally dissociated from its creator. By the nature of its creation, the Truth Commission is intimately linked to the Office of the President, and the Executive Order, as it were, is the umbilical cord that binds the Truth Commission to the Office of the President.

The word "independent," used to describe the Commission, should be interpreted as an expression of the intent of the President: that the Truth Commission shall be accorded the fullest measure of freedom and objectivity in the pursuit of its mandate, unbound and uninhibited in the performance of its duties by interference or undue pressure coming from the President. Our exchange

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[26] See *Tañada v. Angara*, 338 Phil. 546 (1997), where the Court did not "review the *wisdom* of the President and the Senate in enlisting the country into the WTO, or pass upon the *merits* of trade liberalization as a policy espoused by the said international body." The issue passed upon by the Court was limited to determining whether there had been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Senate in ratifying the WTO Agreement and its three annexes.

during the oral argument ended on this note: that while the Truth Commission is, technically, subject to the power of control of the President, the latter has manifested his intention, as indicated in the Executive Order, not to exercise the power over the acts of the Commission.

E. O. No. 1 and the Equal Protection Clause

Enshrined in Section 1, Article III of the Philippine Constitution is the assurance that all persons shall enjoy the equal protection of the laws, expressed as follows:

> Section 1. No person shall be deprived of life, liberty, or property without due process of law, **nor shall any person be denied the equal protection of the laws**. (emphasis supplied)

The equality guaranteed under this clause is equality under the same conditions and among persons similarly situated; it is equality among equals, not similarity of treatment of persons who are classified based on substantial differences in relation to the object to be accomplished.[27] When things or persons are different in fact or circumstances, they may be treated in law differently. On this score, this Court has previously intoned that:

> The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. All that is required of a valid classification should be based on substantial distinctions which make for real differences; that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class. This Court has held that the standard is satisfied if the classification or distinction is based

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[27] *British American Tobacco v. Camacho*, G.R. No. 163583, August 20, 2008, 562 SCRA 511.

on a reasonable foundation or rational basis and is not palpably arbitrary.[28]

Thus, when a statute or executive action is challenged on the ground that it violates the equal protection clause, the standards of judicial review are clear and unequivocal:

> It is an established principle in constitutional law that the guaranty of the equal protection of the laws is not violated by a legislation based on a reasonable classification. Classification, to be valid, must: (1) rest on substantial distinctions; (2) be germane to the purpose of the law; (3) not be limited to existing conditions only; and (4) apply equally to all members of the same class.[29]

Further, in a more recent decision, we also declared:

> In consonance thereto, we have held that "in our jurisdiction, **the standard and analysis of equal protection challenges in the main have followed the 'rational basis' test, coupled with a deferential attitude to legislative classifications and a reluctance to invalidate a law unless there is a showing of a clear and unequivocal breach of the Constitution**." x x x.
>
> Under this test, a legislative classification, to survive an equal protection challenge, must be shown to rationally further a legitimate state interest. The classifications must be reasonable and rest upon some ground of difference having a fair and substantial relation to the object of the legislation. Since every law has in its favor the presumption of constitutionality, the burden of proof is on the one attacking the constitutionality of the law to prove beyond reasonable doubt that the legislative classification is without rational basis. The presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes, and that there is no conceivable basis which might support it.[30]

The "rational basis" test is one of three "levels of scrutiny" analyses developed by courts in reviewing challenges of

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[28] *Victoriano v. Elizalde Rope Workers' Union,* 158 Phil. 60 (1974).

[29] *Coconut Oil Refiners Association v. Torres,* 503 Phil. 42, 53-54 (2005).

[30] *British American Tobacco, v. Camacho, et al., supra* note 27.

unconstitutionality against statutes and executive action. Carl Cheng, in his dissertation, "*Important Right and the Private Attorney General Doctrine*,"[31] enlightens us, thus:

> [I]n the area of equal protection analysis, the judiciary has developed a 'level of scrutiny' analysis for resolving the tensions inherent in judicial review. When engaging in this analysis, a court subjects the legislative or executive action to one of three levels of scrutiny, depending on the class of persons and the rights affected by the action. The three levels are **rational basis scrutiny, intermediate scrutiny, and strict scrutiny**. If a particular legislative or executive act does not survive the appropriate level of scrutiny, the act is held to be unconstitutional. If it does survive, it is deemed constitutional. The three tensions discussed above and, in turn, the three judicial responses to each, run parallel to these three levels of scrutiny. In response to each tension, the court applies a specific level of scrutiny.

He goes on to explain these "levels of scrutiny," as follows:

> The first level of scrutiny, rational basis scrutiny, requires only that the purpose of the legislative or executive act not be invidious or arbitrary, and that the act's classification be reasonably related to the purpose. Rational basis scrutiny is applied to legislative or executive acts that have the general nature of economic or social welfare legislation. While purporting to set limits, rational basis scrutiny in practice results in complete judicial deference to the legislature or executive. Thus, a legislative or executive act which is subject to rational basis scrutiny is for all practical purposes assured of being upheld as constitutional.
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> The second level of scrutiny, intermediate scrutiny, requires that the purpose of the legislative or executive act be an important governmental interest and that the act's classification be significantly related to the purpose. Intermediate scrutiny has been applied to classifications based on gender and illegitimacy. The rationale for this higher level of scrutiny is that gender and illegitimacy classifications historically have resulted from invidious discrimination. However, compared to strict scrutiny, intermediate scrutiny's presumption of invidious discrimination is more readily

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[31] California Law Review 1929, December 1985.

rebutted, since benign motives are more likely to underlie classifications triggering intermediate scrutiny.

The third level of scrutiny is strict scrutiny. Strict scrutiny requires that the legislative or executive act's purpose be a compelling state interest and that the act's classification be narrowly tailored to the purpose. Strict scrutiny is triggered in two situations: (1) where the act infringes on a fundamental right; and (2) where the act's classification is based on race or national origin. While strict scrutiny purports to be only a very close judicial examination of legislative or executive acts, for all practical purposes, an act subject to strict scrutiny is assured of being held unconstitutional. (Citations omitted.)

It is noteworthy that, in a host of cases, this Court has recognized the applicability of the foregoing tests. Among them are *City of Manila v. Laguio, Jr.*,[32] *Central Bank Employees Association v. Bangko Sentral ng Pilipinas*,[33] and *British American Tobacco v. Camacho, et al.*,[34] in all of which the Court applied the minimum level of scrutiny, or the *rational basis* test.

It is important to remember that when this Court resolves an equal protection challenge against a legislative or executive act, "[w]e do not inquire whether the [challenged act] is wise or desirable xxx. Misguided laws may nevertheless be constitutional. Our task is merely to determine whether there is 'some rationality in the nature of the class singled out.'"[35]

Laws classify in order to achieve objectives, but the classification may not perfectly achieve the objective.[36] Thus, in *Michael M. v. Supreme Court of Sonoma County*,[37] the U.S. Supreme Court said that the relevant inquiry is not whether the statute is

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[32] G.R. No. 118127, April 12, 2005, 455 SCRA 308.

[33] 487 Phil. 531 (2004).

[34] *Supra* note 27.

[35] *Prince Eric Fuller v. State of Oregon*, 417 U.S., 40, 94 S.Ct.2116, 40 L.Ed.2d 577.

[36] Calvin Massey, Roadmap of Constitutional Law, Aspen Law & Business, 1997, p. 301.

[37] 450 U.S. 464, 101 S.Ct. 1200, U.S. Cal., 1981, March 23, 1981.

drawn as precisely as it might have been, but whether the line chosen [by the legislature] is within constitutional limitations. The equal protection clause does not require the legislature to enact a statute so broad that it may well be incapable of enforcement.[38]

It is equally significant to bear in mind that when a governmental act draws up a classification, it actually creates two classes: one consists of the people in the "statutory class" and the other consists precisely of those people necessary to achieve the objective of the governmental action (the "objective class").[39] It could happen that —

> The "statutory class" may include "more" than is necessary in the classification to achieve the objective. If so, the law is "over-inclusive." The classification may also include "less" than is necessary to achieve the objective. If so, the statute is "under-inclusive."
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> A curfew law, requiring all persons under age eighteen to be off the streets between the hours of midnight and 6 a.m., presumably has as its objective the prevention of street crime by minors; this is "over-inclusive" since the class of criminal minors (the objective class) is completely included in the class of people under age eighteen (the statutory class), but many people under age eighteen are not part of the class of criminal minors.
>
> A city ordinance that bans streetcar vendors in a heavily visited "tourist quarter" of the city in order to alleviate sidewalk and street congestion is "under-inclusive." All streetcar vendors (the statutory class) contribute toward sidewalk and street congestion, but the class of people causing sidewalk and street congestion (the objective class) surely includes many others as well.
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> It is rare if not virtually impossible for a statutory class and an objective class to coincide perfectly.[40]

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[38] *Id.*

[39] Massey, *Roadmap of Constitutional Law*, *Aspen Law & Business*, 1997, p. 301.

[40] *Id.* at 302-302.

And, as the *ponencia* itself admits, "under-inclusion" or "over-inclusion, *per se*, is not enough reason to invalidate a law for violation of the equal protection clause, precisely because perfection in classification is not required.[41]

Thus, in the determination of whether the classification is invidious or arbitrary, its relation to the purpose must be examined. Under the *rational basis* test, the presence of any plausible legitimate objective for the classification, where the classification serves to accomplish that objective to any degree, no matter how tiny, would validate the classification. To be invalidated on constitutional grounds, the test requires that the classification must have one of the following traits: (1) it has absolutely no conceivable legitimate purpose; or (2) it is so unconnected to any conceivable objective, that it is absurd, utterly arbitrary, whimsical, or even perverse.[42]

Given the foregoing discussion on this constitutional guarantee of equal protection, we now confront the question: Does the mandate of Executive Order No. 1, for the Truth Commission to investigate "graft and corruption during the previous administration," violate the equal protection clause?

I answer in the negative.

First, because Executive Order No. 1 passes the *rational basis test.*

To repeat, the first level of scrutiny known as the *rational basis test*, requires only that the purpose of the legislative or executive act not be invidious or arbitrary, and that the act's classification be reasonably related to the purpose. The classification must be shown to rationally further a legitimate state interest.[43] In its recent equal protection jurisprudence, the Court has focused primarily upon (1) the "rationality" of the government's distinction, and (2) the "purpose" of that distinction.

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[41] *Id.* at 303.

[42] *Id*.

[43] *Id.* at 299.

To the point, we look at the definition of an executive order and the articulated purpose of E.O. No. 1.

An executive order is an act of the President providing for rules in implementation or execution of constitutional or statutory powers.[44] From this definition, it can easily be gleaned that E. O. No. 1 is intended to implement a number of constitutional provisions, among others, Article XI, Section 1. In fact, E.O. No. 1 is prefaced with the principle that "public office is a public trust" and "public officers and employees, who are servants of the people, must at all time be accountable to the latter, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives."

What likewise comes to mind, albeit not articulated therein, is Article II, Section 27, of the 1987 Constitution, which declares that "[t]he State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption." In addition, the immediately following section provides: "[s]ubject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest."[45] There is also Article XI, Section 1, which sets the standard of conduct of public officers, mandating that "[p]ublic officers and employees must, **at all times**, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency; act with patriotism and justice, and lead modest lives." There is, therefore, no gainsaying that the enforcement of these provisions, *i.e.*, the fight against corruption, is a compelling state interest.

Not only does the Constitution oblige the President to ensure that all laws be faithfully executed,[46] but he has also taken an oath to preserve and defend the Constitution.[47] In this regard, the President's current approach to restore public accountability

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[44] Section 2, Book III, Title I, Administrative Code.

[45] CONSTITUTION, Section 28, Article II.

[46] CONSTITUTION, Section 17, Article VII.

[47] CONSTITUTION, Section, 5, Article VII.

in government service may be said to involve a process, starting with the creation of the Truth Commission.

It is also no secret that various commissions had been established by previous Presidents, each specifically tasked to investigate certain reports and issues in furtherance of state interest. Among the latest of such commissions is the Zeñarosa Commission, empowered to investigate the existence of private armies, as well as the Maguindanao Massacre.[48]

Under E.O. No. 1, the President initially classified the investigation of reports of graft and corruption during the previous administration because of his avowed purpose to maintain the public trust that is characteristic of a public office. The first recital (paragraph) of E.O. No. 1 does not depart therefrom. The succeeding recitals (paragraphs) enumerate the causality of maintaining public office as a public trust with corruption as "among the most despicable acts of defiance of this principle and notorious violation of this mandate." Moreover, the President views corruption as "an evil and scourge which seriously affects the political, economic, and social life of a nation." Thus, the incumbent President has determined that the first phase of his fight against graft and corruption is to have reports thereof during the previous administration investigated. There is then a palpable relation between the supposed classification and the articulated purpose of the challenged executive order.

The initial categorization of the issues and reports which are to be the subject of the Truth Commission's investigation is the President's call. Pursuing a system of priorities does not translate to suspect classification resulting in violation of the equal protection guarantee. In his assignment of priorities to address various government concerns, the President, as the Chief Executive, may initially limit the focus of his inquiry and investigate issues and reports one at a time. As such, there is actually no differential treatment that can be equated to an invalid classification.

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[48] See Annex "A" of the Respondent's Memorandum.

E.O. No. 1 cannot be subjected to the *strict level of scrutiny* simply because there is a claimed inequality on its face or in the manner it is to be applied. On its face, there is actually no class created. The *ponencia* harps on three provisions in the executive order directing the conduct of an investigation into cases of large scale graft and corruption "during the previous administration." On that basis, the *ponencia* concludes that there is invidious discrimination, because the executive order is focused only on the immediate past administration.

I disagree. While the phrase "previous administration" alludes to persons, which may, indeed, be a class within the equal protection paradigm, it is important to note that the entire phrase is "during the previous administration," which connotes a time frame that limits the scope of the Commission's inquiry. The phrase does not really create a separate class; it merely lays down the pertinent period of inquiry. The limited period of inquiry, ostensibly (but only initially) excluding administrations prior to the immediate past administration, is not, *per se,* an intentional and invidious discrimination anathema to a valid classification. Even granting that the phrase creates a class, E.O. No. 1 has not, as yet, been given any room for application, since barely a few days from its issuance, it was subjected to a constitutional challenge. We cannot allow the furor generated by this controversy over the creation of the Truth Commission to be an excuse to apply the *strict scrutiny* test, there being no basis for a facial challenge, nor for an "as-applied" challenge.

To reiterate for emphasis, the determination of the perceived instances of graft and corruption that ought to claim priority of investigation is addressed to the executive, as it involves a policy decision. This determination must not to be overthrown simply because there are other instances of graft and corruption which the Truth Commission should also investigate.[49] In any event, Section 17 of E.O. No. 1 responds to this objection, when it provides:

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[49] See: *Miller v. Wilson*, 236 U.S. 373, 384, 35 S. Ct. 342, 59 L. Ed. 628 (1915).

SECTION 17. Special Provision Concerning Mandate. — If and when in the judgment of the President there is a need to expand the mandate of the Commission as defined in Section 1 hereof to include the investigation of cases and instances of graft and corruption during the prior administrations, such mandate may be so extended accordingly by way of a supplemental Executive Order.

It may also be pointed out that E.O. No. 1 does not confer a right nor deprive anyone of the exercise of his right. There is no right conferred nor liability imposed that would constitute a burden on fundamental rights so as to justify the application of the *strict scrutiny* test. A fact-finding investigation of certain acts of public officers committed during a specific period hardly merits this Court's distraction from its regular functions. If we must exercise the power of judicial review, then we should use the minimum level of scrutiny, the *rational basis test*.

On more than one occasion, this Court denied equal protection challenges to statutes without evidence of a clear and intentional discrimination.[50] The pervasive theme in these rulings is a claim of discriminatory prosecution, *not* simply a claim of discriminatory investigation. In *People v. Piedra*,[51] we explained:

The prosecution of one guilty person while others equally guilty are not prosecuted, however, is not, by itself, a denial of the equal protection of the laws. Where the official action purports to be in conformity to the statutory classification, an erroneous or mistaken performance of the statutory duty, although a violation of the statute, is not without more a denial of the equal protection of the laws. The unlawful administration by officers of a statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination. This may appear on the face of the action taken with respect to a particular class or person, or it may only be shown by extrinsic evidence showing a discriminatory design over another not to be inferred from the action itself. **But a discriminatory**

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[50] See *People v. Dumlao*, G.R. No. 168918, March 2, 2009, 580 SCRA 409 citing *Santos v. People* and *People v. Dela Piedra*.

[51] G.R. No. 121777, January 24, 2001, 350 SCRA 163.

purpose is not presumed, there must be a showing of "clear and intentional discrimination." Appellant has failed to show that, in charging appellant in court, that there was a "clear and intentional discrimination" on the part of the prosecuting officials. The discretion of who to prosecute depends on the prosecution's sound assessment whether the evidence before it can justify a reasonable belief that a person has committed an offense. **The presumption is that the prosecuting officers regularly performed their duties, and this presumption can be overcome only by proof to the contrary, not by mere speculation.** Indeed, appellant has not presented any evidence to overcome this presumption. The mere allegation that appellant, a Cebuana, was charged with the commission of a crime, while a Zamboangueña, the guilty party in appellant's eyes, was not, is insufficient to support a conclusion that the prosecution officers denied appellant equal protection of the laws. There is also common sense practicality in sustaining appellant's prosecution.

While all persons accused of crime are to be treated on a basis of equality before the law, it does not follow that they are to be protected in the commission of crime. It would be unconscionable, for instance, to excuse a defendant guilty of murder because others have murdered with impunity. The remedy for unequal enforcement of the law in such instances does not lie in the exoneration of the guilty at the expense of society x x x. Protection of the law will be extended to all persons equally in the pursuit of their lawful occupations, but no person has the right to demand protection of the law in the commission of a crime.

Likewise, [i]f the failure of prosecutors to enforce the criminal laws as to some persons should be converted into a defense for others charged with crime, the result would be that the trial of the district attorney for nonfeasance would become an issue in the trial of many persons charged with heinous crimes and the enforcement of law would suffer a complete breakdown. (emphasis supplied.)

Evidently, the abstraction of the President's power to directly prosecute crimes, hand in hand with his duty to faithfully execute the laws, carries with it the lesser power of investigation. To what extent, then, should this Court exercise its review powers over an act of the President directing the conduct of a fact-finding investigation that has not even commenced? These are clearly issues of wisdom and policy. Beyond what is presented

before this Court, on its face, the rest remains within the realm of speculation.

It bears stressing that by tradition, any administration's blueprint for governance covers a wide range of priorities. Contrary to the *ponencia's* conclusion, such a roadmap for governance obviously entails a "step by step" process in the President's system of priorities.

Viewed in this context, the fact that the "previous administration" was mentioned thrice in E.O. No. 1, as pointed out by the *ponencia*, is not "purposeful and intentional discrimination" which violates the equal protection clause. Such a circumstance does not demonstrate a "history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process."[52] It simply has to be taken in the light of the President's discretion to determine his government's priorities.

It, therefore, remains unclear how the equal protection clause is violated merely because the E. O. does not specify that reports of large scale graft and corruption in other prior administrations should likewise be investigated. Notably, the investigation of these reports will not automatically lead to prosecution, as E.O No. 1 only authorizes the investigation of certain reports with an accompanying recommended action. The following provisions of the executive order are too clear to brook objection:

1. 5th *Whereas* Clause

WHEREAS, there is an urgent call for the determination of the truth regarding certain reports of large scale graft and corruption in the government and to put a closure to them by the filing of the appropriate cases against those involved, if warranted, and to deter others from committing the evil, restore the people's faith and confidence in the Government and in their public servants;

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[52] *State v. Hatori*, 92 Hawaii 217, 225 [1999] citing *State v. Sturch*, 82 Hawaii 269, 276 [1996].

2. Section 1

SECTION 1. Creation of a Commission. — There is hereby created the PHILIPPINE TRUTH COMMISSION, hereinafter referred to as the "COMMISSION," which shall primarily seek and find the truth on, and toward this end, investigate reports of graft and corruption of such scale and magnitude that shock and offend the moral and ethical sensibilities of the people, committed by the public officers and employees, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration; and thereafter recommend the appropriate action or measure to be taken thereon to ensure that the full measure of justice shall be served without fear or favor.

3. Section 2

SECTION 2. Powers and Functions. — The Commission, which shall have all the powers of an investigative body under Section 37, Chapter 9, Book I of the Administrative Code of 1987, is primarily tasked to conduct a thorough fact-finding investigation of reported cases of graft and corruption referred to in Section 1, involving third level public officers and higher, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration and thereafter submit its finding and recommendation to the President, Congress and the Ombudsman.

Second, petitioners do not even attempt to overthrow the *presumption of constitutionality* of executive acts. They simply hurl pastiche arguments hoping that at least one will stick.

In any imputed violations of the equal protection clause, the standard of judicial review is always prefaced by a *presumption of constitutionality*:

As this Court enters upon the task of passing on the validity of an act of a co-equal and coordinate branch of the Government, it bears emphasis that deeply ingrained in our jurisprudence is the time-honored principle that statute is presumed to be valid. This presumption is rooted in the doctrine of separation of powers which enjoins upon the three coordinate departments of the Government a becoming courtesy for each other's acts. Hence, to doubt is to sustain. The theory is that before the act was done or the law was enacted, earnest studies were made by Congress, or the President, or both, to insure that the Constitution would not be breached. This Court, however,

may declare a law, or portions thereof, unconstitutional where a petitioner has shown a clear and unequivocal breach of the Constitution, not merely a doubtful or argumentative one. In other words, before a statute or a portion thereof may be declared unconstitutional, it must be shown that the statute or issuance violates the Constitution clearly, palpably and plainly, and in such a manner as to leave no doubt or hesitation in the mind of the Court.[53]

Clearly, the acts of the President, in the exercise of his or her power, is preliminarily presumed constitutional such that the party challenging the constitutionality thereof (the executive act) on equal protection grounds bears the heavy burden of showing that the official act is arbitrary and capricious.[54]

Indeed, laws or executive orders, must comply with the basic requirements of the Constitution, and as challenged herein, the equal protection of the laws. Nonetheless, only in clear cases of invalid classification violative of the equal protection clause will this Court strike down such laws or official actions.

Third, petitioner Members of the House of Representatives are not proper parties to challenge the constitutionality of E.O. No. 1 on equal protection grounds. Petitioner Members of the House of Representatives cannot take up the lance for the previous administration. Under all three levels of scrutiny earlier discussed, they are precluded from raising the equal protection of the laws challenge. The perceptive notation by my esteemed colleague, Justice Carpio Morales, in her dissent, comes to life when she observes that petitioner Members of the House of Representatives cannot vicariously invoke violation of equal protection of the laws. Even assuming E.O. No. 1 does draw a classification, much less an unreasonable one, petitioner Members of the House of Representatives, as well as petitioner Biraogo, are not covered by the supposed arbitrary and unreasonable classification.

If we applied both *intermediate* and *strict* scrutiny, the nakedness of petitioners' arguments are revealed because they

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[53] *Coconut Oil Refiners Association, Inc., et al. v. Hon. Ruben Torres, et al.*, 503 Phil. 42, 53-54 (2005).

[54] *People v. Dela Piedra*, 403 Phil. 31 (2001).

do not claim violation of any of their fundamental rights, nor do they cry discrimination based on race, gender and illegitimacy. Petitioners' equal protection clause challenge likewise dissolves when calibrated against the purpose of E.O. No. 1 and its supposed classification of the administration which the Truth Commission is tasked to investigate. Nowhere in the pleadings of petitioners and their claim of violation of separation of powers and usurpation of legislative power by the executive is it established how such violation or usurpation translates to violation by E.O. No. 1 of the equal protection of the laws. Thus, no reason exists for the majority to sustain the challenge of equal protection if none of the petitioners belong to the class, claimed by the majority to be, discriminated against.

Finally, I wish to address the proposition contained in Justice Brion's concurrence— the creation of the Truth Commission has a reasonable objective, albeit accomplished through unreasonable means. According to him, E.O. No. 1 is objectionable on due process grounds as well. He propounds that the "truth-telling" function of the Truth Commission violates due process because it primes the public to accept the findings of the Commission as actual and gospel truth.

Considering all the foregoing discussion, I must, regrettably, disagree with the suggestion. Peculiar to our nation is a verbose Constitution. Herein enshrined are motherhood statements— exhortations for public officers to follow. A quick perusal of E.O. No. 1 bears out a similar intonation. Although the Solicitor General may have made certain declarations, read as admissions by the other Members of this Court, these cannot bind the Supreme Court in interpreting the constitutional grant of executive power. The matter is simply a failure of articulation which cannot be used to diminish the power of the executive. On the whole, the erroneous declarations of the Solicitor General, preempting and interpreting the President's exercise of executive power beyond the articulated purpose of E.O. No. 1, are not equivalent to the wrongful exercise by the President of executive power.

Let me then close this dissertation with *Marcos v. Manglapus*[55] which trailblazed and redefined the extent of judicial review on the powers of the co-equal branches of government, in particular, executive power:

> Under the Constitution, judicial power includes the duty to "determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the party of any branch or instrumentality of the Government." xxx
>
> The present Constitution limits resort to the political question doctrine and broadens the scope of judicial inquiry into areas which the Court, under previous constitutions, would have normally left to the political departments to decide. But nonetheless there remain issues beyond the Court's jurisdiction the determination which is exclusively for the President, for Congress or for the people themselves through a plebiscite or referendum. We cannot, for example, question the President's recognition of a foreign government, no matter how premature or improvident such action may appear. We cannot set aside a presidential pardon though it may appear to us that the beneficiary is totally undeserving of the grant. Nor can we amend the Constitution under the guise of resolving a dispute brought before us because the power is reserved to the people.
>
> There is nothing in the case before us that precludes our determination thereof on the political question doctrine. The deliberation of the Constitutional Commission cited by petitioners show that the framers intended to widen the scope of judicial review but they did not intend courts of justice to settle all actual controversies before them. When political questions are involved, the Constitution limits the determination to whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the official whose action is being questioned. If grave abuse is not established, the Court will not substitute its judgment for that of the official concerned and decide a matter which by its nature or by law is for the latter alone to decide. In this light, it would appear clear that the second paragraph of Article VIII, Section 1 of the Constitution, defining "judicial power," which specifically empowers the courts to determine whether or not there has been a grave abuse of discretion on the part of any branch or instrumentality

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[55] G.R. No. 88211, September 15, 1989, 177 SCRA 668, 695-697.

of the government, incorporates in the fundamental law the ruling in *Lansang v. Garcia* that:

> Article VII of the [1935] Constitution vests in the Executive the power to suspend the privilege of the writ of *habeas corpus* under specified conditions. Pursuant to the principle of separation of powers underlying our system of government, the Executive is supreme within his own sphere. However, the separation of powers, under the Constitution, is not absolute. What is more, it goes hand in hand with the system of checks and balances, under which the Executive is supreme, as regards the suspension of the privilege, but only if and when he acts within the sphere allotted to him by the Basic Law, and the authority to determine whether or not he has so acted is vested in the Judicial Department, which, in this respect, is, in turn, constitutionally supreme.
>
> In the exercise of such authority, the function of the Court is merely to check—not to supplant—the Executive, or to ascertain merely whether he has gone beyond the constitutional limits of his jurisdiction, not to exercise the power vested in him or to determine the wisdom of his act.

It is for the foregoing reasons that I vote to **DISMISS** the petitions.

DISSENTING OPINION

CARPIO, *J.*:

The two petitions before this Court seek to declare void Executive Order No. 1, *Creating the Philippine Truth Commission of 2010* (EO 1), for being unconstitutional.

In G.R. No. 192935, petitioner Louis C. Biraogo (Biraogo), as a Filipino citizen and as a taxpayer, filed a petition under Rule 65 for prohibition and injunction. Biraogo prays for the issuance of a writ of preliminary injunction and temporary restraining order to declare EO 1 unconstitutional, and to direct the Philippine Truth Commission (Truth Commission) to desist from proceeding under the authority of EO 1.

In G.R. No. 193036, petitioners Edcel C. Lagman, Rodolfo B. Albano, Jr., Simeon A. Datumanong, and Orlando B. Fua, Sr. (Lagman, *et al.*), as Members of the House of Representatives, filed a petition under Rule 65 for *certiorari* and prohibition. Petitioners Lagman, *et al.* pray for the issuance of a temporary restraining order or writ of preliminary injunction to declare void EO 1 for being unconstitutional.

The Powers of the President

Petitioners Biraogo and Lagman, *et al.* (collectively petitioners) assail the creation of the Truth Commission. They claim that President Benigno S. Aquino III (President Aquino) has no power to create the Commission. Petitioners' objections are mere sound bites, devoid of sound legal reasoning.

On 30 July 2010, President Aquino issued EO 1 pursuant to Section 31, Chapter 10, Title III, Book III of Executive Order No. 292 (EO 292).[1] Section 31 reads:

> Section 31. ***Continuing Authority of the President to Reorganize his Office***. The President, subject to the policy in the Executive Office and in order to achieve simplicity, economy and efficiency, shall have **continuing authority to reorganize the administrative structure of the Office of the President**. For this purpose, he may take any of the following actions:
>
> (1) **Restructure the internal organization of the Office of the President Proper, including the immediate Offices, the Presidential Special Assistants/Advisers System and the Common Staff Support System, by abolishing, consolidating or merging units thereof or transferring functions from one unit to another**;
>
> (2) Transfer any function under the Office of the President to any other Department or Agency as well as transfer functions to the Office of the President from other Departments and Agencies; and

[1] Also known as the Administrative Code of 1987. One of EO 1's WHEREAS clauses reads: "WHEREAS, Book III, Chapter 10, Section 31 of Executive Order No. 292, otherwise known as the Revised Administrative Code of the Philippines, gives the President the continuing authority to reorganize the Office of the President."

(3) Transfer any agency under the Office of the President to any other department or agency as well as transfer agencies to the Office of the President from other departments or agencies. (Emphasis supplied)

The law expressly grants the President the "**continuing authority to *reorganize* the administrative structure of the Office of the President**," which necessarily includes the power to create offices within the Office of the President Proper. The power of the President to reorganize the Office of the President Proper cannot be disputed as this power is expressly granted to the President by law. Pursuant to this power to reorganize, all Presidents under the 1987 Constitution have created, abolished or merged offices or units within the Office of the President Proper, EO 1 being the most recent instance. This Court explained the rationale behind the President's continuing authority to reorganize the Office of the President Proper in this way:

> x x x The law grants the President this power in recognition of the recurring need of every President to reorganize his office "to achieve simplicity, economy and efficiency." The Office of the President is the nerve center of the Executive Branch. **To remain effective and efficient, the Office of the President must be capable of being shaped and reshaped by the President in the manner he deems fit to carry out his directives and policies. After all, the Office of the President is the command post of the President**. This is the rationale behind the President's continuing authority to reorganize the administrative structure of the Office of the President.[2] (Emphasis supplied)

The Power To Execute Faithfully the Laws

Section 1, Article VI of the 1987 Constitution states that "**[t]he executive power is vested in the President of the Philippines**." Section 17, Article VII of the 1987 Constitution states that "[t]he President shall have control of all the executive departments, bureaus and offices. **He shall ensure that the**

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[2] *Domingo v. Zamora*, 445 Phil. 7, 13 (2003).

laws be faithfully executed."[3] Before he enters office, the President takes the following oath prescribed in Section 5, Article VII of the 1987 Constitution: "I do solemnly swear that I will faithfully and conscientiously fulfill my duties as President of the Philippines, preserve and defend its Constitution, **execute its laws**, do justice to every man, and consecrate myself to the service of the Nation. So help me God."[4]

Executive power is vested **exclusively** in the President. Neither the Judiciary nor the Legislature can execute the law. As ***the*** Executive, the President is mandated not only to execute the law, but also to execute ***faithfully*** the law.

To execute ***faithfully*** the law, the President must first know the facts that justify or require the execution of the law. To know the facts, the President may have to conduct fact-finding investigations. **Otherwise, without knowing the facts, the President may be blindly or negligently, and not faithfully and intelligently, executing the law.**

Due to time and physical constraints, the President cannot obviously conduct by himself the fact-finding investigations. The President will have to delegate the fact-finding function to one or more subordinates. Thus, the President may appoint a single fact-finding investigator, or a collegial body or committee. In recognizing that the President has the power to appoint an investigator to inquire into facts, this Court held:

> Moreover, petitioner cannot claim that his investigation as acting general manager is for the purpose of removing him as such for having already been relieved, the obvious purpose of the investigation is merely to gather facts that may aid the President in finding out why the NARIC failed to attain its objectives, particularly in the stabilization of the prices of rice and corn**. His investigation is, therefore, not punitive, but merely an inquiry into matters which the President is entitled to know so that he can be properly guided in the performance of his duties relative to the execution and enforcement of the laws of the land.** ***In this sense, the President***

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[3] Emphasis supplied.

[4] Emphasis supplied. President Aquino took his oath in Filipino.

may authorize the appointment of an investigator of petitioner Rodriguez in his capacity as acting general manager even if under the law the authority to appoint him and discipline him belongs to the NARIC Board of Directors. The petition for prohibition, therefore, has no merit.[5] (Boldfacing and italicization supplied)

The Power To Find Facts

The power to find facts, or to conduct fact-finding investigations, is **necessary and proper**, and thus ***inherent*** in the President's power to execute faithfully the law. Indeed, the power to find facts is inherent not only in Executive power, but also in Legislative as well as Judicial power. The Legislature cannot sensibly enact a law without knowing the factual milieu upon which the law is to operate. Likewise, the courts cannot render justice without knowing the facts of the case if the issue is not purely legal. Petitioner Lagman admitted this during the oral arguments:

ASSOCIATE JUSTICE CARPIO:
x x x The power to fact-find is inherent in the legislature, correct? I mean, before you can pass a law, you must determine the facts. So, it's essential that you have to determine the facts to pass a law, and therefore, the power to fact-find is inherent in legislative power, correct?

CONGRESSMAN LAGMAN:
Yes, Your Honor.

ASSOCIATE JUSTICE CARPIO:
And it is also inherent in judicial power, we must know the facts to render a decision, correct?

CONGRESSMAN LAGMAN:
Yes, Your Honor.

ASSOCIATE JUSTICE CARPIO:
And it is also inherent in executive power that [the] President has to know the facts so that he can faithfully execute the laws, correct?

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[5] *Rodriguez, et al. v. Santos Diaz, et al.*, 119 Phil. 723, 727-728 (1964).

CONGRESSMAN LAGMAN:
Yes, Your Honor, in that context (interrupted).

ASSOCIATE JUSTICE CARPIO:
So (interrupted)

CONGRESSMAN LAGMAN:
Your Honor, in that context, the legislature has the inherent power to make factual inquiries in aid of legislation. In the case of the Supreme Court and the other courts, the power to inquire into facts [is] in aid of adjudication. And in the case of the Office of the President, or the President himself [has the power] to inquire into the facts in order to execute the laws.[6]

Being an inherent power, there is no need to confer explicitly on the President, in the Constitution or in the statutes, the power to find facts. *Evangelista v. Jarencio*[7] underscored the importance of the power to find facts or to investigate:

It has been essayed that the lifeblood of the administrative process is the flow of fact[s], the gathering, the organization and the analysis of evidence. **Investigations are useful for all administrative functions, not only for rule making, adjudication, and licensing, but also for prosecuting, for supervising and directing, for determining general policy, for recommending legislation, and for purposes no more specific than illuminating obscure areas to find out what if anything should be done.** An administrative agency may be authorized to make investigations, not only in proceedings of a legislative or judicial nature, but also in proceedings whose sole purpose is to obtain information upon which future action of a legislative or judicial nature may be taken and may require the attendance of witnesses in proceedings of a purely investigatory nature. It may conduct general inquiries into evils calling for correction, and to report findings to appropriate bodies and make recommendations for actions. (Emphasis supplied)

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[6] TSN, 7 September 2010, pp. 56-57.

[7] G.R. No. L-29274, 27 November 1975, 68 SCRA 99, 104.

The Power To Create
A Public Office

The creation of a public office must be distinguished from the creation of an *ad hoc* fact-finding public body.

The power to create a public office is undeniably a legislative power. There are two ways by which a public office is created: (1) by law, or (2) by delegation of law, as found in the President's authority to reorganize his Office. The President as the Executive does not inherently possess the power to reorganize the Executive branch. However, the Legislature has delegated to the President the power to create public offices within the Office of the President Proper, as provided in Section 31(1), Chapter 10, Title III, Book III of EO 292.

Thus, the President can create the Truth Commission as a public office in his Office pursuant to his power to reorganize the Office of the President Proper.[8] In such a case, the President is exercising his delegated power to create a public office within the Office of the President Proper. There is no dispute that the President possesses this delegated power.

In the alternative, the President can also create the Truth Commission as an *ad hoc* body to conduct a fact-finding investigation pursuant to the President's inherent power to find facts as basis to execute faithfully the law. The creation of such *ad hoc* fact-finding body is indisputably **necessary and proper** for the President to execute faithfully the law. In such a case, members of the Truth Commission may be appointed as Special Assistants or Advisers of the President,[9] and then

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[8] Section 31, Chapter 10, Title III, Book III of EO 292, quoted on page 2.

[9] Section 22, Chapter 8, Title II, Book III of EO 292 reads:

Section 22. *Office of the President Proper.* (1) The Office of the President Proper shall consist of the Private Office, the Executive Office, the Common Staff Support System, and the Presidential Special Assistants/Advisers System;

(2) The Executive Office refers to the Offices of the Executive Secretary, Deputy Executive Secretaries and Assistant Executive Secretaries;

assigned to conduct a fact-finding investigation. The President can appoint as many Special Assistants or Advisers as he may need.[10] There is no public office created and members of the Truth Commission are incumbents already holding public office in government. These incumbents are given an assignment by the President to be members of the Truth Commission. Thus, the Truth Commission is merely an *ad hoc* body assigned to conduct a fact-finding investigation.

The creation of *ad hoc* fact-finding bodies is a ***routine occurrence*** in the Executive and even in the Judicial branches of government. Whenever there is a complaint against a government official or employee, the Department Secretary, head of agency or head of a local government unit usually creates a fact-finding body whose members are incumbent officials in the same department, agency or local government unit.[11] This is also true in the Judiciary, where this Court routinely appoints a fact-finding investigator, drawn from incumbent Judges or Justices (or even retired Judges or Justices who are appointed consultants in the Office of the Court Administrator), to investigate complaints against incumbent officials or employees in the Judiciary.

The creation of such *ad hoc* investigating bodies, as well as the appointment of *ad hoc* investigators, does not result in the

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(3) The Common Staff Support System embraces the offices or units under the general categories of development and management, general government administration and internal administration; and

(4) The Presidential Special Assistants/Advisers System includes such special assistants or advisers as may be needed by the President." (Emphasis supplied)

[10] Section 22(4), *Id*.

[11] Section 47(2), Chapter 6, Book V of EO 292 provides:

Section 47. *Disciplinary Jurisdiction*. —

x x x x x x x x x

(2) The Secretaries and heads of agencies and instrumentalities, provinces, cities and municipalities shall have **jurisdiction to investigate** and decide matters involving disciplinary action against officers and employees under their jurisdiction. x x x. (Emphasis supplied)

creation of a public office. In creating *ad hoc* investigatory bodies or appointing *ad hoc* investigators, executive and judicial officials do not create public offices but merely exercise a power inherent in their primary constitutional or statutory functions, which may be to execute the law, to exercise disciplinary authority, or both. These fact-finding bodies and investigators are not permanent bodies or functionaries, unlike public offices or their occupants. There is no separate compensation, other than *per diems* or allowances, for those designated as members of *ad hoc* investigating bodies or as *ad hoc* investigators.

Presidential Decree No. 1416 (PD 1416) cannot be used as basis of the President's power to reorganize his Office or create the Truth Commission. PD 1416, as amended, delegates to the President "continuing authority to reorganize the National Government,"[12] which means the Executive, Legislative and

[12] Paragraph 1 of PD 1416, as amended, provides:

1. **The President of the Philippines shall have continuing authority to reorganize the National Government.** In exercising this authority, the President shall be guided by generally acceptable principles of good government and responsive national development, including but not limited to the following guidelines for a more efficient, effective, economical and development-oriented governmental framework:

   (a) More effective planning, implementation, and review functions;

   (b) Greater decentralization and responsiveness in the decision-making process;

   (c) Further minimization, if not elimination, of duplication or overlapping of purposes, functions, activities, and programs;

   (d) Further development of as standardized as possible ministerial, sub-ministerial and corporate organizational structures;

   (e) Further development of the regionalization process; and

   (f) Further rationalization of the functions of and administrative relationship among government entities.

For purposes of this Decree, the coverage of the continuing authority of the President to reorganize shall be interpreted to encompass all agencies, entities, instrumentalities, and units of the National Government, including all government-owned or controlled corporations, as well as the entire range of the powers, functions, authorities, administrative relationships, and related aspects pertaining to these agencies, entities, instrumentalities, and units.

Judicial branches of government, in addition to the independent constitutional bodies. Such delegation can exist only in a dictatorial regime, not under a democratic government founded on the separation of powers. The other powers granted to the President under PD 1416, as amended, like the power to transfer appropriations without conditions and the power to standardize salaries, are also contrary to the provisions of the 1987 Constitution.[13] PD 1416, which was promulgated during the Martial Law regime to facilitate the transition from the presidential to a parliamentary form of government under the 1973 Constitution,[14] is now *functus officio* and deemed repealed upon the ratification of the 1987 Constitution.

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2. For this purpose, the President may, at his discretion, take the following actions:

   (a) Group, coordinate, consolidate or integrate departments, bureaus, offices, agencies, instrumentalities and functions of the government;

   (b) Abolish departments, offices, agencies or functions which may not be necessary, or create those which are necessary, for the efficient conduct of government functions services and activities;

   (c) **Transfer** functions, **appropriations**, equipment, properties, records and personnel from one department, bureau, office, agency or instrumentality to another;

   (d) Create, classify, combine, split, and abolish positions;

   (e) **Standardize salaries**, materials and equipment;

   (f) Create, abolish, group, consolidate, merge, or integrate entities, agencies, instrumentalities, and units of the National Government, as well as expand, amend, change, or otherwise modify their powers, functions and authorities, including, with respect to government-owned or controlled corporations, their corporate life, capitalization, and other relevant aspects of their charters; and

   (g) Take such other related actions as may be necessary to carry out the purposes and objectives of this Decree. (Emphasis supplied)

[13] Paragraph 1 (c) and (e), PD 1416, as amended.

[14] The clause states: "WHEREAS, the transition towards the parliamentary form of government will necessitate flexibility in the organization of the national government."

The President's power to create *ad hoc* fact-finding bodies does not emanate from the President's power of control over the Executive branch. The President's power of control is the power to reverse, revise or modify the decisions of subordinate executive officials, or substitute his own decision for that of his subordinate, or even make the decision himself without waiting for the action of his subordinate.[15] This power of control does not involve the power to create a public office. Neither does the President's power to find facts or his broader power to execute the laws give the President the power to create a public office. The President can exercise the power to find facts or to execute the laws without creating a public office.

Objections to EO 1

There Is No Usurpation of Congress' Power To Appropriate Funds

Petitioners Lagman, *et al.* argue that EO 1 usurps the exclusive power of Congress to appropriate funds because it gives the President the power to appropriate funds for the operations of the Truth Commission. Petitioners Lagman, *et al.* add that no particular source of funding is identified and that the amount of funds to be used is not specified.

Congress is exclusively vested with the "power of the purse," recognized in the constitutional provision that "no money shall be paid out of the Treasury except in pursuance of an appropriation made by law."[16] The specific purpose of an appropriation law is to authorize the release of unappropriated public funds from the National Treasury.[17]

Section 11 of EO 1 merely states that "the Office of the President shall provide the necessary funds for the Commission

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[15] *Aurillo v. Rabi*, 441 Phil. 117 (2002); *Drilon v. Lim*, G.R. No. 112497, 4 August 1994, 235 SCRA 135; *Mondano v. Silvosa, etc., et al.*, 97 Phil. 143 (1955).

[16] Section 29(1), Article VI, 1987 Constitution.

[17] *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, G.R. No. 78742, 14 July 1989, 175 SCRA 343.

to ensure that it can exercise its powers, execute its functions, and perform its duties and responsibilities as effectively, efficiently, and expeditiously as possible." Section 11 does not direct the National Treasurer to release unappropriated funds in the National Treasury to finance the operations of the Truth Commission. Section 11 does not also say that the President is appropriating, or is empowered to appropriate, funds from the unappropriated funds in the National Treasury. Clearly, there is absolutely no language in EO 1 appropriating, or empowering the President to appropriate, unappropriated funds in the National Treasury.

Section 11 of EO 1 merely states that the Office of the President shall fund the operations of the Truth Commission. Under EO 1, the funds to be spent for the operations of the Truth Commission have already been appropriated by Congress to the Office of the President under the current General Appropriations Act. The budget for the Office of the President under the annual General Appropriations Act always contains a Contingent Fund[18] that can fund the operations of *ad hoc* investigating bodies like the Truth Commission. In this case, there is no appropriation but merely a disbursement by the President of funds that Congress had already appropriated for the Office of the President.

The Truth Commission Is Not A Quasi-Judicial Body

While petitioners Lagman, *et al.* insist that the Truth Commission is a quasi-judicial body, they admit that there is no specific provision in EO 1 that states that the Truth Commission has quasi-judicial powers.[19]

ASSOCIATE JUSTICE CARPIO:

Okay. Now. Let's tackle that issue. Where in the Executive Order is it stated that [the Truth Commission] has a quasi-judicial power? Show me the provision.

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[18] See Special Provision No. 2, General Appropriations Act of 2010 or Republic Act No. 9970.

[19] TSN, 7 September 2010, p. 61.

CONGRESSMAN LAGMAN:
There is no exact provision.

There is no language in EO 1 granting the Truth Commission quasi-judicial power, ***whether expressly or impliedly***, because the Truth Commission is not, and was never intended to be, a quasi-judicial body. The power of the President to create offices within the Office of the President Proper is a power to create only executive or administrative offices, not quasi-judicial offices or bodies. Undeniably, a quasi-judicial office or body can only be created by the Legislature. The Truth Commission, as created under EO 1, is not a quasi-judicial body and is not vested with any quasi-judicial power or function.

The exercise of quasi-judicial functions involves the determination, with respect to the matter in controversy, of what the law is, what the legal rights and obligations of the contending parties are, and based thereon and the facts obtaining, **the adjudication of the respective rights and obligations of the parties**.[20] The tribunal, board or officer exercising quasi-judicial functions must be clothed with the power to pass judgment on the controversy.[21] ***In short, quasi-judicial power is the power of an administrative body to adjudicate the rights and obligations of parties under its jurisdiction in a manner that is final and binding, unless there is a proper appeal.*** In the recent case of *Bedol v. Commission on Elections*,[22] this Court declared:

Quasi-judicial or administrative adjudicatory power on the other hand is the power of the administrative agency *to adjudicate the rights of persons before it.* It is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself

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[20] *Doran v. Executive Judge Luczon*, Jr., G.R. No. 151344, 26 September 2006, 503 SCRA 106.

[21] *Id*.

[22] G.R. No. 179830, 3 December 2009, 606 SCRA 554, citing *Dole Philippines Inc. v. Esteva*, G.R. No. 161115, 30 November 2006, 509 SCRA 332.

in enforcing and administering the same law. The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act which is essentially of an executive or administrative nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it. In carrying out their quasi-judicial functions the administrative officers or bodies are required to investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature.[23] (Emphasis supplied)

Under EO 1, the Truth Commission primarily investigates reports of graft and corruption and recommends the appropriate actions to be taken. Thus, Section 2 of EO 1 states that the Truth Commission is "***primarily tasked to conduct a thorough fact-finding investigation* of reported cases of graft and corruption and thereafter *submit its findings and recommendations to the President, Congress and the Ombudsman***." The President, Congress and the Ombudsman are not bound by the findings and recommendations of the Truth Commission. Neither are the parties subject of the fact-finding investigation bound by the findings and recommendations of the Truth Commission.

Clearly, the function of the Truth Commission is merely **investigative** and **recommendatory** in nature. The Truth Commission has no power to adjudicate the rights and obligations of the persons who come before it. **Nothing whatsoever in EO 1 gives the Truth Commission quasi-judicial power, expressly or impliedly**. In short, the Truth Commission is not a quasi-judicial body because it does not exercise the quasi-judicial power to bind parties before it with its actions or decisions.

The creation of the Truth Commission has three distinct purposes since it is tasked to submit its findings to the President, Congress and the Ombudsman. The Truth Commission will submit its findings to the President so that the President can

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[23] *Id.* at 570-571.

faithfully execute the law. For example, the Truth Commission may recommend to the President that Department Secretaries should personally approve disbursements of funds in certain contracts or projects above a certain amount and not delegate such function to their Undersecretaries.[24] The Truth Commission will also submit its findings to Congress for the possible enactment by Congress of remedial legislation. For example, Congress may pass a law penalizing Department Secretaries who delegate to their Undersecretaries the approval of disbursement of funds contrary to the directive of the President. Lastly, the Truth Commission will submit its findings to the Ombudsman for possible further investigation of those who may have violated the law. The Ombudsman may either conduct a further investigation or simply ignore the findings of the Truth Commission. Incidentally, the Ombudsman has publicly stated that she supports the creation of the Truth Commission and that she will cooperate with its investigation.[25]

That EO 1 declares that the Truth Commission "will act as an independent collegial body" cannot invalidate EO 1. This provision merely means that the President will not dictate on the members of the Truth Commission on what their findings and recommendations should be. The Truth Commission is free to come out with its own findings and recommendations, free from any interference or pressure from the President. Of course, as EO 1 expressly provides, the President, Congress and the Ombudsman are not bound by such findings and recommendations.

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[24] Section 65, Chapter 13, Book IV of EO 292 merely provides:

Section 65. *Approval of other types of Government Contracts*. — All other types of government contracts which are not within the coverage of this Chapter shall, in the absence of a special provision, be executed with the approval of the Secretary or by the head of the bureau or office having control of the appropriation against which the contract would create a charge. Such contracts shall be processed and approved in accordance with existing laws, rules and regulations.

[25] http://www.mb.com.ph/node/270641/ombud, accessed on 19 November 2010.

There Is No Usurpation of the Powers of the Ombudsman

Petitioners Lagman, *et al.* argue that since the Ombudsman has the exclusive jurisdiction to investigate graft and corruption cases, the Truth Commission encroaches on this exclusive power of the Ombudsman.

There are three types of fact-finding investigations in the Executive branch. *First*, there is the purely fact-finding investigation the purpose of which is to establish the facts as basis for future executive action, excluding the determination of administrative culpability or the determination of probable cause. *Second*, there is the administrative investigation to determine administrative culpabilities of public officials and employees. *Third*, there is the preliminary investigation whose sole purpose is to determine probable cause as to the existence and perpetrator of a crime. These three types of fact-finding investigations are separate and distinct investigations.

A purely fact-finding investigation under the Office of the President is the first type of fact-finding investigation. Such fact-finding investigation has three distinct objectives. The first is to improve administrative procedures and efficiency, institute administrative measures to prevent corruption, and recommend policy options — all with the objective of enabling the President to execute faithfully the law. The second is to recommend to Congress possible legislation in response to new conditions brought to light in the fact-finding investigation. The third is to recommend to the head of office the filing of a formal administrative charge, or the filing of a criminal complaint before the prosecutor.

Under the third objective, the fact-finding investigation is merely a gathering and evaluation of facts to determine whether there is sufficient basis to proceed with a formal administrative charge, or the filing of a criminal complaint before the prosecutor who will conduct a preliminary investigation. This purely fact-finding investigation does not determine administrative culpability or the existence of probable cause. The fact-finding investigation comes ***before*** an administrative investigation or preliminary

investigation, where administrative culpability or probable cause, respectively, is determined.

On the other hand, an administrative investigation follows, and takes up, the recommendation of a purely fact-finding investigation to charge formally a public official or employee for possible misconduct in office. Similarly, a preliminary investigation is an inquiry to determine whether there is sufficient ground to believe that a crime has been committed and that the respondent is probably guilty of such crime, and should be held for trial.[26] A preliminary investigation's sole purpose is to determine whether there is probable cause to charge a person for a crime.

Section 15 of Republic Act No. 6770[27] provides:

SEC. 15. *Powers, Functions and Duties*. — The Office of the Ombudsman shall have the following powers, functions and duties: x x x

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency when such act or omission appears to be illegal, unjust, improper or inefficient. **It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of his primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases**; x x x (Emphasis supplied)

The Ombudsman has "**primary jurisdiction over cases *cognizable* by the Sandiganbayan**." The cases cognizable by the Sandiganbayan are criminal cases as well as quasi-criminal cases like the forfeiture of unexplained wealth.[28] "[I]n the exercise of this primary jurisdiction" over cases cognizable by the

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[26] Section 1, Rule 112, Rules of Court.

[27] "An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes." Also known as "The Ombudsman Act of 1989."

[28] Republic Act No. 8249, entitled "An Act Further Defining the Jurisdiction of the Sandiganbayan, Amending For the Purpose Presidential Decree No. 1606, as Amended, Providing Funds Therefore, and For Other Purposes." Approved on 5 February 1997.

Sandiganbayan, the Ombudsman "may take over x x x the investigation of such cases" from any investigatory agency of the Government. **The cases covered by the "*primary jurisdiction*" of the Ombudsman are criminal or quasi-criminal cases but not administrative cases**. Administrative cases, such as administrative disciplinary cases, are not cognizable by the Sandiganbayan. With more reason, purely fact-finding investigations conducted by the Executive branch are not cognizable by the Sandiganbayan.

Purely fact-finding investigations to improve administrative procedures and efficiency, to institute administrative measures to prevent corruption, to provide the President with policy options, to recommend to Congress remedial legislation, and even to determine whether there is basis to file a formal administrative charge against a government official or employee, do not fall under the "primary jurisdiction" of the Ombudsman. **These fact-finding investigations do not involve criminal or quasi-criminal cases cognizable by the Sandiganbayan**.

If the Ombudsman has the power to take-over purely fact-finding investigations from the President or his subordinates, then the President will become inutile. The President will be wholly dependent on the Ombudsman, waiting for the Ombudsman to establish the facts before the President can act to execute faithfully the law. The Constitution does not vest such power in the Ombudsman. No statute grants the Ombudsman such power, and if there were, such law would be unconstitutional for usurping the power of the President to find facts necessary and proper to his faithful execution of the law.

Besides, if the Ombudsman has the ***exclusive*** power to conduct fact-finding investigations, then even the Judiciary and the Legislature cannot perform their fundamental functions without the action or approval of the Ombudsman. While the Constitution grants the Office of the Ombudsman the power to "[i]nvestigate on its own x x x any act or omission of any public official, employee, office or agency,"[29] such power is **not exclusive**.

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[29] Section 13(1), Article XI, Constitution.

To hold that such investigatory power is exclusive to the Ombudsman is to make the Executive, Legislative and Judiciary wholly dependent on the Ombudsman for the performance of their Executive, Legislative and Judicial functions.

Even in investigations involving criminal and quasi-criminal cases cognizable by the Sandiganbayan, the Ombudsman does not have exclusive jurisdiction to conduct preliminary investigations. In *Honasan II v. The Panel of Investigating Prosecutors of the Department of Justice*,[30] this Court held:

> **In summation, the Constitution, Section 15 of the Ombudsman Act of 1989 and Section 4 of the Sandiganbayan Law, as amended**, **do not give to the Ombudsman exclusive jurisdiction to investigate offenses committed by public officers or employees**. The authority of the Ombudsman to investigate offenses involving public officers or employees is concurrent with other government investigating agencies such as provincial, city and state prosecutors. However, the Ombudsman, in the exercise of its primary jurisdiction over cases cognizable by the Sandiganbayan, may take over, at any stage, from any investigating agency of the government, the investigation of such cases.[31] (Emphasis supplied)

To repeat, *Honasan II* categorically ruled that "**the Constitution, Section 15 of the Ombudsman Act of 1989 and Section 4 of the Sandiganbayan Law, as amended, do not give the Ombudsman exclusive jurisdiction to investigate offenses committed by public officials and employees.**"

The *concurrent jurisdiction* of the Ombudsman refers to the conduct of a *preliminary investigation* to determine if there is probable cause to charge a public officer or employee with an offense, not to the conduct of a purely administrative fact-finding investigation that does not involve the determination of probable cause.[32] The Truth Commission is a purely fact-finding body that does not determine the existence of probable cause.

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[30] G.R. No. 159747, 13 April 2004, 427 SCRA 46.

[31] *Id.* at 70.

[32] *Id*.

There is no accused or even a suspect before the Truth Commission, which merely conducts a general inquiry on reported cases of graft and corruption. No one will even be under custodial investigation before the Truth Commission.[33] Thus, the claim that the Truth Commission is usurping the investigatory power of the Ombudsman, or of any other government official, has no basis whatsoever.

In ***criminal fact-finding investigations***, the law expressly vests in the Philippine National Police (PNP) and the National Bureau of Investigation (NBI) investigatory powers. Section 24 of Republic Act No. 6975[34] provides:

> Section 24. Powers and Functions — The PNP shall have the following powers and duties:
>
> (a) x x x x x x x x x
> x x x x x x x x x
>
> (c) **Investigate** and prevent **crimes**, effect the arrest of criminal offenders, bring offenders to justice, and assist in their prosecution;
>
> x x x x x x x x x.
>
> (Emphasis supplied)

Section 1 of Republic Act No. 157 also provides:

> Section 1. There is hereby created a Bureau of Investigation under the Department of Justice which shall have the following functions:
>
> (a) **To undertake investigation of crimes and other offenses** against the laws of the Philippines, upon its own initiative and as public interest may require;
>
> x x x. (Emphasis supplied)

The PNP and the NBI are under the **control** of the President. Indisputably, the President can at any time direct the PNP and NBI, whether singly, jointly or in coordination with other

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[33] *People vs. Morial*, 415 Phil. 310 (2001).

[34] An Act Establishing The Philippine National Police Under A Reorganized Department of Interior and Local Government And For Other Purposes. Also known as the Philippine National Police Law or the Department of Interior and Local Government Act of 1990.

government bodies, to investigate possible violations of penal laws, whether committed by public officials or private individuals. To say that the Ombudsman has the exclusive power to conduct fact-finding investigations of crimes involving public officials and employees is to immobilize our law-enforcement agencies and allow graft and corruption to run riot. The fact-finding arm of the Department of Justice (DOJ) to investigate crimes, whether committed by public or private parties, is the NBI.[35] The DOJ Proper does not conduct fact-finding investigations of crimes, but only preliminary investigations.

The Truth Commission Has Subpoena Powers

Section 2 of EO 1 provides that the Truth Commission shall have all the powers of an investigative body under Section 37, Chapter 9, Book I of EO 292, which reads:

> Sec. 37. *Powers Incidental to Taking of Testimony*. — When authority to take testimony or receive evidence is conferred upon any administrative officer or any non-judicial person, committee, or other body, **such authority shall include the power to administer oaths, summon witnesses, and require the production of documents by a *subpoena duces tecum***. (Emphasis supplied)

Section 2(e) of EO 1 confers on the Truth Commission the power to "[i]nvite or subpoena witnesses and take their testimonies and for that purpose, administer oaths or affirmation as the case may be." Thus, the Truth Commission, a body authorized to take testimony, can administer oaths and issue subpoena and *subpoena duces tecum* pursuant to Section 37, Chapter 9, Book I of EO 292. In fact, this power to administer oaths and

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[35] Section 3, Chapter I, Title III, Book IV of EO 292 provides:

> Section 3. *Powers and Functions*. — To accomplish its mandate, the Department (DOJ) shall have the following powers and functions:
>
> (1) x x x x x x x x x
>
> (2) Investigate the commission of crimes, prosecute offenders and administer the probation and correction system;
>
> x x x x x x x x x.

to issue subpoena and *subpoena duces tecum* is a power of every administrative fact-finding investigative body created in the Executive, Legislative or Judicial branch. **Section 37, Chapter 9, Book I of EO 292 grants such power to every fact-finding body so created**.

The Truth Commission
Has No Contempt Powers

Section 9 of EO 1 provides:

> Section 9. *Refusal to Obey Subpoena, Take Oath or Give Testimony.* Any government official or personnel who, without lawful excuse, fails to appear upon subpoena issued by the Commission or who, appearing before the Commission refuses to take oath or affirmation, give testimony or produce documents for inspection, when required, shall be subject to administrative disciplinary action. Any private person who does the same may be dealt with in accordance with law.

There is no provision in EO 1 that gives the Truth Commission the power to cite persons for contempt. As explained by Solicitor General Jose Anselmo I. Cadiz, if the person who refuses to obey the subpoena, take oath or give testimony is a public officer, he can be charged with "defiance of a lawful order,"[36] which should mean insubordination[37] if his superior had ordered him to obey the subpoena of the Truth Commission. If the person is not a public officer or employee, he can only be dealt with in accordance with law, which should mean that the Truth Commission could file a petition with the proper court to cite such private person in contempt pursuant to Sections 1[38] and

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[36] TSN, 28 September 2010, pp. 41-42.

[37] Section 46(25), Chapter 7, Book V, EO 292.

[38] Section 1, Rule 21 of the Rules of Court provides:

> SEC. 1. *Subpoena and Subpoena duces tecum*. — Subpoena is a process directed to a person requiring him to attend and to testify at the hearing or trial of an action, **or at any investigation conducted by competent authority**, or for the taking of his deposition. It may also require him to bring with him any books, documents, or other things under his control, in which case it is called a *subpoena duces tecum*. (Emphasis supplied)

9[39] of Rule 21 of the Rules of Court.

However, the mere fact that the Truth Commission, by itself, has no coercive power to compel any one, whether a government employee or a private individual, to testify before the Commission does not invalidate the creation by the President, or by the Judiciary or Legislature, of a purely administrative fact-finding investigative body. There are witnesses who may voluntarily testify, and bring relevant documents, before such fact-finding body. The fact-finding body may even rely only on official records of the government. To require every administrative fact-finding body to have coercive or contempt powers is to invalidate all administrative fact-finding bodies created by the Executive, Legislative and Judicial branches of government.

The Name "Truth Commission" Cannot Invalidate EO 1

There is much ado about the words "Truth Commission" as the name of the fact-finding body created under EO 1. **There is no law or rule prescribing how a fact-finding body should be named.** In fact, there is no law or rule prescribing how permanent government commissions, offices, or entities should be named.[40] **There is also no law or rule prohibiting the use of the words "Truth Commission" as the name of a fact-finding body.** Most fact-finding bodies are named, either officially or unofficially, after the chairperson of such body, which by itself, will not give any clue as to the nature, powers or functions of the body. Thus, the name Feliciano Commission or Melo

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[39] Section 9, Rule 21 of the Rules of Court provides:

SEC. 9. **Contempt**. Failure by any person without adequate cause to obey a subpoena served upon him shall be deemed a contempt of court from which the subpoena is issued. **If the subpoena was not issued by a court, the disobedience thereto shall be punished in accordance with the applicable law or Rule**. (Emphasis supplied)

[40] In sharp contrast, Section 26(1), Article VI of the Constitution provides: "Every bill passed by the Congress shall embrace only one subject which shall be expressed in the title thereof." Thus, the title of a bill must express the subject of the bill.

Commission, by itself, does not indicate what the commission is all about. Naming the present fact-finding body as the "Truth Commission" is more descriptive than naming it the Davide Commission after the name of its chairperson.

The name of a government commission, office or entity does not determine its nature, powers or functions. The specific provisions of the charter creating the commission, office or entity determine its nature, powers or functions. The name of the commission, office or entity is not important and may even be misleading. For example, the term Ombudsman connotes a male official but no one in his right mind will argue that a female cannot be an Ombudsman. In fact, the present Ombudsman is not a man but a woman. In the private sector, the name of a corporation may not even indicate what the corporation is all about. Thus, Apple Corporation is not in the business of selling apples or even oranges. An individual may be named Honesto but he may be anything but honest. **All this tells us that in determining the nature, powers or functions of a commission, office or entity, courts should not be fixated by its name but should examine what it is tasked or empowered to do.**

In any event, there is nothing inherently wrong in the words "Truth Commission" as the name of a fact-finding body. The primary purpose of every fact-finding body is to establish the facts. The facts lead to, or even constitute, the truth. In essence, to establish the facts is to establish the truth. Thus, the name "Truth Commission" is as appropriate as the name "Fact-Finding Commission." If the name of the commission created in EO 1 is changed to "Fact-Finding Commission," the nature, powers and functions of the commission will remain exactly the same. This simply shows that the name of the commission created under EO 1 is not important, and any esoteric discourse on the ramifications of the name "Truth Commission" is merely an academic exercise. Of course, the name "Truth Commission" is more appealing than the worn-out name "Fact-Finding Commission." Courts, however, cannot invalidate a law or executive issuance just because its draftsman has a flair for catchy words and a disdain for trite ones. Under the law, a

fact-finding commission by any other name is a fact-finding commission.[41]

The Public Will Not Be Deceived that Findings of Truth Commission Are Final

The fear that the public will automatically perceive the findings of the Truth Commission as the "truth," and any subsequent contrary findings by the Ombudsman or Sandiganbayan as the "untruth," is misplaced. *First*, EO 1 is unequivocally clear that the findings of the Truth Commission are neither final nor binding on the Ombudsman, more so on the Sandiganbayan which is not even mentioned in EO 1. No one reading EO 1 can possibly be deceived or misled that the Ombudsman or the Sandiganbayan are bound by the findings of the Truth Commission.

Second, even if the Truth Commission is renamed the "Fact-Finding Commission," the same argument can also be raised — that the public may automatically perceive the findings of the Fact-Finding Commission as the unquestionable "facts," and any subsequent contrary findings by the Ombudsman or Sandiganbayan as "non-factual." This argument is bereft of merit because the public can easily read and understand what EO 1 expressly says — that the findings of the Truth Commission are not final or binding but merely recommendatory.

Third, the Filipino people are familiar with the Agrava Board,[42] a fact-finding body that investigated the assassination of former Senator Benigno S. Aquino, Jr. The people know that the findings of the Agrava Board were not binding on the then Tanodbayan or the Sandiganbayan. The Agrava Board recommended for prosecution 26 named individuals[43] but the Tanodbayan charged

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[41] With apologies to William Shakespeare. These are the lines in *Romeo and Juliet*: "What's in a name? That which we call a rose by any other name would smell as sweet."

[42] Created by Presidential Decree No. 1886 dated 14 October 1983.

[43] The Majority Opinion of the Agrava Board recommended for prosecution 26 named individuals, including Gen. Fabian Ver. The Minority Opinion of Chairperson Corazon Agrava recommended for prosecution only 7 named individuals, excluding Gen. Ver.

40 named individuals[44] before the Sandiganbayan. On the other hand, the Sandiganbayan convicted only 16 of those charged by the Tanodbayan and acquitted 20 of the accused.[45]

Fourth, as most Filipinos know, many persons who undergo preliminary investigation and are charged for commission of crimes are eventually acquitted by the trial courts, and even by the appellate courts. In short, the fear that the public will be misled that the findings of the Truth Commission is the unerring gospel truth is more imagined than real.

EO 1 Does Not Violate
The Equal Protection Clause

Petitioners Lagman, *et al*. argue that EO 1 violates the equal protection clause because the investigation of the Truth Commission is limited to alleged acts of graft and corruption during the Arroyo administration.

A reading of Section 17 of EO 1 readily shows that the Truth Commission's investigation is not limited to the Arroyo administration. Section 17 of EO 1 provides:

> Section 17. *Special Provision Concerning Mandate*. If and when in the judgment of the President there is a need to expand the mandate of the Commission as defined in Section 1 hereof **to include the investigation of cases and instances of graft and corruption during the prior administrations, such mandate may be extended accordingly by way of a supplemental Executive Order**. (Emphasis supplied)

The President can expand the mandate of the Truth Commission to investigate alleged graft and corruption cases of other past administrations **even as its primary task is to investigate the Arroyo administration**. EO 1 does not confine the mandate of the Truth Commission solely to alleged acts of graft and corruption during the Arroyo Administration.

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[44] Excluding those charged as "John Does."

[45] One of the accused died during the trial and three remained at large.

Section 17 of EO 1 is the ***same*** as Section 2(b) of Executive Order No. 1 dated 28 February 1986 issued by President Corazon Aquino creating the Presidential Commission on Good Government (PCGG Charter). Section 2(b) of the PCGG Charter provides:

> Section 2. The Commission shall be charged with the task of assisting the President in regard to the following matters:
>
> (a) The recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates xxx.
>
> **(b) The investigation of such cases of graft and corruption as the President may assign to the Commission from time to time**.
>
> x x x x x x x x x.
> (Emphasis supplied)

Thus, under Section 2(b) of the PCGG Charter, the President can expand the investigation of the PCCG **even as its primary task is to recover the ill-gotten wealth of the Marcoses and their cronies**. Both EO 1 and the PCGG Charter have the same provisions on the scope of their investigations. Both the Truth Commission and the PCGG are primarily tasked to conduct specific investigations, with their mandates subject to expansion by the President from time to time. This Court has consistently upheld the constitutionality of the PCGG Charter.[46]

Like Section 2(b) of the PCGG Charter, Section 17 of EO 1 merely ***prioritizes*** the investigation of acts of graft and corruption that may have taken place during the Arroyo administration. If time allows, the President may extend the mandate of the Truth Commission to investigate other administrations prior to the Arroyo administration. **The prioritization of such work or assignment does not violate the equal protection clause because *the prioritization is based on reasonable grounds***.

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[46] *Virata v. Sandiganbayan*, G.R. No. 86926, 15 October 1991, 202 SCRA 680; *PCGG v. Peña*, 243 Phil. 93 (1988); and *Baseco v. PCGG*, 234 Phil. 180 (1987).

First, the prescriptive period for the most serious acts of graft and corruption under the Revised Penal Code is 20 years,[47] 15 years for offenses punishable under the Anti-Graft and Corrupt Practices Act,[48] and 12 years for offenses punishable under special penal laws that do not expressly provide for prescriptive periods.[49] Any investigation will have to focus on alleged acts of graft and corruption within the last 20 years, almost half of which or 9 years is under the Arroyo administration.

While it is true that the prescriptive period is counted from the time of discovery of the offense, the "reported cases"[50] of "large scale corruption"[51] involving "third level public officers and higher,"[52] which the Truth Commission will investigate, have already been **widely reported in media**, and many of these reported cases have even been investigated by the House of Representatives or the Senate. Thus, the prescriptive periods of these "reported cases" of "large scale corruption" may have already began to run since these anomalies are publicly known and may be deemed already discovered.[53] These prescriptive periods refer to the criminal acts of public officials under penal laws, and not to the recovery of ill-gotten wealth which under the Constitution is imprescriptible.[54]

Second, the Marcos, Ramos and Estrada administrations were already investigated by their successor administrations. **This alone is incontrovertible proof that the Arroyo administration is *not being singled out* for investigation or prosecution**.

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[47] Article 90, in relation to Articles 211-A and 217, of the Revised Penal Code.

[48] Section 11, RA No. 3019.

[49] Section 1, Act No. 3326.

[50] Section 2, EO 1.

[51] Section 2(b), EO 1.

[52] *Id*.

[53] See *People v. Duque*, G.R. No. 100285, 13 August 1992, 212 SCRA 607.

[54] Section 15, Article XI, Constitution.

Third, all the past Presidents, with the exception of Presidents Ramos, Estrada and Arroyo, are already dead. The possible witnesses to alleged acts of graft and corruption during the Presidencies of the deceased presidents may also be dead or unavailable. **In fact, the only living President whose administration has not been investigated by its successor administration is President Arroyo**.

Fourth, the more recent the alleged acts of graft and corruption, the more readily available will be the witnesses, and the more easily the witnesses can recall with accuracy the relevant events. Inaction over time means the loss not only of witnesses but also of material documents, not to mention the loss of public interest.

Fifth, the 29-month time limit given to the Truth Commission prevents it from investigating other past administrations.[55] There is also the constraint on the enormous resources needed to investigate other past administrations. Just identifying the transactions, locating relevant documents, and looking for witnesses would require a whole bureaucracy.

These are not only reasonable but also compelling grounds for the Truth Commission to prioritize the investigation of the Arroyo administration. To prioritize based on reasonable and even compelling grounds is not to discriminate, but to act sensibly and responsibly.

In any event, there is no violation of the equal protection clause just because the authorities focus their investigation or prosecution on one particular alleged law-breaker, for surely a person accused of robbery cannot raise as a defense that other robbers like him all over the country are not being prosecuted.[56]

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[55] Section 14 of EO 1 provides that "the Commission shall accomplish its mission on or before December 31, 2012."

[56] In *People v. dela Piedra*, 403 Phil. 31, 54 (2001), the Court stated, "The prosecution of one guilty person while others equally guilty are not prosecuted, however, is not, by itself, a denial of the equal protection of the laws."

By the very nature of an investigation or prosecution, there must be a focus on particular act or acts of a person or a group of persons.

Indeed, almost every fact-finding body focuses its investigation on a specific subject matter — whether it be a specific act, incident, event, situation, condition, person or group of persons. This specific focus results from the nature of a fact-finding investigation, which is a necessary and proper response to a specific compelling act, incident, event, situation, or condition involving a person or group of persons. Thus, the fact-finding commissions created under the previous Arroyo administration had specific focus: the Feliciano Commission focused on the Oakwood mutiny, the Melo Commission focused on extra-judicial killings, and the Zeñarosa Commission focused on private armies.

Significantly, the PCGG Charter even specifies the persons to be investigated for the recovery of ill-gotten wealth. Thus, Section 2(a) of the PCGG Charter provides:

> Section 2. The Commission shall be charged with the task of assisting the President in regard to the following matters:
>
> (a) **The recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates**, whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship.
>
> (b) x x x x x x x x x.
> (Emphasis supplied)

The PCGG Charter has survived all constitutional attacks before this Court, including the claim that its Section 2(a) violates the equal protection clause. In *Virata v. Sandiganbayan*,[57] this Court categorically ruled that the PCGG Charter "**does not violate**

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[57] G.R. No. 86926, 15 October 1991, 202 SCRA 680.

the equal protection clause and is not a bill of attainder or an *ex post facto* law."[58]

This specific focus of fact-finding investigations is also true in the United States. Thus, the Roberts Commission[59] focused on the Pearl Harbor attack, the Warren Commission[60] focused on the assassination of President John F. Kennedy, and the 9/11 Commission[61] focused on the 11 September 2001 terrorist attacks on the United States. These fact-finding commissions were created with specific focus to assist the U.S. President and Congress in crafting executive and legislative responses to specific acts or events of grave national importance. Clearly, fact-finding investigations by their very nature must have a specific focus.

Graft and corruption cases before the Arroyo administration have already been investigated by the previous administrations. President Corazon Aquino created the Presidential Commission on Good Government to recover the ill-gotten wealth of the Marcoses and their cronies.[62] President Joseph Estrada created the Saguisag Commission to investigate the Philippine Centennial projects of President Fidel Ramos.[63] The glaring acts of corruption during the Estrada administration have already been investigated resulting in the conviction of President Estrada for plunder. Thus, it stands to reason that the Truth Commission should give priority to the alleged acts of graft and corruption during the Arroyo administration.

The majority opinion claims that EO 1 violates the equal protection clause because the Arroyo administration belongs to

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[58] *Id.* at 698. (Emphasis supplied)

[59] Created by President Franklin Roosevelt.

[60] Created by President Lyndon Johnson.

[61] Created through law by the U.S. Congress.

[62] Executive Order No. 1, dated 28 February 1986.

[63] Administrative Order No. 53 — Creating an *Ad hoc* and Independent Citizens' Committee to Investigate All the Facts and Circumstances Surrounding Philippine Centennial Projects, Including its Component Activities, dated 24 February 1999.

a class of past administrations and the other past administrations are not included in the investigation of the Truth Commission. Thus, the majority opinion states:

> In this regard, it must be borne in mind that **the Arroyo administration is but just a member of a class, that is, a class of past administrations. It is not a class of its own. Not to include past administrations similarly situated constitutes arbitrariness which the equal protection clause cannot sanction**. Such discriminating differentiation clearly reverberates to label the commission as a vehicle for vindictiveness and selective retribution.
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> x x x x x x x x x
>
> x x x **The PTC [Philippine Truth Commission], to be true to its mandate of searching the truth, must not exclude the other past administrations**. **The PTC must, at least, have the authority to investigate all past administrations**. While reasonable prioritization is permitted, it should not be arbitrary lest it be struck down for being unconstitutional.
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> x x x x x x x x x
>
> x x x **To exclude the earlier administrations in the guise of** "**substantial distinctions" would only confirm the petitioners' lament that the subject executive order is only an "adventure in partisan hostility**." x x x.
>
> x x x x x x x x x
>
> T**o reiterate, in order for a classification to meet the requirements of constitutionality, it must include or embrace all persons who naturally belong to the class**. "Such a classification must not be based on existing circumstances only, or so constituted as to preclude additions to the number included within a class, but must be of such a nature as to embrace all those who may hereafter be in similar circumstances and conditions. Furthermore, all who are in situations and circumstances which are relative to the discriminatory legislation and which are indistinguishable from those of the members of the class must be brought under the influence of the law and treated by it in the same way as are the members of the class." (Emphasis supplied)

The majority opinion goes on to suggest that EO 1 could be amended "**to include the earlier past administrations"** to

allow it "**to pass the test of reasonableness and not be an affront to the Constitution**."

The majority opinion's reasoning is specious, illogical, impractical, impossible to comply, and contrary to the Constitution and well-settled jurisprudence. To require that "**earlier past administrations**" must also be included in the investigation of the Truth Commission, with the Truth Commission expressly empowered "**to investigate *all* past administrations**," before there can be a valid investigation of the Arroyo administration under the equal protection clause, is **to prevent absolutely the investigation of the Arroyo administration under any circumstance**.

While the majority opinion admits that there can be "**reasonable prioritization**" of past administrations to be investigated, it not only fails to explain how such reasonable prioritization can be made, it also proceeds to strike down EO 1 for prioritizing the Arroyo administration in the investigation of the Truth Commission. And while admitting that there can be a valid classification based on substantial distinctions, the majority opinion inexplicably makes any substantial distinction immaterial by stating that "**[t]o exclude the earlier administrations in the guise of "substantial distinctions" would only confirm the petitioners' lament that the subject executive order is only an 'adventure in partisan hostility**.'"

The "**earlier past administrations**" prior to the Arroyo administration cover the Presidencies of Emilio Aguinaldo, Manuel Quezon, Jose Laurel, Sergio Osmeña, Manuel Roxas, Elpidio Quirino, Ramon Magsaysay, Carlos Garcia, Diosdado Macapagal, Ferdinand Marcos, Corazon Aquino, Fidel Ramos, and Joseph Estrada, **a period spanning 102 years or more than a century**. All these administrations, plus the 9-year Arroyo administration, already constitute the universe of all past administrations, covering a total period of 111 years. All these "**earlier past administrations**" cannot constitute just one class of administrations because if they were to constitute just one class, then there would be no other class of administrations. It is like saying that since all citizens are human beings, then all citizens

belong to just one class and you cannot classify them as disabled, impoverished, marginalized, illiterate, peasants, farmers, minors, adults or seniors.

Classifying the "**earlier past administrations**" in the last 111 years as just one class is not germane to the purpose of investigating possible acts of graft and corruption. There are prescriptive periods to prosecute crimes. There are administrations that have already been investigated by their successor administrations. There are also administrations that have been subjected to several Congressional investigations for alleged large-scale anomalies. There are past Presidents, and the officials in their administrations, who are all dead. There are past Presidents who are dead but some of the officials in their administrations are still alive. Thus, all the "**earlier past administrations**" cannot be classified as just one single class — "**a class of past administrations**" because they are not all similarly situated.

On the other hand, just because the Presidents and officials of "**earlier past administrations**" are now all dead, or the prescriptive periods under the penal laws have all prescribed, does not mean that there can no longer be any investigation of these officials. The State's right to recover the ill-gotten wealth of these officials is **imprescriptible**.[64] Section 15, Article XI of the 1987 Constitution provides:

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[64] Even prior to the 1987 Constitution, public officials could not acquire ownership of their ill-gotten wealth by prescription. Section 11 of Republic Act No. 1379, or the *Law on Forfeiture of Ill-Gotten Wealth* enacted on 18 June 1956, provides:

> Section 11. *Laws on prescription.* — The laws concerning acquisitive prescription and limitation of actions cannot be invoked by, nor shall they benefit the respondent, in respect of any property unlawfully acquired by him.

Under Article 1133 of the New Civil Code, "[m]ovables possessed through a crime can never be acquired through prescription by the offender." And under Article 1956 of the Spanish Civil Code of 1889, "ownership of personal property stolen or taken by robbery cannot be acquired by prescription by the thief or robber, or his accomplices, or accessories, unless the crime or misdemeanor or the penalty therefor and the action to enforce the civil liability arising from the crime or misdemeanor are barred by prescription."

Section 15. The right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall **not be barred by prescription**, laches or estoppel. (Emphasis supplied)

Legally and morally, any ill-gotten wealth since the Presidency of Gen. Emilio Aguinaldo can still be recovered by the State. **Thus, if the Truth Commission is required to investigate "earlier past administrations" that could still be legally investigated, the Truth Commission may have to start with the Presidency of Gen. Emilio Aguinaldo**.

A fact-finding investigation of "**earlier past administrations**," spanning 111 years punctuated by two world wars, a war for independence, and several rebellions — would obviously be an impossible task to undertake for an *ad hoc* body like the Truth Commission. To insist that "**earlier past administrations**" must also be investigated by the Truth Commission, together with the Arroyo administration, is utterly bereft of any reasonable basis other than to prevent absolutely the investigation of the Arroyo administration. No nation on this planet has even attempted to assign to one *ad hoc* fact-finding body the investigation of all its senior public officials in the past 100 years.

The majority opinion's overriding thesis — that "**earlier past administrations**" belong to only one class and they must all be included in the investigation of the Truth Commission, with the Truth Commission expressly empowered "**to investigate *all* past administrations**" — is even the ***wrong assertion*** of discrimination that is violative of the equal protection clause. The logical and correct assertion of a violation of the equal protection clause is that the Arroyo administration is being investigated for possible acts of graft and corruption **while other past administrations similarly situated were not**.

Thus, in the leading case of *United States v. Armstrong*,[65] decided in 1996, the U.S. Supreme Court ruled that "*to establish*

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[65] 517 U.S. 456, decided 13 May 1996. The U.S. Supreme Court reiterated this ruling in *United States v. Bass*, 536 U.S. 862 (2002), a *per curiam* decision.

a discrimination effect in a race case, the claimant must show that similarly situated individuals of a different race were not prosecuted."[66] Applied to the present petitions, ***petitioners must establish that similarly situated officials of other past administrations were not investigated***. However, the incontrovertible and glaring fact is that the Marcoses and their cronies were investigated and prosecuted by the PCGG, President Fidel Ramos and his officials in the Centennial projects were investigated by the Saguisag Commission, and President Joseph Estrada was investigated, prosecuted and convicted of plunder under the Arroyo administration. **Indisputably, the Arroyo administration is not being singled out for investigation or prosecution because other past administrations and their officials were also investigated or prosecuted**.

In *United States v. Armstrong*, the U.S. Supreme Court further stated that "[a] selective-prosecution claim asks a court to exercise judicial power over a "special province" of the Executive,"[67] citing *Hecker v. Chaney*[68] which held that a decision whether or not to indict "**has long been regarded as the special province of the Executive Branch, inasmuch it is the Executive who is charged by the Constitution to 'take Care that the Laws be faithfully executed.'**"[69] These U.S. cases already involved the prosecution of cases before the grand jury or the courts, well past the administrative fact-finding investigative phase.

In the present case, no one has been charged before the prosecutor or the courts. What petitioners want this Court to do is invalidate a mere administrative fact-finding investigation by the Executive branch, an investigative phase prior to preliminary investigation. Clearly, if courts cannot exercise the Executive's "special province" to decide whether or not to indict, which is the equivalent of determination of probable cause, with greater reason courts cannot exercise the Executive's "special province"

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[66] 517 U.S. 456, 465.

[67] *Id.* at 464.

[68] 470 U.S. 821 (1985).

[69] *Id.* at 832.

to decide what or what not to investigate for administrative fact-finding purposes.

For this Court to exercise this "special province" of the President is to encroach on the exclusive domain of the Executive to execute the law in blatant violation of the finely crafted constitutional separation of power. Any unwarranted intrusion by this Court into the exclusive domain of the Executive or Legislative branch disrupts the separation of power among the three co-equal branches and ultimately invites re-balancing measures from the Executive or Legislative branch.

A claim of selective prosecution that violates the equal protection clause can be raised only by the party adversely affected by the discriminatory act. In *Nunez v. Sandiganbayan*,[70] this Court declared:

'x x x **Those adversely affected** may under the circumstances invoke the equal protection clause only if they can show that the governmental act assailed, far from being inspired by the attainment of the common weal was prompted by the spirit of hostility, or at the very least, discrimination that finds no support in reason.' x x x. (Emphasis supplied)

Here, petitioners do not claim to be adversely affected by the alleged selective prosecution under EO 1. Even in the absence of such a claim by the proper party, the majority opinion strikes down EO 1 as discriminatory and thus violative of the equal protection clause. This is a gratuitous act to those who are not before this Court, a discriminatory exception to the rule that only those "adversely affected" by an alleged selective prosecution can invoke the equal protection clause. **Ironically, such discriminatory exception is a violation of the equal protection clause**. In short, the ruling of the majority is in itself a violation of the equal protection clause, the very constitutional guarantee that it seeks to enforce.

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[70] 197 Phil. 407, 423 (1982). This ruling was reiterated in *City of Manila v. Laguio*, 495 Phil. 289 (2005); *Mejia v. Pamaran*, 243 Phil. 600 (1998); *Bautista v. Juinio*, 212 Phil. 307 (1984); and *Calubaquib v. Sandiganbayan*, 202 Phil. 817 (1982).

The majority opinion's requirement that "**earlier past administrations**" in the last 111 years should be included in the investigation of the Truth Commission to comply with the equal protection clause is a recipe for all criminals to escape prosecution. This requirement is like saying that before a person can be charged with estafa, the prosecution must also charge all persons who in the past may have committed estafa in the country. Since it is impossible for the prosecution to charge all those who in the past may have committed estafa in the country, then it becomes impossible to prosecute anyone for estafa.

This Court has categorically rejected this specious reasoning and false invocation of the equal protection clause in *People v. dela Piedra*,[71] where the Court emphatically ruled:

> **The prosecution of one guilty person while others equally guilty are not prosecuted, however, is not, by itself, a denial of the equal protection of the laws**. x x x
>
> x x x The mere allegation that appellant, a Cebuana, was charged with the commission of a crime, while a Zamboangueña, the guilty party in appellant's eyes, was not, is insufficient to support a conclusion that the prosecution officers denied appellant equal protection of the laws.
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> There is also **common sense** practicality in sustaining appellant's prosecution.
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> > While all persons accused of crime are to be treated on a basis of equality before the law, it does not follow that they are to be protected in the commission of crime. **It would be unconscionable, for instance, to excuse a defendant guilty of murder because others have murdered with impunity**. **The remedy for unequal enforcement of the law in such instances does not lie in the exoneration of the guilty at the expense of society** . . . . Protection of the law will be extended to all persons equally in the pursuit of their lawful occupations, but no person has the right to demand protection of the law in the commission of a crime. (*People v. Montgomery*, 117 P.2d 437 [1941])

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[71] 403 Phil. 31 (2001).

Likewise,

> [i]f the failure of prosecutors to enforce the criminal laws as to some persons should be converted into a defense for others charged with crime, the result would be that the trial of the district attorney for nonfeasance would become an issue in the trial of many persons charged with heinous crimes and the enforcement of law would suffer a complete breakdown (*State v. Hicks*, 325 P.2d 794 [1958]).[72] (Emphasis supplied)

The Court has reiterated this "**common sense**" ruling in *People v. Dumlao*[73] and in *Santos v. People*,[74] for to hold otherwise is utter nonsense as it means effectively granting immunity to all criminals.

Indeed, it is a basic statutory principle that non-observance of a law by disuse is not a ground to escape prosecution for violation of a law. Article 7 of Civil Code expressly provides:

> Article 7. Laws are repealed only by subsequent ones, and their violation or **non-observance shall not be excused by disuse**, or custom or practice to the contrary.
>
> x x x x x x x x x.
>
> (Emphasis supplied)

A person investigated or prosecuted for a possible crime cannot raise the defense that he is being singled out because others who may have committed the same crime are not being investigated or prosecuted. **Such person cannot even raise the defense that after several decades he is *the first and only one* being investigated or prosecuted for a specific crime.** The law expressly states that disuse of a law, or custom or practice allowing violation of a law, will never justify the violation of the law or its non-observance.

A fact-finding investigation in the Executive or Judicial branch, even if limited to specific government officials — whether

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[72] *Id*. at 54-56.

[73] G.R. No. 168918, 2 March 2009, 580 SCRA 409.

[74] G.R. No. 173176, 26 August 2008, 563 SCRA 341.

incumbent, resigned or retired — does not violate the equal protection clause. If an anomaly is reported in a government transaction and a fact-finding investigation is conducted, the investigation by necessity must focus on the public officials involved in the transaction. It is ridiculous for anyone to ask this Court to stop the investigation of such public officials on the ground that past public officials of the same rank, who may have been involved in similar anomalous transactions in the past, are not being investigated by the same fact-finding body. To uphold such a laughable claim is to grant immunity to all criminals, throwing out of the window the constitutional principle that "[p]ublic office is a public trust"[75] and that "[p]ublic officials and employees must **at all times** be accountable to the people."[76]

When the Constitution states that public officials are "***at all times***" accountable to the people, it means **at any time** public officials can be held to account by the people. Nonsensical claims, like the selective prosecution invoked in *People v. dela Piedra*, are unavailing. Impossible conditions, like requiring the investigation of "**earlier past administrations**," are disallowed. All these flimsy and dilatory excuses violate the clear command of the Constitution that public officials are accountable to the people "**at all times**."

The majority opinion will also mean that the PCGG Charter — which tasked the PCGG to recover the ill-gotten wealth of the Marcoses and their cronies — violates the equal protection clause because the PCCG Charter specifically mentions the Marcoses and their cronies. The majority opinion reverses several decisions[77] of this Court upholding the constitutionality of the PCCG Charter, endangering over two decades of hard work in recovering ill-gotten wealth.

Ominously, the majority opinion provides from hereon every administration a cloak of immunity against any investigation by

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[75] Section 1, Article XI, Constitution.

[76] *Id*.

[77] *Supra*, note 46.

its successor administration. This will institutionalize impunity in transgressing anti-corruption and other penal laws. Sadly, the majority opinion makes it impossible to bring good governance to our government.

The Truth Commission is only a fact-finding body to provide the President with facts so that he can **understand what happened in certain government transactions during the previous administration.** There is no preliminary investigation yet and the Truth Commission will never conduct one. No one is even being charged before the prosecutor or the Ombudsman. This Court has consistently refused to interfere in the determination by the prosecutor of the existence of probable cause in a preliminary investigation.[78] With more reason should this Court refuse to interfere in the purely fact-finding work of the Truth Commission, which will not even determine whether there is probable cause to charge any person of a crime.

Before the President executes the law, he has the right, and even the duty, to know the facts to assure himself and the public that he is correctly executing the law. **This Court has no power to prevent the President from knowing the facts to understand certain government transactions in the Executive branch, transactions that may need to be reviewed, revived, corrected, terminated or completed**. If this Court can do so, then it can also prevent the House of Representatives or the Senate from conducting an investigation, in aid of legislation, on the financial transactions of the Arroyo administration, on the ground of violation of the equal protection clause. Unless, of course, the House or the Senate attempts to do the impossible — conduct an investigation on the financial transactions of "**earlier past administrations**" since the Presidency of General Emilio Aguinaldo. Indeed, under the majority opinion, neither the House nor the Senate can conduct any investigation on any

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[78] See *Spouses Aduan v. Levi Chong*, G.R. No. 172796, 13 July 2009, 592 SCRA 508; *UCPB v. Looyuko*, G.R. No. 156337, 28 September 2007, 534 SCRA 322; *First Women's Credit Corporation v. Perez*, G.R. No. 169026, 15 June 2006, 490 SCRA 774; and *Dupasquier v. Court of Appeals*, 403 Phil. 10 (2001).

administration, past or present, if "earlier past administrations" are not included in the legislative investigation.

In short, the majority opinion's requirements that EO 1 should also include "**earlier past administrations,**" with the Truth Commission empowered "**to investigate *all* past administrations**," to comply with the equal protection clause, is a requirement that is not only illogical and impossible to comply, it also allows the impunity to commit graft and corruption and other crimes under our penal laws. The majority opinion completely ignores the constitutional principle that public office is a public trust and that public officials are **at all times** accountable to the people.

A Final Word

The incumbent President was overwhelmingly elected by the Filipino people in the 10 May 2010 elections based on his announced program of eliminating graft and corruption in government. As the Solicitor General explains it, the incumbent President has pledged to the electorate that the elimination of graft and corruption will start with the investigation and prosecution of those who may have committed large-scale corruption in the previous administration.[79] During the election campaign, the incumbent President identified graft and corruption as the major cause of poverty in the country as depicted in his campaign theme "*kung walang corrupt, walang mahirap*." It was largely on this campaign pledge to eliminate graft and corruption in government that the electorate overwhelmingly voted for the incumbent President. The Filipino people do not want to remain forever at the bottom third of 178 countries ranked in terms of governments free from the scourge of corruption.[80]

Neither the Constitution nor any existing law prevents the incumbent President from redeeming his campaign pledge

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[79] Memorandum for Respondents, p. 91.

[80] The 2010 Transparency International Corruption Index ranks the Philippines at 134 out of 178 countries. *See* http:/www.transparency.org/policy_research/surveys_indices/cpi/2010/results, accessed on 13 November 2010.

to the Filipino people. In fact, the incumbent President's campaign pledge is merely a reiteration of the basic State policy, enshrined in Section 27, Article II of the Constitution, that:

> *Section 27*. The State shall maintain honesty and integrity in the public service and **take positive and effective measures against graft and corruption**. (Emphasis supplied)

The incumbent President's campaign pledge also reiterates the constitutional principle that "[p]ublic office is a public trust"[81] and that "[p]ublic officers and employees must **at all times** be accountable to the people."[82]

This Court, in striking down EO 1 creating the Truth Commission, overrules the manifest will of the Filipino people to start the difficult task of putting an end to graft and corruption in government, denies the President his basic constitutional power to determine the facts in his faithful execution of the law, and suppresses whatever truth may come out in the purely fact-finding investigation of the Truth Commission. This Court, in invoking the equal protection clause to strike down a purely fact-finding investigation, grants immunity to those who violate anti-corruption laws and other penal laws, renders meaningless the constitutional principle that public office is a public trust, and makes public officials unaccountable to the people at any time.

Ironically, this Court, and even subordinates of the President in the Executive branch, **routinely create all year round** fact-finding bodies to investigate all kinds of complaints against officials and employees in the Judiciary or the Executive branch, as the case may be. The previous President created through executive issuances three purely fact-finding commissions similar to the Truth Commission. Yet the incumbent President, the only official mandated by the Constitution to execute faithfully the law, is now denied by this Court the power to create the purely fact-finding Truth Commission.

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[81] Section 1, Article XI, Constitution.

[82] *Id*.

History will record the ruling today of the Court's majority as a severe case of judicial overreach that made the incumbent President a diminished Executive in an affront to a co-equal branch of government, crippled our already challenged justice system, and crushed the hopes of the long suffering Filipino people for an end to graft and corruption in government.

Accordingly, I vote to **DISMISS** the petitions.

DISSENTING OPINION

CARPIO MORALES, *J.*:

Assailed for being unconstitutional in the present consolidated cases is Executive Order (EO) No. 1 of July 30, 2010 that created the Philippine Truth Commission of 2010 (Truth Commission).

In issue is whether EO No. 1 violates the Constitution in three ways, *viz.*, (i) for usurping the power of Congress to create public office and appropriate public funds, (ii) for intruding into the independence of the Office of the Ombudsman, and (iii) for infringing on the equal protection clause with its limited scope of investigation.

The *ponencia* submits the following findings and conclusions which have been synthesized:

1. The Truth Commission is an *ad hoc* body formed under the Office of the President. It has all the powers of an investigative body under the Administrative Code.[1] It is a fact-finding body, and not a quasi-judicial body;

2. The President has the power to create a new office like the Truth Commission. The power inheres in his powers as Chief Executive and springs from the constitutional duty to faithfully execute the laws.[2] Otherwise stated, the President

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[1] EXECUTIVE ORDER No. 292 (July 25, 1987), Book I, Chapter 9, Sec. 37.

[2] CONSTITUTION, Art. VII, Secs. 1 & 7 (2nd sentence), respectively.

has the power to conduct investigations to aid him in ensuring that laws are faithfully executed. It does not emanate from the President's power of control under the Constitution,[3] nor by virtue of the power to reorganize under the Administrative Code[4] which pertains to certain modifications of existing offices, nor by authority of a stale law[5] governing reorganization of the national government;

3. There is no transgression of the legislative power to appropriate public funds since what is involved is only an allotment or allocation of existing funds that have already been appropriated and which shall equally be subject to auditing rules;

4. The Truth Commission does not duplicate, supersede or erode the powers and functions of the Office of the Ombudsman and the Department of Justice, since its investigative function complements the two offices' investigative power which is not exclusive. This investigative function is not akin to the conduct of preliminary investigation of certain cases, over which the Ombudsman exercises primary jurisdiction; and

5. EO No. 1 violates the equal protection clause enshrined in the Constitution,[6] for it singles out the previous administration as the sole subject of investigation.

Sustaining only the fifth ground — that the EO violates the equal protection clause, the *ponencia* disposes:

WHEREFORE, the petition is (sic) **GRANTED**. Executive Order No. 1 is hereby declared **UNCONSTITUTIONAL** insofar as it is violative of the equal protection clause of the Constitution.

As also prayed for, the respondents are enjoined from implementing (sic) and operating the Truth Commission.[7] (underscoring supplied)

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[3] *Id.*, Sec. 7 (1st sentence).

[4] EXECUTIVE ORDER No. 292 (July 25, 1987), Book III, Title III, Chapter 10, Sec. 31.

[5] PRESIDENTIAL DECREE No. 1416 (June 9, 1975), as amended by PRESIDENTIAL DECREE No. 1772 (January 15, 1982).

[6] CONSTITUTION, Art. III, Sec. 1.

[7] *Ponencia*, p. 41.

I submit that the petitions should be DISMISSED.

It bears noting at the outset that none of the petitioners properly raises the issue of equal protection of the laws.

Petitioners in G.R. No. 193036, with legal standing as legislators, cannot properly assert the equal protection claim of the previous administration. While legislators have *locus standi* in certain cases, their legal standing *as such* is recognized only insofar as the assailed issuance affects their functions as legislators. In the absence of a claim that the issuance in question violated the rights of petitioner-legislators or impermissibly intruded into the domain of the Legislature, they have no legal standing to institute the present action in their capacity as members of Congress.[8]

No doubt, legislators are allowed to sue to question the validity of any official action upon a claim of usurpation of legislative power.[9] That is why, not every time that a Senator or a Representative invokes the power of judicial review, the Court automatically clothes them with *locus standi*.[10] The Court examines first, as the *ponencia* did, if the petitioner raises an issue pertaining to an injury to Congress as an institution or a derivative injury to members thereof,[11] before proceeding to resolve that particular issue.

The peculiarity of the *locus standi* of legislators necessarily confines the adjudication of their petition only on matters that tend to impair the exercise of their official functions. In one case, the Court ruled:

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[8] Vide *Bagatsing v. Committee on Privatization, PNCC*, 316 Phil. 414 (1995).

[9] *Anak Mindanao Party-List Group v. The Executive Secretary*, G.R. No. 166052, August 29, 2007, 531 SCRA 583.

[10] Vide *e.g., Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, G.R. No. 178552, October 5, 2010, where the Court found that Sen. Ma. Ana Consuelo Madrigal had no legal standing.

[11] *Ponencia*, pp. 13-14, citing *Philippine Constitution Association v. Enriquez*, G.R. No. 113105, August 19, 1994, 235 SCRA 506.

We find that among the petitioners, only Senator Pimentel has the legal standing to file the instant suit. The other petitioners maintain their standing as advocates and defenders of human rights, and as citizens of the country. They have not shown, however, that they have sustained or will sustain a direct injury from the non-transmittal of the signed text of the Rome Statute to the Senate. Their contention that they will be deprived of their remedies for the protection and enforcement of their rights does not persuade. The Rome Statute is intended to complement national criminal laws and courts. Sufficient remedies are available under our national laws to protect our citizens against human rights violations and petitioners can always seek redress for any abuse in our domestic courts.

As regards Senator Pimentel, it has been held that 'to the extent the powers of Congress are impaired, so is the power of each member thereof, since his office confers a right to participate in the exercise of the powers of that institution. Thus, legislators have the standing **to maintain inviolate the prerogatives, powers and privileges vested by the Constitution in their office** and are allowed to sue to question the validity of any official action **which they claim infringes their prerogatives as legislators**. The petition at bar invokes the power of the Senate to grant or withhold its concurrence to a treaty entered into by the executive branch, in this case, the Rome Statute. The petition seeks to order the executive branch to transmit the copy of the treaty to the Senate to allow it to exercise such authority. Senator Pimentel, as member of the institution, certainly has the legal standing **to assert such authority of the Senate**.[12] (emphasis and underscoring supplied)

Breach of the equal protection clause, as presently raised by petitioner-legislators *on behalf of* the Executive Department of the immediate past administration, has nothing to do with the impairment of the powers of Congress. Thus, with respect to the issue in *Pimentel, Jr. v. Exec. Secretary Ermita*[13] that did not involve any impairment of the prerogatives of Congress, some Senators who merely invoked their status as legislators were not granted standing.

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[12] *Pimentel, Jr. v. Office of the Executive Secretary*, G.R. No. 158088, July 6, 2005, 462 SCRA 622, 631-632.

[13] 509 Phil. 567 (2005).

Moreover, petitioner-legislators cannot take the cudgels for the previous administration/s, unless they admit that they are maintaining a confidential relation with it/them or acting as advocates of the rights of a non-party who seeks access to their market or function.[14]

The petitioner in G.R. No. 192935, Louis Biraogo, does not raise the issue of equal protection. His Memorandum mentions nothing about equal protection clause.[15] While the *ponencia* "finds reason in Biraogo's assertion that the petition

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[14] *Vide White Light Corporation v. City of Manila*, G.R. No. 122846, January 20, 2009, 576 SCRA 416, 431-432, which reads:

> American jurisprudence is replete with examples where parties-in-interest were allowed **standing to advocate or invoke the fundamental due process or equal protection claims of other persons** or classes of persons injured by state action. In *Griswold v. Connecticut*, the United States Supreme Court held that physicians had standing to challenge a reproductive health statute that would penalize them as accessories as well as to plead the constitutional protections available to their patients. The Court held that:
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> The rights of husband and wife, pressed here, are likely to be diluted or adversely affected unless those rights are considered in a suit involving those who have this kind of confidential relation to them.
>
> An even more analogous example may be found in *Craig v. Boren*, wherein the United States Supreme Court held that a licensed beverage vendor has standing to raise the equal protection claim of a male customer challenging a statutory scheme prohibiting the sale of beer to males under the age of 21 and to females under the age of 18. The United States High Court explained that the vendors had standing "by acting as advocates of the rights of third parties who seek access to their market or function."
>
> Assuming *arguendo* that petitioners do not have a relationship with their patrons for the former to assert the rights of the latter, the overbreadth doctrine comes into play. x x x (emphasis and underscoring supplied)

[15] Consequently, A.M. No. 99-2-04-SC (effective March 15, 1999) directs: "No new issues may be raised by a party in the Memorandum. Issues raised in previous pleadings but not included in the Memorandum shall be deemed waived or abandoned. Being a summation of the parties' previous pleadings, the Memoranda alone may be considered by the Court in deciding or resolving the petition."

covers matters of transcendental importance,"[16] not even his successful invocation of transcendental importance can push the Court into resolving an issue which he never raised in his petition.

On the foregoing score alone, the *ponencia* should not have dealt with the issue of equal protection.[17]

Such barriers notwithstanding, the claim of breach of the equal protection clause fails to hurdle the higher barrier of merit.

EQUAL PROTECTION OF THE LAWS

The *ponencia* holds that the previous administration has been denied equal protection of the laws. To it, "[t]o restrict the scope of the commission's investigation to said particular administration constitutes arbitrariness which the equal protection clause cannot sanction."[18]

I find nothing arbitrary or unreasonable in the Truth Commission's defined scope of investigation.

In issues involving the equal protection clause, the test developed by jurisprudence is that of **reasonableness**, which has four requisites: (1) The classification rests on substantial distinctions; (2) It is germane to the purposes of the law; (3) It is not limited to existing conditions only; and (4) It applies equally to all members of the same class.[19]

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[16] *Ponencia*, p. 16.

[17] It can be argued that the danger of otherwise resolving one issue not raised by the proper party, which issue is personal to him, is the effect of foreclosing certain defenses known only to him. If the issue concerning the "injured non-party" is defeated, it then becomes the "law of the case" (*vide Banco de Oro-EPCI, Inc. v. Tansipek*, G.R. No. 181235, July 22, 2009, 593 SCRA 456 on "law of the case"). The injured party can no longer resurrect the issue in a later case, even if he can present arguments more illuminating than that of the current "uninjured" petitioner.

[18] *Ponencia*, p. 36.

[19] *Quinto v. Commission on Elections*, G.R. No. 189698, February 22, 2010.

The classification rests on substantial distinction

Reasonableness should consider the nature of the truth commission which, as found by the *ponencia*, emanates from the power of the President to conduct investigations to aid him in ensuring the faithful execution of laws. The *ponencia* explains that the Executive Department is given much leeway in ensuring that our laws are faithfully executed. It adds:

> It should be stressed that the purpose of allowing *ad hoc* investigating bodies to exist is to allow an inquiry into matters which the President is entitled to know so that he can be properly advised and guided in the performance of his duties relative to the execution and enforcement of the laws of the land. And if history is to be revisited, this was also the objective of the investigative bodies created in the past like the PCAC, PCAPE, PARGO, the Feliciano Commission, the Melo Commission, and the Zenarosa Commission. There being no changes in the government structure, the Court is not inclined to declare such executive power as non-existent just because the direction of the political winds ha[s] changed.[20] (underscoring supplied)

This Court could not, in any way, determine or dictate what information the President would be needing in fulfilling the duty to ensure the faithful execution of laws on public accountability. This sweeping directive of the *ponencia* to include all past administrations in the probe tramples upon the prerogative of a co-equal branch of government.

The group or class, from which to elicit the needed information, rests on substantial distinction that sets the class apart.

Proximity and magnitude of incidents

Fairly recent events like the exigencies of transition and the reported large-scale corruption explain the determined need to focus on no other period but the tenure of the previous administration.

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[20] *Ponencia*, pp. 24-25.

The proximity and magnitude of particular contemporary events like the Oakwood mutiny and Maguindanao massacre similarly justified the defined scope of the Feliciano Commission and the Zenarosa Commission, respectively. As applied to the two commissions whose objective the *ponencia* itself recognizes, the same test of reasonableness rejects the absurd proposition to widen their respective scopes to include *all* incidents of rebellion/ mutiny and election-related violence since the First Republic. Certainly, it is far removed not just from the present time but also from logic and experience.

This explained need for specific information removes the arbitrariness from recognizing the previous administration as a distinct class of its own.

Without a complete and definitive report

The *ponencia* brushes aside the proffered reasons for limiting the investigation to the previous administration since "earlier administrations have also been blemished by similar widespread reports of impropriety."[21]

The *ponencia* employs the premise that previous administrations have all been blemished by reports of improprieties similar[22] to those of the previous administration. Whether reports of such nature exist is not borne by the pleadings submitted by petitioners who allege unequal protection. Without any factual basis, the statement is inconclusive and, at best, arguable.

Assuming *arguendo* that comparable reports of large-scale graft and corruption existed during administrations previous to the last, petitioners do not allege that information regarding these reported activities is not yet available in the Executive Department. On the contrary, respondents disclose that the Presidential Commission on Good Government and the Saguisag Commission have already probed into certain anomalous

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[21] *Id.* at 37.

[22] "x x x reports of graft and corruption of such scale and magnitude that shock and offend the moral and ethical sensibilities of the people x x x"; *vide* EXECUTIVE ORDER No. 1 (July 30, 2010), Sec. 1.

transactions that occurred during the Marcos and Ramos administrations, respectively. During past administrations, parallel functions had been discharged by the Integrity Board, Presidential Complaints and Action Commission (PCAC), Presidential Committee on Administrative Performance Efficiency (PCAPE), and Presidential Anti-Graft Committee (PAGCOM, later replaced by the Presidential Committee on Administering Performance Efficiency), that were created by former Presidents Quirino, Magsaysay, Garcia and Macapagal, respectively.[23] Not to mention the plunder committed during the Estrada administration, the facts of which — already judicially ascertained, at that — are contained in public records.

The Executive Department's determination of the futility or redundancy of investigating other administrations should be accorded respect. Respondents having manifested that pertinent and credible data are already in their hands or in the archives, petitioners' idea of an all-encompassing *de novo* inquiry becomes tenuous as it goes beyond what the Executive Department needs.

The exclusion of other past administrations from the scope of investigation by the Truth Commission is justified by the substantial distinction that complete and definitive reports covering their respective periods have already been rendered. The same is not true with the immediate past administration. There is thus no undue favor or unwarranted partiality. To include everybody all over again is to insist on a useless act.

The distinction is not discriminatory

I find it contradictory for the *ponencia* to state, on the one hand, that the Truth Commission would be labeled as a "vehicle for vindictiveness and selective retribution"[24] and declare, on

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[23] Respondents' Memorandum, Annex 1, citing EXECUTIVE ORDER No. 318 (May 25, 1950) and EXECUTIVE ORDER No. 1 (December 30, 1953); *vide* EXECUTIVE ORDER No. 306 (July 15, 1958), EXECUTIVE ORDER No. 378 (February 18, 1960) later repealed by EXECUTIVE ORDER No. 457 (December 29, 1961).

[24] *Ponencia*, p. 36.

the other, that "its power to investigate is limited to obtaining facts x x x and its findings "would at best be recommendatory in nature[,] [a]nd x x x [the concerned agencies] have a wide degree of latitude to decide whether or not to reject the recommendation."[25]

After precisely explaining that "fact-finding is not adjudication,"[26] the *ponencia* relates it to retribution which it depicts, in the context of truth commissions, as a "retributory body set up to try and punish those responsible for the crimes."[27] The *ponencia* jumps into conclusion but lands nowhere for it has no ground on which to stand.

Further, the Court should not concern itself with the nebulous concept of "partisan hostility," a relatively redundant term that eludes exact definition in a political world of turncoatism. Had the assailed issuance provided exemption to former members of the previous administration who have joined the prevailing political party, I would not hesitate to declare EO No. 1 void.

Far from being discriminatory, E.O. No. 1 permits the probing of current administration officials who may have had a hand in the reported graft and corruption committed during the previous administration, regardless of party affiliation. The classification notably rests not on personalities but on period, as shown by the repeated use of the phrase "during the previous administration."[28]

The *ponencia* treats adventures in "partisan hostility" as a form of undue discrimination. Without defining what it is, the *ponencia* gives life to a political creature and transforms it into a legal animal. By giving legal significance to a mere say-so of "partisan hostility," it becomes unimaginable how the Court will refuse to apply this novel doctrine in the countless concerns

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[25] *Id.* at 29.

[26] *Id.* at 27, *vide id.* at 7.

[27] *Id.* at 8.

[28] EXECUTIVE ORDER No. 1 (July 30, 2010), Secs. 1-2 & 7th whereas clause.

of the inherently political branches of government under an invocation of equal protection. And to think, the present matter only involves the gathering of information.

To knowingly classify *per se* is not synonymous to intentional discrimination, which brings me to the next point that the classification is germane to the purpose of the law.

The classification is germane to the purpose of the law

I entertain no doubt that respondents consciously and deliberately decided to focus on the corrupt activities reportedly committed during the previous administration. For respondents to admit that the selection was inadvertent is worse. The *ponencia*, however, is quick to ascribe intentional discrimination from the mere fact that the classification was intentional.

Good faith is presumed. I find it incomprehensible how the *ponencia* overturns that presumption. Citing an array of foreign jurisprudence, the *ponencia*, in fact, recognizes that mere under-inclusiveness or incompleteness is not fatal to the validity of a law under the equal protection clause. Thus the *ponencia* pontificates:

> The Court is not unaware that "mere underinclusiveness is not fatal to the validity of a law under the equal protection clause." "Legislation is not unconstitutional merely because it is not all-embracing and does not include all the evils within its reach." It has been written that a regulation challenged under the equal protection clause is not devoid of a rational predicate simply because it happens to be incomplete. In several instances, the underinclusiveness was not considered valid reason to strike down a law or regulation where the purpose can be attained in future legislations or regulations. These cases refer to the "step by step" process. "With regard to equal protection claims, a legislature does not run the risk of losing the entire remedial scheme simply because it fails, **through inadvertence or otherwise**, to cover every evil that might conceivably have been attacked."
>
> In Executive Order No. 1, however, there is no clear indicia of inadvertence. That the previous administration was picked out was deliberate and intentional as can be gathered from the fact that it

was stressed three times in the assailed executive order. "The equal protection clause is voided by purposeful and intentional discrimination."[29] (emphasis and underscoring supplied)

According to the *ponencia* itself, the E.O.'s failure to include all evils within its reach, even by design, is not vulnerable to an equal protection challenge. How the *ponencia* arrives at a contrary conclusion puzzles.

Within our own jurisprudential shores, the Court expounded in *Quinto v. Comelec*[30] on those classifications which, albeit not all-inclusive, remain germane to the purpose of the law.

> Sad to state, this conclusion conveniently ignores the long-standing rule that to remedy an injustice, the Legislature need not address every manifestation of the evil at once; it may proceed "one step at a time." In addressing a societal concern, it must invariably draw lines and make choices, thereby creating some inequity as to those included or excluded. Nevertheless, as long as "the bounds of reasonable choice" are not exceeded, the courts must defer to the legislative judgment. We may not strike down a law merely because the legislative aim would have been more fully achieved by expanding the class. Stated differently, the fact that a legislative classification, by itself, is underinclusive will not render it unconstitutionally arbitrary or invidious. There is no constitutional requirement that regulation must reach each and every class to which it might be applied; that the Legislature must be held rigidly to the choice of regulating all or none.
>
> Thus, any person who poses an equal protection challenge must convincingly show that the law creates a classification that is "palpably arbitrary or capricious." He must refute all possible rational bases for the differing treatment, whether or not the Legislature cited those bases as reasons for the enactment, such that the constitutionality of the law must be sustained even if the reasonableness of the classification is "fairly debatable." In the case at bar, the petitioners failed — and in fact did not even attempt — to discharge this heavy burden. Our assailed Decision was likewise silent as a sphinx on this point even while we submitted the following thesis:

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[29] *Ponencia*, p. 39.

[30] G.R. No. 189698, February 22, 2010.

> . . . [I]t is not sufficient grounds for invalidation that we may find that the statute's distinction is unfair, underinclusive, unwise, or not the best solution from a public-policy standpoint; rather, we must find that there is no reasonably rational reason for the differing treatment. (underscoring supplied)

The "one step at a time" approach is thus not unconstitutional. E.O. No. 1 is not the first, but the latest, step in a series of initiatives undertaken by Presidents, as earlier illustrated. Neither will it be the last step. E.O. No. 1 contains a special provision[31] concerning the expansion of mandate. There being no constitutional violation in a step-by-step approach, the present and future administrations may release supplementary or comparable issuances.

The *wisdom* behind the issuance of the E.O. No. 1 is "outside the rubric of judicial scrutiny."[32] Analogous to *Quinto*'s instructions, this Court cannot and should not arrogate unto itself the power to ascertain and impose on the President the best or complete way of obtaining information to eradicate corruption. Policy choices on the practicality or desirability of data-gathering that is responsive to the needs of the Executive Department in discharging the duty to faithfully execute the laws are best left to the sound discretion of the President.

Most enlightening as to how the classification is germane to the purpose of the law is knowing first what is the purpose of the law.

According to the *ponencia*, the objective of E.O. No. 1 is the "stamping out [of] acts of graft and corruption."[33]

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[31] EXECUTIVE ORDER No. 1 (July 30, 2010), Sec. 17. *Special Provision Concerning Mandate*. — If and when in the judgment of the President there is a need to expand the mandate of the Commission as defined in Section 1 hereof to include the investigation of cases and instances of graft and corruption during the prior administrations, such mandate may be so extended accordingly by way of a supplemental Executive Order.

[32] *Quinto v. Commission on Elections*, *supra*.

[33] *Ponencia*, p. 37.

I differ.

The purpose of E.O. No. 1 is the gathering of needed information to aid the President in the implementation of public accountability laws. Briefly stated, E.O. No. 1 aims to provide data for the President.

The *ponencia*, in fact, has earlier explained: "It should be stressed that the purpose of allowing *ad hoc* investigating bodies to exist is to allow an inquiry into matters which the President is entitled to know so that he can be properly advised and guided in the performance of his duties relative to the execution and enforcement of the laws of the land."[34]

The long-term goal of the present administration must not be confused with what E.O. No. 1 intends to achieve within its short life. The opening clauses and provisions of E.O No. 1 are replete with phrases like "an urgent call for the determination of the truth," "dedicated solely to investigating and finding out the truth," and "primarily seek and find the truth."

The *purpose of E.O. No. 1* is to produce a report which, insofar as the Truth Commission is concerned, is the end in itself. The *purpose of the report* is another matter which is already outside the control of E.O. No. 1.

Once the report containing the needed information is completed, the Truth Commission is dissolved *functus officio*. At that point, the endeavor of data-gathering is accomplished, and E.O No. 1 has served its purpose. It cannot be said, however, that it already eradicated graft and corruption. The report would still be passed upon by government agencies. Insofar as the Executive Department is concerned, the report assimilates into a broader database that advises and guides the President in law enforcement.

To state that the purpose of E.O. No. 1 is to stamp out acts of graft and corruption leads to the fallacious and artificial conclusion that respondents are stamping out corrupt acts of the previous administration only, as if E.O. No. 1 represents the entire anti-corruption efforts of the Executive Department.

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[34] *Id.* at 24.

To state that the purpose of E.O. No. 1 is to eradicate graft and corruption begs the question. What is there to eradicate in the first place, if claims of graft and corruption are yet to be verified by the Truth Commission? Precisely, by issuing E.O. No. 1, respondents saw the need to verify raw data before initiating the law enforcement mechanism, if warranted.

The classification is not limited to existing conditions only

The Truth Commission is an *ad hoc* body formed under the Office of the President. The nature of an *ad hoc* body is that it is limited in scope. *Ad hoc* means for the particular end or case at hand without consideration of wider application.[35] An *ad hoc* body is inherently temporary. E.O. No. 1 provides that the Truth Commission "shall accomplish its mission on or before December 31, 2012."[36]

That the classification should not be limited to existing conditions only, as applied in the present case, does not mean the inclusion of future administrations. Laws that are limited in duration (*e.g.*, general appropriations act) do not circumvent the guarantee of equal protection by not embracing all that may, in the years to come, be in similar conditions even beyond the effectivity of the law.

The requirement not to limit the classification to existing conditions goes into the operational details of the law. The law cannot, in fine print, enumerate extant items that exclusively compose the classification, thereby excluding soon-to-exist ones that may also fall under the classification.

In the present case, the circumstance of available reports of large-scale anomalies that fall under the classification (*i.e.*, committed during the previous administration) makes one an "existing condition." Those not yet reported or unearthed but likewise fall under the same class must not be excluded from

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[35] <http://www.merriam-webster.com/dictionary/ad+hoc> [visited: November 10, 2010].

[36] EXECUTIVE ORDER No. 1 (July 30, 2010), Sec. 14.

the application of the law. There is no such exclusionary clause in E.O. No. 1.

The ratiocination on this third requisite so as to include previous administrations already goes into the "classifications," not the "conditions." The *ponencia* rewrites the rule leading to the absurd requirement that the classification should not be limited to the existing "classification" only.

The classification applies equally to all members of the same class

Petitioners concede, by their failure to allege otherwise, that the classification applies equally to all members *within* the same class (*i.e.*, all reports of large-scale graft and corruption during the previous administration). By this implied admission, this fourth requirement meets no objection.

Petitioners' only insistent contention, as sustained by the *ponencia*, is that all prior administrations belong to the same class, citing that equal protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed.[37]

Petitioners do not espouse the view that no one should be investigated. What they advocate is that all administrations should be investigated or, more accurately, all reports of large-scale graft and corruption during the tenure of past administrations should be subjected to investigation.

Discrimination presupposes prejudice. I find none.

First, no one complains of injury or prejudice. Petitioners do not seek the lifting of *their own* obligations or the granting of *their own* rights that E.O. No. 1 imposes or disallows. As earlier expounded, petitioner-legislators cannot plausibly invoke the equal protection claims of other persons, while petitioner Biraogo did not invoke it at all.

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[37] *Ponencia*, p. 33.

Second, petitioners do not allege that previous administrations, other than the immediate past administration, have been denied the right to appear before or be examined by the Truth Commission. Neither do petitioners identify the specific fact-finding obligations exclusively imposed upon the immediate past administration by the Truth Commission whose primary duty is merely to "investigate reports of graft and corruption and to recommend the appropriate action."[38]

Third, assuming that there already exists an imposition of obligation from the mere recommendation for prosecution (as one of the possible appropriate measures) by the Truth Commission, the act of not recommending the prosecution of all those who could be probably guilty of graft and corruption is not violative of the equal protection clause. Even in the succeeding stage of preliminary investigation, which is already "out of the Truth Commission's sphere of functions,"[39] jurisprudence instructs that the right to equal protection of the laws "may not be perversely used to justify desistance by the authorities from prosecution of a criminal case, just because not all of those who are probably guilty thereof were charged."[40]

Verily, where there is claim of breach of the due process and equal protection clauses, considering that they are not fixed rules but rather broad standards, there is a need for proof of such persuasive character as would lead to such a conclusion. Absent such a showing, the presumption of validity must prevail.[41]

Finally, even assuming *arguendo* that all prior administrations should be included within the scope of investigation of the Truth

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[38] *Id.* at 26.

[39] *Id.* at 29.

[40] *Reyes v. Pearlbank Securities, Inc.*, G.R. No. 171435, July 30, 2008, 560 SCRA 518, 539.

[41] *British American Tobacco v. Camacho*, G.R. No. 163583, August 20, 2008, 562 SCRA 511, 570.

Commission, E.O. No. 1 is saved by a separability clause,[42] considering that the remaining portions can stand independently of the assailed portions and constitute a complete, intelligible and valid law which carries out the intent of the law.[43] There is thus no basis for denying the other provisions of their continued force and enjoining the operation of the Truth Commission.

I, therefore, submit that **there exists a "reasonable foundation or rational basis"[44] for defining the subject of the special fact-finding investigation by the Truth Commission.**

For the foregoing reasons, I vote to **DISMISS** the petitions.

SEPARATE DISSENTING OPINION

ABAD, *J.*:

Brief Background

As the opinion written for the majority by Justice Jose Catral Mendoza says, President Benigno Simeon Aquino III (President P-Noy to distinguish him from former President Corazon C. Aquino) campaigned on a platform of "*kung walang corrupt, walang mahirap*." On being elected President, he issued Executive Order 1,[1] creating the Philippine Truth Commission of 2010 that he tasked with the investigation of reported corruption during the previous administration. The Truth Commission is to submit its findings and recommendations to the President, the Congress, and the Ombudsman.

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[42] EXECUTIVE ORDER No. 1 (July 30, 2010), Sec. 18. *Separability Clause*.— If any provision of this Order is declared unconstitutional, the same shall not affect the validity and effectivity of the other provisions hereof.

[43] *Vide Abakada Guro Party List v. Purisima*, G.R. No. 166715, August 14, 2008, 562 SCRA 251, 298-299; *Executive Secretary v. Southwing Heavy Industries, Inc.*, G.R. No. 164171, February 20, 2006, 482 SCRA 673.

[44] *Ambros v. Commission on Audit (COA)*, G.R. No. 159700, June 30, 2005, 462 SCRA 572, 597.

[1] Dated July 30, 2010

Petitioners Louis Biraogo, Rep. Edcel C. Lagman, Rep. Rodolfo B. Albano, Jr., Rep. Simeon A. Datumanong, and Rep. Orlando B. Fua, Sr. have come to this Court to challenge the Constitutionality of Executive Order 1.

The Issues Presented

The parties present four issues:

1. Whether or not petitioners have legal standing to challenge the constitutionality of Executive Order 1;

2. Whether or not Executive Order 1 usurps the authority of Congress to create and appropriate funds for public offices, agencies, and commissions;

3. Whether or not Executive Order 1 supplants the powers of the Ombudsman and the DOJ; and

4. Whether or not Executive Order 1 violates the equal protection clause in that it singles out the previous administration for investigation.

Discussion

The majority holds that petitioners have standing before the Court; that President P-Noy has the power to create the Truth Commission; that he has not usurped the powers of Congress to create public offices and appropriate funds for them; and, finally, that the Truth Commission can conduct investigation without supplanting the powers of the Ombudsman and the Department of Justice since the Commission has not been vested with quasi-judicial powers. I fully conform to these rulings.

The majority holds, however, that Executive Order 1 violates the equal protection clause of the Constitution. It is here that I register my dissent.

The 1987 Constitution provides in section 1 of Article III (The Bill of Rights) as follows:

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

The idea behind the "equal protection clause" is that public authorities should treat all persons or things equally in terms of rights granted to and responsibilities imposed on them. As an element of due process, the equal protection clause bars arbitrary discrimination in favor of or against a class whether in what the law provides and how it is enforced.

Take the comic example of a law that requires married women to wear their wedding rings at all times to warn other men not to entice women to violate their marriage vows. Such law would be unfair and discriminatory since married men, who are not covered by it, are exposed to similar enticements from women other than their wives.

But it would be just as unfair and discriminatory if people who hardly share anything in common are grouped together and treated similarly.[2] The equal protection clause is not violated by a law that applies only to persons falling within a specified class, if such law applies equally to all persons within such class, and reasonable grounds exist for making a distinction between those who fall within it and those who do not.[3]

For example, restaurant cooks and waiters cannot complain of discrimination against an ordinance that requires them but not other workers to undergo periodic medical check-ups. Such check-ups are important for food-handlers in the interest of public health but not for ordinary office clerks. Also, a law that grants a 60-day paid leave to pregnant workers but not to other workers, male or female, is not discriminatory since female workers who just had their babies need more time to care for the latter and make adjustments for going back to work.

Here, the issue I address is whether or not President P-Noy's decision to focus the Truth Commission's investigation solely on the reported corruption during the previous administration, implicitly excluding the corruption during the administrations before it, violates the equal protection clause. Since absolute

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[2] Rene B. Gorospe, *I Constitutional Law* (2004 Edition) 210.

[3] 2 Cooley, *Constitutional Limitations*, 824-825.

equality in treating matters is not required, the ultimate issue in this case is whether or not the President has reasonable grounds for making a distinction between corruptions committed in the recent past and those committed in the remote past. As a rule, his grounds for making a distinction would be deemed reasonable if they are germane or relevant to the purpose for which he created the Truth Commission.[4]

And what is the President's purpose in creating the Truth Commission? This can be inferred from section 1 of Executive Order 1 which states that the Commission's primary function is to —

> **xxx seek and find the truth on, and toward this end, investigate reports of graft and corruption of such scale and magnitude that shock and offend the moral and ethical sensibilities of the people, committed by public officials and employees, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration, and thereafter recommend the appropriate action to be taken thereon to ensure that the full measure of justice shall be served without fear or favor.**

Evidently, the objective the President sets for the Truth Commission is the uncovering of the "truth" regarding reported corruption in the previous administration "to ensure that the full measure of justice [evidently upon those responsible for it] is served without fear or favor." Ultimately, the purpose of the creation of the Truth Commission is to ensure that the corrupt officials of the previous administration are exposed and brought to justice.

The majority holds that picking on the "previous administration" and not the others before it makes the Commission's investigation an "adventure in partisan hostility." To be fair, said the majority, the search for truth must include corrupt acts not only during the previous administration but also during the administrations before it where the "same magnitude of controversies and anomalies" has been reported.

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[4] *People v. Cayat*, 68 Phil. 12 (1939), citing leading American cases.

The majority points out that corruption in the previous administration and corruption in the administrations before it have no substantial difference. And what difference they have, the majority adds, is not relevant to the purpose of Executive Order 1, which is to uncover corrupt acts and recommend their punishment. Superficial difference like the difference in time in this case does not make for a valid classification.

But time differentiation should not be so easily dismissed as superficial. The world in which people live has two great dimensions: the dimension of space and the dimension of time. Nobody can say that the difference in time between two acts or events makes for a superficial difference. Such difference is the substance of human existence. As the Bible says:

> **There is an appointed time for everything,**
> **and a time for every affair under the heavens.**
> **A time to be born, and a time to die;**
> **a time to plant, and a time to uproot the plant.**
> **A time to kill, and a time to heal;**
> **a time to tear down, and a time to build.**
> **A time to weep, and a time to laugh;**
> **a time to mourn, and a time to dance;**
> **A time to scatter stones, and a time to gather them;**
> **a time to embrace, and a time to be far from embraces.**
> **A time to seek, and a time to lose;**
> **a time to keep, and a time to cast away;**
> **A time to rend, and a time to sew;**
> **a time to be silent and a time to speak.**
> **A time to love, and a time to hate;**
> **a time of war, and a time of peace.**
> (Ecclesiastes 3:1-8, New American Bible)

Recognizing the irreversibility of time is indispensable to every sound decision that people make in their lives everyday, like not combing the hair that is no longer there. In time, parents let their married children leave to make their own homes. Also, when a loved one passes away, he who is left must know that he cannot bring back the time that is gone. He is wise to move on with his life after some period of mourning. To deny the truth that the difference in time makes for substantial difference

in human lives is to deny the idea of transition from growth to decay, from life to death, and from relevant to irrelevant.

Here the past presidential administrations the country has gone through in modern history cover a period of 75 years, going back from when President Gloria Macapagal Arroyo ended her term in 2010 to the time President Manuel L. Quezon began his term in 1935. The period could even go back 111 years if the administration of President Emilio Aguinaldo from 1989 to 1901 is included. But, so as not to complicate matters, the latter's administration might just as well be excluded from this discussion.

It should be remembered that the right of the State to recover properties unlawfully acquired by public officials does not prescribe.[5] So, if the majority's advice were to be literally adopted, the Truth Commission's investigation to be fair to all should go back 75 years to include the administrations of former Presidents Arroyo, Estrada, Ramos, Aquino, Marcos, Macapagal, Garcia, Magsaysay, Quirino, Roxas, Osmeña, Laurel, and Quezon.

As it happens, President P-Noy limited the Truth Commission's investigation to the 9 years of the previous administration. He did not include the 66 years of the 12 other administrations before it. The question, as already stated, is whether the distinction between the recent past and the remote past makes for a substantial difference that is relevant to the purpose of Executive Order 1.

That the distinction makes for a substantial difference is the first point in this dissent.

1. The Right to Equal Protection

Feasibility of success. Time erodes the evidence of the past. The likelihood of finding evidence needed for conviction diminishes with the march of time. Witnesses, like everyone else, have short memories. And they become scarce, working overseas, migrating, changing addresses, or just passing away. Official or private documents needed as evidence are easily

[5] 1987 CONSTITUTION OF THE PHILIPPINES, Article 11, Section 15.

overwhelmed by the demand to file and keep even more documents generated by new activities and transactions. Thus, old documents are stored away in basements, garages, or corridors, and eventually lost track of, misplaced, or simply destroyed, whether intentionally or not. In a government that is notorious for throwing away or mishandling old records, searching for a piece of document after ten years would be uncertain, tedious, long, and costly.

When the government of President Marcos fell in 1986, the new government acted swiftly to sequester suspected wealth, impound documents believed to constitute evidence of wrongdoing, and interview witnesses who could help prosecute the Marcoses and their cronies. One would think that these actions will ensure successful prosecution of those who committed graft and corruption in that era. Yet, after just a decade, the prosecution has been mostly unable to find the right documents or call the right witnesses. Today, after 24 years, the full force of government has failed to produce even one conviction.

Clearly, it would be a waste of effort and time to scour all of 66 years of the administrations before the last, looking for evidence that would produce conviction. Time has blurred the chance of success. Limiting the Truth Commission's investigation to the 9 years of the previous administration gives it the best chance of yielding the required proof needed for successful action against the offenders.

Historically, there have been no known or outstanding inquiries done by the Executive Department into corrupt acts of the past that went beyond the term of the immediately preceding administration. It makes sense for President P-Noy to limit the investigation to what is practical and attainable, namely, the 9 years of the previous administration. He strikes at what is here and near. Perchance, he can get a conviction. Investigating corruption in the past 75 years rather than in the nearest 9 years, under a nebulous claim of evenhandedness, is the key to failing altogether. It has been held that if the law presumably

hits the evil where it is felt, it is not to be overthrown because there are other instances to which it might have been applied.[6]

Neutralization of Presidential bias. The Court can take judicial notice of the fact that President P-noy openly attacked the previous administration for its alleged corruption in the course of his election campaign. In a sense, he has developed a bias against it. Consequently, his creation of the Truth Commission, consisting of a former Chief Justice, two former Associate Justices of the Supreme Court, and two law professors serves to neutralize such bias and ensure fairness. The President did not have to include the 66 years of earlier administrations for investigation since he did not specifically target them in his election campaign.

At any rate, it does not mean that when the President created the Truth Commission, he shut the door to the investigation of corruption committed during the 66 years before the previous one. All existing government agencies that are charged with unearthing crimes committed by public officials are not precluded from following up leads and uncovering corruptions committed during the earlier years. Those corrupt officials of the remote past have not gained immunity by reason of Executive Order 1.

Matching task to size. The Truth Commission is a collegial body of just five members with no budget or permanent staffs of its own. It simply would not have the time and resources for examining hundreds if not thousands of anomalous government contracts that may have been entered into in the past 75 years up to the time of President Quezon. You cannot order five men to pull a train that a thousand men cannot move.

Good housekeeping. Directing the investigation of reported corrupt acts committed during the previous administration is, as the Solicitor General pointed out, consistent with good housekeeping. For example, a new treasurer would be prudent to ensure that the former treasurer he succeeds has balanced his accounts and submitted himself to a closing audit even after the new treasurer has taken over. This prevents the latter having

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[6] *Keokee Coke Co v. Taylor*, 234 U.S. 224, 227.

to unfairly assume the liabilities of his predecessor for shortages in the cash box. Of course, the new treasurer is not required to look farther into the accounts of the earlier treasurers.

In like manner, it is reasonable for President P-Noy to cause the investigation of the anomalies reportedly committed during the previous administration to which he succeeded. He has to locate government funds that have not been accounted for. He has to stanch the bleeding that the government could be suffering even now by reason of anomalous contracts that are still on-going. Such is a part of good housekeeping. It does not violate the equal protection clause by its non-inclusion of the earlier administrations in its review. The latter's dealings is remotely relevant to good housekeeping that is intended to manage a smooth transition from one administration to the next.

2. The President's Judgment as against the Court's

That is the first point. The second point is that the Court needs to stand within the limits of its power to review the actions of a co-equal branch, like those of the President, within the sphere of its constitutional authority. Since, as the majority concedes, the creation of the Truth Commission is within the constitutional powers of President P-Noy to undertake, then to him, not to the Court, belongs the discretion to define the limits of the investigation as he deems fit. The Court cannot pit its judgment against the judgment of the President in such matter.

And when can the Supreme Court interfere with the exercise of that discretion? The answer is, as provided in Section 1, Article VIII of the 1987 Constitution, only when the President gravely abuses his exercise of such discretion. This means that, in restricting the Truth Commission's investigation only to corruptions committed during the previous administration, he acted **capriciously** and **whimsically** or in an **arbitrary** or **despotic** manner.[7]

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[7] *Perez v. Court of Appeals*, G.R. No. 162580, January 27, 2006, 480 SCRA 411, 416.

To act capriciously and whimsically is to act freakishly, abruptly, or erratically, like laughing one moment and crying the next without apparent reason. Does this characterize the President's action in this case, considering that he merely acted to set a feasible target, neutralize political bias, assign the Commission a task suitable to its limited capacity, and observe correct housekeeping procedures? Did he act arbitrarily in the manner of little children changing the rules of the game in the middle of the play or despotically in the manner of a dictator? Unless he did, the Court must rein in its horses. It cannot itself exceed the limits of its power of review under the Constitution.

Besides, the Court is not better placed than the President to make the decision he made. Unlike the President, the Court does not have the full resources of the government available to it. It does not have all the information and data it would need for deciding what objective is fair and viable for a five-member body like the Truth Commission. Only when the President's actions are plainly irrational and arbitrary even to the man on the street can the Court step in from Mount Olympus and stop such actions.

Notably, none of those who have been reported as involved in corruption in the previous administration have come forward to complain that the creation of the Truth Commission has violated their rights to equal protection. If they committed no wrong, and I believe many would fall in this category, they would probably have an interest in pushing for the convening of the Commission. On the other hand, if they believe that the investigation unfairly threatens their liberties, they can, if subpoenaed, to testify invoke their right to silence. As stated in the majority opinion, the findings of the Commission would not bind them. Such findings would not diminish their right to defend themselves at the appropriate time and forum.

For the above reasons, I join the main dissent of Justice Antonio T. Carpio.

DISSENTING OPINION

Sir, I say that justice is truth in action.

Benjamin Disraeli, in a speech delivered before the British House of Commons, February 11, 1851

SERENO, *J.*:

The majority Decision defeats the constitutional mandate on public accountability; it effectively tolerates impunity for graft and corruption. Its invocation of the constitutional clause on equal protection of the laws is an unwarranted misuse of the same and is a disservice to those classes of people for whom the constitutional guarantee was created as a succor. The majority Decision accomplished this by completely disregarding "reasonableness" and all its jurisprudential history as constitutional justification for classification and by replacing the analytical test of reasonableness with mere recitations of general case doctrines to arrive at its forced conclusion. By denying the right of the President to classify persons in Executive Order No. (EO) 1 even if the classification is founded on reason, the Decision has impermissibly infringed on the constitutional powers of the President. It wafts the smell of hope onto the air towards those who seek the affirmance of EO 1 by saying:

> ... [T]his is not a death knell for a truth commission as nobly envisioned by the present administration. Perhaps a revision of the executive issuance so as to include the earlier past administrations would allow it to pass the test of reasonableness and not be an affront to the Constitution...[1]

but the scent of hope, as will be demonstrated, is that which emanates from a red herring. Since Ferdinand Marcos's presidency, no Court has stifled the powers of the Philippine presidency as has this Court through the majority Decision.

The Concurring Opinion of Justice Arturo Brion reveals one undercurrent beneath the majority's logically indefensible

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[1] Decision, at p. 43.

conclusion that flows thusly: (1) the Filipino people cannot be trusted to recognize truth from untruth; (2) because the people cannot make the distinction, there exists a large possibility that the people would accept as truth the Philippine Truth Commission (PTC) version of the story on reports of graft and corruption under the administration of President Gloria Macapagal-Arroyo even if it turns out to be untruth; (3) this potential public belief in the untruth also enables the credulous public's inordinate pressure on the Ombudsman and the courts to concur in the untruth; (4) because of the possibility of this inordinate pressure being brought to bear, the probability that the Ombudsman and the courts would give in to such pressure exists; (5) thus the formula emerges – the public clamor supportive of the untruth plus the Ombudsman and the courts possibly giving way to this clamor equals violation of the due process rights of former President Arroyo and her officials; in turn, this sum equals striking down the Philippine Truth Commission for being unconstitutional.

The separate opinions of Chief Justice Renato Corona and Justices Teresita de Castro, Lucas Bersamin, and Jose Perez hold an extreme view on EO 1, opposing well-established jurisprudence which categorically pronounce that the investigatory powers of the Ombudsman may be concurrently exercised with other legally authorized bodies. Chief Justice Corona and Justices de Castro, Diosdado Peralta, and Bersamin even go further in saying that it would take congressional action, by means of legislation, to create a truth commission with the same mandate as that in EO 1; and even if Congress itself were to create such commission, it would still be struck down for violating the equal protection right of former President Arroyo.

Justice Antonio Carpio opines that the effect of the majority Decision is the absolute prevention of the investigation of the Arroyo administration.[2] I agree with his assessment, especially

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[2] This is discussed in the part of this Opinion on "The Majority Decision's Turn-Around."

considering the further views on the matter expressed separately by Chief Justice Corona and Justices de Castro, Brion, Peralta, Bersamin, and Perez. In my view, the Decision and the separate concurring opinions manifest the "backlash effect" wherein movements to achieve social justice and a more equitable distribution of powers are met with opposition from the dominant group. When the people start demanding accountability, in response to which truth commissions and other fact-finding bodies are established, those from the previously ruling elite, who retain some hold on power, lash back at the effort by crying "persecution," "violation of due process" and "violation of the equal protection guarantee." Some of the petitioners, according to Justice Conchita Carpio Morales, are in essence acting for and in behalf of former President Arroyo and her officials, otherwise they would not be invoking the "equal protection clause," a defense that is inherently personal to President Arroyo and her officials. These petitioners are wielding the backlash whip through the Petitions. In bending over backwards to accommodate the Petitions, especially on equal protection claims which Petitioners could not properly raise, this Court is wittingly or unwittingly compromising important constitutional principles and rendering the path to a genuinely strong democratic Philippines more difficult. With all due respect, the Decision in effect conveys the immoral lesson that what is all-important is to capture and retain political power at all costs and misuse the legal infrastructure, including the Bill of Rights and the power of appointment, to create a shield of immunity from prosecution of misdeeds.

Findings and Dispositive Conclusion of the Majority

The dispositive conclusion of the majority Decision contradicts its own understanding of both the Constitution and the legal implication of recent political events. It finds that: (1) the Filipino people convinced in the sincerity and ability of Benigno Simeon Aquino III to carry out the noble objective of stamping out graft and corruption, "catapulted the good senator to the

Presidency"[3]; (2) to transform his campaign slogan into reality, "President Aquino found a need for a special body to investigate reported cases of graft and corruption allegedly committed during the administration of his predecessor"[4]; (3) the Philippine Truth Commission (PTC) is an *ad hoc* committee that flows from the President's constitutional duty to ensure that the laws are faithfully executed, and thus it can conduct investigations under the authority of the President to determine whether the laws were faithfully executed in the past and to recommend measures for the future to ensure that the laws will be faithfully executed;[5] (4) the PTC is constitutional as to its manner of creation and the scope of its powers;[6] (5) that it is similar to valid investigative bodies like the PCAC, PCAPE, PARGO, the Feliciano Commission, the Melo Commission and the Zeñarosa Commission.[7] **Nevertheless,** the majority Decision concluded that the PTC should be struck down as unconstitutional for violating the equal protection clause for the reason that the PTC's clear mandate is to "investigate and find out the truth concerning the reported cases of graft and corruption during the previous administration only."[8]

There is a disjoint between the premises and the conclusion of the Decision caused by its discard of the elementary rules of logic and legal precedents. It suffers from internal contradiction, engages in semantic smoke-and-mirrors and blatantly disregards what must be done in evaluating equal protection claims, *i.e.*, a judge must ask whether there was indeed a classification; the purpose of the law or executive action; whether that purpose achieves a legitimate state objective; the reason for the classification; and the relationship between the means and the end. Within those layers of analysis, the judge must compare

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[3] Decision at p. 3.

[4] *Id.*

[5] *Id.* at p. 24.

[6] *Id.* at p. 23.

[7] *Id.* at p. 25.

[8] Decision at p. 35.

the claimed reason for classification with cases of like or unlike reasoning. He knows the real world, he looks at its limitations, he applies his common sense, and the judge knows in his judicial heart whether the claimed reason makes sense or not. And because he is a practical man, who believes as Justice Oliver Wendell Holmes did that the life of the law is in experience, he knows false from genuine claims of unconstitutional discrimination.

With all due respect, it is bad enough that the Decision upsets the long line of precedents on equal protection and displays self-contradiction. But the most unacceptable effect of the majority Decision is that a court of unelected people — which recognizes that the President "need(s) to create a special body to investigate reports of graft and corruption allegedly committed during the previous administration" to "transform his campaign promise" "to stamp out graft and corruption"[9] — proposes to supplant the will of the more than 15 million voters who voted for President Aquino and the more than 80% of Filipinos who now trust him, by imposing unreasonable restrictions on and impossible, unknowable standards for presidential action. The Decision thereby prevents the fulfillment of the political contract that exists between the Philippine President and the Filipino people. In so doing, the Court has arrogated unto itself a power never imagined for it since the days of *Marbury v. Madison*[10] when the doctrine of judicial review was first laid down by the U.S. Supreme Court. The majority does not only violate the separation of powers doctrine by its gratuitous intrusion into the powers of the President — which violation the Decision seeks to deny. Nay, the majority created a situation far worse — the usurpation by the judiciary of the sovereign power of the people to determine the priorities of Government.

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[9] *Id.* at 3.

[10] 5 U.S. 137 (1803).

The Majority Decision's Expansive Views of the Powers of the Presidency and the Mandate of the Aquino Government

The majority Decision starts with an expansive view of the powers of the Philippine presidency and what this presidency is supposed to accomplish for the Filipino people:

> The genesis of the foregoing cases can be traced to the events prior to the historic May 2010 elections, when then Senator Benigno Simeon Aquino III declared his staunch condemnation of graft and corruption with his slogan, "*Kung walang corrupt, walang mahirap.*" The Filipino people convinced in his sincerity and in his ability to carry out this noble objective catapulted the good senator to the Presidency.[11]

Here we have the majority affirming that there exists a political contract between the incumbent President and the Filipino people — that he must stamp out graft and corruption. It must be remembered that the presidency does not exist for its own sake; it is but the instrument of the will of the people, and this relationship is embodied in a political contract between the President and the people. This political contract creates many of the same kinds of legal and constitutional imperatives under the social contract theory as organic charters do. It also undergirds the moral legitimacy of political administrations. This political contract between President Aquino and the Filipino people is a potent force that must be viewed with the same seriousness as the 1987 Constitution, whose authority is only maintained by the continuing assent thereto of the same Filipino people.

Then the Decision proceeds to affirm the power of the President to conduct investigations as a necessary offshoot of his express constitutional duty to ensure that the laws are faithfully executed.[12]

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[11] Decision at p. 3.

[12] Decision at p. 24.

It then proceeds to explain that fact-finding powers must necessarily carry the power to create *ad hoc* committees to undertake fact-finding. And because the PTC is only an *ad hoc* committee that is to be funded from the approved budget of the Office of the President, the Executive Order that created it is not a usurpation of any legislative power.

The Decision upholds in extensive affirmatory language what, since the creation of the Republic, has been understood about the powers of the Presidency and the need for the effective exercise of the investigatory powers of that office to serve state objectives. Unfortunately, it then breaks its own chain of thought and shrinks the vista from its grand view of representative government to a view that is myopic and logically infirm.

The Majority Decision's Turn-Around to Unconstitutionally Restrict the Powers of the Aquino Presidency, its Unpredictable Standard for "Reasonable Prioritization," and the Resulting Imposition of an Impossible Condition on Aquino's Campaign Promise, as Well as Its Internal Contradiction

Having strongly expounded on the need of President Aquino to fulfill his political contract with the Filipino people to address graft and corruption, and his constitutional duty to ensure that the laws are faithfully executed, the Court suddenly finds itself impermissibly restricting this power when the object of the exercise of the Presidential powers of investigation under EO 1 focused on the reported misdeeds of the Arroyo administration. From full support of the incumbent President and his constitutional powers, the majority Decision reverses its track to unconstitutionally restrict his powers by effectively denying him the right to choose the priority — in this case the Arroyo administration — in his graft-busting campaign.

The reasoning of the Decision proceeds thus: (a) all past administrations are a class and to exclude other past administrations is on its face unlawful discrimination; (b) the reasons given by the Solicitor General for the limited scope of the intended investigation — administrative overburden if other past administrations are included, difficulty in unearthing evidence on old administrations, duplication of investigations already made — are either specious, irrelevant to the legitimate and noble objective of the PTC to stamp out corruption, or beside the point and thus do not justify the discrimination; (c) to be constitutional, the PTC must, "at least, have authority to investigate all past administrations"[13] and "must not exclude the other past administrations";[14] (d) "[p]erhaps a revision of the executive issuance so as to include the earlier past administrations would allow it to pass the test of reasonableness and not be an affront to the Constitution";[15] and (e) "reasonable prioritization is permitted," but "it should not be arbitrary lest it be struck down as unconstitutional."[16]

The Decision is telling the President to proceed with his program of anti-corruption on the condition that, when constituting a fact-finding commission, he must include "all past administrations" without exception, save he cannot be expected to investigate dead presidents[17] or those whose crimes have prescribed. He may prioritize, but he must make sure such prioritization is not arbitrary.

In talking about an acceptable formulation for a fact-finding commission, it is as if the Decision is talking past EO 1. **The President has already made his fact-finding prioritization**

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[13] The majority Decision clarifies that investigation of deceased presidents, cases which have already prescribed and simultaneous investigations of previous administration are not expected of the PTC. (Decision at p. 37)

[14] Decision at p. 37.

[15] Decision at p. 43.

[16] *Id.* at pp. 37-38.

[17] I submit that the majority Decision must have intended to refer to all officials of past presidents, and not only to the Presidents themselves.

in EO 1, and his prioritization is not arbitrary. The government has already explained why investigation of the Arroyo administration is its priority — (a) the audit of an immediate past administration is usually where audits begin; (b) the evidence of graft and corruption is more likely to still be intact; (c) the most immediate deleterious effects of the reported graft and corruption of the immediate past administration will need to be faced by the present administration; (d) the resources required for investigation of the immediate past administration alone will take up all the resources of the PTC; and (e) other past administrations have already been investigated and one past president has already been jailed. But this Court is saying that all the above are not indicators of rational prioritization. Then, what is? This Court seems to have set an inordinately high standard for reasonableness that is impossible to satisfy, primarily because it is unknowable and unpredictable. The only conclusion is that there is no other standard out there acceptable to the majority, and there never will be.[18] Even the majority Decision gives no clue, and perhaps the majority has no clue on what those reasonable standards are. As Justice Florentino Feliciano said in his concurrence in *Tañada v. Tuvera*:[19]

> x x x The enforcement of prescriptions which are both unknown to and unknowable by those subjected to the statute, has been throughout history a common tool of tyrannical governments. Such application and enforcement constitutes at bottom a negation of the fundamental principle of legality in the relations between a government and its people.

This is the red herring — for the majority Decision to speak as if there were a way to "tweak" EO 1 so that it becomes acceptable to the majority when in reality there is no way that can be done without loss of dignity to the incumbent presidency.

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[18] Unless the Court is impliedly saying that the reported crimes that are the earliest in point of time are the ones that must be prioritized, *i.e.*, reported crimes committed during the administrations of Presidents Corazon Aquino and Fidel Ramos. But to impose this standard is the height of legal unreasonableness and the worst form of judicial overreach.

[19] G.R. No. 63915, 29 December 1986, 146 SCRA 446.

The tweaked EO, according to the Decision, must include all past administrations in its coverage, and can identify its priority; but a reading of the Decision already indicates that the moment the prioritization hints at focusing on the Arroyo administration, then the majority is ready to once again strike it down. Such proposition is to require the Aquino administration to engage in hypocrisy — to fact-find on "the elephant in the room" without talking about that elephant in particular because the majority finds that to talk about that particular elephant without talking about all other elephants is to deprive that particular elephant of its equal protection right. This Court has imposed an unbearable and undignified yoke on the presidency. It is to require the Aquino Presidency to pretend that addressing the reported graft and corruption of the Arroyo administration was never a major campaign promise of this Presidency to the people.

It is incumbent upon any administration to conduct an internal audit of its organization - in this case, the executive department. This is standard practice in the private sector; it should likewise be standard practice for the public sector if the mandate of public accountability is to be fulfilled. No President should be prevented from creating administrative structures to exact accountability; from conducting internal audits and creating controls for executive operations; and from introducing governance reforms. For the Court to do so would be to counter progress and to deny the executive department the use of best practices that are par for the course in modern democracies.

The Decision contradicts itself by concluding that the graft and corruption fact-finding mandate of the PTC is confined **only** to those incidents in the Arroyo administration. In the same breath, it acknowledges that the express language of EO 1 indicates that the President can expand the focus of the PTC at any time by including other past misdeeds of other administrations. In other words, the clear and unmistakable language of EO 1 precludes any conclusion that the PTC's investigation of graft and corruption is confined only to the administration of President Arroyo. EO 1 should be read as empowering the PTC to conduct its fact-finding on the Arroyo

administration, and that this fact-finding may expand to include other past administrations on the instruction of President Aquino.

The use of the word "only" in the majority Decision[20] is unwarranted, as it indicates exclusivity of the PTC's focus on the Arroyo administration — an exclusivity that is incompatible with the unequivocally non-exclusive language of Sec. 17 of EO 1.[21] The litmus test that should have been applied by this Court is whether or not EO 1 is unconstitutional for prioritizing fact-finding on the reported graft and corruption of the Arroyo administration without foreclosing, but not guaranteeing, future investigation into other administrations.

Unwarranted Creation of "Class of All Political Administrations" as the Object of Constitutional Review by This Court

At the outset, it must be emphasized that EO 1 did not, for purposes of application of the laws on graft and corruption, create two classes — that of President Arroyo and that of other past administrations. Rather, it prioritized fact-finding on the administration of President Arroyo while saying that the President could later expand the coverage of EO 1 to bring other past administrations under the same scrutiny. Prioritization *per se* is not classification. Else, as all human activities require prioritization, everyone in a priority list for regulation or investigation can make out a case that there is *prima facie* classification, and that the prioritization is not supported by a reasonable objective. All acts of government would have to come to a halt and all public offices would need to justify every plan of action as to

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[20] Decision at p. 36.

[21] SECTION 17. Special Provision Concerning Mandate. If and when in the judgment of the President there is a need to expand the mandate of the Commission as defined in Section 1 hereof to include the investigation of cases and instances of graft and corruption during the prior administrations, such mandate may be so extended accordingly by way of a supplemental Executive Order.

reasonableness of phases and prioritization. The step-by-step approach of legislative and regulatory remedies — recognized as valid in *Quinto v. COMELEC*[22] and in the case law[23] cited by the Decision — in essence says that prioritization is not classification, much less invalid classification.

The majority looks at the issue of equal protection by lumping into a single class all past administrations,[24] *i.e.*, those of former Presidents Aguinaldo, Quezon, Osmeña, Laurel, Roxas, Quirino, Magsaysay, Garcia, Macapagal, Marcos, Aquino, Ramos, Estrada and Arroyo. Justice Carpio makes the case that recovery of ill-gotten wealth is imprescriptible. Then conceivably under the formulation of the majority, all past administrations are required to be investigated. In fact, even with the exceptions introduced by the Decision, its conclusory parts emphasize the need to include all past administrations in the coverage of EO 1. It then pronounces that any difference in treatment between members of this class is unequal protection, such that to treat the Arroyo administration differently from the administration of President Aguinaldo is unconstitutional. After all, says the majority Decision, corruption was reported in other past administrations as well.

The lumping together of all Philippine political administrations spanning 111 years, for purposes of testing valid legislation, regulation, or even fact-finding is unwarranted. There is inherent illogic in the premise of the Decision that administrations from the time of Aguinaldo to Arroyo belong to one class.[25]

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[22] G.R. No. 189698, 22 February 2010.

[23] *Nixon v. Administrator of General Services*, 433 US 425 cited in Am. Jur. 2d, Vol. 16(b), p. 371; *Hunter v. Flowers*, 43 So. 2d 435 cited in Am. Jur. 2d, Vol. 16(b), p. 370; *Clements v. Fashing*, 457 U.S. 957.

[24] Decision at p. 36.

[25] Despite the attempt of the majority Decision to make it appear that it is not unreasonable in requiring an all-comprehensive coverage when it says that it does not require the impossible, the fact that it keeps on insisting that all past administrations must be included in the coverage of EO 1 give basis for the opinion that the Decision indeed requires coverage spanning at least 6 decades, and even perhaps, a century. *See* Dissent of *J.* Carpio.

Assuming *arguendo* that all the political administrations can be categorized as one class, the test of reasonableness has been more than met by EO 1, as extensively discussed by Justices Carpio, Carpio Morales, Antonio Eduardo Nachura, and Roberto Abad. Let me just add to their voices by looking at the constitutional problem before this Court from other angles.

The Majority Decision Indirectly Admits that the "Reasonableness Test" Has Been Satisfied in the Same Breath that it Requires the Public to Live with an Unreal World View

To quote from the majority Decision's discussion of the claim of violation of the equal protection clause:

Although the purpose of the Truth Commission falls within the investigative powers of the President ...

. . . . . .

... It must not leave out or "underinclude" those that should otherwise fall into a certain classification.

. . . . . .

As elucidated in *Victoriano v. Elizalde Rope Workers' Union* and reiterated in a long line of cases,

> The guaranty of equal protection of the laws is not a guaranty of equality in the application of the laws upon all citizens of the state. It is not, therefore, a requirement, in order to avoid the constitutional prohibition against inequality, that every man, woman and child should be affected alike by statute. Equality of operation of statutes does not mean indiscriminate operation on circumstances surrounding them. It guarantees equality, not identity of rights. The Constitution does not require that things which are different in fact be treated in law as though they were the same. The equal protection clause does not forbid discrimination as to things that are different. It does not prohibit legislation which is limited either in the object to which it is directed or by the territory within which it is to operate.

> The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that of inequality. All that is required of a valid classification is that it be reasonable, which means that classification should be based on substantial distinctions which make for real differences, that it must be germane to the purpose of the law; that it must apply equally to each member of the class. The Court has held that the standard is satisfied if the classification is based on a reasonable foundation or rational basis and is not palpably arbitrary.

Applying these precepts to this case, Executive Order No. 1 should be struck down as violative of the equal protection clause. The clear mandate of the envisioned truth commission is to investigate and find out the truth "concerning the reported cases of graft and corruption during the *previous administration*" only. The intent to single out the previous administration is plain, patent and manifest ...

Though the OSG enumerates several differences between the Arroyo administration and other past administrations, these distinctions are not substantial enough to merit the restriction of the investigation to the "previous administration" only.

... The OSG ventures to opine that "to include other past administrations, at this point, may unnecessarily overburden the commission and lead it to lose its effectiveness." The reason given is specious. It is without doubt irrelevant to a legitimate and noble objective of the PTC to stamp out or "end corruption and the evil it breeds."

The **probability that there would be difficulty in unearthing evidence or that the earlier reports involving the earlier administrations were already inquired into is beside the point.** Obviously, deceased presidents and cases which have already prescribed can no longer be the subjects of inquiry by the PTC. Neither is the PTC expected to conduct simultaneous investigations of previous administrations, given the body's limited time and resources. "The Law does not require the impossible" (*Lex non cognit ad impossibilia)*.

Given the foregoing physical and legal impossibility, the Court logically recognizes the unfeasibility of investigating almost a century's worth of graft cases. However, the fact remains that Executive Order No. 1 suffers from arbitrary classification. The PTC, to be true to its mandate of searching for the truth, must not exclude the other past administration. The PTC must, at least, have the authority to investigate all past administrations. While reasonable prioritization is permitted, it should not be arbitrary lest it be struck down for being unconstitutional. …

It could be argued that considering that the PTC is an *ad hoc* body, its scope is limited. The Court, however, is of the considered view that although its focus is restricted, the constitutional guarantee of equal protection under the law should not in any way be circumvented. The Constitution is the fundamental and paramount law of the nation to which all other laws must conform and in accordance with which all private rights determined and all public authority administered. Laws that do not conform to the Constitution should be stricken down for being unconstitutional. While the thrust of the PTC is specific, that is, for investigation of acts of graft and corruption, Executive Order No. 1, to survive, must be read together with the provisions of the Constitution. To exclude the earlier administrations in the guise of "substantial distinctions" only an "adventure in partisan hostility." …

To reiterate, in order for a classification to meet the requirements of constitutionality, it must include or embrace all persons who naturally belong to the class. "Such a classification must not be based on existing circumstances only, or so constituted as to preclude additions to the number included within a class, but must be of such nature as to embrace all those who may thereafter be in similar circumstances and conditions. Furthermore, all who are in situations and circumstances which are relative to the discriminatory legislation and which are indistinguishable from those of the members of the class must be brought under the influence of the law and treated by it in the same way as members of the class."

The Court is not unaware that "mere underinclusiveness is not fatal to the validity of a law under the equal protection clause" ... In several instances, the **underinclusiveness was not considered a valid reason to strike down a law or regulation where the purpose can be attained in future legislations or regulations. These cases refer to the "step by step" process.** "**With regard to equal protection claims, a legislature does not run the risk**

of losing the entire remedial scheme simply because it fails, through inadvertence or otherwise, to cover every evil that might conceivably have been attacked."

In Executive Order No. 1, however, there is no inadvertence. That the previous administration was picked out was deliberate and intentional as can be gleaned from the fact that it was underscored at least three times in the assailed executive order. It must be noted that Executive Order No. 1 does not even mention any particular act, event or report to be focused on unlike the investigative commissions created in the past. "The equal protection clause is violated by purposeful and intentional discrimination."

... Although Section 17 allows the President the discretion to expand the scope of the investigations of the Truth Commission so as to include the acts of graft and corruption, it does not guarantee that they would be covered in the future. Such expanded mandate of the commission will still depend on the whim and caprice of the President. If he would decide not to include them, the section would then be meaningless. This will only fortify the fears of the petitioners that the Executive Order No. 1 was "crafted to tailor-fit the prosecution of officials and personalities of the Arroyo administration."[26] (Emphasis and underscoring supplied)

In an earlier portion, I discussed the findings of the majority Decision regarding the mandate of President Aquino from the electorate and the vast expanse of his powers to investigate and ensure the faithful execution of the laws. The majority concedes the reasonableness of the purpose of EO 1, but, as shown in the above excerpts, it contests the manner by which President Aquino proposes to achieve his purpose. The very discussion above, however, demonstrates the self-contradiction and unreality of the majority Decision's worldview.

First, the Decision concedes that classification *per se* is not forbidden in the process of legislation or regulation. Indeed, cases identified by the Decision, when examined, pronounce that the legislature and the regulators must necessarily pick and choose in the process of their work.

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[26] Decision, at pp. 29-40.

Second, in legislation or regulation, a step-by-step process resulting in a classification of those that are immediately included therein versus those that have yet to be included in the future is constitutional.

Third, the Decision also concedes that the under-inclusiveness of remedial measures is not unconstitutional, especially when the purpose can be attained through inclusive future legislation or regulation. I note of course, that the Decision states in an earlier part that "under-inclusiveness" makes for invalid classification. It is important to note the observation of Justice Carpio that the creation of the Presidential Commission on Good Government (PCGG) has consistently been upheld by the Court despite constitutional challenges on equal protection grounds. The PCGG's charter has the same "future inclusion" clause as Section 17 of EO 1; yet, the majority Decision ignores jurisprudence on the PCGG.

Fourth, the Decision, through a quoted case,[27] observes that valid under-inclusiveness can be the result of either inadvertence or deliberateness.

Regardless of the foregoing findings and discussions, which in effect support its validity, EO 1 is struck down by the Decision. The majority creates an argument for the invalidity of EO 1 by quoting only from general principles of case law and ignoring specific applications of the constitutional tests for valid classification. Instead of drawing from real-world experiences of classification decided in the past by the Court, the Decision relies on general doctrinal statements normally found in cases, but divorces these doctrinal statements from their specific contextual setting and thereby imposes unrealistic standards for presidential action.

The law has always been that a class can be validly distinguished from others if there is a reasonable basis for the distinction. The reasonableness of the classification in EO 1 was amply demonstrated by the Solicitor General, but the majority simply

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[27] Decision at p. 39, citing *McDonald v. Board of Election Com'rs of Chicago*, 394 US 802 cited in AM. Jur 2d, note 9.

responds dismissively that the distinctions are superficial, specious and irrelevant, without clearly explaining why they are so. Contrary to the conclusion of the majority, jurisprudence bear out the substantial and reasonable nature of the distinction.

With respect to the first reason for the classification claimed by the Solicitor General — that other past administrations have already been investigated and, hence, there is constitutional basis not to include them in the immediate focus of the investigation — the case of *Luna v. Sarmiento*[28] supports the conclusion that the distinction is constitutional.

Commonwealth Act No. (CA) 703, which was sustained by *Luna v. Sarmiento*, created two sets of situations — one in which persons were delinquent in their tax payments for half of the year 1941 and the entirety of the years 1942-45 (during the Japanese occupation), and another in which persons had paid their taxes for the said periods. Only the first set of persons was benefited by the tax amnesty provision of CA 703. The law was silent on the treatment of the tax payments made by compliant taxpayers during that period. A claim of unequal protection was raised. The Court said:

> Does this provision cover taxes paid before its enactment, as the plaintiff maintains and the court below held, or does it refer, as the City Treasurer believes, only to taxes which were still unpaid?
>
> There is no ambiguity in the language of the law. It says "taxes and penalties due and payable," the literal meaning of which is taxes owed or owing. (See Webster's New International Dictionary.) Note that the provision speaks of penalties, and note that penalties accrue only when taxes are not paid on time. The word "remit" underlined by the appellant does not help its theory, for to remit is to desist or refrain from exacting, inflicting, or enforcing something as well as to restore what has already been taken. (Webster's New International Dictionary)
>
> We do not see that literal interpretation of Commonwealth Act No. 703 runs counter and does violence to its spirit and intention**, nor do we think that such interpretation would be**

[28] G.R. No. L-3538, 28 May 1952, 91 Phil. 371.

"constitutionally bad" in that "it would unduly discriminate against taxpayers who had paid in favor of delinquent taxpayers." The remission of taxes due and payable to the exclusion of taxes already collected does not constitute unfair discrimination. Each set of taxes is a class by itself, and the law would be open to attack as class legislation only if all taxpayers belonging to one class were not treated alike. They are not.[29]

In other words, within the class of taxpayers obligated to pay taxes in the period from the second half of 1941 to the end of 1945 are two subclasses — those who did not pay their taxes and those who did. By the same kind of reasoning, within the class of political administrations, if past administrations have already been the subject of a fact-finding commission, while one particular administration has not been so, that alone is a good basis for making a distinction between them and an administration that has not yet been investigated. There is a constitutionally valid basis, therefore, to distinguish between the Marcos, Ramos, and Estrada administrations — which have already been the subject of fact-finding commissions – and the Arroyo administration.

With respect to the second reason for the classification — that it would be unduly oppressive and burdensome to require the PTC to investigate all administrations — case law holds that administrative constraints are a valid basis for classification.

In *British American Tobacco v. Camacho*,[30] the Court declared the legislative classification freeze on the four-tiered system of cigarette taxes as a valid and reasonable classification arising from **practicality and expediency**.[31] Thus, freezing the tax

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[29] G.R. No. L-3538, 28 May 1952, 91 Phil. 371.

[30] G.R. No. 163583, 20 August 2008, 562 SCRA 511.

[31] "All in all, the classification freeze provision addressed Congress's administrative concerns in the simplification of tax administration of sin products, elimination of potential areas for abuse and corruption in tax collection, buoyant and stable revenue generation, and ease of projection of revenues. Consequently, there can be no denial of the equal protection of the laws since the rational-basis test is amply satisfied." (*British American Tobacco v. Camacho, id.*)

classification of cigarettes based on their 1996 or 2003 net retail prices was found to be the most efficient way to respond to Congress' legitimate concern with simplifying tax collections from cigarette products. In a similar vein, the President believed that the most efficient and effective way of jump-starting his administration's fight against corruption was to focus on one freezable time frame — the latest past administration. The legitimate and valid administrative concern is obviously the limited resources and time available to the PTC to make a comprehensive yet valuable fact-finding report with recommendations to address the problem of graft and corruption in a timely and responsive manner within a period of two years. Hence, there can be no violation of equal protection based on the fact that the PTC's investigation is limited to the investigation of what can be feasibly investigated, a classification based on the Executive's practical administrative constraints.

With respect to the third reason for the classification made by EO 1, one that lumps together the various temporal reasons, the Solicitor General describes it thus:

> ... The segregation of the preceding administration as the object of fact-finding is warranted by the reality that unlike with administration long gone, the current administration will most likely bear the immediate consequence of the policies of the previous administration.
>
> ... The classification of the previous administration as a separate class for investigation lies in the reality that the *evidence* of possible criminal activity, the evidence that could lead to recovery of public monies illegally dissipated, the policy lessons to be learned to ensure that anti-corruption laws are faithfully executed, are *more easily established* in the regime that immediately precede the current administration.

The temporal dimension of every legal argument is supremely important, imposed by the inevitable fact that this world and its inhabitants are creatures of space and time. Every public official, therefore, must accomplish his duties within the constraints of space and time. To ignore the limitation of time by assuming that a public official has all the time in the world to accomplish

an investigative goal, and to force the subject of the universe of his scrutiny to comprise all past administrations, is the height of legal unreasonableness.

In other words, according to the majority Decision, within the limited term of President Aquino, and within the more severely limited life span of an *ad hoc* fact-finding committee, President Aquino must launch his pursuit to eradicate graft and corruption by fact-finding into all past administrations spanning multitudes of decades. Truth commissions, of which the PTC according to Chief Justice Corona is one, are all highly limited in investigations, statement taking, and transcribing information.[32] In order to be swift and independent, truth commissions operate within strict time constraints. They are also restricted in the subject matter they can review.[33] This is the real world of truth commissions, not that imagined by the majority.

The Majority Decision Grievously Omitted the Analytical Process Required of this Court in Equal Protection Claims

A judicial analysis must not stop at reciting legal doctrines which are its mere beginning points, but, especially in equal protection claims, it must move forward to examine the facts and the context of the controversy. Had the majority taken pains to examine its own cited cases, it would have discovered that the cases, far from condemning EO 1, would actually support the constitutionality of the latter.

The majority Decision and the separate opinion of Chief Justice Corona rely greatly on *Victoriano v. Elizalde Rope Workers*

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[32] Matiangai Sirleaf, *Regional Approach to Transitional Justice? Examining the Special Court for Sierra Leone and the Truth & Reconciliation Commission for Liberia*, 21 Fla. J. Int'l L. 209, 213 (2009), *citing* E. Gyimah-Boadi, Executive Director, CDD-Ghana, Paper Presentation at the British Hall Council: Reconciliation: Comparative Perspectives, 7 (June 13, 2005).

[33] Kristin Bohl, *Breaking the Rules of Transitional Justice*, 24 Wis. Int'l L. J. 557, 473 (2006).

Union[34] for their main doctrinal authority. The Court in that case held that the questioned classification was constitutional, and it went through a step-by-step analysis to arrive at this conclusion. To clarify the kind of analytical process that must go into an examination of the equal protection claim, let us quote from the case *in extenso*:

> Thirdly, the Union contended that Republic Act No. 3350 discriminatorily favors those religious sects which ban their members from joining labor unions, in violation of Article III, Section 1(7) of the 1935 Constitution; and while said Act unduly protects certain religious sects, it leaves no rights or protection to labor organizations.
>
> ... that said Act does not violate the constitutional provision of equal protection, for the classification of workers under the Act depending on their religious tenets is based on substantial distinction, is germane to the purpose of the law, and applies to all the members of a given class...
>
> ... **All presumptions are indulged in favor of constitutionality; one who attacks a statute, alleging unconstitutionality must prove its invalidity beyond a reasonable doubt, that a law may work hardship does not render it unconstitutional; that if any reasonable basis may be conceived which supports the statute, it will be upheld, and the challenger must negate all possible bases; that the courts are not concerned with the wisdom, justice, policy, or expediency of a statute; and that a liberal interpretation of the constitution in favor of the constitutionality of legislation should be adopted.**
>
> ... In *Aglipay v. Ruiz*, this Court had occasion to state that the government should not be precluded from pursuing valid objectives secular in character even if the incidental result would be favorable to a religion or sect...
>
> The **primary effects of the exemption** from closed shop agreements in favor of members of religious sects that prohibit their members from affiliating with a labor organization, **is the protection of said employees against the aggregate force of the collective bargaining agreement, and relieving certain citizens of a burden on their religious beliefs;** and by eliminating to a certain extent

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[34] G.R. L-25246, 12 September 1974, 59 SCRA 54.

economic insecurity due to unemployment, which is a serious menace to the health, morals, and welfare of the people of the State, **the Act also promotes the well-being of society. It is our view that the exemption from the effects of closed shop agreement does not directly advance, or diminish, the interests of any particular religion. Although the exemption may benefit those who are members of religious sects that prohibit their members from joining labor unions, the benefit upon the religious sects is merely incidental and indirect.** The "establishment clause" (of religion) does not ban regulation on conduct whose reason or effect merely happens to coincide or harmonize with the tents of some or all religions. The free exercise clause of the Constitution has been interpreted to require that religious exercise be preferentially aided.

The guaranty of equal protection of the laws is not a guaranty of equality in the application of the laws upon all citizens of the state. It is not, therefore, a requirement, in order to avoid the constitutional prohibition against inequality, that every man, woman and child should be affected alike by a statute. Equality of operation of statutes does not mean indiscriminate operation on persons merely as such, but on persons according to the circumstances surrounding them. It guarantees equality, not identity of rights. The Constitution does not require that things which are different in fact be treated in law as though they were the same. The equal protection clause does not forbid discrimination as to things that are different. It does not prohibit legislation which is limited either in the object to which it is directed or by the territory within which it is to operate.

The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. **All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences; that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class. This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary.**

In the exercise of its power to make classifications for the purpose of enacting laws over matters within its jurisdiction, the state is recognized as enjoying a wide range of discretion. It is not necessary that the classification be based on scientific or marked differences of things or in their relation. Neither is it necessary that the classification be made with mathematical nicety. **Hence legislative classification may in many cases properly rest on narrow distinctions, for the equal protection guaranty does not preclude the legislature from recognizing degrees of evil or harm, and legislation is addressed to evils as they may appear.**

We believe that Republic Act No. 3350 satisfies the aforementioned requirements. **The Act classifies employees and workers, as to the effect and coverage of union shop security agreements, into those who by reason of their religious beliefs and convictions cannot sign up with a labor union, and those whose religion does not prohibit membership in labor unions. The classification rests on real or substantial, not merely imaginary or whimsical, distinctions...**

...The classification, introduced by Republic Act No. 3350, therefore, rests on substantial distinctions.

The classification introduced by said Act is also germane to its purpose. The purpose of the law is precisely to avoid those who cannot, because of their religious belief, join labor unions, from being deprived of their right to work and from being dismissed from their work because of union shop security agreements.

Republic Act No. 3350, furthermore, is **not limited in its application to conditions existing at the time of its enactment. The law does not provide that it is to be effective for a certain period of time only**. It is intended to apply for all times as long as the conditions to which the law is applicable exist. As long as there are closed shop agreements between an employer and a labor union, and there are employees who are prohibited by their religion from affiliating with labor unions, their exemption from the coverage of said agreements continues.

Finally, **the Act applies equally to all members of said religious sects; this is evident from its provision. The fact that the law grants a privilege to members of said religious sects cannot by itself render the Act unconstitutional, for as We have adverted to, the Act only restores to them their freedom of**

association which closed shop agreements have taken away, and puts them in the same plane as the other workers who are not prohibited by their religion from joining labor unions. The circumstance, that the other employees, because they are differently situated, are not granted the same privilege, does not render the law unconstitutional, for every classification allowed by the Constitution by its nature involves inequality.

The mere fact that the legislative classification may result in actual inequality is not violative of the right to equal protection, for every classification of persons or things for regulation by law produces inequality in some degree, but the law is not thereby rendered invalid. A classification otherwise reasonable does not offend the constitution simply because in practice it results in some inequality. Anent this matter, it has been said that whenever it is apparent from the scope of the law that its object is for the benefit of the public and the means by which the benefit is to be obtained are of public character, the law will be upheld even though incidental advantage may occur to individuals beyond those enjoyed by the general public.[35]

The above analysis is the kind of processed reasoning to which EO 1 should be subjected. The majority Decision falls short of satisfying this process.

On the first test. Is the classification reasonable, based on substantial distinctions that make for real difference? The government has already given several reasons why the distinction between the administration of President Arroyo is different from other past administrations. The distinction does not lie in any claim that corruption is the sole hallmark of the Arroyo administration — far from it. The distinction lies in reason – administrative constraints, availability of evidence, immediate past acts, non-prescription of causes of actions — all of which are not whimsical, contrived, superficial or irrelevant. It must also be emphasized that the Court, as quoted above, recognizes that **in many cases, the classification lies in narrow distinctions.** We have already discussed how in *Luna v. Sarmiento* the Court

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[35] G.R. L-25246, 12 September 1974, 59 SCRA 54.

recognized subclasses within a class and upheld the narrow distinction made by Congress between these subclasses. So if past administrations have already been the subject of a fact-finding commission, while one particular administration has not been so subjected, that alone is a good basis for making a distinction between them and an administration that has not yet been investigated. It must be emphasized that the *Victoriano* case, which the majority heavily relied on, reiterated that as long as there is a public benefit to be obtained in a government action, incidental advantage (and conversely, disadvantage) to a group is not sufficient to upset the presumption of constitutionality of a government action.

On the second test. The classification is germane to the purpose of the law — to get a headstart on the campaign against graft and corruption. If the investigation into the root of corruption is to gain traction, it must start somewhere, and the best place to start is to examine the immediate past administration, not distant past administrations.

On the third test. Of course this is not relevant in this case, for the law being examined in *Victoriano* was one that granted prospective rights, and not one that involves fact-finding into past acts as with EO 1.

On the last test. This asks whether the law applies equally to all members of the segregated class. It must be emphasized that in the *Victoriano* case, this last test was applied not to all the workers in the bargaining unit, but it was applied to the subclass of workers whose religions prohibit them from joining labor unions. In application to this case, the question should then have been, not whether there is equality of treatment between all political administrations under EO 1, but whether within the subclass of third level public officials of the Arroyo administration — that is, the subject of EO 1 — there is unequal treatment. Obviously, the answer is no. The majority applied the last test backwards by asking whether there is equality of treatment among all political administrations and concluding that there was no equality of treatment, even before it could answer the first test of whether the classification between the Arroyo administration and other past administrations was reasonable.

It must be emphasized that the *Victoriano* case on which the majority heavily relies states in several parts that classification must necessarily result in inequality of treatment and that such inequality does not give rise to a constitutional problem. It is the lack of reason that gives rise to a constitutional issue, not the inequality *per se*. To quote again:

> The mere fact that the legislative classification may result in actual inequality is not violative of the right to equal protection, for every classification of persons or things for regulation by law produces inequality in some degree, but the law is not thereby rendered invalid. A classification otherwise reasonable does not offend the constitution simply because in practice it results in some inequality. Anent this matter, it has been said that whenever it is apparent from the scope of the law that its object is for the benefit of the public and the means by which the benefit is to be obtained are of public character, the law will be upheld even though incidental advantage may occur to individuals beyond those enjoyed by the general public.[36]

Selective Investigation, Enforcement and Prosecution

Fact-finding or investigation can only begin by identifying the phenomenon, event or matter that is to be investigated. Then it can only proceed if the fact-finder, or the authority under whom he works, identifies or selects the persons to be investigated.

The validity of the Feliciano Commission created by Administrative Order No. (AO) 78 of former President Arroyo is affirmed by the majority Decision. AO 78 zeroed in on the investigation of "the rebellion of misguided military officers last July (2003)," in order "to investigate the roots of the rebellion and the provocations that inspired it," and concludes that "this rebellion is deplorable." AO 78 labeled the officers involved in the July 2003 Oakwood rebellion as "misguided" and cast their actions as "rebellion" and "deplorable." President Arroyo selected a class — the officers involved in the July 2003 "rebellion" — in contradistinction to all other all military officers who had

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[36] G.R. L-25246, 12 September 1974, 59 SCRA 54.

ever rebelled against the Republic since its founding. The acts were stigmatized as acts of "rebellion," a crime punishable by law. The majority does not condemn this classification made in AO 78 by President Arroyo which uses condemnatory language on the class of people targeted. In contrast, the language of EO 1 of President Aquino is mild, willing to grant the administration of President Arroyo the benefit of the doubt by using adjectives to denote the tentativeness of the observations on corruption such as "**alleged**" and "**reported**" instead of treating them as actuality. AO 78 is affirmed while EO 1 is struck down; no explanation for the differing treatment is made by the majority Decision. This difference in treatment is disturbing considering the long history of the treatment by courts of the defense of selective investigation and prosecution.

In fulfilling its duty to execute the laws and bring violators thereof to justice, the Executive is presumed to undertake criminal prosecution "in good faith and in a nondiscriminatory fashion."[37]

The government has broad discretion over decisions to initiate criminal prosecutions[38] and whom to prosecute.[39] Indeed, the fact that the general evil will only be partially corrected may serve to justify the limited application of criminal law without violating the equal protection clause.[40] Mere laxity in the enforcement of laws by public officials is not a denial of equal protection.[41]

Although such discretion is broad, it is not without limit.[42] In order to constitute denial of equal protection, selective enforcement must be deliberately based on unjustifiable or arbitrary classification; the mere failure to prosecute all offenders is no

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[37] *United States v. Haggerty*, 528 F.Supp. 1268, 1291 (D.Colo.1981).

[38] *United States v. Armstrong*, 517 US 456, 464, 116 S.Ct. 1480, 134 L.Ed.2d 687 (1996).

[39] *United States v. Goodwin*, 457 U.S. 368, 380, n. 11 (1982).

[40] *McLaughlin v. State of Fla.*, 85 S.Ct. 283 (1964).

[41] *Application of Finn*, 356 P.2D 685 (1960).

[42] *United States v. Wayte*, 470 US 598, 608 (1995).

ground for the claim of a denial of equal protection.[43] To support a claim of selective prosecution, a defendant must establish a violation of equal protection and show that the prosecution (1) had a **discriminatory effect** and (2) was motivated by a **discriminatory purpose**.[44] *First*, he must show that "he has been singled out for prosecution while other similarly situated generally have not been proceeded against for the type of conduct forming the basis of the charge against him."[45] *Second*, he must prove that his selection for prosecution was invidious or in bad faith and was "**based on impermissible considerations such as race, religion, or the desire to prevent the exercise of constitutional rights.**"[46] In American constitutional history, it is the traditionally oppressed — racial or religious minorities and the politically disenfranchised — who have succeeded in making a case of unequal protection when their prejudiced status is shown to be the principal invidious or bad faith consideration for the selective prosecution.

The standard for demonstrating selective prosecution therefore is demanding: a "presumption of regularity supports prosecutorial decisions and in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official functions."[47]

In *People v. Dela Piedra*,[48] the Philippine Supreme Court, adhering to the precedents set in American jurisprudence, likewise denied the equal protection argument of an illegal recruiter, who claimed that others who had likewise performed acts of recruitment remained scot-free:

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[43] *Bell v. State*, 369 So.2d 932 (1979).

[44] *United States v. Armstrong, supra*, 517 U.S. 456, 465 (1996).

[45] *United States v. Furman*, 31 F.33 1034, 1038 (10th Cir. 1994), quoting *United States v. Salazar*, 720 F.2d 1482, 1487 (10th Cir. 1983).

[46] *United States v. Salazar*, 720 F.2d 1482, 1487 (10th Cir. 1983).

[47] *United States v. Hunter*, 13 F.Supp.2D 586, 10 June 1998.

[48] G.R. No. 121777, 24 January 2001, 350 SCRA 163.

The prosecution of one guilty person while others equally guilty are not prosecuted, however, is not, by itself, a denial of the equal protection of the laws. Where the official action purports to be in conformity to the statutory classification, an erroneous or mistaken performance of the statutory duty, although a violation of the statute, is not without more a denial of the equal protection of the laws. **The unlawful administration by officers of a statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination**. This may appear on the face of the action taken with respect to a particular class or person, or it may only be shown by extrinsic evidence showing a discriminatory design over another not to be inferred from the action itself. But a discriminatory purpose is not presumed, there must be a showing of "clear and intentional discrimination." Appellant has failed to show that, in charging appellant in court, that there was a "clear and intentional discrimination" on the part of the prosecuting officials.

The discretion of who to prosecute depends on the prosecution's sound assessment whether the evidence before it can justify a reasonable belief that a person has committed an offense. **The presumption is that the prosecuting officers regularly performed their duties, and this presumption can be overcome only by proof to the contrary, not by mere speculation.** Indeed, appellant has not presented any evidence to overcome this presumption. The mere allegation that appellant, a Cebuana, was charged with the commission of a crime, while a Zamboangueña, the guilty party in appellant's eyes, was not, is insufficient to support a conclusion that the prosecution officers denied appellant equal protection of the laws. (Emphasis supplied)

In the instant case, the fact that other administrations are not the subject of the PTC's investigative aim is not a case of selective prosecution that violates equal protection. The Executive is given broad discretion to initiate criminal prosecution and enjoys clear presumption of regularity and good faith in the performance thereof. For petitioners to overcome that presumption, they must carry the burden of showing that the PTC is a preliminary step to selective prosecution, and that it is laden with a discriminatory effect and a discriminatory purpose. However, petitioner has sorely failed in discharging that burden.

The presumption of good faith must be observed, especially when the action taken is pursuant to a constitutionally enshrined state policy such as the taking of positive and effective measures against graft and corruption.[49] For this purpose, the President created the PTC. If a law neither burdens a fundamental right nor targets a suspect class, the Court must uphold the classification, as long as it bears a rational relationship to some legitimate government end.[50]

The same presumption of good faith and latitude in the selection of what a truth commission must fact-find must be given to the President. Too wide a mandate would no doubt drown the commission in a sea of history, in the process potentially impeding the more forward-looking aspects of its work.[51] To require the PTC to look into all acts of large-scale corruption in all prior administrations would be to make truth-telling overly comprehensive, resulting in a superficial fact-finding investigation of a multitude of allegations without depth and insightful analysis. The Philippines' past experience with *ad hoc* investigating commissions has been characterized by a focus on the truth regarding a key period or event in our collective history and by a reasonable time frame for achieving their purpose, *i.e.*, the assassination of Ninoy Aquino,[52] the 1989 *coup d'état*,[53] the 2003 Oakwood mutiny,[54] the extra-judicial killings of media and activists,[55] and private armed groups.[56]

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[49] CONSTITUTION, Article II, Section 27.

[50] *Ang Ladlad LGBT Party v. COMELEC*, G.R. No. 190582, 08 April 2010.

[51] Ariel Meyerstein, *Transitional Justice and Post Conflict Israel/ Palestine: Assessing the Applicability of the Truth Commission Paradigm*, 38 Case W. Res. J. Int'l. L. 281, 330 (2006-2007).

[52] Agrava Commission, Presidential Decree No. 1886 (14 October 1983).

[53] Davide Commission, Administrative Order No. 146 (06 December 1989) and Republic Act No. 6832 (05 January 1990).

[54] Feliciano Commission, Administrative Order No. 78 (30 July 2003).

[55] Melo Commission, Administrative Order No. 173 (23 March 2007).

[56] Zeñarosa Commission, Administrative Order No. 275 (09 December 2009).

Here, petitioners who are not even the injured parties are invoking the equal protection clause. Their standing to raise this issue is seriously contested in the Dissent of Justice Carpio Morales. They do not claim in any manner that they are the subject of EO 1. Courts have warned that the right of equal protection of the law "may not be perversely invoked" to justify desistance by the authorities from the prosecution of a criminal case, just because not all of those who are probably guilty thereof were charged.[57] This characterization would apply especially if the ones who invoke the equal protection clause are those who are not injured by the contested executive action.

EO 1 activities are at most initiatory investigations. There is no preliminary investigation — much less prosecution – to be conducted under the auspices of EO 1. The PTC is tasked to "collect, receive, review and evaluate evidence related to or regarding the cases of large scale corruption,"[58] tasks that constitutes nothing more than a general inquiry into such reported cases in the previous administration. Similar to an initiatory police investigation, the PTC is tasked with general fact-finding to uncover the truth of the events pertaining to an alleged unsolved crime. To strike down the PTC's mandate to investigate the previous administration simply because other administrations are not immediately included is tantamount to saying that a police investigation of a recent murder case is violative of equal protection because there are other prior yet equally heinous murders that remain uninvestigated and unsolved by the police.

What renders the plaint regarding an alleged violation of the equal protection clause ridiculous is that it is being raised at the inception stage for the determination of possible criminal liability, where threat to liberty is most absent. In contrast, with respect to petitions to stop later and more freedom-threatening stages in the determination of criminal liability such as in formal criminal investigations and prosecutions, Philippine courts instinctively

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[57] *Reyes v. Pearlbank Security, Inc.*, G.R. No. 171435, 30 July 2008, 560 SCRA 518.

[58] Executive Order No. 1, Section 2 (b).

reject the defense of a suspect or accused that the investigation is illegitimate because others who may have also violated the relevant rule, are not being investigated.[59] In *Gallardo v. People*,[60] the Supreme Court held that there was no violation of the equal protection clause when the Ombudsman recommended the filing of an information against a public officer, even if it had previously dismissed sixteen (16) other cases of similar factual circumstances:

> The contention that petitioners' right to equal protection of the law has been transgressed is equally untenable. The equal protection clause requires that the law operates uniformly on all persons under similar circumstances or that all persons are treated in the same manner, the conditions not being different, both in privileges conferred and the liabilities imposed. It allows reasonable classification. If the classification is characterized by real and substantial differences, one class may be treated differently from another. **Simply because the respondent Ombudsman dismissed some cases allegedly similar to the case at bar is not sufficient to impute arbitrariness or caprice on his part, absent a clear showing that he gravely abused his discretion in pursuing the instant case. The Ombudsman dismissed those cases because he believed there were no sufficient grounds for the accused therein to undergo trial. On the other hand, he recommended the filing of appropriate information against petitioners because there are ample grounds to hold them for trial**. He was only exercising his power and discharging his duty based upon the constitutional mandate of his office. Stated otherwise, the circumstances obtaining in the numerous cases previously dismissed by the Ombudsman are entirely divergent from those here existing. (Emphasis supplied)

Even on the assumption that the recommendation of the PTC is that acts of graft and corruption were indeed committed by the Arroyo administration, there is still a long way to go before the recommendation would ripen to criminal prosecution, much less conviction. The Ombudsman must accept the referral and

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[59] "The prosecution of one guilty person while others equally guilty are not prosecuted, however, is not, by itself, a denial of the equal protection of the laws." (*People v. Dumlao*, G.R. No. 168918, 02 March 2009, 580 SCRA 409).

[60] G.R. No. 142030, 21 April 2005, 456 SCRA 494.

conduct its own preliminary investigation. It must find probable cause, then file the appropriate information. The Court must then preside over a criminal trial at which the findings of the PTC have no conclusive effect on the Court's ultimate judgment, in the same way they treated the findings of the Davide Commission in *Kapunan v. Court of Appeals*:[61]

> We do not wish to denigrate from the wisdom of the Davide Commission. **However, its findings cannot be deemed as conclusive and binding on this Court, or any court for that matter. Nothing in R.A. No. 6832 mandates that the findings of fact or evaluations of the Davide Commission acquire binding effect or otherwise countermand the determinative functions of the judiciary**. The proper role of the findings of fact of the Davide Commission in relation to the judicial system is highlighted by Section 1 (c) of R.A. No. 6832, which requires the Commission to '[t]urn over to the appropriate prosecutorial authorities all evidence involving any person when in the course of its investigation, the Commission finds that there is reasonable ground to believe that he appears to be liable for any criminal offense in connection with said *coup d'état.'*
>
> **Whatever factual findings or evidence unearthed by the Davide Commission that could form the basis for prosecutorial action still need be evaluated by the appropriate prosecutorial authorities to serve as the nucleus of either a criminal complaint or exculpation therefrom**. If a criminal complaint is indeed filed, the same findings or evidence are still subject to the normal review and evaluation processes undertaken by the judge, to be assessed in accordance with our procedural law. (Emphasis and underscoring supplied)

Who Fears the Truth?

Truth commissions operate on the premise that the truth — if faced squarely, documented thoroughly, and acknowledged officially — will reduce the likelihood that a repetition of government abuses will recur in the future.[62] Official

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[61] G.R. Nos. 148213-17, 13 March 2009, 581 SCRA 42.

[62] Rose Weston, *Facing the Past, Facing the Future: Applying the Truth Commission Model to the Historic Treatment of Native Americans in the United States*, 18 ARIZ. J. INT'L & COMP. L. 1017, 1018-1019 (2001).

acknowledgment of the truth is extremely powerful in the healing process, especially in an atmosphere previously dominated by official denial.[63] Aside from their cathartic value, truth commissions like the PTC can be useful in uncovering the causes and patterns that led to such corruption, if it indeed existed, so that it may be prevented in the future. The absence of any form of accountability for public officials' past misconduct of a grave nature and massive scale will promote a culture of impunity. If the present administration does not demonstrate that it can hold accountable persons who committed acts of corruption, such inability may be interpreted as a "license to engage in further acts of corruption"[64] and embolden public officials to steal from the government coffers more often and in greater quantity.

The Concurring Opinion of my esteemed colleague Justice Brion speaks to the fear that the PTC would be a mind-conditioning commission such that if the Ombudsman, the Sandiganbayan or the Supreme Court itself were to reject the PTC's findings, they would incur the ire of the people. The potential imminence of public wrath would thus serve as a deterrent to rejection (and an incentive to acceptance) of the findings of the PTC. He regards the release of the conclusions of the PTC as a "priming" mechanism upon the public, the Ombudsman and the Court to concur with the PTC's way of thinking. He objects to the PTC's appropriation of the word "truth" and assumes that all conclusions contrary to the PTC's would be more likely labeled as "untruth." According to the Concurring Opinion, because President Aquino is highly trusted by Filipinos, then repeated "truth" from him or his government would be believed, wholesale and with finality, by a credulous people. This would thus, the Concurring Opinion states, bring undue pressure to bear on the Ombudsman, the Sandiganbayan, and the Supreme

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[63] Jocelyn E. Getgen, *Untold Truths: The Exclusion of Enforced Sterilizations From the Peruvian Truth Commission's Final Report*, 29 B.C. THIRD WORLD L.J. 1, 34 (2009).

[64] James Thuo Gathii, *Defining The Relationship of Human Rights to Corruption*, 31 U. PA. J. INT'L L. 125, 170 (2009).

Court: in the event of any of these bodies "go[ing] against the Commission's report," the consequent public perception that said body sided with an "untruth" would compromise "the authority, independence, and even the integrity of these constitutional bodies ... to the prejudice of the justice system."[65] Justice Brion theorizes that, in the light of the potential of the Commission's influence to "prime the public" and "go beyond the level of priming" in a way that "can affect the public environment as well as the thinking of both the decision makers in the criminal justice system and the public in general," the PTC's primary role is "negated in actual application by the title Truth Commission and its truth-telling function."[66] According to the Concurring Opinion, this renders the Commission an "unreasonable means to a reasonable objective."[67] I believe these arguments betray a very poor view of the Filipino people and that this view lies at the root of his "due process" problem.

Woven as binding threads throughout the Concurring Opinion are a denial of an imbalance of power and an unwillingness to see it shift in favor of a weaker group seeking redress for the perpetration of injustice against its members. It is an oft-observed phenomenon that when there are attempts to address past abuses committed by a powerful group, and when steps are taken to rectify the systemic inequalities, members of the powerful group decry the threats represented by these efforts to rebalance the scales. In this manner cries and accusations of reverse "discrimination" and "persecution" are raised by persons who have to answer to the demands of those seeking the righting of past wrongs. This reaction may be viewed as part of a larger pattern of backlash, meant to both "lash back" against those perceived to be behind the threat to the security of power and to return the system to the state it occupied before attempts to seek redress were made.[68] In the United States, this pattern is

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[65] Concurring Opinion of Justice Brion, p. 16

[66] *Id*.

[67] *Id.* at p. 22.

[68] Keith Aoki, *The Scholarship of Reconstruction and the Politics of Backlash*, 81 IOWA L. REV p. 1468, July 1996.

evident in various bills, policies and initiatives — from the campaign rhetoric of a presidential contender, immigration bills, and laws on language to university admissions policies — that aim to challenge and minimize any gains made by disadvantaged and subordinated groups over the past years.[69]

To be sure, the differences both in history and circumstance, between the backlash experienced by various disprivileged groups in the U.S. and the situation at hand, are not insignificant. However, the parallels that can be drawn are striking and unsettling. In our present context, it is the Filipino people — a great majority of whom have been disprivileged by institutions that heavily favor the ruling elite — that have suffered the damaging consequences of graft and corruption. It is the Filipino people who have been wronged by past abuses and systematic inequality; and it is they who now desire justice in truth. In the Philippine context, the pre-redress state was that of an imbalance so great it allowed the immunity of past high officials (the privileged class) from public accountability; members from such group will try to return to that state by seeking to continue eluding accountability.

By ignoring the Filipino public's experience as a witness to the frustration of attempts to hold the past administration accountable for its reported misdeeds, and framing it instead as a group that stands ready to convict past officials at the bar of public opinion, the Concurring Opinion turns social reality on its head. It minimizes the status of the Filipino people as a group wronged by the imbalance of power and the betrayal of public trust. It ignores the need of this group to see these rectified. It ascribes an excess of strength to public opinion and grounds its logic on fear of the public acting as an angry mob. It does not attribute the proper importance to the active, participatory role the Filipino people desire to take in the process of dealing with the possible misdeeds of the past.

Implicit in Justice Brion's Concurring Opinion are the roles the public is expected to take: that of passive observer, receiver

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[69] *Id*.

of information and susceptible to the branding of "truth" and its repetition;[70] and that of a source of pressure. In the latter role, the Concurring Opinion envisions the Filipino people, having adjudged guilt according to what it was told by the PTC and the media, wielding the threat of public disapproval against the Ombudsman and the judiciary so as to shift the burden to these bodies to demonstrate proof and the basis for their actions if they were to disagree with the findings of the PTC.[71]

This is gross speculation. It does not follow that repetition of information guarantees the acceptance of its veracity; to make that logical leap in this instance is to insinuate that repetition would rob the Filipino people of the capacity to make distinctions between what to accept and what to reject. Neither does it follow that the Ombudsman and the judiciary must inevitably accede to public clamor, or that the entry of public opinion into the discussion would cause a "qualitative change in the criminal justice system" and weaken "reliance on the law, the rules and jurisprudence."[72]

The public does not need sheltering from the "potentially prejudicial effects of truth-telling." Nor is the public to be viewed as unwitting victims to "a noisy minority [who] can change the course of a case simply because of their noise and the media attention they get."[73] The Filipino people have a genuine stake in the addressing of abuses possibly committed by the past administration and are entitled to information on the same.

Striking down efforts to give the public information regarding the misdeeds of powerful officials sends a signal of the continuing dominance of "might makes right" and the futility of attempting to hold public officials accountable for their actions. Conversely, by carrying out investigations of the past actions of public officials, and by holding up its results to public scrutiny and criticism,

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[70] Justice Brion's Concurring Opinion, pp. 13, 17-18

[71] *Id.* at p. 15

[72] *Id.* at p. 27

[73] Brion, *supra* at p. 27.

the government reinforces respect for the rule of law and educates the people on the nature and extent of past wrongdoing.[74] Moreover, the characterization of public discussion — the "second forum" — as an inappropriate venue for the release of the PTC's findings devalues the utility and meaning that truth possesses for the aggrieved group, and denigrates the need for the construction and repair of the group's collective memory. Indeed, the Concurring Opinion implies that the PTC's influence on public perceptions — and consequently the shaping of the collective memory of Filipinos — will only instigate more injustice.

To the contrary, the need to shape collective memory as a way for the public to confront injustice and move towards a more just society should not be diminished or denied. The Concurring Opinion disregards the significance to justice of what is seen and remembered and eliminates the vital role of the people themselves in "constructing collective memories of injustice as a basis for redress."[75] This disregard need not prevail. There is much value to be found in memory, as Hom and Yamamoto recounted:

> For many of the 10,000 Philippine citizens tortured and murdered for their political opposition to the former Ferdinand Marcos regime, reshaping memory became both a means to challenge injustice and a psychological end in itself. Consider the anguish of the family of Archimedes Trajano, a college student who posed a mildly critical question to Marcos's daughter at a forum and was whisked away, tortured for days, and thrown off a building. For his family, and thousands of others, there existed the need to create a new memory beyond the excruciating story of personal loss and suffering — a memory that included a sense of social justice and government accountability. To write this new memory collectively, many families, lawyers, bureaucrats risked much in the Philippines to aid the thirteen-year human rights multidistrict class action litigation in the United States.[76]

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[74] Stephen Landsman, *Alternative Responses to Serious Human Rights Abuses: Of Prosecution and Truth Commissions*, *LAW & CONTEMP. PROBS.*, Vol. 59, No. 4, p. 88 (1997).

[75] Sharon K. Hom and Eric K. Yamamoto, *Collective Memory, History, and Social Justice*, 47 UCLA LAW REVIEW 1747 (2000), p. 1764.

[76] Hom and Yamamoto, *supra* at p. 1759.

While it is true that public opinion will be influenced by the information that the public can access, it would be specious to claim that the possible turning of the tide of public opinion against those subject to investigation is tantamount to a conviction before the court of the Filipino people. To declare the Filipino public undeserving of the truth on the grounds of its supposed lack of capacity to deal with the truth and its alleged susceptibility to the "priming" effect of the PTC's findings, while ignoring the public's need to know the truth and to seek redress for wrongs, is to deny the public the means to move towards social justice.

In *Razon v. Tagitis*,[77] the Court, speaking through no less than Justice Brion himself, affirmed the grant of the Writ of Amparo petitioned by the wife of Engineer Morced Tagitis, and touched on the "**the right of relatives of the disappeared persons and of the society as a whole to know the truth on the fate and whereabouts of the disappeared and on the progress and results of the investigation**," as expressed in the United Nations Declaration on the Protection of All Persons from Enforced Disappearance. It would be inconsistent for this Court not to afford the same level of openness and accountability in enforced disappearances of individuals to allegations of criminal acts of massive corruption committed against the entire Philippine nation, under the fundamental premise of *Razon v. Tagitis* that the Filipino have the right to know and can handle the truth. The public's right to know[78] and the concomitant public policy of full public disclosure[79] support

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[77] G.R. No. 182498, 03 December 2009, 606 SCRA 598.

[78] The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law. (CONSTITUTION, Article III, Section 7)

[79] Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest. (CONSTITUTION, Article II, Section 28)

the fact-finding mandate of the PTC to uncover the truth of these allegations and reports in the Arroyo administration.[80]

Justice Brion's Concurring Opinion does not lay down enough legal basis for his argument that the PTC has to be struck down due to the possibility of bias to be created in the public mind through public reports of the PTC and the inordinate pressure this bias will bring on the Ombudsman and the judiciary. The Philippine judiciary has had more than a century's worth of experience dealing with judicial cases and criminal investigations under the harsh light of public scrutiny, yet not one case or investigation has been stopped on the simple basis of the public forming a strong opinion on them and voicing this opinion in a loud manner.[81] A judge is expected to act impartially and independently, under any set of circumstances, with or without the public as witness. This is the role of a judge and if the neutrality required of a judge is not maintained, the fault lies not in the creation of a fact-finding commission that started the search for truth, but in the judge's character. To this end, the statement of the Court in *People v. Sesbreño*[82] on undue publicity and its effect on the right of the accused is worth recalling:

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[80] "The policy of full public disclosure enunciated in above-quoted Section 28 complements the right of access to information on matters of public concern found in the Bill of Rights. The right to information guarantees the right of the people to demand information, while Section 28 recognizes the duty of officialdom to give information even if nobody demands.

"The policy of public disclosure establishes a concrete ethical principle for the conduct of public affairs in a genuinely open democracy, with the **people's right to know as the centerpiece**. It is a mandate of the State to be accountable by following such policy. These provisions are vital to the exercise of the freedom of expression and essential to hold public officials at all times accountable to the people." (*Province of North Cotabato v. GRP Peace Panel on Ancestral Domain*, G.R. Nos. 183591, 183752, 183893, 183951 & 183962, 14 October 2008, 568 SCRA 402; emphasis supplied)

[81] In every case, a judge shall endeavor diligently to ascertain the facts and the applicable law unswayed by partisan interests, public opinion or fear of criticism. (*Barillo v. Lantion*, G.R. No. 159117 & A.M. No. MTJ-10-1752, 10 March 2010).

[82] *People v. Sebreño*, G.R. No. 121764, 09 September 1999, 314 SCRA 87.

x x x Besides, a thorough review of the records yields no sufficient basis to show that pervasive publicity unduly influenced the court's judgment. Before we could conclude that appellant was prejudiced by hostile media, he must first show substantial proof, not merely cast suspicions. There must be a showing that adverse publicity indeed influenced the court's decision, as held in *Webb v. De Leon*, 247 SCRA 653 (1995) and *People v. Teehankee*, 249 SCRA 54 (1995).

> "[T]o warrant a finding of prejudicial publicity there must be allegation and proof that the judges have been unduly influenced, not simply that they might be, by the barrage of publicity."
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> "**Pervasive publicity is not per se prejudicial to the right of an accused to fair trial**. The mere fact that the trial of appellant was given a day-to-day, gavel-to-gavel coverage does not by itself prove that the publicity so permeated the mind of the trial judge and impaired his impartiality. For one, it is impossible to seal the minds of the members of the bench from pre-trial and other off-court publicity of sensational criminal cases. The state of the art of our communication system brings news as they happen straight to our breakfast tables and right to our bedrooms. These news form part of our everyday menu of the facts and fictions of life. For another, our idea of a fair and impartial judge is not that of a hermit who is out of touch with the world. We have not installed the jury system whose members are overly protected from publicity lest they lose their impartiality. . . . **Our judges are learned in the law and trained to disregard off-court evidence and on-camera performances of parties to a litigation. Their mere exposure to publications and publicity stunts does not per se infect their impartiality**.
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> "At best appellant can only conjure possibility of prejudice on the part of the trial judge due to the barrage of publicity that characterized the investigation and trial of the case. In *Martelino, et al. v. Alejandro, et al*., we rejected this standard of possibility of prejudice and adopted the **test of actual prejudice** as we ruled that to warrant a finding of prejudicial publicity, there must be allegation and proof that the judges have been unduly influenced, not simply that they might be, by the barrage of publicity. In the case at bar, the records do not show that the trial judge developed actual bias against appellant

> as a consequence of the extensive media coverage of the pre-trial and trial of his case. The totality of circumstances of the case does not prove that the trial judge acquired a fixed opinion as a result of prejudicial publicity which is incapable of change even by evidence presented during the trial. Appellant has the burden to prove this actual bias and he has not discharged the burden. (Italics in the original)"

Absent a persuasive showing by the appellant that publicity prejudicial to his case was responsible for his conviction by the trial judge, we cannot accept his bare claim that his conviction ought to be reversed on that ground.

Justice Cardozo, the Judge and Society

In his Concurring Opinion, Justice Brion quotes Justice Benjamin Cardozo of the United States Supreme Court in the context of "what the repeated" "truth from a generally trusted government can achieve" and "the effect of outside influence on judging." The Concurring Opinion uses quotations from Justice Cardozo's book, *The Nature of the Judicial Process*, to drive home its points on how "the Commission's influence can go beyond the level of priming and can affect the public environment as well as the thinking of both the decision makers in the criminal justice system and the public in general" and on the "potential prejudicial effects of truth-telling."[83]

The source of the quotations featured in Justice Brion's Concurring Opinion is entitled "*Adherence to Precedent. The Subconscious Element in the Judicial Process. Conclusion*," fourth in a series of lectures delivered by Justice Cardozo at Yale University and subsequently published as a book. In the lecture, Justice Cardozo spoke about the gaps left by absence of precedents in systems of law, the development of principles to address these gaps, and adherence to the rule of precedent. With regard to the latter he expressed his belief that "when a rule, after it has been duly tested by experience, has been found to be inconsistent with the sense of justice or with the social

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[83] Justice Brion's Concurring Opinion, at pp. 18-19.

welfare, there should be less hesitation in frank avowal and full abandonment."[84] Building on this principle, he discussed the rule of precedent in application, and from there went on to survey judicial methods, comparing "static" with "dynamic" precedents, narrating his personal struggles first to find certainty, then to reconcile himself with uncertainty.

Throughout all this, one forms the image of a man fully aware of the doubts and tensions that beset a judge, keenly cognizant of the limitations of his position and the temporal nature of even those principles of whose development he earlier spoke: "I have grown to see that the process in its highest reaches is not discovery, but creation; and that the doubts and misgivings, the hopes and fears, are part of the travail of mind, the pangs of death and the pangs of birth, in which principles that have served their day expire, and new principles are born."[85]

Justice Cardozo was also conscious of the close intertwining between a judge's philosophy and the judicial process, in his analysis of Roosevelt's statement on the philosophy of judges, the timeliness of their philosophy, and the impact of the same on the decisions of the courts.[86] It is due to the limits of human nature, Justice Cardozo conceded, that the ideal of "eternal verities" is beyond the reach of a judge; thus it is impossible to completely eliminate the "personal measure of the [judicial] interpreter." Of such personal measures and the signs of the times he wrote: **"My duty as judge may be to objectify in law, not my own aspirations and convictions and philosophies, but the aspirations and convictions and philosophies of the men and women of my time. Hardly shall I do this well if my own sympathies and beliefs and passionate devotions are with a time that is past."**[87]

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[84] Benjamin N. Cardozo, *The Nature of the Judicial Process* (New Haven: Yale University Press, 150 (1921).

[85] Cardozo, *supra* at pp. 166-167.

[86] Roosevelt as cited in Cardozo, *id.*, at p. 171.

[87] *Id.*, at pp. 172-173.

It is clear that Justice Cardozo did not expect a judge to cut himself completely off from the pressures, forces, and beliefs of his society - far from it. "**We may figure the task of the judge, if we please, as the task of a translator, the reading of signs and symbols given from without**,"[88] he went on to say. Indeed, the first lines of the paragraph quoted in Justice Brion's Concurring Opinion[89] state: **"I have no quarrel, therefore, with the doctrine that judges ought to be in sympathy with the spirit of their times**."[90] Justice Cardozo did not regard the influence of "the truth without us" on the shaping of individual beliefs as harmful in and of itself, nor did he say that judges must be completely free of outside influences. He spoke of the effect the thinking of the group could play in the thinking of the individual, and how these factors and influences, as part of human nature, might play out in the judicial process, without considering such effect as a problem. He wrote, following his quoting of James Harvey Robinson, that "[t]he training of the judge, if coupled with what is styled the judicial temperament, will help in some degree to emancipate him from the suggestive power of individual dislikes and prepossessions. It will help to broaden the group to which his subconscious loyalties are due. Never will these loyalties be utterly extinguished while human nature is what it is."[91]

Accepting fully the flaws inherent in human nature and the "eccentricities of judges," optimistic in the belief that "because [the flaws] are not only there but visible, we have faith that they will be corrected,"[92] Justice Cardozo concluded with words on the temporal nature of the work of a judge: "The work of a judge is in one sense enduring and in another sense ephemeral. What is good in it endures. What is erroneous is pretty sure to perish." It was in this sense — the building of new structures

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[88] Cardozo, *supra* at p. 174

[89] Concurring Opinion of Justice Brion, p. 18.

[90] Cardozo, *supra* at p. 174.

[91] *Id.* at p. 176.

[92] *Id.* at p. 177.

upon good foundations, the rejection of errors as they are determined by the years — that Justice Cardozo wrote the lines that constitute the second excerpt quoted in Justice Brion's Concurring Opinion. Preceding Justice Cardozo's quoting of Henderson, he wrote: "Little by little the old doctrine is undermined. Often the encroachments are so gradual that their significance is at first obscured. Finally we discover that the contour of the landscape has been changed, that the old maps must be cast aside, and the ground charted anew."[93] It was change — in the spirit of the times, in the principles underpinning the judicial process, in the personal and very human beliefs of individual judges – that Justice Cardozo spoke of in this passage. **It does not speak of damage wrought by societal influence, nor of destructive or prejudicial effects due to shifts in public opinion and belief, but rather of how law develops and changes.** Indeed, Justice Cardozo ends on a note rich with hope in change:

> Ever in the making, as law develops through the centuries, is this new faith which silently and steadily effaces our mistakes and eccentricities. I sometimes think that we worry ourselves overmuch about the enduring consequences of our errors. They may work a little confusion for a time. In the end, they will be modified or corrected or their teachings ignored. The future takes care of such things. In the endless process of testing and retesting, there is a constant rejection of the dross, and a constant retention of whatever is pure and sound and fine.[94]

Truly, the role of the judge is to do his utmost to exercise his independence, even against overwhelming pressure, to uphold the rule of law. But simply because the possibility exists that the judiciary may go along with a public that is hungry for the truth does not mean we do not allow the truth to be found out. As we can see from a reading of Justice Cardozo's lecture, we need not fear societal influences and forces. The "truth without us" does not negate the validity of "the truth within."

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[93] Cardozo, *supra* at p. 178.

[94] *Id.* at p. 179.

Appropriateness of Establishing a "Truth" Commission

In his Concurring Opinion, Justice Brion raises the points that: (1) the term "truth commission" is usually reserved for a body "investigating the human rights violations that attended past violence and repression, and in some instances for a body working for reconciliation in society," and (2) reconciliation is not present as one of the goals of the PTC.[95] These two points, according to the Concurring Opinion, further distance the PTC from other truth commissions; the latter point in particular thereby "remov[es] a justification for any massive information campaign aimed at healing divisions that may exist in the nation."[96]

To arrive at this conclusion is to place unwarranted restrictions on the definitions and functions of bodies bearing the name of "truth commission." While many truth commissions have indeed been established in the wake of a violent conflict leading to a transition between two regimes, this does not preclude that truth commissions in some countries may be used for circumstances that do not duplicate the violence of the conflict or the character of the regime transition in other countries. The needs of various countries differ and consequently determine a great deal of variation in the fundamental goals, purposes, and characteristics of the bodies they establish, to deal with the abuses of previous administrations.[97] David Crocker puts forth the view that even nations other than new democracies may see the need for ways to "reckon with past wrongs," and classifies these other nations into three broad categories: (1) post-conflict societies aspiring to transition to democracy, but occupied with pressing security issues; (2) authoritarian and conflict-ridden societies; (3) mature democracies that are reckoning with abuses their own

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[95] Justice Brion's Concurring Opinion, pp. 5-6.

[96] *Id.* at p. 6.

[97] Juan E. Mendéz, *Accountability for Past Abuses*, 19 HUM. RTS. Q2, 255-282 (1997); Charles O. Lerche III, *Truth Commissions and National Reconciliation: Some Reflections on Theory and Practice* <http://www.gmu.edu/academic/pcs/LERCHE71PCS.html> (accessed 7 November 2010).

governments may have committed in the past.[98] The Philippine context does not, therefore, close off the avenue of a truth commission as a permissible means to address past abuses. Likewise, a definition that expects reconciliation as a requisite goal for the PTC[99] is an unduly narrow definition.

Another argument raised in Justice Brion's Concurring Opinion refers to the EO 1's creation of the PTC as a "shortcut to the emergence of truth"[100] — one which should not be taken as it "bypass[es] processes established by the Constitution and the laws." Because it deems "the international experiences that give rise to the title Truth Commission" as not applying to the present Philippine situation and claims there is no need for "quick transitional justice," the Concurring Opinion reasons that "there is no need to resort to... institutions and mechanisms outside of those already in place."[101] In other words, only the Ombudsman and the judiciary have the rightful duopoly on truth-finding and truth-telling in graft and corruption cases.

Yet the justifications for the use of truth commissions are not confined only to certain post-conflict scenarios or the absence of functioning judicial systems. Even in some contexts where there is a judicial system already in place, a truth commission may be used by the government as a redress mechanism.[102] There are numerous reasons prosecution and other means usually undertaken within the judicial system may not be viable. There may be too many incidents to prosecute; due to the atmosphere of secrecy in which abuses took place, evidence may be insufficient for a criminal conviction.[103] Current political policies, as well

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[98] David Crocker, *Reckoning with Past Wrongs: A Normative Framework*, 13 ETHICS & INTERNATIONAL AFFAIRS, 43-64 (1999).

[99] Brion, *supra* at p. 6.

[100] *Id.* at p. 20

[101] *Id.* at p. 33

[102] Angelika Schlunck, *Truth and Reconciliation Commissions*, 4 ILSA J. INT'L & COMP. L, 415, 2.

[103] S. Sandile Ngcobo, *Truth, Justice, and Amnesty in South Africa: Sins from the Past and Lessons for the Future*, 8 IUS GENTIUM, 6-7.

as concerns about vengeance and the resulting societal tensions, may also make prosecution difficult or impossible.[104] The element of time may also be a significant factor.[105] In addition, some of the aims of truth commissions may be outside the purview of courts, as in the case of giving an account of events that transpired: "A court is not supposed to give an account about the circumstances of the historic, economic, and political reasons for a crime, nor about the involvement of different groups in the society or political influence from the outside which may have encouraged the perpetrators... Giving an account, providing explanations, and offering recommendations for a better future are exactly the purposes of a truth commission."[106] Means of redress attempted within the confines of the judicial system may also not be viable precisely because of elements influencing the system itself. Officials allied with the previous regime may also still retain power, and through various means hinder proceedings undertaken within the judicial system.

This last point regarding situations wherein the former regime still possesses a certain degree of influence over the system is especially salient in the light of state capture. According to the World Bank, state capture may be treated as akin in essence to regulatory capture as it is used in economics literature: state regulatory agencies are considered "captured" when they "regulate businesses in accordance with the private interests of the regulated as opposed to the public interest for which they were established." State capture, then, encompasses the state's "capture" as evinced in the "formation of laws, rules, and decrees by a wider range of state institutions, including the executive, ministries and state agencies, legislature, and the judiciary."[107] State capture alters

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[104] Landsman, *supra* note 72.

[105] Neil J. Kritz, *Coming to Terms with Atrocities: A Review of Accountability Mechanisms for Mass Violations of Human Rights*, 59 LAW & CONTEMP. PROBS. 4, 127-152.

[106] Schlunck, *supra* at pp. 419-420.

[107] World Bank, Anticorruption in Transition: A Contribution to the Policy Debate (2000) <http://info.worldbank.org/etools/docs/library/17506/contribution.pdf> (accessed on 7 November 2010).

the "rules of the game" in favor of those who have captured the state. While state capture encompasses a variety of situations, its fundamental characteristic is that it is channeled through illicit, informal, and non-transparent means of providing private gains to public officials as incentives for these very officials to *influence the formation of laws* and *prejudice the rules* to these captors' narrow advantage.[108] If public officials are perceived to have been captured, the credibility of official processes — such as rendering decrees, forming laws, and shaping policies — will suffer. It is not difficult to see how state capture may render traditional means such as prosecution completely ineffective against those who may have captured the state.

To that end, S. Sandile Ngcobo writes:

> ...many transitional governments **do not represent a complete break with the past**. In some cases, members of the police and security forces that were responsible for heinous acts under the old regime **remain in influential positions**. Their numbers and their continued control of deadly weapons provide them with the capability to undermine the peaceful transition. Their continued influence may threaten the new democratic order, making prosecutions both undesirable and impractical. Given these realities, the emerging democracy may be compelled to look for alternative approaches. At this point, a truth commission may become an attractive option.[109] (Emphasis supplied.)

It is true that in the Philippine context we may not be speaking of a past regime's continuing control of guns and armed men; but power, in any form, is power. In any event, the appropriateness of naming the PTC as a "truth commission" is not a legal argument for its invalidation, as Justice Brion himself conceded.

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[108] World Bank, *supra* at pp. 1-2.

[109] Ngcobo, *supra* note 103 at p. 7.

Unlawful Discrimination is not an Argument of the Powerful; the Phenomenon of State Capture

Unlawful discrimination, as shown in American cases on equal protection claims in criminal investigation and prosecution, is not inherently an argument of the powerful, but that of the traditionally oppressed. This is because the politically powerful, as in the past administration, still contain all the advantages that such past formal political power begot. It is the height of incongruity that an administration that held power for nine years, successfully evaded all congressional investigations, and effectively invoked all legal defenses from investigation for all those nine years will be extended the same immunity that the former presidential office gave it. The Philippines will be the laughing stock of the world, incapable of correcting any error, unable to erase the perception by many that it is a country where the law only serves the ends of the powerful.

If evidence will later turn out, congruent to the theory of some quarters as intimated by the Solicitor General during the oral arguments, that the reason that former President Arroyo and her closest relatives and officials have not been prosecuted by the present Ombudsman is because the Ombudsman is not independent but is acting out of loyalty for her appointment to the position, then such evidence reinforces the immoral political lesson that the misuse of the law and the power of appointment can be purposively committed to create a strong shield of immunity from accountability. With or without such evidence, however, and especially because the belief in the non-independence of the Ombudsman is openly expressed by people, the only way for this Court to not abet such a plan if such a plan indeed existed on the part of Arroyo administration, is to allow the people to exact accountability upon those from whom accountability is due. It must let the President fulfill his promise to the people, and if the President believes that the best way for him is to start from fact-finding into the past administration, then he must be allowed to do so without unconstitutional judicial restraint.

The "Least Dangerous" Branch

The majority took pains to reiterate the honorable role of the Court in exercising the constitutional and awesome power of judicial review, amidst the recent string of rebukes against the initiatives of the legislature and elected executives — democratically elected representatives of the people.

In the seminal book "*The Least Dangerous Branch: The Supreme Court at the Bar of Politics*," Alexander M. Bickel expounded on the "counter-majoritarian difficulty"[110] of judicial review exercised by an unelected court to declare null and void an act of the legislature or an elected executive in this wise:

> The root difficulty is that judicial review is a counter-majoritarian force in our system. x x x when the Supreme Court declares unconstitutional a legislative act or the action of an elected executive, it thwarts the will of representatives of the actual people of the here and now; it exercises control, not in behalf of the prevailing majority, but against it. That, without mystic overtones, is what actually happens. It is an altogether different kettle of fish, and it is the reason the charge can be made that judicial review is undemocratic.[111]

Bickel's "counter-majoritarian difficulty" is met by the argument that the Court's duty is to uphold the Constitution, that in determining the "boundaries of the great departments of government" is not to assert superiority over them but merely to assert its solemn and sacred obligation to determine conflicting claims of authority under the Constitution.[112]

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[110] "The question at the heart of the anomaly is why a democracy – a political system based on representation and accountability – should entrust the final, or near final, making of such highly significant decisions to judges – unelected, independent and insulated from the direct impact of public opinion." (Stephen G. Breyer, *Judicial Review: A Practising Judge's Perspective*, 19 Oxford Journal of Legal Studies 153 [1999], cited in VICENTE V. MENDOZA, JUDICIAL REVIEW OF CONSTITUTIONAL QUESTIONS, 261 [2004]

[111] ALEXANDER M. BICKEL, THE LEAST DANGEROUS BRANCH: THE SUPREME COURT AT THE BAR OF POLITICS, 16-17 (1962).

[112] Decision, at p. 42.

If the Court is to avoid illegitimacy in its actions as suggested by Professor Bickel, then it must ensure that its discharge of the duty to prevent abuse of the President's executive power does not translate to striking down as invalid even a legitimate exercise thereof, especially when the exercise is in keeping with the will of the people.[113] Invalidating the PTC is an unconstitutional denial of the legitimate exercise of executive power and a stinging reproach against the people's sovereign right. Sadly, there is a wide fissure between the public's hunger for governance justice through the successful delivery by President Aquino of his promise to get behind the stories on corruption of the former administration, and the Court's confirmation of an alleged violation of former President Arroyo's equal protection right. To emphasize, it is not even former President Arroyo who is officially raising this matter before the Court.

Rather than exercise judicial restraint, the majority has pushed the boundaries of judicial activism bordering on what former Chief Justice Puno once described as an imperial judiciary:

"[T]he Court should strive to work out a constitutional equilibrium where each branch of government cannot dominate each other, an equilibrium where each branch in the exercise of its distinct power should be left alone yet bereft of a license to abuse. It is our hands that will cobble the components of this delicate constitutional equilibrium. In the discharge of this duty, Justice Frankfurter requires judges to exhibit that 'rare disinterestedness of mind and purpose, a freedom from intellectual and social parochialism.' The call for that quality of "rare disinterestedness" should counsel us to resist the temptation of unduly inflating judicial power and deflating the executive and legislative powers. **The 1987 Constitution expanded the parameters of judicial power, but that by no means is a justification for the errant thought that the Constitution created an imperial judiciary**. An imperial judiciary composed of the unelected, whose sole constituency is the blindfolded lady without the right to vote, is counter-majoritarian, hence, inherently inimical to the central ideal of democracy. We cannot pretend to be an imperial judiciary for in a government whose cornerstone rests on the doctrine

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[113] *Akbayan Citizens Action Party (AKBAYAN) v. Aquino*, G.R. No. 170516, 16 July 2008, 558 SCRA 468.

of separation of powers, we cannot be the repository of all remedies."[114] (Emphasis supplied)

When forgotten, history does have a tendency to repeat itself.[115] Unless an official and comprehensive narrative of findings of fact on large-scale corruption that reportedly occurred during the previous administration is made public, the country may find the same alleged patterns of corruption repeating themselves. Worse, public officials subject of the investigation — and who may actually be guilty — with continued possession or access to power may spin these events and cause a revision of our history to make those allegations of wrongdoing appear nothing more than unsubstantiated rumors whispered in secret and perpetuated by bitter opponents. The PTC is a step towards national healing over a sordid past. The Court must allow the nation to move forward and the people's faith in a just and accountable government to be restored.

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[114] Puno, Concurring and Dissenting Opinion in *Francisco v. House of Representatives*, G.R. No. 160261, 10 November 2003, 415 SCRA 44, 211.

[115] Getgen, *supra* note 63, at p. 33.

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— Failure to maintain harmonious relationship with the in-laws is not considered a non-fulfillment of an essential marital obligation. (Baccay *vs*. Baccay, G.R. No. 173138, Dec. 01, 2010; *Brion, J., concurring opinion*) p. 68

— If not ably rebutted, the presumption in favor of the validity of marriage shall prevail. (Baccay *vs*. Baccay, G.R. No. 173138, Dec. 01, 2010; *Sereno, J., concurring opinion*) p. 68

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Power to reorganize the National Government under P.D. No. 1416 — Cannot be used as basis of the President's power to reorganize his Office or create the Truth Commission; it can exist only in a dictatorial regime, not under a democratic government founded on the doctrine of separation of powers. (Biraogo *vs*. Philippine Truth Commission, G.R. No. 192935 and Rep. Lagman *vs*. Exec. Sec. Ochoa, Jr., G.R. No. 193036, Dec. 07, 2010; *Corona, C.J., separate opinion*) p. 374

Powers — E.O. No. 1 points to Section 31, Chapter 10, Book III of E.O. 292 or the Administrative Code of 1987 as its legal basis which pertains to the President's continuing delegated power to reorganize the Office of the President. (Biraogo *vs*. Philippine Truth Commission, G. R. No. 192935 and Rep. Lagman *vs*. Exec. Sec. Ochoa, Jr., G.R. No. 193036, Dec. 07, 2010; *Corona, C.J., separate opinion*) p. 374

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Behest loans — Criteria that qualifies loans as behest loans are: (1) the borrower was undercapitalized; (2) the loan accommodation was under-collateralized; and (3) The National Investment Development Corp. (NIDC) Board of Directors approved the loan accommodation with extraordinary haste.

— If this Philippine Truth Commission is an office independent of the President and not subject to the latter's control and supervision, then the creation of the Commission must be done by legislative action and not by executive order. (Biraogo *vs*. Philippine Truth Commission, G. R. No. 192935 and Rep. Lagman *vs*. Exec. Sec. Ochoa, Jr., G.R. No. 193036, Dec. 07, 2010; *Leonardo-De Castro, J., concurring opinion*) p. 374

— If this Philippine Truth Commission is under the control and supervision of the President, and not an independent body, the danger that the Commission may be used for partisan political ends is real and not imagined. *(Id.)*

— In creating the Truth Commission, the President should have conformed to the standards set by the law, that is, that the reorganization be in the interest of "simplicity, economy, and efficiency." (Biraogo *vs*. Philippine Truth Commission, G. R. No. 192935 and Rep. Lagman *vs*. Exec. Sec. Ochoa, Jr., G.R. No. 193036, Dec. 07, 2010; *Corona, C.J., separate opinion*) p. 374

— The Commission is an entirely new specie of public office x x x not exercising inherently executive powers or functions but infringing on functions reserved by the Constitution and our laws to other offices. (Biraogo *vs*. Philippine Truth Commission, G. R. No. 192935 and Rep. Lagman *vs*. Exec. Sec. Ochoa, Jr., G.R. No. 193036, Dec. 07, 2010; *Brion, J., separate opinion*) p. 374

— The creation of the Truth Commission will merely be a waste of money, since it duplicates the function of the Office of the Ombudsman to investigate reported cases of graft and corruption. (Biraogo *vs*. Philippine Truth Commission, G. R. No. 192935 and Rep. Lagman *vs*. Exec. Sec. Ochoa, Jr., G.R. No. 193036, Dec. 07, 2010; *Peralta, J., separate concurring opinion*) p. 374

— The exclusion of other past administrations from the scope of investigation by the Truth Commission (E.O. No. 1) is justified by the substantial distinction that complete and definitive reports covering their respective periods have

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