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Is the Law Still Relevant?

These days, it seems that the headlines of the leading dailies and the top stories of television news shows are all about the law. "The rule of law," "adherence to the law," "the constitutional process" and like phrases stream regularly through the media into our homes, onto our office desks, into buses and jeepneys, possibly trumped only of late by the word "discernment". And sure enough, everybody, from law school dean to high school student, from a Tower One tycoon to Juan dela Cruz, from the CBCP to the CCP, has an opinion about some burning legal issue – the E-VAT, the Anti-Wiretapping Law, the Constitution of the Philippines.

But despite this seeming prevalence of interest in and knowledge (of varying degrees of insight and accuracy) about the law among our citizenry, there also appears to be an equally high level of cynicism about its import and usefulness. We needn't look to the resigned shrugs of pedestrians accosted by reporters for views on this or that scam or scandal, and whether or not a change in the form of government will make a difference in their lives. That some studies include the Philippines in the list of the most corrupt countries in the world, and that we scored a 9.3 in the "Delegitimization of the State" criterion of the Failed States Index[1] indicates that many Filipinos have "flexible" or less than respectful notions of the law and legal institutions.

Indeed, disenchantment with the law may have nothing to do with perceived or actual corruption in its implementation, or a belief that the law can be broken with impunity. The preambles and whereas clauses of statutes always declare the best of purposes, the desire to do good, and yet some rules and legal principles are perceived as counterproductive and unhelpful to human progress.

The breakdown of public trust in legal institutions, or a conviction that some aspect of the law has become irrelevant, is certainly a major concern for government, policy-makers and social scientists. But if there is any group that should be disturbed, even alarmed by such sentiments, it should be the legal profession. After all, in a culture of corruption and expediency, what real use are lawyers? If all our laws and the thousands

[1] An index published in the July/August 2005 issue of Foreign Policy, identifying 12 indicators of crises or collapse. In the list of 60 countries of failed states, or states "about to go over the brink," the Philippines ranked 56th.

of individuals licensed to practice law in this country cannot help make a significant dent in the desperation of Filipinos, or push the country's fortunes forward and upward, what is the point of the discipline and the profession that so many of us have spent so much time and effort to train for?

These, of course, can be viewed as simplistic, rhetorical questions concerning very complex issues, and they rise, unapologetically, on the philosophy that the practice of law is not just an occupation — perhaps a disputable premise. But in these troubled times, when there is so much talk of law and yet there seems so very little of it, they bear some thought.

The J.B.L. Reyes Forum on Contemporary Legal Issues

The editors of the IBP Journal were exchanging ideas along this line when they decided they would try to establish a forum on contemporary legal issues. The following is from the opening remarks delivered by the Journal's editor- in-chief during the forum that the Journal eventually organized, together with the National IBP and the Ateneo Law School:

* * *

Welcome to the First Annual J.B.L. Reyes Forum on Contemporary Legal Issues.

That's quite a mouthful, and if you are thinking that this forum is ambitiously named, it is, and for reasons other than length. First, it bears the name of renowned civilist and legal scholar, J.B.L. Reyes, who was, among many accomplishments, a professor of law, a founder of the Philippine Civil Liberties Union, one of the most respected and admired members of our Supreme Court, and the first president of the Integrated Bar of the Philippines. He passed away in 1994, leaving a legacy of what Justice Fred Ruiz Castro termed as "singular landmarks in Philippine jurisprudence".

This forum's ambitiousness also is shown in its declared interest in contemporary legal issues. This is not the first forum, lecture, or round-table discussion to claim such an interest. It is, however, the hope of the IBP Journal editors, who are the individuals

who first conceived of this undertaking, that this forum can be a bit different. We hope that this forum can provoke discussion and thought in a spirit where members of the profession and the legal community, including our law schools, not only focus on the answers to questions of law, but ask themselves and each other whether or not (i) we as managers and officers of our legal system are answering them with the thoroughness and care that people such as J.B.L. Reyes had answered them, and (ii) how – in a milieu of poverty, corruption and other social problems – those answers can remain relevant and meaningful.

The power of judicial review has long presented many challenges to the Bench and Bar, and in the past several years its exercise has had a significant impact – some say good, some say bad — on government programs, business and how private practitioners advise their clients.

To help us grapple with this contemporary legal issue, we have invited a group of distinguished and accomplished individuals.

Delivering the principal lecture is Justice Vicente V. Mendoza, an expert in political law, a much loved and respected faculty member of the UP College of Law and the author of several articles and books including his 2004 work entitled "Judicial Review of Constitutional Questions." A multi-awarded scholar, he was an Associate Justice of the Supreme Court.

In our panel of reactors we have the following:

Professor Sedfrey Candelaria who is a faculty member of the Ateneo Law School where he teaches Constitutional Law and International Economic Law, among other courses. He is the Assistant Dean for Student Affairs and Director for Admissions. Professor Candelaria is heavily involved in socio-civic work as well, having served as the director of the Child Rights Unit of the Ateneo Human Rights Center. He also opened the Center's desk for indigenous people's concerns. In 2002, he was appointed Head of the Research and Linkages Office of the Philippine Judicial Academy of the Supreme Court.

Professor Solita Collas Monsod's opinions and ideas are among some of the most insightful and refreshing one will hear and read in media today. She has long been

urging minds to think better as a professor of the UP School of Economics on which faculty she still serves today. Among her many posts are memberships and advisory roles in international organizations such as the UN Committee on Development Policy.

Atty. Rene Saguisag's activism and career in government service are well known. He is a teacher at his alma mater, San Beda College and writes thought-provoking columns, and as some people lucky enough to receive them will tell you, colorful and interesting letters. These days he is a private practitioner and describes his practice as basically pro bono or *puro abono*. In 2001 the IBP presented him with a lifetime achievement award.

Perhaps the most ambitious aspect of our forum's name is that we claim that it is annual, hoping we suppose that the future editors and officers of the IBP will take up the activity. Your attendance convinces us that there will always be lawyers willing to respond to the call of J.B.L. "to bring in the element of reason and sanity that can redress the disturbed equilibrium of a society at present riven and strained…"

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This Issue

The papers delivered during the forum are included in this issue,[2] together with two articles dealing with legal reform – Manuel Solis' work on water quality management and Arnold de Vera's article on the settlement of labor disputes – and a report on the Gender Justice Awards, a project supported by the IBP Journal. The report includes excerpts from the decisions of Judge Ma. Nimfa Penaco Sitaca who was recognized by the awards body as Most Outstanding Judge.

This issue also offers a small tribute to Chief Justice Hilario G. Davide, Jr. who will retire from the Supreme Court at the end of 2005. When the editors of the Journal took their oaths as IBP officers in 2003, the Chief Justice had asked the gathering of lawyers set to receive their commissions, which of them practiced "alternative law". No one raised his or her hand. For a split second, Justice Davide seemed taken aback. Then he smiled and proceeded to give his thoughts about the merits of eschewing the mainstream for a more socio-civic-oriented practice. The Journal editors remembered his reaction

and comments when putting together its second double issue, "Social Policy and the Law".

Tarsi Diño and Christine Lao again offer, respectively, case digests for April - June 2004 and summaries of significant laws and issuances for the first quarter of 2005.

The ideas in this issue's articles, the hard work that their respective authors put in them, and the sentiments and beliefs that fueled those ideas and efforts, hopefully belie to some degree the concern that the institution of the law, and its practitioners, have become irrelevant in solving our country's many problems.

R. M. K.

[2] Professor Monsod's comment will be published in a forthcoming issue.

Erratum / Notes

In Saligan Urban Poor Unit's article entitled "Ejectment: Beyond Possession, the Social Imperative" (in the Journal issue for the 1st and 2nd quarters of 2004, Vol. 30, No. 1), one of the authors, Atty. Melanie San Luis, was incorrectly referred to as Atty. Melanie San Juan.

Atty. Gwen Grecia, co-author of "The Promise of Parliament: Challenging Foundations of Constitutional Government in the Philippines," (in the Journal issue for the 3rd and 4th quarters of 2004, Vol 30, No. 2), was already a partner of Puyat Jacinto & Santos at the time of the article's writing and publication.

Our apologies.

The Nature and Function of Judicial Review·

*Vicente V. Mendoza**

I want to thank the Integrated Bar of the Philippines, the IBP Journal, and the Ateneo Center for Continuing Legal Education for the honor of being invited to participate in this forum dedicated to the memory of a great jurist whose views on law and justice have aided us in our struggle for a just and humane society. I take it that our task in this discussion is to try to bring J. B. L. Reyes's steadfast ideals of mind and spirit to bear upon one of the most abiding concerns of our time. I refer to the role of judicial review in our contemporary society.

By judicial review I mean the power of courts to pass upon the constitutional validity of the acts of the other departments of the government in cases properly brought before them for decision. This is a power vested under our Constitution in a small group of judges – appointed not elected, drawn from one profession, and removed from the pressure of public opinion – to set aside the acts of the people's representatives in Congress and of the President, the highest elected magistrate of the land, whenever the group finds such acts to be contrary to the Constitution.

This is quite remarkable given the fact that we are a democracy and the questions we entrust to our courts for decision are truly momentous or, in the phrase of John Marshall, "deeply interesting to the nation." Until its establishment in 1803 in *Marbury v. Madison*,[1] no other court in the world had ever exercised this power. Even now, judicial review is by far not a common feature of the judicial systems of other countries. In England, for example, Parliament is supreme, and courts do not have the power to inquire into the validity of its enactments. On the other hand, in France, courts do not exercise the power of judicial review in keeping with the principle of separation of powers,[2] while in some European states, like Austria, Germany, Czechoslovakia, Italy,

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Lecture delivered at the J. B. L. Reyes Forum on Contemporary Legal Issues of the Integrated Bar of the Philippines, held at the Ateneo de Manila Law School on April 18, 2005.

* Retired Associate Justice, Supreme Court of the Philippines and Chair, Committee on the 2002 Bar Examinations

[1] 1 Cranch (5 U.S.) 137.

[2] See Mauro Cappelletti, Judicial Review in the Contemporary World 12-16 (1971).

and Spain, the power of judicial review is vested instead in a special court called the *verfassungsgerichtshof.*

How was this practice established in the United States? Under the leadership of Chief Justice John Marshall, the Supreme Court of the United States asserted in the *Marbury* case its power to interpret the written Constitution and to strike down laws which it found to be repugnant to the fundamental law. That was, indeed, an extraordinary power claimed for any court.

It will repay to consider briefly the facts of that case: William Marbury was appointed Justice of the Peace in the District of Columbia by outgoing President John Adam. He brought suit for mandamus to compel the Secretary of State, James Madison, to deliver to him his commission, because the new Republican administration of President Thomas Jefferson had refused to release it. The suit was brought under Sec. 13 of the Judiciary Act of 1789 which conferred on the Supreme Court jurisdiction to issue the writ of mandamus. Considering the U.S. Constitution to be a "paramount law" of superior force and declaring it to be "emphatically the province and the duty of the judicial department to say what the law is," Chief Justice Marshall ruled that, if an act of Congress was repugnant to the Constitution, the law would be void and the Constitution would prevail. Interpreting Art. III, Sec.2 of the American document, he held that the Supreme Court's original jurisdiction was limited to cases affecting ambassadors, other public ministers and consuls, and those in which a state was a party and that, "in all other cases," its jurisdiction was appellate. Since mandamus was an exercise of original jurisdiction, the Court held that Sec. 13 had enlarged the original jurisdiction of the Supreme Court and that, for that reason, it was void.

The basic premise of judicial review is that a constitution is a species of "law" — a higher law — which courts must interpret if necessary in order to decide a case before them. Actually, however, much more is involved in the exercise of this power. A constitution is not an ordinary statute, like a fire code, which gives specific directions to judges in almost every conceivable situation. The interpretation of its broad and open-ended provisions calls for the exercise of a faculty larger than is required for interpreting and applying ordinary legislation. More than professional competence is demanded of judges. Knowledge of the problems of statecraft is essential.

It is not surprising that the exercise of this power should bring the Court into conflict with the popular branches of the government. In the 1930s, witnessing the

judicial veto of legislation vital to his New Deal economic recovery program, President Roosevelt sought to retaliate by reorganizing federal courts through the appointment of an additional judge for every incumbent judge reaching the age of 70, with the only limitation that, in the case of the Supreme Court, the appointment of additional judges should not result in enlarging the size of the Court beyond 15. The bill filed in Congress for this purpose was clearly aimed at members of the Court whose views on economic matters were regarded as out of tune with the times. The bill eventually failed of passage because sentiments for an independent judiciary prevailed, but the threat carried by it forced the Justices to revise their views. Since 1937 no economic measure has ever been invalidated by the American Court. "A switch in time saved Nine," it was observed, although Justice Frankfurter stoutly denied this to be so.[3]

In the Philippines, there have been similar encounters between the Court and the other branches of the government over the exercise by the Court of its power of review. One such incident happened in 1962 over the Court's decision in *Garcia v. Executive Secretary.*[4] Dr. Paulino J. Garcia was Chairman of the National Science Development Board. He was suspended for an indefinite period pending his investigation for electioneering. The Court condemned his indefinite suspension as worse than removal without cause and ordered his immediate reinstatement. Justice J. B. L. Reyes filed a concurring opinion in which he questioned the President's impartiality to decide the administrative case against Dr. Garcia because he had allegedly stated in public that the petitioner was "an active politician who [had] openly campaigned for the NP candidates in his province." Justice Reyes said:

> The last and final word under the law pertains to the President, who may set aside the recommendations of the investigating committee, and unfortunately, the Chief Executive's words and conduct have evinced an attitude that is difficult to reconcile with the open mind, soberness, and restraint to be expected of an impartial judge.

The President took umbrage and charged that the decision was the result of a cabal by members of the militant Civil Liberties Union of the Philippines then on the Court. His Secretary of Justice, Juan R. Liwag, accused the Court of abusing the power

[3] Felix Frankfurter, *Mr. Justice Roberts*, 104 U. of Pa. L. Rev. 311 (1955). See, also, Michael Ariens, *A Thrice-Told Tale, Or Felix the Cat*, 107 Harv. L. Rev. 620 (1994). For an account of the constitutional crisis and the Court-Packing Plan of 1937, see Paul A. Freund, Arthur E. Sutherland, Mark De Wolfe Howe, and Ernest J. Brown, Constitutional Law: Cases and Other Problems 260-262 (4th ed. 1977).

of judicial review and of encroaching on the powers of the other departments of the Government. He claimed that historically courts and legislatures derived their powers from the monarch, who had grown "weary of his responsibilities" and decided to delegate some of his powers to his followers, some of whom became the courts, while the others became the legislature. The monarch, however, kept for himself the "indefinite residuum," which became the executive powers.[5]

However historically accurate this account may be, the fact is that in our case it was "We the sovereign Filipino people," and not a monarch, who ordained in the Constitution the distribution of powers of government among the legislative, executive, and judicial departments. What was disturbing was the implication contained in the speech that since historically, courts exercised merely delegated powers, the delegation could be terminated any time it pleased the President to do so. The immediate consequence of the unfortunate incident was the discontinuance of the traditional dinner tendered by the President for the members of the Court at the beginning of the new year.[6]

A recent confrontation two years ago pitted the Court against Congress and led to the impeachment of the Chief Justice by the House of Representatives. On record the incident appears to have stemmed from the refusal of the Chief Justice to appear before a committee of the House looking into disbursements by the Court of its money. The Chief Justice invoked the independence of the judiciary and its fiscal autonomy to fend off a legislative inquiry. He later hinted that powerful interests adversely affected by some decisions of the Court were behind the move to oust him.

In *Francisco v. The House of Representatives*,[7] the Supreme Court declared the House rules, which allowed the filing of impeachment charges within a year after the dismissal of the first complaint, to be unconstitutional. Goodwill and good sense in the end prevailed, and those who feared a constitutional crisis breathed a collective sigh of relief as the House accepted the Court's decision in good grace and recalled its referral of the articles of impeachment to the Senate.

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[4] 6 SCRA 1 (l962).

[5] Juan R. Liwag, *The Supreme Court and the Rule of Law*, 28 Law. J. 3, 5 (1963).

[6] For an account of the 1962 incident, see Sylvia Mendez Ventura, Chief Justice Cesar Bengzon, A Filipino in the World Court 81-86 (1996).

[7] 415 SCRA 44 (2003).

II

Despite these incidents no serious efforts have been really made to examine the nature and basis of the power of review of our courts, much less of the standards by which the exercise of that power must be guided. Like the air we breathe we simply assume that the power is there, and whether its results should be praised or condemned is often a matter of whose ox is gored.

Angara v. Electoral Commission[8] purported to discuss the nature of the power, but what was in issue there was not really the power of the judiciary to determine the intrinsic validity of official actions but only its power to act as referee or umpire in case of a contest between two agencies of the government. In other words, the question was not the intrinsic, but the formal, validity of official action. The Court had jurisdiction over petitions for prohibition, but whether it also had jurisdiction over the Electoral Commission was the question.

The respondents in *Angara* argued that under Sec. 516 of the then Code of Civil Procedure, the writ of prohibition could issue only against "inferior tribunals, corporations, boards, or persons performing function judicial or ministerial" and that the Electoral Commission was not an "inferior tribunal." The resolution of the question required no more than a ruling that the Electoral Commission was not one of the grand departments of the government over which the Court had no jurisdiction. Consequently, it was an easy matter for the Court to conclude that the authority granted to the Electoral Commission to decide contests relating to the elections, returns and qualifications of the members of the National Assembly included the power to set the deadline for the filing of election contests since in *Veloso v. Board of Canvassers*,[9] it had already been settled that the power, which was formerly exercised by the Philippine Legislature, was "full, clear and complete." From this it was just a step away to the conclusion that the power to promulgate rules belonged to the Electoral Commission.

The fact is that the power of judicial review of the Supreme Court has never been formally established. The colonial Supreme Court simply exercised it from the beginning of American rule in this country. It was generally assumed that part of the American law

[8] 63 Phil. 130 (1936).

[9] 39 Phil. 889 (1919).

extended to the Philippines was the power of judicial review. Hence, as early as February 14, 1902, the Court already passed upon a constitutional claim that the arrest of the obligee in a contract was a violation of the obligation of contract. It held that the right not to be imprisoned for debt was not part of the obligation of his contract.[10] Today, such a claim would elicit a ruling that it is the right of every person not to be imprisoned for debt whether under the Philippine Bill of 1902 or under our Constitution of 1935, 1973, or 1987.

The following year, 1903, the Court again passed upon a constitutional claim, made by an American citizen, who contended that under the U.S. Constitution every criminal defendant had a right to a jury trial. The Court rejected the claim as it held that the U.S. Constitution did not follow the American flag and the Bill of Rights did not operate in the Islands ex propio vigore.[11]

Then in 1907 the Court invalidated a law imposing a tax on mining claims on the ground that a government grant, which provided that the taxes therein provided were "in lieu of other taxes," was a contract, the obligation of which would be impaired by the imposition of a new tax.[12]

In 1927, the Court in *Government of the Philippine Islands v. Springer*[13] again exercised the nay-saying function by invalidating a law vesting control of government stocks in a government corporation in a committee composed of the Governor General, the President of the Senate, and the Speaker of the House of Representatives. The majority of the Court held that voting the government's shares was an executive function which must be under the control of the Governor General alone. On appeal, the decision was affirmed by the U.S. Supreme Court.[14]

Indeed, just the year before the decision in *Angara*, the Court in *People v. Linsangan,*[15] exercised the power of review as it held a provision of the Administrative Code of 1917, making it a misdemeanor not to pay the *cedula,* to have become inoperative

[10] In re Prautch, 1 Phil. 132 (1902).

[11] United States v. Dorr, 2 Phil. 269 (1903).

[12] Casanovas v. Hord, 8 Phil. 125 (1907).

[13] 50 Phil. 259.

[14] Springer v. Government of the Philippine Islands, 277 U.S. 189 (1929).

[15] 62 Phil. 646 (1935).

in view of the effectivity of the 1935 Constitution.

When the 1935 Constitution was written, it contained no direct statement granting the power of judicial review to the courts because the power had never really been in question. It merely stated that the Supreme Court could not be deprived of its power to decide constitutional cases and that in deciding such questions the Court should sit en banc and if it had to declare a law unconstitutional the vote of two-thirds of its members must be obtained. Thus, Art. VIII provided:

> SEC. 2. The Congress shall have the power to define, prescribe, and apportion the jurisdiction of the various courts, but may not deprive the Supreme Court of its . . . jurisdiction to review, revise, reverse, modify, or affirm, on appeal, certiorari, or writ of error as the law or the rules of court may provide, final judgments and decrees of inferior courts in –
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> (1) All cases in which the constitutionality or validity of any treaty, law, ordinance, executive order or regulation is in question. . . .
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> SEC. 10. All cases involving the constitutionality of a treaty or law shall be heard and decided by the Supreme Court en banc, and no treaty or law may be declared unconstitutional without the concurrence of two-thirds of all the members of the Court.

Nor did the 1935 document provide the basis for the Court's present power to decide constitutional questions in original actions for certiorari, prohibition, mandamus, and habeas corpus. To be sure, the Court could issue these writs under the Code of Civil Procedure in force at the time of the adoption of the Constitution. But nowhere was it provided that it could decide questions of constitutionality. The Court simply assumed that it had the power and focused instead on whether it could exercise it in the first instance and not only on appeal. In *Yu Cong Eng v. Trinidad*[16] the Court held that while "questions of constitutionality must first be raised in the lower court and that court must be given an opportunity to pass upon the question before it may be presented to

[16] 47 Phil. 385, 389 (1925). Accord, People v. Vera, 65 Phil. 56 (1937).

the appellate court for resolution," nevertheless, the Supreme Court may exercise original jurisdiction where the question raised is important and it affects a number of people.

III

The ease with which the power of judicial review was adopted in the Philippines stands in sharp contrast to the manner in which it was received in other countries. When the 1935 Constitution was adopted, the fate of experiments with democracy abroad hanged in the balance. The Austrian experiment with judicial review and the Weimar Constitution of Germany had crumbled while the efforts of Latin American countries to copy the American model soon degenerated into petty dictatorships.

It was not until 60 years later that things changed. The post war period, the end of apartheid in Africa, and the collapse of the Berlin wall in East Germany saw the rise of constitutionalism in the world.[17] As the *Economist* observed in 1999: "Established and emerging democracies display a puzzling taste in common: both have handed increasing amounts of powers to unelected judges. . . . Despite continued attacks on the legitimacy of judicial review, it has flourished in the past 50 years. All established democracies now have it in some form, and the standing of constitutional courts has grown almost everywhere. In an age when all political authority is supposed to be derived from voters, and every passing mood of the electorate measured by pollsters, the growing power of judges is a startling development."[18]

Today, fifty-six countries have systems of judicial review in one form or another; only Great Britain and the Netherlands, in Europe, and Lesotho, Liberia, and Libya, in Africa, do not have judicial review.[19]

What accounts for this development? These countries in East Europe and Africa are just now emerging from dictatorship and colonial rule. They want protection for their newly-won freedoms which they believe courts, exercising the power of judicial review, can provide. After all, the individual rights guaranteed in the Constitution are minority

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[17] Bruce Ackerman, *The Rise of World Constitutionalism,* 83 Va. L. Rev. 771 (1997).

[18] The Economist, August 7, 1999, p. 47.

[19] For a list of countries with one or the other form of judicial review, see Reynato S. Puno, *Judicial Review: Quo Vadis?,* 79 Phil. L. J. 249, 255, n. 9 (2004) (suggesting adoption of the European type of constitutional courts in place of the American model of judicial review).

rights. They have been put there, as Justice Jackson said, in order to place them beyond the reach of majorities. "One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to a vote; they depend on the outcome of no elections."[20] Couple this with Marshall's declaration in *Marbury* that "the very essence of civil liberty consists in the right of every individual to claim the protection of the laws, whenever he receives an injury, [and that] one of the first duties of government is to afford that protection," and the reason why more and more newly-independent countries are opting for judicial review becomes clear. Protection of individual rights is the reason these new nations have embraced judicial review.

There are other functions which judicial review performs. One is that of umpiring a system of separated powers like ours. Without a referee, the other departments may lock horns and bring the government in a stalemate. "In case of conflict," Justice Laurel wrote in *Angara*, "the judicial department is the only constitutional organ which can be called upon to determine the proper allocation of powers between the several departments and among the integral or constituent units thereof."[21]

Judicial review also serves as a guarantor of the legitimacy of official action. This is the legitimating, as distinguished from the checking, aspect of judicial review. One can endlessly speculate what would have happened to the nation in 1973 had there been no declaration by the Court that, after the dismissal of the suits questioning the ratification of the 1973 Constitution, that document should be considered "in force and effect,"[22] or that President Corazon C. Aquino's government established by people power was a de jure government,[23] or that President Gloria Macapagal-Arroyo was a de jure President of the Philippines by succession.[24]

Still another feature of judicial review is its symbolic function. As the philosopher Alexander Meiklejohn said of the American Supreme Court, "its teachings have peculiar importance because it interprets principles of fact and of values, not merely in the abstract,

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[20] West Va. St. Brd of Educ. v. Barnette, 379 U.S. 624 (1948).

[21] 63 Phil., at 157.

[22] The Ratification Cases (Javellana v. The Executive Secretary), 50 SCRA 30 (1973).

[23] Lawyers' League for a Better Philippines v. President Corazon Aquino, G.R. No. 73746, May 22, 1986; In re Saturnino Bermudez, 145 SCRA 160 (1986).

[24] Estrada v. Desierto, 353 SCRA 452 (2001).

but in their bearing upon the concrete, immediate problems which are at any given moment puzzling and dividing us. . . . For this reason the court holds a unique place in the cultivation of our national intelligence."[25]

There are thus other functions of judicial review. However, as far as these newly-freed countries are concerned, it seems to me more the desire to protect freedoms (which judicial review provides) than anything else which has led them to embrace this system. For the truth is that judicial review does not come without costs to other values of a democratic society. As Alexander M. Bickel has written, judicial review is "a counter-majoritarian force . . . [It] thwarts the will of representatives of the people of the here and now. . . . it is undemocratic. . it is a deviant institution in the American democracy."[26]

IV

What price judicial review? In his biography of John Marshall, James Bradley Thayer wrote:

> [T]he exercise of [the power of judicial review], even when unavoidable, is always attended with serious evil, namely, that the correction of legislative mistakes comes from the outside, and the people thus lose the political experience, and the moral education and stimulus that comes from fighting the question out in the ordinary way, and correcting their own errors. The tendency of a common and easy resort to this great function, now lamentably too common, is to dwarf the political capacity of the people and to deaden its sense of moral responsibility. It is no light thing to do that.[27]

Learned Hand, who was Thayer's student, put the matter thus:

> For myself it would be most irksome to be ruled by a bevy of Platonic Guardians, even if I knew how to choose them, which assuredly I do not. If they were in charge, I should miss the stimulus

[25] Free Speech 32 (1948), quoted in Paul A. Freund, The Supreme Court of the United States 25 (1961).

[26] Alexander M. Bickel, The Least Dangerous Branch 16-18 (1962).

[27] James Bradley Thayer, John Marshall 106-107 (1920), quoted in Archibald Cox, The Role of the Supreme Court in American Government 116-117 (1976).

> of living in a society where I have at least theoretically, some part in the direction of public affairs. Of course I know how illusory would be the belief that my vote determined anything; but nevertheless when I go to the polls I have satisfaction in the sense that we are all engaged in a common venture. . . . [28]

It is indeed true that democracies entrust large decisions to be made by appointed heads of agencies, by commissions, and by generals and admirals of the armed forces.[29] But unlike judges, they are responsible to those who appointed them and the latter are themselves elected. Our judges, in contrast, are independent and insulated from the political process after their appointment and are responsible to no one except themselves. The power which they wield is even more potent than the veto power of the President. For unlike the President's veto, the judicial veto cannot be overridden by Congress. To quote Learned Hand, "it certainly does not accord with the underlying presuppositions of popular government to vest in a chamber unaccountable to anyone but itself, the power to suppress sound experiments which it does not approve." [30]

I do not think anyone can deny the essential contradiction between judicial review and democracy. Efforts to reconcile them have been made by thoughtful men.[31] For myself, what I think can be done is to seek an accommodation between the two, first, through the observance of the case and controversy requirement of the Constitution and secondly, through the employment of a double standard in reviewing legislation. This may cast courts in a role which is less heroic but certainly is consistent with the principle of separation of powers and ensure that they do not intrude into the policy-making domains of the other branches of the government. Let me explain.

V

First is adherence to the case and controversy requirement of the Constitution. Judicial review in our time must be justified by the very same reasoning by which it was established, namely, the necessity of passing on a constitutional question in order to

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[28] Learned Hand, The Bill of Rights 73-74 (1958).

[29] Cf. Eugene V. Restow, "The Democratic Character of Judicial Review," 56 Harv. L. Rev. 193 (1952).

[30] Ibid. 72-73.

[31] See, e.g., Stephen G. Breyer, "Judicial Review: A Practising Judge's Perspective," 19 Oxford J. of Legal Studies 153 (1999).

decide a case before a court. Consequently, the exercise of this power must be avoided where it is not necessary for the decision of a case. Thus, Marshall said in *Marbury*:

> It is emphatically the province and duty of the judicial department to say what the law is. Those who apply a rule to particular cases must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each.

Justice Laurel was no less emphatic in *Angara* in pointing out the need for a case or controversy before the power of review can come into play:

> [W]hen 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. . . . This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution. Even then, this power of judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument by the parties and limited further by the constitutional question raised or the very *lis mota* presented.

Indeed, the Constitution confines the jurisdiction of courts to "cases and controversies." Art. VIII, Sec. 1, par. 2 states that the judicial power "includes the duty of courts of justice . . . to settle actual controversies . . . 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." On the other hand, Sec. 5 gives the Supreme Court original jurisdiction —

> over cases affecting ambassadors, other public ministers and consuls, and over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus

and appellate jurisdiction in —

> 1. All cases in which the constitutionality or validity or any treaty, international or executive agreement, law,

presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

2. All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.

3. All cases in which the jurisdiction of any lower court is in issue.

4. All criminal cases in which the penalty imposed is *reclusion perpetua* or higher.

5. All cases in which only an error or question of law is involved.

Over nothing but cases and controversies can courts exercise jurisdiction, and it is to make the exercise of that jurisdiction effective that they are allowed to pass upon constitutional questions. And what is meant by "case and controversy"?

> By cases and controversies are intended the claims of litigants brought before the courts for determination by such regular proceedings as are established by law or custom for the protection or enforcement of rights, or the prevention, redress, or punishment of wrongs. . . . The term implies the existence of present or possible adverse parties, whose contentions are submitted to the court for adjudication.[32]

Insistence on the existence of a case or controversy then is insistence on a constitutional requirement. Conversely, where there is no case or controversy but a mere request for advisory opinion, or where the case has ceased to be a case because it has become moot and academic, or where a party raising the constitutional question has no standing, or where the question is political, being committed to the other departments of the government, the Court should resist the pressure to decide the constitutional question. Its precious resources should be husbanded for the time when it will have to exercise its power because the occasion importunately demands that it do so.

[32] Muskrat v. United States, 219 U.S. 346 (1911). See also Lopez v. Roxas, 124 Phil. 168 (1966).

One item calls for elaboration and that is the political question doctrine. In *Tañada v. Cuenco*,[33] the Court defined two categories of political questions: (1) "those questions which, under the Constitution, are to be decided by the people in their sovereign capacity," and (2) "[those] in regard to which full discretionary authority has been delegated to the legislature or the executive branch of the Government."

Does Sec. 1, par.2, by making it "the duty of courts of justice . . . 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," make political questions justiciable? Has it abolished the political question doctrine? Chief Justice Concepcion, the Chairman of the Committee on Judicial Power of the Constitutional Commission, emphatically said "no." Only cases of grave abuse of discretion are intended to be covered by the provision in question.[34]

That, indeed, is what the Supreme Court had earlier held in *Lansang v. Garcia*,[35] in which the Government invoked the doctrine to bar review of the President's proclamation suspending the privilege of the writ of habeas corpus. "The function of the Court is merely to check – not to supplant – the Executive, to ascertain merely whether he has gone beyond the constitutional limits of his jurisdiction, not to exercise the power vested in him or determine the wisdom of his act, " said the Court. The question is "not [whether] the President's decision is correct . . . but [whether] in suspending the privilege of the writ the President did not act arbitrarily." The Court thus reversed a long standing rule which regarded as conclusive on the courts the President's proclamation that the suspension of the privilege of the writ of habeas corpus was required by public safety.[36] Chief Justice Concepcion wrote the opinion of the Court in that case, and it may be presumed that in writing Sec. 1, par. 2 he was referring to his opinion in *Lansang*, just as the first part of par. 2, in referring to "the duty of courts of justice to settle actual controversies involving rights which are demandable or enforceable," embodies the ruling in *Lopez v. Roxas*,[37] the opinion in which he also wrote.

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[33] 103 Phil. 1051 (1957).

[34] 1 Records of the Constitutional Commission 439, 443, Session of July 10, 1986.

[35] 42 SCRA 448 (1971).

[36] Barcelon v. Baker, 5 Phil. 87 (1905); Montenegro v. Castaneda, 91 Phil. 882 (1952).

[37] 17 SCRA 756 (1966).

Indeed, Sec. 1, par. 2 appears to be more of a reaction to the perception that, in the martial law years, courts frequently took refuge in the political question doctrine to escape from the duty to decide politically-sensitive cases. What the new constitutional provision seeks is a reversal of the old attitude of courts to defer to the Executive in national security cases. It now casts on the courts "the duty" to look into allegations of grave abuse of discretion and not to let anyone get off easily through the invocation of the political question doctrine. Otherwise, I cannot read in the records of the Constitutional Commission any intent to enlarge the scope of judicial review or to relax the case and controversy requirement of the Constitution. Some cases, it must be acknowledged, have liberalized the rule on standing, but the rulings appear to be based more on prudential considerations rather than on an interpretation of the case and controversy requirement of the Constitution.

Observance of the case and controversy requirement of the Constitution is a means of ameliorating the tension between the counter-majoritarian character of judicial review and the principles of popular government. A second measure that can be adopted for this purpose is the use of a double standard of review: one that is strict when it comes to laws dealing with civil liberties (freedom of speech, of expression and of the press, freedom of religion, or the various rights of an accused in a criminal trial) and another one that is benign or deferential with respect to economic and social experiments. To put this in another way, the double standard of review calls, on the one hand, for judicial activism in matters of individual rights and, on the other, for self-restraint in matters of social and economic experimentation.

This is somewhat similar to the response of the Hughes Court to the constitutional crisis of the 1930s in America. From 1905, when the Court struck down a New York statute regulating the hours of work in bakeries in *Lochner v. New York*,[38] to the mid-thirties when it set aside laws dealing with unfair trade practices, minimum wages, collective bargaining and the like in S*chechter Poultry Corp. v. United States*,[39] a number of social and economic regulations were declared unconstitutional as infringing on due process. The measures had been adopted as part of the New Deal Program of President Roosevelt to bail America out of the Great Depression. Reacting to the activism of the Court, Roosevelt proposed to Congress the reorganization of the federal courts through the appointment of additional judges for incumbents reaching the age of 70, provided that,

[38] 198 U.S. 45.

[39] 295 U.S. 495 (1935).

in the case of the Supreme Court, its membership was not enlarged beyond 15. The additional justices, it was thought, would neutralize the opponents of Roosevelt's program on the Court.

The Court-Packing Plan, as it was called, was killed in the Judiciary Committee of the U.S. Senate because, as earlier stated, of sentiments for the independence of the judiciary. Nonetheless, though it failed of passage, it produced a profound effect on the members of the Court, who started seeing the economic regulations in a new light. The use of substantive due process to test the validity of economic regulations declined in the years which followed as the Court started applying minimum rationality review to such type of regulation.

A parallel development took place in the Philippines when the Supreme Court invalidated a law providing for maternity leave for working women. Although the Court invoked liberty of contract as basis for its decision, in the ultimate analysis it was the due process that it employed to protect property. [40] By 1939, liberty of contract ceased to be a test of validity of legislation, what with the social and economic provisions of the 1935 Constitution which by now had come into force. As the Court stated, "In the midst of changes that have taken place, it may likewise be doubted if the pronouncement made by this Court in the case of People v. Pomar . . . still retains its virtuality as a living principle."[41]

Actually, the double standard of review has been avowed by the Supreme Court in *Ermita-Malate Hotel and Motel Operators Ass'n v. City Mayor*,[42] which was reiterated in *Tolentino v. Secretary of Finance*,[43] in which the Court quoted with approval Professor Freund's succinct statement of the rule that "When freedom of the mind is imperiled by law, it is freedom that commands a momentum of respect; when property is imperiled, it is the lawmakers' judgment that commands respect. This dual standard may not precisely reverse the presumption of constitutionality in civil liberties cases but obviously, it does set up a hierarchy of values within the due process clause."[44]

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[40] People v. Pomar, 46 Phil. 440 (1924).

[41] Antamok Gold Fields Mining Co. v. Court of Industrial Relations, 70 Phil. 340 (1940).

[42] 21 SCRA 448 (1967) (upholding validity of ordinance regulating use of motels).

[43] 235 SCRA 630, 682 (1994) (upholding validity of the Expanded Value Added Tax).

[44] Paul A. Freund, On Understanding the Supreme Court 11 (1950).

In *Ayer Productions Pty. Ltd. v. Capulong*,[45] the Court, using strict scrutiny, held that "Any system of prior restraint of expression comes to this Court bearing a heavy presumption against its constitutional validity. . . . The Government thus carries a heavy burden of showing of justification for the enforcement of such restraint." On this ground the Court set aside a preliminary injunction issued by the trial court prohibiting the showing of a movie and the identification of respondent in that movie.

On the other hand, the Court used a minimal rationality test in sustaining the validity of the Philippine Mining Law and its Implementing Rules and Regulations with regard to Financial and Technical Assistance Agreements. In *L.A. Bugal-Bilaan Tribal Ass'n, Inc. v. Ramos*,[46] recently decided, it said:

> The Constitution should be read in broad, life-giving strokes. It should not be used to strangulate economic growth or to serve narrow, parochial interests. Rather, it should be construed to grant the President and Congress sufficient discretion and reasonable leeway to enable them to attract foreign investments and expertise, as well as to secure for our people and our posterity the blessings of prosperity and peace.

The double standard of review is based on the theory that restrictions on the political process should be placed under strict scrutiny, lest they obstruct the free flow of ideas. As guardians of structure and process, the function of courts is to ensure that all channels of communication are kept open and operating. Hence, the rule that laws restricting freedom of expression must be presumed invalid and the party sustaining its validity should bear a heavy burden of justification. Given a free market of ideas, the political process can then be relied upon to determine the outcome of social and economic experiments. The results can be more safely presumed to represent the popular will and the courts' function will be to determine whether under a benign review the laws have a rational basis in fact.

Indeed, freedom of expression, like religious freedom, has claim to primacy in Philippine history. As the Court pointed out in *United States v. Bustos*,[47] it was a

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[45] 160 SCRA 861 (1988).

[46] G.R. No. 127882, Dec. 1, 2004.

[47] 37 Phil. 731 (1918).

fundamental demand of the Propaganda Movement and its denial was one of the causes of the Philippine Revolution of 1898. The revolutionists knew only too well how indispensable freedom of speech and of the press were in the fight against the abuses of the Spaniards

In the case of the social and economic rights (e.g., the right to work, the right to a healthy environment, the right to quality education) the Court has a different role. Many of these guarantees were derived from the social and economic experiments of the New Deal Era of President Roosevelt. The decision of the 1934 Constitutional Convention to constitutionalize them had the effect of limiting judicial review to a determination whether legislation is reasonably related to a proper governmental purpose and is neither arbitrary nor oppressive.

Indeed, the guarantees of social and economic rights require the positive furnishing of wherewithal which courts obviously are in no position to make. For example, courts cannot provide us with jobs, a healthy environment, or quality education. Like the constitutional mandate to "evolve a progressive system of taxation,"[48] these rights are for Congress to implement.[49]

Strict observance of the case and controversy requirement and the use of a double standard of review (one for civil liberties cases and another for economic measures) can help ensure a fruitful partnership or even just a peaceful coexistence between judicial review and representative government and help us live with the paradox of having a democracy with an unelected group of judges vested with the power to set aside the acts of our representatives in Congress and of the President. For the question is not whether we should do away with judicial review because it is countermajoritarian and undemocratic. The question is whether we can make it do service to enhance the values of our democracy. I believe we can, by confining courts to the role historically assigned to them in our system of separation of powers and by insisting on the use of a differential calculus for measuring the validity of official actions.

That ends my lecture. I thank you for your patience and indulgence for giving me your attention.

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[48] Const., Art. VI, Sec. 28(1).

[49] Tolentino v. Secretary of Finance, 235 SCRA 630 (1994).

Comments on "The Nature and Function of Judicial Review"

Sedfrey M. Candelaria[*]

I would like to thank the IBP and the ACCLE for inviting me today and giving me the opportunity to react to the presentation of Justice Mendoza this afternoon. It is a privilege to undertake this task and an honor to share my thoughts on the subject.

Judicial power is the measure of the allowable scope of judicial action.[1] The power of judicial review flows from judicial power.[2] In this regard, a proper understanding of this concept is essential to the understanding of the role of the judiciary.[3]

Justice Mendoza underscored a number of insights which I wish to address directly. First is the matter of characterization of judges as being removed from the pressure of public opinion[4] and independent or insulated from the political process. Second is the fact that judicial review has never been formally established in this country.[5] Third is the set of tools which he proposes to ensure a healthy balance between exercise of judicial review and democracy in our setting.[6]

Independence from the Political Process

Allow me to premise my treatment of the first reaction point with the prevailing view that the exercise of judicial review is not only limited to the Supreme Court but is, in fact, shared by inferior courts.

Lecture delivered at the J.B.L. Reyes Forum on Contemporary Legal Issues co-sponsored by the IBP Journal, held at the Ateneo Law School on April 18, 2005.

[*] Associate Dean and Professor of Law at the Ateneo Law School, for Constitutional Law, Public International Law, International Economic Law and Political Law Review, Professor II at the Philippine Judicial Academy, Director of the *Adhikain Para sa Karapatang Pambata* of the Ateneo Human Rights Center (Child Rights Unit).

[1] JOAQUIN BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY, 2003 ed., 914.

[2] Id. at 963.

[3] Id. at 914.

[4] Lecture, *supra*. note 1 at 2.

[5] Id. at 12.

[6] Id. at 23.

Justice Mendoza mentioned that "in the exercise of judicial review, calling for interpretation of broad-ended provisions of the Constitution, more than professional competence is demanded of judges and knowledge of the problems of statecraft is essential."

This brings to mind some interesting developments in the field of judicial education centered on the issue judicial perspectives and techniques in judging which are forward looking and sensitive to the needs of a pluralist society.[7] It has been opined that judging is a dynamic process that is an art as much as a bureaucratic function.[8]

Two fundamental principles of judicial office are: independence and impartiality.[9] The observation has been made by some scholars[10] that while there has been great emphasis on the concept of judicial independence, there is a danger in treating it as an end in itself.[11] It has been advanced that the primary goal of judicial office is ethical, fair and responsible decision-making.[12] Based on this premise, it is suggested that judicial impartiality is the end to be achieved and that independence is a means to that end.[13]

This reallocation of emphasis according to the proponents of this view is important because it puts independence in context.[14]

There are three conceptions of judicial impartiality.[15] The first is represented by the icon Themis blindfolded.[16] The idea is to divest oneself of all preconceptions and identifications. The role of the judge is to discover and apply the law, or the ideal of disengagement. This has been criticized as at odds with the inescapable reality that we are social beings and that we are saturated with relationships and preconceptions.[17]

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[7] Richard F. Devlin, *Judging and Diversity: Justice or Just Us?*, PROVINCIAL JUDGES JOURNAL, Vol. 20, No. 3, 1996, 5.

[8] Id. at 18.

[9] Id. at 6.

[10] Id., Devlin citing Hon. Mr. Justice David Marshal, JUDICIAL CONDUCT AND ACCOUNTABILITY (Toronto: Carswell, 1995) and M. Friedland, A PLACE APART: JUDICIAL INDEPENDENCE AND ACCOUNTABILITY IN CANADA (Ottawa: Canadian Communication Group, 1995).

[11] Id. at 7.

[12] Id.

[13] Id.

[14] Id.

[15] Id. at 8.

[16] Id. at 9.

[17] Id. at 10.

Second is the relationist approach to impartiality which goes to the other end of the spectrum and suggests that the judge should incorporate a large degree of empathy to his or her tasks. It has been interpreted to mean "entering into the skin of the other." This approach recognizes that we all have inescapable social contexts that influence our life experiences, our conduct and our understandings of the world. The drawback of this theory is the danger of appropriation and our capacity as human beings to be able to come to terms with the position of the other.[18]

Third is the situational conception which states that the act of judging is a social act. Specifically, it suggests that socio-cultural forces are crucial variables and that those who judge and those who are judged are deeply affected by their experiential contexts.[19]

It must be pointed out that these theories have been largely applied to traditional issues confronting the North American public, such as racialization and equality.[20] But it would be instructive to see how this operates within the Philippine socio- cultural and economic setting.

Development of Our Own Concept of Judicial Review

The opportunities for developing our own notion of judicial review founded on the existing variables which confront the judiciary are inviting enough. It has been pointed out that the new states in Africa and East Europe which emerged from dictatorships and colonial rule want protection for their newly-won freedoms which they believe courts, exercising the power of judicial review, can provide.

But let me take this observation a step further and state that the issues confronting these states and our country today are remarkably similar, if not, identical in a number of instances. While the primordial concern of these states for embracing judicial review is the protection of individual rights, the burden on most of these societies may be traced to economic underdevelopment. It is within context that courts today may have to view some legal controversies that come before them for adjudication.

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[18] Id. at 11-13.

[19] Id. at 16.

[20] Id. at 17.

The consequences of taking into account the context of judicial review as I propose would require a re-examination of the judicial approach toward judging the assertion of basic economic, social and cultural rights of our citizens, on one hand, and the independent pursuit of economic development by the government, on the other hand.

I must admit that this is not a simple task lodged with our courts today as Justice Mendoza would have stressed in his last point on the development of tools to address the essential contradiction between judicial review and democracy.

Judicial Review and Democracy

While the twin tests he proposed on case and controversy requirement and the employment of double standard would be useful guides for judges, I suggest that the emphasis on strict test as far as civil liberties are concerned may have to take into account the context within which fundamental human rights today are affected by the issues of economic deprivation and underdevelopment. Restricting the interpretative role of judges to the human rights mentioned, by way of illustration, may lead to the marginalization of the social justice rights outlined in Article XIII of the Constitution. Emphasis should be made that at the international level the concept of human rights is indivisible.

It is likewise important to note that the Constitution itself tries to strike a balance in the economic development planning in relation to the rights of the citizens. One such example may be found in Article XIII, Section 16 on the right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making.

In light of these observations, it would be of interest to find out from the good Justice, based on his experience in the Supreme Court, the extent that any of the tests of judicial impartiality had been pursued either individually or collegially in the course of deliberations by the Supreme Court. Further, it might be useful to solicit his view on the direction that any constitutional amendment may take as regards judicial power in view of the current historical conditions that we find ourselves in.

Thank you and good day.

Politics, Policy and Judicial Review

Rene A. Saguisag[*]

> *Whoever hath and absolute authority to interpret any written or spoken laws, it is he who is truly the lawgiver, to all intents and purposes, and not the person who first spoke or wrote them.*[1]

Thank you for your kind invitation to this event, on the subject "Probing the Limits of Judicial Review," in honor of Justice Jose Benedicto Luna Reyes, someone I knew only from afar. We always called him as JBL with some inexplicable entitlement to fond intimacy, at a time when Justices had no familiars, in that earlier, innocent era.

As a tyro, I once accompanied San Beda Law Dean Feliciano Jover Ledesma, in an oral argument in the Supreme Court, in the small chamber there. JBL suggested that the parties file memoranda. One *abogado de campanilla* insisted on being heard. JBL said, "well, you may proceed at your own risk but your arguments may not be remembered." We all considered ourselves told and simply filed memoranda.

JBL retired in August 1972. Did President Ferdinand Marcos wait for him to retire before inflicting martial law the following month? The judiciary became politicized but this paled in comparison with what happened on January 20, 2001, when, invoking some power – a mutant of judicial review? – it not only set aside an act of the executive or legislative department,[2] but of the electorate in 1998.[3]

In criticizing in 1975 P.D. No. 823 banning strikes, JBL said "that the decree is unconstitutional and void. Whether the present Judiciary will concur in this view is something that cannot be predicted under present conditions." So some may ask, what else is new?

Reaction given to the lecture of Justice Vicente V. Mendoza in the J.B.L. Reyes Forum on Contemporary Legal Issues (hereafter, Lecture) at the Ateneo Law School, April 18, 2005.

[*] Former Senator of the Republic of the Philippines.

[1] Bishop Hoadly's Sermon, preached before the King, 1717.

[2] Which it may do (Lecture, p.2).

[3] Which it may not do. I did not vote for candidate Joseph E. Estrada, my client from April to June 1998, when he said he would move Mr. Marcos' remains to the Libingan ng mga Bayani and then thrashed the Gordons; from July 1998, I was his constant critic – I am, of those in power – until he fell in January, 2001 (I had no impeachment role) and became the underdog.

In the IBP national Convention of the Second House of Delegates held in Naga in January, 1977, IBP President Emeritus JBL exposed that the Supreme Court had censored articles to be published in the *IBP Journal* written by retired Chief Justice Roberto Concepcion and Justice Claudio Teehankee. A proposed resolution to protest the censorship was killed in plenary.[4]

I voted no on the creation of the IBP, JBL's baby, as it were, as much as I admired him. Aside from utter uselessness, I had been influenced by what Justice Felix V. Makasiar had advised me: it would just be used as a tool by a dictator – who in due time turned out to be a favorite classmate of his – and certain powerful interests.

Mr. Marcos later asked the IBP to participate in some activity. JBL, as IBP head, took out an ad saying it would not, for 'utter uselessness." He was not about to be used. Even then I maintained, as I maintain now, that at times, the I in the IBP seems to stand for *Inutil*. But, because of that bold ad taken out by JBL, I started paying my IBP dues after I had vowed not to, and put myself where my mouth was.

I trust I am not disgressing. My own view, with all due respect, is that the judiciary has shown more and more that it has become the opposite of what used to be called 'The Least Dangerous Branch".[5] It enters political thickets, engages in policy-making and misuses its power of review[6] in grave abuse of discretion.

I appreciate that you have invited a retired magistrate, Justice Vicente Mendoza.[7] To me, those still on the bench should stop speechifying and just decide cases, like that of Judge Florentino V. Floro, suspended since 1999, pending for along, mystifying time,

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[4] The Naga *Balalong* issue of Jan. 30, 1977 saw the delegates reduce the time for their plenary session to the barest minimum. Some delegates worked on nothing except complain about the absence of hospitality girls. The Saturday morning session started more than an hour late, because the delegates had such a good time the previous night they overslept. Result: the plenary session that morning was cancelled. The plenary session in the afternoon, the only one left, was cut short, because the delegates had to rush to Iriga for a lawn party. Result: 8 harmless resolutions that did not say a single word against the injustices and wrongs they talked so much about in their symposia.

So, again, what else is new? I published the above in what JBL said, according to Justice Joe Balajadia, was the only open free paper in the mid-70's, the *IBP-Rizal chapter Newsletter* Joe and I were putting out.

[5] Prof. Alexander Bickel's phrase.

[6] And lowers the bar for bar leadership, a subject for some other day.

[7] He is a dear friend, married to a social worker, Thelma, a teacher and role model of my ever-loving wife, also a social worker (along with two other sisters and a sister-in-law who all attended UP). Justice Mendoza mentioned the Civil Liberties Union of which JBL was stalwart.

almost like Churhchill's riddle wrapped in a mystery inside an enigma.[8] It seems Judge Floro has been charged for having a calling card where he states that he was No. 12 in the bar, among other infractions. He says he can predict events save apparently that he would be suspended or when and how his case would be decided. If a judge cannot get speedy justice, what can the rest of us expect? Where is he to go?

As an excursus, I was fascinated by the snippet from an account by Ms.. Sylvia Mendez Ventura, Justice Mendoza, relying on her account, says that "[t]he immediate consequence of the unfortunate incident was the discontinuance of the traditional dinner tendered by the President for the members of [the Supreme] Court at the beginning of the new year."[9] I hope it will be revived, virtually to be the only social contact between the president and the Court as before.

The JDF case

In the JDF case, the response of Chief Justice Hilario G. Davide, Jr. was Noli Me Tangere, which disappointed me.[10] A public servant asked to account for public funds, should do so, as a matter of course. Two weeks ago, ex-Rep. Felix William Fuentabella again called to say that the judicial ran-and-file who had gotten in touch with him remain restive. He and octogenaria Herminio Teves were among the, to me, Magnificent 77 who successfully impeached Chief Justice Davide, despite the massive propaganda against them. That is from where I sit.

From where Justice Mendoza does, *Francisco* "stemmed from the refusal of the Chief Justice to appear before a committee of the House looking into disbursement by the Court of ITS money. The Chief Justice had invoked the independence of the judiciary and its fiscal autonomy to fend off a legislative inquiry. He later hinted that powerful

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[8] Justice Mendoza recounts us that Dr. Paulino J. Garcia "was suspended for an indefinite period pending his investigation for allegedly campaigning for candidates of the Nacionalista Party in the previous election. The Supreme Court condemned his indefinite suspension as worse than removal without cause and ordered his immediate reinstatement." Lecture, pp. 6-8. It decided the case within months. Judge Floro's state of suspended animation since mid-199 would not have happened when we had magistrates like 1) ponente Justice Jesus Barrera noting the evils of indefinite suspension during investigation, where the respondent employee is deprived in the meantime of his means of livelihood, without an opportunity to find work elsewhere, lest he be considered to have abandoned his office, and for this reason prolonged suspension is worse than removal; and, 2)JBL decrying the denial of procedural due process in his concurrence.

[9] Lecture, p. 8.

[10] Id. At 8-9. *Francisco v. House of Representatives*, 415 SCRA 44 (2003).

interests adversely affected by some decisions of the Court were behind the move to oust him"[11] "Hinted" could mean "intrigued."

I was not involved in *Francisco*. The 77 Congressmen who had sailed against the wind were not "looking into disbursement by the Court of its money,"[12] but the people's. "Powerful interests" can only refer to the people, represented in Congress. Indeed, even if only one citizen, as " a particle of popular sovereignty," in the words of Justice Jose P. Laurel, Sr.,[13] asks any public servant to account, he should do so. Had I accepted my signed Supreme Court appointment in January, 1987, and were I the Chief Justice today – mayhap, as likely as not I would have long been impeached – I would do what I did when I was in government without being asked: account for every centavo entrusted to me, and ask the Representatives, "What else can I do for the people you represent?" No big deal. What "powerful interests?"

For those of you in practice, ask court personnel what they think of the Chief Justice. While their superiors' pay and benefits have jumped in quantum fashion, and which have caused the cost of litigation today to hit the roof, these "powerless interests" have no one of consequence to help them now.

It should have been the Senate which should have dismissed the charges against the Chief Justice who had the votes there and need not have his Court be the judge of his own cause, for the sake of credibility and legitimacy. For the Court again to rule in its own favor truly makes it The Most Dangerous Branch, in my view. Today, it accounts to no one, after that self-serving ruling was even hailed by the House leadership who had just lost part of its power of the purse.

Thus, judicial autonomy has enabled the Court to give the judiciary humongous benefits and to tax litigants again and again by raising the cost of public service as if being a victim of injustice relates to the ability to pay. Various agencies have followed suit in having taxation without representation.[14] Justice Mendoza notes that "courts cannot provide us with jobs, a healthy environment, or quality education. **Like the constitutional**

[11] Emphasis added.

[12] Emphasis added.

[13] *Moya v. Del Fierro*. 69 Phil. 199, 204 (1939).

[14] In one minor office, we tired to file a motion to decide a case long submitted for decision and were charged close to P600! A tricycle driver we are assisting pro bono in Marikina was startled to be told that to have the case against him dismissed, he would have to pay P500. He may have to drive more recklessly and injure more passengers and pedestrians.

mandate to 'evolve a progressive system of taxation' these rights are commands to Congress to implement."[15] The Supreme Court seems to disagree in that the command is for itself to implement in the matter of regressive fees imposed without hearings, which hearings Congress conducts.

We have a Cash Register or Supermarket Theory of Justice, which has fixed prices. So much for eggs, or for a second resetting.

Rationale for expanded jurisdiction

The rationale for the so-called expanded jurisdiction is mentioned in the *Francisco Peonencia* of Associate Justice Conchita Carpio-Morales, quoting Commissioner Roberto R. Concepcion, who said:

> *Fellow Members of this Commission, this is actually a product of our experience during martial law. In fact, it has some antecedents in the past, but the role of the judiciary during the deposed regime was marred considerably by the circumstance that in a number of cases against the government which then had no legal defense at all, the solicitor general set up the defense of political questions and got away with it . . . As a consequence, certain principles concerning particularly the writ of habeas corpus, that is, the authority of courts to order the release of political detainees, and other matters related to the operation and effect of martial law failed because the government set up the defense of political question….*[16]

But, we live under non-martial law conditions. There is no basis to invoke martial misrule that the distinguished former Chief Justice used to justify in giving the Supreme Court superiority over the other two branches of government. He did not want to see a repeat of the martial law trauma, with one man acting as super-executive, super-legislature, super-court and a one-man-continuing-constitutional convention. This is a time of relative normalcy, stability and predictability without some martial law administrator mocking

[15] Lecture, p. 36 (emphasis added). Guess who's taxing?

[16] *Francisco v. House of Representatives*, supra, n. 11, at 125.

civilian and would need checking. The Supreme Court should not be "a continuing Constitutional convention."[17]

I feel reinforced in my belief that the Supreme Court misread the Constitutional Commission proceedings seeing Justice Mendoza's remark that Sec. 1 of par. 2 of Art. VIII of the 1987 Constitution on the "expanded jurisdiction" of the judiciary "appears to be more of a reaction to the perception that in the martial law years, [when] courts frequently took refuge in the political question doctrine to escape from the duty to decide politically-sensitive cases"; like me, he "cannot read in the records of the Constitutional Commission any intent to enlarge the scope of judicial review . . . "[18] either.

In one petition for habeas corpus in late 1982, the Supreme Court was convinced there was no legal basis for an ASSO (Arrest, Search and Seizure Order), and ordered the detainee's release. This could not be immediately effected because Mr. Marcos was in the U.S. on an official visit. Only he could authorize the release. A unanimous Supreme Court order had meant nothing to the all-powerful military.

Jury trial

May one ask for a kind of trial by jury here?[19] In the military, a soldier is tried by his peers. In *People v. Espina*,[20] in an Order dated Oct. 5, 1994, than Judge Aurora Reciña said on our Application for Trial with Assessors . . .

> *It is apparent from the record that the said Application for Trial with Assessors was seasonably filed. As held in the case of Primicias v. Ocampo. 93 Phil. 446 and restated in Manaois vs. dela Cruz, SCRA Vol. 19, February 29, 1967 page 397:*
>
> > "Trial with the aid of assessors in criminal cases was allowed by Act 2369. This right was not repealed by the Constitution nor abolished by the Old Rules of Court."

[17] In the 2000 bar exams, the first question in Political and International Law was: "One Senator remarked that the Supreme Court is a continuing Constitutional Convention. Do you agree? Explain (2%)." This phrase I have used for decades and am not certain which other Filipino said it. However, I stole or paraphrased it from Justice William Brennan, but in the same manner that Voltaire did not really say "I may not agree with what you say but will defend to the death you right to say it," you never know in an uncertain, imperfect world, to paraphrase St. Louis Joaquin Andujar.

[18] Lecture, p. 29.

[19] Lecture, p. 13.

[20] Criminal Case No. 94-6064, NCJR-RTC-Pasay-119.

Finding merit therefore to said Motion filed by counsel for the accused, the same is granted.[21]

Guarantor of legitimacy

If the Supreme Court in 1972 had quickly declared the September Palace coup unconstitutional, the dictatorship might not have lasted 14 years.[22] Like I said, the presence of JBL in the Supreme Court might have made a difference. Might the heavens have fallen? Well, how many became victims of gross human rights violations between 1972 to 1986? The dictatorship damaged our values, institutions and processes, from which we have; yet to recover. This take of mine can compete with the clashing claim that it was good for the country. To me, Mr. Marcos was obeyed the way a gunman robbing a citizen is. Marital law was "the gunman situation writ large," to borrow from the Fuller-Hart debate.[23]

On Day One, I stood on Mendiola, if only because that is where San Beda is. I then pledged that our first-born, to arrive in October, 1972, might be born a slave, but would not live and die as one.

My own view as to the current dispensation is a matter of record. Edsa 1 enforced the people's electoral will, if disputed, but Edsa 2 multiplied a mandate obtained in 1998, clearly undisputed.

It is one thing to subject the Constitution to application, interpretation or construction, but what we had in 2001 was constitutional carpentry. Victor Agustin, of the *Daily Intriguer*, rather, *Inquirer*, has dubbed Justice Artemio Panganiban, my *compadre*, as "the high court's resident Catholic theologian."[24] Justice Panganiban has memorialized how he had come "to propose the oath-taking of Mrs. Arroyo even when she had not yet requested it, and even when President Estrada was still in Malacañang; and why chief Justice Davide immediately agreed to it, even prior to consultation with the other justices." What the Court did "can only be explained as the work of the Holy

[21] MABINI represented here a woman who was told in a motel room by her lover that it was all over as his wife, an overseas contract worker, was on her way home, but, instead of fleeing, he slept, only to awake very much diminished; his manhood became Exh. E, which might still be in some bottle in the Pasay Regional Trial Court.

[22] Lecture, pp. 19-20 (musing supplied; Justice Mendoza had his own).

[23] Some obeyed Mr. Marcos like the "good Germans" who obeyed Hitler.

[24] *Daily Inquirer*, Apr. 11, 2005, p. B3, co. 1.

Spirit on both of us . . ." They had both just read the Bible and saw matutinal inspiration in it early in January 20, 2001, to swear Palace. They agreed on that auroral message. Those Justice Panganiban called "key players of EDSA 2"[25] were involved in the process but all communications were between Taft Avenue and Linden Suites; they forgot or refused to communicate with the elected public servant – not a dictator like Mr. Marcos – about to be dismissed from the service, and who might have agreed to the duo's initiatives.

JBL, were he on the Court, might have asked the foolish question of the day about even the lowliest employee being entitled to a two-notice requirement and that the secular Constitution, not the Jerusalem Bible, should be the guide. But, now that Pope John Paul II is no longer around to deny it, GMA, resurrecting the theory of Divine Right of Queens, says he had also advised her to fight Erap on *Jueteng-Gate. Jueteng* is more rampant today, as perceived by many quarters.

Court-packing may not have worked in Roosevelt's time but it changed the temper of the Supreme Court.[26] No good intention or cause is ever defeated, lost or wasted, I doubt if in a future Edsa the Justices would troop there again as "separators" without realizing that they would compromise themselves in deciding their own cause later.

Standards

I am attracted to Justice Mendoza's fascinating thesis of "a double standard of review for constitutional adjudication in the Philippines".[27] I hope though that we can come up with a more felicitous term, given what "double standard" connotes. Maybe "dual, two-tier, two-tier or bifurcated standard of review" could be considered.

Case and controversy

In principle too, I associate myself with Justice Mendoza's thoughts on the case or controversy requirement.[28]

But, the greatest sin of this Supreme Court is that predictability, the hallmark of a mature legal system or institutional arrangement, has been lost. Many of us have been

[25] *Reforming the Judiciary* 132 (2003).

[26] Lecture, pp. 30-32.

[27] Id. at 36.

[28] Id. at 23-30.

proven to be false prophets as the power to review has become uncanalized. How a unanimous decision can scatter on a motion for reconsideration is a cause for concern. We have a Supreme Court, whose votes swing wildly on reconsideration, indicating that perhaps not much study is devoted during the initial voting in the first place. Was it because of the go-along mutual-back-scratching-attitude? Then, on reconsideration the voting explodes.[29]

What is the basis for the seeming wild shifts? Judicial indolence or inattentiveness in the first instance? Or worse? It does not scandalize anymore that political pressure may have been exerted.[30]

Not that I always complain. Last month, on the basis of a second motion for reconsideration, the Supreme Court's First Division reversed itself, in favor of peasants in Santa Rosa fighting an almighty family.[31] Indeed, after Justice Jose Vitug retired on July 7, 2004, he sent me a note that in his valedictory, *People v. Mateo*,[32] which now requires capital cases convictions to be reviewed by the Court of Appeals, he followed my advocacy even if she issue was not raised there by the parties. You won't hear me complaining about this, either. As Thomas Reed Powell said, those who have less in life should have more in law. Recall Voltaire and Continuing Constitutional Convention?

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[29] On the Mining Act of 1995, in *La Bugal-B'laan Tribal Association, Inc. v. Ramos*, 421 SCRA 148 (2004), the original vote for the petitioners was 8-5. On Dec. 1, 2004, five of the eight, with tow new appointees, joined the original dissenters. From 8-5, the voting became 3-12. One Justice was on leave (yet the Chief Justice wrote: "I hereby certify that Justice Corona voted affirmatively with the majority and he was allowed to do so although he is on leave." This may have set a very dangerous precedent).

In *Chavez v. Public Estates Authority*, 384 SCRA 152, on July 9, 2002, the voting was 13-0, led by *ponente* Justice Carpio. After two reconsiderations, the voting became 8-6, or whatever, as how to count one magistrate's vote proved beyond my intellectual reach.

In the *Kuratong Baleleng* case, *People v. Lacson*, 382 SCRA 365, on May 28, 2002, the Court unanimously remanded the case against Senator Pamfilo Lacson, *et al.*, to the trial court to decide whether the same should be dismissed or not. On April 1, 2003, ten Justices directed the trial proceed. Three maintained their original vote. On Oct. 7, 2003, 413 SCRA 20, eight Justices let stand the April 1, 2003 ruling. FourJustices dissented.

It seems that a case is assigned to a *ponente* and the wildly swinging voting indicates that in fact, the other busy members may not be studying the case as they should and rely manly on the *ponente*, to be jolted when the decision is published and elicits criticisms. Many questions hang.

[30] *Daily Inquirer* columnist Ron Nathan wrote:

The most important event was the Supreme Court reversing its decision on the 1995 Mining Act. Two weeks earlier, I watched Jose de Venecia for an hour and . . . he said that he was talking individually with every [justice] trying to convince them to change course of the good of the country. Well, he succeeded and they voted by 10 to 4 with one abstention, thereby reversing their decision. Congratulations to all concerned. Dec. 7, 2004, p. B3, col. 1.

Congratulations? Should it not be contempt to all concerned? JBL would have shown the Speaker the door, to say the least. Today, lawyers and journalists openly predict how a certain case would be decided and they do not turn out to be false prophets.

[31] *Sta Rosa Realty Development Corporation v. Court of Appeals*, G.R. No. 112526, Mar. 16, 2005. I am *salimpusa* here – a role I often play – to my FLAG colleague, Efren H. Mercado. *Salimpusa* is also my role in the *International School Alliance of Educators (ISAE) v. Quisumbing*, 333 SCRA 13 (2000).

[34] 433 SCRA 640 (2004).

Pomar

Justice Mendoza noted *People v. Pomar*[33] which "invalidated a law providing for maternity leave for working women." I doubt if any court would dare confront our amazons today. Indeed, we even have R.A. No. 8187, An Act Granting Paternity Leave of Seven (7) Days with Full Pay to all Married male Employees in the Private and Public Sectors for the First Four (4) Deliveries of the Legitimate Spouse with Whom he is Cohabiting enacted on June 11, 1996. Were I in the legislature, I would remove the bias against one born out of wedlock. Outcasts, my kind of people. Perhaps the child's mother is a maid, or some such. Denial of benefits has nothing to do with promoting responsible sexual behavior or taming raging hormones that make us multiply like rabbits in this country.

Motels

Which brings me to the case of *Ermita-Malate Hotel and Motel Operators Ass'n v. City Mayor*,[34] where Associate Justice Enrique M. Fernando, hounded by rumors as being *pilio con la mujeres* might have no choice but to take a stand against *panandaliang aliw*, against his better judgment. But, I tease merely before I conclude.

Conclusion

I often wonder at the courage of 15 unelected magistrates, with security of tenure, saying that the executive an/or legislative branches, have gravely abused their discretion. If they say these bodies have done something unconstitutional, the issue has been settled since *Marburry v. Madison.*[35] Those in the two other branches are inferior lawyers, fine. But, for the 15 to say that the others have abused their discretion, gravely, at that, in making political, policy or even business and economic judgment calls, just takes my breath away. When it comes to judgment calls in a non-marital-law-type of case, I wonder whether the framers gave the magistrates that power. Justice Mendoza could not find it, either.[36]

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[33] 46 Phil. 440 (1924).

[34] 21 SCRA 449 (1967), the resolution of the motion to reconsideration cited by Justice Mendoza. The basic decision itself is in 20 SCRA 849 (1967).

[35] 1 Cranch 5 U.S. 137 (1804).

[36] When Aveling Cruz, No. 1 topnotcher in 1961 at 20, and I would take the bus going home from San Beda after out 8:30 p.m. class, one of the things he stressed to me in his brilliant way of capsulizing things, is that in a matter of discretion, one can act any which way and be right.

It seems to me it is the Supreme Court which commits grave abuse of discretion in dismissing a case because of some hyper technical flaw in making the non-shopping certification, or failing to explain why a motion was mailed to Marapipi, or to give the other side a copy of a motion for extension. Give the lawyer time to correct the lapse, and/or fine him, and suspend repeaters, but the innocent litigant relying on counsel must be spared. Would it take a constitutional amendment to reverse this agregious fetish for form? When it sets criminal cases for pre-trial and arguably directs the accused to disclose his defense, is not his right not to speak being violated? May it create a special division to try President Estrada, who it had ousted, but not against the Marcoses,[37] cronies, Disinis[38] AND gracias? It even said that Mr. Estrada had asked for a Special Division to be created when in fact from the start he did not want to be treated like General Yamashita. The Justices do not even seem to look at the records.

Raffle is important: President Estrada was denied this. No special division had been created before and after the one now trying the plunder case. The Supreme Court today even exercises a role in deciding who should joint it – a purely executive function – with the criterion being that the nominee should be one the current members can get along with. Their voting is even published! Thus, a Francis Garchitorrena, who sailed against the wind for much of his life and would ask the foolish questions of the day, had no chance.

It is so confusing. Just before Holy Week, I tried to file a petition for declaratory relief. My staff asked out how much it would cost. Various Metro Manila Offices of Clerks of Courts gave sharply clashing figures. I also have the gut feeling that the confusion leads all the way to it, which cannot account for the JDF because, across the decades, the numbers may have become a mess. It has confused not only the enemy but itself. The relevant decree had fixed quarterly accounting requirement but with its self-serving

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[38] This Supreme Court found the Swiss deposits as ill-gotten wealth; stolen by William Saunders and Jane Ryan, and declared same forfeited in favor of the government, and yet did not direct that the surviving "ill-gottener" or kleptocrat be prosecuted. *Republic v. Sandiganbayan*. 190 SCRA 190 (2003).

Respondents' ownership of the Swiss bank accounts as borne out by Mrs. Marcos' manifestation is as bright as sun light . . . [S]he failed to specifically deny under oath the authenticity of such documents [substantiating her ownership of the funds], specially those involving "William Saunders" and "Jane Ryan" which actually referred to Ferdinand Marcos and Imelda Marcos, respectively. At 263.

Unlike however in the cases of Sen. Lacson and others, the Supreme Court did not direct the prosecution of Mrs. Marcos as if there was fear she might yet get acquitted, in a bizarre case where there is thievery with no thief. Nothing has been heard either from the Ombudsman.

[39] Count Herminio Disini was directed by the Supreme Court to be prosecuted in 2003 but to date, there is an unresolved motion to quash. *PCGG v. Desierto*, 397 SCRA 171.

Francisco ruling no credible accounting may be done until the desert sands grow cold. David Stockman, Mr. Reagan's budget whiz kid once said no one in his office understood the numbers anyway.

An issue that needs revisiting is whether moral fitness is required of IBP leaders now that we will have 1,659 starry-eyed new members, who we wish would stay as sweet as they are, harking back to the time when the JBLs would not even countenance *coleqialas*, with their good intentions, writing to them *ex parte* on how to decide a case.[39]

If I ask here how many of you have not approached any judge or justice *ex parte*, as taught in law school, how many can pass the JBL test? How many have not crossed the JBL line? I have not, which enables me to hit anyone in my lifelong addiction to criticizing the powerful, in comforting the afflicted and afflicting the comfortable, I precisely face a disbarment suit today for critiquing the Supreme Court in the 2001 case of constitutional carpentry.

May I end with another quote, "the Constitution is what the judges say it is,"[40] but, to be precise, as JBL would say, the Supreme Court can correct errors of judges but its own becomes the law of the land.

I know I have tested the limits of your patience.

Thank your for making it possible for me to share some of my thoughts and concerns with you and may I blame those who made it necessary.

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[39] Please see my article, Chief Justice Roberto R. Concepcion, the Supreme Court and Public Opinion, *Free Press*, Dec. 4, 1971, p.9, col. 1.

[40] Charles Evans Hughes, in a speech in Elmira, New York, May 3, 1907, long before he came Chief Justice in 1930 (he became Associate justice in 1910 but resigned in 1916 to run for the presidency). Note the reference to the "Hughes Court." Lecture, p. 30.

Recent Supreme Court Decisions on Judicial Review[1] (2000-2004)

La Bugal-B'laan Tribal Association, Inc. v. Ramos, [En Banc], G.R. No. 127882, December 1, 2004

La Bugal-B'laan Tribal Association, Inc. v. Ramos [En Banc], G.R. No. 127882, January 27, 2004

Agan, Jr. v. Philippine International Air Terminals Co., Inc.[En Banc], G.R. No. 155001, January 21, 2004

Agan, Jr. v. Philippine International Air Terminals Co., Inc.[En Banc], G.R. No. 155001, May 5, 2003

Arsadim Disomangcop v. The Secretary of the Department of Public Works and Highways [En Banc], G.R. No. 149848, November 25, 2004

Brillantes, Jr. v. Commission on Elections [En Banc], G.R. No. 163193, June 15, 2004

Tecson v. Commission on Elections [En Banc], G.R. No. 161434, March 3, 2004

Sanlakas v. Executive Secretary [En Banc], G.R. No. 159085, February 3, 2004

Information Technology Foundation of the Philippines v. Commission on Elections [En Banc], G.R. No. 159139, January 13, 2004

Francisco v. The House of Representatives [En Banc], G.R. No. 160261, November 10, 2003

John Hay Peoples Alternative Coalition v. Lim [En Banc], G.R. No. 119775, October 24, 2003

Chavez v. Public Estates Authority [En Banc] G.R. No. 133250, May 6, 2003

Chavez v. Public Estates Authority [En Banc], G.R. No. 133250, July 9, 2002

Matibag v. Benipayo [En Banc], G.R. No. 149036, April 2, 2002

Estrada v. Desierto [En Banc], G.R. No. 146710-15, April 3, 2001

Estrada v. Desierto [En Banc], G.R. No. 146710-15, March 2, 2001

[1]Compiled by Tarcisio Diño. The list covers the period 2000-2004.

Estrada v. Sandiganbayan [En Banc], G.R. No. 148560, November 19, 2001

Cruz v. Secretary of Environment and Natural Resources [En Banc], G.R. No. 135385, December 6, 2000

Bagong Alyansang Makabayan v. Executive Secretary [En Banc], G.R. No. 138570, October 10, 2000

Integrated Bar of the Philippines v. Zamora [En Banc], G.R. No. 141284, August 15, 2000

Arceta v. Mangrobang [En Banc], G.R. No. 152895, June 15, 2004

Fariñas v. Executive Secretary [En Banc], G.R. No. 147387, December 10, 2003

Pimentel, Jr. v. House of Representatives Electoral Tribunal [En Banc], G.R. No. 141489, November 29, 2002

Monteclaros v. Commission on Elections, [En Banc], G.R. No. 152295, July 9, 2002

Lim vs. Executive Secretary [En Banc], G.R. No. 151445, April 11, 2002

Santiago v. Sandiganbayan [En Banc], G.R. No. 128055, April 18, 2001

Gonzales v. Narvaza [En Banc], G.R. No. 140835, August 14, 2000

Abella, Jr. v. Civil Service Commission [En Banc] G.R. No. 152574, November 17, 2004

Jaworski v. Philippine Amusement and Gaming Corporation [En Banc], G.R. No. 144463, January 14, 2004

Del Mar v. Philippine Amusement and Gaming Corporation [En Banc], G.R. No. 138298, November 29,2000

Tolentino v. Commission on Elections [En Banc], G.R. No. 148334, January 21, 2004

Ang Bagong Bayani-OFW Labor Party v. Commission on Elections [En Banc], G.R. No. 147589, June 26, 2001

Estate of Salud Jimenez v. Philippine Export Processing Zone, G.R. No. 137285, January 16, 2001

Eastern Assurance & Surety Corporation v. Land Transportation Franchising and Regulatory Board, G.R. No. 149717, October 7, 2003

Department of Environment and Natural Resources v. DENR Region XII Employees, G.R. No. 149724, August 19, 2 003

Posadas v. Ombudsman, G.R. No. 131492, September 29, 2000

Griffith v. Court of Appeals, G.R. No. 129764, March 12, 2002

The National Liga ng Mga Barangay v. Paredes [En Banc], G.R. No. 130775, September 27, 2004

Ong v. Court of Appeals, G.R. No. 132839, November 21, 2001

Mirasol v. Court of Appeals, G.R. No. 128448, February 1, 2001

Water Quality Management Reforms in the Philippines

The Clean Water Act 2004

Manuel Peter S. Solis[*]

Introduction

Recognizing the growing threat to sustainable development, the Dublin Statement was adopted during the International Conference on Water and the Environment (ICWE) in 1992 exhorting that the 'effective management of water resources demands a holistic approach, linking social and economic development with protection of natural ecosystems.'[1] Also, '[i]mproved water management, including pollution control and sustainable levels of abstraction, are key factors in maintaining ecosystems integrity.'[2]

Through the years, however, the trend still points to the wasteful consumption and degradation of water resources in many parts of the world, particularly in developing countries. According to the UN World Water Development Report, '[f]reshwater ecosystems have been hit hard by reduced and altered flow patterns, by deteriorating water quality, by infrastructure construction and by land conversions.'[3] Apparently, the pressure on finite and vulnerable water resources[4] from industrialization, urbanization and population growth remains unabated.

In the Philippines, it is reported that more than 58 percent of groundwater sampled is coliform contaminated, which requires treatment.[5] Appallingly, the World Bank estimates the annual economic losses from water pollution in the country at a staggering Philippine Pesos (PhP) 67 billion or US$1.3 billion.[6] Also, densely populated urban areas such as

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[*] The author is a graduate of the University of the Philippines College of Law and has a Master's degree in Environmental Law from the University of Sydney Law School. He has acted as legal and policy consultant on environmental and natural resources concerns involving the Department of Environment and Natural Sources, Congress and multilateral donor and development agencies, among others.

[1] International Conference on Water and the Environment 1992, *The Dublin Statement on Water and Sustainable Development*, Principle 1:<http://www.wmo.ch/web/homs/documents/english/icwedece.html> (08 August 2004).

[2] United Nations, *UN World Water Development Report: Water for People, Water for Life* at 9: <http:// www.unesco.org/water/wwap/wwdr/pdf/chap1.pdf> (08 August 2004).

[3] Id at 508.

[4] Above n1.

[5] The World Bank, *Philippine Environment Monitor 2003* (2003) at iii : <http://www.worldbank. org.ph/downloads/FullEnvMon02.pdf> (14 June 2004).

[6] Ibid.

Metro Manila are experiencing severe water shortages especially during the dry season.[7] As such, the need to protect water quality and preserve ecosystems is becoming more pronounced than ever. Unfortunately, insufficient investment in sanitation and sewerage systems, coupled by poverty and lack of institutional capacity, have only aggravated the situation. For this reason, much-needed policy reforms in the water sector have to be implemented. In response, the Philippine Congress has enacted Republic Act No. 9275 otherwise known as the *Clean Water Act* 2004 (CWA).

Accordingly, this article aims to dissect the various reform components of the CWA to prevent, abate and control water pollution from land-based sources in the Philippines. This is accomplished by initially discussing the national situation prior the passage of the CWA to put into perspective the issues sought to be addressed by the legislation, including the sources of water pollution in the country. From there, the article will scrutinize the institutional, regulatory, and policy approaches adopted by the CWA in the light of broad international consensus highlighting the need to conserve and efficiently manage water resources in an integrated and holistic manner. As such, the overall conceptual framework embodied in the CWA is constructively examined, and the prospect for its successful implementation is contextualized along the lines of consistency, affordability and effectiveness.

The article concludes that the CWA can be successfully implemented if robust political commitment and financial support are extended, including filling in the anticipated gaps prior to implementation. Otherwise, a series of implementation deficits will befall the CWA in a manner that is very much similar to the weak implementation of the *Clean Air Act* 1999 (CAA) and the *Ecological and Solid Waste Management Act* 2000 (ESWMA). Additionally, the development of an integrated approach to pollution control and water resources management has to be seriously pursued in order to achieve environmental sustainability targets under the United Nations Millennium Development Goals (MDGs) and other ecologically sustainable development instruments.

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[7] Ibid.

National Situation

A. Legal and Institutional Framework

The 1987 Philippine Constitution expressly provides that all lands of the public domain, water, fisheries, timber, wildlife, flora and fauna, and other natural resources are owned by the state.[8] Also, the 'exploration, development and utilization of natural resources shall be under the full control and supervision of the State.'[9]

As all waters of the Philippines belong to the state, the conservation, appropriation, utilization, exploitation, and development of water resources are regulated through various governmental agencies. There are about 32 national and regional water bodies under 12 departments of the National Government responsible for certain aspects of water resources management and development.[10] These range from water supply, irrigation, flood control, navigation, pollution, and hydropower, among others.[11] However, the agency with the most extensive jurisdiction over water quality and resources management is the Department of Environment and Natural Resources (DENR).

Pursuant to Executive Order No. 192, Series of 1987, the DENR has been mandated as the primary government agency responsible for the conservation, management and proper use of the country's environment and natural resources. [12] Such a mandate includes the responsibility to ensure the equitable sharing of benefits derived from these resources for the welfare of present and future generations of Filipinos.[13] By virtue of said mandate, the DENR is empowered to issue rules and regulations on water quality criteria, water classification, and effluent standards.[14] Additionally, the DENR Secretary serves as the Chairperson of the Pollution Adjudication

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[8] *1987 Philippine Constitution*, article XII, s2: <http://www.chanrobles.com/1987constitution ofthephilippines.htm> (08 August 2004).

[9] Ibid.

[10] National Water Resources Board, *The NWRB: Background Information*: <http://www.nwrb.gov.

ph/DesktopDeault.aspx?tabindex=1&tabid=2> (08 August 2004).

[11] Ibid.

[12] *Executive Order No. 192, Series of 1987*, s4: <http://www.chanrobles.com/eo192.htm> (08 August 2004).

[13] Ibid.

[14] Id at s5o & p.

Board (PAB), which exercises adjudicatory powers over water pollution cases in the country.[15]

In 2002, the President of the Philippines reconstituted the composition of the National Water Resources Board (NWRB) by designating the DENR Secretary as Chairperson with six other governmental heads as members.[16] The NWRB is the coordinating and regulating governmental body tasked to administer and implement Presidential Decree No. 1067, otherwise known as the 'Water Code of the Philippines,' which governs the utilization, exploitation, development, conservation and protection of water resources in the country.[17] Also, the regulation of water tariffs has been transferred from the Local Water Utilities Administration to NWRB.[18] Though the NWRB is initially placed under the Office of the President, it will be transferred to the DENR as a bureau for purposes of administrative control and supervision.[19]

Pertinently, the institutional and management framework is particularly important in the light of views expressed that the global water crisis is mainly a function of effective water governance. As the United Nations Development Programme (UNDP) points out:

> The water crisis that humankind is facing today is largely of our own making. It has resulted chiefly not from the limitations of the water supply or the lack of financing and appropriate technologies (though these are serious constraints), but rather from profound failures in water governance, i.e., the ways in which individuals and societies have assigned value to, made decisions about, and managed the water resources available to them.[20]

B. Water Resources

As an archipelago of 7,107 islands, the Philippines is abundantly endowed with

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[15] Id at s19.

[16] *Executive Order No. 123, Series of 2002.*

[17] *Presidential Decree No. 1067*, s3d:<http:www.chanrobles.com/pd1067.htm> (08 August 2004).

[18] Above n16 at s6.

[19] Id at s4.

[20] United Nations Development Programme, *Water Governance for Poverty Reduction: Key Issues and the UNDP Response to Millennium Development Goals* (2004) at 2: <http://www.undp.org/water/pdfs/241456%20 UNDP_Guide-Pages.pdf> (13 August 2004).

[21] Above n5 at 1.

natural resources, including water resources comprised of rivers, lakes, groundwater, bays, coastal and oceanic waters. Inland freshwater resources such as rivers and lakes occupy 1,830 square kilometers (km2) or 0.61 percent of total area; while bays and coastal waters occupy 266,000 km2.[21] With a total coastline length of 36,289 kilometers, nearly 60 percent of cities and municipalities are deemed coastal.[22] As such, these areas are home to 60 percent of the national population.[23]

The country has 421 principal river basins situated in 119 proclaimed watersheds.[24] In Metro Manila, the Pasig River system serves as the main drainage outlet for most waterways and directly discharges into the Manila Bay – the country's premier harbor, which is host to approximately 16 million people.[25]

Based on river water classification, 36 percent are classified as public water supply sources or waters that are either disinfected or treated to meet National Standards for Drinking Water.[26] Also, a recent study reveals that there are 72 lakes in the Philippines with Laguna de Bay or Laguna Lake identified as the largest lake straddling Metro Manila and the Southern Tagalog region.[27] The Laguna de Bay area includes 6 provinces, 10 cities, and 51 municipalities with a population density of 3,141 persons per square kilometer.[28]

As to surface water availability, total annual potential is calculated at 125,790 million cubic meters (MCM).[29] On the other hand, groundwater recharge or extraction potential is estimated to be 20,200 MCM per annum.[30] Significantly, groundwater provides 14 percent of total water resources potential in the country with 86 percent of piped water supply systems utilizing groundwater as a source.[31] As such, 50 percent of the

[22] Id at 2.

[23] Ibid.

[24] Ibid.

[25] Ibid.

[26] Id at 3.

[27] Ibid.

[28] Sven Erik Jorgensen, Ricardo de Bernardi, Thomas J. Ballatore & Victor S. Muhandiki, *Lakewatch 2003: The Changing State of the World's Lakes* (2003) at 34.

[29] Ibid.

[30] Ibid.

[31] Ibid.

populace relies on groundwater for drinking purposes.[32] Since 1955, however, the groundwater table in Metro Manila has been declining at the estimated rate of 5 to 12 meters per year.[33]

While the total water resources potential is placed at 145,990 MCM, the Philippines has one of the lowest yearly per capita water availability in the Southeast Asian region.[34] However, this is equally true in many parts of Asia, which has one of the lowest freshwater endowments in the world.[35] Lately, it has been revealed that around 10 million Filipinos do not have a sustainable source of potable drinking water.[36]

Using a low economic growth scenario, major water resources region in the country (Pasig-Laguna, Pampanga and Agno, Bicol, Cagayan, Jalaur, Ilog-Hilabangan, and Cebu) will suffer water availability deficits by the year 2025.[37] Conversely, this means that water stress on both the supply and demand side will be acute and accelerated if a high economic growth scenario is used in the projection. Aside from economic growth, the annual population growth rate of 2.36 percent[38] adds to the pressure being exerted on existing water resources, including the biodiversity of ecosystems.

Although the Philippines has a total forestland area of 15.88 million hectares, only 5.4 million hectares are covered with forests acting as watersheds.[39] Worse, less than a million hectares of virgin or old-growth forests are left.[40] As a result, the hydrological condition of many watersheds in the country is disrupted thereby increasing the incidence of landslides, floods, and droughts. Undoubtedly, there is an urgent need to formulate an effective, comprehensive, and integrated water resources management program in the Philippines.

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[32] Ibid.

[33] The World Bank, *Philippine Environment Monitor 2000* (2000) at 13: <http://www.worldbank. org.ph/downloads/pem2000.pdf> (08August 2004).

[34] Above n5 at 6.

[35] Asian Development Bank, *Water for All: The Water Policy of the Asian Development Bank* (2001) at 3:<http://www.adb.org/ Documents/Policies/Water/water.pdf> (13 August 2004).

[36] Environmental Management Bureau, *Water Matters*: <http://www.emb.gov.ph/eeid/ watermatters.htm> (08 August 2004).

[37] Above n5 at 5.

[38] Id at 42.

[39] Id at 6.

[40] Ibid.

C. Sources of Water Pollution

There are two types of water pollution according to source: point source and non-point source emanating generally from domestic, agricultural and industrial discharges. So far, the following major pollutants are monitored for water pollution: a) Biological Oxygen Demand (BOD) and Dissolved Oxygen (DO); b) Suspended Solids (SS); c) Total Dissolved Solids (TDS); d) Coliforms; e) Nitrates; f) Phosphates; g) Heavy Metals; h) and Toxic Organics such as pesticides.[41]

As defined, a point source refers to 'any identifiable source of pollution with a specific point of discharge into a particular body of water.'[42] On the other hand, a non-point source refers to 'any source of pollution not identifiable as point source to include, but not be limited to, runoff from irrigation or rainwater which picks up pollutants from farms and urban areas.'[43]

Based on the national total BOD generation of 2,236,750 metric tons per year, domestic wastewater and sewage generated by bathing, cooking, cleaning, laundry, washing and other kitchen activities contribute 48 percent of the total BOD load, followed by agricultural wastewater at 37 percent, and industrial wastewater at 15 percent.[44] Domestic wastewater is the principal cause of coliform contamination of groundwater sources, which gives rise to water-borne diseases such as diarrhea, cholera, hepatitis A and the like.[45]

Since Metro Manila has no agricultural area, BOD loading mainly comes from domestic and industrial wastewater discharges. In rural areas, however, the major source of water pollution is from agriculture such as livestock and poultry farms. Significantly, 'domestic wastewater discharge is the highest contributor to Manila Bay's organic pollution.'[46] This is attributed to the lack of localized separate sewerage systems with most residential wastewater being discharged into the public drainage system and then

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[41] Id at 7.

[42] *Republic Act No. 9275*, s4 (aa): <http://www.nwrb.gov.ph/uploads/CLEAN%20WATER%20ACT.pdf> (08 August 2004).

[43] Id at s4 (z).

[44] Above n5 at 7.

[45] Id at 4.

[46] Id at 12.

into Manila Bay.[47] In 1992, a *Pyrodinium* red tide outbreak in the Manila Bay due to high organic loading from rivers that drain into the bay has displaced 38,500 fisher folks.[48] The economic losses from this event were estimated at PhP 3.4 billion.[49]

While it appears that monitoring and control of point sources are well-developed, non-point sources of pollution are more difficult to identify and quantify. Basically, these occur over extensive areas at low concentrations and often involve a substantial number of people.[50] It is observed that the environmental impacts of non-point source pollution 'can be as large [as] or larger than those of point sources.'[51] To exemplify, silt and nutrients from erosion of agricultural lands, forestlands, and urban developments can cause eutrophication or nutrient enrichment of rivers and lakes.

Significantly, solid waste is a major non-point source of water pollution. The indiscriminate disposal of solid waste directly into water bodies has compounded BOD pollution by an estimated 150,000 metric tons per year.[52] Also, the improper disposal of solid waste has clogged drains creating stagnant waters for insect breeding and heavy flooding during the wet season.

Although no official data has been gathered, the rampant encroachment by illegal settlers of land near the urban waterways poses a major challenge to control water pollution in Metro Manila.[53] To amplify, most of these areas where illegal settlement takes place are not likely to be provided with water and sewerage services, and thus, human waste is directly discharged into the water body. Notably, five Metro Manila rivers (San Juan, Paranaque, Marikina, Pasig and Malabon-Tenejeros-Tullahan) sampled by the Environmental Management Bureau from 1996-2001 have exhibited zero DO reading, which mean they are 'biologically dead' during certain periods.[54]

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[47] Ibid.

[48] Id at 4.

[49] Ibid.

[50] Richard Davis & Rafik Hirji (eds), *Water Resources and Environment, Technical Note D.3* (The World Bank, 2003) at 10.

[51] Ibid.

[52] Above n5 at 8.

[53] See Winter King, 'Illegal Settlements and the Impact of Titling Programs' (2003) 44 *Harvard International Law Journal* 433 (2).

[54] Above n5 at 11.

D. Investment Requirements

Although the Metropolitan Waterworks and Sewerage System (MWSS) dates as far back as 1878, making it the oldest water system in Asia, it was only able to service 8 percent of its coverage population of 11 million people.[55] In other parts of the country, the sanitation and sewerage systems in Baguio City (75 years old), Vigan City (70 years old), Zamboanga City (70 years old), and other key cities have very low system coverage ranging from 1 to 3 percent against the number of population served.[56] Interestingly, findings reveal that this is attributable to the fact the annual average investments are substantially concentrated on water supply (97 percent) as opposed to the meager share of sanitation and sewerage (3 percent).[57]

Considering that most of the sanitation and sewerage systems are old, there is an obvious need to upgrade the facilities and to improve the population coverage currently being served. According to the World Bank, a 10-year program from 2005-2015 to treat domestic wastewater through sanitation in rural areas and piped systems in urban areas will cost more than PhP 256 billion (US$4.6 billion), including capital, operating and support services requirements.[58] However, it must be emphasized that this program will improve service coverage to only 50 percent of the target population.[59] Additionally, investment requirements for the physical infrastructure for sewerage in coastal tourist areas are estimated at PhP 2.5 billion (US$45 million) for 2005 and PhP 6.8 billion (US$122 million) for 2015.[60]

E. Economic and Non-economic Impacts of Water Pollution

The economic and non-economic impacts of water pollution are not quantifiable in all respects. However, available figures gained from extant sources reveal that economic and non-economic losses are quite staggering. Sadly, these losses are apparently

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[55] Mark Dumol, *The Manila Water Concession: A Key Government Official's Diary of the World's Largest Water Privatization* (The World Bank, 2000) at 5:<http://www-wds.worldbank.org/servlet/WDSContentServer/ WDSP/IB/2000/09/01/000094946-00081906181731/Rendered/PDF/Multi-page.pdf> (13 August 2004).

[56] Above n5 at 24.

[57] Id at 28.

[58] Ibid.

[59] Ibid

[60] Id at 29.

avoidable. For example, improving water quality can correspondingly boost tourism, increase agricultural productivity, and improve public health.[61]

Based on estimates made by the Department of Health (DOH), water-related diseases such as diarrhea, cholera, typhoid, and hepatitis A have caused 500,000 morbidity and 4,200 mortality cases.[62] The avoidable health costs due to direct income losses and medical expenses for both in-patients and out-patients amount to around PhP 3.3 billion (US$58 million) per annum.[63]

With regard to agricultural productivity, the degradation of aquatic resources has resulted in a decline in fisheries production. Sedimentation and silt pollution from the erosion of uplands and untreated sewerage have been reported as the main causes of the 35 percent decline in the combined yield of municipal and commercial fisheries.[64] Consequently, the Philippine economy has lost an average of PhP 17 billion (US$31 million) a year on account of water pollution.[65]

As stated earlier, the Philippines is an archipelago with an extensive coastline and pristine beaches. It is not surprising that the country's tropical beach resorts and diving spots are main tourist destinations. Obviously, good coastal water quality has to be maintained and the beaches must be pollution-free to continuously draw and attract tourists. The 1997 incident at Boracay Island, one of the world's most beautiful beaches, is a case in point.

When the DENR released the results of its water quality monitoring of Boracay Island in 1997, it was disclosed that high levels of coliform were found, and thus, the waters were unsafe for recreational activities. Immediately, the occupancy rate dropped to 60 percent although subsequent independent tests conducted showed that Boracay Island waters were safe.

This controversy is significant considering that tourist arrivals in 2004 has been estimated to be around 10.2 million, which translates to the equivalent of PhP 495 million

[61] Id at 17.

[62] Id at 18.

[63] Ibid.

[64] Ibid.

[65] Ibid.

(US$9 million) tourist receipts.[66] The tourist receipts exclude the fact that, by 2004, 5.8 million locals are expected to be employed in the tourism industry alone.[67] As such, the cost to tourism of water pollution can reach to as high as PhP 47 billion[68] (US$84 million) if not addressed properly and in a timely fashion.

The foregoing is, however, only illustrative of the quantifiable economic impacts of water pollution. Other effects that are not quantified include the degradation of the aquatic ecosystem, aesthetics, stagnation of river systems or basins, transportation, loss of watersheds, biodiversity and the like.

The Clean Water Act 2004

In March 2004, Congress passed the CWA to provide the legislative framework for the abatement, prevention and control of water pollution from land-based sources in the country. As of this writing, the National Government is still at the crucial stage of preparing the implementing rules and guidelines of the CWA. However, this is the most opportune time to assess its overall conceptual approach in order to contextualize the implementation prospect of the legislation and predict the likely challenges ahead.

A. Institutional Approach

At the onset, the CWA declares as a matter of policy the need to 'formulate an integrated water quality management framework through proper delegation and effective coordination of functions and activities.'[69] For this purpose, the DENR has been designated as the lead government agency tasked to implement and enforce the law.[70] Recognizing that existing laws have distributed the regulatory powers over the water sector to other government agencies, the DENR has been authorized to enter into agreements with them to facilitate coordination.[71] Such authority extends also to executing

[66] Id at 19.

[67] Ibid.

[68] Id at 20.

[69] Above n42 at 2(d).

[70] Id at s19.

[71] Id at s22.

similar agreements with the industrial sector and other concerned sectors to further the objectives of the CWA.[72]

Although the DENR has been empowered to enter into agreements for effective coordination, the CWA separately identifies the functions of other government agencies consistent with their existing mandates. For example, the Philippine Coast Guard is designated to enforce water quality standards in marine waters and offshore areas; the Department of Agriculture is tasked to formulate the guidelines to prevent and control water pollution emanating from agricultural and aquaculture activities; and the Bureau of Fisheries and Aquatic Resources is primarily responsible for the prevention and control of water pollution concerning fisheries and aquatic resources.[73]

Pertinently, the CWA requires the designation of certain areas as water quality management areas 'using appropriate physiographic units such as watershed, river basins or water resources regions.'[74] Accordingly, each water quality management area is to be administered by a governing board composed of representatives from the DENR, other national governmental agencies, nongovernmental organizations, water utility and business sectors, and local officials.[75] The governing board is tasked to formulate strategies, coordinate policies, monitor the water quality management action plan, and manage the area water quality management fund.[76]

Consistent with the participatory approach enshrined in the Dublin Statement,[77] a multi-sectoral group is created for each water quality management area to develop a monitoring network. As the CWA does not provide the exact composition of this multi-sectoral monitoring group, the implementing rules need to ensure that representation is sufficient at the community or village levels that have a direct stake in the water quality management area.

As regards the role of the local government, it is mandated to share responsibility in the management and improvement of water quality within its territorial jurisdiction.[78]

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[72] Ibid.

[73] Above n42 at s22.

[74] Id at s5.

[75] Ibid.

[76] Id at ss5 & 10.

[77] Above n1 at Principle 2.

[78] Id at s20.

Also, the local government is required to prepare a compliance scheme in accordance with the water quality management area action plan adopted for the concerned area.[79] Failure to comply on the part of local government officials with the water quality management area action plan can result into administrative sanctions being filed against them.[80]

Although the CWA mandates the DENR to gradually devolve to local governments and governing boards the authority to administer certain aspects of water quality management and regulation,[81] a clear time-frame has to be set for the purpose. Otherwise, there is a possibility that devolution will never take place if upon determination of the DENR the local governments or governing boards have not demonstrated readiness and technical capability to undertake such functions. To stress, devolution can encourage the local governments to take an active management and regulatory role under the CWA and strengthen local water governance. Additionally, there is a need to develop programs to capacitate local governments considering that the CWA considers non-compliance with area water quality action plans as an administratively punishable act.

Except for the Laguna Lake Development Authority (LLDA), the CWA is silent on what will be the administrative relationship of the water quality management area governing board to existing river basin authorities such as the Bicol River Basin Authority. Unfortunately, this will lead to a duplication of functions between the governing board and the relevant river basin authority if not amplified by the implementing rules. Consequently, the implementing rules must delineate clear responsibilities in order to promote coordination and transparency among the various agencies, and to preclude institutional overlaps or conflicts.

Overall, the institutional arrangement under the CWA does not appear to effectively address the need to further rationalize the current set-up where a substantial number of government agencies still have overlapping and even conflicting priorities in the management and regulation of the water sector. Although this arrangement may be necessary due to the magnitude of the concerns that need to be addressed, it is conducive as well to a fragmented approach from a planning, decision-making and implementation

[79] Ibid.

[80] Id at s29.

[81] Id at s19.

stand point. As the UNDP fittingly underscores, 'the rigid functional divisions within governments…work against the types of cross-cutting, holistic approaches to development planning and resource management that IWRM (Integrated Water Resource Management) requires.'[82]

B. The Assessment and Monitoring Framework

One of the key indicators in determining the effective implementation of the CWA is the strength of its water quality assessment and monitoring framework. This entails the availability of basic information, reliable data interpretation, timely reports, and strong linkages between monitoring programs and management activities.

For this purpose, the CWA has mandated the DENR, in coordination with relevant agencies, to prepare the following:

a) National Water Quality Status Report – This refers to a report indicating the location of water bodies, their water quality, existing and potential uses, sources of water pollution, water quality management areas, and water classification;[83]

b) Integrated Water Quality Management Framework – This refers to the policy guideline integrating all existing frameworks on water quality that include water quality targets, pollution control strategies and techniques, information and education program, and human resources development program;[84]

c) National Groundwater Vulnerability Map – This pertains to identified areas of the land surface where groundwater is most at risk from human activities reflecting the different degrees of vulnerability based on a range of soil and hydrogeological criteria;[85]

d) Water Quality Guidelines – These refer to the values or parameters for a water constituent, which are intended not for direct enforcement but only for water quality management purposes;[86]

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[82] Above n20 at 12-13.

[83] Above n42 at s4(y).

[84] Id at s4(w).

[85] Id at s4(t).

[86] Id at s4(rr).

e) Effluent Standards – These pertain to any legal restriction or limitation on quantities, rates, and concentrations of effluent parameters , which is allowed to be discharged into a body of water;[87] and

f) International-accepted Sampling and Analytical Procedures, including the establishment of an accreditation system for laboratories.[88]

Essentially, the National Water Quality Status Report is an assessment tool to provide the baseline conditions of various water bodies in the country. It is a good reference point in identifying management and non-attainment areas, especially in determining the relative importance of point source as against non-point source pollution of river systems, catchment areas, lake basins, and aquifers.[89] This effort can only be accomplished through the coordination and cross-sectoral involvement of other government agencies, business, nongovernmental organizations, and the affected communities. As such, the preparation of the National Water Quality Status Report is the first step in developing a comprehensive program towards effective water quality management.

In this regard, the monitoring programs to be developed pursuant to the National Water Quality Status Report have to be closely linked to management activities that are identified under the Integrated Water Quality Management Framework. The main objective is for the basic data to underpin management activities in order that clear targets and indicators can be set.

With respect to water quality standards, these have to be developed with the underlying purpose of assessing the suitability of a water resource for particular uses. This means that site specific conditions need to be considered in setting the standards, and thus, flexibility may be required consistent with the principle of adaptive management. For example, a water resource used for public water supply purposes has a different water quality parameter (turbidity, microbial quality, etc.) as opposed to agricultural water supply (sodium content and total dissolved solids).[90] It is even posited that deviations from standards may be justified on economic and technical grounds, and has

[87] Id at s4(n).

[88] Id at s19(g).

[89] Richard Davis & Rafik Hirji (eds), *Water Resources and Environment, Technical Note D.1* (The World Bank, 2003) at 11.

[90] Id at 13.

to be assessed on a case-to-case basis.[91] Moreover, a variety of mechanisms can be utilized to implement the standards outside of the traditional enforcement approach such as the use of financial incentives and public pressure (e.g. environmental performance ratings).[92]

On sampling and analysis, the sampling frequency will depend to a large extent on the type of water body being monitored. To illustrate, the number of sampling stations and frequency for rivers is basically a function of the size of the catchment area; while groundwater sampling and monitoring depends on aquifer characteristics, vulnerability, groundwater exploitation, water and land use, and population served.[93]

Notably, the 'availability of reliable and affordable analytical methods is an important practical consideration for developing countries.'[94] Accordingly, the accreditation and appropriate oversight of independent private laboratories can be explored to address the lack of qualified personnel and laboratory facilities in the public sector. In any case, the assessment and monitoring network need not be technologically advanced as long as it is functional, transparent, and reliable. As Getches notes, addressing water problems 'requires no technological breakthroughs.'[95]

C. Financial Mechanism

To provide better and improved access to sanitation, the CWA provides the establishment of a National Sewerage and Septage Management Program (NSSMP). Based on this program, priority listing of sewerage, septage, and combined sewerage-septage projects for local government units is prepared according to population density and growth, degradation of water resources, topography, geology, and other factors relevant to protect water quality, including rehabilitation of existing facilities.[96] According to the priority listing, the National Government may allocate funds for the construction and rehabilitation of the required facilities.[97]

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[91] Id at 11.

[92] Id at 12, Box 2.

[93] Id at 14, Table 3.

[94] Id at 15.

[95] David Getches, 'Water Wrongs: Why Can't We Get It Right the First Time?' (2004) 34 *Lewis & Clark Law School Environmental Law* 1 at 13.

[96] Above n42 at s7.

[97] Ibid.

Relevantly, water concessionaires in Metro Manila and highly urbanized cities are required to connect the existing sewage line found in subdivisions, commercial centers, hotels, public buildings, hospitals, market places and similar establishments to the available sewerage system.[98] However, areas not considered as highly urbanized must utilize septage or a combined sewerage-septage management system.[99]

To accomplish the objectives of the CWA, a National Water Quality Management Fund (NWQMF) is created as a special account in the National Treasury to finance the following:

a) Containment and clean-up operations;

b) Restoration and rehabilitation of affected areas;

c) Research, monitoring and enforcement activities;

d) Rewards and incentives;

e) Information and Education; and

f) Other disbursements for the prevention and control of water pollution.[100]

However, there is no express reference or allocation for infrastructure requirements such as sewerage facilities, or rehabilitation of the existing ones. Granting that there is allocation for construction and rehabilitation of facilities, the NWQMF is an insufficient financing source. It must be stressed that fines and damages awarded by PAB to the government is an 'end-of-pipe' funding source for the NWQMF, which depends on too many variables. Also, donations, grants or endowments cannot provide a continuing and regular funding stream for infrastructure development.

On a project specific basis, proponents are required to establish an Environmental Guarantee Fund (EGF) as part of the Environmental Compliance Certificate conditionality.[101] The EGF is applied to finance the maintenance of ecosystem health, conservation of watersheds and aquifers, and clean-up or rehabilitation of areas affected during the project's implementation.[102] In effect, the EGF is basically a contingent liability

[98] Id at s8.

[99] Ibid.

[100] Id at s9.

[101] Id at s15.

[102] Ibid.

instrument to cover environmental risk associated with a project. Accordingly, it is not a funding source for the NWQMF.

As adverted to earlier, the investment required to achieve 50 percent sanitation and sewerage service coverage by 2015 is placed at around PhP 256 billion (US$4.6 billion).[103] But the prospect of publicly financing the needed infrastructure is remote considering the precarious fiscal position of the National Government. As the Asian Development Bank observes, the 'budget deficit has become a chronic and structural feature of the macroeconomic landscape.'[104] Admittedly, all financing options have to be explored to meet the target upgrade and to improve the service coverage of sanitation and sewerage systems around the country. Thus, attracting private sector participation and investments are vital in financing the NSSMP. For example, the privatization of the publicly-owned MWSS in 1997 has shown that sewerage connections increased by an average of 2.7 percent under the private concessionaires in the first five (5) years of their operations from 1997 to 2001.[105] Also, desludging of septage improved during the same period.[106] However, the water privatization debacle that happened in Bolivia serves as a constant reminder for governments 'to oversee the operation of water companies, demand certain standards of performance and environment protection, and ensure that consumers are able to afford the price of water.'[107]

Moreover, sustainable cost recovery policies need to be developed as it is noted that most water users barely pay the true cost of the services being provided.[108] This is consistent with the Dublin Statement recognizing the economic value of water.[109] Other options that can be explored include special levies, development fees such as groundwater protection fees, sewerage surcharges, property tax, and credit.[110]

Interestingly, the CWA provides an appropriation of PhP 100 million (US$1.8

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[103] Above n58.

[104] Asian Development Bank, *Asia Development Outlook 2004 - Economic Trends and Prospects in Developing Asia: Southeast Asia* at 91: <http://www.adb.org/Documents/Books/ADO/2004/ADO2004_PART2_SEA.pdf#page=21> (01 June 2004).

[105] Above n5 at Box 13.

[106] Ibid.

[107] Jeffrey Rothfeder, *Every Drop for Sale* (2001) at 116.

[08] *Report of the World Panel on Financing Water Infrastructure: Executive Summary* (2003) at 2: <http:// www.gwpforum.org/gwp/libray/ExecSum030703.pdf> (13 August 2004).

[109] Above n1 at Principle 4.

[110] Above n5 at 29.

million) to the DENR from the savings of the National Government for the initial implementation of the law. Aside from being pathetically inadequate, there is no certainty that this 'start-up' fund will be appropriated at all as it is dependent on the savings of the National Government. Thus, this may give rise to another case of unfunded mandates unless Congress provides a dedicated and realistic budget allocation for the full implementation of the CWA.

D. Wastewater Charge System (Load-Based Licensing)

In another key policy reform, the CWA mandates the DENR to implement a Wastewater Charge System (WCS) in all management areas, including the Laguna Lake region, a pre-existing water quality management area, by collecting charges or fees as payment to the government for the discharge of wastewater into water bodies.[111] This is largely prompted by criticisms that the 'command and control' approach has failed to provide adequate incentives beyond compliance to improve the environment.[112]

The fee is based on the net waste load or the difference between the initial waste load of the abstracted water and the waste load of the final effluent discharge of an industry.[113] The purpose of the WCS includes an inducement to shift in the production process, investment in pollution control technologies, cover the cost of administration, reflect damages caused by water pollution, and the cost of environmental rehabilitation.[114] However, health and social costs associated with the polluting activity appears to be not explicitly covered.

The WCS under the CWA is not a totally new concept. Prior to the enactment of the CWA, the DENR has been imposing environmental user fees (EUF) nationwide as part of the load-based licensing regime.[115] Such a charge system uses the concentration of organic or inorganic pollutants as basis for the load fee. Thus, it is practically based on the traditional approach of controlling pollution at end of the production process, which is inadequate as pollution concentration can be diluted to meet the minimum load levels.

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[111] Above n42 at s13.

[112] Zada Lipman & Gerry Bates, *Pollution Law in Australia* (2002) at 1.

[113] Above n111.

[114] Ibid.

[115] See *Department of Environment and Natural Resources Administrative Order No. 2003- 39*: <http://www.denr.gov.ph/policy/2003/dao2003-39.pdf> (13 August 2004).

In order to capture the cumulative effects of water pollution such as health and social costs, it is suggested that the implementing rules provide a formula that calculates the potential environmental impact of the pollution rather than relying on concentration levels, i.e., the charge has to approximate the damage caused by the effluent, including the required rehabilitation and restoration costs for the affected water body. As the New South Wales (NSW) Environment Protection Authority in Australia explains:

> An approach like this offers polluters a financial incentive to reduce the pollution they produce, and to keep on reducing it. It also encourages industry to invest in pollution reduction in those areas where it will most reduce fees, and so most improve the environment.[116]

It must be emphasized, however, that the application of the WCS entails effective enforcement by the government in a way that firms are induced to undertake abatement rather than pay the cost of the damage attributed to their activity. Also, the assimilative capacity of the particular water body has to be determined to set the level of pollution that can be safely discharged. Admittedly, this is easier said than done with the determination of assimilative capacity made complicated by the variability in environmental requirements of ecosystems in both the temporal and spatial sense.[117]

E. Discharge Permit

Relative to the adoption of the WCS, a discharge permit has to be secured, which serves as the legal authorization granted by the DENR to discharge wastewater.[118] Accordingly, the DENR has to develop procedures to relate the water quality guidelines of the receiving water body with total loading from various sources in order to allocate effluent quotas in the discharge permits.[119] In this manner, effluent trading can then be allowed per water quality management area.[120]

Surprisingly, the CWA provides that industries without a discharge permit are given 12 months after the effectivity of the implementing rules to secure such a permit.

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[116] NSW Environment Protection Authority, *Load-based Licensing: A Fairer System that Rewards Cleaner Industry* (2001) at 3.

[117] Nicholas Brunton, 'Economic Instruments for Water Pollution Control: The Australian Experience' (1996) 6 *Australian Journal of Environmental Management* 21 at 26.

[118] Above n42 at s14.

[119] Ibid.

[120] Ibid.

This means that implementation of the discharge permitting system for industry will be delayed by at least two years (one year to issue the implementing rules plus at least another year after the implementing rules take effect). Also, it unnecessarily gives reprieve to previously non-complying industries that did not secure a permit as required under Presidential Decree (PD) No. 984 or the then Pollution Control Law.[121] With the express repeal of PD No. 984,[122] a gaping regulatory hole has been dug by the CWA itself, which will become a problematic issue upon implementation of the WCS and the permitting system. As such, the implementing rules need to provide detailed and clear transition arrangements to fill this implementation gap.

F. Non-Point Pollution Sources

Other than the general definition and the mandates provided to the DENR and Department of Agriculture to categorize non-point sources of water pollution, the CWA does not have any substantial program or framework to abate, prevent or control this type of pollution source. This is unfortunate as non-point source pollution poses one of the major challenges in improving water quality in the country in both urban and rural areas.

In a passing reference, the CWA mandates the DENR to categorize point and non-point sources of water pollution within 18 months from the effectivity of the law.[123] Also, the Department of Agriculture is tasked to formulate guidelines for the prevention, abatement, and control of water pollution from agricultural and aquaculture activities with discharges from non-point sources to be categorized and further defined.[124] Ostensibly, the lack of familiarity and existing national policy on non-point sources of water pollution is reflected in the absence of any substantial provisions to mitigate the impacts of this pollution type under the CWA.

In the preparation of the implementing rules, attention is drawn to the experience of other countries in developing a suitable policy mix to address non-point source pollution, particularly from the agricultural sector. It is observed that while education, information and voluntarism have dominated policy initiatives to address non-point source pollution from agricultural activities across many countries, the effectiveness of such

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[121] See *Presidential Decree No. 984* at s8:<http://www.chanrobles.com/pd984.htm> (13 August 2004).

[122] Above n42 at s34.

[123] Id at s19(h).

[124] Id at s22(c).

approaches has been limited especially in the absence of a strong regulatory underpinning.[125] As Gunningham and Sinclair argue, '[t]here is little evidence to suggest that various forms of exhortation, when used in isolation, have the capacity to deliver tangible improvements when applied to matters of non-point source pollution.'[126]

On the other hand, the traditional 'command and control' approach alone has not been an effective strategy for non-point source pollution.[127] For this reason, it is posited that the most successful interventions in non-point source pollution are preventive, involve extensive changes in behavior, and embed issues in the development and land-use regulatory process.[128]

With respect to solid waste as diffuse sources of water pollution, the same approaches can be applied. However, this involves more of political will than strategizing as the ESWMA remains weakly enforced. As adverted to in the early part of this article, the problem of illegal settlements and encroachments on rivers, creeks and other drainage channels have resulted in the constriction and reduction in the drainage capacity of many urban waterways. Predictably, the situation has correspondingly increased flooding incidence and compounded BOD pollution of the waters. Also, this aspect has to be included in the non-point source equation if an extensive policy and regulatory response is to be seriously pursued.

The Pollution Adjudication Board under the CWA and the CAA

Under the CAA, the DENR through the PAB may impose fines for any violation of the national ambient air or emission standards against stationary sources of air pollution.[129] Aside from the imposition of fines, the PAB is empowered to issue orders for the closure, suspension of development, construction, or operations of the stationary sources of air pollution until the proper environmental safeguards are put in place.[130] An

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[125] Neil Gunningham & Darren Sinclair, 'Curbing Non-point Pollution: Lessons for the Swan-Canning' (2004) 21 *EPLJ* 181 (3) at 100; See also Neil Gunningham & Darren Sinclair, 'Non-point Pollution, Voluntarism and Policy Failure: Lessons for the Swan-Canning' (2004) 21 *EPLJ* 93 (2).

[126] Id at 103.

[127] Above n50 at 12.

[128] Id at 12-14.

[129] *Republic Act No. 8749*, s45: <http//www.chanrobles.com/philippinecleanairact.htm> (01 June 2004).

[130] Ibid.

ex parte order for closure, suspension of development or construction, or cessation of operations may be immediately issued during the pendency of an air pollution case if prima facie evidence exists that there is imminent threat to life, public health, safety or general welfare, or to plant or animal life.[131] In case of gross violation of the CAA, the PAB is authorized to recommend the filing of criminal charges and assist in the prosecution of the criminal action.[132]

In contrast to the CAA, the recently enacted CWA has apparently beclouded the adjudicatory powers of the PAB over water pollution cases. For example, it is the DENR Secretary who is empowered to impose fines for any violation of the law, rules and regulations with the PAB reduced to a recommendatory body.[133] Additionally, PAB can only recommend to the DENR Secretary the issuance of an order for the closure, suspension of development, construction, or cessation of operations, including disconnection of the water supply, until the proper environmental safeguards are put in place.[134] Similarly, an *ex parte* order for closure, suspension of construction or development, cessation of operations may be issued during the pendency of the water pollution case.[135]

Confusingly, the CWA provides that blatant disregard of the orders of PAB such as non-payment of fines or operating despite an order for closure, suspension, and cessation constitutes gross violation.[136] But as mentioned earlier the PAB can only recommend the issuance of such orders. As a result, there are conflicting provisions within the CWA itself considering that the authority to impose fines or issue the relevant orders expressly rests upon the DENR Secretary albeit with the recommendation of the PAB.

The Enforcement Approach: A Setback on Citizen Participation

In the sphere of administrative enforcement, the CWA provides that without prejudice to the rights of any affected person the DENR may institute administrative actions against any person who violates the standards and rules or regulations issued

[131] Ibid.

[132] Id at s48.

[133] Id at s28.

[134] Ibid.

[135] Ibid.

[136] Id at s28(c).

pursuant to the CWA.[137] This is a considerable deviation from previous environmental laws enacted, which incorporate citizen suits and strategic legal action against public participation provisions.

Specifically, the CAA explicitly recognizes the right of any citizen to file an appropriate civil, criminal or administrative action in the proper courts or bodies against any person, the DENR, other implementing agencies, and public officials who violate or fail to comply with the CAA.[138] In case a suit is brought against a person who files a complaint under the citizen suits provision, the CAA accords protection to that person by directing the investigating prosecutors to immediately make a determination on whether the legal action against such person is meant to harass, vex, exert undue pressure or stifle his or her legal resources.[139] Similar provisions are likewise incorporated in the *Ecological and Solid Waste Management Act* 2000 (ESWMA).[140]

Without an express citizen suit provision in the CWA, access to the administrative and judicial system has been severely restricted by the absence of an 'open standing' provision insofar as water pollution cases are concerned. In a situation such as the Philippines where laws are not being enforced because responsible agencies lack the funding and capacity required, the citizen suit provision is an effective tool to encourage society enforcement, particularly if unfettered by procedural and technical rules on legal standing.

The primary purpose of the citizen suit provision is for the citizen, whether as an individual or an organization, to function as an 'auxiliary enforcer with several options for bringing complaints against the government and private entities...to provide a check on other environmental actors and keep the system running at its most efficient.'[141] In the absence of the citizen suit provision, the party who suffers harm or injury may be the only one who can enforce the CWA. As a result, citizen participation is greatly diminished and the option for enforcement is unfortunately reduced.

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[137] Above n40 at s30.

[138] *Republic Act No. 8749* at s41:<http://www.chanrobles.com/ philippinecleanairact.htm> (01 June 2004).

[139] Id at s43.

[140] *Republic Act No. 9003* at ss52 & 53:<http://www.chanrobles.com/republicactno9003.htm> (13 August 2004).

[141] Katherine M. Bailey, 'Citizen Participation in Environmental Enforcement in Mexico and the United States: A Comparative Study' (2004) 16 *Georgetown International Environmental Law Review* 323 at 346.

While there is an apprehension that a citizen suit provision will open the floodgates to vexatious suits, the experience with the CAA and ESWMA has shown that the courts have not been inundated by legal actions based on such a provision. This can be attributed to the insertion of a preclusion clause that a citizen suit cannot be filed unless a 30-day period is given to the public officer to take appropriate action.[142] Of course, this assumes that government action is commenced and actively pursued 'to require compliance.'[143]

In the absence of the citizen suit provision, the DENR carries the larger burden of enforcing the CWA without an auxiliary enforcer to complement its efforts. However, it will be interesting to see how this will be played out in an actual controversy especially in the light of the *Oposa v Factoran, Jr.*[144] ruling that essentially liberalized legal standing regarding environmental matters based on the constitutional right to a balanced and healthful ecology.

Moreover, the absence of consistency between the CAA and the CWA as regards the adjudicative approach only erodes the opportunity to join issues, which are basically interrelated as to their medium and environmental impacts. This creates a disincentive to adjudicate pollution disputes holistically because the legal threshold for standing is different from one case to another *i.e.* between air pollution and water pollution. As a consequence, it only resurrects the traditional approach of addressing pollution issues on a per media basis, which has essentially failed in the past.[145]

Conclusion

While the CWA may be lauded for introducing integrated water quality management as a policy response to water quality deterioration in the Philippines, many issues ranging from institutional arrangements to affordability remain. However, most of these concerns can be addressed if robust political commitment and financial support are extended. Accordingly, the cooperation of institutions and relevant stakeholders must continuously be pursued to forge appropriate national, regional and local agendas for water quality management in the country. Additionally, national targets have to include programs and

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[142] Above n138 at s41(c) & n140 at s52(c).

[143] Jefferey G. Miller, 'Theme and Variations in Statutory Preclusions against Successive Environmental Enforcement Actions by EPA and Citizens Part One: Statutory Bars in Citizen Suit Provisions' (2004) 28 *Harvard Environmental Law Review* (2) 401 at 445.

[144] *Oposa v Factoran, Jr.* (1993) 224 SCRA 792.

[145] Philippe Sands, *Principles of International Environmental Law* (2nd ed, 2003) at 167.

activities that can contribute towards achieving the MDGs and other ecologically sustainable development commitments.

Otherwise, the CWA may suffer implementation deficits, including serious economic and environmental losses for reasons that are often described to be avoidable. Admittedly, the weak implementation of the CAA and ESWMA effectively hampers the ability of the government to address water issues across the board. On the other hand, the CWA may serve as a catalyst to consolidate efforts in achieving the mandates of other related legislations consistent with the interconnectedness of the environment, including the issues and challenges associated with it.

Fairer, Faster, and Cheaper
A Proposal to Enhance the Philippines' Labor Dispute Settlement System

*Arnold F. de Vera**

Fairness, Speed and Economy remain the hallmarks of an effective delivery system of labor justice in any country. Absence of one is a denial of justice itself.

Cicero D. Calderon, quoting Justice Flerida Ruth P. Romero in "Report on Proposed Reforms of the Labor Code in the Area of Labor Relations"

Introduction

Like a rail system lacking central planning, the Philippines' labor dispute settlement system is a product of successive labor legislation resulting in today's maze of intricate and often overlapping jurisdictions, continuously plagued by perceptions of inefficiency and ineffectiveness.

This article focuses on House Bill No. 3970,[1] which proposes to fundamentally change the Philippines' system of labor dispute settlement to make it fairer, faster, and cheaper.

Part I provides a broad overview of the Philippines' current system of labor dispute settlement, with some attention to the bureaucratic organization of principal agencies and the manner in which disputes are resolved. Part II discusses four key observations on the system, while Part III discusses the proposed system under HB 3970 with emphasis on how it addresses the observations made about the system. Part IV concludes the article.

This article adopts the broad definition in the Labor Code and uses "labor dispute" to refer to any controversy or matter concerning terms and conditions of employment or the association or representation of persons in negotiating, fixing, maintaining, changing

* LL.B., University of the Philippines, LL.M., New York University, Professor of Labor Law, Far Eastern University – La Salle joint JD-MBA program, Labor Unit Coordinator, Sentro ng Alternatibong Lingap Panligal (SALIGAN).

[1] "An Act to Enhance the Philippines' Labor Dispute Settlement System" introduced by Hon. Rep. Del De Guzman (Lone District of Marikina), and Hon. Rep. Loretta Ann P. Rosales, Hon. Rep. Mario "Mayong" Joyo Aguja and Hon. Rep. Ana Theresia Hontiveros-Baraquel, all of the party-list Akbayan. A copy of the bill is available online at http://www.congress.gov.ph/download/billtext_13/HB03970.pdf.

or arranging the terms and conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee. 2 It includes intra and inter union disputes, union registration, representation issues, and disputes involving claims of Overseas Filipino Workers (OFW) except administrative claims under the Philippine Overseas and Employment Administration (POEA). The article does not deal with employees in the public sector since, as presently formulated, the proposal before Congress is limited to labor disputes in the private sector. However, there is nothing inherently incompatible between the core of the proposal and inclusion of government employment. Finally, the article does not deal with claims under the various systems administering social welfare benefits, which are usually claims not against the employer but are against a contributory common fund.[3]

I. The Philippines' Labor Dispute Settlement Machinery

As the system of resolving industrial and labor disputes evolved from the Court of Industrial Relations established under Commonwealth Act No. 103 (1936)[4] to the current system under Presidential Decree No. 442 (1974), or the Labor Code of the Philippines, with its numerous amendments, there is a perceptible shift from formal, adversarial, and court-like adjudication to informal processes like mediation which give disputants more control over the resolution of contested issues. Nevertheless, at present, labor disputes generally remain subjects of compulsory arbitration[5] either at the National Labor Relations Commission (NLRC or the Commission), at the Office of the Secretary of Labor and Employment, or under the mandatory system of voluntary arbitration.[6]

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[2] See Article 212 (l), P.D. 442, as amended.

[3] See Rep. Act No. 7875, National Health Insurance Act of 1995, Presidential Decree No. 1519, as amended, Revised Philippine Medical Care Act, Rep. Act No. 8282, Social Security Act of 1997, and Presidential Decree No. 1752, as amended, Home Development Mutual Fund Law of 1980.

[4] "An Act to Afford Protection of Labor By Creating A Court Of Industrial Relations Empowered to Fix Minimum wages For Laborers And Maximum Rentals To Be Paid By Tenants, And To Enforce Compulsory Arbitration Between Employees Or Landlords, And Employees Or Tenants, Respectively, And By Prescribing Penalties For The Violation Of Its Orders."

[5] In labor cases, compulsory arbitration is the process of settlement of labor disputes by a government agency with the authority to investigate and make an award which is binding on all the parties (*Philippine Airlines, Inc. v National Labor Relations Commission*, G.R. No. 55159, 180 SCRA 555 at 564 [1989]). *See* P. Fernandez, Labor Arbitration, 15 (1975). Professor Fernandez compares voluntary arbitration and compulsory arbitration.

Except for conciliation and mediation[7] by the National Conciliation and Mediation Board (NCMB), the use of alternative dispute resolution (ADR)[8] techniques is largely marginal and unsystematic. This, notwithstanding the law's profession of faith to ADR and despite ADR's inherent appropriateness in settling labor disputes.

Figure 1 (below) illustrates the current labor dispute settlement system under the Department of Labor and Employment (DOLE).[9] From this perspective, its principal components may best be viewed as distinct but intersecting strands, (indicated by boxed numbers and letters) each with its own bureaucracy and jurisdiction, characterized by its own process of dispute settlement.

The first strand represents the compulsory arbitration process[10] dominated by the NLRC. Most labor disputes can be filed only with the NLRC, where they are heard by one of about 171 labor arbiters in 15 Regional Arbitration Branches (RAB) nationwide.[11]

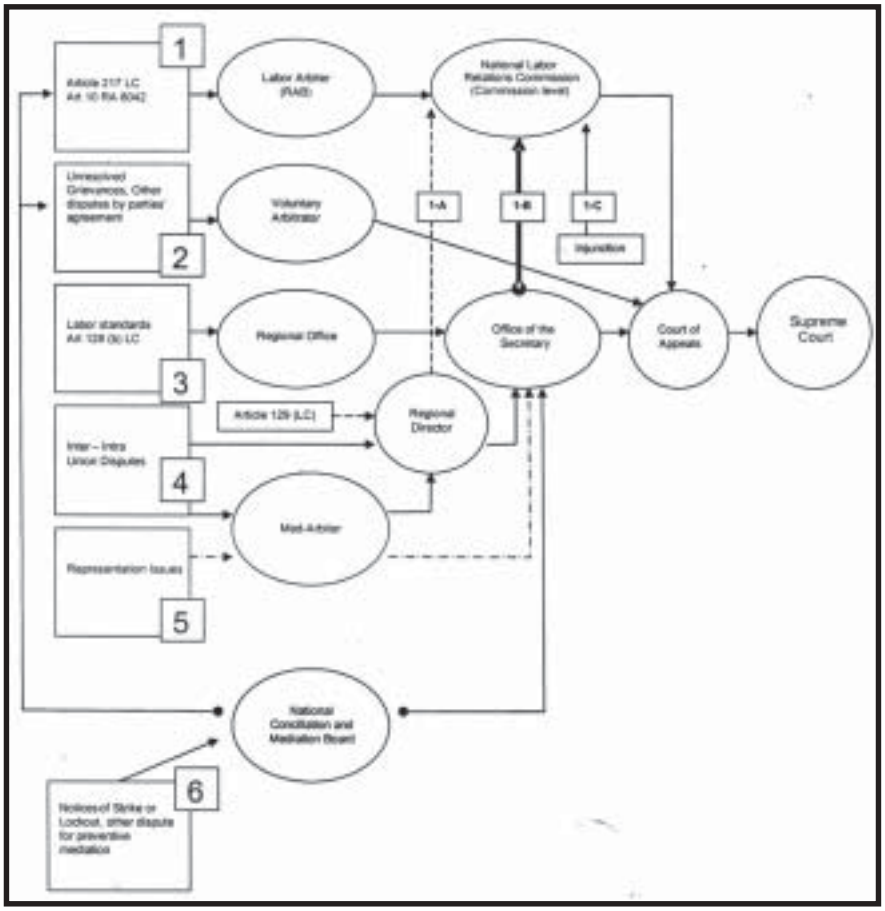

Figure 1: The Principal Agencies in The Philippines' Labor Dispute Settlement System

Generally, disputants before labor arbiters are called to three mandatory conciliation hearings where the labor arbiter or more often, her assistant, helps them settle amicably.[12] If the parties fail to settle, they submit pleadings in support of each of their respective arguments and thereafter, the dispute is considered submitted for decision by the labor arbiter.

Any party assailing the decision of the labor arbiter may file an appeal with the NLRC "Commission-level"[13] where three Commissioners constituting one of the five divisions of the NLRC, resolve the appeal. Presently, the first, second, and third divisions

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[6] The term voluntary arbitration implies that a union and management have complete discretion to opt for arbitration facilities established and maintained at public expense or to seek their own arbitration in the private market for arbitration. See distinction drawn by C. Bovis, "Labor Arbitration as an Industrial Relations Dispute Settlement Procedure in World Labor Markets," 45 Labor Law Journal 150 (March 1994). Also, Professor Fernandez notes the mandatory nature of our system of voluntary arbitration in *supra*, note 6. Indeed, the current practice of voluntary arbitration is dominated by mandatory provisions, such as Article 261 of the Labor Code providing that parties to a collective bargaining agreement (CBA) shall establish a grievance machinery. In practice, a CBA's lacking such provisions on grievance machinery will result in its not being allowed to be registered. Also, all unsettled grievances submitted to the grievance machinery shall "automatically" be referred to voluntary arbitration. Contrary to the connotation of the term "voluntary", parties may not opt out of this manner of resolving disputes. Hence, in practice, the term "voluntary" seems to refer only to the ability of the parties to choose the arbitrator of their dispute from among those named in a list of accredited arbitrators.

[7] There is no apparent distinction between conciliation and mediation as used in our present system. "Mediation" will henceforth be used to refer to facilitation of settlement by a third party neutral except where law or regulations use the term "conciliation."

[8] This paper uses "ADR" to refer to methods of dispute resolution other than court-like litigation and treats "arbitration" practiced at the NLRC as less of ADR considering that arbitration is a form of adjudication in which the neutral decision-maker is not a judge or an official of an administrative agency. *See* L. Riskin and J. Westbrook, DISPUTE RESOLUTION AND LAWYERS, (1997, 2nd ed.), p. 502.

[9] Due to the limitations of the paper, the following agencies have been excluded from the illustration: the Philippine Overseas Employment Administration (POEA), the National Wages and Productivity Commission (NWPC), Regional Tripartite Wages and Productivity Boards (RTWPB), the Employees' Compensation Commission (ECC), the Social Security System (SSS), the PhilHealth, and PAG-IBIG. Causes of action under the respective jurisdiction of said agencies have likewise been excluded due to the limitations of the paper.

[10] *Supra* note 6.

[11] Under Article 217 of P.D. 442 as amended, Labor Arbiters shall have original and exclusive jurisdiction to hear and decide the following cases involving all workers, whether agricultural or non-agricultural:

1. Unfair labor practice cases;
2. Termination disputes;
3. If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;
4. Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;
5. Cases arising from any violation of Article 264 of the Labor Code, including questions involving the legality of strikes and lockouts; and
6. Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (P5,000.00) regardless of whether accompanied with a claim for reinstatement.

In addition, Section 10 of R.A. 8042 added to the exclusive jurisdiction of the labor arbiters money claims of Overseas Filipino Workers arising from violations of their employment contract against foreign employers through their local recruitment agency.

[12] Even as Rule V, Section 2 of NLRC Resolution No. 01-02 or the New Rules of Procedure of the NLRC requires all conciliation proceedings to be conducted by Labor Arbiters, it is still common for such proceedings to be conducted by a representative of the arbiter.

[13] The commonly used term "Commission-level" is used to distinguish the appellate level of the NLRC from the level of the labor arbiters.

of the NLRC hear and decide cases decided by arbiters in the National Capital Region and other parts of Luzon while the fourth and fifth divisions hear and decide cases decided by arbiters in the Visayas and Mindanao, respectively.[14]

Decisions rendered by a division of the Commission may be subject of a motion for reconsideration and thereafter, of a petition for certiorari to the Court of Appeals under Rule 65 of the Revised Rules of Civil Procedure.[15] By fiat of the Supreme Court,[16] all strands converge in the Court of Appeals whose decisions may thereafter be brought to the Supreme Court by a petition for review on certiorari under Rule 45.

In the following instances, disputes may be brought to the Commission level without passing through the level of the labor arbiters:

- Strand 1-A: Under Article 129 of the Labor Code, the Regional Director or a hearing officer of the Department of Labor and Employment hear and decide disputes involving the recovery of wages for as long as the aggregate claim does not exceed Php 5,000.00 and reinstatement is not sought. Designed to expedite enforcement of "simple money claims", hearings are summary in nature and decisions may be appealed to the Commission-level of the NLRC.
- Strand 1-B: Under Article 263 (g) of the Labor Code, disputes certified by the Secretary of Labor and Employment under her authority to assume jurisdiction are brought directly to the Commission-level.
- Strand 1-C: Petitions for injunctions are likewise initially brought to and decided at the Commission-level.[17]

In these exceptional cases, decisions of the Commission may be brought to the Court of Appeals and thereafter to the Supreme Court in the same manner described above.

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[14] Article 213, P.D. 442 as amended.

[15] *St. Martin Funeral Home v. National Labor Relations Commission*, G.R. 130866, 16 Sept. 1998.

[16] Id., See also *Luzon Development Bank v. Association of Luzon Development Bank Employees and Atty. Ester S. Garcia*, G.R. 120319, October 6, 1995, *National Federation of Labor (NFL) v. Hon. Bienvenido E. Laguesma and Anglo-KMU*, G.R. No. 123426, March 10, 1999.

[17] Article 218 (e), P.D. 442 as amended.

The second strand represents the voluntary arbitration machinery, which has authority over unresolved grievances arising from the interpretation or implementation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies.[18] Unresolved grievances involving distortion of wages[19] and the productivity and incentives program under R.A. No. 6971[20] are likewise resolved through voluntary arbitration. Other labor disputes, including those involving strikes, may be referred to voluntary arbitration by agreement of the parties concerned.[21]

To clarify the question of jurisdiction over dismissal cases, Policy Instruction No. 56 (1993) provides that termination cases related to the implementation of collective bargaining agreements or company personnel policies and initially processed through in-plant grievance procedures are within the exclusive jurisdiction of voluntary arbitration.

The third strand represents the inspectorate machinery of the Department of Labor and Employment designed to expedite the enforcement of labor standards laws. So as to save workers from protracted processes, Article 128 (b) of the Labor Code allows the Secretary of Labor and Employment, usually through an authorized representative, to inspect places of employment and, if necessary, issue compliance orders and writs of execution to enforce "labor standards provisions" of labor laws.[22] Orders issued under Article 128 (b) by representatives of the Secretary of Labor and Employment may be appealed to the Secretary of Labor and Employment herself.[23] Decisions of the Secretary may then be brought before the Court of Appeals and thereafter, to the Supreme Court.[24]

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[18] Article 261, P.D. 442 as amended reads in part:

> "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 Collective Bargaining Agreement shall mean flagrant and/or malicious refusal to comply with the economic provisions of such agreement…."

[19] Article 124, P.D. 442 as amended.

[20] Section 4 (b) and 9, R.A. No. 6971 (1991).

[21] Article 263 (h), P.D. 442 as amended.

[22] DOLE Department Order No. 32 issued in November 20,2002 suspended all labor inspection activities in order to allow for the disposition of pending labor standards cases and the preparation of the master list of establishments by province, municipality, by industry, and by size of employment. Subsequently, DOLE Department Order No. 57-04 was issued in January 7, 2004 establishing a new Labor Standards Enforcement Framework consisting of three components: self-assessment, inspection, and advisory services, dependent mainly on the number of employees in the subject workplace.

[23] Article 128 (b), P.D. 442. as amended by R.A. No. 7730 (1994).

[24] J. Jimenez, "The Court of Appeals as an Integral Component of the Philippine Labor Dispute Adjudication System (A Critical Analysis of Three Landmark Decisions by the Supreme Court on Labor Jurisdiction)," 25 IBP Journal 153.

The fourth strand of dispute settlement procedure involves inter and intra union disputes which are generally heard in administrative proceedings by the regional offices or the Bureau of Labor Relations, depending on the labor organization concerned.[25] Under Department Order No. 40-03, inter or intra union disputes are resolved by Med-Arbiters in the regional offices except petitions for cancellation of registration of labor organizations and petitions for deregistration of collective bargaining agreements which are resolved by the appropriate Regional Director or her appointed hearing officer.[26]

Decisions of the Med-Arbiter and Regional Director may be appealed to the Bureau of Labor Relations while decisions of the Bureau Director in the exercise of her original jurisdiction may be appealed to the Office of the Secretary. One motion for reconsideration is allowed by the rules and thereafter, the decision of the Bureau Director or the Secretary of Labor and Employment will become final and executory without prejudice to a petition for certiorari with the Court of Appeals.[27] Decisions of the Court of Appeals may thereafter be brought to the Supreme Court by petition for review on certiorari.

The fifth strand of dispute settlement relates to representation issues under Article 256 and related articles of the Labor Code which are heard and resolved by the Med-Arbiter of the appropriate regional office. Decisions of the Med-Arbiters may be appealed to the Secretary of Labor and Employment whose decisions in turn may be questioned before the Court of Appeals.[28] Thereafter, any party may bring the dispute to the Supreme Court.

The sixth strand represents the mediation process provided by the National Conciliation and Mediation Board (NCMB) involving notices of strike or lockout arising from collective bargaining deadlocks or allegations of unfair labor practices. The NCMB represents the lone agency where Alternative Dispute Resolution techniques (ADR) are systematically employed by full time mediators with any significant or relevant training in ADR. Hearings are non-adversarial and are facilitated by these conciliators-mediators. Inasmuch as mediators have no authority to decide disputes and merely assist parties

[25] Rule XI, Department Order No. 40-03 (2003).

[26] Ibid., Section 5.

[27] *National Federation of Labor v Laguesma*, *supra* note 10.

[28] A notable instance which cannot be appealed is Section 17, Rule VIII of Department Order No. 40-03 (2003) on certification elections which provides that the order granting the conduct of a certification election in unorganized establishments shall not be subject to appeal. Any issue arising therefrom may be raised by means of protest on the conduct and results of the certification election.

reach settlement, the NCMB strand naturally ties in with the other strands of the dispute settlement system. Excepting instances where the Secretary of Labor and Employment exercises her authority under Article 263 (g) of the Labor Code to assume jurisdiction over labor disputes, disputes brought to the NCMB are resolved by agreement of the parties. In the event that mediation fails, any of the parties concerned may opt to bring the dispute through any of the previous strands.

II. Some Observations on the Current System

Doubtless, experts and stakeholders alike have profuse comments on the state of our labor dispute settlement system.[29] The following portions sift through these observations to focus on four key points:

1. There are **too many entry points** by which labor disputes may enter the government machinery.
2. There is **marginal use of alternative dispute resolution** techniques in the overall set-up.
3. There is **incessant delay** in the ultimate resolution of labor disputes.
4. The system implies **unnecessary expense** to disputants and the government.

A. Too Many Entry Points.

From Figure 1, it is clear that there are simply too many entry points available to labor disputes under current law. This multiplicity of entry points leaves many disputants guessing as to which agency or tribunal is appropriate for their dispute. The difficulty is exacerbated in cases where complainants are laborers who are unfamiliar with rules of

[29] To see discussions on the referral of labor cases to the Court of Appeals, particularly the background and some opinions on the effects of the referral, *see* Jimenez, s*upra* note 26, F. Bacungan, "The Impact of the Luzon Development Bank, St. Martin Funeral Home and National Federation of Labor Cases on the Disposition of Labor Cases," 1 CLE J. 73-119 No.2 (2001), *and* M. Manuel, "Requiem to Speedy Labor Justice: An Analysis of the Effects and Underpinnings of the Supreme Court's ruling in St. Martin Funeral Homes v NLRC." 44 Ateneo L.J. 455. For early discussions on experiences of various sectors pertaining to voluntary arbitration, *see* J. Seno, "Labor's View," J. Cacanindin, "Employer's View," Z. Reyes, "Arbitrator's View," all in Arbitration Journal of the Philippines, pp. 53ff Vol. II, Number 1, (October 1977) *and* C. Noriel, "Voluntary and Compulsory Arbitration of Labour Disputes in the Philippines," in VOLUNTARY AND COMPULSORY ARBITRATION OF LABOUR DISPUTES, (published under the auspices of the joint ILO/UNDP/ ASEAN Programme of Industrial Relations for Development) p.33 (1988) *and* R. Baldoz, "The Expanding Frontiers of Voluntary Arbitration of Labor Disputes in the Philippines," 10 Phil. Labor Review, 1 No.1 (1996).

jurisdiction or procedure and who have restricted access to legal assistance. Far from being an academic dilemma, the question of where and how to access the dispute settlement machinery is critical since a wrong decision often implies delay, increased cost, and possible dismissal of a case, all of which the complaining worker can well do without.

For instance, in *Amado De Guzman and Manila Workers Union and General Workers Union (MALEGWU) v. Court Of Appeals*,[30] the Supreme Court characterized the "money claim" brought by workers before the labor arbiter as an "unresolved grievance" and hence, not within the arbiter's jurisdiction. Because of this, the workers' cause of action was deemed barred by prescription inasmuch as the filing before the labor arbiter who was bereft of jurisdiction did not interrupt the prescriptive period.

Needless to say, it does not help that rules on jurisdiction are not too clear-cut. Indeed, even as current laws and regulations seek to define the jurisdiction of each agency or tribunal, the sheer number of possible entry points available to labor disputes inherently opens itself up to confusion and overlap.

A persistent example involves the jurisdiction of labor arbiters and that of voluntary arbitrators over termination disputes. Under the law, labor arbiters have original and exclusive jurisdiction to hear and decide termination disputes[31] whereas voluntary arbitrators have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation and implementation of the Collective Bargaining Agreement and those arising from the interpretation and enforcement of company personnel policies.[32] Unfortunately, this delineation of jurisdiction fails to consider that termination of employment often results from the enforcement of company personnel policies. Those who consider such cases chiefly as termination disputes bring them to the labor arbiter while those who consider them as primarily involving the enforcement of company personnel policies and as unresolved grievances bring them to voluntary arbitration. Regardless of the normative correctness of the actual choice, the confusion over jurisdiction invariably elicits a prayer for dismissal for lack of jurisdiction. Consequently, the question of jurisdiction may considerably complicate and protract the ultimate resolution of the dispute. This, despite the fact that such question usually

[30] G.R. No. 132257, October 12, 1998.

[31] Article 217 (2), P.D. 442 as amended.

[32] Article 261, P.D. 442 as amended.

does not even relate to the substantive aspect of the cause of action. In the worst case, disputants who may have spent years litigating the issue may eventually be told that the case is before the wrong agency or tribunal.[33]

From the time that amendments on jurisdiction were introduced by Republic Act No. 6715 in 1989 and despite the notable efforts at resolving the question of jurisdiction,[34] where to bring illegal termination cases continues to bedevil disputants and decision makers alike. It is not uncommon for disputants before labor arbiters and voluntary arbitrators to quarrel over the issue of jurisdiction up to the appellate courts. The persistence of the problem is in great part due to the continued overlap between Articles 217 and 261. Up to the present, the delineation of jurisdiction fails to account for the usually intimate link between termination of employment and interpretation and enforcement of company personnel policies. Such overlap naturally springs from the multiplicity of entry points characterizing our present system.

Prescinding from the jurisdiction of the labor arbiter and voluntary arbitrator, the jurisdiction of other agencies and tribunals are similarly problematic. While less contested, the boundary between, say, the jurisdiction of labor arbiters over monetary claims under Article 217 and the Regional Director over simple money claims under Article 129 is so thinly drawn as to be virtually invisible, especially to the untrained eye of the typical worker-complainant.

While discussing the issue of jurisdiction, one is forced to ask the critical question whether our dispute settlement system really needs so many entry points. Considering that the current system represents the accumulation of years of successive labor legislation,

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[33] *Supra* note 32.

[34] *Sanyo Philippines Workers-Union PSSLU v. Canizares*, 211 SCRA 361, at 373 (1992) involves a situation where both the union and the company already agreed that a number of employees had to be dismissed. According to the High Court, such an agreement implied that there was in fact no grievance which could be brought to the grievance machinery and that "only disputes involving the union and the company shall be referred to the grievance machinery or voluntary arbitrators." The Court declared that the dispute, arising as it does from the actual dismissal of employees, falls within the jurisdiction of the Labor Arbiter.

In 1993, the Secretary of Labor and Employment tried to clarify the question of jurisdiction through Policy Instruction No. 56 which, in essence, provided that if the following case were filed with the NLRC, the latter should dismiss the case for lack of jurisdiction refer the case to the NCMB:

Termination cases arising in or resulting from the interpretation and implementation of collective bargaining agreements and interpretation and enforcement of company personnel policies which were initially processed at the various steps if the plant level Grievance Procedure under the parties' collective bargaining agreements…

In *Pantranco North Express, Inc. v. NLRC,* 259 SCRA 161 (1996), the Supreme Court, relying on *Sanyo,* ruled that a termination based on CBA provisions on "compulsory retirement" was nonetheless properly denominated a termination dispute under the jurisdiction of labor arbiters.

it is now time to rationalize and reorganize the entire system to at least reduce the number of entry points to what is only necessary. A holistic and comprehensive approach is needed in view of the aggravated confusion likely to result from incremental solutions such as adding rules on jurisdiction designed to draw even finer boundaries between agencies and tribunals.[35]

B. Marginal Use of ADR.

Especially in labor matters, our laws and regulations place great emphasis on modes of dispute settlement alternative to formal litigation.[36] Indeed, the preference for alternative modes of dispute settlement is no less than a Constitutional imperative. Section 3, Article XIII of the 1987 Constitution provides in part:

> The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

Such normative fidelity to alternative dispute resolution techniques is to be expected given the inherent appropriateness of ADR to the resolution of labor disputes. In particular, mediation, a process of reaching settlement through the assistance of a neutral third party facilitator, is deemed quite suited for dispute resolution in the employment area.[37] Unlike adversarial processes where end results are invariably imposed on disputants, ADR enables them to reach a mutually acceptable result and even has the unique potential

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[35] For instance, House Bill No. 3850 introduced in the current Thirteenth Congress seeks to consolidate all money claims to the Regional Offices provided that there is no prayer for reinstatement. While seemingly simple, the proposal actually complicates cases where employees are terminated subsequent to (and usually because of) the previous claim for money. In said cases, workers would have to maintain two (2) cases simultaneously. Also, it is yet to be shown whether the Regional Offices has the institutional capacity to absorb the number of money claims transferred to them. In the end, the proposal may entail additional costs arising from the expanded jurisdiction of the Regional Offices.

[36] Article 211, P.D. 442 as amended, reads in part:

"Declaration of Policy. - A. It is the policy of the State: (a) To promote and emphasize the primacy of free collective bargaining and negotiations, including voluntary arbitration, mediation and conciliation, as modes of settling labor or industrial disputes… Article 221, P.D. 442 reads: Technical rules not binding and prior resort to amicable settlement. - In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process. In any proceeding before the Commission or any Labor Arbiter, the parties may be represented by legal counsel but it shall be the duty of the Chairman, any Presiding Commissioner or Commissioner or any Labor Arbiter to exercise complete control of the proceedings at all stages."

[37] C. Singletary and R. Shearer, "Mediation of Employment Discrimination Claims: The Win-Win ADA Option," 45 Labor Law Journal 341.

of healing the relationship between the disputants.[38] This facilitative and transformative character of ADR[39] complements the nature of labor disputes where the possibility of parties dealing with each other again (as in cases of reinstatement) is naturally part of the legal reliefs available.[40] In contrast, adversarial processes inherently antagonize disputants against one another and naturally makes future cooperation between them an awkward, if not absurd, prospect.

And yet, even with the normative emphasis on ADR and despite ADR's inherent appropriateness in resolving labor disputes, its systematic use remains confined to the mediation service provided by the NCMB. It is only there that labor disputes are tackled by officials with any substantial and relevant training in ADR. Elsewhere, mediation, if conducted, is largely improvised and left by chance in the hands of whoever may happen to face the parties at a certain time.

It is obviously advisable to make ADR the backbone of our labor dispute settlement system. For instance, placing trained personnel to meet disputants at the gates of the system will maximize the benefits of ADR and help parties reach settlement as early as possible without further delay and antagonism.

C. Resolution takes too long.

Perhaps, "justice delayed is justice denied" is already too commonly heard so as to have become trite and meaningless. And yet, for poor workers who actually have to spend much time and resources pursuing a labor claim, the import of that saying cannot

[38] A 2003 study in the United States on grievance mediation shows that interest-based grievance mediation is capable of resolving a high proportion of employee grievances, and can have a positive effect on the ability of employers and unions to resolve such grievances without the aid of a mediator. It also suggests that grievance mediation is capable of having a positive effect on the overall labor-management relationship when it is part of a broad effort focused on relationship building. S. Goldberg, "How Interest-Based, Grievance Mediation Performs Over The Long Term," 59-JAN Disp. Resol. J. 15 (2005).

[39] The evolution of ADR in the United States shows that at present, there are three dominant characterizations of ADR. There are those see ADR techniques such as mediation to have room for some kind of evaluation. Others opine that the only "true" form of mediation is "facilitative" mediation. Recently, a third or "transformative" character of ADR has been highlighted. Under this rubric, whether or not the dispute that brings parties together with a mediator is resolved is less important than the individuals' gaining new understanding, new skills for dealing with problems that may arise in the future, and an enhanced sense of control over their lives. D. Hensler, "Our Courts, Ourselves: How The Alternative Dispute Resolution Movement Is Re-Shaping Our Legal System," 108 Penn St. L. Rev. 189-190 (2003). These characterizations are not exclusive of each other and are invariably manifest in varying degrees in the conduct of ADR.

[40] *Supra* note 39. Singletary notes that cases involving personal injury, commercial contracts, and security disputes typically involve a single transaction or at most occasional transactions between parties. In contrast, employment disputes place at risk long-term relationships in which both employers and employees have an investment. Either or both parties may wish to preserve the relationship or, at worst, terminate it on relatively amicable terms. Employment actions may also be attended by issues which are not strictly legal such as a call for an apology or the modification of remarks made by the employer on an employee's employment record.

be more felt. Even employers have been heard to complain about the unnecessarily protracted attention they spend on labor claims which distracts them from productive business activities. In the face of heartbreaking tales such as retirees dying before the end of their claim for retirement benefits, orders for reinstatement coming several years too late, and employers closing shop long before cases against them are completed, it may be good to see some indicators of just how long labor disputes take to be decided.

Tables 1 and 2 illustrate how long cases stay at the labor arbiter and Commission levels, respectively.

Table 1: Aging of RAB Cases as of December 31, 2003

	2001 and earlier cases	2002	2003	Total
Total	2,115 (10.67%)	3,475 (17.54%)	14,219 (71.78%)	19,809

Source: National Labor Relations Commission

As of December 31, 2003, a total of 19,809 cases were pending at the 15 Regional Arbitration Branches of the NLRC. 14,219 or about 71.78% were filed in 2003 while about 3,475 or 17.54% were 2002 cases. Significantly, and despite the law's requirement for cases to be decided within 30 days from submission of the case for decision,[41] 2,115 or 10.67% are cases filed on 2001 and earlier. By end of 2003 therefore, about one in three cases pending before labor arbiters is more than 1 year old.

Table 2 : Aging of Commission cases ending as of December 31, 2003

	2001 and earlier cases	2002	2003	Total
Total	790 (10.14%)	1,494 (19.17%)	5,509 (70.69%)	7,793

Source: National Labor Relations Commission

As for the Commission level, out of 7,793 cases pending before its 5 Divisions as of December 31, 2003, 5,509 or 70.69% were 2003 cases, 1,494 or 19.17% were 2002 cases and 790 or 10.14% were 2001 or earlier cases. This, despite the legal requirement

[41] Under Article 217, P.D. 442, as amended, Labor Arbiters shall decide cases within 30 calendar days after its submission for decision without extension, even in the absence of stenographic notes. OFW cases are required to be resolved within 90 days from filing. Even allowing for the period of time prior to submitting a case for submission, satisfying these periods is more the exception than the rule. Further considering that exchange of pleadings instead of full blown trials is presently the normal course of presentation of arguments and evidence, it would be surprising for parties to spend a significant amount of time before their case is submitted for decision.

for the Commission to resolve cases within 20 calendar days from receipt of the appellee's answer.[42] By end of 2003, about one in three cases pending at the Commission-level is at least a year old.

These data show that cases can easily take two years to hurdle through the first two levels of the principal strand of labor dispute settlement. Barring instant dismissal, one more year at the Court of Appeals and about two years with the Supreme Court result in a total of about five years for a typical labor case to make it through all the levels available to parties. It is not uncommon for cases to take even longer when, after being decided by the Supreme Court in favor of a complaining worker, the employer would resist compliance at the labor arbiter level where execution is sought. Continued resistance to execution may even start a second round of appeals, which may take the same number of years to reach past the whole appellate procedure.

Table 3. Settlement Rate and Average Number of Settlement Days by NCMB.

Year	Cases Filed	Cases Settled	Settlement Rate (%)	Average Number of Settlement Days (Annual)
1994	1,089	781	71.7	29
1995	904	662	73.2	34
1996	833	617	74.1	24
1997	932	689	73.9	32
1998	811	594	73.2	34
1999	849	654	77.0	37
2000	734	543	74.0	38
2001	623	492	79.0	29
2002	752	550	73.2	32
2003	606	442	73.0	42
2004	558	391	70.0	39
Annual Average	**790**	**583**	**74**	**33.63**

Source: National Conciliation and Mediation Board

[42] Article 223, P.D. 442, as amended.

Numbers relating to the NCMB and voluntary arbitration give a less dismal picture. Table 3 shows that notices of strike and lockout filed from 1994 to 2004 were settled in an average of 33.63 days. As for cases before Voluntary Arbitrators, Table 4 shows that, to decide cases, Voluntary Arbitrators take an average of 167 days reckoned from the date of submission to arbitration or 50 days reckoned from the date of submission of the case for decision. Although incomplete, the data on decisions by Voluntary Arbitrators indicate a far shorter period for cases to be decided by the Voluntary Arbitrators compared to the two (2) years spent by cases at the labor arbiter and Commission levels. This comparison is relevant considering that these are the equivalent levels of adjudication before parties may resort to the Court of Appeals.

Table 4: Case Disposition by Voluntary Arbitrators.

Year	Number of decided cases	Number of cases with available data	Reckoned from submission of case to arbitration	Reckoned from date of submission for decision
1988	37	16	86	39
1989	89	39	148	76
1990	105	59	173	77
1991	111	75	187	78
1992	145	93	211	69
1993	159	64	188	74
1994	235	113	164	42
1995	241	163	193	36
1996	219	210	174	31
1997	236	174	171	27
1998	277	139	173	38
1999	186	103	175	36
2000	162	82	160	39
2001	179	84	133	69
2002	174	98	152	34
2003 (up to October)	129	52	191	40
Total	**2,684**	**1,546**	**167**	**50**

Source: National Conciliation and Mediation Board.

The above data show that disputants going through the NCMB or the Voluntary Arbitration strand can expect their dispute to be resolved in less than a year. The possible three to four years at the regular courts bring the total amount of time for resolution to about less than four to five years.

That labor disputes may take at least five years to resolve is a consequence of the delay in each level of dispute resolution as well as the accumulation of time resulting from the multiple levels of appeal built into the current system. It leaves one to wonder whether so many points of decision making is really necessary and whether incentives could be built into the system to speed up the process of dispute resolution.

D. The system implies unnecessary expense to the government and disputants.

At present, more than 4 Billion pesos is allotted for the whole Department of Labor and Employment. Table 5 shows the general summary of current operating expenses of the DOLE for 2005. Of the DOLE expenses, about 400 Million pesos certain to the NLRC and the NCMB, the leading agencies in dispute settlement.

Table 5: General Summary of Current Operating Expenses of the DOLE.

Office	Personal Services	Maintenance and Other Operating Expenses	Capital Outlays	Total
Office of the Secretary	606,498,000	629,388,000	17,000,000	1,252,886,000
Institute of Labor Studies	11,522,000	5,025,000	-	16,547,000
National Conciliation and Mediation Board	**48,201,000**	**32,687,000**	**1,000,000**	**81,888,000**
National Labor Relations Commission	**231,450,000**	**67,759,000**	**400,000**	**299,609,000**
National Maritime Polytechnic	32,976,000	23,557,000	250,000	56,783,000
National Wages and Productivity Commission	51,107,000	29,930,000	1,200,000	82,237,000
Philippine Overseas and Employment Administration	116,383,000	85,421,000	6,500,000	208,304,000

Office	Personal Services	Maintenance and Other Operating Expenses	Capital Outlays	Total
Technical Education and Skills Development Authority	912,688,000	968,181,000	449,164,000	2,330,033,000
Total New Appropriations of DOLE	2,010,825,000	1,841,948,000	475,514,000	4,328,287,000

Source: Republic Act No. 9336, General Appropriations Act of FY 2005.

Despite the considerable amount already allotted for the NLRC, there are proposals to increase it even further. In particular, to address the delay in the disposition of cases by the NLRC, several bills were introduced at the House of Representatives in the current 13th Congress[43] similarly advocating for the following measures:

- increase the number of commissioners from 14 to 23, thereby increasing the number of NLRC divisions from five to eight;
- remove the appointment of NLRC commissioners from the purview of the Commission on Appointments;
- adjust the emoluments and benefits of labor arbiters to that equivalent to judges of the Regional Trial Courts; and
- add eight lawyer positions (of SG 26 level) to assist NLRC commissioners

At the Senate, at least three senators filed counterpart bills[44] containing essentially the same proposals as those in the House versions.

Obviously, these proposals imply an increase in expense for the government. For instance, if the number of NLRC Commissioners is increased, each of the nine additional commissioners implies an additional payment of salary as well as additional cost in terms of staff, rental, equipment, and utilities such as electricity. It is noted that these

[43] House Bills 245, 869, 1420, 1612 and 1945.

[44] Senate Bill No. 1204 introduced by Senator Ramon Bong Revilla, Jr., Senate Bill No. 1771 introduced by Senator Jinggoy Ejercito Estrada, and Senate Bill No. 1841 introduced by Senator Francis N. Pangilinan.

additional expenses are permanent and will be paid from year to year. Table 6 gives an idea of the NLRC's present staffing cost.

Table 6: 2005 Staffing Summary of NLRC

Permanent Positions	Number of Positions	Amount
Key Positions		
Commission Chairman IV	1	485,000
Commission Member IV	14	4,853,000
Executive Clerk of Court IV	1	304,000
Labor Arbiter	171	51,984,000
Executive Clerk of Court II	4	1,124,000
Director II	2	540,000
Attorney V	2	540,000
Financial and Management Officer II	1	250,000
Administrative Officer V	1	250,000
Total Key Positions	**197**	**60,310,000**
Other Positions		
Administrative	348	36,939,000
Support to Technical	348	44,357,000
Technical	186	42,896,000
Total Other Positions	**882**	**124,192,000**
For the Difference between the Authorized and Actual Salaries		9,485,000
Total Permanent Positions	**1,079**	**193,987,000**
Less: Number and Amount of Salary Lapses / Savings From Unfilled Position / Chargeable Against Savings	155	23,723,000
Total Permanent Filled Positions	**924**	**170,264,000**

Source: Department of Budget and Management.

Therefore, in financial terms, a rudimentary estimate can be made that the budget for personal services for the NLRC may increase by at least Php 3,119,688.00 considering that each of the nine additional Commissioners will receive at least Php 28,886 a month as basic compensation. Still to be added to this are increased expenses relating to more staff, office space, and use of office equipment and utilities for each Commissioner.

Some stakeholders have still to be convinced that the additional expense implied by merely adding commissioners to the current set up will actually expedite and improve

the dispensation of labor justice.[45] They point to the seeming folly of past increases in the number of Commissioners. Table 7 summarizes the major changes in composition of the Commission since 1972.

Table 7: Additions to the Composition of the Commission-level.

Law	(Year)	NLRC Composition	Comments
P.D. 21	(1972)	3 members	**Interim NLRC**
P.D. 442	(1974)	5 members	
P.D. 570-A	(1974)	7 members sitting in 2 divisions	**Amended P.D. 442 before it took effect.**
P.D. 1391	(1978)	10 Commissioners sitting in 3 divisions	
E.O. 252	**(1987)**	**15 Commissioners in five divisions**	**issued to strengthen further the labor dispute machinery and to prevent undue delays as well as to ensure the just and efficient resolution of labor cases.**

From the perspective of the past increases in the number of Commissioners, it remains to be shown that adding Commissioners is an effective means of expediting or enhancing the administration of labor justice.[46] Notably, the last increase in composition of the NLRC was made to further "strengthen our labor dispute machinery and to prevent undue delays as well as to ensure the just and efficient resolution of labor cases." And yet, it still has to be shown whether said increase actually sped up and improved the resolution of labor cases. Indeed, at present, the problems of delay in labor cases continues to be felt and, significantly, it is precisely to address this problem that again, an additional nine (9) commissioners is being proposed.

[45] Alliance of Progressive Labor, "Solve the Problem, A Position Paper on House Bills 245, 869, 1420, 1612 and 1945," submitted to the Congressional Committee on Labor and Employment. (2005).

[46] Under P.D. No. 21 (1972), the interim NLRC had three (3) members with the Undersecretary of Labor or his duly authorized representative as Chairman and the Director of Labor Relations and the Director of Labor Standards or their duly authorized representative, as members. In 1974, P.D. 442 replaced the interim NLRC with a new NLRC composed of five (5) people: the Chairman representing the public, two members representing workers and two members representing employers. Before P.D. 442 came into effect, it was further amended by P.D. 570-A which increased the composition of the NLRC to seven (7) persons, sitting in two (2) divisions: A chairman, two members representing the public, two members representing workers and two members representing employers. In 1978, P.D. 1391 increased the composition of the Commission to ten (10) and made the Secretary of Labor and Employment as Commission Chairman. On 25 July 1987, Executive Order No. 252 was issued to "strengthen further the labor dispute machinery and to prevent undue delays as well as to ensure the just and efficient resolution of labor cases." E.O. 252 increased the composition of the Commission to fifteen (15), which decides cases in five (5) divisions of three (3) Commissioners each.

III. The Proposals under HB 3970.

Unlike other Bills relating to labor dispute settlement,[47] House Bill No. 3970 avoids piecemeal amendments and instead provides a holistic and comprehensive solution to the problems of the current system.

Figure 2 illustrates the new system proposed by HB 3970. Of immediate significance is its single entry point for labor disputes, which effectively removes a major cause of confusion and complexity. The proposal places mediation and other ADR methods as the first level of dispute settlement. The systematic application of ADR techniques early in the process will dramatically reduce the number of disputes which will pass on to arbitration, the next level of dispute settlement. It is only if mediation fails that the dispute will be referred to arbitration. Arbitrators will be chosen by the parties from a list of arbitrators accredited by the DOLE. Unlike labor arbiters, arbitrators will not be engaged full time but will receive an arbitration fee only after issuing an award. Under the proposal, arbitral awards are final unless successfully assailed through a petition for certiorari to the Supreme Court.[48]

The introduction of these changes is designed to achieve the following:

1. Reduce the number of entry points for labor disputes.
2. Maximize the use of Alternative Dispute Resolution techniques.
3. Minimize sources of delay.
4. Reduce expense to the government and to disputants.

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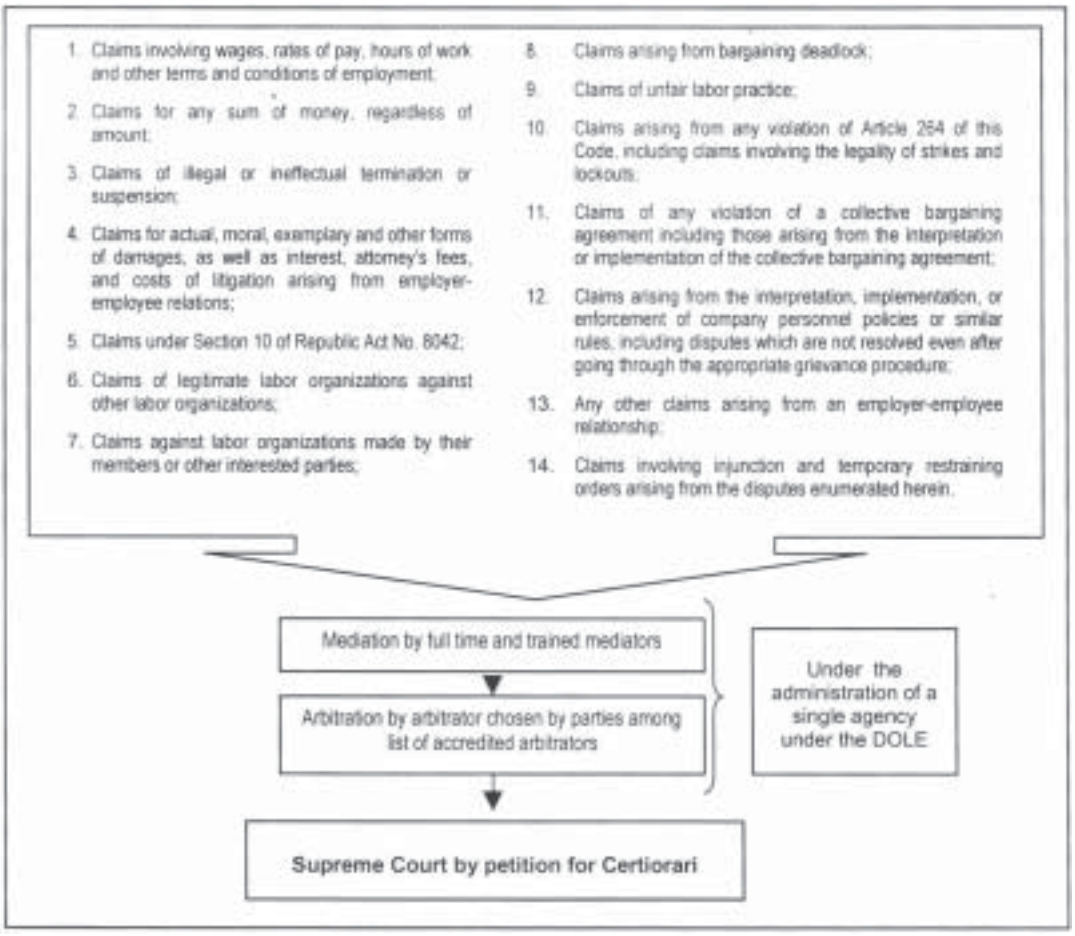
[47] *Supra* notes 37, 45 and 46.

[48] Article 11 of HB 3970 amends Article 220 of the Labor Code to read in part: The award or decision of the arbitrator shall contain the facts and the law on which it is based. It shall be final and executory after ten (10) calendar days from receipt of the copy of the award or decision by the parties and may only be brought before the Supreme Court through a special civil action for certiorari. The arbitrator shall entertain no motion for reconsideration or appeal.

Figure 2: The New Labor Dispute Settlement System Proposed By HB 3970.



The following sections briefly discuss each of these in turn.

A. Reducing the number of entry points.

Addressing the problem of having so many entry points, HB 3970 creates a single entry point for all labor disputes except those involving registration of labor organizations and those involving the determination of majority representation among employees, which shall continue to be filed with the appropriate Regional Office.[49] In particular, there will be a single entry point for the following disputes:

1. Claims involving wages, rates of pay, hours of work and other terms and conditions of employment;

[49] Applications for registration and representation issues are excepted and remain with the regional offices because they are administrative processes which are essentially fact finding and non-litigious in nature, in contrast to the labor disputes placed within the auspices of the new single entry system.

2. Claims for any sum of money, regardless of amount;
3. Claims of illegal or ineffectual termination or suspension;
4. Claims for actual, moral, exemplary and other forms of damages, as well as interest, attorney's fees, and costs of litigation arising from employer-employee relations;
5. Claims under Section 10 of Republic Act No. 8042;[50]
6. Claims of legitimate labor organizations against other labor organizations;
7. Claims against labor organizations made by their members or other interested parties;
8. Claims arising from bargaining deadlock;
9. Claims of unfair labor practice;
10. Claims arising from any violation of Article 264 of the Labor Code, including claims involving the legality of strikes and lockouts;
11. Claims of any violation of a collective bargaining agreement including those arising from the interpretation or implementation of the collective bargaining agreement;
12. Claims arising from the interpretation, implementation, or enforcement of company personnel policies or similar rules, including disputes which are not resolved even after going through the appropriate grievance procedure;
13. Any other claims arising from an employer-employee relationship;
14. Claims involving injunction and temporary restraining orders arising from the disputes enumerated herein.

The proposal allows a complainant to bring any of the claims above to a single agency thereby eliminating confusion arising from varied and overlapping jurisdictions. This also obviates any need to argue over the question of jurisdiction, allowing disputants to focus on settling the heart of their dispute.

[50] *Supra* note 12.

B. Maximizing the use of ADR and placing it at the first level.

In the proposed system, mediation and other techniques of ADR are at the forefront of the government machinery designed to resolve labor disputes.[51] Avoiding the *ad hoc* approach taken by many of today's labor agencies, the practice of ADR under the proposal mirrors the mediation practiced at the NCMB where ADR is conducted by full-time mediators who shall have no reserve authority to ultimately decide the dispute. Building upon NCMB practice, the proposal requires more mediators and requires more from each mediator; there will be about 175 or so full time mediators each having a minimum number of years of experience in industrial or labor matters and having a minimum number of relevant training in ADR prior to and during her appointment as mediator.[52] The proposal also addresses critical issues which are largely overlooked in the current set up such as confidentiality of information,[53] mediator conduct, and availability of ADR techniques in addition to mediation.[54]

The systematic application of ADR techniques under the new system allows disputants to realize the methods' full potential and benefits[55] and brings our country at par with the systems in other jurisdictions where mediation is the first level of government intercession.

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[51] Section 7 of HB 3970 allows the mediator resort to various methods of ADR including the following:

Open Door Policy: Employees are encouraged to meet with their immediate supervisor or manager to discuss problems arising out of the workplace environment. In this case, the mediator may request the presence of any person necessary to the resolution of the dispute.

Ombudsman: A neutral third party (either from within or outside the company) is designated to confidentially investigate and propose settlement of employment complaints brought by employees. In this case, the mediator may engage a neutral third party to investigate the claims and render a non-binding finding thereon.

Internal Mediation: A process for resolving disputes in which a neutral third person from within the company, helps the disputing parties negotiate a mutually acceptable settlement. For this purpose, the mediator may request employees and/or managers from within the same company to help mediate the dispute.

Peer Review: A panel of employees (or employees and managers) works together to resolve employment complaints. In this regard, mediators may request employees and/or managers from other companies to investigate the dispute and render non-binding findings thereon. Mediators shall endeavor to involve employees and managers who are from the same or similar industry. In all cases, mediators shall take all necessary steps to preserve the confidentiality of the dispute.

[52] Section 4, HB 3970.

[53] For a brief discussion on the importance of confidentiality and neutrality in mediation in general, *see* E. Deason, "Procedural Rules For Complementary Systems Of Litigation And Mediation—Worldwide," 80 Notre Dame L. Rev. 563 (2005).

[54] *Supra* note 53.

[55] Roger Fisher & William Ury, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN (1981). The authors argue that "interest-based" or "integrative" negotiation not only had the potential to maximize the joint gains to disputants from resolving their disagreements, but also held out more hope of preserving the relationship between the parties than would a hard- fought adversarial battle. Under the system proposed by HB 3970, it would be possible to employ such interest-based bargaining instead of positional bargaining.

For instance, in Malaysia, conciliation is the first level of government intervention and is principally undertaken by government servants, that is, officers of the Industrial Relations Department of the Ministry of Human Resource. Expected to learn on the job, these officers have no formal training in or even exposure to ADR, but are expected to learn on the job. Nevertheless, they are able to settle 92% to 65% of labor disputes.[56]

In Singapore, despite the fact that labor dispute resolution is achieved through mediation, conciliation or arbitration, disputes rarely move beyond the initial level of mediation and conciliation. Much credit is given to the conciliation services and mediation process provided by the Ministry of Manpower where "conciliation officers" monitor workplace relations through the development of close relations between management and unions.[57]

In Hong Kong, the initial level of government intervention is when the Commissioner for Labour inquires into the causes and circumstances of a labor dispute and appoints a conciliation officer to undertake conciliation, and/or a board of mediation consisting of two (2) or more persons to mediate the dispute. Complaints involving anti-discrimination ordinances are filed with the Equal Opportunities Commission (EOC), which has the role of encouraging persons concerned to settle by conciliation.[58]

By placing a systematic application of ADR at the forefront of the country's labor dispute settlement process, HB 3970 increases the disputants' level of satisfaction at the resolution of their dispute while, in general, reducing the number of disputes calling for the next level of government intervention – neutral third party arbitration.

That the proposed system can decrease the number of cases needing arbitration is seen from figures illustrating case disposition at the NLRC and the NCMB. Regarding NLRC cases, Table 8 shows that 13,866 of the 33,024 cases disposed for the period of January to December 2003 were amicably settled. This translates to a 42% settlement rate.

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[56] S. Ahmad, "The Malaysian Experience with ADR, With Particular Reference To The Resolution Of Labour Disputes," in IDE Asian Law Series No. 11 (March 2002).

[57] S. Frost and C. C. H. Chiu, "Labour Relations and Regulation in Singapore: Theory and Practice," Working Paper Series, No. 55, at pp. 42-45.

[58] C.C.H. Chiu, "Labour Relations and Regulation in Hong Kong: Theory and Practice," Working Paper Series, No. 37, at pp. 24 and 29.

Table 8: Disposition of cases at the NLRC for the period between January to December 2003.

	Total	Decided on the Merits	Orders (Dismissed / Withdrawn)	Amicably Settled	% share of cases settled
Total Regular / OFW cases	33,024	12,076	7,082	13,866	42.0%

Source: National Labor Relations Commission

Prescinding from the debate surrounding the fairness and quality of the agreements reached through settlement at the NLRC, a 42% settlement rate remains rather low. This, despite the fact that the figure is even overstated if one accounts only for all cases *pending as of 2003*, instead of all cases *disposed.*

In contrast, Table 3 *supra* shows that the NCMB settles an average of 74% of the total number of notices of strikes and lockouts filed with it.

In view of the extemporized manner by which mediation is generally conducted at the NLRC, it is hardly surprising that the trained mediators working full time at the NCMB are better able to help parties reach settlement. By employing ADR even more systematically, the system proposed by HB 3970 will likely will be able to settle cases as good as, if not better than, the current system.

Assuming that mediation under the proposed system performs as well as the NCMB and settles about 70% of the cases before it,[59] then only 15,000 cases a year will need arbitration. This is a great reduction from the 50,000 or so cases claimed by the NLRC to be pending before it. This number will further decrease if one disregards backlogged cases and accounts only for new cases filed within a year. For instance, if 30,000 new cases are filed under the new system in a year, 70% could be expected to be settled through mediation and only 9,000 will pass on over to arbitration.

Indeed, the benefits of placing systematic ADR at the gates of our dispute settlement system are readily evident. Apart from easing the strain on arbitrators who will have to decide fewer cases, the diminished number of cases referred to arbitration under the proposed system also implies, as will be discussed further below, less expense to disputants and the government.

[59] *Supra*, note 58. Considering that in Malaysia government officers untrained in ADR are able to settle about 65% to 92% of labor disputes, a 70% settlement rate under the new system is a conservative estimate.

C. Minimizing sources of delay.

Simply, the resolution of labor disputes is protracted by the sheer number of levels of decision-making as well as by the prolonged time spent at each level. To address this, the present proposal minimizes the levels of decision-making to two levels: first by arbitrators and second by the Supreme Court. Assuming that arbitrators continue to resolve cases within 167 days from the time that the case is submitted for arbitration, this change alone promises to reduce time spent at processes preceding resort to regular courts to less than one year. Even with the possible addition of about two years at the Supreme Court, what takes the present system five years to resolve will be resolved by the new system in less than three years.

In addition, under the new system, all arbitrators will receive the arbitration fee only after issuing an award. This encourages speedy disposition of cases inasmuch as delay in the resolution of the case necessarily delays the receipt of said fee. An important aspect of this innovation is that the disputants' ability to choose their arbitrator will allow them to avoid arbitrators who are known for such improprieties as delay.[60] Arbitrators who take too long to decide cases will eventually end up with few or no referrals.

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[60] It also allows them to avoid arbitrators known for poor quality decisions or even corruption. Under HB 3970, disputants can agree on a common arbitrator. Absent a common choice, the parties will be given a list and will take turns canceling out one name until only three or one name remains. The remaining name(s) will become the arbitrator.

Representation Issues mediation for preventive Lockout, other dispute of Strike or Notices Art 10 RA 8042 Article 217 LC Under the administration of a single agency under the DOLE Supreme Court by petition for Certiorari Arbitration by arbitrator chosen by parties among list of accredited arbitrators Mediation by full time and trained mediators

1. Claims involving wages, rates of pay, hours of work and other terms and conditions of employment;
2. Claims for any sum of money, regardless of amount;
3. Claims of illegal or ineffectual termination or suspension;
4. Claims for actual, moral, exemplary and other forms of damages, as well as interest, attorney's fees, and costs of litigation arising from employer-employee relations;
5. Claims under Section 10 of Republic Act No. 8042;
6. Claims of legitimate labor organizations against other labor organizations;
7. Claims against labor organizations made by their members or other interested parties;
8. Claims arising from bargaining deadlock;
9. Claims of unfair labor practice;
10. Claims arising from any violation of Article 264 of this Code, including claims involving the legality of strikes and lockouts;
11. Claims of any violation of a collective bargaining agreement including those arising from the interpretation or implementation of the collective bargaining agreement;
12. Claims arising from the interpretation, implementation, or enforcement of company personnel policies or similar rules, including disputes which are not resolved even after going through the appropriate grievance procedure;
13. Any other claims arising from an employer-employee relationship;
14. Claims involving injunction and temporary restraining orders arising from the disputes enumerated herein.

Inter – Intra Union Disputes Labor standards - Art 128 (b) LC Unresolved Grievances, Other disputes by parties' agreement Labor Arbiter (RAB) Voluntary Arbitrator Regional Office Med - Arbiter National Conciliation and Mediation Board Regional Director Office of the Secretary National Labor Relations Commission (Commission level) Court of Appeals Supreme Court 123456 Article 129 (LC) Injunction **1 - A 1 - B1 - C**

It is very important to note that apart from the time-saving measures built into its decision making processes, the new system places ADR at the system's lone point of entry, thereby maximizing the chances of an early resolution to the dispute. For an estimated 70% of disputants in the new system, their dispute will be resolved in less than a year and will not need to be referred to arbitration at all. In contrast, the unsystematic and marginal use of ADR in the present system invariably deprives disputants of a real opportunity to end the dispute early and amicably. They then end up litigating the issues between them for several years.

D. Reducing costs to government and to parties.

In contrast to other bills presently in Congress, which uniformly increase pressure on the country's coffers, HB 3970 improves the administration of labor justice without any additional expense. In fact, as the new system matures, it even has the potential of reducing costs. Consider the following features of the proposed system:

- The administration of the new agency in charge of the single entry point involves one Executive Director and about four Deputy Directors, a significant reduction from the 15 Commissioners presently heading the NLRC and 19 Directors presently heading the NCMB. Costs for personal services and related expenses will be reduced accordingly.
- The number of mediators who will be placed at the entry point of the proposed system will approximate the number of labor arbiters in the present set up. Applying the present compensation scheme where the position of labor arbiters receive about Php 25,000.00 a month and that of conciliator-mediator receives about Php 21,700.00, this immediately translates to reduction of expense of about half a million pesos every year. Considering that each mediator will not need the same number of support staff presently attending to each labor arbiter, it is very likely that costs will be reduced even more.
- Arbitrators will not be engaged full time but will be compensated for each arbitral award they issue. On the extreme assumption that all of the cases now pending before the NLRC are immediately transferred to the new system, an estimated 15,000 cases or so may resist mediation and be passed on over to arbitration. Even assuming that only the government will shoulder the costs of arbitration, this translates to about 225 Million pesos spent to resolve labor disputes by arbitration, a far cry from the

400 Million spent on the current NLRC-NCMB machinery. Cost will further be reduced if payment of arbitration fees is borne by the government or by the parties in whole or in part on the basis of such criteria as nature or size of enterprise, nature of dispute, or number of employees involved.

- Obviously, the immediate transfer of all pending cases at the NLRC to the new system entails immense expense not unlike the large amount involved during "start up" of any undertaking. As the system matures however, mediators and practitioners will gain more expertise and more disputes will be successfully settled. This translates to less cases needing arbitration and hence, less spent on arbitration costs. As significant, after the initial phase of transition, the new system would have disposed of the cases presently in the docket of the present system. Thus, the new system would only be dealing with new cases filed with it, a definitely lesser number than the number of cases passed on over during the preliminary phases.

As for the parties to a dispute, the increased chance to settle their case earlier in the process means less expense for litigation and legal assistance. Indeed, by replacing the grueling and protracted process presently in place, the new system affords employer and employee alike to stay focused on productive activities without being distracted too much by protracted legal processes.

IV. Conclusion

There is no doubt that our labor dispute settlement system lacks pragmatic responsiveness and calls for meaningful and immediate reform. What remains contentious is the manner and extent by which changes will be instituted. To date, HB 3970 remains the only measure, which extensively simplifies and expedites the resolution of labor disputes. Significantly, HB 3970 implies no additional cost, unlike other pending proposals on dispute resolution, and even promises to reduce cost as its proposed system matures. All this, HB 3970 achieves by introducing comprehensive changes and reorganizing the whole labor dispute settlement machinery.

It is not surprising that the proposed bill's far-reaching effect on the whole system also attracts dissent. By avoiding piecemeal solutions which would only complicate an

already complex system, HB 3970 is naturally perceived to jeopardize entrenched practices and interests. Through sheer inertia, the current system, with its needless confusion and delay, threatens to linger on despite fervent and sincere efforts at reform by stakeholders and policy makers.

The present article brings the discussion involving our labor dispute settlement system closer to lawyers whose actions (or inaction) invariably impact on the outcome of current efforts at reform. By provoking discussion, the article aims to show lawyers that to realize the benefits of a new system, especially one that affords fair and fast labor justice, the old system must necessarily make way for it. Interstitial measures will only worsen the situation. As the current system replaced the old system under the Court of Industrial Relations (CIR), so too should it now make room for a new and better system. Otherwise, Dean Calderon's quote from Justice Romero that "fairness, speed and economy remain the hallmarks of an effective delivery system of labor justice in any country," instead of providing illumination and guidance, may prove to be but a naive aspiration.

Defying Violence and Victimization

The Gender Justice Awards

Introduction[1]

Many women who suffer violence often do not file cases against their abusers mainly due to their lack of resources. They cannot afford to engage themselves in a lengthy litigation, and have no support system. The court process generally intimidates poor women, as the process is often expensive and they perceive the justice system as unreliable. In addition, the lack of competent lawyers who render free or affordable legal aid to victims of violence against women (VAW) remains a problem in the Philippines and probably in most countries in Southeast Asia.

Women see the courts as "unreliable" in understanding their plight as victims of violence and as an institution that can render justice. Many judges and prosecutors continue to perpetuate in their decisions the misconceptions and biases against women who are victims of violence. For example, many decisions of trial judges and even a recent Supreme Court case show evidence of victim blaming, thus requiring from the victim acts that will prove that she did not invite the rape, or that she resisted or tried to prevent the rape. Cases are lost because of the inability of judges and prosecutors to understand the situation of women and the unequal relations of power between men and women within relationships and in our society, the stereotyping of roles of women and men, and the judges' and prosecutors' continuing acceptance of misconceptions about rape and other forms of VAW.

This problem can be solved in part through the education of women on their human rights and the recruitment and training of competent lawyers who will give affordable legal aid. However, more significant results could be achieved through the education of judges, lawyers and prosecutors on VAW and how to be gender sensitive in the conduct of their duties. Laws protecting women and children such as the new Anti-Violence Against Women and Their Children Act of 2004 and the Anti-Trafficking in Persons Act of 2003 have been passed, but the interpretation of these laws rest largely

[1] Notes describing the Gender Justice Awards project were prepared by Atty. Rowena V. Guanzon, who conceptualized the project.

in the hands of men and women in the judiciary and in the prosecution service who carry their personal value systems, biases, beliefs and misconceptions when interpreting facts and in writing decisions. As Chief Justice Hilario G. Davide, Jr. recognizes, gender-responsiveness of the courts and the prosecution service are key to achieving gender justice as well as substantive gender equality.

Gender Justice Awards[2]

As part of the ongoing efforts to reform the judiciary, the U.P. Center for Women's Studies Foundation, Inc., U.P. Center for Women's Studies, and the National Commission on the Role of Filipino Women launched the Gender Justice Awards in 2004. The Gender Justice Awards hopes to raise the level of awareness of judges on the need for rendering gender sensitive decisions in VAW cases. The award aims to a) help raise the quality of court decisions on VAW cases, b) inform the judges of the State's obligations under the Convention on the Elimination of All Forms of Discrimination Against Women or CEDAW, c) inspire trial judges to be gender sensitive in the way they conduct trial and make decisions in VAW cases, and d) raise the level of expectation of the public in respect of our judges.

Last year, the review team[3] composed of lawyers from non-governmental organizations searched for trial judges from all over the Philippines who rendered good decisions in VAW cases (rape, marital rape, sexual harassment, battering in physical injuries, legal separation or nullity of marriage cases, including psychological and emotional abuse in legal separation and nullity of marriage). Judges were nominated by lawyers, representatives of government and non-governmental organizations, and citizens. The criteria for the selection were as follows:

1. The decision of the judges must show gender sensitivity and a keen understanding of the problem of violence against women, especially those

[2] The Co-Project Leaders are Dr. Carol Sobritchea and Atty. Rowena V. Guanzon. The other project committee members are: Ms. Sally Magat (Zonta Club of Metro Pasig), Atty. Myrna Feliciano (NCRFW), Ms. Evelyn Dumdum, Atty. Edith Santos (Legal Advocates for Women Network) and Ms. Emmeline Verzosa (Executive Director, National Commission on the Role of Filipino Woman). The United Nations Development Fund for Women (Unifem-Bangkok) sponsored the project together with the support of the Zonta Club of Metro Pasig.

[3] Attorneys Jing Gaddi and Joan Mosatalla (Saligan), Sally Escutin (DSWD), Loren Barias and Lady Rochelle Saymo (Child Justice League), Charmaine Calalang (Coalition Against Trafficking in Women-Asia Pacific), Milagros Cristobal Amar (Asian Center for Women's Human Rights, Inc.), Sheila Bazar (U.P. Office of Legal Aid), Flor Atillano (Commission on Human Rights), Editha Santos and Ana Luz Cristal (Legal Advocates for Women Network). The Provincial Coordinators were: the late Attorney Arbet Yongco of Law Inc. (Cebu), Myrna Pagsuberon (Bohol), Bing Solamo of Pilipina Legal Resource Center (Davao), Imelda Gidor and Pearl Montesino of Gender Watch Coalition (Bacolod).

that throw away misconceptions and traditional beliefs about rape and other forms of VAW.

2. The decision addresses the issue of discrimination against women as defined in the CEDAW.
3. The judge must not have shown insensitivity to women litigants in the conduct of trial in any of the cases in his or her court.
4. The decision must have been rendered in the period of January 1, 1997-December 31, 2003.

The Awardees

On August 18, 2004, the Gender Justice Awards ceremony was attended by Chief Justice Hilario G. Davide, Jr. as keynote speaker, Justice Adolf Azcuna, Justice Flerida Ruth P. Romero (Retired), Deborah Landey of the United Nations Development Programme, the representatives of Unicef and non-governmental organizations, officers of the Zonta Club, Commission on Human Rights Chairperson Purificacion V. Quisumbing, and U.P. President Francisco Nemenzo, Jr.

Chosen from among 57 nominated judges as the Most Outstanding Judge was Judge Ma. Nimfa Penaco Sitaca.

Judge Sitaca is the Presiding Judge of Branch 13 of the Regional Trial Court (RTC) of Oroquieta City, Misamis Occidental. Prior to that assignment, she was the Assisting Judge of RTC Branch 15, Ozamiz City and Acting Presiding Judge of RTC Branch 35, Ozamiz City. She has received several citations including the Best Written Decisions Award in 1991 and 1993 from the Philippine Women's Judges Association. A native of Boliangao, Misamis Occidental, Judge Sitaca finished her Bachelor of Laws at the Colegio de San Jose-Recoletos in Cebu City in 1972, and her Bachelor of Arts Major in English at the Immaculate Concepcion College, Ozamiz City in 1968. She has been teaching at the Misamis University College of Law since 1983.

The other awardees are:

LUZON

Judge Clifton U. Ganay of Branch 31, RTC in Agoo, La Union. Devoting 31 years to government service, Judge Clifton U. Ganay has received numerous awards in

recognition of his excellent performance. He was named Outstanding RTC Executive Judge of the Year and Excellent Dispenser of Justice in 2000 for his "meritorious performance of duty and outstanding achievement …" The Supreme Court and the Foundation for Judicial Excellence also chose Judge Ganay as the Regional Centennial Judge in 2001. He is now on his fourth year as Executive Judge at RTC Branch 31 of Agoo, La Union. Judge Ganay hails from San Fabian, Pangasinan.

Judge Eloida Patricia R. De Leon-Diaz of Branch 58, RTC, Lucena City. The Presiding Judge of Branch 58, RTC Lucena City since June 2002, Judge De Leon-Diaz obtained her Bachelor of Laws from the University of Santo Tomas in 1981 and her A.B. Major in Sociology from the same school in 1977. She was appointed to the judiciary in 1993 and has served in various Municipal Trial Courts in Quezon Province and in the Metropolitan Court of Makati City. Her alma mater, the Infanta National High School in Quezon, has recognized Judge De Leon-Diaz as Outstanding Alumna in the Government Service for 2003.

VISAYAS

Judge Edgar G. Garvilles of Branch 47, RTC, Bacolod City. Graduating at the top of his Bachelor of Laws class from the University of San Agustin in Iloilo, Judge Garvilles has served government for 33 years. He is currently Presiding Judge of RTC Branch 47 of Bacolod City. A native of Guimbal, Iloilo, he has received numerous citations including the 2001 Award for Judicial Excellence as Centennial RTC Judge for Region VI given by the Supreme Court and the Foundation for Judicial Excellence.

MINDANAO

Judge Jacob T. Malik of Branch 21, RTC, Kapatagan, Lanao del Norte. Judge Malik has been Presiding Judge of RTC Branch 21 in Kapatagan, Lanao del Norte since February 1987. He was Acting Presiding Judge of RTC Branch 7 in Tubod, Lanao del Norte from February 2001 to January 2002. He had a private practice before joining government. Judge Malik graduated with a Bachelor of Laws from the Lyceum of the Philippines in 1977 and with a Bachelor of Arts from Jamiatul Philippine Al-Islamia in Marawi City in 1970.

NCR

Judge Teodoro A. Bay of Branch 86, RTC, Quezon City. Born in San Teodoro, Oriental Mindoro, Judge Bay obtained his Bachelor of Laws from the University of San Carlos, Cebu City. He has been Presiding Judge of RTC Branch 86 in Quezon City since 1995. Branch 86 is a Family Court; before that, it was a Special Court for Drugs Cases and a Special Court for Heinous Crimes. Judge Bay has also served as Presiding Judge in San Fernando, Pampanga and in Makati City. He was appointed Assistant Prosecutor of Quezon City in 1980.

The Board of Judges[4] also awarded three judges for their novel decisions. These special awardees are:

(i) Judge Bensaudi Arabani, Sr. (Shari'a District Court, 1st Shari'a Judicial District, Jolo, Sulu), for his decisions protecting Muslim women and children.

(ii) Judge Anthony Santos (RTC Branch 19 Cagayan De Oro City) for the first conviction for commission of marital rape under Republic Act No. 8353 otherwise known as the Anti-Rape Act of 1997.

(iii) Judge Edgardo Delos Santos (RTC Branch 45 Bacolod City) for the first decision under Republic Act No. 6565, making it unlawful for anyone to match Filipino women (as mail-order brides) with foreigners.

Eleven finalists were also given recognition. These finalists are:

Judge Pampio A. Abarintos
RTC Cebu City Branch 22

Judge Abednego O. Adre
RTC Quezon City Branch 88

Judge Galicano C. Arriesgado
RTC Cebu City Branch 24

[4] Justice Ines Leonor Luciano (Retired), Atty. Lorna P. Kapunan of the Women's Business Council and Ms. Sheila Coronel of the Philippine Center for Investigative Journalism.

Judge Fatima G. Asdala
RTC Quezon City Branch 87

Judge Kaudri Jainul
Shari'a Circuit Court
Isabela City, Basilan

Judge Priscilla B. Padilla
RTC Manila Branch 38

Judge Rosalina Pison
RTC Quezon City Branch 107

Judge Olegario R. Sarmiento, Jr.
RTC Cebu City Branch 24

Judge Myrna Dimaranan Vidal
RTC Caloocan City Branch 127

Judge Nimfa Cuesta Vilches
RTC Manila Branch 48

Judge Marilyn Lagura Yap
RTC Cebu City Branch 28

The first of its kind in the Philippines, The Gender Justice Awards was cited by Dr. Patricia Licuanan, President of Miriam College and member of the Philippine Delegation as an example of best practice in the Intergovernmental Meeting to Review the Beijing Platform For Action in Bangkok on September 9, 2004. Dr. Licuanan emphasized the partnership of government and non-governmental organizations, women's rights and children's rights advocates, lawyers groups, media and business in making The Gender Justice Awards a success.

The awards would not have been successful without the support of the partner organizations, which include non-government organizations and lawyers groups. These are the Pilipina Legal Resource Center, Law Inc., Gender Watch Coalition (Bacolod), Womynet (Davao), Davao Lady Lawyers Association, Sentro ng Alternatibong Lingap

Panlegal, Asian Center for Women's Human Rights, Children's Justice League, Coalition Against Trafficking of Women-Asia Pacific, the Philippine Bar Association, Integrated Bar of the Philippines, and the Integrated Bar of the Philippines Journal. Other partner organizations are the Commission on Human Rights and the Zonta Club of Metro Pasig.

The Case Decisions

The following are excerpts from some of the decisions that led to the selection of Judge Sitaca.

People of the Philippines vs. Rufo Alasagas (rape case):

"An abundance of words is not required for the court to see what the private complainant went through. The medical certificate issued by the municipal health officer graphically corroborates what the child has been unable to put into words… Accused lamely says that the mother who resents him must have coached the child into fabricating the accusation against him. Would a mother deliberately expose her child to the difficulty of a court examination and have her private parts examined just to get even with her father-in-law for a resentment, imagined or real? Accused's contention is difficult to believe. It is likewise settled jurisprudence that no mother would publicly expose a young daughter's dishonor for the purpose of satisfying some evil motive against the accused."

People of the Philippines vs. Anastacio Lico Basadre (rape case):

"Weighed down by dark memories of a past she would have preferred to keep buried, complainant punctuated her testimony with sobbing hiccups and a flood of tears, perhaps because retelling her story meant reliving her horror and defilement. From the play of emotions on her face, the court felt her dread and terror at being left alone in the house in the company of the accused, while her grandmother unsuspectingly went about her daily business away from home. The court saw that when the house afforded accused no opportunity for access to her, accused took complainant away on supposed errands with him, meting out corporal punishment to enforce obedience... Virtually his sex slave from the tender age of seven until she had reached puberty, during which time accused nursed fantasies of fathering a child with her, complainant did not raise a hue and cry, fearing for her life and those of her grandmother's… Through the flood of tears

and sobbing hiccups that made speaking difficult, complainant spoke with the ring and timbre of truth. This court cannot disbelieve her.

"The Bible speaks of a job that cometh in the morning. For complainant, robbed so early in life of innocence and the simple pleasures of childhood, joy may come like a stranger. Morning may have dawned when she obtained her freedom from the clutches of accused but it will take a long time for complainant's bad dreams to stop haunting her and for her memories to heal, if ever. For the trauma inflicted upon complainant, accused is liable for moral damages and civil indemnity."

People of the Philippines vs. Blasco (rape case):

"Accused attempted to diminish the gravity of the offense by raising the defense that the sexual relationship between him and the child was consensual. The court does not find it meritorious. RA 7610 was passed precisely to protect children from abuse, like the very kind of abuse inflicted by accused upon complainant."

"Accused further attempted to show that complainant was not naïve, but how can a 13 year-old whose concern was being able to buy food be a woman of the world?"

"Although the minor did not state it, the court understands the shame and self-loathing that she feels over the experience with her "yoyo" that will haunt and continue to haunt her, perhaps for the rest of her life. Which is why she preferred to refer to the incidents as rape, a term kinder to her as it connotes no participation from her. For inflicting such cruel memories on her, accused is liable for moral damages." (Citing the trauma of mental, physical and psychological suffering which constitute the bases for moral damages in People vs. Ricky Hamela, G.R. No. 124973, January 18, 1999)

Advocacy strategy

As an advocacy strategy for judicial reform, the Gender Justice Awards does not only recognize gender-responsive judges. It also plans to hold a national conference of women's rights lawyers and advocates, and will launch a book in November 2005 entitled, Engendering the Philippine Judiciary, which is supported by the United Nations Development Fund for Women-Bangkok. A research team will include some model decisions by trial judges who were recognized by the Gender Justice Awards, as well as some decisions by the Supreme Court. To highlight the need for reform, the book

includes experiences of female lawyers and litigants in court, and a critique of some Supreme Court decisions on VAW. Foremost of these decisions that needs to be reviewed and critiqued is the 2004 decision in the rape case of *People vs. Relox* [G.R. No. 149395. April 28, 2004]. This decision has serious consequences in respect of the struggle to end violence against women, especially since it comes at a time when the Supreme Court is trying to educate judges on gender-sensitivity.

In *People vs. Relox*, the private complainant was a 33 year-old mother of two who was raped by her own father in her father's house. Her father, who was 60 years old at the time of the rape, had kicked out his wife earlier that evening. She was raped in the same room where her children were sleeping. In cases of incest rape involving children, the moral ascendancy of the father or grandfather is consistently used by the courts as enough evidence of force and intimidation. Such consistency, however, is lacking in rape cases of adult women. In *Relox*, The Supreme Court acquitted the accused. It held that the complainant was a grown woman with children, who was no longer under the parental authority of her father and thus the standard of moral ascendancy of the father no longer applies to her. The Supreme Court stated that the complainant could have shouted for help, fled when she had a chance, fought off her attacker or awakened her brother by crying for help. The Supreme Court also stated the accused was already or must have been weak and sickly at 60 years old, and it would have been easy for the woman, his daughter, to fight him off.

What is also disturbing about the decision in *Relox* is the statement of the Supreme Court that, "While it may be said that tenacious resistance from the victim is not a requirement for the crime of rape, the lack of evidence signifying an obstinate resistance to submit to the intercourse, naturally expected from an unwilling victim, could likewise indicate that no rape has occurred." (citing *People vs*. *Eliarda*, G.R. Nos. 148394-96, April 30, 2003). Although the private complainant testified that she did resist her father by saying no to him and by pleading with him to stop, this was not considered as sufficient resistance by the Supreme Court. The requirement of "obstinate resistance," however, is not an element of the crime of rape.

If judges and justices are looking for a model decision on VAW, they can review a 1988 decision where the phrase and concept of "violence against women" was eloquently used for the first time by the Supreme Court. This is the case of *People vs. Ricardo Munoz* (G.R. No. L-61152, July 29, 1988). With Justice Abraham Sarmiento as *ponente*, the Supreme Court called rape a "gender violation" and affirmed the trial court's

conviction of a man who raped a laundrywoman. Showing a high level of understanding of the victim's plight and the situation of women who are victims of violence, the Supreme Court held that:

> **"Societies generally are not kind to violated women, exposing them to ridicule and shame when they report their having been violated. Rape victims bear the responsibility of proving that they had been raped, that they had not invited seduction, or had not been unchaste.** The process of bearing the burden of proof can cause deep, and in some cases, irreparable emotional damage on the victims and the people around their lives. On the other hand, the harsh hand of social injustice does not seem to apply to the rapists.
>
> **Violence committed against women need not come in the form of physical brutality alone.** In societies where the men are still considered superior to the women, **gender violation presents itself through the emotional and sexual exploitation of women who are vulnerable and weak.** There must come a time when men should consider women with great respect and not trifle with their inferior strengths. In the same vein, there must come a time when societies should be made up of men and women who are equal in every level of existence, and who do not exploit the poor and powerless. Two women, Angela Phillips and Jill Rakusen, in the book Our Bodies, Our Selves, talk about the kinds of rape apart from that committed under great threat. They write: "Although most of us think of rape as a clear-cut, unjustifiable sexual act forced on a woman against her will, many people, especially men (but not only men) have misconceptions about what rape is and what it isn't. In their minds rape is rape when it happens in an alley, when it is committed by a stranger, or when there are bruises and signs of physical violence; but for them rape is not really rape when it happens in a bed, when it's committed by a friend or acquaintance . . . or when a woman appears not to be physically harmed. Many of us women know that these later rapes are just as much 'real rape' as the former. More men need to understand this too." Emphasis ours.

While the Supreme Court in *People vs. Ricardo Munoz* did not cite rape as a violation of a woman's human rights, it created a positive development in jurisprudence by no longer classifying rape as an act of lust as it has done in earlier cases, but as one that is "the ultimate expression of contempt for women." Furthermore, by citing contemporary literature on rape, the Supreme Court in effect tells officers of the judiciary to keep in step with current scholarship on rape and gender relations. This decision came nine years before the Anti-Rape Act of 1997 which now treats rape as a crime against persons and no longer as a crime against chastity. Unfortunately, the Supreme Court's decision in the 1999 case of *People vs. Larry Mahinay* (Per Curiam, G.R. No. 122485, 1 February 1999) retrogressed to the old and erroneous belief that rape is a crime of passion, that the rapist is propelled by lust and not by power or the desire to overpower his victim. In that case, the Supreme Court stated that "…Rape is an ignominious crime which necessity is neither an excuse nor does there exist any other rational justification other than lust. But those who lust ought not to last."

It is decisions such as *People vs. Ricardo Munoz* that hopefully can sweep the minds of judges of misconceptions about violence against women. Decisions of trial courts that were submitted to the Gender Justice Awards also show that while many judges use Supreme Court decisions to support their decisions, some of them often do not use these, and instead rely on their knowledge of the law and weight and quality of the evidence presented to them. Without clear and consistent standards and a high awareness of gender and the nature of violence against women, the judges will continue to use their personal value systems, biases and misconceptions in deciding cases. Supreme Court decisions are used by trial judges either way to convict or acquit the accused because these decisions go back and forth, stating policy statements on VAW on one hand and then reviving century old misconceptions about rape and other forms of VAW on the other. The Gender Justice Awards hopes to tell judges that they can set a culture of gender awareness and responsiveness in the judiciary.

The Gender Justice Awards also comes at a time when a Chief Justice is committed to mainstreaming gender in the Judiciary. Chief Justice Hilario G. Davide, Jr., in his keynote address during the awarding ceremony, said that:

> "Clearly, prejudicial treatment of women is wholly inconsistent with the principle of equality enshrined in our Constitution – a principle the courts must at all times protect, strengthen and promote. I have said this before, and I will say it again if only to underscore its

significance: unequal treatment of persons by reason of gender alone has no place in the courts. Bias against women is injurious to justice, for it in itself is injustice of a very disastrous and disgraceful kind, the result of which affects humanity itself.

Judges, therefore, have the duty to avoid the victimization, and in some instances the perceived double victimization, of women in the court. They must perform their functions without bias or prejudice, and require others under their direction to do the same. Judges must ensure that courtroom proceedings are conducted in a fair and impartial manner that upholds, rather than suppresses or impairs, the rights of women whether as victims, litigants, witnesses, or counsel. Judges must encourage the use of gender-fair language for, as a powerful tool of communication, words can either uplift or damage the status of either sex, thus fostering gender equality or inequality, as the case may be. In the end, judges must render their decisions free of bias and discrimination and they must be perceived to be able to do so; their decisions must reflect the absence of bias and discrimination and must be seen and perceived as undefiled by bias and discrimination.

I am proud to say that each of our Gender Justice Awardees has demonstrated a keen perceptiveness and responsiveness to the differences in gender, gender roles, responsibilities, challenges, and opportunities, and their implications on the delivery of fair, impartial, equal and swift justice to all. They have fearlessly and courageously displayed gender sensitivity and responsiveness in their actions as judges, particularly in rendering their decisions. A judge who does so is one who is firm in the conviction that true and authentic equality in society can never be achieved unless gender sensitivity and responsiveness is honored and lived as a core value. In short one who is not gender sensitive or responsive cannot be reasonably expected to hold or to have no bias or prejudice against another by reason of any other consideration. Bias or prejudice is a state of the mind. One who has it can never claim freedom from it in respect to another condition. Our awardees then deserve not only the award and recognition we give them today, but also our enduring admiration and gratitude for the hope they spark on the countless women out there who continue to be victims of violence."

In step with the call of the times, the Supreme Court created its Committee on Gender Responsiveness of the Judiciary and is undergoing continuing gender sensitivity trainings for judges. While the Supreme Court has its own programs for recognizing the excellence of judges, the Gender Justice Awards focuses on gender awareness and sensitivity of judges. It is a recognition that is prestigious not only because it is supported by government and international organizations, but especially because the awardees have passed the standards of many women's rights advocates and lawyers whose praise of judges come rarely.

The Davide Watch:

Re-inventing the Philippine Judiciary

Ismael G. Khan, Jr. [*]

At precisely the stroke of midnight of December 19, 2005, the tenure of Hilario G. Davide, Jr. as Chief Justice of the Philippines will come to an end. He will be 70 years old, which is the mandatory retirement age for a member of the judiciary. More significantly, it marks the capstone of a remarkable career spanning almost four decades of outstanding public service in all three branches of government.

Appointed on the very same day, November 30, 1998, that his immediate predecessor Andres R. Narvasa had turned seventy — a birthday Narvasa shared with his namesake Andres Bonifacio — the new Chief Justice immediately set out to re-energize the rule of law and ensure the even-handed administration of justice that would have done the Great Plebian proud. In fact, by becoming Chief Justice when he did, even if he accomplishes nothing else until his own mandatory retirement a scant few months away, our own generation's Great Plebian is already assured of a unique and singular distinction that will stand for a thousand years. The sliding of his tenure into the 21st century makes him both the centennial and millennial Chief Justice of the 104-year old Supreme Court, a providential happenstance of history that is replete with improbable twists of fate that would have seemed incongruous had the man in the center of it all were not Davide himself.

But Davide being Davide, he usually makes things happen, which people have come to expect, as we shall realize shortly. But first he had to articulate his vision of "a judiciary that is independent, effective and efficient, and worthy of public trust and confidence; and a legal profession that provides quality, ethical, accessible and cost-effective legal service to our people and is willing and able to answer the call to public service."[1] Thus, a few weeks after taking over the helm of the Supreme Court, he steered it away from the humdrum and the usual, epitomized by the magistrates' black robes, by issuing the now famous *The Davide Watch* — at once the courts' bible and roadmap —

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[*]Assistant Court Administrator and Chief Public Information Officer.

[1] The Davide Watch: Leading the Philippine Judiciary and the Legal Profession Towards the Third Millennium (December 1998).

to reach the following goals: (a) delivery of speedy and fair dispensation of justice to all; (b) judicial autonomy and independence from political interference; (c) improved access to judicial and legal services; (d) improved quality of external inputs to the judicial process; (e) efficient, effective, and continuously improving judicial institutions; and (f) a judiciary that conducts its business with dignity, integrity, accountability, and transparency.

Considering the myriad problems and challenges confronting the judicial department, the country's top magistrate gave himself a tall order indeed. It is possible that he could be painting himself into a corner by boldly drawing in black and white a yardstick by which his legacy and performance as Chief Justice can be readily judged and measured. By the same token, it is also an indication of his firm resolve and commitment as well as abiding faith in the nation's judges and court personnel that they will help turn the wheels of justice faster and more powerfully toward the same direction.

Truly, the reform challenges facing the Supreme Court are daunting, even scary, given that the deep-seated problems besetting our justice system have long been festering and appear to defy solution.

Action Program for Judicial Reform

In what is perhaps the most ambitious judicial reform project ever undertaken anywhere, Chief Justice Davide has initiated a wide-ranging and far-reaching program that upon its completion two years from now would have involved every judge, court employee, lawyer, and all other stakeholders in figuratively overhauling and upgrading the machinery that runs our judicial system.

Briefly, the Action Program for Judicial Reform (APJR) is designed to bring about quantum improvement in six basic areas, namely: (a) judicial systems and procedures; (b) access to justice by the poor; (c) human resource development; (d) institutions development; (e) integrity infrastructure development; and (f) reform support systems. The APJR is receiving support and assistance from the World Bank and many other international organizations, among them the US Agency for International Development (USAID), Canadian International Development Agency (CIDA), Asian Development Bank (ADB), United Nations Development Programme (UNDP), United Nations Environment Programme (UNEP), Australian Agency for International

Development (AusAID), Japan International Cooperation Agency (JICA), and The Asia Foundation. The multitude of projects and activities under the APJR is being coordinated by the Program Management Office. But ever mindful of the independence of the Supreme Court and the judiciary — which concern is fortuitously shared by the donor community — requisite measures have been put into place to ensure that our judicial independence is not compromised in any manner, shape, or form.

In fact, a great many of the major initiatives and innovations inspired by *The Davide Watch* to address such priority areas as clogged dockets, corruption in courts, and access to justice by the marginalized sectors of our society are now being implemented, their salutary benefits already felt by a grateful citizenry. Among the more visible ones are the mobile court of the "Justice on Wheels" project,[2] automation of the courts, the E-library and the availability of Supreme Court decisions online,[3] the establishment of the Public Information Office,[4] the re-engineering of the Philippine Judicial Academy, the promulgation of the codes of conduct for judges and court personnel,[5] strengthening the disciplinary process of misbehaving judges and lawyers, as well as providing recognition and rewards for judicial excellence, the expansion and regionalization of the Court of Appeals[6] and elevation of the Court of Tax Appeals,[7] reforming the bar examinations,[8] the extensive revisions of the Rules of Court to reflect new realities and even newer technology, the enforcement of the Mandatory Continuing Legal Program (MCLE) to update lawyers on legal and jurisprudential developments,[9] and the construction of the first ever Hall of Justice for the city of Manila since its founding in 1571.

It is nothing short of amazing how the Chief Justice and the Supreme Court have been able to mount, much less sustain a program of this scope and magnitude, which amounts to practically re-inventing the Judiciary given that it is being carried out with scant financial, technical, and personnel resources, not to mention that it is being pursued in an unfriendly socio-political environment.

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[2] En Banc Resolution in Am No. 04-6-02-SC, June 8 and July 13, 2004.

[3] Memorandum Order No. 14-2004 dated February 27, 2004 and amended on August 3, 2004.

[4] En Banc Resolution No. 98-12-08-SC which took effect on January 1, 1999.

[5] Adopted in AM Nos. 03-35-01-SC and 03-06-13-SC, both of which took effect on June 1, 2004.

[6] RA No. 8246 (1996) but the formal organization took place on May 5, 2003 per AM No. 03-05-03-SC.

[7] RA No. 9282 (2004).

[8] Bar Matter No. 1161, June 8, 2004.

Juridical Thought or Juristic Heresy?

It is considered the height of legal scholarship to be able to divine the juridical philosophy of the leading and influential members of the Court. Academics and legal researchers would plumb a particular magistrate's decisions, speeches, articles, or lectures in the hope of isolating key elements of thought that would provide a clue to his biases, leanings, and predispositions. It is a system of letting a man define himself through his writings and thus become predictable. While there are those who will deride this "method of discovery" as pure sophistry, there are others who will swear by it as if abstract reasoning could be reduced to a science.

In any event, by using these scholars' methodology and techniques, is it really possible to burrow into the mind of Chief Justice Davide to extract and, hopefully, distill and "bottle" his juristic thought? The Chief Justice himself will be the first one to deny the possibility that such an enterprise can bear fruit. In fact, it might be risky — even foolhardy — to presume that justices of the Supreme Court can be categorized as to which school of juridical philosophy they belong. As retired Justice Camilo D. Quiason opined, no judge "nurses a conscious effort in promoting any theory of law. At times, the facts and the law involved in a case do not leave room for the appreciation of any legal theory."[10] No mean scholar himself, Justice Quiason certainly knows whereof he speaks. He has gone back to private law practice after his mandatory retirement from the Supreme Court on July 18, 1995.

Justice Artemio V. Panganiban, in his book *Leadership by Example*, attempted to divine "The Juridical Thought of Chief Justice Davide." Even as he deeply analyzed some of the major *ponencias* of the Chief, he could go no further than to dissect the Chief's style and approach in writing his decisions.[11]

If Ateneo's Fr. Joaquin Bernas or UP Law Dean Raul Pangalangan were attempting to do so in their recent lectures extolling contributions of Chief Justice

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[9] Bar Matter No. 850, October 2, 2001.

[10] C. Quiason, *The Juristic Thought of Chief Justice Andres R. Narvasa: Odyssey and Legacy* 301 (1998).

[11] A. Panganiban, *Leadership by Example* 59-72 (1989)

Davide to the development and growth of constitutionalism, they too did not fare too well.[12]

In fact, Chief Justice Davide himself would be the last person to admit that he has a juridical philosophy. As he has pointed out, jurists "have neither the need nor reason to side with favor, much less advocate, at least publicly, one school of thought at the expense of the other. This is the price of the judicial office and functions, ideally divorced from policy formulation to maintain impartiality at all costs."

All throughout his life and career, the Chief Justice has consistently adhered to a course of conduct that constantly reinforces the people's belief in him as a man of high principle. He has established an international reputation for integrity, impartiality, intelligence, and caring that has withstood the most blatant assaults mounted by powerful political forces of the left and right, as well as by self-seeking vested interests. It surprised no one that he won the 2002 *Ramon Magsaysay Award for Government Service* — Asia's equivalent of a Nobel prize — for his "life of principled citizenship in profound service to democracy and the rule of law in the Philippines."

His Early Life and Career

In order to fully grasp the measure of the man, it will be helpful to go back in time and re-trace his rural roots and marvel at how far and how fast they have grown and spread.

He first glimpsed the light of day in the remote upland barangay of Colawin in Argao, Cebu. Even as a toddler, he evinced a hunger for learning that he undoubtedly inherited from his father — now 100 years old — who was the division superintendent of schools, and his mother, Josefa L. Gelbolingo, a public school teacher. Driven and dedicated, they had endowed all their children with the values and virtues associated with love of God, country, and fellowmen.

A product of the public school system, he had experienced poverty first-hand from a hard-scrabble existence that helped in shaping and building his sterling character.

[12] Fr. Bernas spoke on "The Contribution of Chief Justice Hilario G. Davide, Jr. on the Writing of the Constitution," while Dean Pangalangan lectured on "Hilario G. Davide, Jr.: A Study in Judicial Philosophy, Transformative Politics, and Judicial Activism" in the sixth and third lectures of the *Chief Justice Hilario G. Davide, Jr. Distinguished Lecture Series*, respectively.

He was admitted to the University of the Philippines as an entrance scholar, graduating with two degrees from its college of law after six years of arduous study and active involvement in numerous extra-curricular activities. He was a member of the *Order of the Purple Feather*, UP Law's renowned honor society, and a member of the student Editorial Board of the *Philippine Law Journal*. In his senior year at UP Law, he was elected a member of two international honor societies — *Phi Kappa Phi* and *Pi Gamma Mu*. And for bringing numerous honors to his *alma mater*, he has been named UP's most distinguished alumnus during its general reunion and homecoming on June 25 this year.

Shortly after passing the Bar, he was thrust into public service as private secretary in both the vice governor's and governor's offices in Cebu. At about the same time, he was also a member of the law faculty of the Southwestern University in Cebu City, an honor it repaid by conferring upon him a Doctor of Laws degree, *honoris causa* in 1999. This would be the first of 13 honorary doctoral degrees, including one from the Soka University of Japan, which would be conferred on him through the years by leading universities here and abroad.

The Chief Justice likewise served as an elected delegate, representing the 4th district of Cebu in the 1971 Constitutional Convention, and was appointed by President Corazon Aquino to the Constitutional Commission of 1986. He was among the three delegates who introduced the most number of reform proposals to the 1973 Constitution as Chairman of the Committee on Duties and Obligations of Citizens and Ethics of Public Officials, a role that he would carry over to the Supreme Court. At the Constitutional Commission that produced the 1987 charter, he served as Chairman of the Committee on Legislative Power and as a member of the Committee on Executive Power and Public Hearings. He was the principal author and sponsor of Article VI on the Legislative Department, as well as the sponsor of the Ordinance appended to the 1987 Constitution, which dealt with the sensitive issue of apportioning seats in the House of Representatives. He submitted the greatest number of resolutions, most of which were incorporated in various committee reports. His views and insights as gleaned from these reports have been a big help to the Supreme Court in disposing of cases involving constitutional issues when their resolution depended on the interpretation of the 1987 Constitution.

In 1978, he was elected assemblyman for Cebu in the Interim Batasang Pambansa where he served as its first minority floor leader. As its leading oppositionist, he filed

resolution after resolution for the lifting of martial law. Consistently voted by media as "one of the ten outstanding assemblymen" in that unicameral body, he was at the vanguard of the campaign for the legislative investigation of rampant cases of graft and corruption and violations of human rights.

Before President Corazon Aquino named him to the Supreme Court in 1991, she first appointed him to another independent constitutional body — as Chairman of the Commission on Elections, in early 1988. He was the principal architect of the COMELEC's rules of procedure which, as far as I can discern, are still extant to this day.

But even as he performed his duties as COMELEC Chairman, the President designated him to head the Presidential Fact Finding Commission to probe the causes of military unrest which destabilized the government after a series of coup attempts. He had to give up his COMELEC position when the Fact Finding Commission was institutionalized in 1990 under RA 6832. There is virtually unanimous agreement by virtually all sectors of civil society that had the administration of either President Aquino or President Fidel Ramos carried out the far-ranging recommendations of the *Davide Commission*, clearly outlined in its widely published Report, the Oakwood incident never would have happened. And civilian supremacy would have been firmly embedded in our political system as a *sine qua non* of a true and vibrant democracy forever unafraid of misdirected adventurism by the military.

For the solid reputation that he has established throughout the years, founded on a bedrock of achievement and high-mindedness, and buttressed by a demonstrated ability for intellectual and moral leadership, President Aquino appointed Davide as Associate Justice of the Supreme Court on January 24, 1991 to near universal acclaim. The rest as they say, is history.

Supreme Irony

In what promises to go down in contemporary history as the grandmother of all ironies, Chief Justice Davide did not get to vote at all in what arguably are the three most important cases ever to reach the Supreme Court during his watch — even as he was upfront and center during the tumultuous events which gave rise to those cases. While he had attained instant celebrity status throughout the nation with his consummate handling

of the first ever impeachment trial of a sitting president, not too many people knew that the rules of the Impeachment Tribunal over which he presided would deny him the right to vote even if the trial were not aborted, thus angering untold millions of our people for whom time had stopped for 23 days as they remained glued to their TV sets. In the case of *Estrada vs. Desierto,*[13] he had to inhibit himself from taking part as it was he who swore in Gloria Macapagal-Arroyo as President of the Republic in the chaotic aftermath of EDSA DOS, proving once again that the voice of the people is the voice of God. And finally, he had to be the total outsider when he himself was sought to be impeached by a House of Representatives run amuck and which monumentally failed to appreciate the power of judicial review — a sublime and sacred constitutional duty that the Supreme Court is not known to shirk, much less abandon, especially under circumstances in which its very independence was being tried and tested.

What will become of Chief Justice Davide when he sheds his black robes come December 20 this year? It will be a grievous mistake to think that he will just quietly fade away and tend to his little farm in a remote corner of Cebu. There is life after the Supreme Court after all. The Chief Justice is in very good health, his mind is just as rapier-sharp as the time when he jousted with lesser mortals in the Batasang Pambansa. Querube Makalintal went on to become Speaker of the House. Marcelo Fernan was Senate President almost up till the day when the Good Lord issued him a summons he could not ignore. Cesar Bengzon looked even smarter garbed in the colorful robe of a member of the International Court of Justice at the Hague. As an incurable workaholic, Chief Justice Davide cannot be expected to sit still. That is not his nature. The lush political landscape is vast and inviting, and the 2007 elections are already visible on the horizon. Should a constitutional convention be called before then, there will be an unstoppable public clamor for him to run and preside over the crafting of a new and improved Charter. After all, he was a much admired and respected framer of both the 1973 and 1987 Constitutions.

It is his destiny to be unstinting and forever willing to be at the service of the nation and our people. The mandatory retirement age of 70 years is in reality merely directory for people made of sterner stuff such as the Chief Justice when duty calls yet once again. And therein lies the supreme irony of all.

[13] GR Nos. 146710-158146738, March 2, 2001, 353 SCRA 452.

Lawyers as Catalysts of National Unity and Progress

*Hilario G. Davide, Jr.**

There are basically two ways by which all persons are remembered – one, by the works they leave behind; and the other, by how they touched the lives of those around them. The first way invokes our minds and intellect – the books and treatises we write, the laws and legal structures we author, the companies and business ventures we help build, and so on. The second way involves our hearts and the manner we live our lives – how we bring up our children and provide role models to other families, our neighborhood and the larger community; our personal response to the many voices and issues we hear every day; our special concerns for some sectors of society, especially the poor and the underprivileged; the choices that we make each moment; and the decisions we make in times of crises.

Either through the first or the second, or even through both, lawyers are strong catalysts. This is so because of the special and unique training they have. Listen to the American lawyer whose name you often hear during presidential elections in the U.S., Ralph Nader, as he spoke before Harvard Law School students in 1972: "We don't have to be egocentric about the law to believe that it is the primordial profession in the country. There is no other profession where it is acceptable to be a generalist, to deal with a wide range of facts, institutions, and roles, and where it is acceptable to go into other occupations. There is no other profession that deals so intimately with the accumulation, distribution, and defense of power, that draws in the other professions in the formation of public policy, conflict resolution, planning etcetera. This is a very important profession, not to be demeaned by styles, rigorous trivia, semantic diversions, lack of courage, or lack of sacrifice."

The question is always this: have lawyers been agents of change for good, or for bad? For progress or stagnation and decay? You must have heard this little story, or a similar one, that shows somehow how lawyers are generally regarded.

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*The Chief Justice of the Supreme Court. This is the main body of the speech he delivered during the opening ceremony of the IBP Greater Manila Regional Convention on October 22, 2004 at the Manila Hotel.

The story goes that one day, a biologist, an engineer and a lawyer were arguing over whose was the first profession. The biologist said that his was because Life started with primieval soup and Life is the subject of biology. The engineer disagreed, pointing out that before Life arose there was Chaos and building Order out of Chaos is an engineer's job. The lawyer, nonplussed, retorted: "Yes, but who made Chaos in the first place?"

Perhaps it is an exaggeration to attribute the lack of order in our society to lawyers. It would, however, be a good point of reflection that many of those who had led and are leading the country are lawyers. We find them in the executive and legislative branches of the government; in the constitutional commission; and all judicial positions in the judiciary are reserved for lawyers. Even the private sector is not spared from the pervasive presence of lawyers. Business contracts and strategies are drafted and reviewed by lawyers; licenses and franchises are obtained by them or under their instruction; negotiations and agreements are hammered out by them. Even much-publicized family disputes that sometimes appear in the papers are reputedly orchestrated by lawyers. Lawyers are a litigious lot. With a group of litigation-oriented professionals running many aspects of our life, can we expect a non-litigious society?

Many have observed that some lawyers do make their bread and butter from disunity and chaos; the more disorderly the situation, or the more high profile the dispute has become, the better for them. The more complicated the problem the longer the litigation will also be, and that spells a thriving business for the lawyers involved. It is suspected that when lawyers are not in there for the money, they are in there for something else, publicity perhaps, prestige, employment opportunity, or whatever. Whatever it is, these observers say that some lawyers have the tendency to foment and encourage litigation.

It seems that from day one in law school, litigation is the focus of the aspiring lawyer. Litigation is based on the philosophy that disputes involve rights and remedies, which are fought through the adversarial system of justice. With this adversarial orientation of both the legal education and the legal system, lawyers are naturally molded to be combative, to always aim at winning over the other party, and to automatically think of filing a case as the first resort.

Even the entertainment media have glamorized litigation by depicting court drama as exciting verbal "combat" scenes.

But the law profession, despite the decreasing average financial return and somehow maligned reputation, carries a certain mystique that attracts the thousands. That, I believe, comes from the sense of power of being able to exercise a privilege that was once the prerogative of kings and sovereigns – the ordering of society – which under our rule of law, is largely the work of lawyers.

While it is true that we do not see a market-driven demand for lawyers, we do hear a clamor for a new breed of lawyers, professionals with a totally different orientation and mold; lawyers who are driven by visions that transcend their personal ambitions and short-term interests; professionals who have the courage to say the word 'no" to pressures that can skew the balance of Justice; lawyers who can effect a positive change in our society. That, I think, is also what you mean by the theme of your convention.

As of September 30 this year, we have 49,709 lawyers in the Roll of Attorneys. Counting out those who had died and those who had been disbarred and those who have migrated to other countries, the remaining number of lawyers, practicing or not, is still a formidable force that wields a real influence for good or evil considering the strategic places in society where they locate.

We realize the urgency of many things, foremost of which are first, the need to reorient the mindset of lawyers if we have to change the chaotic and litigious orientation of the Philippine society. This orientation could be a factor to the slow transformation and growth of our country. Second, we must make sure that only those mentally and morally fit are given the privilege to practice law and thus exercise this unique leadership. The legal profession should not be the sanctuary of those who have high ambition but with weak intellectual muscle and dubious moral fiber. Third, we must ensure that those who enjoy this privilege remain fit.

Changing philosophies or outlooks cannot be done overnight as we all know. However, we can make a small dent today which can deepen into a gap tomorrow, which in turn will become the cut that can separate the new order from the old some years from now. One of those dents that I'm referring to is the shift from litigation to mediation through the court-annexed mediation program, which the Supreme Court

approved in March. A different attitude is called for – that which views the dispute as a problem-solving opportunity in which lawyers encourage the parties to resolve their differences in ways that are productive for their future lives and less taxing to the society.

Under this set-up, lawyers will no longer take the role of knights in shining armors ready to joust. In mediation, the counsel must drop his combative role in adjudication. He must be a peacemaker and thereby achieving a WIN-WIN situation. This is the new mindset that lawyers must be willing to adopt. While he assumes a dominant role in court trials, he must now assume an attenuated role, in fact, a less directive persona, to allow the parties more opportunity to explore their options and craft their own settlement.

Changing the orientation of the legal curriculum as well as the scope and rules of the bar examinations will also impact on the reorientation of the profession. The bar exams are not only a tool to measure what the law students have learned but are also an effective way to mold the students to think in a certain way. Specifically, academic competence and readiness will be seriously emphasized thereby eliminating those who have come to think that the bar exam is a game of hit-and-miss

Since theoretical underpinnings form the bedrock on which law practice lies, the role of law schools in the formation of the new breed of lawyers that our country needs must also be looked into. Thus, the accreditation and supervision of law schools as well as mandatory law school admission test must be seriously studied. Very soon the Legal Education Board will be formally organized. The Judicial and Bar Council has already interviewed the candidates for Chairman and members of the Board.

Side by side with academic grounding and preparations will be the reiteration of the moral requirements for anyone who wants to become and to remain a member of the Philippine Bar. While the Judiciary had adopted a new code of conduct for those sitting on the bench and another for the court personnel, perhaps the IBP can recommend an update of the Code of Professional Responsibility for lawyers, taking into account the many changes that have occurred in our social, economic, political, spiritual and intellectual environment. The IBP as institution of those in the legal marketplace has the insights as well as the flexibility to police the ranks. Many lawyers may have gone astray or away from the path of righteousness or the beaten track, tempted perhaps by lust for money

or power. Your Supreme Court has been very strict in enforcing discipline on these members of the legal profession. It has disbarred or suspended indefinitely from the practice of law many of your brethren.

Lawyers, consciously or not, are indeed social catalysts. But whether they are catalysts for national unity and progress, as your theme suggests to achieve, is entirely a different question. Your brothers and sisters in the Eastern and Western Mindanao Regions in their joint national convention last 7-9 October, adopted the theme: "Justice, Peace and Development in Mindanao: The Role and Responsibility of the IBP." The IBP for sure can start the ideas of your theme and that of the Mindanao Lawyers to snowball, and set an external trend. Ultimately, however, this is a personal question and an individual choice that each must consider. For me, a lawyer does not have to put on the proverbial ash on his head to join the new breed of lawyers that we all wish to have, nor must he move out of the comfort of his circle and take on the cause of the downtrodden and the underprivileged. Those are the more obvious ways but are not exclusive. For a lawyer to become an agent for positive change, the change must start with himself, specifically, with his own response to his conscience and to the demands of his surroundings.

Sir Thomas More, the patron saint of lawyers, himself held a position of privilege in the court of Henry the Eighth, as the king's adviser. He had to do what he had to do as required by the circumstances of his country and the preservation of its integrity. However, when Henry wanted him to legally justify the immoral act of doing away with his queen in favor of his mistress, Thomas More had drawn the line and in resolute words had told the king, "This far only, not farther." In the end, he paid with his life.

Our country is going through an incipient crisis. Individually and as a group of professionals, we lawyers have an immense influence on the run of events, be it in the confines of our family, or neighborhood, or place of work, or in the national level. Whether we respond to the call is ultimately our personal choice. We may talk about becoming catalysts for national unity and progress in this forum and in other venues until kingdom come, and would still be of no use if we no not make that personal decision to subordinate our self-interest and short-term gains in favor of a larger cause. In my vision-mission statement, *The DAVIDE WATCH: Leading the Philippine Judiciary and the Legal Profession Towards the Third Millenium,* I envisioned a legal

profession that provides quality, ethical, accessible and cost-effective legal service to our people and is willing and able to answer the call to public service. May you be guided with and live this vision.

I pose this challenge to you.

Significant Laws and Issuances
First Quarter 2005

Christine V. Lao[*]

Laws and implementing regulations aimed at increasing government revenue are among the key legal developments in the first quarter of 2005. Other key developments seek to further develop good governance in government and self-regulating institutions.

Increasing revenue, improving revenue collection

Republic Act No. 9334 (2004)

Republic Act No. 9334 amended the National Internal Revenue Code (NIRC) provisions on excise tax, and increased the excise tax rates imposed on alcohol and tobacco products.[1] Section 7 of the new law provides that, for five years beginning January 1, 2005, 2.5 percent of the incremental revenue from the excise tax on alcohol and tobacco products will be remitted directly to the Philippine Health Insurance

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[*] Consultant for Law and Policy Reform, Asian Development Bank. Ll.B. (2000), University of the Philippines College of Law. A.B. (1995) Ateneo de Manila University.

[1] Section 1 of Republic Act No. 9335 increases the tax on distilled spirits to P11.65 per proof liter (for distilled spirits produced from nipa/coconut/cassava/camote/buri palm or sugar cane) until P504.00 per proof liter (for distilled spirits produced from other raw materials, where the net retail price per bottle of 750 ml exceeds P675.00. Willful understatement of the suggested net retail price by as much as fifteen percent (15%) of the actual net retail price will make the manufacturer liable for additional excise tax equivalent to the tax due and difference between the understated suggested net retail price and the actual net retail price.

Under section 2 of Republic Act No. 9335, the excise tax on wine is P17.47 per liter of volume capacity (for still wines containing more than 14 percent of alcohol by volume or less) until P500.00 per liter of volume capacity (for sparkling wines with a net retail price per bottle of more than P500.00). Section 3 of the new law increases the excise tax on fermented liquor to P8.27 per liter of volume capacity (for fermented liquor with a net retail price less than P14.50 per liter) until P16.33 per liter of volume capacity (for fermented liquor with a net retail price more than P22.00 per liter).

The new law provides that the new excise tax rates on distilled spirits, wines, and fermented liquor shall increase by eight percent every two years beginning January 1, 2007 until January 1, 2011. (Republic Act No. 9335, secs. 1, 2, and 3)

Section 4 of the new law increases the excise tax on tobacco products from P0.75 to P1.00 on each kilogram of tobacco provided in paragraphs (a) to (c) of section 144 of the NIRC; and from P0.60 to P0.79 per kilogram of tobacco especially prepared for chewing. These rates shall increase by six percent every two years beginning January 1, 2007 until January 1, 2011.

Under section 5 of the new law, cigars are now levied an *ad valorem* tax based on the net retail price per cigar. If the net retail price per cigar is P500.00 or less, it shall be levied a tax equivalent to ten percent of its price. If the net retail price per cigar is more P500.00, the tax shall be equivalent to P50.00 plus 15 percent of the net retail price in excess of P500.00. Section 5 also increases the excise tax on cigarettes packed by hand (which, the law provides, should only be packed in sets of 30s) from P0.40 per pack to P2.00 per pack. The tax levied on machine-packed cigarettes (which should only be packed in sets of 20s) now range between P2.00 per pack (for machine-packed cigarettes with a net retail price below P5.00 per pack) to P25.00 per pack (for cigarettes with a net retail price exceeds P6.50 per pack, but does not exceed P10.00 per pack).

Corporation to sustain the National Health Insurance Program. Another 2.5 percent will be credited to the Department of Health in order to create a trust fund for a disease prevention program. The law took effect on January 7, 2005.

In addition to increasing the excise tax rates levied on alcohol and tobacco products, the new law provides: (1) a new definition of "net retail price,"[2] (2) a definition of "suggested retail price;[3] and (3) a prohibition against "downward classification,"—that is, reclassification of distilled spirits, wines, fermented liquors, cigars and cigarettes in a manner that would reduce the tax imposed under the new law. It also provides that variants of a brand are to be taxed under a classification based on their suggested retail price[4] and that new brands shall be classified according to their suggested retail price. Section 6 removes the exemption formerly granted by section 131 of Republic Act No. 8424 on cigars, cigarettes, distilled spirits, fermented liquors and wines brought directly into "freeport areas" established or created by law.

The new law requires manufacturers and importers of distilled spirits, wines, tobacco products, cigars and cigarettes, and brewers or importers of fermented liquors to submit to the Bureau of Internal Revenue (BIR) commissioner a sworn statement of the volume of sales for each particular brand sold at his establishment within the first five days of every third month. If the commissioner finds that a manufacturer, importer or brewer has knowingly made a misrepresentation on his sworn statement, he is authorized to summarily cancel or withdraw the latter's permit. Any corporation, association or

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[2] For distilled spirits and wines, "net retail price" is the price at which the distilled spirits and wines is sold on retail in at least ten (10) major supermarkets in Metro Manila, excluding the amount intended to cover the applicable excise tax and the value-added tax. For fermented liquors and cigars and cigarettes, it means the price at which these products are sold on retain in at least 20 major supermarkets in Metro Manila, excluding the excise and value-added tax on the product.

For brands of distilled spirits, wines, fermented liquors, cigars and cigarettes which are marketed outside Metro Manila, the 'net retail price' shall mean the price at which the fermented liquor is sold in at least five (5) major supermarkets in the region excluding the amount intended to cover the applicable excise tax and the value-added tax.

Under the new law, the Bureau of Internal Revenue determines the "net retail price" "through a price survey to be conducted by the Bureau of Internal Revenue itself, or by the National Statistics Office when deputized for the purpose by the Bureau of Internal Revenue."

[3] "Suggested net retail price" shall mean the net retail price at which new brands of locally manufactured or imported distilled spirits, wines, fermented liquors, cigars or cigarettes are intended by the manufacturer or importer to be sold on retail in major supermarkets or retail outlets in Metro Manila for those marketed nationwide, and in other regions, for those with regional markets. At the end of three (3) months from the product launch, the Bureau of Internal Revenue shall validate the suggested net retail price of the new brand against the net retail price as defined herein and determine the correct tax bracket under which a particular new brand of cigarette, as defined above, shall be classified. After the end of eighteen (18) months from such validation, the Bureau of Internal Revenue shall revalidate the initially validated net retail price against the net retail price as of the time of revalidation in order to finally determine the correct tax bracket under which a particular new brand of cigarettes shall be classified: Provided, however, That brands of cigarettes introduced in the domestic market between January 1, 1997 and December 31, 2003 shall remain in the classification under which the Bureau of Internal Revenue has determined them to belong as of December 31, 2003. Such classification of new brands and brands introduced between January 1, 1997 and December 31, 2003 shall not be revised except by an act of Congress.

partnership liable for such act or omission will be fined treble the amount of deficiency taxes, surcharges and interest that may be assessed. Any person liable for any of the law's prohibited acts or omissions shall be criminally liable and penalized under section 254 of the NIRC,[5] and any person who willfully aids or abets in the commission of any such act or omission shall be criminally liable in the same manner as the principal. If the offender is not a citizen of the Philippines, he shall be deported immediately after serving the sentence, without further proceedings for deportation.

Republic Act No. 9335 (2004)

The Attrition Act, which seeks to improve revenue collection performance of the BIR and the Bureau of Customs (BOC), took effect on January 10, 2005. The new law makes a system of rewards and incentives[6] available to all officials and employees of

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[4] A 'variant of a brand' shall refer to a brand on which a modifier is prefixed and/or suffixed to the root name of the brand. Under the new law, "Variants of existing brands and variants of new brands which are introduced in the domestic market after the effectivity of this Act shall be taxed under the proper classification thereof based on the their suggested net retail price. However, the classification shall not, in any case, be lower than the highest classification of any variant of that brand."

[5] Section 254. Attempt to evade or Defeat Tax.—Any person who willfully attempts in any manner to evade or defeat any tax imposed under this Code or the payment thereof shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Thirty thousand pesos (P30,000), but not more than One hundred thousand pesos (P100,000) and suffer imprisonment of not less than two (2) years but not more than four (4) years: Provided, That the conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes.

[6] Section 4. Rewards and Incentives Fund. — A Rewards and Incentives Fund, hereinafter referred to as the Fund, is hereby created, to be sourced from the collection of the BIR and the BOC in excess of their respective revenue targets of the year, as determined by the Development Budget and Coordinating Committee (DBCC), in the following percentages:

Excess of Collection Over the Revenue Targets	Percent (%) of the Excess Collection to Accrue to the Fund
30% or below	15%
More than 30%	15% of the first 30% plus 20% of the remaining excess.

The Fund shall be deemed automatically appropriated the year immediately following the year when the revenue collection target was exceeded and shall be released on the same fiscal year. …

Any incentive under this Section shall be apportioned among the various units, official and employees of the BOC or the BIR, as the case may be, in proportion to their relative contribution to the aggregate amount of the excess collection over the targeted amount of tax revenue to be collected by the two bureaus respectively.

The Fund shall be allocated, distributed or released by the Revenue Performance Evaluation Board in each agency, hereinafter created in Section 6 of this Act, in accordance with the rules and regulations issued by the same.

Section 5.Incentives to District Collection Offices. — In the event that the BIR or the BOC fails to meet its revenue target by less than ten (10%), the revenue districts, in the case of the BIR, or the collection districts, in the case of the BOC, which exceed their respective allocations of the revenue target (allocated target), shall be entitled to rewards and incentives (district incentive) amounting to ten percent (10%) of the excess over its allocated target: Provided, however, That the BIR revenue district or BOC collection office which deliberately foregoes any revenue collection in a given year as part of a scheme to avoid a higher allocated target for the subsequent year shall not be entitled to a district incentive in such subsequent year notwithstanding its having exceeded its allocated target: Provided, further, That the allocated target of any such district shall have been reported to and validated by the DBCC as required in the immediately preceding section.

The district reward shall be deemed automatically appropriated the year immediately following the year when the revenue collection target was exceeded and shall be released in the same fiscal year.

BIR and BOC regardless of employment status with at least six months service. It also provides sanctions for under-performing employees (including termination), and creates a Revenue Performance Evaluation Board[7] to set the guidelines for the reward and removal of BIR and BOC employees.[8] The new law also provides the manner by which such employees might appeal the Revenue Performance Evaluation's Board decision.[9]

BIR Revenue Regulation 13-2004 (2004)

The BIR issued regulations implementing Republic Act No. 9243,[10] a law that sought to rationalize the NIRC provisions on documentary stamp tax (DST). Published on December 31, 2004, Revenue Regulation 13-2004 states that its provisions "shall

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[7] SECTION 7. Powers and Functions of the Board. — The Board in the agency shall have the following powers and functions:

(a) To prescribe the rules and guidelines for the allocation, distribution and release of the Fund due to the agency as provided for in Sections 4 and 5 of this Act: Provided, That the rewards under this Act may also take the form of non-monetary benefits;

(b) To set the criteria and procedures for removing from service officials and employees whose revenue collection falls short of the target by at least seven and a half percent (7.5%), with due consideration of all relevant factors affecting the level of collection as provided in the rules and regulations promulgated under this Act, subject to civil service laws, rules and regulations and compliance with substantive and procedural due process: Provided, That the following exemptions shall apply:

1. Where the district or area of responsibility is newly-created, not exceeding two years in operation, as has no historical record of collection performance that can be used as basis for evaluation; and

2. Where the revenue or customs official or employee is a recent transferee in the middle of the period under consideration unless the transfer was due to nonperformance of revenue targets or potential nonperformance of revenue targets: Provided, however, That when the district or area of responsibility covered by revenue or customs officials or employees has suffered from economic difficulties brought about by natural calamities or force majeure or economic causes as may be determined by the Board, termination shall be considered only after careful and proper review by the Board.

(c) To terminate personnel in accordance with the criteria adopted in the preceding paragraph: Provided, That such decision shall be immediately executory: Provided, further, That the application of the criteria for the separation of an official or employee from service under this Act shall be without prejudice to the application of other relevant laws on accountability of public officers and employees, such as the Code of Conduct and Ethical Standards of Public Officers and Employees and the Anti-Graft and Corrupt Practices Act;

(d) To prescribe a system for performance evaluation;

(e) To perform such other functions as are necessary or incidental to its mandated functions, including the issuance of rules and regulations for the proper conduct of its functions; and

(f) To submit as annual report to the Congress

[8] Under section 7, the Revenue Performance Evaluation Board has the power to remove officials and employees whose revenue collection falls out of the target by at least 7.5%. In addition, section 8 provides:

Liability of Officials, Examiners and Employees of the BIR and the BOC. — The officials, examiners, and employees of the Bureau of Internal Revenue and the Bureau of Customs who violate this Act or who are guilty of negligence, abuses or acts of malfeasance or misfeasance or fail to exercise extraordinary diligence in the performance of their duties shall be held liable for any loss or injury suffered by any business establishment or taxpayer as a result of such violation, negligence, abuse, malfeasance, misfeasance or failure to exercise extraordinary diligence.

[9] Section 9. Right to Appeal. — An official or employee whose employment is terminated by virtue of the decision of the Board may appeal to the Civil Service Commission (CSC) or the Office of the President (OP), whichever is applicable, in accordance with pertinent laws, rules and regulations.

[10] Republic Act No. 9243 took effect on March 20, 2004.

apply to all transactions made or to documents or instruments executed or issued as of March 20, 2004, the date when R.A. No. 9243 took effect."[11] The regulation emphasizes that Republic Act No. 9243 applies to all documents not expressly exempted by the law, including documents in electronic form.[12] It identifies portions of the NIRC that have been amended and/or renumbered by Republic Act No. 9243 and explains or clarifies the amended provisions, to remove all doubt as to their interpretation.[13]

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[11] Revenue Regulation No. 13-2004, sec. 12.

[12] *Id.,* sec. 10.

[13] For example, with respect to section 174 of the NIRC, which deals with the new rate of DST on original issue of shares of stock, section 3 of the regulation provides:

> The DST under this Section is imposed on the privilege of issuing shares of stock. The shares are considered issued upon the acquisition of the stockholder of the attributes of ownership over the shares (the right to vote, the right to receive dividends, the right to dispose, etc. notwithstanding that restrictions on the exercise of any of these rights may be imposed by the Corporation's articles and/or by-laws, the Securities and Exchange Commission, stockholder agreement, court order, etc.), which acquisition of such attributes of ownership shall be manifested by the acceptance by the Corporation of the stockholder's subscription to its shares of stock. The entire shares of stock subscribed are considered issued for purposes of the DST, even if not fully paid. The delivery of the certificates of stock to stockholders is not essential for the DST to accrue.
>
> In all cases where the issued shares are with par value, the basis of the DST shall be the par value thereof. For shares of stock without par value, the basis shall be the actual consideration for the shares of stock. However, in a case where shares of stocks without par value are issued as stock dividends, the basis of the DST shall be the actual value represented by each share.

With respect to DST on sales, agreements to sell, memoranda of sales, and subsequent transfer of shares of stocks, section 4 of the regulation states:

> All transfer of shares of stocks of a domestic corporation are subject to the DST upon execution of the deed transferring ownership or rights thereto, or upon delivery, assignment or indorsement of such shares in favor of another. No transfer of shares of stock shall be recorded unless DST thereon has been duly paid for in accordance with Section 201 of the Code.
>
> For a sale or exchange to be taxable, there must be an actual or constructive transfer of beneficial ownership of the shares of stock from one person to another. Such transfer may be manifested by the clear exercise of attributes of ownership over such stocks by the transferee, or by an actual entry of a change in the name appearing in the certificate of stock or in the Stock and Transfer Book of the issuing corporation or by any entry indicating transfer of beneficial ownership in any form of registry including those of a duly authorized scripless registry, such as those maintained for or by the Philippine Stock Exchange. However, if by the transfer of certificates of stock from a resigned trustee to a newly appointed trustee such certificate of stock remain in the name of the cestui que trust or the resigned trustee so that the new trustee is constituted as mere depository of the stock, such transfer is not taxable. Provided, however, that transfer of shares to "nominees" to qualify them to sit in the board or to qualify them to perform any act in relation to the corporation shall not be subject to the DST provided herein only upon proof of a duly executed Nominee Agreement showing the purpose of the transfer; that the transfer is without consideration other than the undertaking of the nominee to only represent the beneficial owner of the stock; and the transfer is in trust.
>
> Agreements to sell shares of stock are also subject to DST. It is not only actual sales or transfers that are taxable but also agreements to sell such stock or executory contracts for the sale or transfer of shares of stock. However, if the DST has been paid on the agreement to sell or memoranda of sale, the actual sale or transfer of the stocks pursuant to the agreement will no longer be subject to DST.

On DST on all debt instruments, section 5 provides that "a sale of a debt instrument in the secondary market will not be subject to the DST," and that "all certificates or other evidences of deposit in the banks drawing interest at such rate depending upon the amount deposited and having a specific maturity date or where the interest earned varies depending on the duration/term (number of days) of the deposit shall be subject to the DST provided herein, irrespective of the nomenclature and whether covered by a certificate, passbook or any other evidence of deposit." The exception to the foregoing rule are "ordinary demand and savings deposits which can be withdrawn upon demand by the depositor and earning rates of interest based on prevailing market rates for a regular saving/demand deposit account, irrespective of the amount deposited." The regulation also lays down rules to help determine when a certificate evidencing deposits is subject to DST imposed on debt instrument.

Revised Legal Fees for 2005 and 2006 under Administrative Matter No. 04-2-04-SC

Last year, the Supreme Court approved the revision of Rule 141 of the Rules of Court. The revised rule, which took effect on 16 August 2004,[14] provides for the annual increase of fees due on filing certain actions in the Regional Trial Court[15] and in first

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With respect to DST life insurance policies, the regulation emphasizes that the new law has prescribed a new tax base for life insurance policies. Under the new law, the tax is assessed on the amount of premium collected. The DST assessed on the new tax base would apply only to life insurance policies issued on or after March 20, 2004. As a consequence of the change in the DST tax base for life insurance policies, all insurance companies issuing such policies were required to submit printed and electronic copies of an inventory of all issued, outstanding and valid life insurance policies as of March 19, 2004, to the revenue district office where they are registered. The deadline for submitting the inventory was January 31, 2005. Failure to submit the inventory resulted in making the unreported insurance policies subject to DST based on insurance premiums collected.

With respect to DST on policies of annuities, section 8 of the regulation emphasizes that the DST tax base has changed from "capital of the annuity" or "annual income" to "premium or installment payment or contract price collected." On the other hand, DST on pre-need plans have changed from "value or amount of the plan" to "premium or contribution collected." The DST assessed on the new tax base applies only to policies of annuities and pre-need plans issued on or after March 20, 2004. Companies issuing these policies were required to submit printed and electronic copies of their inventory of valid and outstanding policies and plans as of March 19, 2004; otherwise such annuities and plans would be subject to DST based on the new law.

Finally, the regulation clarifies section 199, which lists down documents that are not subject to DST, to wit:

> For clarity and to avoid confusion, Section 199(g) of the Code, as amended, shall refer exclusively to debt instruments.
>
> Derivatives exempted from DST under Section 199(h) of the Code, as amended, shall refer only to those derivatives issued by entities duly licensed by the Bangko Sentral ng Pilipinas (BSP) to issue and trade in derivatives, and whose issuance is duly authorized by the Bangko Sentral ng Pilipinas (BSP).
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> The exemption for bank deposit accounts without a fixed term or maturity provided under Section 199(k) of the Code, as amended, shall apply only to deposit account which does not qualify under the provisions of Section 5 of these Regulations.
>
> The exemption on transfer of property pursuant to Section 40(c)(2) of the National Internal Revenue Code of 1997, as amended, provided for under Section 199(m) refers to the DST due on the deed transferring the property. However, the shares of stocks issued in exchange for said property is subject to the DST due under Sections 174 if they are original issues.
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> For clarity and to avoid confusion, for interbank call loans with maturity of not more than seven (7) days, including those between or among banks and quasi-banks, the same must have been made strictly to cover deficiency in reserves against deposit liabilities for the same to be exempted from DST as provided for in Section 199(n) of the Code as amended.

[14] On September 20, 2004, the Supreme Court suspended the new rates imposed on the solemnization of marriages, filing motions and the new legal fee imposed on the filing of compulsory counterclaims.

[15] For an action or a permissive counter-claim; cross-claim; a money claim against an estate not based on judgment; a third-party complaint; or a complaint-in-intervention, filed with the clerk of the Regional Trial Court within the period November 11, 2004 – November 10, 2005, and for the next two years, the legal fees due are as follows:

Where the sum claimed, (inclusive of interests, penalties, surcharges, damages and attorney's fees, litigation expenses and costs) is:[15]	Nov. 11, 2004 to Nov. 10, 2005	Nov. 11, 2005 to Nov. 10, 2006	Effective Nov. 11, 2006
Less than P100,000.00	P 750.00	P 875.00	P 1,000.00
P100,000.00 or more but less than P150,000.00	1,200.00	1,400.00	1,600.00
P150,000.00 or more but less than P200,000.00	1,500.00	1,750.00	2,000.00
P200,000.00 or more but less than P250,000.00	2,250.00	2,625.00	3,000.00
P250,000.00 or more but less than P300,000.00	2,630.00	3,070.00	3,500.00
P300,000.00 or more but less than P350,000.00	3,000.00	3,500.00	4,000.00
P350,000.00 or more but not than P400,000.00	3,380.00	4,000.00	4,500.00
For each P1,000.00 in excess of P400,000.00	15.00	17.50	20.00

For other actions filed with the RTC's clerk of court, the legal fees due for the same period are as follows:

Other Actions filed with the RTC	Nov. 11, 2004 to Nov. 10, 2005	Nov. 11, 2005 to Nov. 10, 2006	Effective Nov. 11, 2006
Actions where the value of the subject matter cannot be estimated	P 1,000.00	P 1,500.00	P 2,000.00
Special civil actions, (except judicial foreclosure of mortgage, expropriation proceedings, partition, and quieting of title)	1,000.00	1,500.00	2,000.00
All other actions not involving property	1,000.00	1,500.00	2,000.00

Beginning November 11, 2004, the legal fees due on filing requests for extrajudicial foreclosure of real estate or chattel mortgage by the sheriff or notary public have increased as follows:

If the amount of the indebtedness, or the mortgagee's claim is:	Nov. 11, 2004 to Nov. 10, 2005	Nov. 11, 2005 to Nov. 10, 2006	Effective Nov. 11, 2006
Less than P50,000.00	P 420.00	P 490.00	P 550.00
P50,000.00 or more but less than P100,000.00	600.00	700.00	800.00
P100,000.00 or more but less than P150,000.00	750.00	875.00	1,000.00
P150,000.00 or more but less than P200,000.00	975.00	1,140.00	1,300.00
P200,000.00 or more but less than P250,000.00	1,500.00	1,750.00	2,000.00
P250,000.00 or more but less than P300,000.00	1,875.00	2,190.00	2,500.00
P300,000.00 or more but not more than P400,000.00	2,250.00	2,625.00	3,000.00
P400,000.00 or more but less than P500,000.00	2,630.00	3,070.00	3,500.00
P500,000.00 or more but not more than P1,000,000.00	3,000.00	3,500.00	4,000.00
For each P1,000.00 in excess of P1,000,000.00	15.00	17.50	20.00

The fees due upon the initiation of proceedings for: the allowance of wills, granting letters of administration, appointment of guardians, trustees, and other special proceedings in the RTC, have likewise increased beginning November 11, 2004:

Where the value of the property involved in the proceedings is:	Nov. 11, 2004 to Nov. 10, 2005	Nov. 11, 2005 to Nov. 10, 2006	Effective Nov. 11, 2006
Not more than P100,000.00	P 2,500.00	P 3,000.00	P 3,500.00
More than P100,000.00 but less than P150,000.00	3,000.00	3,500.00	4,000.00
P150,000.00 or more but less than P200,000.00	3,400.00	4,100.00	4,700.00
P200,000.00 or more but less than P250,000.00	3,750.00	4,375.00	5,000.00
P250,000.00 or more but less than P300,000.00	4,125.00	4,820.00	5,500.00
P300,000.00 or more but less than P350,000.00	4,500.00	5,250.00	6,000.00
P350,000.00 or more but not more than P400,000.00	4,875.00	5,690.00	6,500.00
For each P1,000.00 in excess of P400,000.00	15.00	17.50	20.00

level courts.[16] The revised rule also provides for the increase of filing fees for petitions for rehabilitation under the Interim Rules of Procedure on Corporate Rehabilitation,[17] and of fees required from an offended party who fails to manifest, within 15 days from the filing of an information in an estafa or B.P. 22 case, that he or she would separately prosecute the civil liability resulting from the crime.[18]

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[16] Beginning November 10, 2004, the fees due on filing a civil action or proceeding in a first level court increased as follows:

Where the value of the subject matter involved, or the amount of the demand is:	Nov. 11, 2004 to Nov. 10, 2005	Nov. 11, 2005 to Nov. 10, 2006	Effective Nov. 11, 2006
Not more than P20,000.00	P 225.00	P 270.00	P 300.00
More than P20,000.00 but not more than P100,000.00	750.00	875.00	1,000.00
More than P100,000.00 but not more than P200,000.00	1,875.00	2,190.00	2,500.00
More than P200,000.00 but not more than P300,000.00	2,630.00	3,070.00	3,500.00
More than P300,000.00 but not more than P400,000.00	3,750.00	4,375.00	5,000.00

Beginning November 11, 2004, the fees due on initiating proceedings for the allowance of wills, granting the letters of administration and settlement of estates of small value are:

Where the value of the estate is:	Nov. 11, 2004 to Nov. 10, 2005	Nov. 11, 2005 to Nov. 10, 2006	Effective Nov. 11, 2006
Not more than P20,000.00	P 375.00	P 440.00	P 500.00
More than P20,000.00 but not more than P100,000.00	2,025.00	2,370.00	2,700.00
More than P100,000.00 but not more than P200,000.00	3,000.00	3,500.00	4,000.00
For each proceeding other than the allowance of wills (probate) granting of the letter of administration, settlement of estates of small value	300.00	350.00	400.00

The fee for all other actions filed at first level courts that were not otherwise mentioned under Rule 141 has increased from P400.00 to P500.00 beginning November 11, 2004. Beginning November 11, 2005, it will increase to P600.00. Effective November 11, 2006, it will further increase to P700.00

[17] For petitions for rehabilitation under the Interim Rules of Procedure on Corporate Rehabilitation, the fees payable are now as follows:

Where the value of the assets of, or amount of monetary claims against, the debtor (whichever is higher) is:	Nov. 11, 2004 to Nov. 10, 2005	Nov. 11, 2005 to Nov. 10, 2006	Effective Nov. 11, 2006
Less than P10,000,000.00	P 15,000.00	P 17,500.00	P 20,000.00
P10,000,000.00 or more but less than P20,000,000.00	30,000.00	35,000.00	40,000.00
P20,000,000.00 or more but less than P30,000,000.00	45,000.00	52,500.00	60,000.00
P30,000,000.00 or more but less than P40,000,000.00	60,000.00	70,000.00	80,000.00
P40,000,000.00 or more but less than P50,000,000.00	75,000.00	87,500.00	100,000.00
P50,000,000.00 or more but less than P60,000,000.00	90,000.00	105,000.00	120,000.00
P60,000,000.00 or more but not more than P70,000,000.00	105,000.00	122,500.00	140,000.00
P70,000,000.00 or more but less than P80,000,000.00	120,000.00	140,000.00	160,000.00
P80,000,000.00 or more but less than P90,000,000.00	135,000.00	157,500.00	180,000.00
P90,000,000.00 or more but less than P100,000,000.00	150,000.00	175,000.00	200,000.00
For each P10,000.00 in excess of P100,000,000.00	15.00	17.50	20.00

Good governance, proper guidance

Administrative Matter No. 04-07-02-SC

The Supreme Court approved Guidelines on Corporate Surety Bonds to ensure the fair and systematic processing and accreditation of surety bonds. The Guidelines, which is implemented by the Office of the Court Administrator (OCA), took effect on August 16, 2004.

The guidelines requires all surety companies that transact business with the Supreme Court, Court of Appeals, the Court of Tax Appeals, the Sandiganbayan, the Regional Trial Courts, the Shari'a District and Circuit Courts, the Metropolitan, Municipal and Municipal Circuit Trial Courts, and other courts that may be created in the future, to seek accreditation from OCA. The guidelines provide the procedure for application and the requirements to be submitted by applicants to the Docket and Clearance Division of OCA's Legal Department. Applicants that are allowed to engage in transactions in criminal cases are required to make a P1,000,000.00 cash deposit to OCA. Applicants allowed to engage in transactions in civil cases only are not required to make the cash deposit. The guidelines also provide: (1) grounds for the suspension or cancellation of the certificate of accreditation and authority; (2) the procedure for processing the application for surety bonds; (3) the procedure for executing judgments of forfeitures in bail-bonds claims against the cash deposit; and (4) the procedure followed upon cessation of bonding transactions between the court and surety company.

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[18] In estafa cases where the offended party fails to manifest within fifteen (15) days following the filing of the information that the civil liability arising from the crime has been or would be separately prosecuted, or in B.P. 22 violations, the filing fees are now as follows:

If the amount involved is:	Nov. 11, 2004 to Nov. 10, 2005	Nov. 11, 2005 to Nov. 10, 2006	Effective Nov. 11, 2006
Less than P100,000.00	P 750.00	P 875.00	P 1,000.00
P100,000.00 or more but less than P150,000.00	1,200.00	1,400.00	1,600.00
P150,000.00 or more but less than P200,000.00	1,500.00	1,750.00	2,000.00
P200,000.00 or more but less than P250,000.00	2,250.00	2,625.00	3,000.00
P250,000.00 or more but less than P300,000.00	2,630.00	3,070.00	3,500.00
P300,000.00 or more but less than P350,000.00	3,000.00	3,500.00	4,000.00
P350,000.00 or more but not more than P400,000.00	3,400.00	4,100.00	4,700.00
For each P1,000.00 in excess of P400,000.00	15.00	17.50	20.00

Administrative Matter No. 03-03-13-SC

The Supreme Court issued a rule setting forth guidelines on proper work decorum in the judiciary and the administrative procedure in sexual harassment cases. Under these guidelines, any official or employee of the judiciary[19] who commits an act of sexual harassment,[20] induces another to commit an act of sexual harassment, or performs an act without which the sexual harassment would not have been committed, suffers administrative liability for their actions. The rule took effect on January 3, 2005.

The rule created a Committee on Decorum and Investigation (CODI) in each court. The CODI has jurisdiction over work-related sexual harassment cases and has the power to receive and investigate sexual harassment complaints.[21] The CODI may recommend to the proper court or authority that the respondent be placed under preventive suspension.[22] Within 20 working days from termination of its hearings on a complaint, the CODI should submit its report and recommendation to the proper court or authority for action.[23] The effect of the proceedings before the CODI and the resulting imposition of administrative penalties do not interrupt or bar civil or criminal actions that the complainant has filed, or might file, against the respondent.[24]

The Revised Listing Rules of the Philippine Stock Exchange

Revisions to the Philippine Stock Exchange listing rules duly approved by the Securities and Exchange Commission (SEC) took effect on June 24, 2004. Among the notable revisions are: (1) a new rule that sets forth the framework for listing securities that are already in issue at the listing date, where the marketability of the securities can be assumed; (2) a rule prohibiting companies that use the operational track record of their subsidiaries from divesting their shareholdings in these subsidiaries within three years

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[19] Justices of the Supreme Court, who may be removed only by impeachment, and members of the Judicial and Bar Council, are not covered by the guidelines.

[20] The rule defines work-related sexual harassment in the judiciary as an act "committed by an official or employee in the judiciary who, having authority, influence or moral ascendancy over another in a work environment, demands, requests or otherwise requires any sexual favor from the other regardless of whether the demand, request or requirement for submission is accepted by the latter." (S.Ct. Adm. Matter No. 03-03-13-SC, sec. 3)

[21] S. Ct. Adm. Matter No. 03-03-13-SC, secs. 6 and 8.

[22] *Id.*, sec. 15.

[23] *Id.*,sec. 18.

[24] *Id.*, sec. 19.

after listing in the First Board;[25] (3) a reduction in the lock up period for shares of security holders owning at least 10 percent of the issued and outstanding company shares from two years to one year from the date of listing in the Second Board, and from three years to two years from date of listing in the Small and Medium Enterprises Board; (4) a requirement for companies that intend to pursue listing in the Second Board and in the Small and Medium Enterprises Board to submit a "Statement of Active Business Pursuits and Objectives" instead of the business plan required by the old rules; (5) a reduction in the initial listing fee for the Small and Medium Enterprises Board from P200,000 to P50,000; and (6) a reduction in the track record requirement for companies intending to register their shares in the Small and Medium Enterprises Board from two years to one year of positive operating income.

SEC Memorandum Circular No. 19 (Series of 2004)

The SEC approved the adoption of Philippine Financial Reporting Standards (PFRS) approved by the Accounting Standards Council. These accounting standards became effective for annual financial reporting periods beginning January 1, 2005. For interim or quarterly reports, these rules will take effect on January 1, 2006.

SEC Memorandum Circular No. 1 (Series of 2005)

The SEC adopted the Philippine Standards on Auditing (PSA) and the Philippine Auditing Practice Statements (PAPS) approved by the Auditing Standards and Practices Council in its rules and regulations. These auditing standards have become effective for audits of financial statements ending on or after December 31, 2004.

Other significant administrative issuances

Executive Order No. 389 (2004)

The Sixth Regular Foreign Investment Negative List took effect on December 31, 2004. The list reproduces the Fifth Regular Foreign Investment Negative List (which expired on November 8, 2004) and will remain effective for two years.

[25] This prevents the dilution in value of shares that would otherwise be brought about by a takeover or change in management or control.

Department of Labor and Employment Advisory No. 02 (Series of 2004)

The Department of Labor issued guidelines on the implementation of compressed workweek schemes for all establishments except those in the construction industry, health services, occupations requiring heavy manual labor or in occupations or workplaces in which workers are exposed to airborne contaminants, human carcinogens substances, chemicals or noise that exceed threshold limit values or tolerance levels for an eight-hour workday. The guidelines took effect on December 30, 2005.

The advisory defines a compressed workweek scheme as "an alternative arrangement whereby the normal workweek is reduced to less than six days but the total number of normal work hours per week shall remain at 48 hours." The normal work hours may be extended beyond eight hours, but may not exceed 12 hours. Employees are not entitled to overtime premium. There should be no diminution in benefits resulting from the scheme's adoption.

The adoption of the scheme is conditioned upon the express and voluntary agreement of majority of the covered employees or their duly authorized representatives. Firms using substances, chemicals and processes, or which operate under conditions where there are airborne contaminants, human carcinogens or noise are required to secure a certification from an accredited health and safety organization, health practitioner, or from the firm's safety committee, stating that work beyond eight hours is within threshold limits or tolerable levels of exposure. If the employer fails to present proof that it has complied with these requirements, it becomes liable for overtime premiums due to employees who have rendered work beyond eight hours.

Management is allowed to revert to the normal eight-hour workday provided that it gives employees prior notice of the reversion within a reasonable period of time. Differences in management's and the employees' interpretation of the scheme are to be submitted to the company's grievance mechanism, if any. If there is no adequate grievance mechanism, the grievance may be referred to the Department of Labor's Regional Office.

Department of Health Administrative Order No. 2005-0001

The Department of Health (DOH) issued revised policies and guidelines governing patent and trade secret rights in relation to the registration of pharmaceutical products.[26] The guidelines require parties applying for a certificate of product registration (CPAR) to submit with its application an affidavit stating that the applicant understands that the CPR issued shall be deemed automatically cancelled or revoked if the Intellectual Property Office (IPO) or a court of competent jurisdiction decides with finality that the applicant has no intellectual property right involving or attaching to the pharmaceutical product. The affidavit should also state that the applicant acknowledges and agrees to indemnify and hold BFAD free from all third party claims arising from its registration of the pharmaceutical product concerned.

The guidelines instruct that intellectual property matters are beyond BFAD's mandate. and cancels the effect of any annotation on CPRs stating that, "The effectivity of this CPR will be the date after the patent of this product expires." Any other similar annotation linking the CPR's effectivity with intellectual property matters or any other restriction or condition outside BFAD's mandate shall not have any effect.

Department of Justice Memorandum Order No. AFF-04-025

The Department of Justice issued instructions to immigration officers and personnel regarding the entry and departure of Filipinos possessing dual or multiple citizenship who present a foreign passport upon their arrival. The rules instruct all immigration officers and personnel to allow such Filipinos to enjoy an indefinite period to stay in the country and to depart without paying immigration fees or presenting other certificates required of foreign nationals, provided that they present upon entry, and in addition to their foreign passport, a Philippine passport and/or an identification certificate issued by the Bureau of Immigration.

[26] The Administrative Order was issued on January 3, 2005

Subject Guide and Digests

Supreme Court Decisions

Tarcisio Diño

AGRARIAN REFORM LAW

Agricultural Tenancy. Republic Act No. 3844 (Agricultural Land Reform Code, promulgated on 8 August 1963) abolished and outlawed share tenancy and put in its stead the agricultural leasehold system. Republic Act No. 6389 ("RA 6389," promulgated on September 10, 1971), amending RA 3844, declared share tenancy relationships as contrary to public policy. (Mon v. Court of Appeals, G.R. No. 118292, April 14, 2004). An agricultural leasehold relationship exists by operation of law when there is concurrence of an agricultural lessor (one who furnishes the land as owner, civil law lessee, usufructuary or legal possessor) and agricultural lessee (the person who personally cultivates the land). Essential requisites: [i] the parties are the landholder and the tenant; [ii] the subject is agricultural land; [iii] there is consent; [iv] the purpose is agricultural production; and [v] there is consideration. (Id.)

Security of Tenure. RA 3844, as amended, expressly recognizes and protects an agricultural leasehold tenant's right to security of tenure. Under Section 7 thereof, the landowner cannot eject the agricultural tenant from the land unless authorized by the court for causes provided by law. Under Section 37 of the same law, the burden of proving lawful cause for ejecting the lessee falls on the lessor-landowner. (id.).

Fixing of Rental. Remand of case to the DAR Provincial Adjudicator to determine and fix the rentals in accordance with Section 34 of RA 3844, as amended. The law mandates that not more than 25% of the average normal harvest shall constitute the just and fair rental rate for leasehold. (Id.).

DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD ("DARAB")

Appeal to DARAB. The proper remedy from a decision of the Provincial Agrarian Reform Adjudication Board is an appeal to the DARAB and not a petition for review in

the CA under Rule 43 of the Rules of Court. Under Rule XIII, Sections 1, 2 and 3 of the DARAB New Rules of Procedure, the petitioner should have appealed the decision of the PARAB to the DARAB orally or in writing, and perfected the said appeal within the requisite period and in the manner provided therefor. Non-compliance with the above-mentioned requisites shall be a ground for the dismissal of the appeal. (Vda. de Cardona v. Amansec, G.R. No. 147216, April 15, 2004).

CIVIL LAW

EFFECT AND APPLICATION OF LAWS

Respondents (overseas Filipino workers) perfected and entered into their employment contracts in the Philippines, and such contracts were approved by the Philippine and Overseas Employment Administration (POEA). As such, the rule *lex loci contractus* (the law of the place where the contract is made) governs. The Labor Code, its implementing rules and regulations, and other laws affecting labor, apply in this case. (Phil. Employ Services and Resources, Inc. v. Paramio, G.R. No. 144786, April 15, 2004

FAMILY CODE

Conjugal Property. The Family Code provisions on conjugal partnerships govern the property relations between spouses, even if they were married before the effectivity of Family Code (August 3, 1988) - without prejudice to vested rights already acquired under the Civil Code or other laws. Under Article 116, if the properties are acquired during the marriage, the presumption is that they are conjugal. However, the properties must first be proven to have been acquired during the marriage before they are presumed conjugal. (Villanueva v. Court of Appeals, G.R. No. 143286, April 14, 2004).

The presumption applies regardless in whose name the property is registered. The burden of proof is on the party claiming that they are not. No unilateral declaration by one spouse can change the character of a conjugal property. (Id.).

Petitioners argue that since Nicolas and Pacita were already cohabiting when Lot No. 152 was acquired, said lot cannot be deemed conjugal property of Nicolas and Eusebia. Petitioners' argument is flawed. The cohabitation of a spouse with another person, even for a long period, does not sever the tie of a subsisting previous marriage. Otherwise, the law would be giving a stamp of approval to an act that is both illegal and immoral. Nicolas and Pacita's cohabitation cannot work to the detriment of Eusebia, the legal spouse. The marriage of Nicolas and Eusebia continued to exist regardless of the fact that Nicolas was already living with Pacita. Hence, all property acquired from the date of Nicolas and Eusebia's marriage until the date of Eusebia's death, are still presumed conjugal. Petitioners have neither claimed nor proved that any of the subject properties was acquired outside or beyond this period. (Id.).

Petitioners further point out that Pacita had the means to buy Lot No. 152. HELD: Even if Pacita had the financial capacity, this does not prove that Pacita bought Lot No. 152 with her own money. To rebut the presumption that Lot No. 152 is conjugal, petitioners must prove that Pacita used her own money to pay for Lot No. 152. (Id.).

Under Article 148, there must be proof of "actual joint contribution" by both the live-in partners before the property becomes co-owned by them in proportion to their contribution. The presumption of equality of contribution arises only in the absence of proof of their proportionate contributions, subject to the condition that actual joint contribution is proven first. Simply put, proof of actual contribution by both parties is required, otherwise there is no co-ownership and no presumption of equal sharing. Petitioners failed to show proof of actual contribution by Pacita in the acquisition of Lot No. 152. In short, petitioners failed to prove that Pacita bought Lot No. 152 with her own money, or that she actually contributed her own money to acquire it. (Id.).

OBLIGATIONS AND CONTRACTS

Obligations

Solidary. Section 10, Republic Act No. 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995. Solidary liability of local agent for illegal dismissal of overseas Filipino contract worker. (Phil. Employ Services and Resources, Inc. v. Paramio, G.R. No. 144786, April 15, 2004

Contracts

Relativity of Contracts. In a letter-agreement dated October 5, 1995, Iba-Finance informed Premiere Bank of its approval of Panacor's loan application in the amount of P10 million to be secured by a real estate mortgage over a parcel of land covered by TCT No. T-3475. It was agreed that Premiere Bank shall entrust to Iba-Finance the owner's duplicate copy of TCT No. T-3475 in order to register its mortgage, after which Iba-Finance shall pay off Arizona's outstanding indebtedness. Accordingly, Iba-Finance remitted P6,235,754.79 to Premiere Bank on the understanding that said amount represented the full payment of Arizona's loan obligations. Despite performance by Iba-Finance of its end of the bargain, Premiere Bank refused to deliver the mortgage document. As a consequence, Iba-Finance failed to release the remaining P2.5 million loan it earlier

pledged to Panacor, which finally led to the revocation of its distributorship agreement with Colgate. (Premiere Development Bank V. Court Of Appeals, G.R. No. 159352, April 14, 2004).

The not-so-forthright conduct of Premiere Bank in its dealings with respondent corporations caused damage to Panacor and Iba-Finance. It is error for Premiere Bank to assume that the compromise agreement it entered with Iba-Finance extinguished all direct and collateral incidents to the aborted take-out such that it also cancelled its obligations to Panacor. The unjustified refusal by Premiere Bank to release the mortgage document prompted Iba-Finance to withhold the release of the P2.5 million earmarked for Panacor which eventually terminated the distributorship agreement. Both Iba-Finance and Panacor, which are two separate and distinct juridical entities, suffered damages due to the fault of Premiere Bank. Hence, it should be held liable to each of them. (id.).

While the compromise agreement may have resulted in the satisfaction of Iba-Finance's legal claims, Premiere Bank's liability to Panacor remains. The "present appeal is only with respect to the liability of appellant Premiere Bank to the plaintiffs-appellees (Panacor and Arizona)" taking into account the compromise agreement. (id.).

SALES

Purchasers in Good Faith. While petitioners were not parties to Civil Case No. 655-B, they could not have been unaware of the dispute over the land because they claim to be tenants thereof. (Sacdalan v. Court of Appeals, G.R. No. 128967, May 20, 2004).

LEASE

Improvements by Tenant and Adjustment in Rentals. That the lessee had shouldered maintenance expenses on the building and paid real estate taxes as well as insurance premiums are inconsequential and immaterial in fixing the rent. The improvements introduced and the payment of expenses, taxes and premiums have always been excluded in the determination of the monthly rental in the contracts of lease between the parties. (The Insular Life Assurance Company, Ltd. v. Court of Appeals, G.R. No. 126850, April 28, 2004).

Consigned Rentals. The amount of monthly rentals consigned should be deducted from the total amount of actual or compensatory damages herein granted to Insular. (id.).

Claim for Monthly Rental. Judicial notice of the general increase in rentals of lease contract renewals much more with business establishments, especially in this case where the subject leased property covers a 4,215 square meter prime property centrally located in a well-developed commercial district of the City of Makati. Based thereon, the Court finds the amount of ₱500,000.00 as reasonable monthly rental. (id.).

Reasonable Rental Value or Unrealized Monthly Income. It is not for the Court to make a contract for the parties or bind parties to one when no consensual agreement was entered into. But the amount of ₱500,000.00 a month since 1992 or ₱6 Million a year, can be considered actual or compensatory damages representing reasonable rental value or unrealized monthly income for Sun Brothers' continued occupation and enjoyment of the leased property. (id.).

Lease and Rescission. In addition to the general remedy of rescission granted under Article 1191 of the Civil Code, there is an independent provision granting the remedy of rescission for breach of any of the lessor's or lessee's statutory obligations under Article 1659 of the Civil Code. The aggrieved party may, at his option, ask for (1) the rescission of the contract; (2) rescission and indemnification for damages; or (3) only indemnification for damages, allowing the contract to remain in force. Upon non-payment by petitioners of the increased rental in September 1994 in this case, the lessor acquired the right to avail of any of the three remedies outlined above. (Chua, G.R. No. 157568, May 18, 2004).

Ordinarily, an obligee's remedies upon breach of an obligation are judicial in nature. This is implicit in the third paragraph of Article 1191, and in Article 1659 of the Civil Code. Thus, the mere failure by the lessees to comply with the increased rental did not *ipso jure* produce the rescission of the contract of lease. However, although the lessor did not resort to judicial action to specifically avail of any of the three remedies in Article 1659, this does not mean that the compromise agreement continues in force. In certain exceptional cases, the law recognizes the availability of extrajudicial remedies, which exist in addition to the judicial remedies given above. In the case of lease agreements, Article 1673 of the Civil Code must be read in conjunction with Rule 70, Section 2 of the Rules of Court, which provides that a demand to pay or to comply with the conditions

of the lease and to vacate the premises is a condition precedent for the institution of an ejectment suit against the lessee. *The import of these provisions is to grant the lessor the option of extrajudicially terminating the contract of lease by simply serving a written notice upon the lessee. This extrajudicial termination has the same effect as rescission. Rescission of lease contracts under Article 1659 of the Civil Code is not one that requires an independent action, unlike resolution of reciprocal obligations under Article 1191 of said Code.* (id.).

When, in 1994, the petitioners refused to pay the rentals, and respondent initiated the earlier ejectment suits, the juridical bond between the parties was severed. The parties were no longer connected by the link of a lessor-lessee relation. The compromise agreement ceased to be the law between the parties and ceased to govern their legal relationship. No amount of subsequent payment by the lessees could automatically restore the parties to what they once were. The lessor's acceptance of the increased rentals did not have the effect of reviving the earlier contract of lease. Upon the moment of acquiescence by respondents to the increased amount, an entirely new contract of lease was entered into, forging an entirely new juridical relation. (id.).

Lease Without a Fixed Period. Article 1687 of the Civil Code applies. Since the payment of the rentals was made on a monthly basis, the contract of lease was on a monthly term. Hence, respondent was well within her rights to increase the rental of her properties each month as she desired, subject to existing laws. Petitioners were similarly within their rights to refuse to acquiesce. Upon this refusal, the contract of lease between the parties was once more terminated. Respondent thus has the right to demand that petitioners vacate her properties. (id.).

"Option to renew" clause under a Contract of Lease. (The Insular Life Assurance Company, Ltd., G.R. No. 126850, April 28, 2004).

Interpretation of lease contract. The courts may not read into a contract any other intention that would contradict its plain import. A court has no right to make new contracts for the parties or ignore those already made by them, simply to avoid seeming hardships. Neither abstract justice nor the rule of liberal construction justifies the creation of a contract for the parties which they did not make themselves or the imposition upon one party to a contract of an obligation not assumed. (id.).

AGENCY

The basis of agency is representation. A person dealing with an agent is put upon inquiry and must discover upon his peril the authority of the agent. In the instant case, the petitioners' loss could have been avoided if they had simply exercised due diligence in ascertaining the identity of the person to whom they allegedly made the payments. Persons dealing with an assumed agent are bound at their peril to ascertain not only the fact of agency but also the nature and extent of authority, and in case either is controverted, the burden of proof is upon them to establish it. (Culaba v. Court Of Appeals, G.R. No. 125862, April 15, 2004).

COMPROMISE

Once approved by final order of the court, a compromise agreement has the force of *res judicata* between the parties and should not be disturbed except for vices of consent or forgery. (Ayala Land, Inc. v. Navarro, G. R. No. 127079, May 7, 2004). A "petition may be dismissed in view of the compromise agreement entered into by the parties." (id.).

Interpretation of compromise agreement relating to provisions of a contract of lease on allowable increase in the rentals of respondents' premises. (Chua v. Victorio, G.R. No. 157568, May 18, 2004).

DAMAGES

Attorneys Fees. The issue of whether or not Atty. Catly's attorney's fee is reasonable should be resolved by the trial court. (Ayala Land, Inc. v. Navarro, G. R. No. 127079, May 7, 2004). Attorney's fees may be awarded not only when exemplary damages is awarded but also when a party is compelled to litigate or to incur expenses to protect its interest by reason of an unjustified act of the other party. (Article 2208 of the Civil Code). (The Insular Life Assurance Company, Ltd. v. Court of Appeals, G.R. No. 126850, April 28, 2004).

COMMERCIAL LAW

CORPORATION LAW

Corporate Officers. If a private corporation intentionally or negligently clothes its officers or agents with apparent power to perform acts for it, the corporation will be estopped to deny that the apparent authority is real as to innocent third persons dealing in good faith with such officers or agents. When the officers or agents of a corporation exceed their powers in entering into contracts or doing other acts, the corporation, when it has knowledge thereof, must promptly disaffirm the contract or act and allow the other party or third persons to act in the belief that it was authorized or has been ratified. If it acquiesces, with knowledge of the facts, or fails to disaffirm, ratification will be implied or else it will be estopped to deny ratification. (Premiere Development Bank v. Court Of Appeals, G.R. No. 159352, April 14, 2004).

Corporate Authorizations. Acts showing that the corporate officer was vested by the corporation with sufficient authority to enter into transactions for the corporation. (id.).

CONDOMINIUMS

Brochures, Advertisements, Warranties and Representations of Developer Under Section 19 of PD No. 957. Petitioner was in breach of its warranties when it failed to deliver a "closed-circuit TV monitor through which residents from their apartments can see their guests x x x." (Bank of the Philippine Islands v. ALS Management & Development Corp., G.R. No. 151821, April 14, 2004).
Condominium Defects. (id.).

Damages. For Delay in Delivery. Reimbursement of Amount to Complete Work. Unearned Lease Income. (id.).

CRIMINAL LAW

REVISED PENAL CODE (RPC)

Book 1

FELONIES

Art. 3. Criminal Intent. The RPC was enacted to penalize unlawful acts accompanied by evil intent denominated as crimes *mala in se*. The principal consideration is the existence of malicious intent. To constitute a crime, the act must, generally and in most cases, be accompanied by a criminal intent. *Actus non facit reum, nisi mens sit rea.* No crime is committed if the mind of the person performing the act complained of is innocent. In estafa, the accused may thus prove that he acted in good faith and that he had no intention to convert the money or goods for his personal benefit. (People v. Ojeda, G.R. Nos. 104238-58, June 3, 2004)

CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY

Conspiracy as a Mode of Committing a Felony

Art. 8. Conspiracy is predominantly a state of mind as it involves the meeting of the minds and intent of the malefactors. Its existence may be inferred from proof of facts and circumstances which, taken together, indicate that they are parts of the complete plan to commit the crime. (People v. Bello [En Banc], G.R. No. 124871, May 13, 2004). It is not necessary to show that all the conspirators actually hit and killed the victim. Conspiracy renders all the conspirators as co-principals regardless of the extent and character of their participation because in contemplation of law, the act of one conspirator is the act of all. (People v. Buntag, G.R. No. 123070, April 14, 2004; People v. Magdaraog, G.R. No. 151251, May 19, 2004; People v. Dacillo [En Banc], G.R. No. 149368, April 14, 2004).). Even in the absence of direct evidence of prior agreement to commit the crime, conspiracy may be deduced from the acts of the perpetrators before, during and after the commission of the crime, which are indicative of a common design, concerted action and concurrence of sentiments. Spontaneous agreement or active cooperation by all perpetrators at the moment of the commission of the crime is sufficient to create joint criminal responsibility. (Dacillo [En Banc], G.R. No. 149368, April 14, 2004; Sim, Jr. v.

Court of Appeals, G.R. No. 159280, May 18, 2004; Magdaraog, G.R. No. 151251, May 19, 2004; People v. Rom, G. R. No. 137585, April 28, 2004; People v. Ramos, G.R. No. 135204, April 14, 2004).

As a rule, conspiracy has to be established with the same quantum of proof as the crime itself and shown as clearly as the commission of the crime. (Dacillo [En Banc], G.R. No. 149368, April 14, 2004; Sim, Jr., G.R. No. 159280, May 18, 2004). It is not presumed. The elements of conspiracy must be proven beyond reasonable doubt. (People v. Yu, G.R. No. 155030, May 18, 2004).

Conspiracy in: [i] estafa (Sim, G.R. No. 159280, May 18, 2004); [ii] murder (Dacillo [En Banc], G.R. No. 149368, April 14, 2004; Ramos, G.R. No. 135204, April 14, 2004); [iv] robbery with homicide (Bello [En Banc], G.R. No. 124871, May 13, 2004); [v] kidnapping for ransom. (People v. Saldaña [En Banc, *Per Curiam*], G.R. No. 148518, April 15, 2004).

JUSTIFYING CIRCUMSTANCES

Art. 11 (1). Self-defense. When invoked by the accused, he thereby admits that he deliberately killed or inflicted injuries on the victim, and the burden of evidence is shifted on him to prove his defense with clear and convincing evidence. If he fails to prove his defense, the evidence of the prosecution can no longer be disbelieved and the accused can no longer be exonerated of the crime charged. Elements: (1) unlawful aggression by the victim; (2) the means employed to prevent or repel such aggression were reasonable; and (3) lack of sufficient provocation on the part of the person defending himself. There can be no self-defense, complete or incomplete, unless the accused proves unlawful aggression on the part of the victim. (People v. Marcelo, G.R. No. 140385, April 14, 2004). One who acted in self-defense is expected to surrender, not only himself, but also the weapon he used to kill or inflict physical injuries on the victim, as well as the weapon used by the victim. (id.).

EXEMPTING CIRCUMSTANCES

Art. 12 (5). Duress. Compulsion of Irresistible Force. A person who does not act with freedom but under the compulsion of an irresistible force, or under the impulse of an uncontrollable fear of equal or greater injury, is exempt from criminal liability. The

duress, force, fear or intimidation must be *present, imminent and impending*, and of such nature as to induce a well-grounded apprehension of death or serious bodily harm if the act be done. A threat of future injury is not enough. (Saldaña [En Banc, *Per Curiam*], G.R. No. 148518, April 15, 2004). In this case, the evidence shows that at the time the ransom money was to be delivered, appellants, unaccompanied by any of the other accused, entered the van where the complainant was. At that time, the other accused were waiting for both appellants from a distance of about one (1) kilometer. By not availing of this chance to escape, appellants' allegation of fear or duress becomes untenable. Duress should not be speculative or remote. Even granting *arguendo* that the other accused threatened to harm appellants' families to coerce appellants to receive the ransom money, such threats were not of such imminence as to preclude any chance of escape. (id.; Bello [En Banc], G.R. No. 124871, May 13, 2004).

MITIGATING CIRCUMSTANCES

Art. 13 (2). Minority. Privileged Mitigating. Accused is *below* eighteen (18) years of age, when he/she committed the crime (Art. 68). A special mitigating circumstance which has the effect of lowering the penalty by one degree. (People v. Villafuerte; People v. Quimzon, G.R. No. 133541, April 14, 2004).

Art. 13 (7). Voluntarily Surrender. Requisites. (1) The accused has not been actually arrested; (2) he surrendered himself to a person in authority or the latter's agent; and (3) the surrender is voluntary. (Marcelo, G.R. No. 140385, April 14, 2004). There must be a showing of spontaneity and an intent to surrender unconditionally to the authorities, either because the accused acknowledges his guilt or he wishes to spare them the trouble and expense concomitant to his capture. Not appreciated where the appellant "surrendered to the police" two (2) years after the warrant of arrest was issued. In between said period, appellant, through counsel, filed a Motion to Fix Bail Bond without surrendering his person to the jurisdiction of the trial court. (Quimzon, G.R. No. 133541, April 14, 2004).

AGGRAVATING CIRCUMSTANCES

Art. 14 (6). Nighttime - To be an aggravating, must be shown to have facilitated the commission of the crime, or to have been especially sought or taken advantage of by the accused for the purpose of impunity. (Marcelo, G.R. No. 140385, April 14, 2004).
Art. 14 (9). Recidivism. Requisites: [i] it must be alleged in the information; and [ii]

certified true copies of the sentences previously meted out to the accused must be attached thereto. (Dacillo [En Banc], G.R. No. 149368, April 14, 2004).

Art. 14 (15). Abuse of Superior Strength. Necessitates a showing of the relative disparity in the physical characteristics of the aggressor and the victim. (Magdaraog). Established, where two grown-up men assault a young fragile woman whose ability to defend herself had been effectively restrained. (id.). Absorbed in treachery. (People v. Layugan [En Banc], G.R. Nos. 130493-98, April 28, 2004).

Art. 14 (16). Treachery. Appreciated in crimes against persons when the following elements are present: (1) the malefactor employed means, method or manner of execution affording the person attacked no opportunity to defend himself or to retaliate and, (2) the means, method or manner of execution was deliberately or consciously adopted by the offender. Treachery was not appreciated where there was no eyewitness to the crime, and there was no evidence that the appellants deliberately or consciously adopted a method or means of execution to insure the death of the victim. (People v. Buntag, G.R. No. 123070, April 14, 2004; Marcelo, G.R. No. 140385, April 14, 2004; People v. Estoya, GR No. 153538, May 19, 2004). Treachery cannot be considered where no witness has testified on how the assault began and developed. Considering that the existence of any qualifying circumstance such as treachery cannot be inferred, but must be proven as fully as the crime itself, any doubt as to its existence must be resolved in favor of appellant. (Estoya, GR No. 153538, May 19, 2004). Treachery cannot be based on speculations and surmises. (Buntag, G.R. No. 123070, April 14, 2004).

The essence of treachery is the sudden and unexpected attack by an aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself and thereby ensuring the commission of the crime with no risk to the aggressor. In this case, the victim accepted Salvacion's invitation for them to go outside the dance hall on the impression that the latter had something important to tell the victim. The victim had no inkling of any impending danger on his life as he even told his sister to wait for him because he would be coming back. Outside the dance hall, Salvacion pushed the victim towards Canoto and Edgardo who immediately attacked the victim without warning, inflicting wounds on the front and back portions of his body with the use of bolos. Although the initial assault on the victim was frontal, it was treacherous because the attack was sudden and unprovoked. There is no evidence showing that the attack was preceded by any exchange of words or any untoward incident between the assailants

and the victim, sufficient to warn the latter of the impending attack on him. Moreover, the victim was unarmed while all three assailants were carrying deadly weapons. The treachery continued when appellant held the hands of the victim as the latter was running away from the initial stabbings of Canoto and Edgardo, rode on Marlo's back when the latter fell down and repeatedly stabbed the victim who had already been rendered weak by the multiple stab wounds inflicted by Edgardo and Canoto. Appellant attacked Marlo from behind and repeatedly stabbed Marlo when he was already in a defenseless position. (Quimzon, G.R. No. 133541, April 14, 2004).

The suddenness of the attack, however, does not establish treachery. The prosecution should also establish beyond reasonable doubt that *such mode of attack was consciously adopted by the appellant*. There are, however, no other particulars showing that he did, except the witness' testimony that two shots were fired successively from outside. No circumstance was cited to show that the accused had particularly ascertained and aimed at the exact position of the victim, then seated — his back against the window. (Estoya, GR No. 153538, May 19, 2004).

Treachery was established in the following cases: [i] After a drinking spree, the victim and his friends were walking towards home when suddenly, the appellant came out from nowhere, armed with a knife. Without any warning, the appellant stabbed the victim on the vital parts of his body, ensuring the latter's immediate death. (Marcelo, G.R. No. 140385, April 14, 2004). [ii] Appellant and her co-accused tied the victim to a santol tree before they stabbed and shot him to death, thus, insuring the execution of the crime without risk to themselves. (Ramos, G.R. No. 135204, April 14, 2004).

Where the only evidence the prosecution presented to prove treachery was the *sworn statement* executed by the eyewitness which in part stated: "*[N]akita ko po itong lalaki na binanggit ko na may hawak na patalim at inundayan ng saksak ang isang lalaki, tumatakbo na nga palayo yung lalaki ay hindi pa rin nito tinitigilan ng pagsaksak hanggang sa bumagsak na ito….*" In his testimony, however, the witness *failed to recount the aforesaid manner* by which the victim was stabbed. All he testified to was seeing the assailant stab the victim three times while the two were facing each other. He omitted to describe how the assailant purportedly kept stabbing the victim while the latter was running away, as what is stated in his affidavit. As a rule, testimonial evidence or oral testimony commands greater weight than a mere affidavit. (People v. Ramos, G.R. No. 125898, April 14, 2004).

Treachery cannot be established when only the moment when appellant stabbed the victim was witnessed by the prosecution witness. No evidence was presented to establish the circumstances prior to the very moment of aggression. Where the lone witness did not see the commencement of the assault, treachery cannot be considered. (id.).

The allegedly treacherous manner of the attack as the witness declared in his sworn statement fails to draw support from the prosecution's physical evidence. The autopsy report disclosed that the victim sustained all injuries at the front, and none at the back. It further showed a stab wound on the victim's left hand, which the Medico-Legal found to be a defensive wound. Clearly, there were indications that the victim had the opportunity to resist appellant's attack, thereby negating the existence of treachery. (id.).

Minority in Qualified Rape. Art. 266-B (5). The victim is a child below seven (7) years old on ths old on the date of the incident. The imposable penalty is death. (People v. Villafuerte, G.R. No. 154917, May 18, 2004).

PERSONS CRIMINALLY LIABLE FOR FELONIES

Principal by Direct Participation. (Dacillo [En Banc], G.R. No. 149368, April 14, 2004).

PENALTIES

Indeterminate Sentence Law. Considering the actual penalty to be imposed upon appellant, as prescribed by law, is not *reclusion perpetua* or death, appellant is entitled to the application of the Indeterminate Sentence Law. (Quimzon, G.R. No. 133541, Syndicated or Organized Crime Group. Art. 62 (1) [a]. merits the imposition of the maximum penalty. In this case, however, it was neither alleged nor proved that the accused formed *part of a group organized for the general purpose of committing crimes for gain* which is the essence of a syndicated or organized crime group. (Bello [En Banc], G.R. No. 124871, May 13, 2004).

CIVIL LIABILITY

Subsidiary Liability. Employers for felonies committed by their employees in the discharge of their duties. The employer cannot defeat the finality of the judgment by

filing a notice of appeal on its own behalf in the guise of asking for a review of its subsidiary civil liability. An appeal by the employer in such circumstances is not possible. The cases dealing with the subsidiary liability of employers uniformly declare that, strictly speaking, the employers are not parties to the criminal cases instituted against their employees. Both the primary civil liability of the accused-employee and the subsidiary civil liability of the employer are carried in one single decision that has become final and executory. The subsidiary liability of the employer is incidental to and dependent on the pecuniary civil liability of the accused-employee. Hence, the subsidiary civil liability of the employer under Art. 103 may be enforced by execution on the basis of the judgment of conviction meted out to the employee. (Philippine Rabbit Bus Lines, Inc. v. People G.R. No. 147703, April 14, 2004).

In the absence of collusion between the accused-employee and the offended party, the judgment of conviction should bind the person who is subsidiarily liable. To allow employers to dispute the civil liability fixed in a criminal case would enable them to amend, modify or defeat a final judgment rendered by a competent court. (id.).

Before the employers' subsidiary liability is exacted, there must be adequate evidence establishing that: (1) they are indeed the employers of the convicted employees; (2) the employers are engaged in some kind of industry; (3) the crime was committed by the employees in the discharge of their duties; and (4) the execution against the convicted employees has not been satisfied due to their insolvency. The resolution of these issues need not be done in a separate civil action. But the determination must be based on the evidence that the offended party and the employer may fully and freely present. Such determination may be done in the same criminal action in which the employee's liability, criminal and civil, has been pronounced; and in a hearing set for that precise purpose, with due notice to the employer, as part of the proceedings for the execution of the judgment. The employer becomes *ipso facto* subsidiarily liable upon the conviction of the employee and upon proof of the latter's insolvency. (id.).

Book II

CRIMES AND PENALTIES

CRIMES RELATIVE TO OPIUM AND OTHER PROHIBITED DRUGS

Conspiracy in the "[s]ale, administration, delivery, distribution and transportation of dangerous drugs" (Section 21 of the Dangerous Drugs Act of 1972). This is one of the few instances when the law specifically punishes mere conspiracy. (People v. Balag-ey, G.R. No. 141532, April 14, 2004; People v. Yu, G.R. No. 155030, May 18, 2004).

Sale of Prohibited Drugs. (Section 15, Article III, in relation to Section 21[b], Article IV, of the Dangerous Drugs Act of 1972). Elements: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the drug sold and its payment. *What is important is that the prohibited drug the accused sold and delivered be presented before the court and the accused be identified as the offender by the prosecution eyewitnesses*. The prosecution failed to prove clearly who carried the red Jollibee plastic bag containing the shabu and more importantly, who sold the shabu. (People v. Jubail, G.R. No. 143718, May 19, 2004).

Illegal possession and attempted sale of prohibited drugs – included in the offense of sale or delivery of said prohibited drugs. The prevailing doctrine is that "possession of prohibited drugs" is a necessary element in the offense of selling them, except where the seller is also found in possession of another quantity of prohibited drugs not covered by or included in the sale and which are probably intended for some future dealings or use by the seller. (Balag-ey, G.R. No. 141532, April 14, 2004).

Transporting prohibited drugs (Section 4, Article 2 of RA 7659, as amended), (People v. Ayangao, G.R. No. 142356, April 14, 2004).

Procedure in the Custody of Seized Prohibited and Regulated Drugs. Embodied in the Dangerous Drugs Board Regulation No. 3 Series of 1979 amending Board Regulation No. 7 Series of 1974. Any apprehending team having initial custody and control of said drugs and/or paraphernalia, should *immediately after seizure or confiscation*, have the same physically inventoried and photographed in the presence of the accused, if there be any, and/or his representative, who shall be required to sign the

copies of the inventory and be given a copy thereof. Failure of the NARCOM operatives to place markings on the alleged seized marijuana coupled with their failure to observe the procedure in the seizure and taking custody of said drug seriously bring to question the existence of the seized prohibited drug. It is not positively and convincingly clear that what was submitted for laboratory examination and presented in court was actually recovered from the appellants. (People v. Tokohisa Kimura, G.R. No. 130805, April 27, 2004).

The rules on penalties in the RPC and the Indeterminate Sentence Law have suppletory application to the Dangerous Drugs Act after its amendment by RA 7659. As the appellant was found to be transporting 14.75 kilograms of marijuana, the trial court was correct in imposing the lesser penalty of *reclusion perpetua* since there was no aggravating or mitigating circumstance, and in not applying the Indeterminate Sentence Law, which is not applicable when indivisible penalties are imposed. (Ayangao, G.R. No. 142356, April 14, 2004).

CRIMES AGAINST PERSONS

Parricide

Art. 246, as amended by Republic Act No. 7659. Elements: (1) a person is killed; (2) the deceased is killed by the accused; and (3) the deceased is the father, mother or child, whether legitimate or illegitimate, of the accused or any of his ascendants or descendants, or his spouse. The key element is the relationship of the offender with the victim. (People v. Ayuman [En Banc], G.R. No. 133436, April 14, 2004).

Relationship. Oral evidence may be considered. While the prosecution failed to present to the trial court the victim's Certificate of Live Birth, both appellant and his wife Ermita admitted during the hearing that the victim is their son. (id.).

Penalty. Composed of two indivisible penalties, *reclusion perpetua* to death. Considering that no aggravating or mitigating circumstance attended the commission of the crime, we impose upon the appellant the lesser penalty of *reclusion perpetua*. (id.).

Civil Liability. (a) Civil Indemnity of P50,000. When death occurs as a result of a crime, appellant should be ordered to pay the heirs of the victim this amount, without

need of any evidence or proof of damages. (b) Exemplary damages of ₱25,000.00 also awarded, considering that the qualifying circumstance of relationship is present. This amount is recoverable if there is present an aggravating circumstance (whether qualifying or ordinary) in the commission of the crime. (id.).

Murder

Killing qualified by treachery. Art. 248 (1), as amended by Rep. Act 7659. Punishable by *reclusion perpetua* to death. (Marcelo, G.R. No. 140385, April 14, 2004; Ramos, G.R. No. 135204, April 14, 2004). - Killing qualified by abuse of superior strength. (Dacillo [En Banc], G.R. No. 149368, April 14, 2004; Rom, G. R. No. 137585, April 28, 2004).

Civil Liability. (a) Actual Damages. Must be supported by substantial evidence. (Magdaraog, G.R. No. 151251, May 19, 2004; People v. Quimzon, G.R. No. 133541, April 14, 2004). Award of ₱80,000 reduced to ₱18,500, the amount duly supported by receipts. (Marcelo, G.R. No. 140385, April 14, 2004). [i] Loss of Earning Capacity. The indemnification for loss of earning capacity partakes of the nature of actual damages which must be duly proved. In the absence of competent evidence to prove how much the victim was earning, the heirs of the victim are not entitled thereto. (Quimzon, G.R. No. 133541, April 14, 2004). Computed in accordance with the following formula: $^{2}/_{3}$ x (life expectancy - age of victim x [monthly income - ½ living expenses]). (Dacillo [En Banc], G.R. No. 149368, April 14, 2004). Cannot be awarded in the absence of competent proof of the average income of the deceased. The award refers to net income; that is, total income less average expenses. (Magdaraog).

(b) Civil Indemnity of ₱50,000. Automatically awarded e*x delicto* for the death of the victim. (Magdaraog, G.R. No. 151251, May 19, 2004). Requires no proof other than the death of the victim and the accused's responsibility therefor. (Dacillo [En Banc], G.R. No. 149368, April 14, 2004; Ramos, G.R. No. 135204, April 14, 2004; Quimzon, G.R. No. 133541, April 14, 2004).

(c) Moral Damages of ₱50,000 - awarded for proven mental suffering of the victim's heirs, as a result of his untimely death. (id.; Dacillo [En Banc], G.R. No. 149368, April 14, 2004). Not intended to enrich the victim's heirs; rather they are awarded to allow them to obtain means for diversion that could serve to alleviate their moral and

psychological sufferings. (Ramos, G.R. No. 135204, April 14, 2004). Erlinda testified that her son was single when he died; that she felt sad when her son was killed. Her testimony sufficient to sustain the trial court's award of moral damages but the same was reduced from ₱75,000.00 to ₱50,000.00 in line with current jurisprudence. (Quimzon, G.R. No. 133541, April 14, 2004).

(d) Temperate Damages. The award of ₱30,000 for actual damages is improper, as only the amount of ₱20,000, representing funeral expenses, was duly proven by competent documents during the trial. In the light of the foregoing, the amount of ₱25,000 as temperate damages, was awarded, in lieu of actual damages. (Magdaraog, G.R. No. 151251, May 19, 2004). The actual damages in the amount of ₱5,850.00 should be increased to ₱25,000.00, not as actual damages but as temperate damages. (Dacillo [En Banc], G.R. No. 149368, April 14, 2004). In cases where the heirs of the victim failed to prove their claim for actual damages, but have shown that they have suffered pecuniary loss by reason of the death of the victim, an award of ₱25,000.00 by way of temperate damages is justified, in lieu of an award of actual or compensatory damages. In cases where actual damages was proven by receipts during the trial but said damages amounted to less than ₱25,000.00, as in the present case, the award of temperate damages in the amount of ₱25,000.00 is justified, in lieu of said actual damages. The rationale for such an award of temperate damages is that it would be anomalous and unfair for the heirs of the victim, who by presenting receipts, tried and succeeded in proving actual damages but in an amount less than ₱25,000.00, to be placed in a worse situation than those who might not have presented any receipts at all but would be entitled to ₱25,000.00 for temperate damages. (Quimzon, G.R. No. 133541, April 14, 2004).

(e) Exemplary Damages of ₱25,000.00. Warranted under Art. 2230 of the Civil Code in view of the presence of the aggravating circumstance, qualifying or generic. (Ramos, G.R. No. 135204, April 14, 2004; Marcelo, G.R. No. 140385, April 14, 2004). Also justified under Art. 2229 of the Civil Code in order to set an example for the public good. (Dacillo [En Banc], G.R. No. 149368, April 14, 2004).

Homicide

Civil Liability. (a) Civil indemnity of ₱50,000. (Estoya, GR No. 153538, May 19, 2004; Buntag, G.R. No. 123070, April 14, 2004). (G.R. No. 125898, April)

(b) Actual Damages. [i] Loss of Earning Capacity. Cannot be granted in the *absence of sufficient evidence.* (Estoya, GR No. 153538, May 19, 2004). (G.R. No. 125898, April)

(c) Temperate Damages of P25,000.00. In lieu of actual damages, since the heirs undeniably suffered pecuniary loss. (Estoya, GR No. 153538, May 19, 2004). (G.R. No. 125898, April; Ramos, G.R. No. 135204, April 14, 2004).

(d) Moral Damages. Cannot be granted In the *absence of sufficient evidence.* (id.; Buntag, G.R. No. 123070, April 14, 2004). Furthermore, *jurisprudence dictates the grant of moral damages in the amount of ₱50,000 to the victim's heirs in recognition of the latter's emotional suffering brought about by the violent death of their loved one.* (G.R. No. 125898, April)

(e) Exemplary Damages. Proper only when the crime is committed with one or more aggravating circumstances. (Estoya, GR No. 153538, May 19, 2004).

Rape

Rape With Homicide. Special Complex Crime. Art. 266-B. Elements: (1) the appellant had carnal knowledge of a woman; (2) carnal knowledge of a woman was achieved by means of force, threat or intimidation; and (3) by reason or on the occasion of such carnal knowledge by means of force, threat or intimidation, appellant killed the woman. However, in rape committed by close kin, such as the victim's father, stepfather, uncle, or the common-law spouse of her mother, it is not necessary that actual force or intimidation be employed. Moral influence or ascendancy takes the place of violence and intimidation. (People v. Yatar [En Banc, Per Curriam], G.R. No. 150224, May 19, 2004). The penalty of death is imposed when by reason or on the occasion of the rape, homicide is committed. (id.).

Civil Liability. (a) Civil indemnity *ex delicto* of P100,000.00. (id.).

(b) Actual Damages incurred by the family of the victim that have been proved at the trial. (id.).

(c) Moral Damages of P75,000. (id.).

(d) Exemplary damages cannot be awarded as part of the civil liability since the crime was not committed with one or more aggravating circumstances. (id.).

Qualified Rape. Involving Minority and Relationship. Minority of the victim is best established by her Certificate of Live Birth. In this case, the witness merely declared that the rape victim was 14 years old when appellant committed the crimes, *without even stating the date she was born*. Such declaration does not satisfy the requirement that the victim's age must be proved with certainty as the crime itself. (People v. Layugan [En Banc], G.R. Nos. 130493-98, April 28, 2004).

Intimidation. The victim was cowed to submit *quietly* to his lust since she was overwhelmed with fear when she recalled how he killed her own eldest bother.

Sweetheart Defense. As an affirmative defense, must be established with convincing evidence — by some documentary and/or other evidence like mementos, love letters, notes, pictures and the like. However, even if the appellant and the victim were really sweethearts, such would not necessarily establish consent. In this case, it was the wife of appellant who accompanied the victim and her mother to police authorities to report the incident and informed them of his whereabouts. Such reaction was obviously inconsistent with that of a wife whose trust was betrayed by her husband — as the situation would have been, if he and the victim were indeed lovers. (People v. Bautista, G.R. No. 140278, June 3, 2004).

Simple Rape. Civil Liability. Upon a finding of the fact of rape, the award of civil indemnity in the sum of ₱50,000.00 is mandatory for each count of rape. Additionally, the victim must be awarded moral damages of ₱50,000.00 in each count of simple rape, without need of pleading or proof of the basis thereof since the anguish and pain she has endured are evident. (People v. Layugan [En Banc], G.R. Nos. 130493-98, April 28, 2004).

CRIMES AGAINST PERSONAL LIBERTY AND SECURITY

Kidnapping for Ransom. (Art. 267). Elements: (a) the accused is a private individual; (b) the accused kidnaps or detains another, or in any manner deprives the latter of his liberty; (c) the act of detention or kidnapping is illegal; and (d) in the commission of the offense, any of the four circumstances mentioned in Art. 267 are

present. The imposition of the death penalty is mandatory if the kidnapping was committed for the purpose of extorting ransom. (Saldaña [En Banc, *Per Curiam*], G.R. No. 148518, April 15, 2004).

Civil Liability. Exemplary Damages. (id.).

CRIMES AGAINST PROPERTY

Robbery

Robbery With Homicide. Art. 294 (1), as amended by Republic Act No. 7659. Special complex crime. (Bello [En Banc], G.R. No. 124871, May 13, 2004). Arises when, by reason of or on the occasion of a robbery, a person is killed. The original criminal design of the culprit must be robbery (originally, there must be intent to gain), and the homicide is perpetrated with a view to the consummation of the robbery (by reason or on the occasion of the robbery). In this case, while violence was not present at the commencement of the felony, it was nonetheless employed by the appellant in order to completely take possession of the victim's waist bag. The unlawful taking became robbery at such juncture when violence against the person of the victim was employed. The killing of the victim resulting from or on the occasion of such robbery gave rise to the special complex crime of robbery with homicide. (People v. Alcantara, G.R. No. 157669, April 14, 2004)

Penalty is *reclusion perpetua* to death.

The accused must be shown to have the principal purpose of committing robbery, the homicide being committed either by reason of or on occasion of the robbery. The homicide may precede robbery or may occur thereafter. What is essential is that there is a nexus, an intrinsic connection between the robbery and the killing. The latter may be done prior to or subsequent to the former. However, the intent to commit robbery must precede the taking of the victim's life. Furthermore, the constituted crimes of robbery and homicide must be consummated.

A homicide is considered as having been committed on the occasion or by reason of the robbery when the motive of the offender in killing the victim is to deprive the latter of his property, to eliminate an obstacle to the crime, to protect his

possession of the loot, to eliminate witnesses, to prevent his being apprehended or to insure his escape from the scene of the crime.

Robbery with homicide is essentially a felony against property. The aggravating circumstance of disregard of the victim's age is applied only to crimes against persons and honor. The bare fact that the victim is a woman does not *per se* constitute disregard of sex. For this circumstance to be properly considered, the prosecution must adduce evidence that in the commission of the crime, the accused had particularly intended to insult or commit disrespect to the sex of the victim. In this case, the appellant killed the victim because the latter started to shout. There was no intent to insult nor commit disrespect to the victim on account of the latter's sex.

Dwelling is aggravating in robbery with homicide.

Although he claimed that he was drunk when he gained entry into the victim's house, killed her and divested her of her properties, the appellant failed to prove that his intoxication was not habitual or subsequent to the plan to commit the felony charged. (People v. Reyes [En Banc], G.R. No. 153119, April 13, 2004).

Estafa

Art. 315 (2) [d], RPC. Sec. 2, BP 22. In view of such special circumstances, this Court issued a resolution dated June 9, 1993 recalling its resolutions dated October 14, 1992, February 3, 1993 and March 17, 1993 for *humanitarian reasons and in the interest of justice, and in order that this Court may resolve appellant's appeal on the merits.*

Element: Deceit and Damage. Under paragraph 2 (d) of Article 315 of the RPC, as amended by RA 4885, the elements of estafa are: (1) a check is postdated or issued in payment of an obligation contracted at the time it is issued; (2) lack or insufficiency of funds to cover the check; (3) damage to the payee thereof. The drawer of the dishonored check is given three days from receipt of the notice of dishonor to cover the amount of the check. Otherwise a *prima facie* presumption of deceit arises. In this case, deceit was not established. The *prima facie* presumption of deceit was successfully rebutted by appellant's evidence of good faith, a defense in *estafa* by postdating a check. Good faith in this case was demonstrated by the appellant who not only made arrangements for payment; but fully paid the entire amount of the dishonored checks.

Notice of Dishonor Not Established. The prosecution claimed that the demand letter was sent by registered mail. To prove this, it presented a copy of the demand letter as well as the registry return receipt bearing a signature which was, however, not even authenticated or identified. A registry receipt alone is insufficient as proof of mailing. Receipts for registered letters and return receipts do not prove themselves; they must be properly authenticated in order to serve as proof of receipt of the letters. Notice of dishonor is required under both par. 2(d) Art. 315 of the RPC and Sec. 2 of BP 22. While the RPC prescribes that the drawer of the check must deposit the amount needed to cover his check within *three* days from receipt of notice of dishonor, BP 22, on the other hand, requires the maker or drawer to pay the amount of the check within *five* days from receipt of notice of dishonor. *Under both laws, notice of dishonor is necessary for prosecution*. Without proof of notice of dishonor, knowledge of insufficiency of funds cannot be presumed and no crime (whether estafa or violation of BP 22) can be deemed to exist. (People v. Ojeda, G.R. Nos. 104238-58, June 3, 2004)

Responsibility under BP 22 is personal to appellant; hence, personal knowledge of the notice of dishonor is necessary. Consequently, while there may have been constructive notice to appellant regarding the insufficiency of her funds in the bank, it is not enough to satisfy the requirements of procedural due process.

With the evident lack of notice of dishonor of the checks, appellant cannot be held guilty of violation of BP 22. When service of notice is an issue, the person alleging that the notice was served must prove the fact of service. The burden of proving receipt of notice rests upon the party asserting it and the quantum of proof required for conviction in this criminal case is proof beyond reasonable doubt.

ANTI-GRAFT AND CORRUPT PRACTICES ACT

Causing Undue Injury to Any Party. 3 (e) of Republic Act No. 3019, as amended. Receipt and custody of cash bond in criminal cases. (Judge Sidro v. People, G.R. No. 149685, April 28, 2004).

Causing Undue Injury to Any Party. Section 3 (e) of Rep. Act No. 3019. We do not believe the petitioner's contention that, on June 5, 1990, he requested Bantilo to deposit the amount with the office of the municipal treasurer but that the latter rejected the deposit. In the first place, contrary to the petitioner's claim, he already knew that the

municipal treasurer of Mondragon had previously rejected deposits of cash bail of accused in the municipal trial court. This was the testimony of stenographic reporter Remedios Bantilo, a witness for the petitioner no less, in answer to the clarificatory questions of the Presiding Justice of the Sandiganbayan, to wit:

It is inconceivable that the petitioner would still order Bantilo on June 5, 1990 to deposit the money in the office of the municipal treasurer when he knew all along that the deposit would be rejected.

Even assuming that the petitioner was not aware before June 5, 1990, that the municipal treasurer would refuse to accept cash bail and still sent Bantilo to deposit the amount in the office of the municipal treasurer, the petitioner should have turned over the amount to the clerk of court the next day, and ordered the latter to deposit the amount to the nearest internal revenue collector as provided for in Rule 114, Section 11 of the Rules of Court. The petitioner failed to do so.

After the petitioner dismissed the case provisionally on September 14, 1990, he was obliged to return the ₱1,000.00 to Vicario, Cardenas or Castillo. After all, the proceedings before the municipal trial court had already been terminated when the petitioner's order provisionally dismissing Criminal Case No. 5671 became final. However, the petitioner failed to return the amount when Castillo and Vicario asked him during the first week of October 1990 to return the same. It turned out that the petitioner used the money and did not have ₱1,000.00 when Vicario and Cardenas arrived in his office to claim it. As testified to by Vicario, the petitioner asked to be given until November 1990 within which to repay the amount.

Vicario's testimony, thus, belies the petitioner's defense that he refused to return the amount to Vicario because the dismissal of the case on September 14, 1990 was merely provisional, and because neither Vicario nor Castillo filed a motion for the withdrawal of the amount as mandated by the petitioner in his Order of October 30, 1990. Vicario and Castillo could not file any motion for the withdrawal of the cash bail, as there was no official receipt for the amount issued by the municipal treasurer or internal revenue collector.

Vicario cannot be faulted for not filing a motion for the withdrawal of the ₱1,000.00 because he had earlier learned from the municipal treasurer's office that the petitioner

had not deposited the said amount. Furthermore, the petitioner himself had promised Vicario that he would refund the amount in November 1990. There was, thus, no sense for Vicario to file such motion to withdraw the cash bail.

Undue Injury. Explained. By holding on to the money illegally, the accused precluded the enjoyment of the said amount by the concerned persons. The belated action by the accused in ordering the deposit of the amount with the Municipal Treasurer on January 18, 1991, more than four (4) months from the time the case against Vicario was dismissed on September 14, 1990, is of no moment since it is a fact that actual injury had already been suffered by Vicario and his bondsmen. (Judge Sidro v. People, G.R. No. 149685, April 28, 2004).

Estafa

Under par. 2(d) Art. 315 of the RPC and Sec. 2 of BP 22. In view of such special circumstances, the Court issued a resolution dated June 9, 1993 recalling its resolutions dated October 14, 1992, February 3, 1993 and March 17, 1993 for *humanitarian reasons and in the interest of justice, and in order that this Court may resolve appellant's appeal on the merits*.

Notice of dishonor is required under both par. 2(d) Art. 315 of the RPC and Sec. 2 of BP 22. While the RPC prescribes that the drawer of the check must deposit the amount needed to cover his check within *three* days from receipt of notice of dishonor, BP 22, on the other hand, requires the maker or drawer to pay the amount of the check within *five* days from receipt of notice of dishonor. *Under both laws, notice of dishonor is necessary for prosecution* (for estafa and violation of BP 22). Without proof of notice of dishonor, knowledge of insufficiency of funds cannot be presumed and no crime (whether estafa or violation of BP 22) can be deemed to exist. (People v. Ojeda, G.R. Nos. 104238-58, June 3, 2004).

LABOR LAWS

LABOR RELATIONS

Voluntary Arbitrator

The proper remedy from the adverse decision of a voluntary arbitrator is a petition for review under Rule 43 (See Section 1) of the 1997 Rules of Civil Procedure, not a petition for *certiorari* under Rule 65, which is not and cannot be a substitute for an appeal, where the latter remedy is available. (Sevilla Trading Company v. Semana, G.R. No. 152456, April 28, 2004).

Factual Findings of labor officials. Ordinarily, final and binding upon the Court. However, when the findings of the labor arbiter and the NLRC are inconsistent, there is a need to review the records to determine which of them should be preferred as more conformable to the evidentiary facts. Where the CA's findings of fact clash with those of the NLRC, the Court is compelled to go over the records of the case, as well as the submissions of the parties. (Phil. Employ Services and Resources, Inc. v. Paramio, G.R. No. 144786, April 15, 2004). The lower tribunals' factual findings will not be upheld where there is a showing that such findings were totally devoid of support, or that the judgment was based on a misapprehension of facts. (Emco Plywood Corporation v. Abelgas, G.R. No. 148532, April 14, 2004).

Appeals. Section 223, Labor Code. The Order of the Labor Arbiter denying petitioners' motion to dismiss is interlocutory; hence, it cannot be appealed, until a final judgment on the merits of the case is rendered. (Texon Manufacturing v. Millena, G.R. No. 141380, April 14, 2004).

National Labor Relations Commission

Cause of Action. Requires: [i] a legal right of the plaintiff and a correlative obligation of the defendant; and [ii] an act of omission of the defendant in violation of the legal right of the plaintiff. Does not accrue until the party obligated refuses, expressly or impliedly, to comply with its duty. (id.)

Prescription of Action. Money claims. 3 years from the time the cause of action

accrued. (id.) Illegal Dismissal with prayer for grant of money claims and benefits. 4 years based on Article 1146 (1) of the Civil Code. (id.)

Appearance and Fees. Article 222. The obligation to pay attorney's fees belongs to the union and cannot be shunted to the individual workers as their direct responsibility. Any agreement to the contrary shall be null and void *ab initio*. Petitioners' deduction of attorney's fees from respondents' separation pay has no basis in law. (Emco Plywood Corporation, G.R. No. 148532, April 14, 2004).

Collective Bargaining and Administration of Agreement

Collective Bargaining Agreement. Signing Bonus. Not demandable and enforceable for the following reasons: [i] the non-fulfillment of the condition for which it was offered, *i.e.*, the speedy and amicable conclusion of the CBA negotiations; and [ii] the failure of respondent union to prove that the grant of the said bonus is a long established tradition or a regular practice on the part of the employer. To be considered a regular practice, the giving of the bonus should have been done over a long period of time, and must be shown to have been consistent and deliberate. The test or rationale of this rule requires an indubitable showing that the employer agreed to continue giving the benefits, knowing fully well that said employees are not covered by the law requiring payment thereof. Here, the petitioner initially offered a signing bonus only during the previous CBA negotiation. Previous to that, there is no evidence on record that petitioner ever offered the same or that the parties included a signing bonus among the items to be resolved in the CBA negotiation. Hence, the giving of such bonus cannot be deemed as an established practice. (Philippine Appliance Corporation [Philacor] v. Court Of Appeals, G.R. No. 149434, June 3, 2004).

Certification Election. Under Article 259 of the Labor Code, as amended, any party to a certification election may *appeal* the order of the Med-Arbiter *directly to the Secretary of Labor* who shall decide the same within fifteen (15) calendar days. The Decision or Resolution of the Secretary of the DOLE on appeal shall be *final and executory*. Upon finality of the Decision of the Secretary, the entire records of the case shall be remanded to the office of origin for implementation of the Decision, *unless restrained by the appropriate court*. (SMC Quarry 2 Workers Union – February Six Movement (FSM) Local Chapter NO. 1564 v. Titan Megabags Industrial Corporation, G.R. No. 150761, May 19, 2004). The remedy of an aggrieved party in a Decision or

Resolution of the Secretary of the DOLE is to timely file a motion for reconsideration as a precondition for any further or subsequent remedy, and then seasonably file a special civil action for certiorari under Rule 65 of the 1997 Rules of Civil Procedure. Without a motion for reconsideration seasonably filed within the ten-day reglementary period, the questioned Decision or Resolution of the Secretary becomes final and executory. (id.).

In certification elections, the employer is a bystander. It has no right or material interest to assail the certification election. Thus, when a petition for certification election is filed by a legitimate labor organization, it is good policy of the employer not to have any participation or partisan interest in the choice of the bargaining representative. While employers may rightfully be notified or informed of petitions of such nature, they should not, however, be considered parties thereto with an inalienable right to oppose it. (id.).

POST EMPLOYMENT

Termination of Employment

Security of Tenure. Section 3, Article XVI of the Constitution. The worker should be protected and insulated against any arbitrary deprivation of his job. The worker's job - his right to property. (Philips Semiconductors (Phils.), Inc. v. Fadriquela, G.R. No. 141717, April 14, 2004).

Regular Employment. Two kinds of regular employees: (1) those engaged to perform activities which are necessary or desirable in the usual business or trade of the employer; and (2) those casual employees who have rendered at least one year of service, whether continuous or broken, with respect to the activities in which they are employed. The primary standard to determine a regular employment is the reasonable connection between the particular activity performed by the employee in relation to the business or trade of the employer. The test is whether the former is usually necessary or desirable in the usual business or trade of the employer. If the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity, if not indispensability of that activity to the business of the employer. Hence, the employment is also considered regular, but only with respect to such activity and while such activity exists. The law does not provide the qualification that the employee

must first be issued a regular appointment or must be declared as such before he can acquire a regular employee status. (id.).

In this case, the respondent was employed by the petitioner on May 8, 1992 as *production operator*. She was assigned to wire building at the transistor division. The *work of the respondent was necessary or desirable in the business or trade of the petitioner*. She remained under the employ of the petitioner without any interruption for one (1) year and twenty-eight (28) days. The original contract of employment had been extended or renewed for four times, to the same position, with the same chores. *Such a continuing need* for the services of the respondent is sufficient evidence of the necessity and indispensability of her services to the petitioner's business. By operation of law, then, the respondent had attained the regular status of her employment with the petitioner, and is thus entitled to security of tenure as provided for in Article 279 of the Labor Code. (id.). The respondent's re-employment under contracts ranging from two to three months, with an express statement that she may be reassigned at the discretion of the petitioner and that her *employment may be terminated at any time upon notice*, was but a catch-all excuse to prevent her regularization. Such is contrary to the letter and spirit of Articles 279 and 280 of the Labor Code. The Court rejected the employer's submission that: [i] its hiring policy for a specific and limited period on an "as the need arises" basis is not prohibited by law; and [ii] that it resorted to hiring employees for fixed terms to augment or supplement its regular employment "for the duration of peak loads" during short-term surges to respond to cyclical demands. (id.). Article 280 and Article 281 of the Labor Code of the Philippines, as amended, seek to put an end to the pernicious practice of making permanent casuals of lowly employees by the simple expedient of extending to them temporary or probationary appointments, *ad infinitum*. (id.).

Term Employment. The Labor Code does not outlaw employment contracts on fixed terms or for specific period. The decisive determinant in "*term employment*" should not be the activity that the employee is called upon to perform but the day certain agreed upon by the parties for the commencement and termination of their employment relationship. Term Employment is valid where: (1) The fixed period of employment was knowingly and voluntarily agreed upon by the parties without any force, duress, or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent; or (2) It satisfactorily appears that the employer and the employee dealt with each other on more or less equal terms with no moral dominance exercised by the former or the latter. (id.).

Grounds for Termination of Employment. Disease. Article 284 of the Labor Code. Section 8, Rule 1, Book VI of the Omnibus Rules Implementing the Labor Code. The employer is burdened to prove that the employee was suffering from a disease, or wound that prevented his continued employment. The employer must present a certification from competent public authority that the employee was heavily wounded and had lost the ability to work. (Phil. Employ Services and Resources, Inc., G.R. No. 144786, April 15, 2004).

Retrenchment. One of the authorized causes for the dismissal of employees. Art. 283 of the Labor Code. It is a management prerogative consistently recognized and affirmed by the Court. However, there must be faithful compliance with the substantive and the procedural requirements laid down by law and jurisprudence. It must be exercised essentially as a measure of last resort, after less drastic means have been tried and found wanting. It is resorted to by employers to avoid or minimize business losses. The "loss" cannot be of just any kind or amount; otherwise, a company could easily feign excuses to suit its whims and prejudices or to rid itself of unwanted employees. The employer *must prove*, among others, that the losses are *substantial* and that the retrenchment is *reasonably necessary to avert those losses*. The employer bears the burden of proving [i] the existence or the imminence of substantial losses with clear and satisfactory evidence that [ii] there are legitimate business reasons justifying a retrenchment. Should the employer fail to do so, the dismissal shall be deemed unjustified. (Emco Plywood Corporation, G.R. No. 148532, April 14, 2004).

Standards that a company must meet to justify retrenchment and to guard against abuse. Audited Financial Statements – to prove the necessity of retrenchment. The presentation of the company's financial statements for a particular year was inadequate to overcome the stringent requirement of the law. The failure of petitioner to show its income or loss for the immediately preceding years or to prove that it expected no abatement of such losses in the coming years bespeaks the weakness of its cause. (id.).

Notice. For a valid termination due to retrenchment, there must be written notices of the intended retrenchment served by the employer on the worker and on the Department of Labor and Employment at least one (1) month before the actual date of the retrenchment. This is to give employees some time to prepare for the eventual loss of their jobs, as well as to give DOLE the opportunity to ascertain the verity of the alleged cause of termination. Such notice should be served on the employees themselves, not on their supervisors.

(id.). Also, the Notice sent to DOLE was defective, because it stated that EMCO would terminate the services of 104 of its workers but the corporation actually dismissed 250. Petitioners aver that the 146 employees not listed in the Notice sent to DOLE voluntarily resigned; hence, the latter were not retrenched. This assertion does not deserve any consideration. Petitioners reiterate that those workers voluntarily resigned because of the atmosphere of uncertainty, which occurred after the Sawmill Department had been temporarily shut off in February 1993. The renewal of the permit on March 31, 1993, however, removed the alleged shroud of uncertainty. (id.).

Resignation. Voluntary act of employees who are compelled by personal reasons to dissociate themselves from their employment. Must be done with the intention of relinquishing an office, accompanied by the act of abandonment. In this case, it was illogical for respondents to resign and then file a Complaint for illegal dismissal. Resignation is inconsistent with the filing of the Complaint. (id.).

Not Voluntary. Constructive Dismissal. There is constructive dismissal if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it would foreclose any choice by him except to forego his continued employment. It exists where there is cessation of work because "continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a diminution in pay." (Phil. Employ Services and Resources, Inc., G.R. No. 144786, April 15, 2004).

Illegal Dismissal. Due Process. Respondent was dismissed by the petitioner without the requisite notice and without any formal investigation. Given the factual milieu in this case, the respondent's dismissal from employment for incurring five (5) absences in April 1993, three (3) absences in May 1993 and four (4) absences in June 1993, even if true, is too harsh a penalty. An employee may not be dismissed for violation of reasonable regulations/rules promulgated by the employer. (Philips Semiconductors (Phils.), Inc., G.R. No. 141717, April 14, 2004). In order to effect a valid dismissal of an employee, the law requires that: [i] there be a just and valid cause as provided in Article 282, or any of the authorized causes provided for in Articles 283 and 284 of the Labor Code; and [ii] the employee was afforded an opportunity to be heard and to defend himself. Where there is no showing of a clear, valid and legal cause for the termination of employment, the law considers the matter a case of illegal dismissal. (Phil. Employ Services and Resources, Inc., G.R. No. 144786, April 15, 2004).

Migrant Workers and Overseas Filipinos Act of 1995 (Rep. Act No. 8042). The agency which deployed the employees whose employment contract were adjudged illegally terminated, shall be jointly and solidarity liable with the principal for the money claims awarded to the aforesaid employees. Consequently, the petitioner, as the agency of the respondents, is solidarily liable with its principal Kuan Yuan for the payment of the salaries due to the respondents corresponding to the unexpired portion of their contract, as well as the reimbursement of their placement fees. (id.). The repatriation of the worker and the transport of his personal belongings shall be the primary responsibility of the agency which recruited or deployed the overseas contract worker. All the costs attendant thereto shall be borne by the agency concerned and/or its principal. (id.).

Backwages. Art. 279 of the Labor Code. An employee who is unjustly dismissed is entitled to reinstatement, without loss of seniority rights and other privileges, and to the payment of his full backwages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the time his compensation was withheld from him (which, as a rule, is from the time of his illegal dismissal) up to the time of his actual reinstatement. Similarly, under R.A. 6715, employees who are illegally dismissed are entitled to full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time their actual compensation was withheld from them up to the time of their actual reinstatement. If reinstatement is no longer possible, the backwages shall be computed from the time of their illegal termination up to the finality of the decision. (Philippine Journalists, Inc. v. Mosqueda, G.R. No. 141430, May 7, 2004).

Quitclaims and Waivers. As a rule, deeds of release or quitclaim cannot bar employees from demanding benefits to which they are legally entitled or from contesting the legality of their dismissal. The acceptance of those benefits would not amount to estoppel. The amounts already received by the present respondents as consideration for signing the Quitclaims should, however, be deducted from their respective monetary awards. The mere fact that respondents were not physically coerced or intimidated does not necessarily imply that they freely or voluntarily consented to the terms thereof. Moreover, the employer has the burden of proving that the Quitclaims were voluntarily entered into. (Emco Plywood Corporation, G.R. No. 148532, April 14, 2004). (id.). In these cases, the Quitclaims were deemed illegal, as the employees' consents had been vitiated by mistake or fraud. Because the retrenchment was illegal and of no effect, the Quitclaims were therefore not voluntarily entered into by respondents. Their consent

was similarly vitiated by mistake or fraud. The law looks with disfavor upon quitclaims and releases by employees pressured into signing by unscrupulous employers minded to evade legal responsibilities. (id.).

After all the expenses and the trouble they went through in seeking greener pastures and financial upliftment, and the concomitant tribulations of being separated from their families, the respondents would not suddenly and without reason decide to resign, return home and be jobless once again. Here, the respondents had no choice but to agree to their employer's demand to sign and execute the respective agreements. They were stranded in a foreign land, with their remunerations considerably diminished by numerous illegal deductions. Their plight was all the more made unbearable by the inhumane working conditions. (Phil. Employ Services and Resources, Inc., G.R. No. 144786, April 15, 2004).

The agreement signed by respondent Curameng, Jr. was mimeographed and prepared by his employer. Except for his handwritten name, the words "I'm go (sic) very very (sic)" and his signature at the bottom of the document, the rest of the spaces to be filled up were all blank. Most of the contents of the agreement were even in Chinese characters. In sum, there can be no other conclusion than that the aforementioned respondents were illegally dismissed, and their employment contract illegally terminated. (id.).

CONDITIONS OF EMPLOYMENT

13th-Month Pay. Computed on the basis of the basic salary of the employee. (Sevilla Trading Company v. Semana, G.R. No. 152456, April 28, 2004).

Prohibition Against Diminution of Benefits. In this case, there is no reason for any mistake in the construction or application of the law. When petitioner included, over a period of at least two (2) years, non-basic benefits of its employees, such as maternity leave pay, cash equivalent of unused vacation and sick leave, among others in the computation of the 13th-month pay, this may only be construed as a voluntary act on its part – which has ripened into a company practice or policy that can no longer be peremptorily withdrawn without violating Article 100 of the Labor Code. However, jurisprudence has not fixed the length of time the company practice should have been exercised to constitute voluntary employer practice which cannot be unilaterally withdrawn by the employer. (id.).

LAND LAWS

TORRENS SYSTEM

Indefeasibility of Title. The principle does not apply where fraud attended the issuance of the title. (Sacdalan v. Court of Appeals, G.R. No. 128967, May 20, 2004).

Registration. Levy on execution. At the time of the levy on execution, there was yet no annotation of petitioner's adverse claim appearing at the back of the title. The adverse claim was filed only after the auction sale of the property. It is the act of registration that operates to convey registered land or affect title thereto – registration in a public registry creates constructive notice to the whole world. In the absence of registration, third persons cannot be charged with constructive notice of dealings involving registered land. (Venzon v. Sps. Santos, G.R. No. 128308, April 14, 2004).

Buyer in Good Faith. A purchaser cannot close his eyes to facts that should put a reasonable man on his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor. In this case, respondent spouses had actual knowledge, or should have been put on guard, that petitioner had a pre-existing claim to the property, which renders the lack of annotation of the adverse claim at the back of the TCT irrelevant. From respondent spouses' perspective, petitioner, at the time of the levy, had a claim over the subject lot although the same was actually in the name of the judgment debtor. Their acquisition of such property at the execution sale is, therefore, subject to the perfection of petitioner's claim to ownership. (id.).

JUDICIAL CONFIRMATION OF AN IMPERFECT TITLE

Possession and Occupation of the Land. Open, continuous, exclusive, and notorious possession and occupation under a *bona fide* claim of acquisition of ownership. Proof of specific acts of ownership must be presented to substantiate the claim. The law speaks of *possession and occupation* which is not meant to be synonymous with the other. When the law adds the word *occupation*, it seeks to delimit the all-encompassing effect of constructive possession. Taken together with the words open, continuous, exclusive and notorious, the word *occupation* serves to highlight the fact that for an applicant to qualify, his possession must not be a mere fiction. Actual possession of a land consists in the manifestation of acts of dominion over it of such a nature as a party

would naturally exercise over his own property. (Republic V. Alconaba, G.R. No. 155012, April 14, 2004).

Tax Payment to support *bona fide* claim of acquisition of ownership. (id.).

Absence of improvement on the land negates the claim of the respondents that they immediately took possession of the subject land upon the death of their parents in 1976 and 1967, respectively. (id.).

LEGAL AND JUDICIAL ETHICS

JUDGES

Judicial Competence. Respondent's failure to comply with the elementary dictates of procedural rules constitutes a violation of the Code of Judicial Conduct that a judge shall be faithful to the law and maintain professional competence. (Alcaraz v. Judge Lindo, A.M. No. MTJ-04-1539, April 14, 2004).

Rift Between Judges. (Judge Navarro v. Judge Tormis, A.M. No. MTJ-00-1337, April 27, 2004).

Improper Conduct. Attempting to Influence the Outcome of Any Case Pending Before Another Judge. Rule 2.04, Canon 2 of the Code of Judicial Conduct. (id.).

Conduct Unbecoming of a Judge – even when acting as a private citizen. A judge's official life cannot simply be detached or separated from his personal existence. A judge should avoid impropriety and the appearance of impropriety in all activities. (Canon 2, The Code of Judicial Conduct). (Hon. Decena v. Judge Malanyaon, AM No. RTJ-02-1669, April 14, 2004).

Inhibition. Voluntary. The issue of whether a judge should voluntarily inhibit himself is addressed to his sound discretion (paragraph 2, Section 1 of Rule 137). provides for the rule on voluntary inhibition. (Talag v. Judge Reyes, A.M. No. RTJ-04-1852, June 3, 2004).

Administrative Responsibility. It is the duty of Judges to see to it that clerks and other court personnel faithfully perform the functions assigned to them. (Manzon v. Judge Perello, A.M. No. RTJ-02-1686, May 7, 2004).

Judicial remedy. Anent the correctness of respondent Judge's decision and denial of complainant's Motion for Annulment of Decision, being essentially judicial in character, the proper action that complainant should have taken was an appeal to the RTC. An administrative complaint is not the appropriate remedy for every act of a judge deemed aberrant or irregular where a judicial remedy exists and is available. (Alcaraz, A.M. No. MTJ-04-1539, April 14, 2004).

LAWYERS

In Public Office. Administrative Proceedings Against. The Code of Professional Responsibility governs the conduct of private practitioners as well as lawyers in government service. (Office of the Court Administrator v. Atty. Morante [En Banc *Per Curiam*], A.M. No. P-02-1555, April 16, 2004).

Gross Misconduct. The grounds expressed in Section 27, Rule 138, of the Rules of Court are broad enough to cover any misconduct, including dishonesty, of a lawyer in his professional or private capacity. Respondent's issuance of worthless checks and his contumacious refusal to comply with his just obligation for nearly eight years is appalling and hardly deserves compassion from the Court. (Orbe v. Atty. Adaza, A.C. No. 5252, May 20, 2004).

Disbarment. The supreme penalty of disbarment is meted out only in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court and member of the bar, as in this case. (Ting-Dumali v. Atty. Torres[En Banc, *Per Curiam*], A.C. No. 5161, April 14, 2004). Shall not be meted out where a lesser penalty could accomplish the end desired. (Fajardo v. Atty. De la Torre, A.C. No. 6295, April 14, 2004). Administrative complaints for disbarment are referred to the IBP for formal investigation by the Court after an evaluation by it of the pleadings submitted. An *ex-parte* investigation may only be conducted when the respondent fails to appear despite reasonable notice. In this case, no investigation, not even just an *ex-parte* investigation, was conducted by the Commission on Bar Discipline. The prevailing procedure for investigation is that expressed in Rule 139-B of the Rules of Court. (Gaviola v. Atty. Salcedo, A.C. No. 3037, May 20, 2004). In this case, from the time respondent was directed to file his answer up to the time the IBP Board of Governors issued a Resolution adopting the recommendation of the Investigating Commissioner, nothing was heard from respondent despite due notice. Hence, the respondent is deemed to have waived the opportunity to present witnesses on his behalf or to be heard by himself and counsel. (Fajardo v. Atty. De la Torre, A.C. No. 6295, April 14, 2004).

Lawyer's Oath. All lawyers subscribed in solemn agreement to dedicate themselves to the pursuit of justice. Not a mere ceremony or formality for practicing law to be forgotten afterwards; nor is it mere words, drift and hollow, but a sacred trust that lawyers must uphold and keep inviolable at all times. By swearing the lawyer's oath,

they become guardians of truth and the rule of law, as well as instruments in the fair and impartial dispensation of justice. This oath is firmly echoed and reflected in the Code of Professional Responsibility: CANON 1. Rule 1.01. Rule 1.02. CANON 7. Rule 7.03. CANON 10. Rule 10.01. (Ting-Dumali v. Atty. Torres[En Banc, *Per Curiam*], A.C. No. 5161, April 14, 2004)

A Lawyer Must Not Engage in Dishonest, Immoral or Deceitful Conduct. False declaration that the parties to an extrajudicial settlement of estate are the only heirs of the decedent. Falsification of complainant's signature in the extrajudicial settlement, which contains a purported waiver by the complainant of her right over the property. Instead of advising the party to secure a written special power of attorney and not to falsify the signature on the document, the lawyer presented such document to the Registry of Deeds to secure a new title for the lot in favor of his wife and the party making the falsification. The lawyer himself may also be held liable for *knowingly using a falsified document to the damage of the complainant* and her other co-heirs. (id.)

The first and foremost duty of a lawyer is to maintain allegiance to the Republic of the Philippines, uphold the Constitution, and obey the laws of the land. (Canon 1, Code of Professional Responsibility). (id.)

A lawyer owes candor, fairness, and good faith to the court. (Canon 10 of the Code of Professional Responsibility). He shall "not do any falsehood, nor consent to the doing of any in court; *nor shall he mislead or allow the court to be misled by any artifice.*" This Rule was clearly and openly violated by the respondent when he permitted a party to falsely testify that she had no siblings aside from her sister, and offered such testimony in the petition for reconstitution of title. (id.).

An attorney is an officer of the court called upon to assist in the administration of justice. Like the court itself, he is an instrument to advance its cause. For this reason, any act on his part that obstructs and impedes the administration of justice constitutes misconduct and justifies disciplinary action against him. (id.).

POLITICAL LAW

CONSTITUTIONAL LAW

BILL OF RIGHTS

Freedom from Unreasonable Searches and Seizures (*Please see* REMEDIIAL LAW. Criminal Procedure. Searches and Seizures).

Rights of the Accused

Right to be Heard. (People v. Jusayan [En Banc], G.R. No. 149785, April 28, 2004).

Right to Counsel. Section 12 of Article III of the Constitution. Right to independent and competent counsel at *every* phase of the investigation. Violation of this right renders inadmissible the alleged extrajudicial admission of the accused. (People v. Balag-ey, G.R. No. 141532, April 14, 2004).

Right Against Double Jeopardy. Waiver of. An appeal from the sentence of the trial court implies a waiver of the constitutional safeguard against double jeopardy and throws the whole case open to a review by the appellate court. This is the risk involved when the accused decides to appeal a sentence of conviction. Appellate courts have the power to reverse, affirm or modify the judgment of the lower court and to increase or reduce the penalty it imposed. (Philippine Rabbit Bus Lines, Inc. v. People G.R. No. 147703, April 14, 2004). If the present appeal of the employer (in regard to its subsidiary civil liability) is given course, the whole case against the accused-employee becomes open to review. A penalty higher than that which has already been imposed by the trial court may be meted out to him. Hence, petitioner-employer may not appeal without violating the right of the accused-employee against double jeopardy. (id.).

Right Against Self-incrimination (Secs. 12 and 17 of Art. III, Constitution). Not violated by DNA tests. The kernel of the right is not against all compulsion, but against testimonial compulsion. The right against self-incrimination is simply against the legal process of extracting from the lips of the accused an admission of guilt. It does not apply where the evidence sought to be excluded is not an incrimination but as part of object evidence. Hence, a person may be compelled to submit to fingerprinting,

photographing, paraffin, blood and DNA, as there is no testimonial compulsion involved. (People v. Yatar [En Banc Per Curiam], G.R. No. 150224, May 19, 2004

THE JUDICIAL DEPARTMENT

Judicial Review

Justiciable Controversy. Refers to an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory. (Velarde V. Social Justice Society [En Banc], G.R. No. 159357. April 28, 2004).

Legal standing or *locus standi.* Defined as a personal and substantial interest in the case, such that the party has sustained or will sustain direct injury as a result of the challenged act. *Interest* means a material interest in issue that is affected by the questioned act or instrument, as distinguished from a mere incidental interest in the question involved. Parties bringing suits challenging the constitutionality of a law, an act or a statute must show "not only that the law [or act] is invalid, but also that [they have] sustained or [are] in immediate or imminent danger of sustaining some direct injury as a result of its enforcement, and not merely that [they] suffer thereby in some indefinite way." They must demonstrate that they have been, or are about to be, denied some right or privilege to which they are lawfully entitled, or that they are about to be subjected to some burdens or penalties by reason of the statute or act complained of. (id.).

Parties suing as taxpayers must specifically prove that they have sufficient interest in preventing the illegal expenditure of money raised by taxation. A taxpayer's action may be properly brought only when there is an exercise by Congress of its taxing or spending power. In the present case, there is no allegation, whether express or implied, that taxpayers' money is being illegally disbursed. (id.). The allegedly keen interest of its "thousands of members who are citizens-taxpayers-registered voters" is too general and beyond the contemplation of the standards set by our jurisprudence. Not only is the presumed interest impersonal in character; it is likewise too vague, highly speculative and uncertain to satisfy the requirement of standing. (id.).

Transcendental Importance. In not a few cases, the Court has liberalized the *locus standi* requirement when a petition raises an issue of transcendental significance or paramount importance to the people, as in the instant case. The issue did not simply

concern a delineation of the separation between church and state, but ran smack into the governance of our country. The issue was both transcendental in importance and novel in nature, since it had never been decided before. (id.).

Justice. Appellant appears to be a broken man resigned to his fate. In situations like these, the Court must even be more vigilant in protecting the rights of the accused. For while the accused may give up all hope in his trial, the Court, as the last bastion where justice is expected to be dispensed, must remain steadfast in seeing that all men, even those who refuse to help themselves, are given a fair and just judgment. (People v. Relox, G.R. No. 149395, April 28, 2004).

Court Decisions

Forms, Procedures and Requirements. Sec. 14, Article VIII of the 1987 Constitution. Section 1 of Rule 36 of the Rules on Civil Procedure. Section 2, Rule 120 of the Rules of Court on Criminal Procedure. SC Administrative Circular No. 1 dated January 28, 1988. The decisions of courts must be in writing and must set forth clearly and distinctly the facts and the law on which they are based. Failure to comply with the constitutional injunction is a grave abuse of discretion amounting to lack or excess of jurisdiction. Decisions or orders issued in careless disregard of the constitutional mandate are a patent nullity and must be struck down as void. Elementary due process demands that the parties to a litigation be given information on how the case was decided, as well as an explanation of the factual and legal reasons that led to the conclusions of the court. (Velarde [En Banc], G.R. No. 159357. April 28, 2004). id.).

Parts of a Decision: (1) statement of the case; (2) statement of facts; (3) issues or assignment of errors; (4) court ruling, in which each issue is, as a rule, separately considered and resolved; and, finally, (5) dispositive portion. The *ponente* may also opt to include an introduction or a prologue as well as an epilogue, especially in cases in which controversial or novel issues are involved. (id.).

The provisions of the RPC on subsidiary liability (Arts. 102 and 103) are deemed written into the judgments in the cases to which they are applicable. Thus, in the dispositive portion of its decision, the trial court need not expressly pronounce the subsidiary liability of the employer. (Philippine Rabbit Bus Lines, Inc. v. People, G.R. No. 147703, April 14, 2004).

Judicial Clemency

Judicial Compassion. Respondent filed the present Petition for Equal Protection and Due Process, invoking Decisions that were allegedly applicable to his case, although they were rendered long after his case had attained finality. The Court Administrator observed that twelve and one-half (12 ½) years had passed since the filing of the Complaint, and ten (10) years since the finality of respondent's dismissal from the service. Throughout this period, the Court has remained steadfast in its resolve to deny the numerous Motions, Pleas, Manifestations and Petitions of respondent requesting modification or amendment of its adverse judgment. The Court, however, has modified and even reduced the penalties already imposed on some offenders, owing to some intervening factors or circumstances that merited the mitigation of their sentences. In the present case, respondent served the judiciary for thirty-four years, during which he committed only a single offense. In view thereof, the Court granted a reduction of the penalties to the extent that his retirement and leave benefits would be restored to him. (Paredes v. Padua [En Banc], A.M. No. CA-91-3-P, April 14, 2004).

LAW ON ELECTIONS

Commission on Elections (COMELEC)

Inhibition of Commissioner. Voluntary piecemeal inhibition cannot be countenanced. The COMELEC Rules do not allow a Commissioner to voluntarily inhibit with reservation. To allow him to participate in the *En Banc* proceedings when he previously inhibited himself in the Division is, absent any satisfactory justification, not only judicially unethical but legally improper and absurd. (Estrella v. Commission on Elections[En Banc], G.R. No. 160465, April 28, 2004). The Commissioner's vote in the assailed order should be disregarded because of his previous inhibition in a similar case and in the same case in the Division level, thus making said assailed order null and void as it was not concurred by the required majority. (id.).

Interlocutory Orders of the COMELEC in Division. Motion for reconsideration thereof should be resolved by the same Division. The remedy of the aggrieved party is neither to file a motion for reconsideration for certification to the COMELEC *en banc* nor to elevate the issue to this Court via a petition for *certiorari* under Rule 65 of the Rules of Civil Procedure. (Repol v. Commission on Elections [En Banc], G.R. No. 161418, April 28, 2004).

Only final orders of the COMELEC in Division may be raised before the COMELEC *en banc*. (id.).

Repol went directly to the Supreme Court from an interlocutory order of the COMELEC First Division. Under Section 7, Article IX of the 1987 Constitution, the Court has no power to review via certiorari an interlocutory order or even a final resolution of a Division of the COMELEC. The Court further pointed out that an exception was warranted where there was hardly enough opportunity to move for a reconsideration and to obtain a swift and timely resolution of the issue. The Court ruled that direct resort to this Court through a special civil action for certiorari is justified under the circumstances obtaining in the present case. (id.).

COMELEC's Power to Issue Injunctive Relief - Overturning the trial court's grant of execution pending appeal. Rule 30 of the 1993 COMELEC Rule of Procedure provides the metes and bounds on the COMELEC's power to issue injunctive relief.(id.). Execution Pending Appeal. The rationale why such execution is allowed in election cases. To deprive trial courts of their discretion to grant execution pending appeal would, bring back the ghost of the "grab-the-proclamation-prolong the protest" techniques so often resorted to by devious politicians in the past in their efforts to perpetuate their hold to an elective office. This would, as a consequence, lay to waste the will of the electorate. (id.).

The COMELEC has broad powers to ascertain the true results of an election by means available to it, such as requiring the parties to present their side through position papers and memoranda and conducting a clarificatory hearing wherein the members of the BOC were required to shed light on the two proclamations made. The COMELEC's judgment cannot be overturned by the Court unless it is clearly tainted with grave abuse of discretion.Since the assailed resolution is supported by substantial evidence, it cannot be considered whimsical, capricious or arbitrary warranting this Court's power of review. (Aradais v. Commission on Elections [En Banc], G.R. No. 157863, April 28, 2004).

Intervention in Election Protests. COMELEC Rules of Procedure, Rule 8, Section 1. Does not state that the motion for intervention be filed before or during the trial of an action or proceeding. To be construed liberally "in order to promote the effective and efficient implementation of the objectives of ensuring the holding of free, orderly, honest, peaceful and credible elections and to achieve just, expeditious and inexpensive determination and disposition of every action and proceeding" before the COMELEC.

Election protests are guided by an extra-ordinary rule of interpretation that statutes providing for election contests are to be liberally construed to the end that the will of the people in the choice of public officers may not be defeated by mere technical objections. (Idulza v. Commission on Elections [En Banc], G.R. No. 160130, April 14, 2004).

The Omnibus Election Code (OEC)

Rules for the Appreciation of Ballots. Section 211(24) of the OEC should be read in relation with Section 72 (Effects of Disqualification Cases) thereof, as amended by RA 6646. These provisions mean that any vote cast in favor of a candidate, whose *disqualification has already been declared final* regardless of the ground therefor, shall be considered stray. Such provisions though cannot be the bases for the COMELEC to proclaim as winner the candidate who obtained the second highest number of votes, should the winning candidate be declared ineligible or disqualified. The COMELEC's interpretation of a section in the OEC cannot supplant an accepted doctrine laid down by the Court. To allow the defeated and repudiated candidate to take over the mayoralty despite his rejection by the electorate is to disenfranchise them through no fault on their part, and to undermine the importance and the meaning of democracy and the right of the people to elect officials of their choice. (Kare v. Commission on Elections En Banc], G.R. No. 157526, April 28, 2004).

Forum-shopping. Due to a clear showing that Ceracas was forum-shopping, the COMELEC First Division, should have dismissed outright instead of giving due course to Ceracas's petition in SPR No. 1-2004. (Repol v. Commission on Elections [En Banc], G.R. No. 161418, April 28, 2004).

Party List Organization

Petition for Re-qualification. Registration. Section 5 of Republic Act No. 7941 (R.A. 7941). Prohibitive period beyond which petitions for registration should no longer be filed nor entertained. It is simply the minimum countback period which is not subject to reduction since it is prescribed by law, but it is susceptible of protraction on account of administrative necessities and other exigencies perceived by the poll body. (Aklat-Asosasyon Para Sa Kaunlaran Ng Lipunan At Adhikain Para Sa Tao, Inc. v. Commission On Elections [En Banc], G.R. No. 162203, April 14, 2004).

The COMELEC has the power to promulgate the necessary rules and regulations to enforce and administer election laws, including the determination, within the parameters fixed by law, of appropriate periods for the accomplishment of certain pre-election acts like filing petitions for registration under the party-list system. (id.).

Senate Electoral Tribunal

(Enrile v. Senate Electoral Tribunal [En Banc], G.R. No. 132986, May 19, 2004).

GOVERNMENT OWNED AND CONTROLLED CORPORATIONS

Housing and Land Use Regulatory Board (HLURB)

Jurisdiction. PD No. 957, otherwise known as "The Subdivision and Condominium Buyers' Protective Decree" (promulgated on July 12, 1976) - gave the National Housing Authority (NHA) exclusive authority to regulate the real estate trade and business. PD No. 1344 entitled "Empowering the National Housing Authority to Issue Writs of Execution in the Enforcement of Its Decisions Under Presidential Decree No. 957" (promulgated on April 2, 1978) - expanded the exclusive jurisdiction of the NHA. (Bank of the Philippine Islands v. ALS Management & Development Corp., G.R. No. 151821, April 14, 2004).

Executive Order No. 648 (promulgated on February 7, 1981) transferred the regulatory functions of the NHA to the Human Settlements Regulatory Commission (HSRC). Pursuant to Executive Order No. 90 dated December 17, 1986, the functions of the HSRC were transferred to the HLURB. (id.).

The jurisdiction of the HLURB over cases enumerated in Section 1 of PD No. 1344 is *exclusive*. The board has sole jurisdiction in a complaint of specific performance for the delivery of a certificate of title to a buyer of a subdivision lot; for claims of refund regardless of whether the sale is perfected or not; and for determining whether there is a perfected contract of sale. Respondent's counterclaim - for specific performance (correction of defects/deficiencies in the condominium unit) and damages) - falls under the jurisdiction of the HLURB as provided by Section 1 of PD No. 1344. (id.).

LOCAL GOVERNMENT

Local Taxation

Limitation. Sec. 133 (g) of the Local Government Code (LGC) proscribes local government units (LGUs) from levying taxes on BOI-certified pioneer enterprises for a period of six years from the date of registration. This limitation applies specifically to taxes imposed by the LGUs, like the business tax imposed by Batangas City on Batangas Power Corporation. (Batangas Power Corporation v. Batangas City, G.R. No. 152675, April 28, 2004).

Tax Exemption of Government-Owned or Controlled Corporations. Petitioners insist that the National Power Corporation's (NPC) exemption from all taxes under its Charter had not been repealed by the LGC. They argue that NPC's Charter is a special law which cannot be impliedly repealed by a general and later legislation like the LGC. They likewise anchor their claim of tax-exemption on Section 133 (o) of the LGC which exempts government instrumentalities, such as the NPC, from taxes imposed by LGUs. HELD: Section 193 of the LGC, an express and general repeal of all statutes granting exemptions from local taxes, withdrew the sweeping tax privileges previously enjoyed by the NPC under its Charter. (id.).

Elective Officials

Disqualification. When a mayoral candidate who gathered the highest number of votes is disqualified after the election is held, a permanent vacancy is created, and the vice mayor succeeds to the position. (Kare [En Banc], G.R. No. 157526, April 28, 2004).

Permanent Vacancies in the Office of the Governor, Vice-Governor, Mayor, and Vice-Mayor. (Section 44 of the LGC). When Moll was adjudged to be disqualified, a permanent vacancy was created for failure of the elected mayor to qualify for the office. In such eventuality, the duly elected vice mayor shall succeed as provided by law. (id.).

PUBLIC OFFICERS

Administrative Proceedings

Involving Acts That Are Criminal in Nature. Only substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to support a conviction, is required. The dismissal of any criminal case against the respondent in an administrative case, for the prosecution's failure to prove his guilt beyond reasonable doubt, is not a ground for the dismissal of the administrative case. (Office of the Court Administrator {En Banc *Per Curiam*], A.M. No. P-02-1555, April 16, 2004). The complainant has the burden of proving by substantial evidence the allegations in his complaint. (Mendoza v. Buo-Rivera, A.M. No. P-04-1784, April 28, 2004).

Administrative cases are entirely independent of contempt proceedings. (Quizon v. Court Of Appeals, G.R. No. 127819, April 27, 2004). Petitioner claims that the institution of the administrative case is unwarranted since his refusal to answer was made in the exercise of his right against self-incrimination. This plea is premature, since it does not appear that the administrative tribunal already had to rule on the matter then, assuming that petitioner has even raised that argument therein. (id.).

Resignation from his position does not render the complaint against respondent moot and academic. The jurisdiction over the respondent has already attached at the time of the filing of the letter-complaint, and was not lost by the mere fact that he resigned from his office during the pendency of the case against him. (Judge Reyes, Jr. v. Cristi, A.M. No. P-04-1801, April 2, 2004).

Administrative Liability

Clerk of Court. (a) Prompt Action on Complaints, Letters and Requests from the Public. It is respondent's duty to act on the letters and requests of the public within 15 working days from the time she receives them and to attend promptly and expeditiously to anyone who wants to avail of the services of her office. (Atty. Muyco v. Saratan, A.M. No. P-03-1761, April 2, 2004). Simple Neglect of Duty. Respondent's infraction is classified as a light offense. Considering that this is respondent's first offense, the penalty of reprimand is warranted. (id.).

(b) Handling of check that is not a fiduciary collection, per se. (Gonzales v. Familara III, A.M. No. P-04-1794, April 14, 2004).

(c) Grave and Serious Misconduct: Extorting ₱50,000 for the unsigned order, and another ₱200,000 for the order duly signed by the judge. Warrants dismissal from the service and the imposition of accessory penalties therefor. (Office of the Court Administrator v. Atty. Morante [En Banc *Per Curiam*], A.M. No. P-02-1555, April 16, 2004).

Other Court Employees. (a) Conduct Unbecoming a Public Servant. False Accusation. Sowing Intrigues. (Mendoza v. Buo-Rivera, A.M. No. P-04-1784, April 28, 2004). (b) Habitual Absenteeism. Grave Offense. The total number of days of unauthorized absences of respondent clearly exceeding the allowable 2.5 days monthly leave. Penalties: for the first offense - suspension for six (6) months and one (1) day to one (1) year; and for the second offense – dismissal. (Judge Reyes, Jr., A.M. No. P-04-1801, April 2, 2004). (c) Gross Dishonesty. Tampering of Daily Time Records. A grave offense punishable by dismissal. However, inasmuch as this is respondent's first offense, it is considered a mitigating circumstance in respondent's favor. Thus, as recommended by the OCA, respondent should be meted a fine of ₱5,000.00. (Re: Alleged Tampering of the Daily Time Records (DTR), A.M. No. 03-8-463-RTC, May 20, 2004).

Salary and Perquisites

Earned Leave Credits. Despite their dismissal from the service, government employees are entitled to the leave credits that they have earned during the period of their employment. As a matter of fairness and law, they may not be deprived of such remuneration, which they have already earned prior to their dismissal. (Paredes [En Banc], A.M. No. CA-91-3-P, April 14, 2004).

ADMINISTRATIVE LAW

Administrative Agencies

Quasi-Judicial Power. The Provincial Adjudicator and the DARAB are bound by the findings of fact and conclusion of law of the Court. Indeed, they should have been more circumspect in the disposition of this case. Instead of facilitating the administration

of justice, their obstinate refusal to obey a valid final judgment of the CA, further delayed the resolution of this case and added valuable irretrievable years to a case that has already dragged on for decades. It blatantly questioned the wisdom of a higher court which manifest not only a superficial grasp of the rules, but more disappointingly, a contumacious attitude which the Court cannot countenance. (Sacdalan, G.R. No. 128967, May 20, 2004).

REMEDIAL LAW

CIVIL PROCEDURE

Jurisdiction

Jurisdiction and Estoppel. Petitioner proceeded with the trial, and only after a judgment unfavorable to it did it raise the issue of jurisdiction. Petitioner may no longer deny the trial court's jurisdiction for estoppel bars it from doing so. (Batangas Power Corporation v. Batangas City, G.R. No. 152675, April 28, 2004; Bank of the Philippine Islands v. ALS Management & Development Corp., G.R. No. 151821, April 14, 2004).

THE REVISED RULES OF COURT

General Provisions

Liberal Interpretation of the Rules relating to the period for filing a petition for review. Not warranted in this case. (Zaragoza v. Nobleza, G.R. No. 144560, May 13, 2004).

Ordinary Civil Actions

Cause of Action

Elements. A complaint or initiatory pleading states a cause of action when it contains three essential elements: (1) the legal right of the plaintiff, (2) the correlative obligation of the defendant and (3) the act or the omission of the defendant in violation of the said legal right. (Mondragon Leisure and Resources Corporation v. United Coconut Planters Bank, G.R. No. 154187, April 14, 2004).

Failure to State a Cause of Action. In determining whether a complaint fails to state a cause of action, only the allegations therein may be properly considered – and admitting the facts alleged – whether the court may render a valid judgment upon them in accordance with the prayer of the complaint. If the allegations in the complaint furnish sufficient basis on which it can be maintained, it should not be dismissed regardless of the defense that may be presented by the defendants. If the trial court finds the allegations to be sufficient, but doubts their veracity, it must deny the motion to dismiss and then

require the defendant to answer, and proceed to try the case on the merits. (id.; Velarde v. Social Justice Society [En Banc], G.R. No. 159357. April 28, 2004).

Parties to Civil Actions

Non-Joinder of Party. The husband's non-joinder does not warrant dismissal, as it is merely a formal requirement that may be cured by amendment. Since petitioner alleges that her husband has already passed away, such an amendment has become moot. (Imperial v. Jaucian, G.R. No. 149004, April 14, 2004).

Venue of Actions

Venue. Sec. 4, Rule 4, of the Revised Rules of Civil Procedure allows the parties to agree in writing, before the filing of an action, on the exclusive venue of any litigation between them. Such an agreement would be valid and binding provided that the stipulation on the chosen venue is exclusive in nature or in intent, that it is expressed in writing by the parties thereto, and that it is entered into before the filing of the suit. The stipulation in this case that the subscriber "expressly waives any other venue" clearly indicates the intent of the parties to consider the venue stipulation as being preclusive in character. (Pilipino Telephone Corporation v. Tecson, G.R. No. 156966, May 7, 2004).

Procedure in the Regional Trial Courts (RTCs)

Elementary procedure in the conduct of civil cases. (Velarde, [En Banc], G.R. No. 159357, April 28, 2004).

Kinds of Pleadings

Complaint or Initiatory Pleading. Ultimate facts. (id.).

Parts of Pleading

Certificate of Non-Forum Shopping. Mandatory. To be executed by the plaintiff or principal party. (Spouses Chan v. Regional Trial Court of Zamboanga del Norte, G.R. No. 149253, April 15, 2004). However, in this case, in the interest of substantial justice, the belated compliance by the respondents of the requisite certificate executed

by their counsel subsequent to the petitioners' first motion to dismiss was deemed a substantial compliance of the rule. (id.). The Complaint was filed two and a half months after SC Administrative Circular No. 04-94 requiring the certificate of non-forum shopping took effect. The said rule may be said to have been recent, a "justifying circumstance" which would make the belated filing of the certification required thereunder as substantial compliance therewith. Apparently, the petitioners themselves deemed the certificate of non-forum shopping executed by the respondents' counsel as a substantial compliance by the respondents with the circular of the Court. (id.).

Effect of Failure to Plead

Effect of Order of Default. Rule 9, Sec. 3 (a) and (b), 1997 Rules of Civil Procedure. Even when a defendant is already declared in default, he is entitled to notice of subsequent proceedings. (Alcaraz v. Judge Lindo, A.M. No. MTJ-04-1539, April 14, 2004).

Motion to Dismiss

Grounds. Forum Shopping. The filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. A party violates the rule against forum shopping if the elements of *litis pendentia* are present; or if a final judgment in one case would amount to *res judicata* in the other. Elements: [i] identity of parties, or at least such parties as represent the same interests in both actions [ii] identity of rights asserted and relief prayed for, the relief being founded on the same facts and [iii] the identity of the two preceding particulars such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration; said requisites also constitutive of the requisites for *auter action pendant* or *lis pendens*. (Venzon v. Sps. Santos, G.R. No. 128308, April 14, 2004). Two collection cases: (1) to recover amounts drawn by petitioner from a ₱100 million omnibus line with ₱60 million excess availments, a US$5 million FCDU promissory note line, and a postdated checks discounting line; and (2) for the recovery of money availed by petitioner from a ₱300 million term loan, with an action for foreclosure in case petitioner fails to pay. The credit accommodations involved in the two cases are covered by different promissory notes. The elements of *litis pendentia* are absent, and a final judgment in either case will not amount to *res judicata* in the other. (Mondragon Leisure and Resources Corporation, G.R. No. 154187, April 14, 2004).

Denial of. An order denying a motion to dismiss is interlocutory. From such denial, a party has to file an answer and interpose as a defense the objections raised in the motion, and then proceed to trial. (id.).

Pre-Trial

Purpose. To insure that the parties properly raise all issues necessary to dispose of a case. The parties must disclose during pre-trial all issues they intend to raise during the trial, except those involving privileged or impeaching matters. Although a pre-trial order is not meant to catalogue each issue that the parties may take up during the trial, issues not included in the pre-trial order may be considered only if they are impliedly included in the issues raised or inferable from the issues raised by necessary implication. (Villanueva v. Court of Appeals, G.R. No. 143286, April 14, 2004).

Record of. While petitioners did raise the issue of prescription and laches in their Answer, they failed to have the same included in the pre-trial order for consideration during the trial. Now, petitioners wish to raise the issue on appeal by relying on Section 1, Rule 9 of the Rules of Court (Defenses and objections not pleaded). HELD: The determination of issues during the pre-trial conference bars the consideration of other questions, whether during trial or on appeal. Section 1 of Rule 9 covers situations where a defense or objection is not raised in a motion to dismiss or an answer. Clearly, Section 1 of Rule 9 does not apply to the present case. (id.). Same. (Spouses Chan, G.R. No. 149253, April 15, 2004).

Judgments, Final Orders and Entry Thereof

Decision of the trial court. Utterly wanting in the requirements prescribed by the Constitution and the Rules of Court. (Velarde [En Banc], G.R. No. 159357, April 28, 2004). Judgment must conform to and be supported by both the pleadings and the evidence, and that it be in accordance with the theory of the action on which the pleadings were framed and the case was tried. Exception: Issues not alleged in the pleadings may still be decided upon, if tried with the parties' express or implied consent. Trial courts are not precluded from granting reliefs not specifically claimed in the pleadings — notwithstanding the absence of their amendment — upon the condition that evidence has been presented properly, with full opportunity on the part of the opposing parties to support their respective contentions and to refute each other's evidence. (Bank of the Philippine Islands, G.R. No. 151821, April 14, 2004).

Final Decision. A decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the Court. Litigation must end sometime and somewhere, and it is essential to an effective and efficient administration of justice that, once a judgment has become final, the winning party be not deprived of the fruits of the verdict. Exceptions: correction of clerical errors, the so-called *nunc pro tunc* entries which cause no prejudice to any party, void judgments, and whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable. (Sacdalan v. Court of Appeals, G.R. No. 128967, May 20, 2004).

Execution, Satisfaction and Effect of Judgment

Effect of Judgments or Final Orders. *Res judicata* in the concept of "conclusiveness of judgment," also known as "preclusion of issues" or "collateral estoppel." (paragraph (c) of Rule 39, Section 47 of the Rules of Court). Issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties involving a different cause of action. (Venzon v. Sps. Santos, G.R. No. 128308, April 14, 2004).

Writ of Possession. An *ex-parte* writ of possession issued pursuant to Act No. 3135, as amended, cannot be enforced against a third person who is in actual possession of the foreclosed property and who is not in privity with the debtor/mortgagor. To do so would be to sanction his summary ejectment in violation of due process. This is because properties brought within the ambit of Act No. 3135, unlike those subject to judicial foreclosure, are foreclosed by the mere filing of a petition with the office of the sheriff of the province where the sale is to be made. A third person in possession of the extrajudicially foreclosed property, who claims a right superior to that of the original mortgagor, is thus given no opportunity to be heard in his claim. Considering the lack of opportunity, such third person may therefore not be dispossessed on the strength of a mere *ex-parte* possessory writ issued in foreclosure proceedings to which he was not a party. (Capital Credit Dimension, Inc. v. Chua, G.R. No. 157213, April 28, 2004). The cases cited by petitioner to support his claim that the issuance of a writ of possession in favor of the mortgagee of a foreclosed property after the period of redemption has expired is ministerial upon the trial court do not apply since the parties who filed the cases questioning the mortgage and its foreclosure were the debtors/mortgagors themselves, not third parties, as in the instant case. (id.).

Sale on Execution of Real Property. Required Posting and Publication of Notice of Sale. The sale of property on execution that does not conform to the requirements of notice to the debtor and publication is void. (id.). The Petitioner is not entitled to notice of the sale, which plainly requires notice only to the judgment debtor, who, by such notice, is given the opportunity to prevent the sale by paying the judgment debt sought to be enforced and the costs which may have been incurred pursuant to Section 20 of Rule 39. (id.).

Appeal

Changing the Theory of the Case on Appeal. A party cannot change his theory of the case or his cause of action on appeal. Courts of justice have no jurisdiction or power to decide a question not in issue. (Mon v. Court of Appeals, G.R. No. 118292, April 14, 2004). Courts have neither the time nor the resources to accommodate parties who choose to go to trial haphazardly. It would be grossly unfair to allow petitioners the luxury of changing their mind to the detriment of private respondents at this late stage. (Villanueva, G.R. No. 143286, April 14, 2004).

Dismissal of Appeal

Failure to Perfect Appeal. While every litigant must be given the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities, the failure to perfect an appeal is not a mere technicality as it raises a jurisdictional problem which deprives the appellate court of jurisdiction over the appeal. Only under exceptionally meritorious circumstances may a departure from an otherwise stringent rule be allowed. (Zaragoza, G.R. No. 144560, May 13, 2004).

Delay. One-day delay does not justify the outright dismissal of an appeal. (Vda. De Cardona v. Amansec, G.R. No. 147216, April 15, 2004).

Reinstatement of Appeal. Deemed just and proper in this case, considering the greater interest of justice. Dismissal of appeal for failure to pay the appeal docket fee is discretionary with the appellate court and should be exercised wisely and prudently with a view to substantial justice. (Sacdalan, G.R. No. 128967, May 20, 2004).

Appeals from Quasi-Judicial Agencies to the Court of Appeals (CA)

The proper remedy from the adverse decision of a voluntary arbitrator is a petition for review under Rule 43 of the 1997 Rules of Civil Procedure, not a petition for *certiorari* under Rule 65. (Sevilla Trading Company v. Semana, G.R. No. 152456, April 28, 2004).

Contents of Petition. Section 6 of Rule 43 of the 1997 Rules of Civil Procedure should not be construed as imposing the requirement that all supporting papers accompanying the petition for review be certified true copies. (Zaragoza, G.R. No. 144560, May 13, 2004).

Petition for Review on Certiorari

A petition for review should only cover questions of law. Factual Findings of the CA. Conclusive on the parties and are not reviewable by the Court. (Philippine Journalists, Inc. v. Mosqueda, G.R. No. 141430, May 7, 2004; Bank of the Philippine Islands, G.R. No. 151821, April 14, 2004; Zaragoza, G.R. No. 144560, May 13, 2004). Exceptions: (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 facts 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 the trial court; (8) when the findings are conclusions without citation of specific 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; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. Exceptions (4), (10) and (11) are present in this case. (The Insular Life Assurance Company, Ltd. v. Court of Appeals, G.R. No. 126850, April 28, 2004; Republic v. Alconaba, G.R. No. 155012, April 14, 2004; Villanueva, G.R. No. 143286, April 14, 2004; Litonjua v. Fernandez, G.R. No. 148116, April 14, 2004; Culaba v. Court Of Appeals, G.R. No. 125862, April 15, 2004; Boy v. Court of Appeals, G.R. No. 125088, April 14, 2004; Bank of the Philippine Islands, G.R. No. 151821, April 14, 2004).

Question of Fact. Whether the body of proofs presented by a party, weighed and analyzed in relation to contrary evidence submitted by an adverse party, may be said to be strong, clear and convincing, whether certain documents presented by one side should be accorded full faith and credit in the face of protests as to their spurious character by the other side, whether inconsistencies in the body of proofs of a party are of such gravity as to justify refusing to give said proofs weight – all these are issues of fact. (Zaragoza, G.R. No. 144560, May 13, 2004). Hence: [i] The finding of the CA that the petition for review was filed beyond the prescribed period. (id.). [ii] Whether the payment of the petitioners' obligation to the private respondent was properly made, thus, extinguishing the same. (Culaba, G.R. No. 125862, April 15, 2004).

Question of Law arises when there is doubt or difference as to what the law is on a certain state of facts. (id.).

Period for Filing. The OSG may not be faulted in filing the petition for review before its receipt of our Resolution granting the motion for extension of time. Had petitioner waited to receive a resolution granting its motion for extension before filing the petition, the extended period for filing would have, by then, expired. Thus, there was nothing irregular with the procedure taken by petitioner, rather, such was the most prudent thing for it to have done. (People v. Odilao, G.R. No. 155451, April 14, 2004).

Liberal Interpretation. Considering that the petitioner has presented a good cause for the proper and just determination of his case, the appellate court should have relaxed the stringent application of technical rules of procedure and yielded to considerations of substantial justice. The issue involved in this case is the legality of the issuance of a warrant of arrest. It behooved the CA to look past rules of technicality and to resolve the case on its merits, considering that the petitioner therein was invoking a constitutional right. The appellate court should have considered the petitioner's appeal under Rule 45 of the Rules of Court, as a special civil action for *certiorari* under Rule 65 of the said Rules. (Vallejo v. Court Of Appeals, G.R. No. 156413, April 14, 2004).

SPECIAL CIVIL ACTIONS

Certiorari

Requisites. In a petition for certiorari from an interlocutory order, the petitioner is burdened to prove that the remedy of appeal would not afford adequate and expeditious

relief. A remedy is considered plain, speedy and adequate if it will promptly relieve the petitioners from the injurious effects of the acts of the lower court or agency. Appeal in due course is a speedy and adequate remedy. A tribunal acts with grave abuse of discretion only where it is clearly shown that there is a patent and gross abuse of discretion as to amount to an evasion of positive duty or to virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility. (Spouses Chan, G.R. No. 149253, April 15, 2004). The order of the trial court granting private respondent's Motion to Dismiss the complaint was a final, not interlocutory, order and as such, it was subject to appeal, not a petition for *certiorari*. (Siena Realty Corporation v. Hon. Gal-lang, G.R. No. 145169, May 13, 2004). No Grave Abuse of Discretion. Re computation of the thirteenth month pay. (Sevilla Trading Company, G.R. No. 152456, April 28, 2004).

Ground for Dismissal. The petition has become moot and academic. The tenure of the contested senatorial position subject of this petition expired as early as June 30, 1998. A case becomes moot and academic when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits. (Enrile v. Senate Electoral Tribunal [En Banc], G.R. No. 132986, May 19, 2004).

Declaratory Relief

Who May File Petition. Purpose - to interpret or to determine the validity of the written instrument *and* to seek a judicial declaration of the parties' rights or duties thereunder. Essential requisites: [I] there is a justiciable controversy; [ii] the controversy is between persons whose interests are adverse; [iii] the party seeking the relief has a legal interest in the controversy; and [iv] the issue is ripe for judicial determination. (Velarde [En Banc], G.R. No. 159357. April 28, 2004).

Cause of Action. The concept of a cause of action under ordinary civil actions does not strictly apply. The reason for this is that an action for declaratory relief presupposes that there has been no actual breach of the instruments involved or of rights arising thereunder. Nevertheless, a breach or violation should be impending, imminent or at least threatened. (id.)

Forcible Entry and Unlawful Detainer

Jurisdiction. Forcible Entry. Requisites for the municipal court to acquire jurisdiction: [i] the plaintiff must allege his prior physical possession of the property. [ii] he must also allege that he was deprived of his possession by any of any of the following means: force, intimidation, threats, strategy, and stealth. The action must be filed against the intruder within one year from illegal entry. (Varona v. Court of Appeals, G.R. No. 124148, May 20, 2004).

Unlawful Detainer. Must be filed within one year from the date of the last demand. A complaint for unlawful detainer is sufficient if it alleges that the withholding of possession or the refusal to vacate is unlawful without necessarily employing the terminology of the law. (id.).

Possession by Mere Tolerance. A person who occupies the land of another at the latter's tolerance or permission, without any contract between them, is bound by an implied promise that he will vacate the same upon demand, failing which, a summary action for ejectment is the proper remedy against him. (Boy, G.R. No. 125088, April 14, 2004).

If the defendant raises the question of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the inferior courts can provisionally resolve the issue of ownership for the sole purpose of determining the issue of possession. (id.).

Extension of Time to Vacate. The CA, in the exercise of equity jurisdiction, granted petitioners an extension of one year to vacate the premises. The CA decision which was unfavorable to petitioners was promulgated almost three years ago, on May 31, 2001. In the interim, petitioners have had ample time to seek other premises where they can operate their business establishments. A period of one month should suffice to wrap up their remaining business affairs. (Chua v. Victorio, G.R. No. 157568, May 18, 2004).

Mandamus

As the petitioner has lost the right to appeal the RTC decision to the CA, his petition for *mandamus* cannot prosper. (Teope v. People, G.R. No. 149687, April 14, 2004).

Contempt

Direct Contempt. Moot. In these contempt cases, the matter becomes a *fait accompli* once the penalty has been executed by the contemnor's service of the penalty of imprisonment. (Quizon v. Court of Appeals, G.R. No. 127819, April 27, 2004).

CRIMINAL PROCEDURE

Prosecution of Offenses

Sufficiency of Information. The Revised Rules on Criminal Procedure (RRCP), which took effect on December 1, 2000, re-enacted Sec. 6, Rule 110 of the old Rules. The Information need not use the language of the statute in stating the acts or omissions complained of as constituting the offense. What is required is that the acts or omissions complained of as constituting the offense must be stated in ordinary and concise language sufficient to enable a person of common understanding to know the offense charged. (People v. Cadampog, G.R. No. 148144, April 30, 2004). Cause of Accusation. Rule 110, Sec.9. Although the Information does not allege that the appellant used force, threat or intimidation in having sexual intercourse with the victim, it alleges that the appellant "criminally wrestled" with the private complainant and succeeded in having carnal knowledge of her *against her will.* (id.).

Qualifying Circumstances. Any qualifying circumstance attendant to the commission of a crime must be alleged in the Information and proved by the prosecution, conformably to the constitutional right of an accused to be informed of the nature of the charges against him. (People v. Buntag, G.R. No. 123070, April 14, 2004).

Prosecution of Civil Action

Civil Action Deemed Instituted in a Criminal Prosecution. Only the civil liability of the accused arising from the crime charged (which includes the subsidiary civil liability of the employer for such crime under Art. 103 of the RPC is deemed impliedly in a criminal action. The RRCP deleted the requirement of reserving independent civil actions and allowed these to proceed separately from the criminal actions. The civil actions referred to in Articles 32, 33, 34 and 2176 of the Civil Code shall remain "separate, distinct and independent" of any criminal prosecution based on the same act.

Consequently: (1) The right to bring the foregoing actions based on the Civil Code need not be reserved in the criminal prosecutions, since they are not deemed included therein; (2) The institution or waiver of the right to file a separate civil action arising from the crime charged does not extinguish the right to bring such action; (3) The only limitation is that the offended party cannot recover more than once for the same act or omission. What is deemed instituted in every criminal prosecution is the civil liability arising from the crime or delict *per se* (civil liability *ex delicto*), but not those liabilities arising from quasi-delicts, contracts, or quasi-contracts. (Philippine Rabbit Bus Lines, Inc. v. People, G.R. No. 147703, April 14, 2004).

Preliminary Investigation

Judicial Determination of Probable Cause. Section 6 (a), Rule 112. The judge of the trial court is mandated to personally evaluate the resolution of the prosecutor and its supporting evidence to determine whether probable cause exists and pursuant to its own findings, either dismiss the case immediately if no probable cause exists, or to issue the warrant of arrest in the absence of probable cause. (Odilao, G.R. No. 155451, April 14, 2004). Once a complaint or information is filed in court, any disposition of the case (its dismissal, or the conviction, or acquittal of the accused) rests in the sound discretion of the court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in court, he cannot impose his opinion on the trial court. A motion to dismiss the case filed by the fiscal should be addressed to the court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation. (id.)

Arrest

Issuance of Warrant of Arrest. The Information was filed on May 7, 2002 while the warrant of arrest was issued May 23, 2003. When complainant filed the omnibus motion on May 7, 2002, the court has not yet acquired jurisdiction over his person. With the filing of Information, the trial court could then issue a warrant for the arrest of the accused as provided for by Section 6 of Rule 112 of the RRCP. Complainant's charge that respondent Judge failed to act on the omnibus motion before issuing the arrest warrant is untenable. Whether respondent correctly disregarded the omnibus motion in

view of the alleged fatal defects is a judicial matter, which is not a proper subject in an administrative proceeding. (Talag v. Judge Reyes, A.M. No. RTJ-04-1852, June 3, 2004). Alias Warrant. (id.).

Arrest Without Warrant (Rule 113, Section 5). The alleged crime happened on June 27, 1994 and appellant was arrested two days after the subject incident. At the time appellant was arrested, he was at a restaurant having dinner with a group of friends, thus, he was not committing or attempting to commit a crime. Neither was he an escaped prisoner whose arrest could be effected even without a warrant. None of the arresting officers of appellant was present on the night of June 27 where appellant allegedly sold and transported marijuana and escaped, thus the arresting officers had no personal knowledge of facts or circumstances that appellant committed the crime. None of the exceptions was present to justify appellant's warrantless arrest. (People v. Tokohisa Kimura, G.R. No. 130805, April 27, 2004).

Waiver. Notwithstanding the unjustified warrantless arrest of appellant, he did not raise such question before he pleaded to the offense charged; he did not move to quash the information on that ground before the trial court. Moreover, appellant's application for bail which was denied by the trial court likewise constitutes a waiver of his right to question whatever irregularities and defects attended his arrest. (id.).

Bail

Cash Bail. Deposit of Proper procedure in the handling of cash given to the municipal court as bail bond. The transaction must not only be properly receipted for but must also appear in the records of the case. (Judge Sidro v. People, G.R. No. 149685, April 28, 2004).

Forfeiture of. Sec. 21, Rule 114 of the Revised Rules of Court. (Talag, A.M. No. RTJ-04-1852, June 3, 2004).

Arraignment and Plea

Suspension of Arraignment, The suspension of arraignment of an accused in cases where a petition for review of the resolution of the prosecutor is pending at either the Department of Justice or the Office of the President "shall not exceed sixty days

counted from the filing of the petition with the reviewing office." Section 11, Rule 116 of the RRCP. (Odilao, G.R. No. 155451, April 14, 2004).

New Trial

Grounds. A motion for new trial based on newly discovered evidence may only be granted if the following concur: (a) the evidence is discovered after trial; (b) such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; and (c) the evidence is material, not merely cumulative, corroborative, or impeaching and of such weight that, if admitted, could probably change the judgment. (People v. Saldaña [En Banc, *Per Curiam*], G.R. No. 148518, April 15, 2004).

Other Grounds. To allow a motion for new trial on grounds other than those provided in Section 2, Rule 121 of the Rules of Court, the movant must cite peculiar circumstances obtaining in the case sufficient to warrant a new trial, if only to give the accused an opportunity to establish his innocence of the crime charged. (id.).

Judgment

Promulgation of Judgment (Section 6 of Rule 120). Once an accused escapes from prison or confinement, or jumps bail or flees to a foreign country, he loses his standing in court and unless he surrenders or submits to the jurisdiction of the court, he is deemed to have waived any right to seek relief from the court. (Teope, G.R. No. 149687, April 14, 2004).

Finality of a Decision. Section 7 of Rule 120 of the RRCP. (Philippine Rabbit Bus Lines, Inc., G.R. No. 147703, April 14, 2004). Modification of Judgment. (Kare v. Commission on Elections En Banc], G.R. No. 157526, April 28, 2004).

Appeal

When Appeal to be Taken. (Section 6 of Rule 122). The period for appeal is interrupted by the filing of either a motion for reconsideration or a motion for a new trial. What he did file, however, was a "Motion to Quash the Information"; and when it was denied, he filed a Motion for Reconsideration of the denial. (id.).

Neither Moll's Motion to Quash Information nor his Motion for Reconsideration was directed at the judgment of conviction. Rather, they both attacked a matter extraneous to the judgment. Hence, they cannot affect the period of appeal granted by the Rules of Court in relation to the conviction. Since no appeal of the conviction was seasonably filed by Moll, the judgment against him has become final. (id.).

An appeal in a criminal case opens the entire decision for review (People v. Rom, G. R. No. 137585, April 28, 2004), and the appellate court can correct errors, though unassigned in the appeal (People v. Quimzon, G.R. No. 133541, April 14, 2004), or even reverse the trial court's decision on grounds other than those the parties raised as errors. (People v. Jubail, G.R. No. 143718, May 19, 2004).

Considering that the reduction of the amounts awarded by the trial court is beneficial to the accused, the same should also apply to accused Rom who did not appeal while the additional amount of exemplary damages shall be enforced only against herein appellant. (Rom, G. R. No. 137585, April 28, 2004), Section 1 of Rule 122 of the RRCP. Both the accused and the prosecution may appeal a criminal case, but the government may do so only if the accused would not thereby be placed in double jeopardy. The prosecution cannot appeal on the ground that the accused should have been given a more severe penalty. On the other hand, the offended parties may also appeal the judgment with respect to their right to civil liability. If the accused has the right to appeal the judgment of conviction, the offended parties should have the same right to appeal as much of the judgment as is prejudicial to them. (Philippine Rabbit Bus Lines, Inc., G.R. No. 147703, April 14, 2004).

Appeal by the Accused Who Jumps Bail. The appellate court may, upon motion or *motu proprio*, dismiss an appeal during its pendency if the accused jumps bail. Second paragraph of Section 8 of Rule 124 of the 2000 RRCP. The findings of the fact of the CA are final and cannot be reviewed on appeal by this Court, provided they are borne out by the record or are based on substantial evidence. (Boy, G.R. No. 125088, April 14, 2004). When the accused-employee absconds or jumps bail, the judgment meted out becomes final and executory. The employer cannot defeat the finality of the judgment by filing a notice of appeal on its own behalf in the guise of asking for a review of its subsidiary civil liability. Both the primary civil liability of the accused-employee and the subsidiary civil liability of the employer are carried in one single decision that has become final and executory. (id.).

Factual findings of the trial court and its evaluation of the credibility of witnesses and their testimonies are entitled to great respect and will not be disturbed on appeal. (People v. Estoya, G.R. No. 153538, May 19, 2004; People v. Alcantara, G.R. No. 157669, April 14, 2004; People v. Golimlim, G. R. No. 145225, April 2, 2004; People v. Cadampog, G.R. No. 148144, April 30, 2004; Saldaña [En Banc, *Per Curiam*], G.R. No. 148518, April 15, 2004; People v. Bautista, G.R. No. 140278, June 3, 2004). Exception: Where the trial court has overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance. (Jubail, G.R. No. 143718, May 19, 2004; People v. Magdaraog, G.R. No. 151251, May 19, 2004; People v. Yatar [En Banc Per Curiam], G.R. No. 150224, May 19, 2004; Estoya, GR No. 153538, May 19, 2004). More so, when affirmed by the CA. (Sim v. Court of Appeals, G.R. No. 159280, May 18, 2004).

Search Warrants

Void for Lack of Particularity. Section 2, Article III of the 1987 Constitution guarantees the right to be free from unreasonable searches and seizures. Rule 126 of the RRCP. Requisites for the issuance of a search warrant (Sec. 4.). *Examination of complainant; record.* (Sec. 5). The things to be seized must be described with particularity. Any description of the place or thing to be searched that will enable the officer making the search with reasonable certainty to locate such place or thing is sufficient. In this case, the terms expressly used in the warrant were too all-embracing, with the obvious intent of subjecting all the records pertaining to all the transactions of the petitioner's office at the Register of Deeds to search and seizure. Such tenor of a seizure warrant contravenes the explicit command of the Constitution that there be a particular description of the things to be seized. A description of such generality, as to lodge in the executing officer virtually unlimited discretion as to what property shall be seized, is repugnant to the Constitution. (Vallejo, G.R. No. 156413, April 14, 2004).

The Search Warrant Must Be Issued for One Specific Offense. The questioned warrant in this case is a scatter-shot warrant for having been issued for more than one offense. (id.).

Warrantless Search. Rule 113, Section 5 (a) of the RRCP. The police officer should be spurred by *probable cause* in making the arrest. Although the term eludes exact definition, probable cause signifies a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief

that the person accused is guilty of the offense with which he is charged. The determination of probable cause must be resolved according to the facts of each case. In this case, the arresting officers had probable cause to make the arrest in view of the tip they received from their informant. Tipped information is sufficient probable cause to effect a warrantless search. Although the apprehending officers received the tip two weeks prior to the arrest, they could not be faulted for not applying for a search warrant inasmuch as the exact date of appellant's arrival was not known by the informant. (People v. Ayangao, G.R. No. 142356, April 14, 2004).

In those cases where this Court invalidated a warrantless search on the ground that the officers could have applied for a search warrant, the concerned officers received the tip either days prior to the arrival or in the afternoon of a working day. Thus, the officers had time to obtain search warrants inasmuch as Administrative Circulars 13 and 19 of the Supreme Court allowed the application for search warrants even after office hours. In the present case, the informant arrived at the police station at 5:00 A.M. on August 13, 1999 and informed the officers that the appellant would be arriving at 6:00 A.M. (just an hour later) that day. The circumstances clearly called for an immediate response from the officers. The Court upheld the validity of the warrantless arrest and corresponding search of accused Valdez as the officer made the arrest on the strength of a similar on-the-spot tip. In the case at bar, though all other pertinent details were known by the officers except the date, they could not have applied for a search warrant since the validity of a warrant was only for 10 days. Considering that the officers did not know when the appellant was going to arrive, prudence made them act the way they did. (Ayangao, G.R. No. 142356, April 14, 2004).

Waiver. The waiver of the non-admissibility of the "fruits" of an invalid warrantless arrest and warrantless search and seizure is *not* to be casually presumed for the constitutional guarantee against unreasonable searches and seizures to retain vitality. Here, the arrest was lawful; hence, the resulting warrantless search on appellant was also valid as the legitimate warrantless arrest authorized the arresting police officers to validly search and seize from the offender (1) any dangerous weapons and (2) the things which may be used as proof of the commission of the offense. By entering a plea upon arraignment and by actively participating in the trial, an accused is deemed to have waived any objection to his arrest and warrantless search. Any objection to the arrest or acquisition of jurisdiction over the person of the accused must be made before he enters his plea, otherwise the objection is deemed waived. (id.).

EVIDENCE

General Provisions

Admissibity and Relevancy. Deoxyribonucleic acid (DNA) and Positive Identification of Accused. DNA is a molecule that encodes the genetic information in all living organisms. A person's DNA is the same in each cell and it does not change throughout a person's lifetime. The DNA in a person's blood is the same as the DNA found in his saliva, sweat, bone, the root and shaft of hair, earwax, mucus, urine, skin tissue, and vaginal and rectal cells. Most importantly, because of polymorphisms in human genetic structure, no two individuals have the same DNA, with the notable exception of identical twins. (Yatar [En Banc. Per Curiam], G.R. No. 150224. May 19, 2004).

DNA print or identification technology has been advanced as a uniquely effective means to link a suspect to a crime, or to exonerate a wrongly accused suspect, where biological evidence has been left. It can assist immensely in effecting a more accurate account of the crime committed, efficiently facilitating the conviction of the guilty, securing the acquittal of the innocent, and ensuring the proper administration of justice in every case. (id.).

In assessing the probative value of DNA evidence, courts should consider, inter alia, the following factors: how the samples were collected, how they were handled, the possibility of contamination of the samples, the procedure followed in analyzing the samples, whether the proper standards and procedures were followed in conducting the tests, and the qualification of the analyst who conducted the tests. (id.).

Pertinent evidence based on scientifically valid principles could be used as long as it was relevant and reliable. Under Philippine law, evidence is relevant when it relates directly to a fact in issue as to induce belief in its existence or non-existence. (id.).

DNA Tests do not violate the right of the accused to remain silent as well as his right against self-incrimination. The right against self- incrimination is simply against the legal process of extracting from the lips of the accused an admission of guilt. It does not apply where the evidence sought to be excluded is not an incrimination but as part of object evidence. A person may be compelled to submit to fingerprinting, photographing, paraffin, blood and DNA, as there is no testimonial compulsion involved. (id.).

DNA Tests Do Not Involve Ex Post Facto Law. The science of DNA typing involves the admissibility, relevance and reliability of the evidence obtained under the Rules of Court. Whereas an ex-post facto law refers primarily to a question of law, DNA profiling requires a factual determination of the probative weight of the evidence presented. (id.)

What Need Not Be Proved

Judicial Notice – When Mandatory. Section 1, Rule 129. Even if petitioner did not raise or allege the amendment in their motion for reconsideration before it, the CA should have taken mandatory judicial notice of this Court's resolution in A.M. Matter No. 00-02-03 SC. The resolution did not have to specify that it had retroactive effect as it pertains to a procedural matter. (Siena Realty Corporation v. Hon. Gal-lang, G.R. No. 145169, May 13, 2004).

Testimonial Evidence

Admission. Any admission made by a party in the course of the proceedings in the same case does not require proof to hold him liable therefor. Such admission may be contradicted only by showing that it was made through palpable mistake or no such admission was in fact made. (People v. Dacillo [En Banc], G.R. No. 149368, April 14, 2004).

Extrajudicial Confession or Admission of one accused is admissible only against him but not against the other accused. The same rule applies if the extrajudicial confession is made by one accused after the conspiracy has ceased. However, if the declarant/ admitter repeats in court his extrajudicial confession during trial and the other accused is accorded the opportunity to cross-examine the admitter, such confession or admission is admissible against both accused. The erstwhile extrajudicial confession or admission when repeated during the trial is transposed into judicial admissions. (Buntag, G.R. No. 123070, April 14, 2004).

Confession Distinguished from Admission in Criminal Cases. An admission is a statement of facts by the accused, direct or implied, which do not directly involve an acknowledgment of his guilt or of his criminal intent to commit the offense with which he is bound. It is an acknowledgment of some facts or circumstances which, in itself, is

insufficient to authorize a conviction and which tends only to establish the ultimate facts of guilt. A confession, on the other hand, is an acknowledgment, in express terms, of his guilt of the crime charged. (id.).

In this case, some of the extrajudicial inculpatory admissions of one appellant are identical with some of the extrajudicial inculpatory admissions of the other, and *vice versa*. This corroborates and confirms their veracity. Such admissions, made without collusion, are akin to interlocking extrajudicial confessions. They are admissible as circumstantial evidence against the other appellant implicated therein to show the probability of his participation in the commission of the crime and as corroborative evidence against him. (id.).

Extrajudicial Confession. (Saldaña [En Banc, *Per Curiam*], G.R. No. 148518, April 15, 2004). Allegation of forgery. The appellant made this claim for the first time, only when he testified before the trial court. Forgery cannot be presumed; it must be proved by clear, positive and convincing evidence. One who alleges forgery has the burden of proving the same. (People v. Reyes [En Banc], G.R. No. 153119, April 13, 2004).

Testimonial Knowledge. Hearsay. It was Dr. Villanueva, not Dr. Asperin, who conducted the autopsy taken on the body of Marlo. As the attending physician, Dr. Villanueva was the one who signed the autopsy report. Dr. Asperin herself admitted in her testimony that she never saw the victim, and that it was Dr. Villanueva who conducted the autopsy and was the one who prepared the autopsy report. However, Dr. Villanueva died before the prosecution was able to present her as witness. Dr. Asperin is an incompetent witness as to the autopsy report and her testimony could not have probative value for being hearsay. (Quimzon, G.R. No. 133541, April 14, 2004).

Weight and Sufficiency of Evidence

Evaluation of Evidence

To determine the credibility and probative weight of the testimony of a witness, such testimony must be considered in its entirety and not in truncated parts. Contradicting testimony given subsequently does not necessarily discredit the previous testimony if the contradiction is satisfactorily explained. There is no rule which states that a previous

testimony is presumed to be false merely because a witness now says that the same is not true. A testimony solemnly given in court should not be lightly set aside. Before this can be done, both the previous testimony and the subsequent one should be carefully scrutinized – in other words, all the expedients devised by man to determine the credibility of witnesses should be utilized to determine which of the two contradicting testimonies represents the truth. (Office of the Court Administrator v. Atty. Morante [En Banc *Per Curiam*], A.M. No. P-02-1555, April 16, 2004).

Circumstantial Evidence

Also referred to as Indirect or Presumptive Evidence. That which proves a fact or series of facts from which the facts in issue may be established by inference. Resort to circumstantial evidence is, in the nature of things, a necessity as crimes are usually committed clandestinely and under conditions where concealment is highly probable. To require direct testimony would, in many cases, result in freeing criminals and deny proper protection to society. (People v. Bello [En Banc], G.R. No. 124871, May 13, 2004).

Sufficient to warrant a judgment of conviction if: (a) there is more than one circumstance; (b) the facts from which the inferences are derived have been established; and, (c) the combination of all the circumstances is such as to warrant a finding of guilt beyond reasonable doubt. (Buntag, G.R. No. 123070, April 14, 2004). To warrant a conviction, must form an unbroken chain which leads to a fair and reasonable conclusion that the accused, to the exclusion of others, is the perpetrator of the crime. (Yatar [En Banc. Per Curiam], G.R. No. 150224. May 19, 2004; Bello [En Banc], G.R. No. 124871, May 13, 2004).

Established: [iI] Robbery with Homicide. (Bello [En Banc], G.R. No. 124871, May 13, 2004); [ii] Rape with Homicde. (Yatar [En Banc Per Curiam], G.R. No. 150224, May 19, 2004); [iii] parricide. Here is a father who mercilessly abused his own son and refused to bring him to the hospital, although on the verge of death, for prompt medical treatment. (Ayuman [En Banc], G.R. No. 133436, April 14, 2004).

Not sufficient to constitute substantial evidence in administrative case involving alleged stealing of money. (Re: AC No. 04-AM-2002 [Fria v. De los Angeles], En Banc. A.M. No. CA-02-15-P, June 3, 2004).

Alibi

The accused must show that he was at some other place when the crime was committed at such length of time that it was impossible for him to have been at the *locus criminis;* or that the distance is such as to preclude the possibility or probability for the accused to be at the crime scene at the time it was committed; or that it would have been physically impossible for the accused, by reason of illness or physical condition to be at the place where the crime was committed. (Bello [En Banc], G.R. No. 124871, May 13, 2004; Magdaraog, G.R. No. 151251, May 19, 2004; People v. Villafuerte; People v. Alcantara, G.R. No. 157669, April 14, 2004; People v. Balbarona [En Banc], G. R. No. 146854, April 28, 2004; (Ayangao, G.R. No. 142356, April 14, 2004; Estoya, G.R. No. 153538, May 19, 2004).

Where there is positive testimony of eyewitnesses regarding the presence of the accused at the *locus criminis* on the date and time the crime was committed, a negative defense of alibi is undeserving of weight or credence. (Bello [En Banc], G.R. No. 124871, May 13, 2004; Quimzon, G.R. No. 133541, April 14, 2004; Magdaraog, G.R. No. 151251, May 19, 2004; (People v. Layugan [En Banc], G.R. Nos. 130493-98, April 28, 2004; People v. Cadampog, G.R. No. 148144, April 30, 2004). Alibi assumes significance or strength only when it is amply corroborated by credible and disinterested witnesses. (Estoya, GR No. 153538, May 19, 2004). Positive identification — when categorical, consistent and showing no ill motive on the part of the witness testifying on the matter — prevails over the alibi and the denial proffered by the accused. (id.; Golimlim, G. R. No. 145225, April 2, 2004; Magdaraog, G.R. No. 151251, May 19, 2004). In the present case, not one of appellant's four friends who were allegedly with him on the night of the incident came forward to corroborate his alibi. (People v. Ramos, G.R. No. 125898, April 14, 2004).

Nevertheless, the prosecution's evidence must stand or fall on its own merit and cannot be allowed to draw strength from the weakness of the evidence of the defense. And while there may have been an affidavit presented by the prosecution, wherein appellant admitted having raped Adela, such was repudiated by appellant who said that he was just asked to sign the affidavit without knowing its contents. (People v. Relox, G.R. No. 149395, April 28, 2004). The denial of appellant Kimura that he was caught in the Cash and Carry Supermarket delivering marijuana on the night of June 27, 1994 may be weak but the evidence for the prosecution is clearly even weaker. The prosecution failed to

establish the identity of the marijuana allegedly seized from the appellants. (Tokohisa Kimura, G.R. No. 130805, April 27, 2004).

Corpus Delicti

Defined - as the body, foundation or substance upon which a crime has been committed, e.g. the corpse of a murdered man. It refers to the fact that a crime has been actually committed. *Corpus delicti* does not refer to the autopsy report evidencing the nature of the wounds sustained by the victim nor the testimony of the physician who conducted the autopsy or medical examination. It is made up of two elements: (a) that a certain result has been proved, for example, a man has died and (b) that some person is criminally responsible for the act. Proof of *corpus delicti* is indispensable in prosecutions for felonies and offenses. While the autopsy report of a medico legal expert in cases of murder or homicide is preferably accepted to show the extent of the injuries suffered by the victim, it is not the only competent evidence to prove the injuries and the fact of death. It may be proved by the testimonies of credible witnesses. Even a single witness' uncorroborated testimony, if credible, may suffice to prove it and warrant a conviction therefor. (Quimzon, G.R. No. 133541, April 14, 2004).

Based on the foregoing jurisprudence, it is clear that the testimony of Dr. Asperin is not indispensable in proving the *corpus delicti*. Even without her testimony, the prosecution was still be able to prove the *corpus delicti* by establishing the fact that the victim died and that such death occurred after he was stabbed by appellant and his co-accused. These facts were established by the testimony of prosecution witness Emolyn Casiong. (id.).

Presentation of Evidence

Witnesses. The matter of presentation of witnesses by the prosecution is not for appellant or even the trial court to decide. Section 5, Rule 110 of the Rules of Court expressly vests in the prosecutor the direction and control over the prosecution of a case. (Saldaña [En Banc, *Per Curiam*], G.R. No. 148518, April 15, 2004).

Non-Presentation of the Informant. The testimony of a police informant in an illegal drug case is not essential to convict the accused since the testimony would be merely corroborative and cumulative. Where the informant is the only eyewitness to the

illegal transaction, his testimony is essential and non-presentation of the informant is fatal to the prosecution's cause. (Jubail, G.R. No. 143718, May 19, 2004).

Impeachment of Witness Based on Contradictory Statements. Rule 132, Section 13 of the Revised Rules of Court. A witness may be impeached by showing that such two contradicting statements are under oath. However, in order to impeach a testimony to be inconsistent with the sworn statement, the sworn statement alleged to be inconsistent with the subsequent one should have been shown and read to him and, thereafter, he should have been asked to explain the apparent inconsistency. (Office of the Court Administrator [En Banc *Per Curiam*], A.M. No. P-02-1555, April 16, 2004).

Retraction. Mere retraction by a prosecution witness does not necessarily vitiate the original testimony if credible, as in this case. (People v. Ayuman, GR. No. 133436, April 14, 2005). Any reconsideration must be tested in a public trial, with sufficient opportunity given to the adverse party affected by it to cross-examine the recanting witness. When confronted with a situation where a witness recants his testimony, courts must not automatically exclude the original testimony solely on the basis of recantation. They should determine which testimony should be given credence through a comparison of the original testimony and the new testimony, applying the general rules of evidence. It is absurd to disregard a testimony that has undergone trial and scrutiny by the Court and the parties simply because an affiant withdraws his testimony. (id.).

Burden of Proof

Presumption. Regularity in the performance of official duty. Cannot by itself overcome the presumption of innocence. An accused in a criminal case is presumed innocent until proven otherwise and the prosecution has the burden of proving his guilt beyond reasonable doubt. The evidence of the prosecution must stand on its own weight and not rely on the weakness of the defense. (Jubail, May 19, 2004).

Proof Beyond Reasonable Doubt. In any criminal prosecution, the prosecution must prove the guilt of the accused beyond reasonable doubt. This does not mean such a degree of proof that, excluding the possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. (Quimzon, G.R. No. 133541, April 14, 2004). Generally, courts should only consider and rely upon duly established evidence and never on mere

conjectures or suppositions. The legal relevancy of evidence denotes "something more than a minimum of probative value," suggesting that such evidentiary relevance must contain a "plus value." (Yatar [En Banc, Per Curriam], G.R. No. 150224, May 19, 2004).

Witnesses

Credible Witness. A witness who testifies in a clear, positive, and convincing manner and remains consistent on cross-examination, especially, when there is no evidence to indicate that such witness was moved by improper motive. (Saldaña [En Banc, *Per Curiam*], G.R. No. 148518, April 15, 2004).

Credibility. Rape victim. (Balbarona [En Banc], G.R. No. 146854, April 28, 2004). Young and immature. (Villafuerte, G.R. No. 154917, May 18, 2004). Reinforced by physical evidence. (Layugan [En Banc], G.R. Nos. 130493-98, April 28, 2004).

Mental Retardate as Witness. Sections 20 and 21 of Rule 130 of the Revised Rules of Court. (Golimlim, G. R. No. 145225, April 2, 2004).

Relationship of Witness to the victim. Did not adversely affect credibility. (Magdaraog, G.R. No. 151251, May 19, 2004).

Delay in reporting or testifying on the criminal incident - explained. (Quimzon, G.R. No. 133541, April 14, 2004; Estoya). Alleged Failure to Execute Affidavit. Explained. (id.).

Inconsistencies. Minor and did not affect the credibility of the witness: [i] Relating to the description of the gun used in killing the victim; [ii] inaccuracies in recounting the events that took place prior to and during the stabbing incident which refer to trivial matters and not to material points, and do not detract from the clear and positive testimony of the witness that she saw appellant and the other accused stab and kill her brother. (id.); [iii] in the description of the window — from one that could be opened by sliding the frame, to one that could be pushed open does not deviate from the fact that shortly after hearing two shots, Pactor opened the window and heard Estoya shout "Withdraw Bay." (Estoya, GR No. 153538, May 19, 2004); [iv] Discordance as to the exact or precise time when the appellant signed his extrajudicial confession where the two witnesses confirm that the appellant signed his extrajudicial confession in the morning of June 12,

1998. (Reyes [En Banc], G.R. No. 153119, April 13, 2004). In this case, the inconsistencies were minor ones involving negligible details which did not negate the truth of the witnesses' testimonies nor detract from their credibility. (Ayangao, G.R. No. 142356, April 14, 2004; Villafuerte, G.R. No. 154917, May 18, 2004).

Miscellaneous

Death. Time of. Determined from completion of rigor mortis. (Yatar [En Banc Per Curiam], G.R. No. 150224, May 19, 2004).

Drugs, Prohibited. The testimony shows that the witness did not actually see who was carrying the red Jollibee plastic bag containing the shabu or to whom this bag was handed to during the sale. (People v. Jubail, G.R. No. 143718, May 19, 2004). (Jubail, G.R. No. 143718, May 19, 2004).

Entrapment. (Office of the Court Administrator [En Banc *Per Curiam*], A.M. No. P-02-1555, April 16, 2004).

Flight. Held to be an admission of guilt; yet, non-flight is not proof of innocence. (Saldaña [En Banc, *Per Curiam*], G.R. No. 148518, April 15, 2004).

Forgery. Dissimilarities in Signatures. Determination of Genuineness. The fact of forgery cannot be presumed simply because there are dissimilarities between the standard and the questioned signature. (People v. Reyes [En Banc], G.R. No. 153119, April 13, 2004).

Identification of the Assailant. Positive. (Estoya, G.R. No. 153538, May 19, 2004). Categorical, consistent and showing no ill motive on the part of the witness testifying on the matter. (id.). Absence of suggestive identification in a line-up in jail. (Ramos, G.R. No. 125898, April 14, 2004).

(a) The witness, being then present at the *locus* of the crime, was able to identify the appellant and the other accused as the persons who killed the victim. The witness narrated the incidents leading to the victim's death with clarity and lucidity that they could not have been fabricated or concocted. The records show that throughout the trial, the witness remained steadfast in his testimony. This lone eyewitness is credible. While his testimony is uncorroborated, still it sustains the conviction of appellant. (id.).

(b) Leonila was not able to name appellant when she was first asked by the police at the hospital regarding the identity of the assailant. This, however, does not erode Leonila's credibility considering the circumstances attending the inquiry. Leonila was questioned by the police just a few hours after she witnessed the killing of the victim who is her fellow vendor. Such a shocking experience can verily create confusion especially in the mind of a fifty-year old woman. (People v. Alcantara, G.R. No. 157669, April 14, 2004)

(c) Where the prosecution eyewitness was familiar with both victim and accused, and where the *locus criminis* afforded good visibility, and where no improper motive can be attributed to the witness for testifying against the accused, then her version of the story deserves much weight. (id.)

Illumination. Sufficient in these cases. From: [i] three kerosene lamps in the kitchen and another one hanging outside Garsula's house. (Estoya, G.R. No. 153538, May 19, 2004). [ii] the fluorescent bulbs situated near the places where appellant and his companions attacked Marlo enabled Emolyn to witness the killing of her brother. (Quimzon, G.R. No. 133541, April 14, 2004).

Motive. Essential for conviction when there is doubt as to the identity of the culprit. (Yatar [En Banc, Per Curriam], G.R. No. 150224, May 19, 2004). Ill Motive. A chimeric defense in this case. (People v. Cadampog, G.R. No. 148144, April 30, 2004). Perception of individuals may vary, depending on their location and the extent of their peripheral vision. (Magdaraog, G.R. No. 151251, May 19, 2004).

Police Blotter. Entries. Should not be given undue significance or probative value, for these are normally incomplete and inaccurate, especially when made by persons with no personal knowledge of the circumstances surrounding the incident. The fact that the assailant was unnamed in the police blotter does not affect the credibility of the other pieces of evidence on record, positively pointing to appellant as the killer. (Estoya, G.R. No. 153538, May 19, 2004).

Sexual Violation. Established. (Yatar [En Banc Per Curiam], G.R. No. 150224, May 19, 2004

Weapon Used in Crime. The failure of the witness to see the weapon used by the assailants does not detract from his positive identification of them. Such weapon is not, after all, an element of either homicide or murder. The identification and the presentation of the murder weapon are not indispensable to the prosecution's cause when the accused has positively been identified. (Magdaraog, G.R. No. 151251, May 19, 2004).

Wounds. Puncture wounds. (Magdaraog, G.R. No. 151251, May 19, 2004).

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