JOSEPH EJERCITO ESTRADA, PETITIONER, VS. SANDIGANBAYAN (THIRD DIVISION) AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 148560. November 19, 2001

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

JOHN STUART MILL, in his essay On Liberty, unleashes the full fury of his pen in defense of the rights of the individual from the vast powers of the State and the inroads of societal pressure. But even as he draws a sacrosanct line demarcating the limits on individuality beyond which the State cannot tread - asserting that "individual spontaneity" must be allowed to flourish with very little regard to social interference - he veritably acknowledges that the exercise of rights and liberties is imbued with a civic obligation, which society is justified in enforcing at all cost, against those who would endeavor to withhold fulfillment. Thus he says -

> The sole end for which mankind is warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.

Parallel to individual liberty is the natural and illimitable right of the State to self-preservation. With the end of maintaining the integrity and cohesiveness of the body politic, it behooves the State to formulate a system of laws that would compel obeisance to its collective wisdom and inflict punishment for non-observance.

The movement from Mill's individual liberalism to unsystematic collectivism wrought changes in the social order, carrying with it a new formulation of fundamental rights and duties more attuned to the imperatives of contemporary socio-political ideologies. In the process, the web of rights and State impositions became tangled and obscured, enmeshed in threads of multiple shades and colors, the skein irregular and broken. Antagonism, often outright collision, between the law as the expression of the will of the State, and the zealous attempts by its members to preserve their individuality and dignity, inevitably followed. It is when individual rights are pitted against State authority that judicial conscience is put to its severest test.

Petitioner Joseph Ejercito Estrada, the highest-ranking official to be prosecuted under RA 7080 (An Act Defining and Penalizing the Crime of Plunder),[1] as amended by RA 7659,[2] wishes to impress upon us that the assailed law is so defectively fashioned that it crosses that thin but distinct line which divides the valid from the constitutionally infirm. He therefore makes a stringent call for this Court to subject the Plunder Law to the crucible of constitutionality mainly because, according to him, (a) it suffers from the vice of vagueness; (b) it dispenses with the "reasonable doubt" standard in criminal prosecutions; and, (c) it abolishes the element of mens rea in crimes already punishable under The Revised Penal Code, all of which are purportedly clear violations of the fundamental rights of the accused to due process and to be informed of the nature and cause of the accusation against him.

Specifically, the provisions of the Plunder Law claimed by petitioner to have transgressed constitutional boundaries are Secs. 1, par. (d), 2 and 4 which are reproduced hereunder:

> Section 1. x x x x (d) "Ill-gotten wealth" means any asset, property, business, enterprise or material possession of any person within the purview of Section Two (2) hereof, acquired by him directly or indirectly through dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes:
> (1) Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;
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> (2) By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public office concerned;
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> (3) By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities, or government owned or controlled corporations and their subsidiaries;
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> (4) By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;
>
> (5) By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or
>
> (6) By taking advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

Section 2. Definition of the Crime of Plunder, Penalties. - Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1 (d) hereof, in the aggregate amount or total value of at least fifty million pesos (P50,000,000.00) shall be guilty of the crime of plunder and shall be punished by reclusion perpetua to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances as provided by the Revised Penal Code shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State (underscoring supplied).

Section 4. Rule of Evidence. - For purposes of establishing the crime of plunder, it shall not be necessary to prove each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth, it being sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy (underscoring supplied).

On 4 April 2001 the Office of the Ombudsman filed before the Sandiganbayan eight (8) separate Informations, docketed as: (a) Crim. Case No. 26558, for violation of RA 7080, as amended by RA 7659; (b) Crim. Cases Nos. 26559 to 26562, inclusive, for violation of Secs. 3, par. (a), 3, par. (a), 3, par. (e) and 3, par. (e), of RA 3019 (Anti-Graft and Corrupt Practices Act), respectively; (c) Crim. Case No. 26563, for violation of Sec. 7, par. (d), of RA 6713 (The Code of Conduct and Ethical Standards for Public Officials and Employees); (d) Crim. Case No. 26564, for Perjury (Art. 183 of The Revised Penal Code); and, (e) Crim. Case No. 26565, for Illegal Use Of An Alias (CA No. 142, as amended by RA 6085).

On 11 April 2001 petitioner filed an Omnibus Motion for the remand of the case to the Ombudsman for

preliminary investigation with respect to specification "d" of the charges in the Information in Crim. Case No. 26558; and, for reconsideration/reinvestigation of the offenses under specifications "a," "b," and "c" to give the accused an opportunity to file counter-affidavits and other documents necessary to prove lack of probable cause. Noticeably, the grounds raised were only lack of preliminary investigation, reconsideration/reinvestigation of offenses, and opportunity to prove lack of probable cause. The purported ambiguity of the charges and the vagueness of the law under which they are charged were never raised in that Omnibus Motion thus indicating the explicitness and comprehensibility of the Plunder Law.

On 25 April 2001 the Sandiganbayan, Third Division, issued a Resolution in Crim. Case No. 26558 finding that "a probable cause for the offense of PLUNDER exists to justify the issuance of warrants for the arrest of the accused." On 25 June 2001 petitioner's motion for reconsideration was denied by the Sandiganbayan.

On 14 June 2001 petitioner moved to quash the Information in Crim. Case No. 26558 on the ground that the facts alleged therein did not constitute an indictable offense since the law on which it was based was unconstitutional for vagueness, and that the Amended Information for Plunder charged more than one (1) offense. On 21 June 2001 the Government filed its Opposition to the Motion to Quash, and five (5) days later or on 26 June 2001 petitioner submitted his Reply to the Opposition. On 9 July 2001 the Sandiganbayan denied petitioner's Motion to Quash.

As concisely delineated by this Court during the oral arguments on 18 September 2001, the issues for resolution in the instant petition for certiorari are: (a) The Plunder Law is unconstitutional for being vague; (b) The Plunder Law requires less evidence for proving the predicate crimes of plunder and therefore violates the rights of the accused to due process; and, (c) Whether Plunder as defined in RA 7080 is a malum prohibitum, and if so, whether it is within the power of Congress to so classify it.

Preliminarily, the whole gamut of legal concepts pertaining to the validity of legislation is predicated on the basic principle that a legislative measure is presumed to be in harmony with the Constitution.[3] Courts invariably train their sights on this fundamental rule whenever a legislative act is under a constitutional attack, for it is the postulate of constitutional adjudication. This strong predilection for constitutionality takes its bearings on the idea that it is forbidden for one branch of the government to encroach upon the duties and powers of another. Thus it has been said that the presumption is based on the deference the judicial branch accords to its coordinate branch - the legislature.

If there is any reasonable basis upon which the legislation may firmly rest, the courts must assume that the legislature is ever conscious of the borders and edges of its plenary powers, and has passed the law with full knowledge of the facts and for the purpose of promoting what is right and advancing the welfare of the majority. Hence in determining whether the acts of the legislature are in tune with the fundamental law, courts should proceed with judicial restraint and act with caution and forbearance. Every intendment of the law must be adjudged by the courts in favor of its constitutionality, invalidity being a measure of last resort. In construing therefore the provisions of a statute, courts must first ascertain whether an interpretation is fairly possible to sidestep the question of constitutionality.

In La Union Credit Cooperative, Inc. v. Yaranon[4] we held that as long as there is some basis for the decision of the court, the constitutionality of the challenged law will not be touched and the case will be decided on other available grounds. Yet the force of the presumption is not sufficient to catapult a fundamentally deficient law into the safe environs of constitutionality. Of course, where the law clearly and palpably transgresses the hallowed domain of the organic law, it must be struck down on sight lest the positive commands of the fundamental law be unduly eroded.

Verily, the onerous task of rebutting the presumption weighs heavily on the party challenging the validity of the statute. He must demonstrate beyond any tinge of doubt that there is indeed an infringement of the constitution, for absent such a showing, there can be no finding of unconstitutionality. A doubt, even if well-founded, will hardly suffice. As tersely put by Justice Malcolm, "To doubt is to sustain."[5] And petitioner has miserably failed in the instant case to discharge his burden and overcome the presumption of constitutionality of the Plunder Law.

As it is written, the Plunder Law contains ascertainable standards and well-defined parameters which would enable the accused to determine the nature of his violation. Section 2 is sufficiently explicit in its description of the acts, conduct and conditions required or forbidden, and prescribes the elements of the crime with reasonable certainty and particularity. Thus -

> - That the offender is a public officer who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons;
>
> - That he amassed, accumulated or acquired ill-gotten wealth through a combination or series of the following overt or criminal acts: (a) through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury; (b) by receiving, directly or indirectly, any commission, gift, share, percentage, kickback or any other form of pecuniary benefits from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer; (c) by the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities of Government owned or controlled corporations or their subsidiaries; (d) by obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking; (e) by establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or (f) by taking advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines; and,
>
> - That the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least P50,000,000.00.

As long as the law affords some comprehensible guide or rule that would inform those who are subject to it what conduct would render them liable to its penalties, its validity will be sustained. It must sufficiently guide the judge in its application; the counsel, in defending one charged with its violation; and more importantly, the accused, in identifying the realm of the proscribed conduct. Indeed, it can be understood with little difficulty that what the assailed statute punishes is the act of a public officer in amassing or accumulating ill-gotten wealth of at least P50,000,000.00 through a series or combination of acts enumerated in Sec. 1, par. (d), of the Plunder Law.

In fact, the amended Information itself closely tracks the language of the law, indicating with reasonable certainty the various elements of the offense which petitioner is alleged to have committed:

> "The undersigned Ombudsman, Prosecutor and OIC-Director, EPIB, Office of the Ombudsman, hereby accuses former PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES, Joseph Ejercito Estrada, a.k.a. 'ASIONG SALONGA' and a.k.a. 'JOSE VELARDE,' together with Jose 'Jinggoy' Estrada, Charlie 'Atong' Ang, Edward Serapio, Yolanda T. Ricaforte, Alma Alfaro, JOHN DOE a.k.a. Eleuterio Tan OR Eleuterio Ramos Tan or Mr. Uy, Jane Doe a.k.a. Delia Rajas, and John DOES & Jane Does, of the crime of Plunder, defined and penalized under R.A. No. 7080, as amended by Sec. 12 of R.A. No. 7659, committed as follows:
>
> That during the period from June, 1998 to January 2001, in the Philippines, and within the jurisdiction of this Honorable Court, accused Joseph Ejercito Estrada, THEN A PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES, by himself AND/OR in CONNIVANCE/CONSPIRACY with his co-accused, WHO ARE

MEMBERS OF HIS FAMILY, RELATIVES BY AFFINITY OR CONSANGUINITY, BUSINESS ASSOCIATES, SUBORDINATES AND/OR OTHER PERSONS, BY TAKING UNDUE ADVANTAGE OF HIS OFFICIAL POSITION, AUTHORITY, RELATIONSHIP, CONNECTION, OR INFLUENCE, did then and there willfully, unlawfully and criminally amass, accumulate and acquire BY HIMSELF, DIRECTLY OR INDIRECTLY, ill-gotten wealth in the aggregate amount or TOTAL VALUE of FOUR BILLION NINETY SEVEN MILLION EIGHT HUNDRED FOUR THOUSAND ONE HUNDRED SEVENTY THREE PESOS AND SEVENTEEN CENTAVOS (P4,097,804,173.17), more or less, THEREBY UNJUSTLY ENRICHING HIMSELF OR THEMSELVES AT THE EXPENSE AND TO THE DAMAGE OF THE FILIPINO PEOPLE AND THE REPUBLIC OF THE PHILIPPINES, through ANY OR A combination OR A series of overt OR criminal acts, OR SIMILAR SCHEMES OR MEANS, described as follows:

(a) by receiving OR collecting, directly or indirectly, on SEVERAL INSTANCES, MONEY IN THE AGGREGATE AMOUNT OF FIVE HUNDRED FORTY-FIVE MILLION PESOS (P545,000,000.00), MORE OR LESS, FROM ILLEGAL GAMBLING IN THE FORM OF GIFT, SHARE, PERCENTAGE, KICKBACK OR ANY FORM OF PECUNIARY BENEFIT, BY HIMSELF AND/OR in connection with co-accused CHARLIE 'ATONG' ANG, Jose 'Jinggoy' Estrada, Yolanda T. Ricaforte, Edward Serapio, AND JOHN DOES AND JANE DOES, in consideration OF TOLERATION OR PROTECTION OF ILLEGAL GAMBLING;

(b) by DIVERTING, RECEIVING, misappropriating, converting OR misusing DIRECTLY OR INDIRECTLY, for HIS OR THEIR PERSONAL gain and benefit, public funds in the amount of ONE HUNDRED THIRTY MILLION PESOS (P130,000,000.00), more or less, representing a portion of the TWO HUNDRED MILLION PESOS (P200,000,000.00) tobacco excise tax share allocated for the province of Ilocos Sur under R.A. No. 7171, by himself and/or in connivance with co-accused Charlie 'Atong' Ang, Alma Alfaro, JOHN DOE a.k.a. Eleuterio Ramos Tan or Mr. Uy, Jane Doe a.k.a. Delia Rajas, AND OTHER JOHN DOES & JANE DOES; (italic supplied).

(c) by directing, ordering and compelling, FOR HIS PERSONAL GAIN AND BENEFIT, the Government Service Insurance System (GSIS) TO PURCHASE 351,878,000 SHARES OF STOCKS, MORE OR LESS, and the Social Security System (SSS), 329,855,000 SHARES OF STOCK, MORE OR LESS, OF THE BELLE CORPORATION IN THE AMOUNT OF MORE OR LESS ONE BILLION ONE HUNDRED TWO MILLION NINE HUNDRED SIXTY FIVE THOUSAND SIX HUNDRED SEVEN PESOS AND FIFTY CENTAVOS (P1,102,965,607.50) AND MORE OR LESS SEVEN HUNDRED FORTY FOUR MILLION SIX HUNDRED TWELVE THOUSAND AND FOUR HUNDRED FIFTY PESOS (P744,612,450.00), RESPECTIVELY, OR A TOTAL OF MORE OR LESS ONE BILLION EIGHT HUNDRED FORTY SEVEN MILLION FIVE HUNDRED SEVENTY EIGHT THOUSAND FIFTY SEVEN PESOS AND FIFTY CENTAVOS (P1,847,578,057.50); AND BY COLLECTING OR RECEIVING, DIRECTLY OR INDIRECTLY, BY HIMSELF AND/OR IN CONNIVANCE WITH JOHN DOES AND JANE DOES, COMMISSIONS OR PERCENTAGES BY REASON OF SAID PURCHASES OF SHARES OF STOCK IN THE AMOUNT OF ONE HUNDRED EIGHTY NINE MILLION SEVEN HUNDRED THOUSAND PESOS (P189,700,000.00) MORE OR LESS, FROM THE BELLE CORPORATION WHICH BECAME PART OF THE DEPOSIT IN THE EQUITABLE-PCI BANK UNDER THE ACCOUNT NAME 'JOSE VELARDE;'

(d) by unjustly enriching himself FROM COMMISSIONS, GIFTS, SHARES, PERCENTAGES, KICKBACKS, OR ANY FORM OF PECUNIARY BENEFITS, IN CONNIVANCE WITH JOHN DOES AND JANE DOES, in the amount of MORE OR LESS THREE BILLION TWO HUNDRED THIRTY THREE MILLION ONE HUNDRED FOUR THOUSAND ONE HUNDRED SEVENTY THREE PESOS AND SEVENTEEN CENTAVOS (P3,233,104,173.17) AND DEPOSITING THE SAME UNDER HIS ACCOUNT NAME 'JOSE VELARDE' AT THE EQUITABLE-PCI BANK."

We discern nothing in the foregoing that is vague or ambiguous - as there is obviously none - that will confuse petitioner in his defense. Although subject to proof, these factual assertions clearly show that the elements of the

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crime are easily understood and provide adequate contrast between the innocent and the prohibited acts. Upon such unequivocal assertions, petitioner is completely informed of the accusations against him as to enable him to prepare for an intelligent defense.

Petitioner, however, bewails the failure of the law to provide for the statutory definition of the terms "combination" and "series" in the key phrase "a combination or series of overt or criminal acts" found in Sec. 1, par. (d), and Sec. 2, and the word "pattern" in Sec. 4. These omissions, according to petitioner, render the Plunder Law unconstitutional for being impermissibly vague and overbroad and deny him the right to be informed of the nature and cause of the accusation against him, hence, violative of his fundamental right to due process.

The rationalization seems to us to be pure sophistry. A statute is not rendered uncertain and void merely because general terms are used therein, or because of the employment of terms without defining them;[6] much less do we have to define every word we use. Besides, there is no positive constitutional or statutory command requiring the legislature to define each and every word in an enactment. Congress is not restricted in the form of expression of its will, and its inability to so define the words employed in a statute will not necessarily result in the vagueness or ambiguity of the law so long as the legislative will is clear, or at least, can be gathered from the whole act, which is distinctly expressed in the Plunder Law.

Moreover, it is a well-settled principle of legal hermeneutics that words of a statute will be interpreted in their natural, plain and ordinary acceptation and signification,[7] unless it is evident that the legislature intended a technical or special legal meaning to those words.[8] The intention of the lawmakers - who are, ordinarily, untrained philologists and lexicographers - to use statutory phraseology in such a manner is always presumed. Thus, Webster's New Collegiate Dictionary contains the following commonly accepted definition of the words "combination" and "series:"

> Combination - the result or product of combining; the act or process of combining. To combine is to bring into such close relationship as to obscure individual characters.
>
> Series - a number of things or events of the same class coming one after another in spatial and temporal succession.

That Congress intended the words "combination" and "series" to be understood in their popular meanings is pristinely evident from the legislative deliberations on the bill which eventually became RA 7080 or the Plunder Law:

> DELIBERATIONS OF THE BICAMERAL COMMITTEE ON JUSTICE, 7 May 1991
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> REP. ISIDRO: I am just intrigued again by our definition of plunder. We say THROUGH A COMBINATION OR SERIES OF OVERT OR CRIMINAL ACTS AS MENTIONED IN SECTION ONE HEREOF. Now when we say combination, we actually mean to say, if there are two or more means, we mean to say that number one and two or number one and something else are included, how about a series of the same act? For example, through misappropriation, conversion, misuse, will these be included also?
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> REP. GARCIA: Yeah, because we say a series.
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> REP. ISIDRO: Series.
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> REP. GARCIA: Yeah, we include series.
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> REP. ISIDRO: But we say we begin with a combination.
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> REP. GARCIA: Yes.

REP. ISIDRO: When we say combination, it seems that -

REP. GARCIA: Two.

REP. ISIDRO: Not only two but we seem to mean that two of the enumerated means not twice of one enumeration.

REP. GARCIA: No, no, not twice.

REP. ISIDRO: Not twice?

REP. GARCIA: Yes. Combination is not twice - but combination, two acts.

REP. ISIDRO: So in other words, that's it. When we say combination, we mean, two different acts. It cannot be a repetition of the same act.

REP. GARCIA: That be referred to series, yeah.

REP. ISIDRO: No, no. Supposing one act is repeated, so there are two.

REP. GARCIA: A series.

REP. ISIDRO: That's not series. Its a combination. Because when we say combination or series, we seem to say that two or more, di ba?

REP. GARCIA: Yes, this distinguishes it really from ordinary crimes. That is why, I said, that is a very good suggestion because if it is only one act, it may fall under ordinary crime but we have here a combination or series of overt or criminal acts. So x x x x

REP. GARCIA: Series. One after the other eh di....

SEN. TANADA: So that would fall under the term "series?"

REP. GARCIA: Series, oo.

REP. ISIDRO: Now, if it is a combination, ano, two misappropriations....

REP. GARCIA: Its not... Two misappropriations will not be combination. Series.

REP. ISIDRO: So, it is not a combination?

REP. GARCIA: Yes.

REP. ISIDRO: When you say combination, two different?

REP. GARCIA: Yes.

SEN. TANADA: Two different.

REP. ISIDRO: Two different acts.

REP. GARCIA: For example, ha...

REP. ISIDRO: Now a series, meaning, repetition...

DELIBERATIONS ON SENATE BILL NO. 733, 6 June 1989

SENATOR MACEDA: In line with our interpellations that sometimes "one" or maybe even "two" acts may already result in such a big amount, on line 25, would the Sponsor consider deleting the words "a series of overt or," to read, therefore: "or conspiracy COMMITTED by criminal acts such as." Remove the idea of

> necessitating "a series." Anyway, the criminal acts are in the plural.
>
> SENATOR TANADA: That would mean a combination of two or more of the acts mentioned in this.
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> THE PRESIDENT: Probably two or more would be....
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> SENATOR MACEDA: Yes, because "a series" implies several or many; two or more.
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> SENATOR TANADA: Accepted, Mr. President x x x x
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> THE PRESIDENT: If there is only one, then he has to be prosecuted under the particular crime. But when we say "acts of plunder" there should be, at least, two or more.
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> SENATOR ROMULO: In other words, that is already covered by existing laws, Mr. President.

Thus when the Plunder Law speaks of "combination," it is referring to at least two (2) acts falling under different categories of enumeration provided in Sec. 1, par. (d), e.g., raids on the public treasury in Sec. 1, par. (d), subpar. (1), and fraudulent conveyance of assets belonging to the National Government under Sec. 1, par. (d), subpar. (3).

On the other hand, to constitute a series" there must be two (2) or more overt or criminal acts falling under the same category of enumeration found in Sec. 1, par. (d), say, misappropriation, malversation and raids on the public treasury, all of which fall under Sec. 1, par. (d), subpar. (1). Verily, had the legislature intended a technical or distinctive meaning for "combination" and "series," it would have taken greater pains in specifically providing for it in the law.

As for "pattern," we agree with the observations of the Sandiganbayan[9] that this term is sufficiently defined in Sec. 4, in relation to Sec. 1, par. (d), and Sec. 2 -

> x x x x under Sec. 1 (d) of the law, a 'pattern' consists of at least a combination or series of overt or criminal acts enumerated in subsections (1) to (6) of Sec. 1 (d). Secondly, pursuant to Sec. 2 of the law, the pattern of overt or criminal acts is directed towards a common purpose or goal which is to enable the public officer to amass, accumulate or acquire ill-gotten wealth. And thirdly, there must either be an 'overall unlawful scheme' or 'conspiracy' to achieve said common goal. As commonly understood, the term 'overall unlawful scheme' indicates a 'general plan of action or method' which the principal accused and public officer and others conniving with him follow to achieve the aforesaid common goal. In the alternative, if there is no such overall scheme or where the schemes or methods used by multiple accused vary, the overt or criminal acts must form part of a conspiracy to attain a common goal.

Hence, it cannot plausibly be contended that the law does not give a fair warning and sufficient notice of what it seeks to penalize. Under the circumstances, petitioner's reliance on the "void-for-vagueness" doctrine is manifestly misplaced. The doctrine has been formulated in various ways, but is most commonly stated to the effect that a statute establishing a criminal offense must define the offense with sufficient definiteness that persons of ordinary intelligence can understand what conduct is prohibited by the statute. It can only be invoked against that specie of legislation that is utterly vague on its face, i.e., that which cannot be clarified either by a saving clause or by construction.

A statute or act may be said to be vague when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ in its application. In such instance, the statute is repugnant to the Constitution in two (2) respects - it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of what conduct to avoid; and, it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle.[10] But the doctrine does not apply as against legislations that are merely couched in imprecise language but which nonetheless specify a

standard though defectively phrased; or to those that are apparently ambiguous yet fairly applicable to certain types of activities. The first may be "saved" by proper construction, while no challenge may be mounted as against the second whenever directed against such activities.[11] With more reason, the doctrine cannot be invoked where the assailed statute is clear and free from ambiguity, as in this case.

The test in determining whether a criminal statute is void for uncertainty is whether the language conveys a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practice.[12] It must be stressed, however, that the "vagueness" doctrine merely requires a reasonable degree of certainty for the statute to be upheld - not absolute precision or mathematical exactitude, as petitioner seems to suggest. Flexibility, rather than meticulous specificity, is permissible as long as the metes and bounds of the statute are clearly delineated. An act will not be held invalid merely because it might have been more explicit in its wordings or detailed in its provisions, especially where, because of the nature of the act, it would be impossible to provide all the details in advance as in all other statutes.

Moreover, we agree with, hence we adopt, the observations of Mr. Justice Vicente V. Mendoza during the deliberations of the Court that the allegations that the Plunder Law is vague and overbroad do not justify a facial review of its validity -

> The void-for-vagueness doctrine states that "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."[13] The overbreadth doctrine, on the other hand, decrees that "a governmental purpose may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms."[14]
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> A facial challenge is allowed to be made to a vague statute and to one which is overbroad because of possible "chilling effect" upon protected speech. The theory is that "[w]hen statutes regulate or proscribe speech and no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, the transcendent value to all society of constitutionally protected expression is deemed to justify allowing attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with narrow specificity."[15] The possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that the protected speech of others may be deterred and perceived grievances left to fester because of possible inhibitory effects of overly broad statutes.
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> This rationale does not apply to penal statutes. Criminal statutes have general in terrorem effect resulting from their very existence, and, if facial challenge is allowed for this reason alone, the State may well be prevented from enacting laws against socially harmful conduct. In the area of criminal law, the law cannot take chances as in the area of free speech.
>
> The overbreadth and vagueness doctrines then have special application only to free speech cases. They are inapt for testing the validity of penal statutes. As the U.S. Supreme Court put it, in an opinion by Chief Justice Rehnquist, "we have not recognized an 'overbreadth' doctrine outside the limited context of the First Amendment."[16] In Broadrick v. Oklahoma,[17] the Court ruled that "claims of facial overbreadth have been entertained in cases involving statutes which, by their terms, seek to regulate only spoken words" and, again, that "overbreadth claims, if entertained at all, have been curtailed when invoked against ordinary criminal laws that are sought to be applied to protected conduct." For this reason, it has been held that "a facial challenge to a legislative act is the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid."[18] As for the vagueness doctrine, it is said that a litigant may challenge a statute on its face only if it is vague in all its possible applications. "A plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others."[19]

> In sum, the doctrines of strict scrutiny, overbreadth, and vagueness are analytical tools developed for testing "on their faces" statutes in free speech cases or, as they are called in American law, First Amendment cases. They cannot be made to do service when what is involved is a criminal statute. With respect to such statute, the established rule is that "one to whom application of a statute is constitutional will not be heard to attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations in which its application might be unconstitutional."[20] As has been pointed out, "vagueness challenges in the First Amendment context, like overbreadth challenges typically produce facial invalidation, while statutes found vague as a matter of due process typically are invalidated [only] 'as applied' to a particular defendant."[21] Consequently, there is no basis for petitioner's claim that this Court review the Anti-Plunder Law on its face and in its entirety.
>
> Indeed, "on its face" invalidation of statutes results in striking them down entirely on the ground that they might be applied to parties not before the Court whose activities are constitutionally protected.[22] It constitutes a departure from the case and controversy requirement of the Constitution and permits decisions to be made without concrete factual settings and in sterile abstract contexts.[23] But, as the U.S. Supreme Court pointed out in Younger v. Harris[24]
> [T]he task of analyzing a proposed statute, pinpointing its deficiencies, and requiring correction of these deficiencies before the statute is put into effect, is rarely if ever an appropriate task for the judiciary. The combination of the relative remoteness of the controversy, the impact on the legislative process of the relief sought, and above all the speculative and amorphous nature of the required line-by-line analysis of detailed statutes, . . . ordinarily results in a kind of case that is wholly unsatisfactory for deciding constitutional questions, whichever way they might be decided.

For these reasons, "on its face" invalidation of statutes has been described as "manifestly strong medicine," to be employed "sparingly and only as a last resort,"[25] and is generally disfavored.[26] In determining the constitutionality of a statute, therefore, its provisions which are alleged to have been violated in a case must be examined in the light of the conduct with which the defendant is charged.[27]

In light of the foregoing disquisition, it is evident that the purported ambiguity of the Plunder Law, so tenaciously claimed and argued at length by petitioner, is more imagined than real. Ambiguity, where none exists, cannot be created by dissecting parts and words in the statute to furnish support to critics who cavil at the want of scientific precision in the law. Every provision of the law should be construed in relation and with reference to every other part. To be sure, it will take more than nitpicking to overturn the well-entrenched presumption of constitutionality and validity of the Plunder Law. A fortiori, petitioner cannot feign ignorance of what the Plunder Law is all about. Being one of the Senators who voted for its passage, petitioner must be aware that the law was extensively deliberated upon by the Senate and its appropriate committees by reason of which he even registered his affirmative vote with full knowledge of its legal implications and sound constitutional anchorage.

The parallel case of Gallego v. Sandiganbayan[28] must be mentioned if only to illustrate and emphasize the point that courts are loathed to declare a statute void for uncertainty unless the law itself is so imperfect and deficient in its details, and is susceptible of no reasonable construction that will support and give it effect. In that case, petitioners Gallego and Agoncillo challenged the constitutionality of Sec. 3, par. (e), of The Anti-Graft and Corrupt Practices Act for being vague. Petitioners posited, among others, that the term "unwarranted" is highly imprecise and elastic with no common law meaning or settled definition by prior judicial or administrative precedents; that, for its vagueness, Sec. 3, par. (e), violates due process in that it does not give fair warning or sufficient notice of what it seeks to penalize. Petitioners further argued that the Information charged them with three (3) distinct offenses, to wit: (a) giving of "unwarranted" benefits through manifest partiality; (b) giving of "unwarranted" benefits through evident bad faith; and, (c) giving of "unwarranted" benefits through gross inexcusable negligence while in the discharge of their official function and that their right to be informed of the

nature and cause of the accusation against them was violated because they were left to guess which of the three (3) offenses, if not all, they were being charged and prosecuted.

In dismissing the petition, this Court held that Sec. 3, par. (e), of The Anti-Graft and Corrupt Practices Act does not suffer from the constitutional defect of vagueness. The phrases "manifest partiality," "evident bad faith," and "gross and inexcusable negligence" merely describe the different modes by which the offense penalized in Sec. 3, par. (e), of the statute may be committed, and the use of all these phrases in the same Information does not mean that the indictment charges three (3) distinct offenses.

> The word 'unwarranted' is not uncertain. It seems lacking adequate or official support; unjustified; unauthorized (Webster, Third International Dictionary, p. 2514); or without justification or adequate reason (Philadelphia Newspapers, Inc. v. US Dept. of Justice, C.D. Pa., 405 F. Supp. 8, 12, cited in Words and Phrases, Permanent Edition, Vol. 43-A 1978, Cumulative Annual Pocket Part, p. 19).
>
> The assailed provisions of the Anti-Graft and Corrupt Practices Act consider a corrupt practice and make unlawful the act of the public officer in:
> x x x or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence, x x x (Section 3 [e], Rep. Act 3019, as amended).

It is not at all difficult to comprehend that what the aforequoted penal provisions penalize is the act of a public officer, in the discharge of his official, administrative or judicial functions, in giving any private party benefits, advantage or preference which is unjustified, unauthorized or without justification or adequate reason, through manifest partiality, evident bad faith or gross inexcusable negligence.

In other words, this Court found that there was nothing vague or ambiguous in the use of the term "unwarranted" in Sec. 3, par. (e), of The Anti-Graft and Corrupt Practices Act, which was understood in its primary and general acceptation. Consequently, in that case, petitioners' objection thereto was held inadequate to declare the section unconstitutional.

On the second issue, petitioner advances the highly stretched theory that Sec. 4 of the Plunder Law circumvents the immutable obligation of the prosecution to prove beyond reasonable doubt the predicate acts constituting the crime of plunder when it requires only proof of a pattern of overt or criminal acts showing unlawful scheme or conspiracy -

> SEC. 4. Rule of Evidence. - For purposes of establishing the crime of plunder, it shall not be necessary to prove each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth, it being sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy.

The running fault in this reasoning is obvious even to the simplistic mind. In a criminal prosecution for plunder, as in all other crimes, the accused always has in his favor the presumption of innocence which is guaranteed by the Bill of Rights, and unless the State succeeds in demonstrating by proof beyond reasonable doubt that culpability lies, the accused is entitled to an acquittal.[29] The use of the "reasonable doubt" standard is indispensable to command the respect and confidence of the community in the application of criminal law. It is critical that the moral force of criminal law be not diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned. It is also important in our free society that every individual going about his ordinary affairs has confidence that his government cannot adjudge him guilty of a criminal offense without convincing a proper factfinder of his guilt with utmost certainty. This "reasonable doubt" standard has acquired such exalted stature in the realm of constitutional law as it gives life to the Due Process Clause which

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protects the accused against conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged.[30] The following exchanges between Rep. Rodolfo Albano and Rep. Pablo Garcia on this score during the deliberations in the floor of the House of Representatives are elucidating -

> DELIBERATIONS OF THE HOUSE OF REPRESENTATIVES ON RA 7080, 9 October 1990
>
> MR. ALBANO: Now, Mr. Speaker, it is also elementary in our criminal law that what is alleged in the information must be proven beyond reasonable doubt. If we will prove only one act and find him guilty of the other acts enumerated in the information, does that not work against the right of the accused especially so if the amount committed, say, by falsification is less than P100 million, but the totality of the crime committed is P100 million since there is malversation, bribery, falsification of public document, coercion, theft?
>
> MR. GARCIA: Mr. Speaker, not everything alleged in the information needs to be proved beyond reasonable doubt. What is required to be proved beyond reasonable doubt is every element of the crime charged. For example, Mr. Speaker, there is an enumeration of the things taken by the robber in the information - three pairs of pants, pieces of jewelry. These need not be proved beyond reasonable doubt, but these will not prevent the conviction of a crime for which he was charged just because, say, instead of 3 pairs of diamond earrings the prosecution proved two. Now, what is required to be proved beyond reasonable doubt is the element of the offense.
>
> MR. ALBANO: I am aware of that, Mr. Speaker, but considering that in the crime of plunder the totality of the amount is very important, I feel that such a series of overt criminal acts has to be taken singly. For instance, in the act of bribery, he was able to accumulate only P50,000 and in the crime of extortion, he was only able to accumulate P1 million. Now, when we add the totality of the other acts as required under this bill through the interpretation on the rule of evidence, it is just one single act, so how can we now convict him?
>
> MR. GARCIA: With due respect, Mr. Speaker, for purposes of proving an essential element of the crime, there is a need to prove that element beyond reasonable doubt. For example, one essential element of the crime is that the amount involved is P100 million. Now, in a series of defalcations and other acts of corruption in the enumeration the total amount would be P110 or P120 million, but there are certain acts that could not be proved, so, we will sum up the amounts involved in those transactions which were proved. Now, if the amount involved in these transactions, proved beyond reasonable doubt, is P100 million, then there is a crime of plunder (underscoring supplied).

It is thus plain from the foregoing that the legislature did not in any manner refashion the standard quantum of proof in the crime of plunder. The burden still remains with the prosecution to prove beyond any iota of doubt every fact or element necessary to constitute the crime.

The thesis that Sec. 4 does away with proof of each and every component of the crime suffers from a dismal misconception of the import of that provision. What the prosecution needs to prove beyond reasonable doubt is only a number of acts sufficient to form a combination or series which would constitute a pattern and involving an amount of at least P50,000,000.00. There is no need to prove each and every other act alleged in the Information to have been committed by the accused in furtherance of the overall unlawful scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth. To illustrate, supposing that the accused is charged in an Information for plunder with having committed fifty (50) raids on the public treasury. The prosecution need not prove all these fifty (50) raids, it being sufficient to prove by pattern at least two (2) of the raids beyond reasonable doubt provided only that they amounted to at least P50,000,000.00.[31]

A reading of Sec. 2 in conjunction with Sec. 4, brings us to the logical conclusion that "pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy" inheres in the very acts of accumulating,

acquiring or amassing hidden wealth. Stated otherwise, such pattern arises where the prosecution is able to prove beyond reasonable doubt the predicate acts as defined in Sec. 1, par. (d). Pattern is merely a by-product of the proof of the predicate acts. This conclusion is consistent with reason and common sense. There would be no other explanation for a combination or series of

overt or criminal acts to stash P50,000,000.00 or more, than "a scheme or conspiracy to amass, accumulate or acquire ill gotten wealth." The prosecution is therefore not required to make a deliberate and conscious effort to prove pattern as it necessarily follows with the establishment of a series or combination of the predicate acts.

Relative to petitioner's contentions on the purported defect of Sec. 4 is his submission that "pattern" is "a very important element of the crime of plunder;" and that Sec. 4 is "two pronged, (as) it contains a rule of evidence and a substantive element of the crime," such that without it the accused cannot be convicted of plunder -

> JUSTICE BELLOSILLO: In other words, cannot an accused be convicted under the Plunder Law without applying Section 4 on the Rule of Evidence if there is proof beyond reasonable doubt of the commission of the acts complained of?
>
> ATTY. AGABIN: In that case he can be convicted of individual crimes enumerated in the Revised Penal Code, but not plunder.
>
> JUSTICE BELLOSILLO: In other words, if all the elements of the crime are proved beyond reasonable doubt without applying Section 4, can you not have a conviction under the Plunder Law?
>
> ATTY. AGABIN: Not a conviction for plunder, your Honor.
>
> JUSTICE BELLOSILLO: Can you not disregard the application of Sec. 4 in convicting an accused charged for violation of the Plunder Law?
>
> ATTY. AGABIN: Well, your Honor, in the first place Section 4 lays down a substantive element of the law x x x x
>
> JUSTICE BELLOSILLO: What I said is - do we have to avail of Section 4 when there is proof beyond reasonable doubt on the acts charged constituting plunder?
>
> ATTY. AGABIN: Yes, your Honor, because Section 4 is two pronged, it contains a rule of evidence and it contains a substantive element of the crime of plunder. So, there is no way by which we can avoid Section 4.
>
> JUSTICE BELLOSILLO: But there is proof beyond reasonable doubt insofar as the predicate crimes charged are concerned that you do not have to go that far by applying Section 4?
>
> ATTY. AGABIN: Your Honor, our thinking is that Section 4 contains a very important element of the crime of plunder and that cannot be avoided by the prosecution.[32]

We do not subscribe to petitioner's stand. Primarily, all the essential elements of plunder can be culled and understood from its definition in Sec. 2, in relation to Sec. 1, par. (d), and "pattern" is not one of them. Moreover, the epigraph and opening clause of Sec. 4 is clear and unequivocal:

> SEC. 4. Rule of Evidence. - For purposes of establishing the crime of plunder x x x x

It purports to do no more than prescribe a rule of procedure for the prosecution of a criminal case for plunder. Being a purely procedural measure, Sec. 4 does not define or establish any substantive right in favor of the accused but only operates in furtherance of a remedy. It is only a means to an end, an aid to substantive law. Indubitably, even without invoking Sec. 4, a conviction for plunder may be had, for what is crucial for the prosecution is to present sufficient evidence to engender that moral certitude exacted by the fundamental law to

prove the guilt of the accused beyond reasonable doubt. Thus, even granting for the sake of argument that Sec. 4 is flawed and vitiated for the reasons advanced by petitioner, it may simply be severed from the rest of the provisions without necessarily resulting in the demise of the law; after all, the existing rules on evidence can supplant Sec. 4 more than enough. Besides, Sec. 7 of RA 7080 provides for a separability clause -

> Sec. 7. Separability of Provisions. - If any provisions of this Act or the application thereof to any person or circumstance is held invalid, the remaining provisions of this Act and the application of such provisions to other persons or circumstances shall not be affected thereby.

Implicit in the foregoing section is that to avoid the whole act from being declared invalid as a result of the nullity of some of its provisions, assuming that to be the case although it is not really so, all the provisions thereof should accordingly be treated independently of each other, especially if by doing so, the objectives of the statute can best be achieved.

As regards the third issue, again we agree with Justice Mendoza that plunder is a malum in se which requires proof of criminal intent. Thus, he says, in his Concurring Opinion -

> x x x Precisely because the constitutive crimes are mala in se the element of mens rea must be proven in a prosecution for plunder. It is noteworthy that the amended information alleges that the crime of plunder was committed "willfully, unlawfully and criminally." It thus alleges guilty knowledge on the part of petitioner.
>
> In support of his contention that the statute eliminates the requirement of mens rea and that is the reason he claims the statute is void, petitioner cites the following remarks of Senator Tañada made during the deliberation on S.B. No. 733:
> SENATOR TAÑADA . . . And the evidence that will be required to convict him would not be evidence for each and every individual criminal act but only evidence sufficient to establish the conspiracy or scheme to commit this crime of plunder.[33]

However, Senator Tañada was discussing §4 as shown by the succeeding portion of the transcript quoted by petitioner:

> SENATOR ROMULO: And, Mr. President, the Gentleman feels that it is contained in Section 4, Rule of Evidence, which, in the Gentleman's view, would provide for a speedier and faster process of attending to this kind of cases?
>
> SENATOR TAÑADA: Yes, Mr. President . . .[34]
>
> Senator Tañada was only saying that where the charge is conspiracy to commit plunder, the prosecution need not prove each and every criminal act done to further the scheme or conspiracy, it being enough if it proves beyond reasonable doubt a pattern of overt or ciminal acts indicative of the overall unlawful scheme or conspiracy. As far as the acts constituting the pattern are concerned, however, the elements of the crime must be proved and the requisite mens rea must be shown.

Indeed, §2 provides that -

> Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court.

The application of mitigating and extenuating circumstances in the Revised Penal Code to prosecutions under the Anti-Plunder Law indicates quite clearly that mens rea is an element of plunder since the degree of responsibility of the offender is determined by his criminal intent. It is true that §2 refers to "any person who participates with

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the said public officer in the commission of an offense contributing to the crime of plunder." There is no reason to believe, however, that it does not apply as well to the public officer as principal in the crime. As Justice Holmes said: "We agree to all the generalities about not supplying criminal laws with what they omit, but there is no canon against using common sense in construing laws as saying what they obviously mean."[35]

Finally, any doubt as to whether the crime of plunder is a malum in se must be deemed to have been resolved in the affirmative by the decision of Congress in 1993 to include it among the heinous crimes punishable by reclusion perpetua to death. Other heinous crimes are punished with death as a straight penalty in R.A. No. 7659. Referring to these groups of heinous crimes, this Court held in People v. Echegaray:[36]

> The evil of a crime may take various forms. There are crimes that are, by their very nature, despicable, either because life was callously taken or the victim is treated like an animal and utterly dehumanized as to completely disrupt the normal course of his or her growth as a human being . . . . Seen in this light, the capital crimes of kidnapping and serious illegal detention for ransom resulting in the death of the victim or the victim is raped, tortured, or subjected to dehumanizing acts; destructive arson resulting in death; and drug offenses involving minors or resulting in the death of the victim in the case of other crimes; as well as murder, rape, parricide, infanticide, kidnapping and serious illegal detention, where the victim is detained for more than three days or serious physical injuries were inflicted on the victim or threats to kill him were made or the victim is a minor, robbery with homicide, rape or intentional mutilation, destructive arson, and carnapping where the owner, driver or occupant of the carnapped vehicle is killed or raped, which are penalized by reclusion perpetua to death, are clearly heinous by their very nature.
>
> There are crimes, however, in which the abomination lies in the significance and implications of the subject criminal acts in the scheme of the larger socio-political and economic context in which the state finds itself to be struggling to develop and provide for its poor and underprivileged masses. Reeling from decades of corrupt tyrannical rule that bankrupted the government and impoverished the population, the Philippine Government must muster the political will to dismantle the culture of corruption, dishonesty, greed and syndicated criminality that so deeply entrenched itself in the structures of society and the psyche of the populace. [With the government] terribly lacking the money to provide even the most basic services to its people, any form of misappropriation or misapplication of government funds translates to an actual threat to the very existence of government, and in turn, the very survival of the people it governs over. Viewed in this context, no less heinous are the effects and repercussions of crimes like qualified bribery, destructive arson resulting in death, and drug offenses involving government officials, employees or officers, that their perpetrators must not be allowed to cause further destruction and damage to society.

The legislative declaration in R.A. No. 7659 that plunder is a heinous offense implies that it is a malum in se. For when the acts punished are inherently immoral or inherently wrong, they are mala in se[37] and it does not matter that such acts are punished in a special law, especially since in the case of plunder the predicate crimes are mainly mala in se. Indeed, it would be absurd to treat prosecutions for plunder as though they are mere prosecutions for violations of the Bouncing Check Law (B.P. Blg. 22) or of an ordinance against jaywalking, without regard to the inherent wrongness of the acts.

To clinch, petitioner likewise assails the validity of RA 7659, the amendatory law of RA 7080, on constitutional grounds. Suffice it to say however that it is now too late in the day for him to resurrect this long dead issue, the same having been eternally consigned by People v. Echegaray[38] to the archives of jurisprudential history. The declaration of this Court therein that RA 7659 is constitutionally valid stands as a declaration of the State, and becomes, by necessary effect, assimilated in the Constitution now as an integral part of it.

Our nation has been racked by scandals of corruption and obscene profligacy of officials in high places which have shaken its very foundation. The anatomy of graft and corruption has become more elaborate in the corridors

of time as unscrupulous people relentlessly contrive more and more ingenious ways to bilk the coffers of the government. Drastic and radical measures are imperative to fight the increasingly sophisticated, extraordinarily methodical and economically catastrophic looting of the national treasury. Such is the Plunder Law, especially designed to disentangle those ghastly tissues of grand-scale corruption which, if left unchecked, will spread like a malignant tumor and ultimately consume the moral and institutional fiber of our nation. The Plunder Law, indeed, is a living testament to the will of the legislature to ultimately eradicate this scourge and thus secure society against the avarice and other venalities in public office.

These are times that try men's souls. In the checkered history of this nation, few issues of national importance can equal the amount of interest and passion generated by petitioner's ignominious fall from the highest office, and his eventual prosecution and trial under a virginal statute. This continuing saga has driven a wedge of dissension among our people that may linger for a long time. Only by responding to the clarion call for patriotism, to rise above factionalism and prejudices, shall we emerge triumphant in the midst of ferment.

PREMISES CONSIDERED, this Court holds that RA 7080 otherwise known as the Plunder Law, as amended by RA 7659, is CONSTITUTIONAL. Consequently, the petition to declare the law unconstitutional is DISMISSED for lack of merit.

SO ORDERED.

Buena, and De Leon, Jr., JJ., concur.
Davide, Jr. C.J., Melo, and Quisumbing, JJ., join concurring opinion of J. Mendoza.
Puno, and Vitug, JJ., concurred and joins J. Mendoza's concurring opinion.
Kapunan, Pardo, Sandoval-Gutierrez, and Ynares-Santiago, JJ., see dissenting opinion.
Mendoza, J., please see concurring opinion.
Panganiban J., please see separate concurring opinion.
Carpio, J., no part. Was one of the complainants before Ombudsman.

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[1] Approved 12 July 1991 and took effect 8 October 1991.

[2] Approved 13 December 1993 and took effect 31 December 1993.

[3] Lim v. Pacquing, et al., G.R. No. 115044, 27 January 1995, 240 SCRA 644.

[4] G.R. No. 87001, 4 December 1989, 179 SCRA 828.

[5] Yu Cong Eng v. Trinidad, 47 Phil. 385, 414 (1925).

[6] 82 C.J.S. 68, p. 113; People v. Ring, 70 P.2d 281, 26 Cal. App. 2d Supp. 768.

[7] Mustang Lumber, Inc. v. Court of Appeals, G.R. No. 104988, 18 June 1996, 257 SCRA 430, 448.

[8] PLDT v. Eastern Telecommunications Phil., Inc., G.R. No. 943774, 27 August 1992, 213 SCRA 16, 26.

[9] Resolution of 9 July 2001.

[10] See People v. Nazario, No. L-44143, 31 August 1988, 165 SCRA 186, 195-196.

[11] Ibid.

[12] State v. Hill, 189 Kan 403, 369 P2d 365, 91 ALR2d 750.

[13] Connally v. General Constr. Co., 269 U.S. 385, 391, 70 L. Ed. 328 (1926) cited in Ermita-Malate Hotel and

Motel Operators Ass'n. v. City Mayor, 20 SCRA 849, 867 (1967).

[14] NAACP v. Alabama, 377 U.S. 288, 307, 12, 2 L. Ed 325, 338 (1958); Shelton v. Tucker, 364 U.S. 479, 5 L. Ed. 2d 231 (1960).

[15] Gooding v. Wilson, 405 U.S. 518, 521, 31 L. Ed. 2d 408, 413 (1972) (internal quotation marks omitted).

[16] United States v. Salerno, 481 U.S. 739, 745 95 L. Ed 2d 697, 707 (1987); see also People v. De la Piedra, G.R. No. 121777, 24 January 2001.

[17] 413 U.S. 601, 612-613, 37 L. Ed 2d 830, 840-841 (1973).

[18] United States v. Salerno, supra.

[19] Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 494-95, 71 L. Ed. 2d 362, 369 (1982).

[20] United States v. Raines, 362 U.S. 17, 21, 4 L. Ed. 2d 524, 529 (1960). The paradigmatic case is Yazoo & Mississippi Valley RR. v. Jackson Vinegar Co., 226 U.S. 217, 57 L. Ed. 193 (1912).

[21] G. Gunther & K. Sullivan, Constitutional Law 1299 (2001).

[22] Id. at 1328. See also Richard H. Fallon, Jr., As Applied and Facial Challenges, 113 Harv. L. Rev. 1321 (2000) arguing that, in an important sense, as applied challenges are the basic building blocks of constitutional adjudication and that determinations that statutes are facially invalid properly occur only as logical outgrowths of ruling on whether statutes may be applied to particular litigants on particular facts.

[23] Constitution, Art. VIII, §1 and 5. Compare Angara v. Electoral Commission, 63 Phil. 139, 158 (1936); "[T]he 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 to be constitutional question raised or the very lis mota presented. Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities."

[24] 401 U.S. 37, 52-53, 27 L. Ed. 2d 669, 680 (1971). Accord, United States v. Raines, 362 U.S. 17, 4 L. Ed. 2d 524 (1960); Board of Trustees, State Univ. of N.Y. v. Fox, 492 U.S. 469, 106 L. Ed. 2d 388 (1989).

[25] Broadrick v. Oklahoma, 413 U.S. at 613, 37 L. Ed. 2d at 841; National Endowment for the Arts v. Finley, 524 U.S. 569, 580 (1998).

[26] FW/PBS, Inc. v. City of Dallas, 493 U.S. 223, 107 L. Ed. 2d 603 (1990); Cruz v. Secretary of Environment and Natural Resources, G.R. No. 135385, 6 December 2000 (Mendoza, J., Separate Opinion).

[27] United States v. National Dairy Prod. Corp., 372 U.S. 29, 32-33, 9 L. Ed. 2d 561, 565-6 (1963).

[28] G.R. No. 57841, 30 July 1982, 115 SCRA 793.

[29] People v. Ganguso, G.R. No. 115430, 23 November 1995, 250 SCRA 268, 274-275.

[30] People v. Garcia, G.R. No. 94187, 4 November 1992, 215 SCRA 349, 360.

[31] Then Senate President Jovito R. Salonga construed in brief the provision, thuswise: "If there are let's say 150 crimes all in all, criminal acts, whether bribery, misappropriation, malversation, extortion, you need not prove all those beyond reasonable doubt. If you can prove by pattern, let's say 10, but each must be proved beyond reasonable doubt, you do not have to prove 150 crimes. That's the meaning of this (Deliberations of Committee on Constitutional Amendments and Revision of Laws, 15 November 1988, cited in the Sandiganbayan Resolution of

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9 July 2001).

[32] TSN, 18 September 2001, pp. 115-121.

[33] 4 Record of the Senate 1316, 5 June 1989.

[34] Ibid.

[35] Roschen v. Ward, 279 U.S. 337, 339, 73 L.Ed. 722, 728 (1929).

[36] 267 SCRA 682, 721-2 (1997) (emphasis added).

[37] Black's Law Dictionary 959 (1990); Lozano v. Martinez, 146 SCRA 324, 338 (1986).

[38] G.R. No. 117472, 7 February 1997, 267 SCRA 682.

DISSENTING OPINION

KAPUNAN, J.:

The primary duty of the Court is to render justice. The resolution of the issues brought before it must be grounded on law, justice and the basic tenets of due process, unswayed by the passions of the day or the clamor of the multitudes, guided only by its members' honest conscience, clean hearts and their unsullied conviction to do what is right under the law.

The issues posed by the instant petition are quite difficult. The task of the Court to resolve the same is made more daunting because the case involves a former President of the Republic who, in the eyes of certain sectors of society, deserves to be punished. But the mandate of the Court is to decide these issues solely on the basis of law and due process, and regardless of the personalities involved. For indeed, the rule of law and the right to due process are immutable principles that should apply to all, even to those we hate. As Fr. Joaquin G. Bernas, S.J., a noted constitutionalist, aptly puts it--

> x x x the greater disaster would be if the Supreme Court should heed the clamor for conviction and convict Estrada even under an unconstitutional law but of the belief that Estrada deserves to be punished. That would be tantamount to a rule of men and not of law.[1]

The Basic Facts

The petition before us questions the constitutionality of Republic Act No. 7080 (R.A. No. 7080 or Plunder Law), as amended by Republic Act No. 7659,[2] entitled "An Act Defining and Penalizing the Crime of Plunder."[3] This original petition for certiorari and prohibition against Respondent Third Division of the Sandiganbayan filed by petitioner Joseph Ejercito Estrada assails Respondent court's Resolution, dated July 9, 2001, denying his Motion to Quash the information against him in Criminal Case No. 26558 for Plunder. Petitioner likewise prays that the Sandiganbayan be prohibited and enjoined from proceeding with his arraignment and trial in Criminal Case No. 26558 due to the unconstitutionality of R. A. No. 7080.

On the heels of the finality of the joint decision of this Court in G.R. No. 146710 (Estrada vs. Desierto, et al.) and in G.R. No. 146738 (Estrada vs. Macapagal-Arroyo), promulgated on April 3, 2001, upholding the constitutionality of President Gloria Macapagal-Arroyo's assumption of office as President of the Republic of the Philippines and declaring that the former President Joseph Ejercito Estrada no longer enjoyed immunity from suit, the Ombudsman filed eight (8) Informations against Estrada. These cases were Criminal Case No. 26558 (for Plunder); Criminal Case No. 26559 (for Violation of Sec. 3[a] of Republic Act No. 3019); Criminal Case No.

26560 (for Violation of Sec. 3[a] of R.A. No. 3019); Criminal Case No. 26561 (for Violation of Sec. 3[e] of R.A. 3019); Criminal Case No. 26562 (for Violation of Sec. 3[e] of R.A. No. 3019); Criminal Case No. 26563 (for Violation of Sec. 7[d] of R.A. No. 6713); Criminal Case No. 26564 (for Perjury); and Criminal Case No. 26565 (for Illegal Use of Alias).

The aforementioned informations were raffled to the five divisions of the Sandiganbayan. Criminal Case No. 26558 was raffled to the Third Division of said court. The amended information against petitioner charging violations of Section 2, in relation to Section (d) (1) (2) of the statute reads:

> That during the period from June, 1998 to January, 2001, in the Philippines, and within the jurisdiction of this Honorable Court, accused Joseph Ejercito Estrada, by himself and in conspiracy with his co-accused, business associates and persons heretofore named, by taking advantage of his official position, authority, connection or influence as President of the Republic of the Philippines, did then and there wilfully, unlawfully and criminally amass, accumulate and acquire ill-gotten wealth, and unjustly enrich himself in the aggregate amount of P4,097,804,173.17, more or less, through a combination and series of overt and criminal acts, described as follows:
>
> (a)
>
> by receiving, collecting, directly or indirectly, on many instances, so-called "jueteng money" from gambling operators in connivance with co-accused Jose `Jinggoy' Estrada, Yolanda T. Ricaforte and Edward Serapio, as witnessed by Gov. Luis `Chavit' Singson, among other witnesses, in the aggregate amount of FIVE HUNDRED FORTY-FIVE MILLION PESOS (P545,000.000.00), more or less, in consideration of their protection from arrest or interference by law enforcers in their illegal "jueteng" activities; and
>
> (b)
>
> by misappropriating, converting and misusing for his gain and benefit public fund in the amount of ONE HUNDRED THIRTY MILLION PESOS (P130,000,000.00), more or less, representing a portion of One Hundred Seventy Million Pesos (P170,000,000.00) tobacco excise tax share allocated for the Province of Ilocos Sur under R.A. No. 7171, in conspiracy with co-accused Charlie `Atong' Ang, Alma Alfaro, Eleuterio Tan a.k.a. Eleuterio Ramos Tan or Mr. Uy, and Jane Doe a.k.a. Delia Rajas, as witnessed by Gov. Luis `Chavit' Singson, among other witnesses; and
>
> (c)
>
> by directing, ordering and compelling the Government Service Insurance System (GSIS) and the Social Security System (SSS) to purchase and buy a combined total of 681,733,000 shares of stock of the Belle Corporation in the aggregate gross value of One Billion Eight Hundred Forty-Seven Million Five Hundred Seventy Eight Thousand Pesos and Fifty Centavos(P1,847,578,057.50), for the purpose of collecting for his personal gain and benefit, as in fact he did collect and receive the sum of ONE HUNDRED EIGHTY NINE MILLION SEVEN HUNDRED THOUSAND FIFTY SEVEN PESOS (P189,700,000.00) as commission for said stock purchase; and
>
> (d)
>
> by unjustly enriching himself in the amount of THREE BILLION TWO HUNDRED THIRTY THREE MILLION ONE HUNDRED FOUR THOUSAND ONE HUNDRED SEVENTY THREE PESOS AND SEVENTEEN CENTAVOS (P3,233,104,173.17) comprising his unexplained wealth acquired, accumulated and amassed by him under his account name "Jose Velarde" with Equitable PCI Bank:
>
> to the damage and prejudice of the Filipino people and the Republic of the Philippines.
>
> CONTRARY TO LAW.[4]

On April 16 and 17, 2001, the Ombudsman filed an Ex-Parte Manifestation to Withdraw Information in Criminal Case Nos. 26559, 26560, 26561, 26562 and 26563. Petitioner registered his objection to the Ombudsman's motion to withdraw. The divisions of the Sandiganbayan to which said cases were assigned granted the withdrawal of the informations, save for that in Criminal Case No. 26561. At present, the Order of the First Division of the Sandiganbayan denying the Ombudsman's motion to withdraw in Criminal Case No. 26561 is still under reconsideration.

In Criminal Case No. 26558, petitioner filed on April 11, 2001 an Omnibus Motion for the remand of the case to the Office of the Ombudsman for: (1) the conduct of a preliminary investigation as regards specification "d" of the accusations in the information in said case; and (2) reconsideration/reinvestigation of the offenses in specifications "a," "b" and "c" to enable petitioner to file his counter-affidavits as well as other necessary documents.

On April 25, 2001, the Third Division of the Sandiganbayan issued a Resolution finding that:

> (p)robable cause for the offense of PLUNDER exists to justify issuance of warrants of arrest of accused former President Joseph Ejercito Estrada, Mayor Jose "Jinggoy" Estrada, Charlie "Atong" Ang, Edward Serapio, Yolanda T. Ricaforte, Alma Alfaro, John Doe a.k.a Eleuterio Tan or Eleuterio Ramon Tan or Mr. Uy and Jane Doe a.k.a. Delia Rajas.

Subsequently, on May 31, 2001, the Third Division of the Sandiganbayan issued a Resolution denying petitioner's Omnibus Motion.

On June 15, 2001, petitioner filed a Motion for Reconsideration of said Resolution but the same was denied in a Resolution of June 25, 2001.

Meanwhile, on June 14, 2001, petitioner filed a Motion to Quash the information in Criminal Case No. 26558, invoking the following grounds: (1) the facts charged do not constitute an indictable offense as R.A. No. 7080, the statute on which it is based, is unconstitutional; and (2) the information charges more than one offense.

The People of the Philippines filed an Opposition thereto on June 21, 2001. Petitioner filed his Reply to the Opposition on June 28, 2001.

On July 9, 2001, the Third Division of the Sandiganbayan issued its Resolution denying petitioner's motion to quash.

Petitioner thus filed the instant petition for certiorari and prohibition, claiming that the Sandiganbayan committed grave abuse of discretion in denying his motion to quash the information in Criminal Case No. 26558. Petitioner argues that R.A. No. 7080 is unconstitutional on the following grounds:

> - IT VIOLATES THE DUE PROCESS CLAUSE FOR ITS VAGUENESS
>
> - IT VIOLATES THE CONSTITUTIONAL RIGHT OF THE ACCUSED TO KNOW THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HIM
>
> - IT VIOLATES THE DUE PROCESS CLAUSE AND THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE BY LOWERING THE QUANTUM OF EVIDENCE NECESSARY FOR PROVING THE COMPONENT ELEMENTS OF PLUNDER
>
> - IT IS BEYOND THE CONSTITUTIONAL POWER OF THE LEGISLATURE TO DELIMIT THE REASONABLE DOUBT STANDARD AND TO ABOLISH THE ELEMENT OF MENS REA IN MALA IN SE CRIMES BY CONVERTING THESE TO MALA PROHIBITA, IN VIOLATION OF THE DUE PROCESS CONCEPT OF CRIMINAL RESPONSIBILITY.[5]

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The provisions of law involved

Section 2 of R.A. No. 7080 provides:

> Definition of the Crime of Plunder; Penalties. - Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1(d) hereof in the aggregate amount or total value of at least Fifty million pesos (P50,000,000.00) shall be guilty of the crime of plunder and shall be punished by reclusion perpetua to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State. (As amended by Sec. 12, RA No. 7659.)

Section 1(d) of the same law defines "ill-gotten wealth" as "any asset, property, business enterprise or material possession of any person within the purview of Section Two (2)" hereof, acquired by him directly or indirectly through dummies, nominees, agents, subordinates, and/or business associates by any combination or series of the following means or similar schemes:

> - Through misappropriation, conversion, misuse or malversation of public funds or raids on the public treasury;
>
> - By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;
>
> - By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities or government-owned or controlled corporations and their subsidiaries;
>
> - By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;
>
> - By establishing agricultural, industrial or commercial monopolies or other combination and/or implementation of decrees and orders intended to benefit particular persons or special interests; or
>
> - By taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.[6]

On the other hand, Section 4 states:

> Rule of Evidence - For purposes of establishing the crime of plunder, it shall not be necessary to prove each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth, it being sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy.

Petitioner's theory

Petitioner asserts that R.A. No. 7080 is vague and overbroad on its face, and suffers from structural deficiency and ambiguity.[7] In sum, he maintains that the law does not afford an ordinary person reasonable notice that his actuation will constitute a criminal offense. More particularly, petitioner argues that the terms "combination" and "series" are not clearly defined, citing that in a number of cases, the United States (U.S.) federal courts in deciding

cases under the Racketeer Influenced and Corrupt Organizations Act (RICO law), after which the Plunder Law was patterned, have given different interpretations to "series of acts or transactions."[8] In addition, he terms "raid on the public treasury," "receiving or accepting a gift," "commission," "kickbacks," "illegal or fraudulent conveyance or disposition of assets," "monopolies or other combinations," "special interests," "taking undue advantage of official position," "unjustly enrich" all suffer from overbreadth which is a form of vagueness.[9]

In arguing that the law on plunder is vague and impermissibly broad, petitioner points out that the terms "combination" and `series" used in the phrase "any combination or series of the following means or similar schemes" are not defined under the statute. The use of these terms in the law allegedly raises several questions as to their meaning and import.

Petitioner posits the following queries: "Does it (referring to the term "series") mean two, three, four, of the overt or criminal acts listed in Section 1(d)? Would it mean two or more related enterprises falling under at least two of the means or `similar schemes' listed in the law, or just a joint criminal enterprise? Would it require substantial identity of facts and participants, or merely a common pattern of action? Would it imply close connection between acts, or a direct relationship between the charges? Does the term mean a factual relationship between acts or merely a common plan among conspirators?"[10]

The term "combination" is allegedly equally equivocal. According to petitioner, it is not clear from the law if said term covers time, place, manner of commission, or the principal characters. Thus petitioner asks: "Does it (referring to the term "combination") include any two or more acts, whether legal or illegal, or does the law require that the combination must include at least two of the `means or similar schemes' laid down in R.A. 7080? Does it cover transactions that have occurred in the same place or area, or in different places, no matter how far apart? Does `combination' include any two or more overt acts, no matter how far apart in time, or does it contemplate acts committed within a short period of time? Does the `combination' cover the modus operandi of the crimes, or merely the evidence to be used at the trial?"[11]

It is also argued that the phrase "pattern of overt or criminal acts indicative of the overall scheme or conspiracy" adds to the vagueness of the law because "pattern" is not defined therein and is not included in the definition of the crime of plunder even though it is an essential element of said crime.[12]

Petitioner also maintains that the Plunder Law violates the due process clause and the constitutional presumption of innocence by lowering the quantum of evidence necessary for proving the component elements of plunder because Section 4 does not require that each and every criminal act done by the accused in furtherance of the scheme or conspiracy be proved, "it being sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy."[13]

Finally, petitioner alleges that it is beyond the power of Congress to delimit the reasonable doubt standard and to abolish the element of mens rea in mala in se crimes by converting these to mala prohibita, thereby making it easier for the prosecution to prove malversation, bribery, estafa and other crimes committed by public officers since criminal intent need not be established.[14]

Considering the infringement to the constitutionally-guaranteed right to due process of an accused, petitioner contends that R.A. No. 7080 cannot be accorded any presumption of constitutional validity.

Respondents' theory

On the other hand, Respondents argue that the "particular elements constituting the crime of plunder" are stated with "definiteness and certainty," as follows:

(1)

There is a public officer who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons;

(2)

There is an amassing, accumulating or acquiring of ill-gotten wealth;

(3)

The total amount of ill-gotten wealth so amassed, accumulated or acquired is at least Fifty Million Pesos (P50,000,000.00); and

(4)

The ill-gotten wealth, which is defined as any asset, property, business enterprise or material possession of any person within the purview of Section Two (2) of R.A. No. 7080, was acquired by him directly or indirectly through dummies, nominees, agents, subordinates, and/or business associates by any combination or series of the means or similar schemes enumerated in Section 1(d).[15]

Moreover, Respondents maintain that assuming that there is some vagueness in the law, it need not be declared unconstitutional but may be clarified by judicial construction.[16] Respondents further add that the ordinary import of the terms combination" and "series" should prevail, as can be gleaned from the deliberations of the Congress in the course of its passage of the law. According to respondents, "series of overt criminal acts" simply mean a repetition of at least two of any of those enumerated acts found in Section 1(d) of R.A. 7080. And "combination" means a product of combining of at least one of any of those enumerated acts described in Section 1(d) with at least one of any of the other acts so enumerated. Respondents score petitioner for arguing on the basis of federal courts' decisions on the RICO law, citing that the U.S. courts have consistently rejected the contention that said law is void for being vague.[17]

Respondents deny that the Plunder Law dispenses with the requirement of proof beyond reasonable doubt. While there may be no necessity to prove each and every other act done by the accused in furtherance of the scheme to acquire ill-gotten wealth, it is still necessary for the prosecution to prove beyond reasonable doubt the pattern of overt or criminal acts indicative of the overall scheme or conspiracy, as well as all the other elements of the offense of plunder.[18] Respondents also point out that conspiracy itself is not punishable under the Plunder Law, which deals with conspiracy as a means of incurring criminal liability.[19]

Respondents likewise contend that it is within the inherent powers and wisdom of the legislature to determine which acts are mala prohibita in the same way that it can declare punishable an act which is inherently not criminal in nature.[20]

In conclusion, Respondents assert that petitioner has failed to overcome the presumption of constitutionality of R.A. No. 7080.

Petitioner's Reply

Petitioner, in his Reply to Comment, draws attention to Section 4, arguing that the provision states the "most important element, which is the common thread that ties the component acts together: "a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy[21] and raises the following questions:

(a)

Reference is made to a "pattern of overt or criminal acts." The disjunctive "or" is used. Will a pattern of acts, which are overt but not criminal in themselves, be indicative of an overall unlawful scheme or conspiracy?

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(b)

Under what specific facts or circumstances will a "pattern" be "indicative" of the overall unlawful scheme or conspiracy?

(c)

Under what specific facts or circumstances will the required "pattern" or "scheme" even be said to be present or to exist?

(d)

When is there an "unlawful scheme or conspiracy?"[22]

Issues raised in the oral arguments

Oral arguments were heard on September 18, 2001. At said hearing, the Court defined the issues for resolution as follows:

1.) WHETHER R.A. NO. 7080 IS UNCONSTITUTIONAL FOR BEING VAGUE;

2) WHETHER R.A. NO. 7080 REQUIRES LESS EVIDENCE FOR PROVING THE PREDICATE CRIMES OF PLUNDER AND THEREFORE VIOLATES THE RIGHT OF THE ACCUSED TO DUE PROCESS; and

3) WHETHER PLUNDER AS DEFINED IN R.A. NO. 7080 IS A MALUM PROHIBITUM AND IF SO, WHETHER IT IS WITHIN THE POWER OF CONGRESS TO SO CLASSIFY THE SAME.[23]

Thereafter, both parties filed their respective memoranda in which they discussed the points which they raised in their earlier pleadings and during the hearing.

I believe that there is merit in the petition.

A penal statute which violates constitutional
guarantees of individual rights is void.

Every law enacted by Congress enjoys a presumption of constitutionality,[24] and the presumption prevails in the absence of contrary evidence.[25] A criminal statute is generally valid if it does not violate constitutional guarantees of individual rights.[26] Conversely, when a constitutionally protected right of an individual is in danger of being trampled upon by a criminal statute, such law must be struck down for being void.[27]

One of the fundamental requirements imposed by the Constitution upon criminal statutes is that pertaining to clarity and definiteness. Statutes, particularly penal laws, that fall short of this requirement have been declared unconstitutional for being vague. This "void-for-vagueness" doctrine is rooted in the basic concept of fairness as well as the due process clause of the Constitution.

The Constitution guarantees both substantive and procedural due process[28] as well as the right of the accused to be informed of the nature and cause of the accusation against him.[29] A criminal statute should not be so vague and uncertain that "men of common intelligence must necessarily guess as to its meaning and differ as to its application.[30]

There are three distinct considerations for the vagueness doctrine. First, the doctrine is designed to ensure that individuals are properly warned ex ante of the criminal consequences of their conduct. This "fair notice" rationale was articulated in United States v. Harriss:[31]

The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of

> ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed.[32]

Second, and viewed as more important, the doctrine is intended to prevent arbitrary and discriminatory law enforcement.[33] Vague laws are invariably "standardless" and as such, they afford too great an opportunity for criminal enforcement to be left to the unfettered discretion of police officers and prosecutors.[34] Third, vague laws fail to provide sufficient guidance to judges who are charged with interpreting statutes. Where a statute is too vague to provide sufficient guidance, the judiciary is arguably placed in the position of usurping the proper function of the legislature by "making the law" rather than interpreting it.[35]

While the dictum that laws be clear and definite does not require Congress to spell out with mathematical certainty the standards to which an individual must conform his conduct,[36] it is necessary that statutes provide reasonable standards to guide prospective conduct.[37] And where a statute imposes criminal sanctions, the standard of certainty is higher.[38] The penalty imposable on the person found guilty of violating R.A. No. 7080 is reclusion perpetua to death.[39] Given such penalty, the standard of clarity and definiteness required of R.A. No. 7080 is unarguably higher than that of other laws.[40]

Void-for-vagueness doctrine
applies to criminal laws.

A view has been proffered that "vagueness and overbreadth doctrines are not applicable to penal laws."[41] These two concepts, while related, are distinct from each other.[42] On one hand, the doctrine of overbreadth applies generally to statutes that infringe upon freedom of speech.[43] On the other hand, the "void-for-vagueness" doctrine applies to criminal laws, not merely those that regulate speech or other fundamental constitutional rights.[44] The fact that a particular criminal statute does not infringe upon free speech does not mean that a facial challenge to the statute on vagueness grounds cannot succeed.[45]

As earlier intimated, the "vagueness doctrine" is anchored on the constitutionally-enshrined right to due process of law. Thus, as in this case that the "life, liberty and property" of petitioner is involved, the Court should not hesitate to look into whether a criminal statute has sufficiently complied with the elementary requirements of definiteness and clarity. It is an erroneous argument that the Court cannot apply the vagueness doctrine to penal laws. Such stance is tantamount to saying that no criminal law can be challenged however repugnant it is to the constitutional right to due process.

While admittedly, penal statutes are worded in reasonably general terms to accomplish the legislature's objective of protecting the public from socially harmful conduct, this should not prevent a vagueness challenge in cases where a penal statute is so indeterminate as to cause the average person to guess at its meaning and application. For if a statute infringing upon freedom of speech may be challenged for being vague because such right is considered as fundamental, with more reason should a vagueness challenge with respect to a penal statute be allowed since the latter involve deprivation of liberty, and even of life which, inarguably, are rights as important as, if not more than, free speech.

It has been incorrectly suggested[46] that petitioner cannot mount a "facial challenge" to the Plunder Law, and that "facial" or "on its face" challenges seek the total invalidation of a statute.[47] Citing Broadrick v. Oklahoma,[48] it is also opined that "claims of facial overbreadth have been entertained in cases involving statutes which, by their terms, seek to regulate only spoken words" and that "overbreadth claims, if entertained at all, have been curtailed when invoked against ordinary criminal laws that are sought to be applied to protected conduct." For this reason, it is argued further that "on its face invalidation of statutes has been described as

`manifestly strong medicine,' to be employed `sparingly and only as a last resort.'" A reading of Broadrick, however, shows that the doctrine involved therein was the doctrine of overbreadth. Its application to the present case is thus doubtful considering that the thrust at hand is to determine whether the Plunder Law can survive the vagueness challenge mounted by petitioner. A noted authority on constitutional law, Professor Lockhart, explained that "the Court will resolve them (vagueness challenges) in ways different from the approaches it has fashioned in the law of overbreadth."[49] Thus, in at least two cases,[50] the U.S. courts allowed the facial challenges to vague criminal statutes even if these did not implicate free speech

In Kolender v. Lawson,[51] petitioners assailed the constitutionality of a California criminal statute which required persons who loiter or wander on the streets to provide a credible and reasonable identification and to account for their presence when requested by a peace officer under circumstances that would justify a valid stop. The U.S. Supreme Court held that said statute was unconstitutionally vague on its face within the meaning of the due process clause of the Fourteenth Amendment because it encourages arbitrary enforcement by failing to clarify what is contemplated by the requirement that a suspect provide a "credible and reasonable identification." Springfield vs. Oklahoma[52] on the other hand involved a challenge to a Columbus city ordinance banning certain assault weapons. The court therein stated that a criminal statute may be facially invalid even if it has some conceivable application. It went on to rule that the assailed ordinance's definition of "assault weapon" was unconstitutionally vague, because it was "fundamentally irrational and impossible to apply consistently by the buying public, the sportsman, the law enforcement officer, the prosecutor or the judge."[53]

It is incorrect to state that petitioner has made "little effort to show the alleged invalidity of the statute as applied to him, as he allegedly "attacks `on their face' not only §§ 1(d)(1) and (2) of R.A. 7080 under which he is charged, but also its other provisions which deal with plunder committed by illegal or fraudulent disposition of government assets (§1(d)(3)), acquisition of interest in business (§1(d)(4)), and establishment of monopolies and combinations or implementation of decrees intended to benefit particular persons or special interests (§ 1(d)(5))."[54] Notably, much of petitioner's arguments dealt with the vagueness of the key phrases "combination or series" and "pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy" which go into the very nature of the crime for which he is charged.

Taking into consideration that the Plunder Law is a penal statute that imposes the supreme penalty of death, and that petitioner in this case clearly has standing to question its validity inasmuch as he has been charged thereunder and that he has been for sometime now painfully deprived of his liberty, it behooves this Court to address the challenge on the validity of R.A. No. 7080.

Men steeped in law find
difficulty in understanding plunder.

> The basic question that arises, therefore, is whether the clauses in Section 2--
>
> combination or series of overt or criminal acts as described in Section 1(d) hereof

and Section 1(d), which provides--

> x x x by any combination or series of the following means or similar schemes:
>
> 1) Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;
>
> x x x
>
> 6) By taking undue advantage of official position, authority, relationship, connection or influence to unjustly

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> enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

as qualified by Section 4 which also speaks of the "scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth" and of "a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy," are clear enough that a person "of common intelligence" need not guess at their meaning and differ as to their application.

The above raise several difficult questions of meaning which go to the very essence of the offense, such as:

> - How many acts would constitute a "combination or series?"
>
> - Must the acts alleged to constitute the "combination or series" be similar in nature? Note that Section 1(d) speaks of "similar schemes" while Section 4 speaks of "the scheme" and of "a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy."
>
> - Must the "combination or series" of "overt or criminal acts" involving the aggregate amount of at least P50 million be conceived as such a scheme or a "pattern of overt or criminal acts" from inception by the accused?
>
> - What would constitute a "pattern"? What linkage must there be between and among the acts to constitute a "pattern"? Need there be a linkage as to the persons who conspire with one another, and a linkage as to all the acts between and among them?
>
> - When Section 4 speaks of "indicative of the overall unlawful scheme or conspiracy," would this mean that the "scheme" or "conspiracy" should have been conceived or decided upon in its entirety, and by all of the participants?
>
> - When committed in connivance "with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons" or through "dummies, nominees, agents, subordinates and/or business associates", would such fact be part of the "pattern of overt or criminal acts" and of the "overall unlawful scheme or conspiracy" such that all of those who are alleged to have participated in the crime of plunder must have participated in each and every act allegedly constituting the crime of plunder? And as in conspiracy, conspired together from inception to commit the offense?
>
> - Within what time frame must the acts be committed so as to constitute a "combination or series"?

I respectfully disagree with the majority that "ascertainable standards and well-defined parameters" are provided in the law[55] to resolve these basic questions.

Even men steeped in the knowledge of the law are in a quandary as to what constitutes plunder. The Presiding Justice of the Sandiganbayan, Justice Francis Garchitorena, admitted that the justices of said court "have been quarrelling with each other in finding ways to determine what [they] understand by plunder."[56] Senator Neptali Gonzales also noted during the deliberations of Senate Bill No. 733 that the definition of plunder under the law is vague. He bluntly declared: "I am afraid that it might be faulted for being violative of the due process clause and the right to be informed of the nature and cause of the accusation of an accused.[57] Fr. Bernas, for his part, pointed to several problematical portions of the law that were left unclarified. He posed the question: "How can you have a 'series' of criminal acts if the elements that are supposed to constitute the series are not proved to be criminal?"[58]

The meanings of "combination" and "series"
as used in R.A. No. 7080 are not clear.

Although the law has no statutory definition of "combination" or "series", the majority is of the view that resort

can be had to the ordinary meaning of these terms. Thus, Webster's Third New International Dictionary gives the meaning of "combination": "the result or product or product of combining: a union or aggregate made of combining one thing with another."[59]

In the context of R.A. No. 7080, "combination" as suggested by the Solicitor General means that at least two of the enumerated acts found in Section 1(d), i.e., one of any of the enumerated acts, combined with another act falling under any other of the enumerated means may constitute the crime of plunder. With respect to the term "series," the majority states that it has been understood as pertaining to "two or more overt or criminal acts falling under the same category"[60] as gleaned from the deliberations on the law in the House of Representatives and the Senate.

Further, the import of "combination" or "series" can be ascertained, the majority insists,[61] from the following deliberations in the Bicameral Conference Committee on May 7, 1991:

> REP. ISIDRO: I am just intrigued again by our definition of plunder. We say, THROUGH A COMBINATION OR SERIES OF OVERT OR CRIMINAL ACTS AS MENTIONED IN SECTION ONE HEREOF. Now when we say combination, we actually mean to say, if there are two or more means, we mean to say that number one and two or number one and something else are included, how about a series of the same act? For example, through misappropriation, conversion, misuse, will these be included also?
>
> THE CHAIRMAN (REP. GARCIA): Yeah, because we say series.
>
> REP. ISIDRO: Series.
>
> THE CHAIRMAN (REP. GARCIA): Yeah, we include series.
>
> REP. ISIDRO: But we say we begin with a combination.
>
> THE CHAIRMAN: (REP. GARCIA): Yes.
>
> REP. ISIDRO: When we say combination, it seems that-
>
> THE CHAIRMAN (REP. GARCIA): Two.
>
> REP. ISIDRO: Not only two but we seem to mean that two of the enumerated means not twice of one enumeration.
>
> THE CHAIRMAN: (REP. GARCIA): No, no, not twice.
>
> REP. ISIDRO: Not twice?
>
> THE CHAIRMAN (REP. GARCIA): Yes. Combination is not twice--but combination, two acts.
>
> REP. ISIDRO: So in other words, that's it. When we say combination, we mean two different acts. It can not be a repetition of the same act.
>
> THE CHAIRMAN (REP. GARCIA): That be referred to series. Yeah.
>
> REP. ISIDRO: No, no. Supposing one act is repeated, so there are two.
>
> THE CHAIRMAN (REP. GARCIA): A series.
>
> REP. ISIDRO: That's not series. It's a combination. Because when we say combination or series, we seem to say that two or more, `di ba?
>
> THE CHAIRMAN: (REP. GARCIA): Yes, This distinguishes it, really, from the ordinary crimes. That is why, I said, that is a very good suggestion because if it is only one act, it may fall under ordinary crime but we have

here a combination or series of overt or criminal acts. So...

HON. ISIDRO: I know what you are talking about. For example, through misappropriation, conversion, misuse or malversation of public funds who raids the public treasury, now, for example, misappropriation, if there are a series of misappropriations?

x x x

THE CHAIRMAN (REP. GARCIA): Series. One after the other eh di...

THE CHAIRMAN (SEN TAÑADA): So that would fall under term "series"?

THE CHAIRMAN (REP. GARCIA): Series, oo.

REP. ISIDRO: Now, if it is combination, ano, two misappropriations...

THE CHAIRMAN (REP. GARCIA): It's not... two misappropriations will not be combination. Series.

REP. ISIDRO: So, it is not a combination?

THE CHAIRMAN (REP. GARCIA): Yes.

REP. ISIDRO: When you say "combination", two different?

THE CHAIRMAN (REP. GARCIA): Yes.

THE CHAIRMAN (SEN. TAÑADA): Two different.

REP. ISIDRO: Two different acts.

THE CHAIRMAN (REP. GARCIA): For example, ha...

REP. ISIDRO: Now a series, meaning, repetition...[62]

The following deliberations in the Senate are pointed to by the majority[63] to show that the words "combination" and "series" are given their ordinary meaning:

Senator Maceda. In line of our interpellations that sometimes "one" or maybe even "two" acts may already result in such a big amount, on line 25, would the Sponsor consider deleting the words "a series of overt or". To read, therefore: "or conspiracy COMMITTED by criminal acts such as". Remove the idea of necessitating "a series". Anyway, the criminal acts are in the plural.

Senator Tañada. That would mean a combination of two or more of the acts mentioned in this.

The President. Probably, two or more would be....

Senator Maceda. Yes, because `a series' implies several or many' two or more.

Senator Tañada. Accepted, Mr. President.

x x x

The President. If there is only one, then he has to be prosecuted under the particular crime. But when we say `acts of plunder' there should be, at least, two or more.

Senator Romulo. In other words, that is already covered by existing laws, Mr. President.[64]

To my mind, resort to the dictionary meaning of the terms "combination" and "series" as well as recourse to the deliberations of the lawmakers only serve to prove that R.A. No. 7080 failed to satisfy the strict requirements of

the Constitution on clarity and definiteness. Note that the key element to the crime of plunder is that the public officer, by himself or in conspiracy with others, amasses, accumulates, or acquires "ill-gotten wealth" through a "combination or series of overt or criminal acts" as described in Section 1(d) of the law. Senator Gonzales, during the deliberations in the Senate, already raised serious concern over the lack of a statutory definition of what constitutes "combination" or "series", consequently, expressing his fears that Section 2 of R.A. No. 7080 might be violative of due process:

> Senator Gonzales. To commit the offense of plunder, as defined in this Act and while constituting a single offense, it must consist of a series of overt or criminal acts, such as bribery, extortion, malversation of public funds, swindling, illegal exaction, and graft or corrupt practices act and like offenses. Now, Mr. President, I think, this provision, by itself will be vague. I am afraid that it might be faulted for being violative of the due process clause and the right to be informed of the nature and cause of accusation of an accused. Because, what is meant by "series of overt or criminal acts"? I mean, would 2, 3, 4 or 5 constitute a series? During the period of amendments, can we establish a minimum of overt acts like, for example, robbery in band? The law defines what is robbery in band by the number of participants therein. In this particular case probably, we can statutorily provide for the definition of "series" so that two, for example, would that be already a series? Or, three, what would be the basis for such determination?[65] (Emphasis supplied.)

The point raised by Senator Gonzales is crucial and well-taken. I share petitioner's observation that when penal laws enacted by Congress make reference to a term or concept requiring a quantitative definition, these laws are so crafted as to specifically state the exact number or percentage necessary to constitute the elements of a crime. To cite a few:

> "Band" - "Whenever more than three armed malefactors shall have acted together in the commission of an offense, it shall be deemed to have been committed by a band." (Article 146, Revised Penal Code)[66]
>
> "Conspiracy" - "A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." (Article 8, Revised Penal Code)[67]
>
> "Illegal Recruitment by a Syndicate" - "Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise or scheme x x x." (Section 38, Labor Code)
>
> "Large-scale Illegal Recruitment" - "Illegal recruitment is deemed committed in large scale if committed against three (3) or more persons individually or as a group." (Section 38, Labor Code)
>
> "Organized/Syndicated Crime Group" - "[M]eans a group of two or more persons collaborating, confederating or mutually helping one another for purposes of gain in the commission of any crime." (Article 62 (1)(1a), Revised Penal Code)[68]
>
> "Swindling by a Syndicate" - "x x x if the swindling (estafa) is committed by a syndicate consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme x x x ." (Section 1, P.D. No. 1689)[69]

The deliberations of the Bicameral Conference Committee and of the Senate cited by the majority, consisting mostly of unfinished sentences, offer very little help in clarifying the nebulous concept of plunder. All that they indicate is that Congress seemingly intended to hold liable for plunder a person who: (1) commits at least two counts of any one of the acts mentioned in Section 1(d) of R.A. No. 7080, in which case, such person commits plunder by a series of overt criminal acts; or (2) commits at least one count of at least two of the acts mentioned in Section 1(d), in which case, such person commits plunder by a combination of overt criminal acts. Said discussions hardly provide a window as to the exact nature of this crime.

A closer look at the exchange between Representatives Garcia and Isidro and Senator Tañada would imply that initially, combination was intended to mean "two or more means,"[70] i.e., "number one and two or number one and something else x x x,"[71] "two of the enumerated means not twice of one enumeration,"[72] "two different acts."[73] Series would refer to "a repetition of the same act."[74] However, the distinction was again lost as can be gleaned from the following:

> THE CHAIRMAN (REP. GARCIA) Yes. Combination is not twice - but combination, two acts.
>
> REP. ISIDRO. So in other words, that's it. When we say combination, we mean, two different acts. It can not be a repetition of the same act.
>
> THE CHAIRMAN (REP. GARCIA). That be referred to series. Yeah.
>
> REP. ISIDRO. No, no. Supposing one act is repeated, so there are two.
>
> THE CHAIRMAN (REP. GARCIA). A series.
>
> REP. ISIDRO. That's not series. It's a combination. Because when we say combination or series, we seem to say that two or more, `di ba?
>
> THE CHAIRMAN (REP. GARCIA). Yes. This distinguishes it really the ordinary --- That's why I said, that's a very good suggestion, because if its' only one act, it may fall under ordinary crime. But we have here a combination or series, of overt or criminal acts" (Emphasis supplied).[75]
>
> x x x
>
> THE CHAIRMAN (REP. GARCIA P.) Series. One after the other eh di...
>
> THE CHAIRMAN (SEN. TAÑADA) So, that would fall under the term "series"?
>
> THE CHAIRMAN (REP. GARCIA P) Series, oo.
>
> REP. ISIDRO. Now, if it is combination, ano, two misappropriations...
>
> THE CHAIRMAN (REP. GARCIA) It's not... two misappropriations will not be combination. Series.
>
> REP. ISIDRO. So, it is not a combination?
>
> THE CHAIRMAN. (REP. GARCIA P.) Yes.
>
> REP. ISIDRO. When we say "combination", two different?
>
> THE CHAIRMAN (REP. GARCIA P.) Yes.
>
> THE CHAIRMAN (SEN. TAÑADA) Two different.
>
> REP. ISIDRO. Two different acts.
>
> THE CHAIRMAN (REP. GARCIA P.) For example, ha...
>
> REP. ISIDRO. Now a series, meaning, repetition...
>
> THE CHAIRMAN (SEN. TAÑADA) Yes.
>
> REP. ISIDRO. With that...
>
> THE CHAIRMAN (REP. GARCIA P.) Thank you.
>
> THE CHAIRMAN (SEN. TAÑADA) So, it could be a series of any of the acts mentioned in paragraphs 1, 3, 4,

5 of Section 2 (d), or... 1 (d) rather, or a combination of any of the acts mentioned in paragraph 1 alone, or paragraph 2 alone or paragraph 3 or paragraph 4.

THE CHAIRMAN (REP. GARCIA P.) I think combination maybe...which one? Series?

THE CHAIRMAN (SEN. TAÑADA) Series or combination.

REP. ISIDRO. Which one, combination or series or series or combination?

THE CHAIRMAN (SEN. TAÑADA) Okay. Ngayon doon sa definition, ano, Section 2, definition, doon sa portion ng... Saan iyon? As mentioned, as described...

THE CHAIRMAN (REP. GARCIA P.) Described. I think that is...

THE CHAIRMAN (SEN. TAÑADA) ... better than "mentioned". Yes.

THE CHAIRMAN (REP. GARCIA P.) Okay?

REP. ISIDRO. Very good.

THE CHAIRMAN. (SEN. TAÑADA) Oo, marami pong salamat.

THE CHAIRMAN (REP. GARCIA P.) Maraming salamat po.

The meeting was adjourned at 1:33 p.m."[76] (Emphasis supplied.)

The aforequoted deliberations, especially the latter part thereof, would show a dearth of focus to render precise the definition of the terms. Phrases were uttered but were left unfinished. The examples cited were not very definite. Unfortunately, the deliberations were apparently adjourned without the Committee members themselves being clear on the concept of series and combination.

Moreover, if "combination" as used in the law simply refers to the amassing, accumulation and acquisition of ill-gotten wealth amounting to at least P50 Million through at least two of the means enumerated in Section 1(d), and "series," to at least two counts of one of the modes under said section, the accused could be meted out the death penalty for acts which, if taken separately, i.e., not considered as part of the combination or series, would ordinarily result in the imposition of correctional penalties only. If such interpretation would be adopted, the Plunder law would be so oppressive and arbitrary as to violate due process and the constitutional guarantees against cruel or inhuman punishment.[77] The penalty would be blatantly disproportionate to the offense. Petitioner's examples illustrate this absurdity:

- One act of indirect bribery (penalized under Art. 211 of the Revised Penal Code with prision correccional in its medium and maximum periods),

combined with -

one act of fraud against the public treasury (penalized under Art. 213 of the Revised Penal Code with prision correccional in its medium period to prision mayor in its minimum period).

equals -

Plunder (punished by reclusion perpetua to death plus forfeiture of assets under R. A. 7080)

- One act of prohibited transaction (penalized under Art. 215 of the Revised Penal Code with prision correccional in its minimum period or a fine ranging from P200 to P1,000 or both).

combined with -

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> one act of establishing a commercial monopoly (penalized under Art. 186 of Revised Penal Code with prision correccional in its minimum or a fine ranging from P200 to P6,00, or both.
>
> equals -
>
> Plunder (punished by reclusion perpetua to death, and forfeiture of assets under R.A. 7080).
>
> - One act of possession of prohibited interest by a public officer (penalized with prision correccional in its minimum period or a fine of P200 to P1,000, or both under Art. 216 of the Revised Penal Code).
>
> combined with -
>
> one act of combination or conspiracy in restraint of trade (penalized under Art. 186 of the Revised Penal Code with prision correccional in its minimum period, or a fine of P200 to P1,000, or both),
>
> equals -
>
> plunder (punished by reclusion perpetua to death, and forfeiture of assets).[78]

The argument that higher penalties may be imposed where two or more distinct criminal acts are combined and are regarded as special complex crimes, i.e., rape with homicide, does not justify the imposition of the penalty of reclusion perpetua to death in case plunder is committed. Taken singly, rape is punishable by reclusion perpetua;[79] and homicide, by reclusion temporal.[80] Hence, the increase in the penalty imposed when these two are considered together as a special complex crime is not too far from the penalties imposed for each of the single offenses. In contrast, as shown by the examples above, there are instances where the component crimes of plunder, if taken separately, would result in the imposition of correctional penalties only; but when considered as forming part of a series or combination of acts constituting plunder, could be punishable by reclusion perpetua to death. The disproportionate increase in the penalty is certainly violative of substantive due process and constitute a cruel and inhuman punishment.

It may also be pointed out that the definition of "ill-gotten wealth" in Section 1(d) has reference to the acquisition of property (by the accused himself or in connivance with others) "by any combination or series" of the "means" or "similar schemes" enumerated therein, which include the following:

> x x x
>
> - By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other forms of interest or participation including the promise of future employment or any business enterprise or undertakings;
>
> - By establishing agricultural, industrial or commercial monopolies or other combination and/or implementation of decrees and orders intended to benefit particular persons or special interests;
>
> x x x

The above-mentioned acts are not, by any stretch of the imagination, criminal or illegal acts. They involve the exercise of the right to liberty and property guaranteed by Article III, Section 1 of the Constitution which provides that "No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws." Receiving or accepting any shares of stock is not per se objectionable. It is in pursuance of civil liberty, which includes "the right of the citizen to be free to use his faculties in all lawful ways; x x x to earn his livelihood by any lawful calling; to pursue any avocation, and/or that purpose, to enter into all contracts which may be proper, necessary and essential to his carrying out these purposes to a successful conclusion.[81] Nor is there any impropriety, immorality or illegality in establishing agricultural, industrial or

commercial monopolies or other combination and/or implementation of decrees and orders even if they are intended to benefit particular persons or special interests. The phrases "particular persons" and "special interests" may well refer to the poor,[82] the indigenous cultural communities,[83] labor,[84] farmers,[85] fisherfolk,[86] women,[87] or those connected with education, science and technology, arts, culture and sports.[88]

In contrast, the monopolies and combinations described in Article 186 of the Revised Penal Code are punishable because, as specifically defined therein, they are "on restraint of trade or commerce or to prevent by artificial means of free competition in the market, or the object is "to alter the price" of any merchandise "by spreading false rumors," or to manipulate market prices in restraint of trade. There are no similar elements of monopolies or combinations as described in the Plunder Law to make the acts wrongful.

If, as interpreted by the Solicitor General, "series" means a "repetition" or pertains to "two or more" acts, and "combination as defined in the Webster's Third New International Dictionary is "the result or product of combining one thing with another,"[89] then, the commission of two or more acts falling under paragraphs (4) and (5) of Section 1(d) would make innocent acts protected by the Constitution as criminal, and punishable by reclusion perpetua to death.

R.A. No. 7080 does not define "pattern,"
an essential element of the crime of plunder.

Granting arguendo that, as asserted by the majority, "combination" and "series" simplistically mean the commission of two or more of the acts enumerated in Section 1(d),[90] still, this interpretation does not cure the vagueness of R.A. No. 7080. In construing the definition of "plunder," Section 2 of R.A. No. 7080 must not be read in isolation but rather, must be interpreted in relation to the other provisions of said law. It is a basic rule of statutory construction that to ascertain the meaning of a law, the same must be read in its entirety.[91] Section 1 taken in relation to Section 4 suggests that there is something to plunder beyond simply the number of acts involved and that a grand scheme to amass, accumulate or acquire ill-gotten wealth is contemplated by R.A. No. 7080. Sections 1 and 2 pertain only to the nature and quantitative means or acts by which a public officer, by himself or in connivance with other persons, "amasses, accumulates or acquires ill-gotten wealth." Section 4, on the other hand, requires the presence of elements other than those enumerated in Section 2 to establish that the crime of plunder has been committed because it speaks of the necessity to establish beyond reasonable doubt a "pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy."

Clearly, it will not suffice that the "illegal wealth" amassed is at least Fifty Million Pesos and that this was acquired by any two or more of the acts described in Section 1(d); it is necessary that these acts constitute a "combination or series" of acts done in furtherance of "the scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth", and which constitute "a pattern of overt or criminal acts indicative of the overall scheme or conspiracy."

That pattern is an essential element of the crime of plunder is evident from a reading of the assailed law in its entirety. It is that which would distinguish plunder from isolated criminal acts punishable under the Revised Penal Code and other laws, for without the existence a "pattern of overt or criminal acts indicative of the overall scheme or conspiracy" to acquire ill-gotten wealth, a person committing several or even all of the acts enumerated in Section 1(d) cannot be convicted for plunder, but may be convicted only for the specific crimes committed under the pertinent provisions of the Revised Penal Code or other laws.

For this reason, I do not agree that Section 4 is merely a rule of evidence or a rule of procedure. It does not become such simply because its caption states that it is, although its wording indicates otherwise. On the contrary, it is of substantive character because it spells out a distinctive element of the crime which has to be established,

i.e., an overall unlawful "scheme or conspiracy" indicated by a "pattern of overt or criminal acts" or means or similar schemes "to amass, accumulate or acquire ill-gotten wealth."

The meaning of the phrase "pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy," however, escapes me. As in "combination" and "series," R.A. No. 7080 does not provide a definition of "pattern" as well as "overall unlawful scheme." Reference to the legislative history of R.A. No. 7080 for guidance as to the meanings of these concepts would be unavailing, since the records of the deliberations in Congress are silent as to what the lawmakers mean by these terms.

Resort to the dictionary meanings of "pattern" and "scheme" is, in this case, wholly inadequate. These words are defined as:

> pattern: an arrangement or order of things or activity.[92]
>
> scheme: design; project; plot.[93]

At most, what the use of these terms signifies is that while multiplicity of the acts (at least two or more) is necessary, this is not sufficient to constitute plunder. As stated earlier, without the element of "pattern" indicative of an "overall unlawful scheme," the acts merely constitute isolated or disconnected criminal offenses punishable by the Revised Penal Code or other special laws.

The commission of two or more of the acts falling under Section 1(d) is no guarantee that they fall into a "pattern" or "any arrangement or order." It is not the number of acts but the relationship that they bear to each other or to some external organizing principle that renders them "ordered" or "arranged":

> A pattern is an arrangement or order of things, or activity, and the mere fact that there are a number of predicates is no guarantee that they fall into an arrangement or order. It is not the number of predicates but the relationship that they bear to each other or to some external organizing principle that renders them `ordered' or `arranged.'[94]

In any event, it is hardly possible that two predicate acts can form a pattern:

> The implication is that while two acts are necessary, they may not be sufficient. Indeed, in common parlance, two of anything will not generally form a `pattern.'[95]

In H. J. Inc. v. Northwestern Bell Telephone Co. et al.[96] (hereinafter referred to as Northwestern), the U.S. Court reiterated the foregoing doctrine:

> xxx Nor can we agree with those courts that have suggested that a pattern is established merely by proving two predicate acts.[97]

Respondents' metaphorical illustration of "pattern" as a wheel with spokes (the overt or criminal acts of the accused) meeting at a common center (the acquisition of ill-gotten wealth) and with a rim (the overall unlawful scheme or conspiracy) of the wheel enclosing the spokes, is off tangent. Their position that two spokes suffice to make a wheel, even without regard to the relationship the spokes bear to each other clearly demonstrates the absurdity of their view, for how can a wheel with only two spokes which are disjointed function properly?

That "pattern" is an amorphous concept even in U.S. jurisprudence where the term is reasonably defined is precisely the point of the incisive concurring opinion of Justice Antonin Scalia in Northwestern where he invited a constitutional challenge to the RICO law on "void-for-vagueness" ground.[98] The RICO law is a federal statute in the United States that provides for both civil and criminal penalties for violation therefor. It incorporates by reference twenty-four separate federal crimes and eight types of state felonies.[99] One of the key elements of a RICO violation is that the offender is engaged in a "pattern of racketeering activity."[100] The RICO law defines

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the phrase "pattern of racketeering activity" as requiring "at least two acts of racketeering activity, one of which occurred after the effective date of 18 USCS § 1961, and within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity."[101] Incidentally, the Solicitor General claims that R.A. No. 7080 is an entirely different law from the RICO law. The deliberations in Congress reveal otherwise. As observed by Rep. Pablo Garcia, Chairman of the House of Representatives Committee on Justice, R.A. No. 7080 was patterned after the RICO law.[102]

In Northwestern, conceding that "[the U.S. Congress] has done nothing . . . further to illuminate RICO's key requirement of a pattern of racketeering," the U.S. Supreme Court, through Justice William J. Brennan, Jr., undertook the task of developing a meaningful concept of "pattern" within the existing statutory framework.[103] Relying heavily on legislative history, the US Supreme Court in that case construed "pattern" as requiring "continuity plus relationship."[104] The US Supreme Court formulated the "relationship requirement" in this wise: "Criminal conduct forms a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events."[105] Continuity is clarified as "both a closed and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition."[106]

In his separate concurring opinion, Justice Scalia rejected the majority's formulation. The "talismanic phrase" of "continuity plus relationship" is, as put by Justice Scalia, about as helpful as advising the courts that "life is a fountain." He writes:

> x x x Thus, when §1961(5) says that a pattern "requires at least two acts of racketeering activity" it is describing what is needful but not sufficient. (If that were not the case, the concept of "pattern" would have been unnecessary, and the statute could simply have attached liability to "multiple acts of racketeering activity"). But what that something more is, is beyond me. As I have suggested, it is also beyond the Court. Today's opinion has added nothing to improve our prior guidance, which has created a kaleidoscope of Circuit positions, except to clarify that RICO may in addition be violated when there is a "threat of continuity." It seems to me this increases rather than removes the vagueness. There is no reason to believe that the Court of Appeals will be any more unified in the future, than they have in the past, regarding the content of this law.
>
> That situation is bad enough with respect to any statute, but it is intolerable with respect to RICO. For it is not only true, as Justice Marshall commented in Sedima, S.P.R.L. vs. Imrex Co., 473 U.S. 479 x x x, that our interpretation of RICO has "quite simply revolutionize[d] private litigation" and "validate[d] the federalization of broad areas of state common law of frauds," x x x so that clarity and predictability in RICO's civil applications are particularly important; but it is also true that RICO, since it has criminal applications as well, must, even in its civil applications, possess the degree of certainty required for criminal laws x x x. No constitutional challenge to this law has been raised in the present case, and so that issue is not before us. That the highest court in the land has been unable to derive from this statute anything more than today's meager guidance bodes ill for the day when that challenge is presented.[107]

It bears noting that in Northwestern the constitutionality of the RICO law was not challenged.[108] After Northwestern, the U.S. Supreme Court has so far declined the opportunity to hear cases in which the void-for-vagueness challenge to the pattern requirement was raised.[109]

Admittedly, at the district courts level, the state statutes (referred to as Little RICOS)[110] have so far successfully survived constitutional challenge on void-for-vagueness ground. However, it must be underscored that, unlike R.A. No. 7080, these state anti-racketeering laws have invariably provided for a reasonably clear, comprehensive and understandable definition of "pattern."[111] For instance, in one state, the pattern requirement specifies that the related predicate acts must have, among others, the same or similar purpose, result, principal,

victims or methods of commission and must be connected with "organized crime.[112] In four others, their pattern requirement provides that two or more predicate acts should be related to the affairs of the enterprise, are not isolated, are not closely related to each other and connected in point of time and place, and if they are too closely related, they will be treated as a single act.[113] In two other state, pattern requirements provide that if the acts are not related to a common scheme, plan or purpose, a pattern may still exist if the participants have the mental capacity required for the predicate acts and are associated with the criminal enterprise.[114]

All the foregoing state statutes require that the predicate acts be related and that the acts occur within a specified time frame.

Clearly, "pattern" has been statutorily defined and interpreted in countless ways by circuit courts in the United States. Their divergent conclusions have functioned effectively to create variant criminal offenses.[115] This confusion has come about notwithstanding that almost all these state laws have respectively statutorily defined "pattern". In sharp contrast, R.A. No. 7080, as earlier pointed out, lacks such crucial definition. As to what constitutes pattern within the meaning of R.A. No. 7080 is left to the ad hoc interpretation of prosecutors and judges. Neither the text of R.A. No. 7080 nor legislative history afford any guidance as to what factors may be considered in order to prove beyond reasonable doubt "pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy."

Be that as it may, it is glaringly fallacious to argue that "series" simply means a "repetition" or "pertaining to two or more" and "combination" is the "result or product or product of combining." Whether two or more or at least three acts are involved, the majority would interpret the phrase "combinations' or "series" only in terms of number of acts committed. They entirely overlook or ignore Section 4 which requires "a pattern of overt of criminal acts indicative of the overall unlawful scheme or conspiracy" to convict.

If the elements of the offense are as what the majority has suggested, the crime of plunder could have been defined in the following manner:

> Where a public official, by himself or in conspiracy with others, amasses or acquires money or property by committing two or more acts in violation of Section 3 of the Anti-Graft and Corrupt Practices Act (R.A. 3019), or Articles 210, 211, 212, 213, 214, 215, 216 and 217 of the Revised Penal Code, he shall be guilty of the crime of plunder and shall be punished by reclusion perpetua to death.

The above would be a straightforward and objective definition of the crime of plunder. However, this would render meaningless the core phrases "a combination or series of" "overt or criminal acts indicative of the overall unlawful scheme or conspiracy," or the phrase "any combination or series of the following means or similar schemes" or "a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy."

But that obviously is not the definition of the crime of plunder under R.A. 7080. There is something more. A careful reading of the law would unavoidably compel a conclusion that there should be a connecting link among the "means or schemes" comprising a "series or combination" for the purpose of acquiring or amassing "ill-gotten wealth." The bond or link is an "overall unlawful scheme or conspiracy mentioned in Section 4. The law contemplates a combination or series of criminal acts in plunder done by the accused "in furtherance of the scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth." It does not postulate acts committed randomly, separately or independently or sporadically. Otherwise stated, if the legislature intended to define plunder as the acquisition of ill-gotten wealth in the manner espoused by the majority, the use in R.A. 7080 of such words and phrases as "combination" and "series of overt or criminal acts" xxx "in furtherance of the scheme or conspiracy" is absolutely pointless and meaningless.

R.A. No. 7080 makes it possible for a person

conspiring with the accused in committing
one of the acts constituting the charge
of plunder to be convicted for the same crime.

Section 2 of R.A. No. 7080 states that "[a]ny person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court." Both parties share the view that the law as it is worded makes it possible for a person who participates in the commission of only one of the component crimes constituting plunder to be liable as co-conspirator for plunder, not merely the component crime in which he participated.[116] While petitioner concedes that it is easy to ascertain the penalty for an accomplice or accessory under R.A. No. 7080, such is not the case with respect to a co-principal of the accused.[117] In other words, a person who conspires with the accused in the commission of only one of the component crimes may be prosecuted as co-principal for the component crime, or as co-principal for the crime of plunder, depending on the interpretation of the prosecutor. The unfettered discretion effectively bestowed on law enforcers by the aforequoted clause in determining the liability of the participants in the commission of one or more of the component crimes of a charge for plunder undeniably poses the danger of arbitrary enforcement of the law.[118]

R.A. No. 7080 does not clearly state
the prescriptive period of the crime of plunder.

Section 6 of R.A. No. 7080 provides that the crime punishable under said Act shall prescribe in twenty (20) years. Considering that the law was designed to cover a "combination or series of overt or criminal acts," or "a pattern of overt or criminal acts," from what time shall the period of prescription be reckoned? From the first, second, third or last act of the series or pattern? What shall be the time gap between two succeeding acts? If the last act of a series or combination was committed twenty or more years after the next preceding one, would not the crime have prescribed, thereby resulting in the total extinction of criminal liability under Article 89(b) of the Revised Penal Code? In antithesis, the RICO law affords more clarity and definiteness in describing "pattern of racketeering activity" as "at least two acts of racketeering activity, one of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity."[119]The U.S. state statutes similarly provide specific time frames within which racketeering acts are committed.

The Solicitor General enjoins the Court to rectify the deficiencies in the law by judicial construction. However, it certainly would not be feasible for the Court to interpret each and every ambiguous provision without falling into the trap of judicial legislation. A statute should be construed to avoid constitutional question only when an alternative interpretation is possible from its language.[120] Borrowing from the opinion of the court[121] in Northwestern,[122] the law "may be a poorly drafted statute; but rewriting it is a job for Congress, if it so inclined, and not for this Court." But where the law as the one in question is void on its face for its patent ambiguity in that it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ as to its application, the Court cannot breathe life to it through the guise of construction.

R.A. No. 7080 effectively eliminates mens rea
or criminal intent as an element of the crime of plunder.

Section 4 provides that for the purpose of establishing the crime of plunder, "it shall not be necessary to prove each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth, it being sufficient to establish beyond reasonable a pattern of overt or criminal acts

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indicative of the overall unlawful scheme or conspiracy."

The majority would interpret this section to mean that the prosecution has the burden of "showing a combination or series resulting in the crime of plunder." And, once the minimum requirements for a combination or a series of acts are met, there is no necessity for the prosecution to prove each and every other act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate, or acquire ill-gotten wealth.[123]

By its language, Section 4 eliminates proof of each and every component criminal act of plunder by the accused and limits itself to establishing just the pattern of overt or criminal acts indicative of unlawful scheme or conspiracy. The law, in effect, penalizes the accused on the basis of a proven scheme or conspiracy to commit plunder without the necessity of establishing beyond reasonable doubt each and every criminal act done by the accused in the crime of plunder. To quote Fr. Bernas again: "How can you have a `series' of criminal acts if the elements that are supposed to constitute the series are not proved to be criminal?"[124]

Moreover, by doing away with proof beyond reasonable doubt of each and every criminal act done by the accused in the furtherance of the scheme or conspiracy to acquire ill-gotten wealth, it being sufficient just to prove a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy, the Plunder Law effectively eliminated the mens rea or criminal intent as an element of the crime. Because of this, it is easier to convict for plunder and sentence the accused to death than to convict him for each of the component crimes otherwise punishable under the Revised Penal Code and other laws which are bailable offenses. The resultant absurdity strikes at the very heart if the constitutional guarantees of due process and equal protection.

Plunder is a malum in se.

The acts enumerated in Section 1(d) are mostly defined and penalized by the Revised Penal Code, e.g. malversation, estafa, bribery and other crimes committed by public officers. As such, they are by nature mala in se crimes. Since intent is an essential element of these crimes, then, with more reason that criminal intent be established in plunder which, under R.A. No. 7659, is one of the heinous crimes[125] as pronounced in one of its whereas clauses.[126]

The fact that the acts enumerated in Section 1(d) of R.A. 7080 were made criminal by special law does not necessarily make the same mala prohibita where criminal intent is not essential, although the term refers generally to acts made criminal by special laws. For there is a marked difference between the two. According to a well-known author on criminal law:

> There is a distinction between crimes which are mala in se, or wrongful from their nature, such as theft, rape, homicide, etc., and those that are mala prohibita, or wrong merely because prohibited by statute, such as illegal possession of firearms.
>
> Crimes mala in se are those so serious in their effects on society as to call for almost unanimous condemnation of its members; while crimes mala prohibita are violations of mere rules of convenience designed to secure a more orderly regulation of the affairs of society. (Bouvier's Law Dictionary, Rawle's 3rd Revision)
>
> (1)
>
> In acts mala in se, the intent governs; but in those mala prohibit the only inquiry is, has the law been violated? (People vs. Kibler, 106 N.Y., 321, cited in the case of U.S. vs. Go Chico, 14 Phil. 132)
>
> Criminal intent is not necessary where the acts are prohibited for reasons of public policy, as in illegal possession of firearms. (People vs. Conosa, C.A., 45 O.G. 3953)
>
> (2)

> The term mala in se refers generally to felonies defined and penalized by the Revised Penal Code. When the acts are inherently immoral, they are mala in se, even if punished by special laws. On the other hand, there are crimes in the Revised Penal Code which were originally defined and penalized by special laws. Among them are possession and use of opium, malversation, brigandage, and libel.[127]

The component acts constituting plunder, a heinous crime, being inherently wrongful and immoral, are patently mala in se, even if punished by a special law and accordingly, criminal intent must clearly be established together with the other elements of the crime; otherwise, no crime is committed. By eliminating mens rea, R.A. 7080 does not require the prosecution to prove beyond reasonable doubt the component acts constituting plunder and imposes a lesser burden of proof on the prosecution, thus paving the way for the imposition of the penalty of reclusion perpetua to death on the accused, in plain violation of the due process and equal protection clauses of the Constitution. Evidently, the authority of the legislature to omit the element of scienter in the proof of a crime refers to regulatory measures in the exercise of police power, where the emphasis of the law is to secure a more orderly regulations of the offense of society, rather than the punishment of the crimes. So that in mala prohibita prosecutions, the element of criminal intent is a requirement for conviction and must be provided in the special law penalizing what are traditionally mala in se crimes. As correctly pointed out by petitioner,[128] citing U.S. Supreme Court decisions, the Smith Act was ruled to require "intent" to advocate[129] and held to require knowledge of illegal advocacy.[130] And in another case,[131] and ordinance making illegal the possession of obscene books was declared unconstitutional for lack of scienter requirement.

Mens rea is a substantive due process requirement under the Constitution, and this is a limitation on police power. Additionally, lack of mens rea or a clarifying scienter requirement aggravates the vagueness of a statute.

In Morisette v. U.S.[132] the U.S. Supreme Court underscored the stultifying effect of eliminating mens rea, thus:

> The Government asks us by a feat of construction radically to change the weights and balances in the scales of justice. The purpose and obvious effect of doing away with the requirement of a guilty intent is to ease the prosecution's party to conviction, to strip the defendant of such benefit as he derived at common law from innocence of evil purpose, and to circumscribe the freedom heretofore allowed juries. Such a manifest impairment of the immunities of the individual should not be extended to common law crimes on judicial initiative.

In the same breath, Justice Florenz Regalado expreses serious doubts as to the authority of the legislature to complex mala in se crimes with mala prohibita, saying:

> x x x although there has been a tendency to penalize crimes under special laws with penalties "borrowed" from the Code, there is still the question of legislative authority to consolidate crimes punished under different statutes. Worse, where one is punished under the Code and the other by the special law, both of these contingencies had not been contemplated when the concept of a delito complejo was engrafted into the Code.[133]

Petitioner is not estopped from questioning
the constitutionality of R.A. No. 7080.

The case at bar has been subject to controversy principally due to the personalities involved herein. The fact that one of petitioner's counsels[134] was a co-sponsor of the Plunder Law[135] and petitioner himself voted for its passage when he was still a Senator would not in any put him in estoppel to question its constitutionality. The rule on estoppel applies to questions of fact, not of law.[136] Moreover, estoppel should be resorted to only as a means of preventing injustice.[137] To hold that petitioner is estopped from questioning the validity of R.A. No. 7080 because he had earlier voted for its passage would result in injustice not only to him, but to all others who may be held liable under this statute. In People vs. Vera,[138] citing the U.S. case of Attorney General v. Perkins, the

Court held:

> x x x The idea seems to be that the people are estopped from questioning the validity of a law enacted by their representatives; that to an accusation by the people of Michigan of usurpation upon their government, a statute enacted by the people of Michigan is an adequate statute relied on in justification is unconstitutional, it is a statute only in form, and lacks the force of law, and is of no more saving effect to justify action under it it had never been enacted. the constitution is the supreme law, and to its behests the courts, the legislature, and the people must bow. x x x[139]

The Court should not sanction the use of an equitable remedy to defeat the ends of justice by permitting a person to be deprived of his life and liberty under an invalid law.

Undoubtedly, the reason behind the enactment of R.A. 7080 is commendable. It was a response to the felt need at the time that existing laws were inadequate to penalize the nature and magnitude of corruption that characterized a "previous regime."[140] However, where the law, such as R.A. 7080, is so indefinite that the line between innocent and condemned conduct becomes a matter of guesswork, the indefiniteness runs afoul of due process concepts which require that persons be given full notice of what to avoid, and that the discretion of law enforcement officials, with the attendant dangers of arbitrary and discriminatory enforcement, be limited by explicit legislative standards.[141] It obfuscates the mind to ponder that such an ambiguous law as R.A. No. 7080 would put on the balance the life and liberty of the accused against whom all the resources of the State are arrayed. It could be used as a tool against political enemies and a weapon of hate and revenge by whoever wields the levers of power.

I submit that the charge against petitioner in the Amended Information in Criminal Case No. 26558 does not constitute "plunder" under R.A. No. 7080, as amended by R.A. No. 7659. If at all, the acts charged may constitute offenses punishable under the Anti-Graft and Corrupt Practices Act (R.A. No. 3019) or the Revised Penal Code. Hence, the information charging petitioner with plunder must be quashed. Such quashal, however, should be without prejudice to the filing of new informations for acts under R.A. No. 3019, of the Revised Penal Code and other laws. Double jeopardy would not bar the filing of the same because the dismissal of the case is made with the express consent of the petitioner-accused.[142]

In view of the foregoing, I vote to GRANT the petition.

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[1] Joaquin G. Bernas, S.J., Prejudging the Supreme Court, in his column "Sounding Board", Today, September 26, 2001, p. 6.

[2] An Act to Impose the Death Penalty on Certain Heinous Crimes, amending for that purpose the Revised Penal Code and Other Special Penal Laws, namely: Dangerous Drugs Act, Crime of Plunder, and Anti-Carnapping Act (1993).

[3] 87 O.G. 38, pp. 5488-5490 (1991).

[4] Annex "C" of Petition.

[5] Amended Petition, p. 8.

[6] Section 1(d).

[7] Memorandum for Petitioner, p.11.

[8] Amended Petition., pp. 13-17; Memorandum for Petitioner, pp. 16-24.

According to petitioners:

- While American federal courts in the First Circuit in the U.S. have defined "series of acts or transactions" for purposes of Rule 8(b) of the Federal Rules of Criminal Procedure to refer only to "joint criminal enterprise" [U.S. v. Turkette (1980, CA 1 Mass. 632 F 2d 896)] under a common scheme [U.S. v. J. Tirocchi & Sons, Inc. (1960 DC RI) 187 F. Supp. 778], the courts in the Second Circuit insist that "series of acts and transactions" should mean that there should be "connection between the offenses" [U.S. v. Charney (1962, SD BY) 211 F. Supp. 904] or "direct relationship between counts" [U.S. v. Haim (1963 SD NY), 218 F. Supp. 922] or "substantial identity of facts and participants" [U.S. v. Olin Corp. (1979, WD NY), 465 S. Supp. 1120].

- Still on the U.S. Federal courts, the courts in the Third Circuit define "series of acts" following the "direct relationship between acts" standard of the Second Circuit; for example, U.S. v. Stafford (1974, ED Pa.), 382 F. Supp. 1401) using "factual relationship between acts"; U.S. v. Slawik (1975, DC Del.) 408 F. Supp. 190, using "connection between charges"; U.S. v. Cohen (1978, ED Pa.) 444 F. Supp. 1314, using "direct relationship between offenses"; and U.S. v. Serubo (1978, ED Pa.) 460 F. Supp. 689), using "direct relationship between offenses", but the federal courts in the Fourth Circuit follow the "common scheme" standard, as in Rakes v. U.S. (169 F2d 730).

- The Sixth Circuit courts define "series" to mean "common scheme" (e.g. U.S. v. Russo (480 F2d 1228) and so do the courts in the Seventh Circuit (e.g. U.S. v. Scott, (1969, CA 7 Ill.) (413 F2d 932), and Eighth Circuit Courts (e.g. Haggard v. U.S. (1966, CA 8 Mo.) 369 F2d 968), but the courts in the Fifth Circuit follow the "close connection between acts" standard, (e.g. U.S. v. Laca (1974 CA 5 Tex) 593 F2d 615) or "substantial identity of facts and participants" (e.g. U.S. v. Levine (1977 CA 5 Fla.) 546 F2d 658; U.S. v. Marionneaux (1975 CA 5 La.) 514 F2d 1244) together with federal courts in the Ninth Circuit (e.g. U.S. v. Ford (1980 CA 9 Cal..) 632 F2d 1354) and those in the District of Columbia Circuit (U.S. v. Jackson (1977) 562 F2d 789; U.S. v. Bachman, (1958 DC Dist. Col.) 164 F. Suppl. 898). [Amended Petition, pp. 14-16; Memorandum for Petitioner, pp. 20-22.]

[9] Amended Petition, pp. 18-19; Memorandum for Petitioner, pp. 34-45.

[10] Id., at 13-14; Id., at 19.

[11] Id., at 16-17; Id., at 23.

[12] Id., at 25-34.

[13] Id., at 27-31;Id., at. 66-76.

[14] Id., at 27-35; Id., at 76-83.

[15] Comment, pp. 11-13; Memorandum for Respondents, pp. 30-32.

[16] Ibid.; Id., at 49-50.

[17] Id., at 13-25; Id., at 58-59.

[18] Id., at 28-33; Id.., at 70-77.

[19] Id., at 33-34.

[20] Comment, pp. 37-42; Memorandum for Respondents, pp. 82-84.

[21] Reply to Comment, p. 12.

[22] Id., at 14-15.

[23] TSN, Hearing on oral arguments, September 18, 2001, pp. 2-3.

[24] Tan vs. People, 290 SCRA 117 (1998); see also Padilla vs. Court of Appeals, 269 SCRA 402 (1997).

[25] Morfe vs. Mutuc, 22 SCRA 424 (1968).

[26] State v. Vogel, 467 N.W.2d 86 (1991).

[27] See Id.

[28] ART. III, Sections 1, 12 and 14.

In Ermita-Malate Hotel and Motel Operators Association, Inc. vs. City Mayor of Manila (20 SCRA 849 [1967]), the Court expounded on the concept of due process as follows:

> x x x What then is the standard of due process which must exist both as a procedural and a substantive requisite to free the challenged ordinance, or any governmental action for that matter, from the imputation of legal infirmity sufficient to spell its doom? It is responsiveness to the supremacy of reason, obedience to the dictates of justice. Negatively put, arbitrariness is ruled out and unfairness avoided. To satisfy the due process requirement, official action, to paraphrase Cardozo, must not outrun the bounds of reason and result in sheer oppression. Due process is thus hostile to any official action marred by lack of reasonableness. Correctly it has been identified as freedom from arbitrariness. It is the embodiment of the sporting idea of fair play. It exacts fealty 'to those strivings for justice' and judges the act of officialdom of whatever branch 'in the light of reason drawn from considerations of fairness that reflect [democratic] traditions of legal and political thought.' It is not a narrow or 'technical conception with fixed content unrelated to time, place and circumstances,' decisions based on such a clause requiring a 'close and perceptive inquiry into fundamental principles of our society." Questions of due process are not to be treated narrowly or pedantically in slavery to form or phrases (at pp. 860-861).

[29] ART. III, Section 14.

[30] People v. Nazario, 165 SCRA 186 (1988).

[31] 347 U.S. 612 (1954).

[32] Id., at 617.

[33] Kolender v. Lawson, 461 U.S. 352 (1983).

[34] Ibid.

[35] See Grayned v. City of Rockford, 408 U.S. 104 (1972).

[36] Ibid.

[37] Kolender, supra.

[38] Ibid.

[39] Section 2.

[40] See FCC v. American Broadcasting Co., 347 US 284 (1954).

[41] See Dissenting Opinion of Justice Vicente V. Mendoza, pp. 10-12.

[42] RELATIONS BETWEEN VAGUENESS AND OVERBREADTH - THE VOID FOR VAGUE DOCTRINE, American Constitutional Law (2[nd]) (1998), p. 1033 citing Lanzetta v. New Jersey, 306 U.S. 451 (1939). See

also Springfield Armory, Inc. v. City of Columbus, 29 F.3d 250, 1994 FED App 239P (6[th] Cir. 1994); Connally v. General Construction Company, 269 U.S. 385 (1926); Lambert v. California, 355 U.S. 225 1957); Kolender v. Lawson, supra.

[43] THE OVERBREADTH DOCTRINE, Treatise on Constitutional Law - Substance and Procedure, Vol. IV (1992), pp. 25-31; 36-37.

[44] See Note 42.

[45] Springfield Armory, Inc. v. City of Columbus, supra.

[46] See Concurring Opinion of Justice Vicente V. Mendoza, pp. 10-12.

[47] RELATIONS BETWEEN VAGUENESS AND OVERBREADTH - THE VOID FOR VAGUE DOCTRINE, American Constitutional Law (2[nd]) [1998], p. 1033 citing Lanzetta v. New Jersey, 306 U.S. 451 [1939]. See also Springfield Armory, Inc. v. City of Columbus, 29 F.3d 250, 1994 FED App 239P [6[th] Cir. 1994]; Connally v. General Construction Company, 269 U.S. 385 [1926]; Lambert v. California, 355 U.S. 225 [1957]; Kolender v. Lawson, 461 U.S. 352 [1953].

[48] 413 U.S. 601 [1973].

[49] VAGUENESS AND OVERBREADTH, AN OVERVIEW, Lockhart et al. Constitutional Law, Cases-Comments-Questions [6th Ed, 1986], p. 740.

[50] Springfield v. Oklahoma, supra; Kolender v. Lawson, supra.

[51] Supra.

[52] Supra.

[53] At p. 253.

[54] See Concurring Opinion of Justice Mendoza, p. 5.

[55] See Decision, p. 7.

[56] The transcript of Stenographic Notes of the Hearing in Criminal Case No. 26561 on June 13, 2001, p. 16 reads:

PJ Garchitorena:

> x x x
>
> But you see, I will provoke you. Forgive us for provoking you, but we ourselves have been quarrelling with each other in finding ways to determine what we understand by plunder.
>
> x x x

[57] Infra.

[58] In his column on the April 25, 2001 issue of Today, Fr. Bernas stated:

> x x x
>
> One question that has come up is whether a public official can commit more than one crime of plunder during his or her incumbency. There are those who hold that the law describes only one crime and that it cannot be split into several offenses. This would mean that the prosecution must weave a web of offenses out of the six

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> ways of illegally amassing wealth and show how the various acts reveal a combination or series of means or schemes which reveal a pattern of criminality. My understanding is that under such a reading the six ways of amassing wealth should not be seen as separate from each other but must be shown to be parts of one combination or scheme. The interrelationship of the separate acts must be shown.
>
> An alternate reading of the law, which is perhaps easier to prove but harsher on the accused, is that each one of the six ways of amassing wealth can constitute plunder if the total take adds up to the required P75 million.
>
> x x x
>
> There is another provision in the law which I find intriguing. It says: "For purposes of establishing the crime of plunder, it shall not be necessary to prove each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth, it being sufficient to establish beyond reasonable doubt a pattern of overt criminal acts indicative of the overall unlawful scheme or conspiracy." Is this an indication that there is only one crime of plunder under the statute?

Fr. Bernas also discussed the vagueness of "combination" or "series" in the July 1, 2001 issue of Today:

> Taken individually, the elements that are supposed to constitute the series can be well understood. But now the Estrada lawyers are asking when precisely these elements constitute a "combination or series". The question is important because of an intriguing provision in the plunder law: "For purposes of establishing the crime of plunder, it shall not be necessary to prove each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth, it being sufficient to establish beyond reasonable doubt a pattern of overt criminal acts indicative of the overall unlawful scheme or conspiracy." How can you have a "series of criminal acts if the elements that are supposed to constitute the series are not proved to be criminal?

[59] Decision, p. 12.

[60] Id., at 14.

[61] Decision, pp. 12-14.

[62] RECORD OF THE JOINT CONFERENCE MEETING COMMITTEE ON JUSTICE AND COMMITTEE ON CONSTITUTIONAL AMENDMENTS (S. No. 733 & H. No. 22752), May 7, 1991, pp. 39-40.

[63] Decision, p. 14.

[64] RECORDS OF THE SENATE, June 6, 1989, pp. 92-93.

[65] RECORDS OF THE SENATE, June 5, 1989, pp. 34.

[66] Reply to Comment, p. 33.

[67] Ibid.

[68] Id.

[69] Id.

[70] RECORD OF THE JOINT CONFERENCE MEETING COMMITTEE ON JUSTICE AND COMMITTEE ON CONSTITUTIONAL AMENDMENTS (S. No. 733 & H. No. 22752), May 7, 1991, p. 40.

[71] Ibid.

[72] Id.

[73] Id.

[74] Id.

[75] Id., at 40-41.

[76] Id., at 42-43.

[77] Article III of the Constitution provides:

> Sec. 1. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.
>
> x x x
>
> Sec. 19(1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua. (Emphasis supplied.)

[78] Reply to Comment, pp.16-18; Memorandum for Petitioner, pp. 62-63.

[79] Article 335, Revised Penal Code.

[80] Article 249, Revised Penal Code.

[81] Rubi vs. Provincial Board of Mindoro, 39 Phil 660 (1919).

[82] See Article XIII, Section 1 and 2, Constitution.

[83] Id., at Section 6.

[84] Id., at Section 3.

[85] Id., at Section 5.

[86] Id., at Section 7.

[87] Id., at Section 14.

[88] See Article XIV, Constitution..

[89] Comment, p. 13.

[90] Decision, pp. 14-15.

[91] Alpha Investigation and Security Agency, 272 SCRA 653 (1997).

[92] 11 Oxford English Dictionary 357 (2d ed 1989).

[93] Webster's Third New International Dictionary, p. 2029 (1976).

[94] H.J. Inc., et al. v. Northwestern Bell Telephone Co., et al., 492 US 229 (1989)

[95] Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479 (1985).

[96] Supra.

[97] Id., at 236.

[98] Justice Scalia was joined by Chief Justice Rehnquist, Justices O'Connor and Kennedy.

[99] Atkinson, Jeff. "RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS," § § 1961-68: Broadest of the Federal Criminal Statutes, 69 JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY 1 (1978).

[100] 18 U.S.C. § 1962 (1970):

> (a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which effect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, an do not confer, either in law or in fact, the power to elect one or more directors of the issuer.
>
> (b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.
>
> (c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.
>
> (d) It shall be unlawful for any person to conspire to violate any of the provisions of subsections (a), (b), or (c) of this section.

[101] Id., at § 1961(5).

[102] See RECORDS JOINT CONFERENCE COMMITTEE MEETING, May 7, 1991, p. 12.

[103] Northwestern, supra.

[104] Id., at 239:

> RICO's legislative history reveals Congress' intent that to prove a pattern of racketeering activity a plaintiff or prosecutor must show that the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity. Citing 116 Cong Rec 18940 (1970)

[105] Id., at 240.

[106] Id.,at 241.

[107] Separate Concurring Opinion, pp. 255-256.

[108] The issue involved in this case was whether Northwestern Bell Telephone Co., Inc. was liable under the RICO Law for bribing the members of the Minnesota Public Utilities Commission to approve rates for the company in excess of a fair and reasonable amount. The U.S. Supreme Court reversed the District Court of Minnesota and held that (1) to prove a "pattern of racketeering activity" within the meaning of RICO, it must be shown that the predicate acts of racketeering activity are related and that they amount to or pose a threat of continued criminal activity; (2) it is not only by proof of multiple schemes that continuity of criminal activity may

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be shown; (3) a pattern of racketeering activity may be shown regardless of whether the racketeering activities are characteristic of "organized crime"; and (4) remand was necessary because, under the facts alleged, it might be possible to prove that the defendants' actions satisfied the requirements of relatedness and continuity and they thus constituted a "pattern of racketeering activity".

[109] See United States v. Masters, 924 F.2d 1362 (7[th] Cir.), cert. denied 11 S. Ct. 2019 (1991); United States v. Pungitore, 910 F.2d 1084 (3[rd] Cir. 1990), cert. denied, 11 S.Ct. 2009-11 (1991); United States v. Angiulo, 897 F.2d 1169 (1[st] Cir.), cert. denied, 111 S. Ct. 130 (1990). All cases cited in Moran, Christopher, infra.

[110] Bauerschmidt, Joseph E., Mother of Mercy - Is this the End of RICO? - Justice Scalia Invites Constitutional Void-for-Vagueness Challenge to RICO "Pattern", 65 NOTRE DAME LAW REVIEW 1106 (1990).

[111] Moran, Christopher. Is the "Darling" in Danger? "Void for Vagueness" - The Constitutionality of the RICO Pattern Requirement, 36 VILLANOVA LAW REVIEW 1697 (1991) citing:

> COLO. REV. STAT. § 18-17-103(3): "Pattern of racketeering activity" means engaging in at least two acts of racketeering activity which are related to the conduct of the enterprise, if at least one of such acts occurred in this state after July 1, 1981, and if the last of such acts occurred within ten years (excluding any period of imprisonment) after a prior act of racketeering activity.
>
> CONN. GEN. STAT. ANN. § 53-394(e) (West 1985): "Pattern of racketeering activity" means engaging in at least two incidents of racketeering activity that have the same or similar purposes, results, participants, victims or methods of commission or otherwise are interrelated by distinguishing characteristics, including a nexus to the same enterprise, and are not isolated incidents, provided at least one of such incidents occurred after the effective date of this act and that the last of such incidents occurred within five years after a prior incident of racketeering conduct.
>
> GA. CODE ANN. § 16-14-3(8) (Supp. 1991): "Pattern of racketeering activity" means engaging in at least two incidents of racketeering activity that have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such incidents occurred after July 1, 1980, and that the last of such incidents occurred within four years, excluding any periods of imprisonment, after the commission of a prior incident of racketeering activity.
>
> IDAHO CODE § 18-7803(d) (1987): "Pattern of racketeering activity" means engaging in at least two (2) incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one (1) of such incidents occurred after the effective date of this act and that the last of such incidents occurred within five (5) years after a prior incident of racketeering conduct.
>
> IND. CODE ANN. § 35-45-6-1 (West 1986): "Pattern of racketeering activity" means engaging in at least two (2) incidents of racketeering activity that have the same or similar intent, result, accomplice, victim, or method of commission, or that are otherwise interrelated by distinguishing characteristics [sic] that are not isolated incidents. However, the incidents are a pattern of racketeering activity only if at least one (1) of the incidents occurred after August 31, 1980, and if the last of the incidents occurred within five (5) years after a prior incident of racketeering activity.
>
> LA. REV. STAT. ANN. § 15:1352 (C) (West Supp. 1992): "Pattern of drug racketeering activity" means engaging in at least two incidents of drug racketeering activity that have the same or similar intents, results, principals, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such occurs after a prior incident of drug racketeering activity.

MISS. CODE ANN. § 97-43-3(d) (Supp 1989): "Pattern of racketeering activity" means engaging in at least two (2) incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one (1) of such incidents occurred after the effective date of this chapter and that the last of such incidents occurred within five (5) years after a prior incident of racketeering conduct.

N.C. GEN. STAT. § 75D-3(b) (1990): "Pattern of racketeering activity means engaging in at least two incidents of racketeering activity that have the same or similar purposes, results, accomplices, victims or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated and unrelated incidents, provided at least one of such incidents occurred after October 1, 1986, and that at least one other of such incidents occurred within a four-year period of time of the other, excluding any periods of imprisonment, after the commission of a prior incident of racketeering activity.

OR. REV. STAT. § 166.715(4) (1990): "Pattern of racketeering activity" means engaging in at least two incidents of racketeering activity that have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics, including a nexus to the same enterprise, and are not isolated incidents, provided at least one of such incidents occurred after November 1, 1981, and that the last of such incidents occurred within five years after a prior incident of racketeering activity.

TENN. CODE ANN. § 39-12-203(6) (1991): "Pattern of racketeering activity" means engaging in at least two (2) incidents of racketeering activity that have the same or similar intents, results, accomplices, victims or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated incidents; provided, that at least one (1) of such incidents occurred after July 1, 1986, and that the last of such incidents occurred within two (2) years after a prior incident of racketeering conduct.

WASH. REV. CODE ANN. § 9A.82.010(15) (1988): "Pattern of criminal profiteering activity" means engaging in at least three acts of criminal profiteering, one of which occurred after July 1, 1985, and the last of which occurred within five years, excluding any period of imprisonment, after the commission of the earliest act of criminal profiteering. In order to constitute a pattern, the three acts must have the same or similar intent, results, accomplices, principals, victims or methods of commission, or be otherwise interrelated by distinguishing characteristics including a nexus to the same enterprise, and must not be isolated events.

[112] Id., citing:

CAL. PENAL CODE § 186.2(b) (West 1988): "Pattern of criminal profiteering activity" means engaging in at least to incidents of criminal profiteering, as defined by this act, which meet the following requirements: (1) Have the same or similar purpose, result, principals, victims or methods of commission, or are otherwise interrelated by distinguishing characteristics[;] (2) Are not isolated events[; and] (3) Were committed as criminal activity of organized crime.

[113] Id., citing:

DEL. CODE ANN. Tit. 11. § 1502(5) (1987): "Pattern of racketeering activity" shall mean 2 or more incidents of conduct: a. That: 1. Constitute racketeering activity; 2. Are related to the affairs of the enterprise; 3. Are not so closely related to each other and connected in point of time and place that they constitute a single event; and b. Where: 1. At least 1 of the incidents of conduct occurred after July 9, 1986; 2. The last incident of conduct occurred within 10 years after a prior occasion of conduct . . .

OHIO REV. CODE ANN. §2923.31(E) (Anderson Supp. 1991): "Pattern of corrupt activity" means two or more incidents of corrupt activity, whether or not there has been a prior conviction, that are related to the affairs of the same enterprise, are not isolated, and are not so closely related to each other and connected in time and place that they constitute a single event. At least one of the incidents forming the pattern shall occur

on or after January 1, 1986. Unless any incident was an aggravated murder or murder, the last incidents forming the pattern shall occur within six years after the commission of any prior incident forming the pattern, excluding any period of imprisonment served by any person engaging in the corrupt activity.

OKLA. STAT. ANN. tit. 22, § 1402(5) (West Supp. 1992): Pattern of racketeering activity" means two or more occasions of conduct: a. that include each of the following: (1) constitute racketeering activity, (2) are related to the affairs of the enterprise, (3) are not isolated, (4) are not so closely related to each other and connected in point of time and place that they constitute a single event, and b. where each of the following is present: (1) at least one of the occasions of conduct occurred after November 1, 1988, (2) the last of the occasions of conduct occurred within three (3) years, excluding any period of imprisonment served by the person engaging in the conduct, of a prior occasion of conduct . . .

WIS. STAT. ANN. § 946.82(3) (West Supp. 1991): "Pattern of racketeering activity" means engaging in at least 3 incidents of racketeering activity that the same or similar intents, results, accomplices, victims or methods of commission or otherwise are interrelated by distinguishing characteristics, provided at least one of the incidents occurred after April 27, 1982 and that the last of the incidents occurred within 7 years after the first incident of racketeering activity. Acts occurring at the same time and place which may form the basis for crimes punishable under more than one statutory provision may count for only one incident of racketeering activity.

[114] Id., citing:

MINN. STAT. ANN. §609.902(6) (West Supp. 1992): "Pattern of criminal activity" means conduct consisting constituting three or more criminal acts that: (1) were committed within ten years of the commencement of the criminal proceedings; (2) are neither isolated incidents, nor so closely related and connected in point of time or circumstance of commission as to constitute a single criminal offense; and (3) were either: (i) related to one another through a common scheme or plan or shared criminal purpose or (ii) committed, solicited, requested, importuned, or intentionally aided by persons acting with the mental culpability required for the commission of the criminal acts and associated with or in an enterprise involved in these activities.

N.Y. PENAL LAW §460.10(4) (McKinney 1989): "Pattern of criminal activity" means conduct engaged in by persons charged in an enterprise corruption count constituting three or more criminal acts that: (a) were committed within ten years of the commencement of the criminal action; (b) are neither isolated incidents, nor so closely related and connected in point in time or circumstance of commission as to constitute a criminal offense or criminal transaction . . . ; and (c) are either: (i) related to one another through a common scheme or plan or (ii) were committed, solicited, requested, importuned or intentionally aided by persons acting with the mental culpability required for the commission thereof and associated with or in the criminal enterprise.

[115] Luskin, Robert D. Behold, The Day of Judgment: Is the RICO Pattern Requirement Void for Vagueness? 64 ST. JOHN'S LAW REVIEW 779 (1990).

[116] Memorandum for Petitioner, p. 47; TSN, Oral Arguments, September 18, 2001, see pp. 224-233.

[117] Memorandum for Petitioner, p. 47.

[118] See Kolender v. Lawson, supra

[119] 18 U.S.C. § 1961 (5). .

[120] See U.S. v. Batchelder, 442 US 114, 60 L Ed 2d 755, 99 S Ct 2198 (1979).

[121] Through Justice Brennan.

[122] Supra.

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[123] Decision, pp. 21-22.

[124] Today, July 1, 2001 issue.

[125] In People vs. Echegaray (267 SCRA 682) the word "heinous" was traced to the early Spartans' word "haineus" which means hateful and abominable. In turn, the word came from the Greek prefix "haton" indicating acts so hateful or shockingly evil. (at 715)

[126] WHEREAS, the crimes punishable by death under this Act are heinous for being grievous, odious and hateful offenses and which, by reason of their inherent or manifest wickedness, viciousness, atrocity and perversity are repugnant and outrageous to the common standards and norms of decency and morality in a just, civilized and ordered society.

[127] Reyes, Luis B. THE REVISED PENAL CODE, Book One (13th ed.), p. 56.

[128] Petitioner's Memorandum, p. 81.

[129] Dennis v. U.S., 314 U.S. 494 (1951).

[130] Scales v. U.S., 203 (1961).

[131] Smith v. California, 361 U.S. 147 (1959).

[132] 342 U.S. 246 (1952).

[133] Regalado, Florenz, CRIMINAL LAW CONSPECTUS (2001 ED.), 161-162.

[134] Atty. Rene A.V. Saguisag.

[135] Senate Bill No. 733.

[136] Tañada and Macapagal vs. Cuenco, 103 Phil. 1093.

[137] Commercial National Bank v. Rowe, 666 So. 2d 1312 (1996).

[138] 65 Phil. 56 (1937).

[139] Id., at 90.

[140] See Explanatory Note, Senate Bill No. 733, Records of the Senate, June 1, 1989, pp. 1-2.

[141] See Papachristou v. Jacksonville, 405 U.S. 156 (1972).

[142] One of the reliefs sought in the Prayer contained in the Petition (at p. 37) and in Petitioner's Memorandum (at p. 84) is for the quashal of the Information in Criminal case No. 26558 for being null and void.

Double jeopardy attaches only when all of the following circumstances are present: (1) upon a valid indictment; (2) before a competent court; (3) after arraignment; (4) when a valid plea has been entered; and (5) when the accused was acquitted or convicted or the case was dismissed or otherwise terminated without the express consent of the accused (Tecson vs. Sandiganbayan, 318 SCRA 80, 89 [1999]).

CONCURRING IN THE JUDGMENT

MENDOZA, J.:

Before I explain my vote, I think it necessary to restate the basic facts.

Petitioner Joseph Ejercito Estrada was President of the Philippines until January 20, 2001 when he was forced to vacate the presidency by people power and then Vice President Gloria Macapagal-Arroyo succeeded him in office.[1] He was charged, in eight cases filed with the Sandiganbayan, with various offenses committed while in office, among them plunder, for allegedly having amassed ill-gotten wealth in the amount of P4.1 billion, more or less. He moved to quash the information for plunder on the ground that R.A. No. 7080, otherwise called the Anti-Plunder Law, is unconstitutional and that the information charges more than one offense.

In its resolution dated July 9, 2001, the Sandiganbayan denied petitioner's motion, along with those filed by his co-accused, Edward Serapio, and his son, Jose "Jinggoy" Estrada. Petitioner brought this petition for certiorari and prohibition under Rule 65 to set aside the Sandiganbayan's resolution principally on the ground that the Anti-Plunder Law is void for being vague and overbroad. We gave due course to the petition and required respondents to file comments and later heard the parties in oral arguments on September 18, 2001 and on their memoranda filed on September 28, 2001 to consider the constitutional claims of petitioner.

I. THE ANTI-PLUNDER LAW

The Anti-Plunder Law (R.A. No. 7080) was enacted by Congress on July 12, 1991 pursuant to the constitutional mandate that "the State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption."[2] Section 2 of the statute provides:

> Definition of the Crime of Plunder; Penalties. - Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1(d) hereof in the aggregate amount or total value of at least Fifty million pesos (P50,000,000.00) shall be guilty of the crime of plunder and shall be punished by reclusion perpetua to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State. (As amended by Sec. 12, R.A. No. 7659).

The term "ill-gotten wealth" is defined in §1(d) as follows:

> "Ill-gotten wealth," means any asset, property, business enterprise or material possession of any person within the purview of Section Two (2) hereof, acquired by him directly or indirectly through dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes:
> 1) Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury.
>
> 2) By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;
>
> 3) By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or

any of its subdivisions, agencies or instrumentalities or government-owned or controlled corporations and their subsidiaries.

4) By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;

5) By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or

6) By taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

Section 4 of the said law states:

Rule of Evidence. - For purposes of establishing the crime of plunder, it shall not be necessary to prove each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth, it being sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy.

II. ANTI-PLUNDER LAW NOT TO BE JUDGED

"ON ITS FACE"

The amended information against petitioner charges violations of §2, in relation to §1(d)(1)(2), of the statute. It reads:

AMENDED INFORMATION

The undersigned Ombudsman Prosecutor and OIC-Director, EPIB, Office of the Ombudsman, hereby accuses former President of the Republic of the Philippines, Joseph Ejercito Estrada a.k.a "Asiong Salonga" and a.k.a "Jose Velarde," together with Jose "Jinggoy" Estrada, Charlie "Atong" Ang, Edward Serapio, Yolanda T. Ricaforte, Alma Alfaro, John Doe a.k.a. Eleuterio Tan or Eleuterio Ramos Tan or Mr. Uy, Jane Doe a.k.a. Delia Rajas, and John Does & Jane Does, of the crime of plunder, defined and penalized under R.A. No. 7080, as amended by Sec. 12 of R.A. No. 7659, committed as follows:
That during the period from June, 1998 to January, 2001, in the Philippines, and within the jurisdiction of this Honorable Court, accused Joseph Ejercito Estrada, then a public officer, being then the President of the Republic of the Philippines, by himself and/or in connivance/conspiracy with his co-accused, who are members of his family, relatives by affinity or consanguinity, business associates, subordinates and/or other persons, by taking undue advantage of his official position, authority, relationship, connection, or influence, did then and there wilfully, unlawfully and criminally amass, accumulate and acquire by himself, directly or indirectly, ill-gotten wealth in the aggregate amount or total value of four billion ninety seven million eight hundred four thousand one hundred seventy three pesos and seventeen centavos [P4,097,804,173.17], more or less, thereby unjustly enriching himself or themselves at the expense and to the damage of the Filipino people and the Republic of the Philippines, through any or a combination or a series of overt or criminal acts, or similar schemes or means, described as follows:

(a) by receiving or collecting, directly or indirectly, on several instances, money in the aggregate amount of five hundred forty-five million pesos (P545,000,000.00), more or less, from illegal gambling in the form of gift, share, percentage, kickback or any form of pecuniary benefit, by himself and/or in connivance with co-accused Charlie "Atong" Ang, Jose "Jinggoy" Estrada, Yolanda T. Ricaforte, Edward Serapio, and John Does and Jane Does, in consideration of toleration or protection of illegal gambling;

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(b) by diverting, receiving, misappropriating, converting or misusing directly or indirectly, for his or their personal gain and benefit, public funds in the amount of ONE HUNDRED THIRTY MILLION PESOS [P130,000,000.00], more or less, representing a portion of the two hundred million pesos [P200,000,000.00] tobacco excise tax share allocated for the Province of Ilocos Sur under R.A. No. 7171, by himself and/or in connivance with co-accused Charlie "Atong" Ang, Alma Alfaro, John Doe a.k.a. Eleuterio Tan or Eleuterio Ramos Tan or Mr. Uy, and Jane Doe a.k.a. Delia Rajas, and other John Does and Jane Does;

(c) by directing, ordering and compelling, for his personal gain and benefit, the Government Service Insurance System (GSIS) to purchase 351,878,000 shares of stocks, more or less, and the Social Security System (SSS), 329,855,000 shares of stocks, more or less, of the Belle Corporation in the amount of more or less one billion one hundred two million nine hundred sixty five thousand six hundred seven pesos and fifty centavos [P1,102,965,607.50] and more or less seven hundred forty four million six hundred twelve thousand and four hundred fifty pesos [P744,612,450.00], respectively, or a total of more or less one billion eight hundred forty seven million five hundred seventy eight thousand fifty seven pesos and fifty centavos [P1,847,578,057.50]; and by collecting or receiving, directly or indirectly, by himself and/or in connivance with John Does and Jane Does, commissions or percentages by reason of said purchases of shares of stock in the amount of one hundred eighty nine million seven hundred thousand pesos [P189,700,000.00], more or less, from the Belle Corporation which became part of the deposit in the Equitable-PCI Bank under the account name "Jose Velarde";

(d) by unjustly enriching himself from commissions, gifts, shares, percentages, kickbacks, or any form of pecuniary benefits, in connivance with John Does and Jane Does, in the amount of more or less three billion two hundred thirty three million one hundred four thousand one hundred seventy three pesos and seventeen centavos [P3,233,104,173.17] and depositing the same under his account name "Jose Velarde" at the Equitable-PCI Bank.

CONTRARY TO LAW.

Manila for Quezon City, Philippines, 18 April 2001

But, although this is a prosecution under §2, in relation to §1(d)(1)(2), what we are seeing here is a wholesale attack on the validity of the entire statute. Petitioner makes little effort to show the alleged invalidity of the statute as applied to him. His focus is instead on the statute as a whole as he attacks "on their face" not only §§1(d)(1)(2) of the statute but also its other provisions which deal with plunder committed by illegal or fraudulent disposition of government assets (§1(d)(3)), acquisition of interest in business (§1(d)(4)), and establishment of monopolies and combinations or implementation of decrees intended to benefit particular persons or special interests (§1(d)(5)).

These other provisions of the statute are irrelevant to this case. What relevance do questions regarding the establishment of monopolies and combinations, or the ownership of stocks in a business enterprise, or the illegal or fraudulent dispositions of government property have to the criminal prosecution of petitioner when they are not even mentioned in the amended information filed against him? Why should it be important to inquire whether the phrase "overt act" in §1(d) and §2 means the same thing as the phrase "criminal act" as used in the same provisions when the acts imputed to petitioner in the amended information are criminal acts? Had the provisions of the Revised Penal Code been subjected to this kind of line-by-line scrutiny whenever a portion thereof was involved in a case, it is doubtful if we would have the jurisprudence on penal law that we have today. The prosecution of crimes would certainly have been hampered, if not stultified. We should not even attempt to assume the power we are asked to exercise. "The delicate power of pronouncing an Act of Congress unconstitutional is not to be exercised with reference to hypothetical cases . . . . In determining the sufficiency of the notice a statute must of necessity be examined in the light of the conduct with which a defendant is charged."[3]

Nonetheless, it is contended that because these provisions are void for being vague and overbroad, the entire statute, including the part under which petitioner is being prosecuted, is also void. And if the entire statute is void, there is no law under which he can be prosecuted for plunder. Nullum crimen sine lege, nullum poena sine lege.

Two justifications are advanced for this facial challenge to the validity of the entire statute. The first is that the statute comes within the specific prohibitions of the Constitution and, for this reason, it must be given strict scrutiny and the normal presumption of constitutionality should not be applied to it nor the usual judicial deference given to the judgment of Congress.[4] The second justification given for the facial attack on the Anti-Plunder Law is that it is vague and overbroad.[5]

We find no basis for such claims either in the rulings of this Court or of those of the U.S. Supreme Court, from which petitioner's counsel purports to draw for his conclusions. We consider first the claim that the statute must be subjected to strict scrutiny.

A. Test of Strict Scrutiny Not Applicable to Penal Statutes

Petitioner cites the dictum in Ople v. Torres[6] that "when the integrity of a fundamental right is at stake, this Court will give the challenged law, administrative order, rule or regulation stricter scrutiny" and that "It will not do for authorities to invoke the presumption of regularity in the performance of official duties." As will presently be shown, "strict scrutiny," as used in that decision, is not the same thing as the "strict scrutiny" urged by petitioner. Much less did this Court rule that because of the need to give "stricter scrutiny" to laws abridging fundamental freedoms, it will not give such laws the presumption of validity.

Petitioner likewise cites "the most celebrated footnote in [American] constitutional law," i.e., footnote 4 of the opinion in United States v. Carolene Products Co.,[7] in which it was stated:

> There may be narrower scope for operation of the presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten amendments, which are deemed equally specific when held to be embraced within the Fourteenth.
>
> It is unnecessary to consider now whether legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation, is to be subjected to more exacting judicial scrutiny under the general prohibitions of the Fourteenth Amendment than are most other types of legislation.
>
> Nor need we inquire whether similar considerations enter into the review of statutes directed at particular religious, or national, or racial minorities: whether prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry.

Again, it should be noted that what the U.S. Supreme Court said is that "there may be narrower scope for the operation of the presumption of constitutionality" for legislation which comes within the first ten amendments to the American Federal Constitution compared to legislation covered by the Fourteenth Amendment Due Process Clause. The American Court did not say that such legislation is not to be presumed constitutional, much less that it is presumptively invalid, but only that a "narrower scope" will be given for the presumption of constitutionality in respect of such statutes. There is, therefore, no warrant for petitioner's contention that "the presumption of constitutionality of a legislative act is applicable only where the Supreme Court deals with facts regarding ordinary economic affairs, not where the interpretation of the text of the Constitution is involved."[8]

What footnote 4 of the Carolene Products case posits is a double standard of judicial review: strict scrutiny for laws dealing with freedom of the mind or restricting the political process, and deferential or rational basis

standard of review for economic legislation. As Justice (later Chief Justice) Fernando explained in Malate Hotel and Motel Operators Ass'n v. The City Mayor,[9] this simply means that "if the liberty involved were freedom of the mind or the person, the standard for the validity of governmental acts is much more rigorous and exacting, but where the liberty curtailed affects what are at the most rights of property, the permissible scope of regulatory measures is wider."

Hence, strict scrutiny is used today to test the validity of laws dealing with the regulation of speech, gender, or race and facial challenges are allowed for this purpose. But criminal statutes, like the Anti-Plunder Law, while subject to strict construction, are not subject to strict scrutiny. The two (i.e., strict construction and strict scrutiny) are not the same. The rule of strict construction is a rule of legal hermeneutics which deals with the parsing of statutes to determine the intent of the legislature. On the other hand, strict scrutiny is a standard of judicial review for determining the quality and the amount of governmental interest brought to justify the regulation of fundamental freedoms. It is set opposite such terms as "deferential review" and "intermediate review."

Thus, under deferential review, laws are upheld if they rationally further a legitimate governmental interest, without courts seriously inquiring into the substantiality of such interest and examining the alternative means by which the objectives could be achieved. Under intermediate review, the substantiality of the governmental interest is seriously looked into and the availability of less restrictive alternatives are considered. Under strict scrutiny, the focus is on the presence of compelling, rather than substantial, governmental interest and on the absence of less restrictive means for achieving that interest.[10]

Considering these degrees of strictness in the review of statutes, how many criminal laws can survive the test of strict scrutiny to which petitioner proposes to subject them? How many can pass muster if, as petitioner would have it, such statutes are not to be presumed constitutional? Above all, what will happen to the State's ability to deal with the problem of crimes, and, in particular, with the problem of graft and corruption in government, if criminal laws are to be upheld only if it is shown that there is a compelling governmental interest for making certain conduct criminal and if there is no other means less restrictive than that contained in the law for achieving such governmental interest?

B. Vagueness and Overbreadth Doctrines, as Grounds for Facial Challenge,
Not Applicable to Penal Laws

Nor do allegations that the Anti-Plunder Law is vague and overbroad justify a facial review of its validity. The void-for-vagueness doctrine states that "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."[11] The overbreadth doctrine, on the other hand, decrees that "a governmental purpose may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms."[12]

A facial challenge is allowed to be made to a vague statute and to one which is overbroad because of possible "chilling effect" upon protected speech. The theory is that "[w]hen statutes regulate or proscribe speech and no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, the transcendent value to all society of constitutionally protected expression is deemed to justify allowing attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with narrow specificity."[13] The possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that the protected speech of others may be deterred and perceived grievances left to fester because of possible inhibitory effects of overly broad statutes.

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This rationale does not apply to penal statutes. Criminal statutes have general in terrorem effect resulting from their very existence, and, if facial challenge is allowed for this reason alone, the State may well be prevented from enacting laws against socially harmful conduct. In the area of criminal law, the law cannot take chances as in the area of free speech.

The overbreadth and vagueness doctrines then have special application only to free speech cases. They are inapt for testing the validity of penal statutes. As the U.S. Supreme Court put it, in an opinion by Chief Justice Rehnquist, "we have not recognized an `overbreadth' doctrine outside the limited context of the First Amendment."[14] In Broadrick v. Oklahoma,[15] the Court ruled that "claims of facial overbreadth have been entertained in cases involving statutes which, by their terms, seek to regulate only spoken words" and, again, that "overbreadth claims, if entertained at all, have been curtailed when invoked against ordinary criminal laws that are sought to be applied to protected conduct." For this reason, it has been held that "a facial challenge to a legislative Act is ... the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid."[16] As for the vagueness doctrine, it is said that a litigant may challenge a statute on its face only if it is vague in all its possible applications. "A plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others."[17]

In sum, the doctrines of strict scrutiny, overbreadth, and vagueness are analytical tools developed for testing "on their faces" statutes in free speech cases or, as they are called in American law, First Amendment cases. They cannot be made to do service when what is involved is a criminal statute. With respect to such statute, the established rule is that "one to whom application of a statute is constitutional will not be heard to attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations in which its application might be unconstitutional."[18] As has been pointed out, "vagueness challenges in the First Amendment context, like overbreadth challenges typically produce facial invalidation, while statutes found vague as a matter of due process typically are invalidated [only] `as applied' to a particular defendant."[19] Consequently, there is no basis for petitioner's claim that this Court review the Anti-Plunder Law on its face and in its entirety.

C. Anti-Plunder Law Should be Construed "As Applied"

Indeed, "on its face" invalidation of statutes results in striking them down entirely on the ground that they might be applied to parties not before the Court whose activities are constitutionally protected.[20] It constitutes a departure from the case and controversy requirement of the Constitution and permits decisions to be made without concrete factual settings and in sterile abstract contexts.[21] But, as the U.S. Supreme Court pointed out in Younger v. Harris:[22]

> [T]he task of analyzing a proposed statute, pinpointing its deficiencies, and requiring correction of these deficiencies before the statute is put into effect, is rarely if ever an appropriate task for the judiciary. The combination of the relative remoteness of the controversy, the impact on the legislative process of the relief sought, and above all the speculative and amorphous nature of the required line-by-line analysis of detailed statutes,...ordinarily results in a kind of case that is wholly unsatisfactory for deciding constitutional questions, whichever way they might be decided.

This is the reason "on its face" invalidation of statutes has been described as "manifestly strong medicine," to be employed "sparingly and only as a last resort,"[23] and is generally disfavored.[24] In determining the constitutionality of a statute, therefore, its provisions which are alleged to have been violated in a case must be examined in the light of the conduct with which the defendant is charged.[25]

This brings me to the question whether, as applied, §2, in relation to §1(d)(1)(2), of the Anti-Plunder Law is void on the ground of vagueness and overbreadth.

III. ANTI-PLUNDER LAW NEITHER VAGUE NOR OVERBROAD

As earlier noted, the case against petitioner Joseph Ejercito Estrada in the Sandiganbayan is for violation of §2, in relation to §1(d)(1)(2), of the Anti-Plunder Law, which, so far as pertinent, provide:

> SEC. 2. Definition of the Crime of Plunder; Penalties. - Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1(d) hereof in the aggregate amount or total value of at least Fifty million pesos (P50,000,000.00) shall be guilty of the crime of plunder and shall be punished by reclusion perpetua to death....
>
> SEC. 1. Definition of Terms. - ...
>
> (d) "Ill-gotten wealth," means any asset, property, business enterprise or material possession of any person within the purview of Section Two (2) hereof, acquired by him directly or indirectly through dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes:
> 1) Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury.
>
> 2) By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;

The charge is that in violation of these provisions, during the period June 1998 to January 2001, petitioner, then the President of the Philippines, willfully, unlawfully, and criminally amassed wealth in the total amount of P4,097,804,173.17, more or less, through "a combination or series of overt or criminal acts," to wit: (1) by receiving or collecting the total amount of P545,000,000.00, more or less, from illegal gambling by himself and/or in connivance with his co-accused named therein, in exchange for protection of illegal gambling; (2) by misappropriating, converting, or misusing, by himself or in connivance with his co-accused named therein, public funds amounting to P130,000,000.00, more or less, representing a portion of the share of the Province of Ilocos Sur in the tobacco excise tax; (3) by ordering the GSIS and the SSS to buy shares of stocks of the Belle Corp., worth P1,102,965,607.50 and P744,612,450.00 respectively, or the total amount of P1,847,578,057.50, for which he received as commission the amount of P189,700,000.00, more or less, from Belle Corp.; (4) by unjustly enriching himself from commissions, gifts, shares, percentages, and kickbacks in the amount of P3,233,104,173.17, which he deposited in the Equitable-PCI Bank under the name of "Jose Velarde."

Anyone reading the law in relation to this charge cannot possibly be mistaken as to what petitioner is accused of in Criminal Case No. 26558 of the Sandiganbayan. But, repeatedly, petitioner complains that the law is vague and deprives him of due process. He invokes the ruling in Connally v. General Constr. Co.[26] that "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." He does this by questioning not only §2, in relation to §1(d)(1)(2), as applied to him, but also other provisions of the Anti-Plunder Law not involved in this case. In 55 out of 84 pages of discussion in his Memorandum, petitioner tries to show why on their face these provisions are vague and overbroad by asking questions regarding the meaning of some words and phrases in the statute, to wit:

- Whether "series" means two, three, or four overt or criminal acts listed in §1(d) in view of the alleged divergence of interpretation given to this word by the Ombudsman, the Solicitor General, and the Sandiganbayan, and whether the acts in a series should be directly related to each other;

- Whether "combination" includes two or more acts or at least two of the "means or similar schemes" mentioned in §1(d);

- Whether "pattern" as used in §1(d) must be related to the word "pattern" in §4 which requires that it be "indicative of an overall unlawful scheme or conspiracy";

- Whether "overt" means the same thing as "criminal";

- Whether "misuse of public funds" is the same as "illegal use of public property or technical malversation";

- Whether "raids on the public treasury" refers to raids on the National Treasury or the treasury of a province or municipality;

- Whether the receipt or acceptance of a gift, commission, kickback, or pecuniary benefits in connection with a government contract or by reason of his office, as used in §1(d)(2), is the same as bribery in the Revised Penal Code or those which are considered corrupt practices of public officers;

- Whether "illegal or fraudulent conveyance or disposition of assets belonging to the National Government," as used in §1(d)(3), refers to technical malversation or illegal use of public funds or property in the Revised Penal Code;

- Whether mere ownership of stocks in a private corporation, such as a family firm engaged in fishing, is prohibited under §1(d)(4);

- Whether the phrase "monopolies or other combinations in restraint of trade" in §1(d)(5) means the same thing as "monopolies and combinations in restraint of trade" in the Revised Penal Code because the latter contemplates monopolies and combinations established by any person, not necessarily a public officer; and

- Whether under §1(d)(5) it is the public officer who intends to confer benefit on a particular person by implementing a decree or it is the decree that is intended to benefit the particular person and the public officer simply implements it.

Many more questions of this tenor are asked in the memorandum of petitioner[27] as well as in the dissent of MR. JUSTICE KAPUNAN. Not only are they irrelevant to this case, as already pointed out. It is also evident from their examination that what they present are simply questions of statutory construction to be resolved on a case-to-case basis. Consider, for example, the following words and phrases in §1(d) and §2:

A. "Combination or series of overt or criminal acts"

Petitioner contends that the phrase "combination or series of overt, or criminal acts" in §1(d) and §2 should state how many acts are needed in order to have a "combination" or a "series." It is not really required that this be specified. Petitioner, as well as MR. JUSTICE KAPUNAN, cites the following remarks of Senators Gonzales and Tañada during the discussion of S. No. 733 in the Senate:

> SENATOR GONZALES. To commit the offense of plunder, as defined in this Act while constituting a single offense, it must consist of a series of overt or criminal acts, such as bribery, extortion, malversation of public funds, swindling, falsification of public documents, coercion, theft, fraud, and illegal exaction, and graft or corrupt practices act and like offenses. Now, Mr. President, I think, this provision, by itself, will be vague. I am afraid that it might be faulted for being violative of the due process clause and the right to be informed of the

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> nature and cause of accusation of an accused. Because, what is meant by "series of overt or criminal acts"? I mean, would 2, 3, 4 or 5 constitute a series? During the period of amendments, can we establish a minimum of overt acts like, for example, robbery in band? The law defines what is robbery in band by the number of participants therein.
>
> In this particular case, probably, we can statutorily provide for the definition of "series" so that two, for example, would that be already a series? Or, three, what would be the basis for such a determination?
>
> SENATOR TAÑADA. I think, Mr. President, that would be called for, this being a penal legislation, we should be very clear as to what it encompasses; otherwise, we may contravene the constitutional provision on the right of the accused to due process.[28]

But, as the later discussion in the Senate shows, the senators in the end reached a consensus as to the meaning of the phrase so that an enumeration of the number of acts needed was no longer proposed. Thus, the record shows:

> SENATOR MACEDA. In line with our interpellations that sometimes "one" or maybe even "two" acts may already result in such a big amount, on line 25, would the Sponsor consider deleting the words "a series of overt or." To read, therefore: "or conspiracy COMMITTED by criminal acts such." Remove the idea of necessitating "a series." Anyway, the criminal acts are in the plural.
>
> SENATOR TAÑADA. That would mean a combination of two or more of the acts mentioned in this.
>
> THE PRESIDENT. Probably, two or more would be . . .
>
> SENATOR MACEDA. Yes, because "a series" implies several or many; two or more.
>
> SENATOR TAÑADA: Accepted, Mr. President.
>
> . . . .
>
> THE PRESIDENT: If there is only one, then he has to be prosecuted under the particular crime. But when we say "acts of plunder" there should be, at least, two or more.
>
> SENATOR ROMULO: In other words, that is already covered by existing laws, Mr. President.[29]

Indeed, the record shows that no amendment to S. No. 733 was proposed to this effect. To the contrary, Senators Gonzales and Tañada voted in favor of the bill on its third and final reading on July 25, 1989. The ordinary meaning of the term "combination" as the "union of two things or acts" was adopted, although in the case of "series," the senators agreed that a repetition of two or more times of the same thing or act would suffice, thus departing from the ordinary meaning of the word as "a group of usually three or more things or events standing or succeeding in order and having a like relationship to each other," or "a spatial or temporal succession of persons or things," or "a group that has or admits an order of arrangement exhibiting progression."[30]

In the Bicameral Conference Committee on Justice meeting held on May 7, 1991, the same meanings were given to the words "combination" and "series." Representative Garcia explained that a combination is composed of two or more of the overt or criminal acts enumerated in §1(d), while a series is a repetition of any of the same overt or criminal acts. Thus:

> REP. ISIDRO: I am just intrigued again by our definition of plunder. We say, THROUGH A COMBINATION OR SERIES OF OVERT OR CRIMINAL ACTS AS MENTIONED IN SECTION ONE HEREOF. Now when we say combination, we actually mean to say, if there are two or more means, we mean to say that number one and two or number one and something else are included, how about a series of the same act? For example, through misappropriation, conversion, misuse, will these be included also?
>
> . . . .

REP. ISIDRO: When we say combination, it seems that -

THE CHAIRMAN (REP. GARCIA): Two.

REP. ISIDRO: Not only two but we seem to mean that two of the enumerated means not twice of one enumeration.

THE CHAIRMAN (REP. GARCIA): No, no, not twice.

REP. ISIDRO: Not twice?

THE CHAIRMAN (REP. GARCIA): Yes, combination is not twice - but combination, two acts.

REP. ISIDRO: So in other words, that's it. When we say combination, we mean, two different acts. It can not be a repetition of the same act.

THE CHAIRMAN (REP. GARCIA): That be referred to series. Yeah.

REP. ISIDRO: No, no. Supposing one act is repeated, so there are two.

THE CHAIRMAN (REP. GARCIA): A series.

REP. ISIDRO: That's not [a] series. It's a combination. Because when we say combination or series, we seem to say that two or more, `di ba?

THE CHAIRMAN (REP. GARCIA): Yes, this distinguishes it, really, from ordinary crimes. That is why, I said, that is a very good suggestion because if it is only one act, it may fall under ordinary crime but we have here a combination or series of overt or criminal acts. So. . .

. . . .

REP. ISIDRO: When you say "combination", two different?

THE CHAIRMAN (REP. GARCIA): Yes.

THE CHAIRMAN (SEN. TAÑADA): Two different. . . .

REP. ISIDRO: Two different acts.

THE CHAIRMAN (REP. GARCIA): For example, ha. . .

REP. ISIDRO: Now a series, meaning, repetition. . .[31]

Thus, resort to the deliberations in Congress will readily reveal that the word "combination" includes at least two different overt or criminal acts listed in R.A. No. 7080, such as misappropriation (§1(d)(1)) and taking undue advantage of official position (§1(d)(6)). On the other hand, "series" is used when the offender commits the same overt or criminal act more than once. There is no plunder if only one act is proven, even if the ill-gotten wealth acquired thereby amounts to or exceeds the figure fixed by the law for the offense (now P50,000,000.00). The overt or criminal acts need not be joined or separated in space or time, since the law does not make such a qualification. It is enough that the prosecution proves that a public officer, by himself or in connivance with others, amasses wealth amounting to at least P50 million by committing two or more overt or criminal acts.

Petitioner also contends that the phrase "series of acts or transactions" is the subject of conflicting decisions of various Circuit Courts of Appeals in the United Sates. It turns out that the decisions concerned a phrase in Rule 8(b) of the Federal Rules of Criminal Procedure which provides:

(b) Joinder of Defendants: Two or more defendants may be charged in the same indictment or information if

> they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged on each count. (Emphasis added)

The fact that there is a conflict in the rulings of the various courts does not mean that Rule 8(b) is void for being vague but only that the U.S. Supreme Court should step in, for one of its essential functions is to assure the uniform interpretation of federal laws.

We have a similar provision in Rule 3, §6 of the 1997 Code of Civil Procedure. It reads:

> SEC. 6. Permissive joinder of parties. - All persons in whom or against whom any right to relief in respect to or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, may, except as otherwise provided in these Rules, join as plaintiffs or be joined as defendants in one complaint, where any question of law or fact common to all such plaintiffs or to all such defendants may arise in the action; but the court may make such orders as may be just to prevent any plaintiff or defendant from being embarrassed or put to expense in connection with any proceedings in which he may have no interest. (Emphasis added)

This provision has been in our Rules of Court since 1940 but it has never been thought of as vague. It will not do, therefore, to cite the conflict of opinions in the United States as evidence of the vagueness of the phrase when we do not have any conflict in this country.

B. "Pattern of overt or criminal acts"

Petitioner contends that it is not enough that there be at least two acts to constitute either a combination or series because §4 also mentions "a pattern of overt or criminal acts indicative of the overall scheme or conspiracy," and "pattern" means "an arrangement or order of things or activity."

A "pattern of overt or criminal acts" is required in §4 to prove "an unlawful scheme or conspiracy." In such a case, it is not necessary to prove each and every criminal act done in furtherance of the scheme or conspiracy so long as those proven show a pattern indicating the scheme or conspiracy. In other words, when conspiracy is charged, there must be more than a combination or series of two or more acts. There must be several acts showing a pattern which is "indicative of the overall scheme or conspiracy." As Senate President Salonga explained, if there are 150 constitutive crimes charged, it is not necessary to prove beyond reasonable doubt all of them. If a pattern can be shown by proving, for example, 10 criminal acts, then that would be sufficient to secure conviction.[32]

The State is thereby enabled by this device to deal with several acts constituting separate crimes as just one crime of plunder by allowing their prosecution by means of a single information because there is a common purpose for committing them, namely, that of "amassing, accumulating or acquiring wealth through such overt or criminal acts." The pattern is the organizing principle that defines what otherwise would be discreet criminal acts into the single crime of plunder.

As thus applied to petitioner, the Anti-Plunder Law presents only problems of statutory construction, not vagueness or overbreadth. In Primicias v. Fugoso,[33] an ordinance of the City of Manila, prohibiting the holding of parades and assemblies in streets and public places unless a permit was first secured from the city mayor and penalizing its violation, was construed to mean that it gave the city mayor only the power to specify the streets and public places which can be used for the purpose but not the power to ban absolutely the use of such places. A constitutional doubt was thus resolved through a limiting construction given to the ordinance.

Nor is the alleged difference of opinion among the Ombudsman, the Solicitor General, and the Sandiganbayan as to the number of acts or crimes needed to constitute plunder proof of the vagueness of the statute and, therefore, a

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ground for its invalidation. For sometime it was thought that under Art. 134 of the Revised Penal Code convictions can be had for the complex crime of rebellion with murder, arson, and other common crimes. The question was finally resolved in 1956 when this Court held that there is no such complex crime because the common crimes were absorbed in rebellion.[34] The point is that Art. 134 gave rise to a difference of opinion that nearly split the legal profession at the time, but no one thought Art. 134 to be vague and, therefore, void.

Where, therefore, the ambiguity is not latent and the legislative intention is discoverable with the aid of the canons of construction, the void for vagueness doctrine has no application.

In Connally v. General Constr. Co.[35] the test of vagueness was formulated as follows:

> [A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.

Holmes's test was that of the viewpoint of the bad man. In The Path of the Law, Holmes said:

> If you want to know the law and nothing else, you must look at it as a bad man, who cares only for the material consequences which such knowledge enables him to predict, not as a good one, who finds his reasons for conduct, whether inside the law or outside of it, in the vaguer sanctions of conscience.[36]

Whether from the point of view of a man of common intelligence or from that of a bad man, there can be no mistaking the meaning of the Anti-Plunder Law as applied to petitioner.

IV. PLUNDER A COMPLEX CRIME REQUIRING PROOF OF MENS REA

Petitioner argues that, in enacting the statute in question, Congress eliminated the element of mens rea, or the scienter, thus reducing the burden of evidence required for proving the crimes which are mala in se.[37]

There are two points raised in this contention. First is the question whether the crime of plunder is a malum in se or a malum prohibitum. For if it is a malum prohibitum, as the Ombudsman and the Solicitor General say it is,[38] then there is really a constitutional problem because the predicate crimes are mainly mala in se.

A. Plunder A Malum In Se Requiring Proof of Mens Rea

Plunder is a malum in se, requiring proof of criminal intent. Precisely because the constitutive crimes are mala in se the element of mens rea must be proven in a prosecution for plunder. It is noteworthy that the amended information alleges that the crime of plunder was committed "willfully, unlawfully and criminally." It thus alleges guilty knowledge on the part of petitioner.

In support of his contention that the statute eliminates the requirement of mens rea and that is the reason he claims the statute is void, petitioner cites the following remarks of Senator Tañada made during the deliberation on S. No. 733:

> SENATOR TAÑADA. . . . And the evidence that will be required to convict him would not be evidence for each and every individual criminal act but only evidence sufficient to establish the conspiracy or scheme to commit this crime of plunder.[39]

However, Senator Tañada was discussing §4 as shown by the succeeding portion of the transcript quoted by petitioner:

> SENATOR ROMULO: And, Mr. President, the Gentleman feels that it is contained in Section 4, Rule of Evidence, which, in the Gentleman's view, would provide for a speedier and faster process of attending to this kind of cases?

> SENATOR TAÑADA. Yes, Mr. President . . .[40]

Señator Tañada was only saying that where the charge is conspiracy to commit plunder, the prosecution need not prove each and every criminal act done to further the scheme or conspiracy, it being enough if it proves beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy. As far as the acts constituting the pattern are concerned, however, the elements of the crime must be proved and the requisite mens rea must be shown.

Indeed, §2 provides that -

> Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court.

The application of mitigating and extenuating circumstances in the Revised Penal Code to prosecutions under the Anti-Plunder Law indicates quite clearly that mens rea is an element of plunder since the degree of responsibility of the offender is determined by his criminal intent. It is true that §2 refers to "any person who participates with the said public officers in the commission of an offense contributing to the crime of plunder." There is no reason to believe, however, that it does not apply as well to the public officer as principal in the crime. As Justice Holmes said: "We agree to all the generalities about not supplying criminal laws with what they omit, but there is no canon against using common sense in construing laws as saying what they obviously mean."[41]

Finally, any doubt as to whether the crime of plunder is a malum in se must be deemed to have been resolved in the affirmative by the decision of Congress in 1993 to include it among the heinous crimes punishable by reclusion perpetua to death. Other heinous crimes are punished with death as a straight penalty in R.A. No. 7659. Referring to these groups of heinous crimes, this Court held in People v. Echagaray:[42]

> The evil of a crime may take various forms. There are crimes that are, by their very nature, despicable, either because life was callously taken or the victim is treated like an animal and utterly dehumanized as to completely disrupt the normal course of his or her growth as a human being. . . . Seen in this light, the capital crimes of kidnapping and serious illegal detention for ransom resulting in the death of the victim or the victim is raped, tortured, or subjected to dehumanizing acts; destructive arson resulting in death; and drug offenses involving minors or resulting in the death of the victim in the case of other crimes; as well as murder, rape, parricide, infanticide, kidnapping and serious illegal detention, where the victim is detained for more than three days or serious physical injuries were inflicted on the victim or threats to kill him were made or the victim is a minor, robbery with homicide, rape or intentional mutilation, destructive arson, and carnapping where the owner, driver or occupant of the carnapped vehicle is killed or raped, which are penalized by reclusion perpetua to death, are clearly heinous by their very nature.
>
> There are crimes, however, in which the abomination lies in the significance and implications of the subject criminal acts in the scheme of the larger socio-political and economic context in which the state finds itself to be struggling to develop and provide for its poor and underprivileged masses. Reeling from decades of corrupt tyrannical rule that bankrupted the government and impoverished the population, the Philippine Government must muster the political will to dismantle the culture of corruption, dishonesty, greed and syndicated criminality that so deeply entrenched itself in the structures of society and the psyche of the populace. [With the government] terribly lacking the money to provide even the most basic services to its people, any form of misappropriation or misapplication of government funds translates to an actual threat to the very existence of government, and in turn, the very survival of the people it governs over. Viewed in this context, no less heinous are the effects and repercussions of crimes like qualified bribery, destructive arson resulting in death, and drug offenses involving government officials, employees or officers, that their perpetrators must not be

> allowed to cause further destruction and damage to society.

The legislative declaration in R.A. No. 7659 that plunder is a heinous offense implies that it is a malum in se. For when the acts punished are inherently immoral or inherently wrong, they are mala in se[43] and it does not matter that such acts are punished in a special law, especially since in the case of plunder the predicate crimes are mainly mala in se. Indeed, it would be absurd to treat prosecutions for plunder as though they are mere prosecutions for violations of the Bouncing Check Law (B.P. Blg. 22) or of an ordinance against jaywalking, without regard to the inherent wrongness of the acts.

B. The Penalty for Plunder

The second question is whether under the statute the prosecution is relieved of the duty of proving beyond reasonable doubt the guilt of the defendant. It is contended that, in enacting the Anti-Plunder Law, Congress simply combined several existing crimes into a single one but the penalty which it provided for the commission of the crime is grossly disproportionate to the crimes combined while the quantum of proof required to prove each predicate crime is greatly reduced.

We have already explained why, contrary to petitioner's contention, the quantum of proof required to prove the predicate crimes in plunder is the same as that required were they separately prosecuted. We, therefore, limit this discussion to petitioner's claim that the penalty provided in the Anti-Plunder Law is grossly disproportionate to the penalties imposed for the predicate crimes. Petitioner cites the following examples:

> For example, please consider the following `combination' or `series' of overt or criminal acts (assuming the P50 M minimum has been acquired) in light of the penalties laid down in the Penal Code:
>
> - One act of indirect bribery (penalized under Art. 211 of the Revised Penal Code with prision correccional in its medium and maximum periods),
>
> - combined with -
>
> one act of fraud against the public treasury (penalized under Art. 213 of the Revised Penal Code with prision correccional in its medium period to prision mayor in its minimum period,
>
> - equals -
>
> plunder (punished by reclusion perpetua to death plus forfeiture of assets under R.A. 7080)
>
> - One act of prohibited transaction (penalized under Art. 215 of the revised Penal Code with prision correccional in its minimum period or a fine ranging from P200 to P1,000 or both),
>
> - combined with -
>
> one act of establishing a commercial monopoly (penalized under Art. 186 of Revised Penal Code with prision correccional in its minimum period or a fine ranging from P200 to P6,000, or both),
>
> -equals-
>
> plunder (punished by reclusion perpetua to death, and forfeiture of assets under R.A. 7080.
>
> - One act of possession of prohibited interest by a public officer (penalized with prision correccional in its minimum period or a fine of P200 to P1,000, or both under Art. 216 of the Revised Penal Code),
>
> - combined with -
>
> one act of combination or conspiracy in restraint of trade (penalized under Art. 186 of the Revised penal Code with prision correccional in its minimum period, or a fine of P200 to P1,000, or both,

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> - equals -
>
> plunder, punished by reclusion perpetua to death, and forfeiture of assets)[44]

But this is also the case whenever other special complex crimes are created out of two or more existing crimes. For example, robbery with violence against or intimidation of persons under Art. 294, par. 5 of the Revised Penal Code is punished with prision correccional in its maximum period (4 years, 2 months, and 1 day) to prision mayor in its medium period (6 years and 1 day to 8 years). Homicide under Art. 249 of the same Code is punished with reclusion temporal (12 years and 1 day to 20 years). But when the two crimes are committed on the same occasion, the law treats them as a special complex crime of robbery with homicide and provides the penalty of reclusion perpetua to death for its commission. Again, the penalty for simple rape under Art. 266-B of the Revised Penal Code is reclusion perpetua, while that for homicide under Art. 249 it is reclusion temporal (12 years and 1 day to 20 years). Yet, when committed on the same occasion, the two are treated as one special complex crime of rape with homicide and punished with a heavier penalty of reclusion perpetua to death. Obviously, the legislature views plunder as a crime as serious as robbery with homicide or rape with homicide by punishing it with the same penalty. As the explanatory note accompanying S. No. 733 explains:

> Plunder, a term chosen from other equally apt terminologies like kleptocracy and economic treason, punishes the use of high office for personal enrichment, committed thru a series of acts done not in the public eye but in stealth and secrecy over a period of time, that may involve so many persons, here and abroad, and which touch so many states and territorial units. The acts and/or omissions sought to be penalized do not involve simple cases of malversation of public funds, bribery, extortion, theft and graft but constitute the plunder of an entire nation resulting in material damage to the national economy. The above-described crime does not yet exist in Philippine statute books. Thus, the need to come up with a legislation as a safeguard against the possible recurrence of the depravities of the previous regime and as a deterrent to those with similar inclination to succumb to the corrupting influences of power.

Many other examples drawn from the Revised Penal Code and from special laws may be cited to show that, when special complex crimes are created out of existing crimes, the penalty for the new crime is heavier.

To recapitulate, had R.A. No. 7080 been a law regulating speech, I would have no hesitation examining it on its face on the chance that some of its provisions - even though not here before us - are void. For then the risk that some state interest might be jeopardized, i.e., the interest in the free flow of information or the prevention of "chill" on the freedom of expression, would trump any marginal interest in security.

But the Anti-Plunder Law is not a regulation of speech. It is a criminal statute designed to combat graft and corruption, especially those committed by highly-placed public officials. As conduct and not speech is its object, the Court cannot take chances by examining other provisions not before it without risking vital interests of society. Accordingly, such statute must be examined only "as applied" to the defendant and, if found valid as to him, the statute as a whole should not be declared unconstitutional for overbreadth or vagueness of its other provisions. Doing so, I come to the following conclusions:

- That the validity of R.A. No. 7080, otherwise known as the Anti-Plunder Law, cannot be determined by applying the test of strict scrutiny in free speech cases without disastrous consequences to the State's effort to prosecute crimes and that, contrary to petitioner's contention, the statute must be presumed to be constitutional;

- That in determining the constitutionality of the Anti-Plunder Law, its provisions must be considered in light of the particular acts alleged to have been committed by petitioner;

- That, as applied to petitioner, the statute is neither vague nor overbroad;

- That, contrary to the contention of the Ombudsman and the Solicitor General, the crime of plunder is a malum in se and not a malum prohibitum and the burden of proving each and every predicate crime is on the prosecution.

For these reasons, I respectfully submit that R.A. No. 7080 is valid and that, therefore, the petition should be dismissed.

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[1] See Estrada v. Desierto, G.R. No. 146710, March 2, 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146715, March 2, 2001.

[2] CONST., ART., Art. II, §27.

[3] United States v. National Dairy Prod. Corp., 372 U.S. 29, 32-33, 9 L.Ed.2d 561, 565-6 (1963) (internal quotation marks omitted).

[4] Memorandum for the Petitioner, pp. 4-7.

[5] Id. at 11-66.

[6] 293 SCRA 161, 166 (1998).

[7] 304 U.S. 144, 152, 82 L.Ed. 1234, 1241 (1938) (cases cited omitted).

[8] Memorandum for the Petitioner, p. 5.

[9] 20 SCRA 849, 865 (1967).

[10] Geoffrey R. Stone, Content-Neutral Restrictions, 54 Univ. of Chi. L. Rev. 46, 50-53 (1987).

[11] Connally v. General Constr. Co., 269 U.S. 385, 391, 70 L.Ed. 328 (1926) cited in Ermita-Malate Hotel and Motel Operators Ass'n v. City Mayor, 20 SCRA 849, 867 (1967).

[12] NAACP v. Alabama, 377 U.S. 288, 307, 12 L.Ed.2d 325, 338 (1958); Shelton v. Tucker, 364 U.S. 479, 5 L.Ed.2d 231 (1960).

[13] Gooding v. Wilson, 405 U.S. 518, 521, 31 L.Ed.2d 408, 413 (1972) (internal quotation marks omitted).

[14] United States v. Salerno, 481 U.S. 739, 745, 95 L.Ed.2d 697, 707 (1987). See also People v. De la Piedra, G.R. No. 121777, Jan. 24, 2001.

[15] 413 U.S. 601, 612-613, 37 L.Ed. 2d 830, 840-841 (1973).

[16] United States v. Salerno, supra.

[17] Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 494-95, 71 L.Ed.2d 362, 369 (1982).

[18] United States v. Raines, 362 U.S. 17, 21, 4 L.Ed.2d 524, 529 (1960). The paradigmatic case is Yazoo & Mississippi Valley RR. v. Jackson Vinegar Co., 226 U.S. 217, 57 L.Ed. 193 (1912).

[19] K. SULLIVAN & G. GUNTHER, CONSTITUTIONAL LAW 1299 (14[th] ed., 2001).

[20] Id. at 1328. See also Richard H. Fallon, Jr., As Applied and Facial Challenges, 113 HARV. L. Rev. 1321 (2000), arguing that, in an important sense, as applied challenges are the basic building blocks of constitutional adjudication and that determinations that statutes are facially invalid properly occur only as logical outgrowths of

rulings on whether statutes may be applied to particular litigants on particular facts.

[21] CONST., ART. VIII, §§1 and 5. Compare Angara v. Electoral Commission, 63 Phil. 139, 158 (1936): "[T]he 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 to the constitutional question raised or the very lis mota presented. Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities."

[22] 401 U.S. 37, 52-53, 27 L.Ed.2d 669, 680 (1971). Accord, United States v. Raines, 362 U.S. 17, 4 L.Ed.2d 524 (1960); Board of Trustees, State Univ. of N.Y v. Fox, 492 U.S. 469, 106 L.Ed.2d 388 (1989).

[23] Broadrick v. Oklahoma, 413 U.S. at 613, 37 L.Ed.2d at 841; National Endowment for the Arts v. Finley, 524 U.S. 569, 580 (1998).

[24] FW/PBS, Inc. v. City of Dallas, 493 U.S. 223, 107 L.Ed.2d 603 (1990); Cruz v. Secretary of Environment and Natural Resources, G.R. No. 135385, Dec. 6, 2000 (Mendoza, J., Separate Opinion).

[25] United States v. National Dairy Prod. Corp., 372 U.S. 29, 32-33, 9 L.Ed.2d 561, 565-6 (1963).

[26] 269 U.S. 385, 391, 70 L.Ed. 328 (1926) cited in Ermita-Malate Hotel and Motel Operators Ass'n v. City Mayor, 20 SCRA 849, 867 (1967).

[27] Memorandum for the Petitioner, pp. 11-66.

[28] 4 RECORD OF THE SENATE 1310, June 5, 1989.

[29] 4 RECORD OF THE SENATE 1339, June 6, 1989.

[30] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2073 (1993).

[31] Deliberations of the Joint Conference Committee on Justice held on May 7, 1991.

[32] Deliberations of the Conference Committee on Constitutional Amendments and Revision of Laws held on Nov. 15, 1988.

[33] 80 Phil. 71 (1948).

[34] People v. Hernandez, 99 Phil. 515 (1956); People v. Geronimo, 100 Phil. 90 (1956).

[35] 269 U.S. 385, 391, 70 L.Ed. 328 (1926) cited in Ermita-Malate Hotel and Motel Operators Ass'n v. City Mayor, 20 SCRA 849, 867 (1967).

[36] Oliver Wendell Holmes, Jr., The Path of the Law, 10 HARV. L. REV. 457, 459 (1897).

[37] Memorandum for the Petitioner, p. 32.

[38] See Memorandum for the Respondents, pp. 79-88.

[39] 4 RECORD OF THE SENATE 1316, June 5, 1989.

[40] Id.

[41] Roschen v. Ward, 279 U.S. 337, 339, 73 L.Ed. 722, 728 (1929).

[42] 267 SCRA 682, 721-2 (1997) (emphasis added).

[43] BLACK'S LAW DICTIONARY 959 (1990); Lozano v. Martinez, 146 SCRA 324, 338 (1986).

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[44] Memorandum for the Petitioner, pp. 62-63 (emphasis in the original).

SEPARATE OPINION (Concurring)

PANGANIBAN, J.:

In his Petition for Certiorari under Rule 65 of the Rules of Court, former President Joseph Ejercito Estrada seeks the annulment of the Sandiganbayan Resolution dated July 9, 2001, which denied his Motion to Quash. He further prays to prohibit the anti-graft court from conducting the trial of petitioner in Criminal Case No. 26558, on the ground that the statute under which he has been charged - the Anti-Plunder Law or Republic Act (RA) 7080 -- is unconstitutional.

In sum, he submits three main arguments to support his thesis, as follows:

- "RA 7080 is vague and overbroad on its face and suffers from structural deficiency and ambiguity."[1]

- "RA 7080 reduces the standard of proof necessary for criminal conviction, and dispenses with proof beyond reasonable doubt of each and every criminal act done in furtherance of the crime of plunder."[2]

- "RA 7080 has been admitted by respondent to be malum prohibita which deprives petitioner of a basic defense in violation of due process."[3]

I have read former President Estrada's Petition, Reply, Memorandum and other pleadings and listened carefully to his Oral Argument. However, I cannot agree with his thesis, for the following reasons:

(1) RA 7080 is not vague or overbroad. Quite the contrary, it is clear and specific especially on what it seeks to prohibit and to penalize.

(2) The Anti-Plunder Law does not lessen the degree of proof necessary to convict its violator -- in this case, petitioner.

(3) Congress has the constitutional power to enact laws that are mala prohibita and, in exercising such power, does not violate due process of law.

First Issue:
"Void for Vagueness" Not Applicable

In the main, petitioner attacks RA 7080 for being allegedly vague and ambiguous, for "wanting in its essential terms," and for failing to "define what degree of participation means as [it] relates to the person or persons charged with having participated with a public officer in the commission of plunder."[4]

In Dans v. People,[5] reiterated recently in Sajul v. Sandiganbayan,[6] this Court debunked the "void for vagueness" challenge to the constitutionality of Section 3(g) of the Anti-Graft Law (RA 3019, as amended) and laid down the test to determine whether a statute is vague. It has decreed that as long as a penal law can answer the basic query "What is the violation?," it is constitutional. "Anything beyond this, the `hows' and the `whys,' are evidentiary matters which the law cannot possibly disclose in view of the uniqueness of every case x x x."

Elements of Plunder

The Anti-Plunder Law more than adequately answers the question "What is the violation?" Indeed, to answer this question, any law student -- using basic knowledge of criminal law -- will refer to the elements of the crime, which in this case are plainly and certainly spelled out in a straightforward manner in Sections 2 and 1(d) thereof.

Those elements are:

- The offender is a public officer acting by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons.

- The offender amasses, accumulates or acquires ill-gotten wealth.

- The aggregate amount or total value of the ill-gotten wealth so amassed, accumulated or acquired is at least fifty million pesos (P50,000,000).

- Such ill-gotten wealth -- defined as any asset, property, business enterprise or material possession of any of the aforesaid persons (the persons within the purview of Section 2, RA 7080) -- has been acquired directly or indirectly through dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes:

(i)

through misappropriation, conversion, misuse or malversation of public funds or raids on the public treasury;

(ii)

by receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;

(iii)

by the illegal or fraudulent conveyance or disposition of assets belonging to the national government or any of its subdivisions, agencies or instrumentalities or government-owned or controlled corporations and their subsidiaries;

(iv)

by obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;

(v)

by establishing agricultural, industrial or commercial monopolies or other combination and/or implementation of decrees and orders intended to benefit particular persons or special interests; or

(vi)

by taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.[7]

Petitioner argues that, notwithstanding the above-detailed statement of the elements of the crime, there is still

vagueness because of the absence of definitions of the terms combination, series and pattern in the text of the law.

Citing People v. Nazario,[8] petitioner adds that "a statute or act may be said to be vague when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ as to its application."

I say, however, that in that very case cited by petitioner, the Court cautioned that "the act (or law) must be utterly vague on its face." When it can be "clarified either by a saving clause or by construction," the law cannot be decreed as invalid. In other words, the absence of statutory definitions of words used in a statute will not render the law "void for vagueness," if the meanings of such words can be determined through the judicial function of construction.[9]

Solution: Simple
Statutory Construction

Indeed, simple statutory construction, not a declaration of unconstitutionality, is the key to the allegedly vague words of the Anti-Plunder Law. And the most basic rule in statutory construction is to ascertain the meaning of a term from the legislative proceedings. Verily, in the judicial review of a law's meaning, the legislative intent is paramount.[10]

Pervading the deliberations of the Bicameral Conference Committee on Justice held on May 7, 1991 was the common understanding of combination as a joining or combining of at least two dissimilar things or acts, and series as a repetition or recurrence of the same thing at least twice.[11] As a matter of fact, the same understanding of those terms also prevailed during the Senate deliberations on Senate Bill No. 733 (Plunder) earlier held on June 6, 1989.[12] The Records of those deliberations speak for themselves.

It is true that during the deliberations in the Senate, the late Senator Neptali A. Gonzales initially raised concerns over the alleged vagueness in the use of the terms combination and series. I respectfully submit, however, that the reliance[13] of petitioner on such concerns is misplaced. That portion of the interpellations, evincing the late senator's reservations on the matter, had taken place during the session of June 5, 1989.[14] And the clarificatory remarks of Senate President Jovito R. Salonga and Senators Wigberto Tañada, Alberto Romulo and Ernesto Maceda, which threw light on the matters in doubt, happened the following day, June 6, 1989.[15] In brief, the misgivings voiced by Senator Gonzales as to the use of the two terms were adequately addressed, answered and disposed of the following day.

Thus, Senate Bill No. 733, defining and penalizing plunder, was passed and approved on third reading on July 25, 1989, with 19 affirmative votes (including those of Senators Gonzales, Tañada, Maceda, and petitioner himself) sans any negative vote or abstention. Indeed, some of the sharpest legal minds in the country voted to approve the bill, even though it was bereft of statutory definitions. Likewise, it would certainly be inconceivable for Senator Gonzales to have voted for the approval of the Bill had he believed that it was vague to the point of constitutional infirmity; or at the very least, if he believed that his earlier reservations or apprehensions were not fully satisfied.

At this juncture, may I call attention to the Record of the Joint Conference Meeting held on May 7, 1991.[16] The portion thereof relied upon by petitioner[17] features the exchanges involving Representatives Garcia and Isidro and Senator Tañada on the meanings of the terms combination and series. The quoted part of the Record would suggest that, somehow, particularly towards the end of the meeting, the discussion among the legislators seemed to have degenerated into a clutch of unfinished sentences and unintelligible phrases. Still, I believe that the deliberations did not actually sound the way they were subsequently transcribed or as they now appear on the Record. Even more reluctant am I to agree with petitioner that the apparent tenor of the deliberations evinced "a

dearth of focus to render precise the definition of the terms," or that the Committee members themselves were not clear on the meanings of the terms in question.

Most of us in the legal profession are all too familiar with the vagaries of stenographic note-taking, especially in courtrooms and legislative halls. Too often, lawyers, parties-litigants and even judges find themselves at the mercy of stenographers who are unfamiliar with certain legal terms; or who cannot hear well enough or take notes fast enough; or who simply get confused, particularly when two or more persons happen to be speaking at the same time. Often, transcripts of stenographic notes have portrayed lawyers, witnesses, legislators and judges as blithering idiots, spouting utterly nonsensical jargon and plain inanities in the course of a proceeding. The Record in question is no exception.

Rather than believe that the distinguished lawmakers went about their business uttering senseless half-sentences to one another, I think that these learned and intelligent legislators of both chambers knew what they were talking about, spoke their minds, and understood each other well, for the Record itself does not indicate the contrary. Neither does it show any details or minutiae that would indicate that they abandoned their earlier common understanding of the terms combination and series.

Specific Number or
Percentage Not Always Necessary

Regrettably, I shall also have to take issue with petitioner's disquisition to the effect that "when penal laws enacted by Congress make reference to a term or concept requiring a quantitative definition, these laws are so crafted as to specifically state the exact number or percentage necessary to constitute the elements of a crime," followed by a recitation of the minimum number of malefactors mentioned in the statutory definitions of band, conspiracy, illegal recruitment by syndicate, large-scale illegal recruitment, organized/syndicated crime group, and swindling by a syndicate. Thus, he insinuates that, because RA 7080 has failed to specify precisely the minimum number of malefactors needed for an offense to be properly classified as plunder, the law is vague or has somehow failed to meet the standard for penal laws.

The aforequoted discourse would appear to be incongruous, if not totally misleading. As pointed out during the Oral Argument on September 18, 2001, the crime of plunder can be committed by a public officer acting alone. Section 2 of RA 7080 reads as follows: "Definition of the Crime of Plunder; Penalties. - Any public officer who, by himself or in connivance with x x x." Thus, the insistence on a mathematical specification or precise quantification is essentially without basis. And lest anyone believe that the Anti-Plunder Law is unusual in this respect, let me just recall that the RICO law, to which petitioner made repeated references in his Amended Petition, can likewise be violated by a single individual.[18]

Not Oppressive
or Arbitrary

Neither can it be said that RA 7080 is oppressive or arbitrary for imposing a more severe penalty on a combination or series of the offenses enumerated in Section 1(d) of the law, than would otherwise be imposed if the said offenses were taken separately. As Mr. Justice Mendoza lucidly pointed out in his interpellation during the Oral Argument, the Anti-Plunder Law is merely employing a familiar technique or feature of penal statutes, when it puts together what would otherwise be various combinations of traditional offenses already proscribed by existing laws and attaching thereto higher or more severe penalties than those prescribed for the same offenses taken separately.

Here, Mr. Justice Mendoza is referring to special complex crimes like rape with homicide or robbery with

homicide. During the Oral Argument, he asked whether petitioner's counsel was in fact suggesting that such special complex crimes -- a very important part of the Revised Penal Code and well-entrenched in our penal system -- were violative of due process and the constitutional guarantees against cruel and unusual punishment and should also be struck down. It goes without saying that the legislature is well within its powers to provide higher penalties in view of the grave evils sought to be prevented by RA 7080.

Innocent Acts Not
Penalized by RA 7080

Petitioner insists that innocent acts are in effect criminalized by RA 7080, because it allegedly penalizes combinations or series of acts coming within the purview of the means or similar schemes enumerated under items 4 and 5 of Section 1(d) of the law, which reads as follows:

> "4.
>
> By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other forms of interest or participation including the promise of future employment in any business enterprise or undertaking;
>
> "5.
>
> By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests"

That such contention "deserves scant attention" is an understatement of the extreme sort. The claim of "innocent acts" is possible only because items 4 and 5 have been taken completely out of context and read in isolation instead of in relation to the other provisions of the same law, particularly Section 2. The above-enumerated acts, means or similar schemes must be understood as having reference to or connection with the acquisition of ill-gotten wealth by a public officer, by himself or in connivance with others. Those acts are therefore not innocent acts. Neither are those prohibitions new or unfamiliar. The proscribed acts under item 4, for instance, may to some extent be traced back to some of the prohibitions in RA 3019 (the Anti-Graft Law). Section 3, the pertinent part of such law, reads as follows:

> "SEC. 3. Corrupt practices of public officers. - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
>
> "(a)
>
> x x x x x x x x x
>
> "(b)
>
> Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other party wherein the public officer in his official capacity has to intervene under the law.
>
> "(c)
>
> Directly or indirectly requesting or receiving any gift, present or other pecuniary or material benefit, for himself or for another, from any person for whom the public officer, in any manner or capacity, has secured or obtained, or will secure or obtain, any Government permit or license, in consideration for the help given or to be given, without prejudice to Section Thirteen of this Act.
>
> "(d)

> Accepting or having any member of his family accept employment in a private enterprise which has pending official business with him during the pendency thereof or within one year after its termination.
>
> x x x x x x x x x
>
> "(h)
>
> Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.
>
> x x x x x x x x x."

On the other hand, the prohibited acts under item 5 have antecedents in the Revised Penal Code's interdiction against monopolies and combinations in restraint of trade. Clearly, the acts dealt with in Items 4 and 5 of Section 1(d) are in no wise the innocent or innocuous deeds that petitioner would have us mistake them for.

RA 7080 Not Suffering
from Overbreadth

In connection with the foregoing discussion, petitioner also charges that RA 7080 suffers from "overbreadth." I believe petitioner misconstrues the concept. In the very recent case People v. Dela Piedra,[19] this Court held:

> "A statute may be said to be overbroad where it operates to inhibit the exercise of individual freedoms affirmatively guaranteed by the Constitution, such as the freedom of speech or religion. A generally worded statute, when construed to punish conduct which cannot be constitutionally punished, is unconstitutionally vague to the extent that it fails to give adequate warning of the boundary between the constitutionally permissible and the constitutionally impermissible applications of the statute.
>
> "In Blo Umpar Adiong vs. Commission on Elections, for instance, we struck down as void for overbreadth provisions prohibiting the posting of election propaganda in any place - including private vehicles - other than in the common poster areas sanctioned by the COMELEC. We held that the challenged provisions not only deprived the owner of the vehicle the use of his property but also deprived the citizen of his right to free speech and information. The prohibition in Adiong, therefore, was so broad that it covered even constitutionally guaranteed rights and, hence, void for overbreadth. In the present case, however, appellant did not even specify what constitutionally protected freedoms are embraced by the definition of `recruitment and placement' that would render the same constitutionally overbroad." (Italics supplied)

Similarly, in the instant case, petitioner has not identified which of his constitutionally protected freedoms, if any, are allegedly being violated by the Anti-Plunder Law. As Mr. Justice Mendoza pointed out to petitioner's counsel during the Oral Argument, specious and even frivolous is the contention that RA 7080 infringes on the constitutional right of petitioner by depriving him of his liberty pending trial and by paving the way for his possible conviction because, following that line of argument, the entire Revised Penal Code would be reckoned to be an infringement of constitutional rights.

"Pattern of Overt
or Criminal Acts"

Petitioner, in line with his "void for vagueness" attack on RA 7080, faults the statute for failing to provide a definition of the phrase a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy used in Section 4 of the law. This definition is crucial since, according to him, such pattern is an essential element of the crime of plunder.

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A plain reading of the law easily debunks this contention. First, contrary to petitioner's suggestions, such pattern of overt or criminal acts and so on is not and should not be deemed an essential or substantive element of the crime of plunder. It is possible to give full force and effect to RA 7080 without applying Section 4 -- an accused can be charged and convicted under the Anti-Plunder Law without resorting to that specific provision. After all, the heading and the text of Section 4, which I quote below, leave no room for doubt that it is not substantive in nature:

> "SEC. 4. Rule of Evidence. - For purposes of establishing the crime of plunder, it shall not be necessary to prove each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth, it being sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy." (Boldface supplied)

As Mr. Chief Justice Davide very astutely pointed out during the Oral Argument, Section 2 in relation to Section 1(d) deals with how the crime of plunder is committed. Hence, these two sections constitute the substantive elements, whereas Section 4 deals with how the crime is proved and is therefore not substantive, but merely procedural. It may be disregarded or discarded if found defective or deficient, without impairing the rest of the statute.

Actually, the root of this problem may be traced to an observation made by Rep. Pablo Garcia, chair of the House Committee on Justice, that RA 7080 had been patterned after the RICO Law.[20] Petitioner apparently seized on this statement and on the assertions in H.J. Inc. v. Northwestern Bell[21] and other cases that a pattern of racketeering is a "key requirement" in the RICO Law and a "necessary element" of violations thereof. He then used these as the springboard for his vagueness attacks on RA 7080. However, his reliance on the RICO law is essentially misplaced. Respondent Sandiganbayan correctly held that the said legislation was essentially different from our Anti-Plunder Law, as it pointed out in its Resolution of July 9, 2001, which I quote:

> "Accused Joseph E. Estrada claims that the Anti-Plunder Law does not define `pattern of overt or criminal acts' indicative of the overall scheme or conspiracy, thereby giving prosecutors and judges unlimited discretion to determine the nature and extent of evidence that would show `pattern.'" (Motion to Quash dated June 7, 2001, p. 13) The Court disagrees with this contention.
>
> "x x x. According to the sponsors of the Anti-Plunder Law in Congress, the said law is similar to the U.S. RICO (Deliberations of the House of Representatives Committee on Revision of Law and Justice, May 24, 1990). However, the similarities extend only insofar as both laws penalize with severe penalties the commission by a single accused or multiple accused of a pattern of overt or criminal acts as one continuing crime. However, the legislative policies and objectives as well as the nature of the crimes penalized respectively by the RICO and the Anti-Plunder Law are different." (Boldface and underscoring supplied)

Indeed, a careful reading of RICO vis-à-vis RA 7080 can lead to no other conclusion than that the crimes being penalized are completely different in nature and character, and that the legislative objectives and policies involved are quite dissimilar.

In the case of RICO, legislative concern focused on the threat of continued racketeering activity, and that was why pattern was imbued with such importance. "Congress was concerned in RICO with long-term criminal conduct,"[22] as the following quote indicates:

> "RICO's legislative history reveals Congress' intent that to prove a pattern of racketeering activity a plaintiff or prosecutor must show that the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity.[23]
>
> x x x x x x x x x

> "What a plaintiff or prosecutor must prove is continuity of racketeering activity, or its threat, simpliciter. This may be done in a variety of ways, thus making it difficult to formulate in the abstract any general test for continuity. We can, however, begin to delineate the requirement.
>
> "`Continuity' is both a closed and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition. x x x. It is, in either case, centrally a temporal concept - and particularly so in the RICO context, where what must be continuous, RICO's predicate acts or offenses, and the relationship these predicates must bear one to another, are distinct requirements. A party alleging a RICO violation may demonstrate continuity over a closed period by proving a series of related predicates extending over a substantial period of time. Predicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy this requirement. Congress was concerned in RICO with long-term criminal conduct. Often a RICO action will be brought before continuity can be established in this way. In such cases, liability depends on whether the threat of continuity is demonstrated."[24] (italics and underscoring supplied)

However, in RA 7080, precisely because of the sheer magnitude of the crimes in question and their extremely deleterious effects on society, the legislative sentiment of great urgency - the necessity of immediate deterrence of such crimes -- was incompatible with the RICO concept of "pattern" as connoting either continuity over a substantial period of time or threat of continuity or repetition. The legislative intent[25] and policy of RA 7080 centered on imposing a heavy penalty in order to achieve a strong, if not permanent, deterrent effect -- the sooner the better. The following Senate deliberations are instructive:

> "Senator Paterno. Mr. President, [I'm] not too clear yet on the reason for trying to define a crime of plunder. Could I get some further clarification?
>
> "Senator Tañada. Yes, Mr. President.
>
> "Because of our experience in the former regime, we feel that there is a need for Congress to pass the legislation which would cover a crime of this magnitude. While it is true, we already have the Anti-Graft Law. But that does not directly deal with plunder. That covers only the corrupt practices of public officials as well as their spouses and relatives within the civil degree, and the Anti-Graft law as presently worded would not adequately or sufficiently address the problems that we experienced during the past regime.
>
> "Senator Paterno. May I try to give the Gentleman, Mr. President, my understanding of the bill?
>
> "Senator Tañada. Yes.
>
> "Senator Paterno. I envision that this bill or this kind of plunder would cover a discovered interconnection of certain acts, particularly, violations of Anti-Graft and Corrupt Practices Act when, after the different acts are looked at, a scheme or conspiracy can be detected, such scheme or conspiracy consummated by the different criminal acts or violations of Anti-Graft and Corrupt Practices Act, such that the scheme or conspiracy becomes a sin, as a large scheme to defraud the public or rob the public treasury. It is parang robo and banda. It is considered as that. And, the bill seeks to define or says that P100 million is that level at which ay talagang sobra na, dapat nang parusahan ng husto. Would it be a correct interpretation or assessment of the intent of the bill?
>
> "Senator Tañada. Yes, Mr. President. x x x x x.
>
> "Senator Paterno. Would the Author not agree that this crime of plunder should be considered a heinous crime, Mr. President?
>
> "Senator Tañada. Yes, Mr. President. That is why, the penalty imposed under this bill is life imprisonment, and permanent disqualification from holding public office.

> "Senator Paterno. I would really ask, Mr. President, whether the Author would not consider that this is a heinous crime which, for compelling reasons, namely to try and dampen the graft and corruption, Congress should provide the death penalty for the crime of plunder.
>
> "Senator Tañada. I personally would have some problem with that, Mr. President, because I am against the restoration of death penalty in our criminal code. I would submit that to this Body.
>
> "Senator Paterno. I respect the ministerial attitude and the respect for human life of the author, Mr. President, but I just feel that graft and corruption is such a large problem in our society that, perhaps, it is necessary for this Congress to express itself that this crime of plunder is a heinous crime which should be levied the death penalty, Mr. President."[26]

Thus, it is clear and unarguable that "pattern," a key requirement or necessary element of RICO, is in no wise an essential element of RA 7080.

This conclusion is further bolstered by the fact that pattern, in the RICO law context, is nowhere to be found in the language of RA 7080 or in the deliberations of Congress. Indeed, the legislators were well aware of the RICO Act; hence, they could have opted to adopt its concepts, terms and definitions and installed pattern in the RICO sense as an essential element of the crime of plunder, if that were their intent. At the very least, they would not have relegated the term pattern to a procedural provision such as Section 4.

Second, to answer petitioner's contention directly, the Anti-Plunder Law does in fact provide sufficient basis to get at the meaning of the term pattern as used in Section 4. This meaning is brought out in the disquisition of Respondent Sandiganbayan in its challenged Resolution, reproduced hereunder:

> "The term `pattern' x x x is sufficiently defined in the Anti-Plunder Law, specifically through Section 4 x x x, read in relation to Section 1(d) and Section 2 of the same law. Firstly, under Section 1(d) x x x, a pattern consists of at least a combination or a series of overt or criminal acts enumerated in subsections (1) to (6) of Section 1(d). Secondly, pursuant to Section 2 of the law, the `pattern' of overt or criminal acts is directed towards a common purpose or goal which is to enable a public officer to amass, accumulate or acquire ill-gotten wealth; and [t]hirdly, there must either be an `overall unlawful scheme' or `conspiracy' to achieve said common goal. As commonly understood, the term `overall unlawful scheme' indicates `a general plan of action or method' which the principal accused and public officer and others conniving with him follow to achieve the aforesaid common goal. In the alternative, if there is no such overall scheme or where the schemes or methods used by multiple accused vary, the overt or criminal acts must form part of a conspiracy to attain said common goal.
>
> "Parenthetically, it can be said that the existence of a pattern indicating an overall scheme or a single conspiracy would serve as the link that will tie the overt or criminal acts into one continuing crime of plunder. A conspiracy exists when two or more persons come into an agreement concerning the commission of a felony and decide to commit it. (Art. 8, Revised Penal Code). To use an analogy made by U.S. courts in connection with RICO violations, a pattern may be likened to a wheel with spokes (the overt or criminal acts which may be committed by a single or multiple accused), meeting at a common center (the acquisition or accumulation of ill-gotten wealth by a public officer) and with the rim (the over-all unlawful scheme or conspiracy) of the wheel enclosing the spokes. In this case, the information charges only one count of [the] crime of plunder, considering the prosecution's allegation in the amended information that the series or combination of overt or criminal acts charged form part of a conspiracy among all the accused."[27]

Judiciary Empowered
to Construe and Apply the Law

At all events, let me stress that the power to construe law is essentially judicial. To declare what the law shall be is

a legislative power, but to declare what the law is or has been is judicial.[28] Statutes enacted by Congress cannot be expected to spell out with mathematical precision how the law should be interpreted under any and all given situations. The application of the law will depend on the facts and circumstances as adduced by evidence which will then be considered, weighed and evaluated by the courts. Indeed, it is the constitutionally mandated function of the courts to interpret, construe and apply the law as would give flesh and blood to the true meaning of legislative enactments.

Moreover, a statute should be construed in the light of the objective to be achieved and the evil or mischief to be suppressed and should be given such construction as will advance the purpose, suppress the mischief or evil, and secure the benefits intended.[29] A law is not a mere composition, but an end to be achieved; and its general purpose is a more important aid to its meaning than any rule that grammar may lay down.[30] A construction should be rejected if it gives to the language used in a statute a meaning that does not accomplish the purpose for which the statute was enacted and that tends to defeat the ends that are sought to be attained by its enactment.[31]

As can be gleaned from the legislative deliberations, the Plunder Law was enacted to curb the "despoliation of the National Treasury by some public officials who have held the levers of power" and to penalize "this predatory act which has reached unprecedented heights and has been developed by its practitioners to a high level of sophistication during the past dictatorial regime." Viewed broadly, "plunder involves not just plain thievery but economic depredation which affects not just private parties or personal interests but the nation as a whole." Invariably, plunder partakes of the nature of "a crime against national interest which must be stopped, and if possible, stopped permanently."[32]

No Patent and Clear
Conflict with Constitution

Against the foregoing backdrop, I believe petitioner's heavy reliance on the void-for-vagueness concept cannot prevail, considering that such concept, while mentioned in passing in Nazario and other cases, has yet to find direct application in our jurisdiction. To this date, the Court has not declared any penal law unconstitutional on the ground of ambiguity.[33] On the other hand, the constitutionality of certain penal statutes has been upheld in several cases, notwithstanding allegations of ambiguity in the provisions of law. In Caram Resources Corp. v. Contreras[34] and People v. Morato,[35] the Court upheld the validity of BP 22 (Bouncing Checks Law) and PD 1866 (Illegal Possession of Firearms), respectively, despite constitutional challenges grounded on alleged ambiguity.

Similarly, the cases cited by petitioner involving U.S. federal court decisions relative to the RICO Law did not at all arrive at a finding of unconstitutionality of the questioned statute. To repeat, reference to these U.S. cases is utterly misplaced, considering the substantial differences in the nature, policies and objectives between the RICO Law and the Anti-Plunder Law. Verily, "the RICO Law does not create a new type of substantive crime since any acts which are punishable under the RICO Law also are punishable under existing federal and state statutes."[36] Moreover, the main purpose of the RICO Law is "to seek the eradication of organized crime in the United States."[37]

On the other hand, the Plunder Law creates an entirely new crime that may consist of both (a) criminal acts already punished by the Revised Penal Code or special laws and (b) acts that may not be punishable by previously existing laws. Furthermore, unlike in the RICO Law, the motivation behind the enactment of the Anti-Plunder Law is "the need to for a penal law that can adequately cope with the nature and magnitude of the corruption of the previous regime"[38] in accordance with the constitutional duty of the State "to take positive and effective measures against graft and corruption."[39]

In sum, the law must be proven to be clearly and unequivocally repugnant to the Constitution before this Court may declare its unconstitutionality. To strike down the law, there must be a clear showing that what the fundamental law prohibits, the statute allows to be done.[40] To justify the nullification of the law, there must be a clear, unequivocal breach of the Constitution; not a doubtful, argumentative implication.[41] Of some terms in the law which are easily clarified by judicial construction, petitioner has, at best, managed merely to point out alleged ambiguities. Far from establishing, by clear and unmistakable terms, any patent and glaring conflict with the Constitution, the constitutional challenge to the Anti-Plunder law must fail. For just as the accused is entitled to the presumption of innocence in the absence of proof beyond reasonable doubt, so must a law be accorded the presumption of constitutionality without the same requisite quantum of proof.

Second Issue:
Quantum of Evidence
Not Lowered by RA 7080

I will now tackle petitioner's impassioned asseverations that the Anti-Plunder Law violates the due process clause and the constitutional presumption of innocence.

Section 4 of RA 7080 provides that, for purposes of establishing the crime of plunder, it shall not be necessary to prove each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth. This is because it would be sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy.

Hence, petitioner now concludes that the Anti-Plunder Law "eliminates proof of each and every component criminal act of plunder by the accused and limits itself to establishing just the pattern of overt or criminal acts indicative of unlawful scheme or conspiracy." He thus claims that the statute penalizes the accused on the basis of a proven scheme or conspiracy to commit plunder, without the necessity of establishing beyond reasonable doubt each and every criminal act done by the accused. From these premises, he precipitately, albeit inaccurately, concludes that RA 7080 has ipso facto lowered the quantum of evidence required to secure a conviction under the challenged law. This is clearly erroneous.

First, petitioner's allegation as to the meaning and implications of Section 4 can hardly be taken seriously, because it runs counter to certain basic common sense presumptions that apply to the process of interpreting statutes: that in the absence of evidence to the contrary, it will be presumed that the legislature intended to enact a valid, sensible and just law; that the law-making body intended right and justice to prevail;[42] and that the legislature aimed to impart to its enactments such meaning as would render them operative and effective and prevent persons from eluding or defeating them.

Second, petitioner's allegation is contradicted by the legislative Records that manifest the real intent behind Section 4, as well as the true meaning and purpose of the provision therein. This intent is carefully expressed by the words of Senate President Salonga:

> "Senate Pres. Salonga. Is that, if there are let's say 150 crimes all in all, criminal acts, whether bribery, misappropriation, malversation, extortion, you need not prove all of those beyond reasonable doubt. If you can prove by pattern, let's say 10, but each must be proved beyond reasonable doubt, you do not have to prove 150 crimes. That's the meaning of this."[43] (italics supplied)

All told, the above explanation is in consonance with what is often perceived to be the reality with respect to the crime of plunder -- that "the actual extent of the crime may not, in its breadth and entirety, be discovered, by reason of the `stealth and secrecy' in which it is committed and the involvement of `so many persons here and

abroad and [the fact that it] touches so many states and territorial units.'"[44] Hence, establishing a pattern indicative of the overall unlawful scheme becomes relevant and important.

Proof of Pattern
Beyond Reasonable Doubt

Nevertheless, it should be emphasized that the indicative pattern must be proven beyond reasonable doubt. To my mind, this means that the prosecution's burden of proving the crime of plunder is, in actuality, much greater than in an ordinary criminal case. The prosecution, in establishing a pattern of overt or criminal acts, must necessarily show a combination or series of acts within the purview of Section 1(d) of the law.

These acts which constitute the combination or series must still be proven beyond reasonable doubt. On top of that, the prosecution must establish beyond reasonable doubt such pattern of overt or criminal acts indicative of the overall scheme or conspiracy, as well as all the other elements thereof.

Thus, Respondent Sandiganbayan was correct in its ratiocination on that point:

> "The accused misread the import and meaning of the above-quoted provision (Sec. 4). The latter did not lower the quantum of evidence necessary to prove all the elements of plunder, which still remains proof beyond reasonable doubt. For a clearer understanding of the import of Section 4 of the Anti-Plunder Law, quoted hereunder are pertinent portions of the legislative deliberations on the subject:
> `MR. ALBANO. Now, Mr. Speaker, it is also elementary in our criminal law that what is alleged in the information must be proven beyond reasonable doubt. If we will prove only one act and find him guilty of the other acts enumerated in the information, does that not work against the right of the accused especially so if the amount committed, say, by falsification is less than P100 million, but the totality of the crime committed is P100 million since there is malversation, bribery, falsification of public document, coercion, theft?
>
> `MR. GARCIA (P). Mr. Speaker, not everything alleged in the information needs to be proved beyond reasonable doubt. What is required to be proved beyond reasonable doubt is every element of the crime charged. For example, Mr. Speaker, there is an enumeration of the things taken by the robber in the information - three pairs of pants, pieces of jewelry. These need not be proved beyond reasonable doubt, but these will not prevent the conviction of a crime for which he was charged just because, say, instead of 3 pairs of diamond earrings the prosecution proved only two. Now, what is required to be proved beyond reasonable doubt is the element of the offense.
>
> `MR. ALBANO. I am aware of that, Mr. Speaker, but considering that in the crime of plunder the totality of the amount is very important, I feel that such a series of overt (or) criminal acts has to be taken singly. For instance, in the act of bribery, he was able to accumulate only P50,000 and in the crime of extortion, he was only able to accumulate P1 million. Now, when we add the totality of the other acts as required under this bill through the interpretation on the rule of evidence, it is just one single act, so how can we now convict him?
>
> `MR. GARCIA (P). With due respect, Mr. Speaker, for purposes of proving an essential element of the crime, there is a need to prove that element beyond reasonable doubt. For example, one essential element of the crime is that the amount involved is P100 million. Now, in a series of defalcations and other acts of corruption and in the enumeration the total amount would be P110 or P120 million, but there are certain acts that could not be proved, so, we will sum up the amounts involved in these transactions which were proved. Now, if the amount involved in these transactions, proved beyond reasonable doubt, is P100 million, then there is a crime of plunder.' (Deliberations of House of Representatives on RA 7080, dated October 9, 1990).'
>
> x x x x x x x x x

"According to the Explanatory Note of Senate Bill No. 733, the crime of plunder, which is a `term chosen from other equally apt terminologies like kleptocracy and economic treason, punishes the use of high office for

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personal enrichment, committed through a series [or combination] of acts done not in the public eye but in stealth or secrecy over a period of time, that may involve so many persons, here and abroad, and which touch so many states and territorial units.' For this reason, it would be unreasonable to require the prosecution to prove all the overt and criminal acts committed by the accused as part of an `over-all unlawful scheme or conspiracy' to amass ill-gotten wealth as long as all the elements of the crime of plunder have been proven beyond reasonable doubt, such as, the combination or series of overt or criminal acts committed by a public officer alone or in connivance with other persons to accumulate ill-gotten wealth in the amount of at least Fifty Million Pesos.

"The statutory language does not evince an intent to do away with the constitutional presumption of guilt nor to lower the quantum of proof needed to establish each and every element or ingredient of the crime of plunder."[45]

In connection with the foregoing, I emphasize that there is no basis for petitioner's concern that the conspiracy to defraud, which is not punishable under the Revised Penal Code, may have been criminalized under RA 7080. The Anti-Plunder Law treats conspiracy as merely a mode of incurring criminal liability, but does not criminalize or penalize it per se.

In sum, it is clear that petitioner has misunderstood the import of Section 4. Apropos the foregoing, I maintain that, between an interpretation that produces questionable or absurd results and one that gives life to the law, the choice for this Court is too obvious to require much elucidation or debate.

Even granting arguendo that Section 4 of the Anti-Plunder law suffers from some constitutional infirmity, the statute may nonetheless survive the challenge of constitutionality in its entirety. Considering that this provision pertains only to a rule on evidence or to a procedural matter that does not bear upon or form any part of the elements of the crime of plunder, the Court may declare the same unconstitutional and strike it off the statute without necessarily affecting the essence of the legislative enactment. For even without the assailed provision, the law can still stand as a valid penal statute inasmuch as the elements of the crime, as well as the penalties therein, may still be clearly identified or sufficiently derived from the remaining valid portions of the law. This finds greater significance when one considers that Section 7 of the law provides for a separability clause declaring the validity, the independence and the applicability of the other remaining provisions, should any other provision of the law be held invalid or unconstitutional.

Third Issue:
The Constitutional Power of Congress
to Enact Mala Prohibita Laws

Petitioner maintains that RA 7080 "eliminated the element of mens rea from crimes which are mala in se and converted these crimes which are components of plunder into mala prohibita, thereby rendering it easier to prove" since, allegedly, "the prosecution need not prove criminal intent."

This asseveration is anchored upon the postulate (a very erroneous one, as already discussed above) that the Anti-Plunder Law exempts the prosecution from proving beyond reasonable doubt the component acts constituting plunder, including the element of criminal intent. It thus concludes that RA 7080 violates the due process and the equal protection clauses of the Constitution.

While I simply cannot agree that the Anti-Plunder Law eliminated mens rea from the component crimes of plunder, my bottom-line position still is: regardless of whether plunder is classified as mala prohibita or in se, it is the prerogative of the legislature -- which is undeniably vested with the authority -- to determine whether certain acts are criminal irrespective of the actual intent of the perpetrator.

to Penalize Certain Acts

Jurisprudence dating as far back as United States v. Siy Cong Bieng[46] has consistently recognized and upheld "the power of the legislature, on grounds of public policy and compelled by necessity, `the great master of things,' to forbid in a limited class of cases the doing of certain acts, and to make their commission criminal without regard to the intent of the doer." Even earlier, in United States v. Go Chico,[47] Justice Moreland wrote that the legislature may enact criminal laws that penalize certain acts, like the "discharge of a loaded gun," without regard for the criminal intent of the wrongdoer. In his words:

> "In the opinion of this Court it is not necessary that the appellant should have acted with criminal intent. In many crimes, made such by statutory enactment, the intention of the person who commits the crime is entirely immaterial. This is necessarily so. If it were not, the statute as a deterrent influence would be substantially worthless. It would be impossible of execution. In many cases the act complained of is itself that which produces the pernicious effect which the statute seeks to avoid. In those cases the pernicious effect is produced with precisely the same force and result whether the intention of the person performing the act is good or bad. The case at bar is a perfect illustration of this. The display of a flag or emblem used, particularly within a recent period, by the enemies of the Government tends to incite resistance to governmental functions and insurrection against governmental authority just as effectively if made in the best of good faith as if made with the most corrupt intent. The display itself, without the intervention of any other factor, is the evil. It is quite different from that large class of crimes, made such by the common law or by statute, in which the injurious effect upon the public depends upon the corrupt intention of the person perpetrating the act. If A discharges a loaded gun and kills B, the interest which society has in the act depends, not upon B's death, but upon the intention with which A consummated the act. If the gun were discharged intentionally, with the purpose of accomplishing the death of B, then society has been injured and its security violated; but if the gun was discharged accidentally on the part of A, the society, strictly speaking, has no concern in the matter, even though the death of B results. The reason for this is that A does not become a danger to society and its institutions until he becomes a person with a corrupt mind. The mere discharge of the gun and the death of B do not of themselves make him so. With those two facts must go the corrupt intent to kill. In the case at bar, however, the evil to society and to the Government does not depend upon the state of mind of the one who displays the banner, but upon the effect which that display has upon the public mind. In the one case the public is affected by the intention of the actor; in the other by the act itself."

Without being facetious, may I say that, unlike the act of discharging a gun, the acts mentioned in Section 1(d) -- bribery, conversion, fraudulent conveyance, unjust enrichment and the like -- cannot be committed sans criminal intent. And thus, I finally arrive at a point of agreement with petitioner: that the acts enumerated in Section 1(d) are by their nature mala in se, and most of them are in fact defined and penalized as such by the Revised Penal Code. Having said that, I join the view that when we speak of plunder, we are referring essentially to two or more instances of mala in se constituting one malum prohibitum. Thus, there should be no difficulty if each of the predicate acts be proven beyond reasonable doubt as mala in se, even if the defense of lack of intent be taken away as the solicitor general has suggested.

In brief, the matter of classification is not really significant, contrary to what petitioner would have us believe. The key, obviously, is whether the same burden of proof -- proof beyond reasonable doubt -- would apply.

Furthermore, I also concur in the opinion of the solicitor general: if it is conceded that the legislature possesses the requisite power and authority to declare, by legal fiat, that acts not inherently criminal in nature are punishable as offenses under special laws, then with more reason can it punish as offenses under special laws those acts that are already inherently criminal. "This is so because the greater (power to punish not inherently criminal acts) includes the lesser (power to punish inherently criminal acts). In eo plus sit, semper inest et minus."[48]

Epilogue

> "The constitutionality of laws is presumed. To justify nullification of a law, there must be a clear and unequivocal breach of the Constitution, not a doubtful or argumentative implication; a law shall not be declared invalid unless the conflict with the Constitution is clear beyond a reasonable doubt. `The presumption is always in favor of constitutionality x x x. To doubt is to sustain.' x x x."[49]

A law should not be overturned on the basis of speculation or conjecture that it is unconstitutionally vague. Everyone is duty-bound to adopt a reasonable interpretation that will uphold a statute, carry out its purpose and render harmonious all its parts. Indeed, the constitutionality of a statute must be sustained if, as in this case, a ground therefor can possibly be found. For the unbending teaching is that a law cannot be declared invalid, unless the conflict with the Constitution is shown to be clearly beyond reasonable doubt.

To lend color and vividness to the otherwise boring legalese that has been used to dissect RA 7080, the parties to this case laced their arguments with interesting little stories. Thus, petitioner opened his Oral Argument with an admittedly apocryphal account of a befuddled student of law who could not make heads or tails of the meanings of series, combination and pattern.

On the other hand, the solicitor general compares petitioner with Hans Christian Andersen's fabled tailors who tried to fool the emperor into walking around naked by making him believe that anyone who did not see the invisible garment, which they had supposedly sewn for him, was "too stupid and incompetent to appreciate its quality." This is no doubt a parody of the alleged vagueness of RA 7080, which is purportedly "invisible only to anyone who is too dull or dense to appreciate its quality."[50]

I do not begrudge petitioner (or his lawyers) for exhausting every known and knowable legal tactic to exculpate himself from the clutches of the law. Neither do I blame the solicitor general, as the Republic's counsel, for belittling the attempt of petitioner to shortcut his difficult legal dilemmas. However, this Court has a pressing legal duty to discharge: to render justice though the heavens may fall.

By the Court's Decision, petitioner is now given the occasion to face squarely and on the merits the plunder charges hurled at him by the Ombudsman. He may now use this opportunity to show the courts and the Filipino people that he is indeed innocent of the heinous crime of plunder - to do so, not by resorting to mere legalisms, but by showing the sheer falsity of the wrongdoings attributed to him.

I think that, given his repeated claims of innocence, petitioner owes that opportunity to himself, his family, and the teeming masses he claims to love. In short, the Court has rendered its judgment, and the heavens have not fallen. Quite the contrary, petitioner is now accorded the opportunity to prove his clear conscience and inculpability.

WHEREFORE, I vote to DISMISS the Petition and to uphold the constitutionality of RA 7080.

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[1] Memorandum for Petitioner, p. 11.

[2] Ibid., p. 66.

[3] Id., p.76.

[4] Petitioner's Memorandum, p. 16.

[5] 285 SCRA 504, January 29, 1998, per Francisco, J.

[6] GR No. 135294, November 20, 2000, per Kapunan, J.

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[7] §1(d), RA 7080, as amended.

[8] 165 SCRA 186, August 31, 1988, per Sarmiento, J.

[9] "Construction is the means by which the Court clarifies the doubt to arrive at the true intent of the law." Agpalo, Statutory Construction, 1990 ed., p. 44; see also Caltex v. Palomar, 18 SCRA 247, September 29, 1966.

[10] See People v. Purisima, 86 SCRA 542, November 20, 1978.

[11] These deliberations are quoted in the Comment, pp. 14-15.

[12] Record of the Senate, Vol. IV, No. 141, June 6, 1989, at p. 1399; quoted in the Comment, p. 16.

[13] Petitioner's Memorandum, p. 19.

[14] Records of the Senate, Vol. IV, No. 140, June 5, 1989, at p. 1310.

[15] See discussion of Senate Bill No. 733 on June 6, 1989.

[16] Record of the Joint Conference Meeting - Committee on Justice and Committee on Constitutional Amendments (S. No. 733 & H. No. 22752), May 7, 1991, pp. 40-43.

[17] The relevant portions of the Record are as follows:

"REP. ISIDRO. I am just intrigued again by our definition of plunder. We say, THROUGH A COMBINATION OR SERIES OF OVERT OR CRIMINAL ACTS AS MENTIONED IN SECTION ONE HEREOF. Now when we say combination, we actually mean to say, if there are too or more means, we mean to say that number one and two or number one and something else are included, how about a series of the same act? Fore example, through misappropriation, conversation, misuse, will these be included also?

THE CHAIRMAN (REP. GARCIA). Yeah, because we say series.

REP. ISIDRO. Series.

THE CHAIRMAN (REP. GARCIA). Yeah, we include series.

REP. ISIDRO. But we say we begin with a combination.

THE CHAIRMAN (REP. GARCIA). Yes.

REP. ISIDRO. When we say combination, it seem that -

THE CHAIRMAN (REP. GARCIA). Two.

REP. ISIDRO. Not only two but we seem to mean that two of the enumerated means not twice of one enumeration.

THE CHAIRMAN (REP. GARCIA). No, no, not twice.

REP. ISIDRO. Not twice?

THE CHAIRMAN (REP. GARCIA). Yes. Combination is not twice - but combination, two acts.

REP. ISIDRO. So in other words, that's it. When we say combination, we mean, two different acts. It can not be a repetition of the same act.

THE CHAIRMAN (REP. GARCIA). That be referred to series. Yeah.

REP. ISIDRO. No, no. Supposing one act is repeated, so there are two.

THE CHAIRMAN (REP. GARCIA). A series.

REP. ISIDRO. That's not series. It's a combination. Because when we say combination or series, we seem to say that two or more, `di ba?

THE CHAIRMAN (REP. GARCIA). Yes. This distinguishes it really the ordinary --- That's why I said, that's a very good suggestion, because if it's only one act, it may fall under ordinary crime. But we have here a combination or series, overt or criminal acts.

REP. ISIDRO. I know what you are talking about. For example, through misappropriation, conversion, misuse or malversation of public funds who raids the public treasury, now, for example, misappropriation, if there are a series of . . . . .

REP. ISIDRO.

. . . If there are a series of misappropriations?

THE CHAIRMAN. (REP. GARCIA P.) Yes.

REP. ISIDRO. So, these constitute illegal wealth.

THE CHAIRMAN. (REP. GARCIA P.) Yes, yes.

REP. ISIDRO. Ill-gotten

THE CHAIRMAN. (SEN. TAÑADA) Ill-gotten wealth.

THE CHAIRMAN. (REP. GARCIA P.) Series. One after the other eh di . . .

THE CHAIRMAN. (SEN. TAÑADA), So, that would fall under the term `series'?

THE CHAIRMAN. (REP. GARCIA P.) Series, oo.

REP. ISIDRO. Now, if it is combination, ano, two misappropriations . . .

THE CHAIRMAN. (REP. GARCIA P.) It's not, . . two misappropriations will not be combination. Series.

REP. ISIDRO. So, it is not a combination?

THA CHAIRMAN. (REP. GARCIA P.) Yes.

REP. ISIDRO. When you say `combination', two different?

THE CHAIRMAN. (REP. GARCIA P.) Yes.

THE CHAIRMAN. (REP. TAÑADA.) Two different.

REP. ISIDRO. Two different acts.

THE CHAIRMAN. (REP. GARCIA P.) For example, ha . . .

REP. ISIDRO. Now series, meaning, repetition . . .

THE CHAIRMAN. (SEN. TAÑADA) Yes.

REP. ISIDRO. With that . . .

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THE CHAIRMAN. (REP. GARCIA P.) Thank you.

THE CHAIRMAN. (SEN. TAÑADA) So, it cold be a series of any of the acts mentioned in paragraphs 1, 3, 4, 5 of Section 2 (2), or . . 1 (d) rather, or combination of any of he acts mentioned in paragraph 1 alone, or paragraph 2 alone or paragraph 3 or paragraph 4.

THE CHAIRMAN. (REP. GARCIA P.) I think combination maybe . . which one? Series?

THE CHAIRMAN. (SEN. TAÑADA) Series or combination.

REP. ISIDRO. Which one, combination or series or series or combination?

THE CHAIRMAN. (SEN. TAÑADA) Okay, Ngayon doon sa definition, ano, Section 2, definition, doon sa portion ng . . . Saan iyon? As mentioned, as described . . .

THE CHAIRMAN. (SEN. TAÑADA) . . better than `mentioned'. Yes.

THE CHAIRMAN. (REP. GARCIA P.) Okay?

REP. ISIDRO. Very good.

THE CHAIRMAN. (SEN. TAÑADA) Oo, marami pong salamat.

THE CHAIRMAN. (REP. GARCIA P.) maraming salamat po.

The meeting was adjourned at 1:33 p.m."

[18] H. J., Inc. v. Northwestern Bell, (1999) 492 US 229, 106 L Ed 2d 195, 109 S Ct 2893, at p. 211: "One evident textual problem with the suggestion that predicates form a RICO pattern only if they are indicative of an organized crime perpetrator - in either a traditional or functional sense - is that it would seem to require proof that the racketeering acts were the work of an association or group, rather than of an individual acting alone. RICO's language supplies no grounds to believe that Congress meant to impose such a limit on the scope of the Act. A second indication from the text that Congress intended no organized crime limitation is that no such restriction is explicitly stated. In those titles of OCCA (the Organized Crime Control Act of 1970) where Congress did intend to limit the new law's application to the context of organized crime, it said so."

[19] GR No. 121777, January 24, 2001, per Kapunan, J.

[20] The Racketeer-Influenced and Corrupt Organizations Act (RICO), 18 USC §§1961-1968 [18 USCS §§1961-1968] which is Title IX of the Organized Crime Control Act of 1970 (OCCA).

[21] Supra.

[22] Ibid., at p. 209.

[23] Id., at p. 208.

[24] Id., at p. 209.

[25] The relevant portion of the sponsorship speech of Senator Tañada reads as follows:

> "It cannot be seriously disputed that much of our economic woes and the nation's anguish are directly attributable to the despoliation of the National Treasury by some public officials who have held the levers of power.
>
> "It is sad to state, Mr. President, that there is presently no statute that either effectively discourages or adequately penalizes this predatory act which reached unprecedented heights and which had been developed by

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its practitioners to a high level of sophistication during the past dictatorial regime.

"For, while it is true that we have laws defining and penalizing graft and corruption in government and providing for the forfeiture of unexplained wealth acquired by public officials, it has become increasingly evident that these legislations x x x no longer suffice to deter massive looting of the national wealth; otherwise, this country would not have been raided and despoiled by the powers that be at that time.

"Indeed, there is a need to define plunder, and provide for its separate punishment as proposed in Senate Bill No. 733; because, plunder involves not just plain thievery but economic depredation which affects not just private parties or personal interest but the nation as a whole. And, therefore, Mr. President, it is a crime against national interest which must be stopped and if possible stopped permanently."

[26] Record of the Senate, Vol. IV, No. 140, June 5, 1989, at pp. 1314-1315.

[27] On pp. 19-20 of the Resolution.

[28] Foote v. Nickerson, 54 L.R.A. 554.

[29] Intia Jr. v. Commission on Audit, 306 SCRA 593, April 30, 1999; Paat v. Court of Appeals, 266 SCRA 167, January 10, 1997.

[30] Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc., 309 SCRA 87, June 25, 1999.

[31] De Guia v. Commission on Elections, 208 SCRA 420, May 6, 1992.

[32] Quoted portions are excerpts from Senator Tañada's speech sponsoring Senate Bill No. 733, Records of the Senate, June 5, 1989.

[33] During the Oral Argument, petitioner contended that Yu Cong Eng v. Trinidad [271 US 500 (1926)] declared the Bookkeeping Act unconstitutional for its alleged vagueness. This is incorrect. The reason for its unconstitutionality was the violation of the equal protection clause. Likewise, Adiong v. Comelec (207 SCRA 712, March 31, 1992) decreed as void a mere Comelec Resolution, not a statute. Finally, Santiago v. Comelec (270 SCRA 106, March 19, 1997) declared a portion of RA 6735 unconstitutional because of undue delegation of legislative powers, not because of vagueness.

[34] 237 SCRA 724, October 26, 1994.

[35] 224 SCRA 361, July 5, 1993.

[36] Jeff Atkinson, "Racketeer Influenced and Corrupt Organization," 18 U.S.C. 1961-1968; "Broadest of the Criminal Statutes," 69 Journal of Criminal Law and Criminology 1 (1978), p.1.

[37] Ibid., at p. 2

[38] Senator Angara's vote explaining proposed Senate Bill No. 733; Records of the Senate, June 5, 1989.

[39] Ibid.; see also Article II (Declaration of Principles and State Policies), Section 27 of the 1987 Constitution.

[40] Morfe v. Mutuc, 22 SCRA 424, January 31, 1968; Salas v. Jarencio, 46 SCRA 734, August 30, 1972.

[41] Padilla v. Court of Appeals, 269 SCRA 402, March 12, 1997; Francisco v. Permskul, 173 SCRA 324, May 12, 1989.

[42] See Article 10, Civil Code.

[43] Deliberations of the Committee on Constitutional Amendments and Revision of Laws, November 15, 1988;

cited in the Resolution of the Sandiganbayan (Third Division) dated July 9, 2001.

[44] Comment, p. 29, citing the House deliberations on House Bill No. 22572, October 9, 1990.

[45] Resolution of the Sandiganbayan (Third Division) dated July 9, 2001, pp. 28-30.

[46] 30 Phil. 577, March 31, 1915, per Carson, J; see also US v. Ah Chong, 15 Phil. 488, March 19, 1910 and Caram Resources Corp. v. Contreras, supra.

[47] 14 Phil. 128, September 15, 1909, per Moreland, J.

[48] Respondent's Memorandum, pp. 84-85. The solicitor general cites illegal recruitment as an example of a malum in se crime, which the law penalizes as malum prohibitum; that is, to punish it severely without regard to the intent of the culprit.

[49] Virata v. Sandiganbayan, 202 SCRA 680, 698-699, October 15, 1991, per Davide, J. (now CJ).

[50] Solicitor general's Comment, pp. 1-2.

SEPARATE DISSENTING OPINION

PARDO, J.:

With due respect, I vote to grant the petition on the second ground raised therein, that is, multiplicity of offenses charged in the amended information.[1] Consequently, the resolution of the Sandiganbayan must be set aside, and the case remanded to the Ombudsman for the amendment of the information to charge only a single offense.

In my view, it is unnecessary to rule on the unconstitutionality of the entire law,[2] R. A. No. 7080, as amended by R. A. No. 7659, although I share the opinion of the dissenting justices in the case of People v. Echagaray,[3] that the heinous crime law is unconstitutional. Hence, the amendments to the plunder law prescribing the death penalty therefor are unconstitutional. I am of the view that the plunder law penalizes acts that are mala in se, and consequently, the charges must be the specific acts alleged to be in violation of the law, committed with malice and criminal intent. At any rate, I venture the view that Section 4, R. A. No. 7080, must be interpreted as requiring proof beyond reasonable doubt of all the elements of plunder as prescribed in the law, including the elements of the component crimes, otherwise, the section will be unconstitutional.

---

[1] Petition, Annex "B", Motion to Quash, Ground II.

[2] `The Court will not pass upon a constitutional question although properly presented by the record if the case can be disposed of on some other ground." (Laurel v. Garcia, 187 SCRA 797, 813 [1990], citing Siler v. Louisville and Nashville R. Co., 312 U.S. 175 [1909]; Railroad Commission v. Pullman Co., 312 U.S. 496 [1941]; Lalican v. Vergara, 342 Phil. 485, 498 [1997]; Mirasol v. Court of Appeals, G. R. No. 128448, February 1, 2001.

[3] 335 Phil. 343 [1997].

DISSENTING OPINION

YNARES-SANTIAGO, J.:

It is an ancient maxim in law that in times of frenzy and excitement, when the desire to do justice is tarnished by anger and vengeance, there is always the danger that vital protections accorded an accused may be taken away.

The Plunder Law and its amendment were enacted to meet a national problem demanding especially immediate and effective attention. By its very nature, the law deserved or required legislative drafting of the highest order of clarity and precision.

Substantive due process dictates that there should be no arbitrariness, unreasonableness or ambiguity in any law which deprives a person of his life or liberty. The trial and other procedures leading to conviction may be fair and proper. But if the law itself is not reasonable legislation, due process is violated. Thus, an accused may not be sentenced to suffer the lethal injection or life imprisonment for an offense understood only after judicial construction takes over where Congress left off, and interpretation supplies its meaning.

The Constitution guarantees both substantive and procedural due process[1] as well as the right of the accused to be informed of the nature and cause of the accusation against him.[2] Substantive due process requires that a criminal statute should not be vague and uncertain.[3] More explicitly -

> That the terms of a penal statute. . . must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to penalties, is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process.[4]

The doctrine of constitutional uncertainty is also based on the right of the accused to be informed of the nature and cause of the accusation.[5] Fundamental fairness dictates that a person cannot be sent to jail for a crime that he cannot with reasonable certainty know he was committing.[6] Statutes defining crimes run afoul of the due process clause if they fail to give adequate guidance to those who would be law-abiding, to advise defendants of the nature of the offense with which they are charged or to guide courts trying those who are accused.[7] In short, laws which create crime ought to be so explicit that all men subject to their penalties may know what acts it is their duty to avoid.[8]

A reading of the Plunder Law immediately shows that it is phrased in a manner not susceptible to ready or clear understanding. In the desire to cover under one single offense of plunder every conceivable criminal activity committed by a high government official in the course of his duties, Congress has come out with a law unduly vague, uncertain and broad.

The doctrines of overbreadth and void-for-vagueness in Constitutional Law were developed in the context of freedom of speech and of the press. However, they apply equally, if not more so, to capital offenses. In the present case, what the law seeks to protect or regulate involves the deprivation of life itself and not merely the regulation of expression.

In its early formulation, the overbreadth doctrine states that a governmental purpose to control or prevent activities constitutionally subject to regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.[9]

A statute, especially one involving criminal prosecution, must be definite to be valid. A statute is vague or overbroad, in violation of the due process clause, where its language does not convey sufficiently definite warning

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to the average person as to the prohibited conduct. A statute is unconstitutionally vague if people of common intelligence must necessarily guess at its meaning.[10]

It is not only prosecutors and judges who are concerned. The need for definiteness applies with greater force to the accused and those in positions where opportunities for them to commit the proscribed offense are present. They must understand exactly what prohibited activity will be punished by capital punishment. Sadly, even the record of deliberations in Congress cited in the motion to quash shows that even the members of the Senate who are illustrious lawyers found the Plunder Law vague.

Under Section 1 of R.A. 7080 and Section 12 of R.A. 7659, the acquisition of at least P50,000,000.00 of ill-gotten wealth is punished by reclusion perpetua to death, if committed as follows:

> 1) Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;
>
> 2) By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;
>
> 3) By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities or government-owned or controlled corporations and their subsidiaries;
>
> 4) By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;
>
> 5) By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or
>
> 6) By taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.[11]

The crimes of malversation of public funds and bribery, which appear to be included among the modes of committing plunder, have acquired well-defined meanings under our present penal statutes. The accused immediately knows how to defend and justify his actions. The prosecution understands the quantum and nature of the evidence he has to produce in court. The Judge can apply the law with straight and positive judgment because there is no vagueness about it.

The Sandiganbayan, however, has ruled that the Plunder Law does not make any reference to any specific provision of laws other than R.A. 7080, as amended. It is an entirely new offense where malversation or bribery become "generic terms" according to the court. And since "generic" refers to an entire group or class of related matters, the discretion given to the prosecutor and the judge figuratively runs riot.

Under the same paragraph of the Plunder Law, malversation is lumped with "misuse of public funds." Misuse can be as innocuous as error or it can be as severe as corruption or embezzlement. The terms "abuse," "distortion," "misapplication," "mismanagement," "poor stewardship," "malpractice," "debasement," or "breach of trust," all conceivably fall under the generic term "misuse." Exactly when does an administrative offense of misuse become the capital crime of plunder? What degree of misuse is contemplated under the law?

A penal law violates due process where inherently vague statutory language permits selective law enforcement.[12] Under the Plunder Law, a crusading public officer who steps on too many important toes in the

course of his campaign could be prosecuted for a capital offense, while for exactly the same acts, an official who tries to please everybody can be charged whether administratively or for a much lighter offense.

For instance, direct bribery under Article 210 of the Revised Penal Code is punished with prision mayor in its medium or minimum periods, prision correccional in its medium period, or prision mayor in its minimum period, depending on the manner of commission.[13] Indirect bribery under Article 211 is punished with prision correccional in its medium and maximum periods.[14] Under the Plunder Law, the penalty is reclusion perpetua to death. The void-for-vagueness infirmity becomes all the more apparent if the proscribed activity is "misuse of public funds." The prosecutor is given broad powers of selective law enforcement. For "misuse," exactly the same acts could be punished with death under the Plunder Law, or mere dismissal with prejudice to future government employment under the Civil Service Law.

The provision in the Plunder Law on "implementation of decrees and orders intended to benefit particular persons or special interests" also calls for more specific elucidation. If the only person benefited is himself, does that fall under "particular person?" Decrees and orders issued by a top government official may be intended to benefit certain segments of society such as farmers, manufacturers, residents of a geographical area and the like. If in the process a close relative acquires P50,000,000.00 because of development in that sector solely because of the decree and without lifting a finger, is that plunder? The vagueness can be better appreciated by referring to petitioner's arguments that the element of mens rea in mala in se crimes has been abolished and the offenses have been converted to mala prohibita. If the guilty intent is eliminated, even innocent acts can be plunder. The law was not drafted for petitioner alone. It applies to all public officers.

As petitioner has stated, what Congress did in enacting the Plunder Law was to take out the provisions of the Revised Penal Code on malversation, estafa, bribery, and other crimes committed by public officers, mix these with special laws on graft and corruption and together with a couple of non-criminal acts, combine them into a special law and call it "plunder."

Early in the history of this Court, it ruled that in acts mala in se, the criminal intent governs. But in those acts mala prohibita, the only inquiry is: has the law been violated?[15] Acts constituting malversation, estafa, and bribery are mala in se. The courts must inquire into the criminal intent, the evil nature or wrongful disposition behind the criminal acts. In mala prohibita crimes, there is a violation of a prohibitory law and the inquiry is, therefore, has the law been violated?

In the crime of plunder, it is enough that the acts defining malversation or bribery are described. The court then proceeds to determine whether the acts fall under the prohibitory terms of the law. Criminal intent no longer has to be proved. The criminal intent to commit the crime is not required to be proved. The desire to benefit particular persons does not have to spring from criminal intent under the special law creating the crime of plunder. In malversation or bribery under the Revised Penal Code, the criminal intent is an important element of the criminal acts. Under the Plunder Law, it is enough that the acts are committed.

Thus, even if the accused can prove lack of criminal intent with respect to crimes mala in se, this will not exonerate him under the crime mala prohibita. This violates substantive due process and the standards of fair play because mens rea is a constitutional guarantee under the due process clause. Indeed, as stated by the U.S. Supreme Court in Morisette v. U.S.:[16]

> The Government asks us by a feat of construction radically to change the weights and balances in the scales of justice. The purpose and obvious effect of doing away with the requirement of a guilty intent is to ease the prosecution's party to conviction, to strip the defendant of such benefit as he derived at common law from innocence of evil purpose, and to circumscribe the freedom heretofore allowed juries. Such a manifest

> impairment of the immunities of the individual should not be extended to common law crimes on judicial initiative. (Emphasis ours)

By grafting several felonies, some mala in se and some mala prohibita, to constitute the crime of plunder and by doing away with the standard of proof beyond reasonable doubt for the component elements, the State would practically be given the judicial imprimatur to impose the extreme penalty of death on the basis of proof only of the overall pattern of overt or criminal acts showing unlawful scheme or conspiracy. This attempt of Congress to tip the scales of criminal justice in favor of the state by doing away with the element of mens rea and to pave the way for the accused to be convicted by depriving him of the defense of criminal intent as to mala in se components of plunder will be anathema to substantive due process which insures "respect for those personal immunities which are so rooted in the traditions and conscience of our people as to be ranked as fundamental."[17]

Equally disagreeable is the provision of the Plunder Law which does away with the requirement that each and every component of the criminal act of plunder be proved and instead limits itself to proving only a pattern of overt acts indicative of the unlawful scheme or conspiracy.[18] In effect, the law seeks to penalize the accused only on the basis of a proven scheme or conspiracy, and does away with the rights of the accused insofar as the component crimes are concerned. In other words, R.A. No. 7080 circumvents the obligation of the prosecution to prove beyond reasonable doubt every fact necessary to constitute the crime of plunder, because the law requires merely proof of a pattern of overt acts showing an unlawful scheme or conspiracy. What aggravates matters on this point is that under controlling case law, conspiracy to defraud is not punishable under the Revised Penal Code.[19] Cutting corners on the burden of proof is unconstitutional because the standard of reasonable doubt is part of the due process safeguard accorded an accused. The due process clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.[20]

Under R.A. 7659, plunder is a heinous crime punishable by death. It is described as grievous, odious and hateful because of its inherent or magnified wickedness, viciousness, atrocity, and perversity. There can be no quarrel with the legislative objective of reducing the upsurge of such crimes which affect sustainable economic development and undermine the people's faith in Government and the latter's ability to maintain peace and order. Nevertheless, due process commands that even though the governmental purpose is legitimate and substantial, that purpose cannot be pursued by means so vague and broad that they infringe on life or stifle liberty when the end can be more narrowly achieved through existing penal statutes.

Where the statute has an overbroad sweep just as when it is vague, the hazard of loss or impairment of life or liberty is critical.[21]

The problem of vagueness is reduced or eliminated if the different schemes mentioned in the law as used in the acquisition of ill-gotten wealth are prosecuted under existing penal law. The offenses are by their nature distinct and separate from each other and have acquired established meanings.

Thus, the acts of misappropriation or malversation may be prosecuted as separate offenses. So may the receipt of commissions, gifts, or kickbacks by higher officials in connection with government contracts. The four other methods or schemes mentioned in the law may be the objects of separate penal statutes.

When the law creates a new crime of plunder through a combination or series of overt or criminal acts, the courts have to supply missing elements if conviction is to be achieved.

Bribery is punished as plunder under the law only when there is a combination or series of criminal acts. But when do certain acts constitute a combination or series? Does the Plunder law provide that two or three acts of

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one crime of bribery constitute a combination or series which qualify bribery into plunder? Or does bribery have to be conjoined with the separate offense of malversation to become a combination? Or with malversation and fraudulent conveyance or disposition of public assets or one of the other means or schemes before it becomes a series?

I find it difficult to accept the wide discretion given to the prosecution by the Plunder Law. An elective official who is a political threat may be charged for plunder as one single offense punishable by death while one in the good graces of the powers-that-be is charged only under the Revised Penal Code.

The confusion generated by a vague law is exemplified in the informations filed against petitioner in this case. Petitioner was charged with eight crimes, namely: [1] plunder; [2] violation of Section 3 (e) of R.A. 3019; [3] violation of Section 3 (a) of R.A. 3019; [4] another violation of Section 3 (e) of R.A. 3019; [5] violation of Section 3 (c) of R.A. 3019; [6] violation of Section 7 (d) of R.A. 6713; [7] perjury; [8] illegal use of alias.

Only twelve days later, the prosecution withdrew five (5) of the informations which it consolidated into only one offense of plunder. The prosecution was not clear about the steps to take in instances where the words "combination" or "series" may or may not apply. It could not understand the coverage of the law as acts repetitive of the same offense or acts constituting one crime lumped up with other crimes or both criminal and non-criminal acts punished as one new offense of plunder.

In the following exchange during the deliberations on Senate Bill No. 733, Senators Neptali Gonzales and Wigberto Tanada voiced serious doubts on the constitutionality of the definition of plunder, thus:

> Senator Gonzales:
>
> To commit the offense of plunder, as defined in this act, and while constituting a single offense, it must consist of a series of overt or criminal acts, such as bribery, extortion, malversation of public funds, swindling, falsification of public documents, coercion, theft, fraud, and illegal exaction and graft or corrupt practices and like offenses. Now, Mr. President, I think this provision, by itself will be vague. I am afraid that it may be faulted for being violative of the due process clause and the right to be informed of the nature and cause of accusation of an accused. Because what is meant by "series of overt or criminal acts?" I mean, would 2, 4, or 5 constitute a series? During the period of amendments, can we establish a minimum of overt acts like, for example, robbery in band? The law defines what is robbery in band by the number of participants therein. In this particular case, probably, we can statutorily provide for the definition of "series" so that two, for example, would that already be a series? Or, three, what would be the basis for such determination?
>
> Senator Tanada:
>
> I think, Mr. President, that would be called for, this being a penal legislation, we should be very clear as to what it encompasses; otherwise, we may contravene the constitutional provision on the right of accused to due process. (Emphasis ours)[22]

The foregoing concerns to statutorily provide for the definition of "series" or "combination" have, however, not been addressed and the terms were left undefined. The law, as presently crafted, does not specify whether a "series" means two, three, four or even more of the overt or criminal acts listed in Section 1 (d) of R.A. 7080.

Even more difficult to accept is when the trial court has to supply the missing elements, in effect taking over corrective or punitive legislation from Congress. The attempts of the Sandiganbayan in the questioned Resolution do not clarify. They instead serve to confuse and increase the ambiguity even more.

The Sandiganbayan interprets the words "combination" and "series" of overt or criminal acts through terms found in American decisions like "pattern," "conspiracy," "over-all unlawful scheme," or "general plan of action or

method."

The above definitions are not found in the Plunder Law. The use of such phrases as "over-all scheme" or "general plan" indicates that the Sandiganbayan is expanding the coverage of the law through the use of ambiguous phrases capable of dual or multiple applications. When do two or three acts of the same offense of malversation constitute a "pattern," "a general plan of action," or an "over-all scheme?" Would one malversation in the first week of a public officer's tenure and another similar act six (6) years later become a "combination," a "pattern," or a "general plan of action?"

I agree with petitioner's concern over the danger that the trial court may allow the specifications of details in an information to validate a statute inherently void for vagueness. An information cannot rise higher than the statute upon which it is based. Not even the construction by the Sandiganbayan of a vague or ambiguous provision can supply the missing ingredients of the Plunder Law.

The right of an accused to be informed of the nature and cause of the accusation against him is most often exemplified in the care with which a complaint or information should be drafted. However, the clarity and particularity required of an information should also be present in the law upon which the charges are based. If the penal law is vague, any particularity in the information will come from the prosecutor. The prosecution takes over the role of Congress.

The fact that the details of the charges are specified in the Information will not cure the statute of its constitutional infirmity. If on its face the challenged provision is repugnant to the due process clause, specification of details of the offense intended to be charged would not serve to validate it.[23] In other words, it is the statute, not the accusation under it, that prescribes the rule to govern conduct and warns against transgression. No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids.[24]

Definiteness is a due process requirement. It is especially important in its application to penal statutes. Vagueness and unintelligibility will invariably lead to arbitrary government action. The purpose of the due process clause is to exclude everything that is arbitrary and capricious affecting the rights of the citizen.[25] Congress, in exercising its power to declare what acts constitute a crime, must inform the citizen with reasonable precision what acts it intends to prohibit so that he may have a certain understandable rule of conduct and know what acts it is his duty to avoid.[26]

The questioned statutes were enacted purportedly in the interest of justice, public peace and order, and the rule of law. These purposes are not served by R.A. Nos. 7080 and 7659. These statutes allow the prosecutors and the courts arbitrary and too broad discretionary powers in their enforcement. Fair, equal and impartial justice would be denied.

For all the foregoing reasons, I vote to grant the petition and nullify the Plunder Law for being unconstitutional.

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[1] Constitution, Article III, Sections 1, 12 & 14.

[2] Constitution, Article III, Section 14.

[3] People v. Nazario, 165 SCRA 186, 195 [1988].

[4] Connally v. General Construction Co., 269 U.S. 385 [1926].

[5] Yu Cong Eng v. Trinidad, 271 U.S. 500 [1926].

[6] People v. Nazario, supra; Scull v. Commonwealth, 359 U.S. 344, 353.

[7] Musser v. Utah, 333 U.S. 95; 92 L Ed. 562.

[8] U.S. v. Brewer, 139 U.S. 278, 35 L Ed. 190, 193.

[9] National Association for the Advancement of Colored People (NAACP) v. Alabama, 377 U.S. 288.

[10] U.S. v. Petrillo, 332 U.S. 1; U.S. v. Spector, 343 U.S. 169; U.S. v. Darby, 312 U.S. 100.

[11] Republic Act No. 7080, Section 1 (d).

[12] Smith v. Goguen, 415 U.S. 566.

[13] "Any public officer who shall agree to perform an act constituting a crime, in connection with the performance of his official duties, in consideration of any offer, promise, gift or present received by such officer, personally or through the mediation of another, shall suffer the penalty of prision mayor in its medium and minimum periods and a fine of not less than three times the value of the gift, in addition to the penalty corresponding to the crime agreed upon, if the same shall have been committed.

"If the gift was accepted by the officer in consideration of the execution of an act which does not constitute a crime, and the officer executed said act, he shall suffer the same penalty provided in the preceding paragraph; and if said act shall not have been accomplished, the officer shall suffer the penalties of prision correccional in its medium period and a fine of not less than twice the value of such gift.

"If the object for which the gift was received or promised was to make the public officer refrain from doing something which it was his official duty to do, he shall suffer the penalties of prision correccional in its maximum period to prision mayor in its minimum period and a fine of not less than three times the value of such gift.

"In addition to the penalties provided in the preceding paragraphs, the culprit shall suffer the penalty of special temporary disqualification.

"The provisions contained in the preceding paragraphs shall be made applicable to assessors, arbitrators, appraisal and claim commissioners, experts or any other persons performing public duties."

[14] "The penalties of prision correccional in its medium and maximum periods, suspension and public censure shall be imposed upon any public officer who shall accept gifts offered to him by reason of his office."

[15] U.S. v. Go Chico, 14 Phil. 134 [1909].

[16] 342 U.S. 246.

[17] Rochin v. California, 324 U.S. 165, 168.

[18] Republic Act No. 7080, "Section 4. Rule of Evidence. --- For purposes of establishing the crime of plunder, it shall not be necessary to prove each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate of acquire ill-gotten wealth, it being sufficient to establish beyond reasonable doubt a pattern of overt criminal acts indicative of the overall unlawful scheme or conspiracy."

[19] U.S. v. Lim Buanco, 14 Phil. 472 [1910]; U.S. v. Remigio, 39 Phil. 599 [1919].

[20] In re Winship, 397 U.S. 358 ,364.

[21] See Keyshian v. Board of Regents of the University of the State of New York, 385 U.S. 589; and Shelton v. Tucker, 364 U.S. 479.

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[22] Record of the Senate, June 5, 1989, Vol. IV, No. 140, p. 1310.

[23] Lanzetta v. New Jersey, 306 U.S. 451, 453 (1939).

[24] Ibid., p. 453.

[25] Nebbia v. New York, 291 U.S. 502.

[26] Musser v. Utah, supra; Giaccio v. Pennsylvania, 382 U.S. 399; United States v. Brewer, supra.

DISSENTING OPINION

SANDOVAL-GUTIERREZ, J.:

At times when speaking against popular views can subject a member of this Court to all sorts of unfair criticism and pressure from the media, the lure not to wield the judicial pen is at its crest. Nevertheless, I cannot relent to such enticement. Silence under such circumstances may mean not only weakness, but also insensibility to the legal consequence of a constitutional adjudication bound to affect not only the litigants, but the citizenry as well. Indeed, the core issue in this case is highly significant, the resolution of which is inevitably historical. Thus, today, I prefer to take a stand and, therefore, dissent from the majority opinion.

It is beyond dispute that Republic Act No. 7080 (R.A. No. 7080),[1] entitled "An Act Penalizing the Crime of Plunder," is controversial and far-reaching. Nonetheless, it is my view that it is also vague and fuzzy, inexact and sweeping. This brings us to the query - may R.A. No. 7080 be enforced as valid and its shortcomings supplied by judicial interpretation? My answer, to be explained later, is "NO."

As a basic premise, we have to accept that even a person accused of a crime possesses inviolable rights founded on the Constitution which even the welfare of the society as a whole cannot override. The rights guaranteed to him by the Constitution are not subject to political bargaining or to the calculus of social interest. Thus, no matter how socially-relevant the purpose of a law is, it must be nullified if it tramples upon the basic rights of the accused.

Enshrined in our Constitution is the ultimate guaranty that "no person shall be deprived of life, liberty, or property without due process of law."[2] This provision in the Bill of Rights serves as a protection of the Filipino people against any form of arbitrariness on the part of the government, whether committed by the legislature, the executive or the judiciary. Any government act that militates against the ordinary norms of justice and fair play is considered an infraction of the due process; and this is true whether the denial involves violation merely of the procedure prescribed by law or affects the very validity of the law itself.[3]

The same Due Process Clause protects an accused against conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The reason for this was enunciated in In Re Winship:[4] "[t]he accused during a criminal prosecution has at stake interest of immense importance, both because of the possibility that he may lose his liberty (or life) upon conviction and because of the certainty that he would be stigmatized by the conviction." In view thereof, any attempt on the part of the legislature to diminish the requirement of proof in criminal cases should be discouraged.

I

R.A. No. 7080, as amended, is unconstitutional. Albeit the legislature did not directly lower the degree of proof required in the crime of plunder from proof beyond reasonable doubt to mere preponderance of or substantial evidence, it nevertheless lessened the burden of the prosecution by dispensing with proof of the essential elements of plunder. Let me quote the offending provision:

> SEC. 4. Rule of Evidence. - For purposes of establishing the crime of plunder, it shall not be necessary to prove each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate, or acquire ill-gotten wealth, it being sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy.

In every criminal prosecution, the law recognizes certain elements as material or essential. Calling a particular fact an "essential element" carries certain legal consequences. In this case, the consequence that matters is that the Sandiganbayan cannot convict the accused unless it unanimously[5] finds that the prosecution has proved beyond reasonable doubt each element of the crime of plunder.

What factual elements must be proved beyond reasonable doubt to constitute the crime of plunder?

Ordinarily, the factual elements that make up a crime are specified in the law that defines it. Under R.A. No 7080, as amended, the essential elements of the crime of plunder are: a) that the offender is a public officer; b) that he amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts described in Section 1 (d), to wit:

> 1) Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;
>
> 2) By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks, or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;
>
> 3) By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivision, agencies or instrumentalities or government -owned or controlled corporations and their subsidiaries;
>
> 4) By obtaining, receiving or accepting directly, or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;
>
> 5) By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular person or special interests; or
>
> 6) By taking undue advantage of official position, authority, relationship, connection, or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

and c) that the aggregate amount or total value of the ill-gotten wealth is at least Fifty Million Pesos (P50,000,000.00).[6]

Does the phrase "combination or series of overt or criminal acts described in Section 1 (d)" mean that the "criminal acts" merely constitute the means to commit plunder? Or does it mean that those "criminal acts," are essential elements of plunder?

When Section 4 of R.A. No. 7080 mandates that it shall not be necessary for the prosecution to prove each and every criminal act done by the accused, the legislature, in effect, rendered the enumerated "criminal acts" under

Section 1 (d) merely as means and not as essential elements of plunder. This is constitutionally infirmed and repugnant to the basic idea of justice and fair play.[7] As a matter of due process, the prosecution is required to prove beyond reasonable doubt every fact necessary to constitute the crime with which the defendant is charged. The State may not specify a lesser burden of proof for an element of a crime.[8] With more reason, it should not be allowed to go around the principle by characterizing an essential element of plunder merely as a "means" of committing the crime. For the result is the reduction of the burden of the prosecution to prove the guilt of the accused beyond reasonable doubt.

Let me elucidate on the vices that come with Section 4.

First, treating the specific "criminal acts" merely as means to commit the greater crime of plunder, in effect, allows the imposition of the death penalty even if the Justices of the Sandiganbayan did not "unanimously" find that the accused are guilty beyond reasonable doubt of those "criminal acts." The three Justices need only agree that the accused committed at least two of the criminal acts, even if not proved by evidence beyond reasonable doubt. They do not have to agree unanimously on which two.

Let us consider the present case against former President Joseph Ejercito Estrada. The accusatory portion of the information in Criminal Case No. 26558 charges Mr. Estrada and others of willfully, unlawfully and criminally amassing, accumulating and acquiring ill-gotten wealth in the aggregate amount of P4,097,804,173.17 more or less, through a combination and series of overt and criminal acts described as follows:

> "a) by receiving, collecting, directly or indirectly, on many instances, so called "jueteng money" from gambling operators in connivance with co-accused Jose "Jinggoy" Estrada, Yolanda Ricaforte and Edward Serapio, as witnessed by Gov. Luis Chavit Singson, among other witnesses, in the aggregate amount of FIVE HUNDRED FORTY-FIVE MILLION PESOS (P545,000,000.00), more or less, in consideration of their protection from arrest or interference by law enforcers in their illegal "jueteng" activities; and
>
> b) by misappropriating, converting and misusing his gain and benefit public fund in the amount of ONE HUNDRED THIRTY MILLION PESOS (P130,000,000.00), more or less, representing a portion of the One Hundred Seventy Million Pesos (P170,000,000.00) tobacco excise tax share allocated for the Province of Ilocos Sur under R.A. No. 7171, in conspiracy with co-accused Charlie "Atong" Ang, Alma Alfaro, Eleuterio Tan a.k.a Eleuterio Ramos Tan or Mr. Uy., and Jane Doe a.k.a Delia Rajas as witnesses by Gov. Luis "Chavit" Singson, among other witnesses; and
>
> c) by directing, ordering and compelling the Government Service Insurance System (GSIS) and the Social Security System (SSS) to purchase and buy a combined total of P681,733,000. shares of stock of Belle Corporation in the aggregate value of One Billion Eight Hundred Forty Seven Pesos and Fifty Centavos (P1,847,578,057.50), for the purpose of collecting for his personal gain and benefit, as in fact he did collect and receive the sum of ONE HUNDRED EIGHTY NINE MILLION SEVEN HUNDRED THOUSAND PESOS (P189,700,000.00), as commission from said stock purchase; and
>
> d) by unjustly enriching himself in the amount of THREE BILLION TWO HUNDRED THIRTY THREE MILLION ONE HUNDRED FOUR THOUSAND ONE HUNDRED SEVENTY THREE PESOS AND SEVENTEEN CENTAVOS (P3,233,104,173.17) comprising his unexplained wealth, acquired, accumulated and amassed by him under his account name "Jose Velarde" with Equitable PCI Bank."

Since it is not necessary to prove each criminal act, the inevitable conclusion is that Mr. Estrada may be convicted of the crime of plunder without the Justices of the Sandiganbayan "unanimously" deciding which two of the four criminal acts have actually been committed. In short, all that R.A. No. 7080 requires is that each Justice must be convinced of the existence of a "combination or series." As to which criminal acts constitute a combination or series, the Justices need not be in full agreement. Surely, this would cover-up a wide disagreement among them

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about just what the accused actually did or did not do. Stated differently, even if the Justices are not unified in their determination on what criminal acts were actually committed by the accused, which need not be proved under the law, still, they could convict him of plunder.

Considering that what R.A. No. 7080 punishes is the plurality of criminal acts indicative of the grand scheme or conspiracy to amass ill-gotten wealth, it is imperative to focus upon the individual "criminal acts" in order to assure the guilt of the accused of plunder.

Second, R.A. No. 7080 lumps up into one new offense of plunder six (6) distinct crimes which by themselves are currently punishable under separate statutes or provisions of law. The six (6) separate crimes become mere "means or similar schemes" to commit the single offense of plunder. It bears emphasis that each of the separate offenses is a crime mala in se. The commission of any offense mala in se is inherently accompanied by a guilty mind or a criminal intent.[9] Unfortunately, R.A. No. 7080 converted the six mala in se offenses into one crime which is mala prohibita wherein the intent becomes insignificant. Upon the commission of the proscribed act, without proof of intent, the law is considered violated.[10] Consequently, even acts recklessly committed (i.e. without intent) can be punished by death.

Third, Section 4 mandates that it shall not be necessary for the prosecution to prove each and every criminal act done by the accused x x x it being sufficient to prove beyond reasonable doubt a pattern of overt or criminal acts. By its own terminology, Section 4 requires that the "pattern" be proved by evidence beyond reasonable doubt. Initially, we must disassociate the specific "criminal acts" from the "pattern of criminal acts." These two phrases do not refer to one and the same thing. Pattern, as defined in the dictionary, means an established mode of behavior.[11] In the crime of plunder, the existence of a "pattern" can only be inferred from the specific "criminal acts" done by the accused. Several queries may be raised to determine the existence of a "pattern." Are these criminal acts related or tied to one another? Is the subsequent criminal act a mere continuation of the prior criminal act? Do these criminal acts complement one another as to bring about a single result? Inevitably, one must focus first on each criminal act to ascertain the relationship or connection it bears with the other criminal acts, and from there determine whether a certain "pattern" exists. But how could "pattern" be proved beyond reasonable doubt when in the first place the specific "criminal acts" from which such pattern may be inferred are not even required to be proved?

And fourth, plunder is a very serious offense. What is at stake under the law is not only the liberty of the accused but his life and property as well. Thus, it will be extremely unjust to lessen the prosecution's burden of proof to such a degree not commensurate to what the accused stands to suffer. If a person will lose his life, justice requires that every fact on which his guilt may be inferred must be proved beyond reasonable doubt.

Providing a rule of evidence which does not require proof beyond reasonable doubt to establish every fact necessary to constitute the crime is a clear infringement of due process. While the principles of the law of evidence are the same whether applied on civil or criminal trials, they are more strictly observed in criminal cases.[12] Thus, while the legislature of a state has the power to prescribe new or alter existing rules of evidence, or to prescribe methods of proof, the same must not violate constitutional requirements or deprive any person of his constitutional rights.[13] Unfortunately, under R.A. No. 7080, the State did not only specify a lesser burden of proof to sustain an element of the crime; it even dispensed with proof by not considering the specific "criminal acts" as essential elements. That it was the clear intention of the legislature is evident from the Senate deliberation, thus:

> "Senator Guingona. Since it is a series or a scheme,what amount of evidence will, therefore, be required? Must there be a pattern of the criminal acts? Must there be a series of briberies, for example? Or, can there be only one?

> Senator Tanada. Under Section 4 of the bill, Mr. President, it is provided that:
>
> "For purposes of establishing the OFFENSE, of plunder, it shall not be necessary to prove each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate, or acquire ill-gotten wealth... But, there must be enough evidence "sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts of the overall unlawful scheme or conspiracy."
>
> So, that is the quantum of evidence that would be required under this proposal measure.
>
> Senator Guingona. That is sufficient to establish the prima facie case.[14]
>
> x x x x x x
>
> Senator Romulo. That, perhaps, is a good provision of the bill. But, may I ask, Mr. President, what is in this bill that would insure that there would be a speedier process by which this crime of plunder would readily and immediately processed and convicted or acquitted than is now existing in present laws?
>
> Senator Tanada. Yes, x x x.
>
> Now, on the second point, Mr. President, I believe that what could make faster and speedier prosecutions of these grafters would be a change that will be authorized in this bill, at least, in the filing of information against the perpetrators. Under the existing criminal procedure, as I said earlier, there can only be one offense charged per information. So, if there is going to be a series of overt or criminal acts committed by the grafter, then that would necessitate the filing of so many informations against him. Now, if this bill becomes a law, then that means that there can be only one information filed against the alleged grafter. And the evidence that will be required to convict him would not be evidence for each and every individual criminal act but only evidence sufficient to establish the conspiracy or scheme to commit this crime of plunder.[15]
>
> x x x x x x
>
> Senator Guingona. May I just be clarified Mr. President. In this Section 4, a pattern of the criminal acts is all that is required. Would this pattern of criminal acts be also sufficient to establish a prima facie case?
>
> Senator Tanada. Mr. President, under Section 4, it would not only be sufficient to establish a prima facie case. It would be sufficient to establish guilt as long as the evidence, necessary to establish guilt beyond reasonable doubt is presented."[16]

In dispensing with proof of each criminal act, the clear objective of Congress is to render it less difficult for the prosecution to prove the crime of plunder. While this presupposes a noble intention, I do not think there is a sufficient justification. I, too, have the strong desire to eliminate the sickness of corruption pervading in the Philippine government, but more than anything else, I believe there are certain principles which must be maintained if we want to preserve fairness in our criminal justice system. If the prosecution is not mandated to prove the specific "criminal acts," then how can it establish the existence of the requisite "combination or series" by proof beyond reasonable doubt?

II

Another valid constitutional objection to R.A. No. 7080 is the vagueness of the term "pattern." As stated by Mr. Justice Kapunan, in his Dissent, the concept of "pattern of overt or criminal acts" embodied in the law was derived by Congress from the RICO (Racketeer Influenced and Corrupt Organizations) statute.[17] I am, therefore, constrained to refer to US law and jurisprudence. "Pattern" as defined in the RICO statute means "as requiring at least two acts of racketeering activity....the last of which occurred within ten years....after the commission of the prior act of racketeering activity.[18]

Mr. Justice Kapunan observed that unlike the RICO law, the law on plunder does not specify a) the number of criminal acts necessary before there could be a "pattern," as well as b) the period within which the succeeding criminal acts should be committed. These failures render the law void for its vagueness and broadness.

Indeed, Congress left much to be desired. I am at a quandary on how many delictual acts are necessary to give rise to a "pattern of overt or criminal acts" in the crime of plunder. If there is no numerical standard, then, how should the existence of "pattern" be ascertained? Should it be by proximity of time or of relationship? May an act committed two decades after the prior criminal act be linked with the latter for the purpose of establishing a pattern?

It must be remembered that plunder, being a continuous offense, the "pattern of overt or criminal acts" can extend indefinitely, i.e., as long as the succeeding criminal acts may be linked to the initial criminal act. This will expose the person concerned to criminal prosecution ad infinitum. Surely, it will undermine the purpose of the statute of limitations, i.e., to discourage prosecution based on facts obscured by the passage of time, and to encourage law enforcement officials to investigate suspected criminal activity promptly.[19] All these undesirable consequences arise from the fact that the plunder law fails to provide a period within which the next criminal act must be committed for the purpose of establishing a pattern. I believe R.A. No. 7080 should have provided a cut-off period after which a succeeding act may no longer be attached to the prior act for the purpose of establishing a pattern. In reiteration, the RICO law defines "pattern" as requiring at least two acts of racketeering activity... the last of which occurred within ten years... after the commission of the prior act of racketeering activity. Such limitation prevents a subsequent racketeering activity, separated by more than a decade from the prior act of racketeering, from being appended to the latter for the purpose of coming up with a pattern. We do not have the same safeguard under our law.

Significantly, in Sedima, S.P.R.L v. Imrex Co.,[20] the United States Supreme Court expressed dismay that Congress has failed to properly define the term "pattern" at all but has simply required that a "pattern" includes at least two acts of racketeering activity. The Court concluded that "pattern" involves something more than two acts, and after examining RICO's legislative history, settled on "continuity plus relationship" as the additional requirement.

Years later, in H.C. Inc. v. The Northwestern Bell Tel.,[21] the U.S. Supreme Court conceded that "the continuity plus relationship" means different things to different circuits. Nevertheless, it held firm to the Sedima requirement that "in order to establish a pattern, the government has to show "that the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity." Justice Scalia, in a concurring opinion in which three other justices joined, derided the "relationship" requirement as not "much more helpful [to the lower courts] than telling them to look for a "pattern" - - which is what the statute already says." As for the continuity requirement, Justice Scalia said: "Today's opinion has added nothing to improve our prior guidance, which has created a kaleidoscope of circuit positions, except to clarify that RICO may in addition be violated when there is a 'threat of continuity'. It seems to me this increases rather than removes the vagueness. There is no reason to believe that the Court of Appeals will be any more unified in the future, than they have in the past, regarding the content of this law."

Aware of the ambiguities present in the RICO law the drafters of the New York "Organized Crime Control Act" (a progeny of RICO) now more specifically define "pattern of criminal activity" as conduct engaged in by persons charged in an enterprise corruption count constituting three or more criminal acts that (a) were committed within ten years from the commencement of the criminal action; (b) are neither isolated incidents, nor so closely related and connected in point of time or circumstance of commission as to constitute a criminal offense or criminal transaction, as those terms are defined in section 40.10 of the criminal procedure law; and (c) are either: (i) related

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to one another through a common scheme or plan or (ii) were committed, solicited, requested, importuned or intentionally aided by persons acting with the mental culpability required for the commission thereof and associated with or in the criminal enterprise.[22]

If the term "pattern" as defined in the RICO law is continuously subjected to constitutional attacks because of its alleged vagueness, how much more the term "pattern" in R.A. No. 7080 which does not carry with it any limiting definition and can only be read in context. Indeed, there is no doubt that the invalidity of the law based on vagueness is not merely debatable - it is manifest. Thus, this Court should declare R.A. No. 7080 unconstitutional.

III

Lastly, the terms "combination" and "series" are likewise vague. Hence, on the basis of the law, a conviction of an accused cannot be sustained. A statute that does not provide adequate standards for adjudication, by which guilt or innocence may be determined, should be struck down.[23] Crimes must be defined in a statute with appropriate certainty and definiteness.[24] The standards of certainty in a statute prescribing punishment for offenses are higher than in those depending primarily on civil sanctions for their enforcement.[25] A penal statute should therefore be clear and unambiguous.[26] It should explicitly establish the elements of the crime which it creates[27] and provide some reasonably ascertainable standards of guilt.[28] It should not admit of such a double meaning that a citizen may act on one conception of its requirements and the courts on another.[29]

I agree with the observation of Mr. Justice Kapunan that "resort to the dictionary meaning of the terms `combination' and `series' as well as recourse to the deliberations of the lawmakers only serve to prove that R.A. No. 7080 failed to satisfy the requirement of the Constitution on clarity and definiteness." The deliberations of our law-makers, as quoted verbatim in Justice Kapunan's Dissent, indeed, failed to shed light on what constitute "combination" and "series."[30]

I believe this is fatal.

The essence of the law on plunder lies in the phrase "combination or series of overt or criminal acts." As can be gleaned from the Record of the Senate, the determining factor of R.A. 7080 is the plurality of the overt acts or criminal acts under a grand scheme or conspiracy to amass ill-gotten wealth. Thus, even if the amassed wealth equals or exceeds fifty million pesos, a person cannot be prosecuted for the crime of plunder if there is only a single criminal act.[31]

Considering that without plurality of overt or criminal acts, there can be no crime of plunder, due process of law demands that the terms "combination" and "series" be defined with exactitude in the law itself. Equating these terms with mere "plurality" or "two or more," is inaccurate and speculative. For one, a "series" is a group of usually three or more things or events standing or succeeding in order and having like relationship to each other.[32] The Special Prosecution Division Panel defines it as "at least three of the acts enumerated under Section 1(d) thereof."[33] But it can very well be interpreted as only one act repeated at least three times. And the Office of the Solicitor General, invoking the deliberations of the House of Representatives, contends differently. It defines the term series as a "repetition" or pertaining to "two or more."[34] The disparity in the Prosecution and OSG's positions clearly shows how imprecise the term "series" is.

This should not be countenanced. Crimes are not to be created by inference.[35] No one may be required, at the peril of life, liberty or property to guess at, or speculate as to, the meaning of a penal statute.[36] An accused, regardless of who he is, is entitled to be tried only under a clear and valid law.

Respondents argue that the vagueness of R.A. No. 7080, as amended, is cured when the Information clearly specified the acts constituting the crime of plunder. I do not agree. It is the statute and not the accusation under it

that prescribes the rule to govern conduct and warns against aggression.[37] If on its face, a statute is repugnant to the due process clause on account of vagueness, specification in the Information of the details of the offense intended to be charged will not serve to validate it.[38]

On the argument that this Court may clarify the vague terms or explain the limits of the overbroad provisions of R.A. No. 7080, I should emphasize that this Court has no power to legislate.

Precision must be the characteristic of penal legislation. For the Court to define what is a crime is to go beyond the so-called positive role in the protection of civil liberties or promotion of public interests. As stated by Justice Frankfurter, the Court should be wary of judicial attempts to impose justice on the community; to deprive it of the wisdom that comes from self-inflicted wounds and the strengths that grow with the burden of responsibility.[39]

A statute which is so vague as to permit the infliction of capital punishment on acts already punished with lesser penalties by clearly formulated law is unconstitutional. The vagueness cannot be cured by judicial construction.

Also, not to be glossed over is the fact that R.A. 7080, as amended, is a novel law. Hence, there is greater need for precision of terms. The requirement that law creating a crime must be sufficiently explicit to inform those subject to it, what conduct on their part will render them liable to its penalties, has particular force when applied to statutes creating new offenses. For that reason, those statutes may not be generally understood, or may be subject of generally accepted construction.[40]

Today, I recall what James Madison remarked in presenting the Bill of Rights to the United States Congress in 1789: "if they (Bill of Rights) are incorporated into the Constitution, independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the legislative or executive; and they will be naturally led to resist every encroachment upon rights expressly stipulated for in the Constitution by the declaration of rights."[41] Time did not render his foreboding stale. Indeed, in every constitutional democracy, the judiciary has become the vanguard of these rights. Now, it behooves this Court to strike an unconstitutional law. The result, I concede, may not be politically desirable and acceptable, nevertheless, I am fully convinced that it is constitutionally correct.

To recapitulate, R.A. No. 7080 is unconstitutional because it violates the DUE PROCESS CLAUSE of the Constitution. The vagueness of its terms and its incorporation of a rule of evidence that reduces the burden of the prosecution in proving the crime of plunder tramples upon the basic constitutional rights of the accused.

In fine, I can only stress that the one on trial here is not Mr. Estrada, but R.A. No. 7080. The issue before this Court is not the guilt or innocence of the accused, but the constitutionality of the law. I vote to grant the petition, not because I favor Mr. Estrada, but because I look beyond today and I see that this law can pose a serious threat to the life, liberty and property of anyone who may come under its unconstitutional provisions. As a member of this Court, my duty is to see to it that the law conforms to the Constitution and no other. I simply cannot, in good conscience, fortify a law that is patently unconstitutional.

WHEREFORE, I vote to grant the petition.

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[1] As amended by Republic Act No. 7659 - "An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, other Special Penal Laws and for other Purpose (1993).

[2] Section 1, Article III of the 1987 Constitution.

[3] Cruz, Constitutional Law, 1995 Ed. p. 95.

[4] 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2[nd] 368.

[5] Section 1 (b) Rule XVIII, Revised Rules of the Sandiganbayan

"The unanimous vote of three Justices in a division shall be necessary for the rendition of a judgment or order. In the event that three Justices do not reach a unanimous vote, the Presiding Justice shall designate by raffle two justices from among the other members of the Sandiganbayan to sit temporarily with them forming a special division of five Justices, and the vote of a majority of such special division shall be necessary for the rendition of a judgment or order.

[6] Section 2 of R.A. No. 7080.

[7] It is an elementary principle of criminal jurisprudence, a principle firmly embedded in the organic law of every free state and vindicated by statutory guarantee as well as by innumerable judicial decisions, that every criminal, however hideous his alleged crime, or however, debauched and fiendish his character, may require that the elements of that crime shall be clearly and indisputably defined by law, and that his commission of and relationship to the alleged offense shall be established by legal evidence delivered in his presence. (Rice, The Law of Evidence on Evidence, Vol. 3, p. 421.

[8] 29 Am Jur 2d Section 168, p. 192. Re Winship, 397 US 358, 25 L Ed 2d 368; State v. Krantz, 498 US 938, 112 L Ed 2d 306.

[9] In U.S. vs. Ah Chong, 15 Phil. 488 (1910), it was held that the crime must be the product of a free, intelligent, and intentional act.

[10] U.S. vs. Go Chico, 14 Phil. 134 (1909-1910).

[11] Webster, Third New International Dictionary, Unabridged, 1993, p. 1657.

[12] Harris and Wilshere's Criminal Law, Seventeenth Division, 1943, pp.513-514.

[13] Burgett v. Texas, 389 US 109, 19 L Ed 2d 319, 88 Ct 258; 29 Am Jur 6.

[14] Records of the Senate, June 5, 1989, Vol. IV, No. 140, p. 1314.

[15] Records of the Senate, Vol. IV, No. 140, p. 1316.

[16] Records of the Senate, June 16, 1989, Vol. IV, No. 141, p. 1403.

[17] See Records Joint Conference Committee Meeting, May 7, 1991, p. 12. Representative Pablo Garcia, Chairman of the House of Representatives Committee on Justice, observed that R.A. No. 7080 was patterned after the RICO law.

[18] Rotella v. Wood, United States Supreme Court, February 23, 2000.

[19] Toussie vs. United States, 397 U.S. 112, 115 (1970).

[20] 473 U.S. 479, 105 S. Ct. 3275, 87 L. Ed. 2d 346 (1985).

[21] 492 U.S. 229, 109 S. Ct. 2893, 106 L Ed. 2d 195 (1989).

[22] The People of the State of New York v. Capaldo et al., 151 Misc. 2d 114 (1991).

[23] 21 Am Jur §349, p.399.

[24] 22 C.J.S. §24 (2) p. 62; Pierce v. United States 314 US 306; 86 L. Ed 226.

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"The constitutional vice in a vague or indefinite statute is the injustice to accused in placing him on trial for an offense as to the nature of which he is given no fair notice. (American Communications Associations C.I.O. v. Douds, N.Y. 70 S. Ct. 674, 339 U.S. 382, 94 L. Ed 1391) In determining whether a statute meets the requirement of certainty, the test is whether the language conveys sufficiently definite warning as to the proscribe conduct when measured by a common understanding and practices. Penal statutes affecting public officers and employees and public funds or property will be held invalid where the prohibited conduct is not sufficiently defined. (Jordan v. De George III341 U.S. 223, 95 L. Ed. 886; Winters v. People of State of New York. 333 U.S. 507; 92 L. Ed 840) The requirement of statutory specificity has the dual purpose of giving adequate notice of acts which are forbidden and of informing accused of the nature of offense charged so that he may defend himself. (Amsel v. Brooks, 106 A. 2d 152, 141 Conn. 288; 67 S. Ct. 125, 348 U.S. 880, 91 L. Ed. 693)".

[25] "Winters v. People of State of Newyork 333 US 507; 92 L. Ed. 840 -- "A penal statute must set up ascertainable standards so that men of common intelligence are not required to guess at its meaning, either as to persons within the scope of the act or as to the apllicable test to ascertain guilt."

[26] Sullivan v. United States 332 U.S. 689; 92 L. Ed. 297.

[27] United States v. Dettra Flag co. D.C. Pa., 86 F. Supp. 84.

[28] Winters v. People of State of New York, supra.

[29] State v. Tsutomu Ikeda, 143 P. 2d 880, followed in State v. Waller 143 P. 2d 884.

[30] "Senator Gonzales. To commit the offense of plunder, as defined in this Act and while constituting a single offense, it must consist of a series of overt or criminal acts, such as bribery, extortion, malversation, of public funds, swindling, falsification of public documents, coercion, theft, fraud and illegal exaction, and graft or corrupt practices act and like offenses. Now, Mr. President, I think, this provision, by itself, will be vague. I am afraid that it might be faulted for being violative of the due process clause and the right to be informed of the nature and cause of accusation of an accused. Because, what is meant by "series of overt or criminal acts"? I mean, would 2, 3, 4 or 5 constitute a series? During the period of amendments, can we establish a minimum of overt acts like, for example, robbery in band? The law defines what is robbery in band by the number of participants therein. In this particular case, probably, we can statutorily provide for the definition of "series" so that two, for example, would that already be a series? Or, three, what would be the basis for such a determination?" (Record of the Senate, June 5, 1989, Vol. IV, No. 140, p. 1310).

[31] "Senator Paterno. Mr. President, not too clear yet on the reason for trying to define a crime of plunder. Could I get some further clarification?

Senator Tanada. Yes, Mr. President.

Because of our experience in the former regime, we feel that there is a need for Congress to pass the legislation which would cover a crime of this magnitude. While it is true, we already have the Anti-Graft Law. But that does not directly deal with plunder. That covers only the corrupt practices of public officials as well as their spouses and relatives within the civil degree, and the Anti-Graft law as presently worded would not adequately or sufficiently address the problems that we experienced during the past regime.

Senator Paterno. May I try to give the Gentleman, Mr. President, my understanding of the bill?

Senator Tanada. Yes.

Senator Paterno. I envision that this bill or this kind of plunder would cover a discovered interconnection of certain acts, particularly, violations of Anti-Graft and Corrupt Practices Act when, after the different acts are

looked at, a scheme of conspiracy can be detected, such scheme or conspiracy consummated by the different criminal acts or violations of Anti-Graft and Corrupt Practices Act, such that the scheme or conspiracy becomes a sin, as a large scheme to defraud the public or rob the public treasury. It is parang robo and banda. It is considered as that. And, the bill seeks to define or says that P100 million is that level at which ay talagang sobra na dapat nang parusahan ng husto. Would it be a correct interpretation or assessment of the intent of the bill?

Senator Tanada. Yes, Mr. President. The fact that under existing law, there can be only one offense charged in the information, that makes it very cumbersome and difficult to go after these grafters if we would not come out with this bill. That is what is happening now; because of that rule that there can be only one offense charged per information, then we are having difficulty in charging all the public officials who would seem to have committed these corrupt practices. With this bill, we could come out with just one information, and that would cover all the series of criminal acts that may have been committed by him.

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Senator Romulo. To follow up the interpolations of Senator Paterno and Maceda, this crime of plunder as envisioned here contemplates of a series or a scheme as responded by the distinguished Sponsor.

Senator Tanada. That is correct, Mr. President. (Record of Senate, June 5, 1989, Vol. IV, No. 140, p. 1315)

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Senator Romulo. Mr. President, I was going to suggest prior to Senator Maceda that on line 24: "SHALL THROUGH ONE overt or criminal act OR...." I was just thinking of one which is really not a "series.",

The President. If there is only one, then he has to be prosecuted under the particular crime. But when we say "acts of plunder" there should be, at least, two or more. (Record of the Senate, June 6, 1989, Vol. IV, No. 141, p. 1399).

[32] Tarsia v. Nick's Laundry & Linen Supply Co., 399 P. 2d 28, 29, 239 Or. 562; Words and Phrases, 38A p. 441.

For purposes of Rule permitting government to charge several defendants under one indictment if they have participated in same "series" of acts or transactions, a "series" is something more than mere "similar" acts.

[33] Opposition to the Motion to Quash of Accused Joseph Estrada dated June 21, 2001, p. 9.

[34] Comment to the Amended Petition dated July 16, 2001, p. 14.

[35] United States v. Laub, 385 US 475, 17 L Ed 2d 526, 87 S Ct 574.

[36] State v. Nelson, 95 N.W. 2d 678.

[37] 22 C.J.S. §24 (2); People v. Bevilacqua, 170 N.Y. S. 2d 423; Lanzetta v. State of New Jersey, 306 U.S. 451, 59 S Ct 618, 83 L. Ed. 888; United States v. DeCadena, D.C. 105 F. Supp. 202.

[38] 21 Am Jur §17 p. 129.

[39] Tresolini and Shapiro, American Constitutional Law, 3[rd] Edition, p. 23.

[40] State v. Evans, 245 P. 2d 788, 73 Idaho 50.

[41] Abraham, Perry, Freedom and the Court, 1998, p. 25.

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