

ALFREDO T. ROMUALDEZ, PETITIONER, VS. THE HONORABLE SANDIGANBAYAN (FIFTH DIVISION) AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 152259. July 29, 2004

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Repetitive motions to invalidate or summarily terminate a criminal indictment prior to plea and trial, however they may be named or identified -- whether as a motion to quash or motion to dismiss or by any other nomenclature -- delay the administration of justice and unduly burden the court system. Grounds not included in the first of such repetitive motions are generally deemed waived and can no longer be used as bases of similar motions subsequently filed.

Section 5 of the Anti-Graft Law is constitutional. It penalizes certain presidential relatives who “intervene, directly or indirectly, in any business, transaction, contract or application with the Government.” This provision is not vague or “impermissibly broad,” because it can easily be understood with the use of simple statutory construction. Neither may the constitutionality of a criminal statute such as this be challenged on the basis of the “overbreadth” and the “void-for-vagueness” doctrines, which apply only to free-speech cases.

The Case

Before us is a Petition for Certiorari^[1] under Rule 65 of the Rules of Court, seeking to set aside the November 20, 2001^[2] and the March 1, 2002^[3] Resolutions of the Sandiganbayan in Criminal Case No. 13736. The first Resolution disposed thus:

“WHEREFORE, for lack of merit, the Motion to Dismiss is hereby DENIED. The arraignment of the accused and the pre-trial of the case shall proceed as scheduled.”^[4]

The second Resolution denied reconsideration.

The Facts

The facts of the case are narrated by the Sandiganbayan as follows:

“[The People of the Philippines], through the Presidential Commission on Good Government (PCGG), filed on July 12, 1989 an information before [the anti-graft court] charging the accused [with] violation of Section 5, Republic Act No. 3019,^[5] as amended. The Information reads: ‘That on or about and during the period from July 16, 1975 to July 29, 1975, in Metro Manila, Philippines, and within the jurisdiction of [the Sandiganbayan], said [petitioner], brother-in-law of Ferdinand E. Marcos, former President of the Philippines, and therefore, related to the latter by affinity within the third civil degree, did then and there wil[l]fully and unlawfully, and with evident bad faith, for the purpose of promoting his self-interested [sic] and/or that of others, intervene directly or indirectly, in a contract between the National Shipyard and Steel Corporation (NASSCO), a government-owned and controlled corporation and the Bataan Shipyard and Engineering

Company (BASECO), a private corporation, the majority stocks of which is owned by former President Ferdinand E. Marcos, whereby the NASSCO sold, transferred and conveyed to the BASECO its ownership and all its titles and interests over all equipment and facilities including structures, buildings, shops, quarters, houses, plants and expendable and semi-expendable assets, located at the Engineer Island known as the Engineer Island Shops including some of its equipment and machineries from Jose Panganiban, Camarines Norte needed by BASECO in its shipbuilding and ship repair program for the amount of P5,000,000.00.

‘Contrary to law.’

“On December 27, 1996, the accused filed his first ‘MOTION TO DISMISS AND TO DEFER ARRAIGNMENT’ claiming that no valid preliminary investigation was conducted in the instant case. He asserts that if a preliminary investigation could be said to have been conducted, the same was null and void having been undertaken by a biased and partial investigative body.

“On January 9, 1997, [the Sandiganbayan], through the First Division, issued an order giving the accused fifteen days to file a Motion for Reinvestigation with the Office of the Special Prosecutor.

“[Petitioner] questioned said order before the Supreme Court via a petition for Certiorari and Prohibition with prayer for temporary restraining order. On January 21, 1998, the Supreme Court dismissed the petition for failure to show that [the Sandiganbayan] committed grave abuse of discretion in issuing the assailed order.

“On November 9, 1998, the [petitioner] filed with the Office of the Special Prosecutor a Motion to Quash.

“On September 22, 1999, x x x Special Prosecution Officer (SPO) III Victorio U. Tabanguil, manifested that the prosecution had already concluded the reinvestigation of the case. He recommended the dismissal of the instant case. Both the Deputy Special Prosecutor and the Special Prosecutor approved the recommendation. However, Ombudsman Aniano A. Desierto disagreed and directed the prosecutors to let the [petitioner] present his evidence in Court.

“Subsequently, [petitioner] filed on October 8, 1999 his second ‘MOTION TO QUASH AND TO DEFER ARRAIGNMENT’.

“On February 9, 2000, the [Sandiganbayan] denied the motion for lack of merit.

“On June 19, 2001, [the] accused filed a ‘MOTION FOR LEAVE TO FILE MOTION TO DISMISS’. On June 29, 2001, the [Sandiganbayan] admitted the motion and admitted the attached (third) Motion to Dismiss.

“The [Motion to Dismiss] raise[d] the following grounds:

‘I. THE CONSTITUTIONAL RIGHT TO DUE PROCESS OF

LAW OF [PETITIONER] WAS VIOLATED DURING THE PRELIMINARY INVESTIGATION STAGE IN THE FOLLOWING WAYS:

‘A. NO VALID PRELIMINARY INVESTIGATION

WAS CONDUCTED IN THE INSTANT CASE; AND

‘B. THE PRELIMINARY INVESTIGATION WAS

CONDUCTED BY A BIASED AND PARTIAL INVESTIGATOR

**‘II. THE CONSTITUTIONAL RIGHT OF [PETITIONER] TO BE
INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HIM WAS VIOLATED
‘III. PURSUANT TO ARTICLE VII, SECTION 17 OF THE 1973
CONSTITUTION, [PETITIONER] IS IMMUNE FROM CRIMINAL PROSECUTION
‘IV. THE CRIMINAL ACTION OR LIABILITY HAS BEEN
EXTINGUISHED BY PRESCRIPTION’”[6]**

Ruling of the Sandiganbayan

The Sandiganbayan explained that all the grounds invoked by petitioner, except the third one, had already been raised by him and passed upon in its previous Resolutions.[7] In resolving the third ground, the anti-graft court pointed out that Section 17 of the 1973 Constitution became effective only in 1981 when the basic law was amended. Since his alleged illegal intervention had been committed on or about 1975, the amended provision was inapplicable to him.[8]

In denying the Motion for Reconsideration filed by petitioner, the Sandiganbayan passed upon the other grounds he had raised. It ruled that his right to a preliminary investigation was not violated, because he had been granted a reinvestigation.[9] It further held that his right to be informed of the nature and cause of the accusation was not trampled upon, either, inasmuch as the Information had set forth the essential elements of the offense charged.[10]

Hence, this Petition.[11]

The Issues

In his Memorandum, petitioner assigns the following errors for our consideration:

“Whether or not the Honorable Sandiganbayan erred and gravely abused its discretion amounting to lack of, or in excess of jurisdiction –

- In not dismissing and/or quashing Criminal Case No. 13736 despite clear and incontrovertible evidence that:
- Section 5 of Republic Act No. 3019 is unconstitutional because its vagueness violates the due process right of an individual to be informed of the nature and the cause of the accusation against him;
- Section 5 of Republic Act No. 3019 is unconstitutional because it violates the due process right of an individual to be presumed innocent until the contrary is proved;
- The constitutional right of petitioner x x x to be informed of the nature and the cause of the accusation against him was violated;
- The constitutional right to due process of law of petitioner x x x was violated during the preliminary investigation stage in the following ways:
- No valid preliminary investigation was conducted for Criminal Case No. 13736; and
- The preliminary investigation was conducted by a biased and partial investigator.
- The criminal action or liability has been extinguished by prescription; and
- Pursuant to Article VII, Section 17 of the 1973 Constitution, petitioner x x x is immune from criminal

prosecution.

And

- In light of the foregoing, in denying petitioner['s] x x x right to equal protection of the laws.”[12]

Simply stated, the issues are as follows: (1) whether Section 5 of Republic Act 3019 is unconstitutional; (2) whether the Information is vague; (3) whether there was a valid preliminary investigation; (4) whether the criminal action or liability has been extinguished by prescription; and (5) whether petitioner is immune from criminal prosecution under then Section 17 of Article VII of the 1973 Constitution.

The Court’s Ruling

The Petition has no merit.

First Issue:

Constitutionality of Section 5,
Republic Act 3019

Petitioner challenged the constitutionality of Section 5 of RA 3019 for the first time in the Sandiganbayan through a Supplemental Motion to Dismiss. Attached to his December 7, 2001 Motion for Reconsideration of the Order denying his Motion to Dismiss was this Supplemental Motion which was, in effect, his third motion to quash.[13] We note that the Petition for Certiorari before us challenges the denial of his original, not his Supplemental, Motion to Dismiss.

Upon the denial of his original Motion to Quash on February 9, 2000, petitioner could have filed a motion for reconsideration of the denial. Had reconsideration been turned down, the next proper remedy would have been either (1) a petition for certiorari[14] -- if there was grave abuse of discretion -- which should be filed within 60 days from notice of the assailed order;[15] or (2) to proceed to trial without prejudice to his right, if final judgment is rendered against him, to raise the same questions before the proper appellate court.[16] But instead of availing himself of these remedies, he filed a “Motion to Dismiss” on June 19, 2001.

Impropriety of
Repetitive Motions

There is no substantial distinction between a “motion to quash” and a “motion to dismiss.” Both pray for an identical relief, which is the dismissal of the case. Such motions are employed to raise preliminary objections, so as to avoid the necessity of proceeding to trial. A motion to quash is generally used in criminal proceedings to annul a defective indictment. A motion to dismiss, the nomenclature ordinarily used in civil proceedings, is aimed at summarily defeating a complaint. Thus, our Rules of Court use the term “motion to quash” in criminal,[17] and “motion to dismiss” in civil, proceedings.[18]

In the present case, however, both the “Motion to Quash” and the “Motion to Dismiss” are anchored on basically the same grounds and pray for the same relief. The hairsplitting distinction posited by petitioner does not really make a difference.

By filing a Motion to Dismiss, petitioner submitted in effect a prohibited second motion to quash. A party is not permitted to raise issues, whether similar or different, by installment. The Rules abhor repetitive motions. Otherwise, there would be no end to preliminary objections, and trial would never commence. A second motion to quash delays the administration of justice and unduly burdens the courts. Moreover, Rule 117 provides that grounds not raised in the first motion to quash are generally deemed waived.[19] Petitioner’s “Motion to Dismiss” violates this rule.

Constitutionality of the Challenged Provision

If only for the foregoing procedural lapses, the Petition deserves to be dismissed outright. However, given the importance of this case in curtailing graft and corruption, the Court will nevertheless address the other issues on their merit. Petitioner challenges the validity of Section 5 of Republic Act 3019, a penal statute, on the ground that the act constituting the offense is allegedly vague and “impermissibly broad.”

It is best to stress at the outset that the overbreadth[20] and the vagueness[21] doctrines have special application only to free-speech cases. They are not appropriate for testing the validity of penal statutes. Mr. Justice Vicente V. Mendoza explained the reason as follows:

“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.’ 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.

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.

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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.’ 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.’”[22] (underscoring supplied)

“To this date, the Court has not declared any penal law unconstitutional on the ground of ambiguity.”[23] While mentioned in passing in some cases, the void-for-vagueness concept has yet to find direct application in our jurisdiction. In *Yu Cong Eng v. Trinidad*,[24] the Bookkeeping Act was found unconstitutional because it violated the equal protection clause, not because it was vague. *Adiong v. Comelec*[25] decreed as void a mere Comelec Resolution, not a statute. Finally, *Santiago v. Comelec*[26] held that a portion of RA 6735 was unconstitutional because of undue delegation of legislative powers, not because of vagueness.

Indeed, an “on-its-face” invalidation of criminal statutes would result in a mass acquittal of parties whose cases may not have even reached the courts. Such invalidation would constitute a departure from the usual requirement of “actual case and controversy” and permit decisions to be made in a sterile abstract context having no factual concreteness. In *Younger v. Harris*, this evil was aptly pointed out by the U.S. Supreme Court in these words:[27]

“[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, x x x ordinarily results in a kind of case that is wholly unsatisfactory for deciding constitutional questions, whichever way they might be decided.”

For this reason, generally disfavored is an on-its-face invalidation of statutes, described as a “manifestly strong medicine” to be employed “sparingly and only as a last resort.” In determining the constitutionality of a statute, therefore, its provisions that have allegedly been violated must be examined in the light of the conduct with which the defendant has been charged.[28]

As conduct -- not speech -- is its object, the challenged provision must be examined only “as applied” to the defendant, herein petitioner, and should not be declared unconstitutional for overbreadth or vagueness.

The questioned provision reads as follows:

“Section 5. Prohibition on certain relatives. — It shall be unlawful for the spouse or for any relative, by consanguinity or affinity, within the third civil degree, of the President of the Philippines, the Vice-President of the Philippines, the President of the Senate, or the Speaker of the House of Representatives, to intervene, directly or indirectly, in any business, transaction, contract or application with the Government: Provided, That this section shall not apply to any person who, prior to the assumption of office of any of the above officials to whom he is related, has been already dealing with the Government along the same line of business, nor to any transaction, contract or application already existing or pending at the time of such assumption of public office, nor to any application filed by him the approval of which is not discretionary on the part of the official or officials concerned but depends upon compliance with requisites provided by law, or rules or regulations issued pursuant to law, nor to any act lawfully performed in an official capacity or in the exercise of a profession.”

Petitioner also claims that the phrase “to intervene directly or indirectly, in any business, transaction, contract or application with the Government” is vague and violates his right to be informed of the cause and nature of the accusation against him.[29] He further complains that the provision does not specify what acts are punishable under the term intervene, and thus transgresses his right to be presumed innocent.[30] We disagree.

Every statute is presumed valid.[31] On the party challenging its validity weighs heavily the onerous task of rebutting this presumption.[32] Any reasonable doubt about the validity of the law should be resolved in favor of its constitutionality.[33] To doubt is to sustain, as tersely put by Justice George Malcolm. In *Garcia v. Executive Secretary*,[34] the rationale for the presumption of constitutionality was explained by this Court thus:

“The policy of the courts is to avoid ruling on constitutional questions and to presume that the acts of the political departments are valid in the absence of a clear and unmistakable showing to the contrary. To doubt is to sustain. This presumption is based on the doctrine of separation of powers which enjoins upon each department a becoming respect for the acts of the other departments. The theory is that as the joint act of Congress and the President of the Philippines, a law has been carefully studied and determined to be in accordance with the fundamental law before it was finally enacted.”[35]

In the instant case, petitioner has miserably failed to overcome such presumption. This Court has previously laid down the test for determining whether a statute is vague, as follows:

“x x x [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 species 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.[36] 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.[37] 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.[38] 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.”[39]

A simpler test was decreed in *Dans v. People*,[40] in which the Court said that there was nothing vague about a penal law that adequately answered the basic query “What is the violation?”[41] Anything beyond -- the hows and the whys -- are evidentiary matters that the law itself cannot possibly disclose, in view of the uniqueness of every case.[42]

The question “What is the violation?” is sufficiently answered by Section 5 of RA 3019, as follows:

- The offender is a spouse or any relative by consanguinity or affinity within the third civil degree of the President of the Philippines, the Vice-President of the Philippines, the President of the Senate, or the Speaker of the House of Representatives; and
- The offender intervened directly or indirectly in any business, transaction, contract or application with the government.

Applicability of Statutory Construction

As to petitioner’s claim that the term intervene is vague, this Court agrees with the Office of the Solicitor General that the word can easily be understood through simple statutory construction. The absence of a statutory definition of a term used in a statute will not render the law “void for vagueness,” if the meaning can be determined through the judicial function of construction.[43] Elementary is the principle that words should be construed in their ordinary and usual meaning.

“x x x. 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;[44] 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 x x x.

“x x x [I]t 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,[45] unless it is evident that the legislature intended a

technical or special legal meaning to those words.[46] The intention of the lawmakers - who are, ordinarily, untrained philologists and lexicographers - to use statutory phraseology in such a manner is always presumed.”[47]

The term intervene should therefore be understood in its ordinary acceptation, which is to “to come between.”[48] Criminally liable is anyone covered in the enumeration of Section 5 of RA 3019 -- any person who intervenes in any manner in any business, transaction, contract or application with the government. As we have explained, it is impossible for the law to provide in advance details of how such acts of intervention could be performed. But the courts may pass upon those details once trial is concluded. Thus, the alleged vagueness of intervene is not a ground to quash the information prior to the commencement of the trial.

In sum, the Court holds that the challenged provision is not vague, and that in any event, the “overbreath” and “void for vagueness” doctrines are not applicable to this case.

Second Issue:

Allegedly Vague Information

Other than arguing on the alleged intrinsic vagueness of intervene, petitioner further contends that the Information itself is also unconstitutionally vague, because it does not specify the acts of intervention that he supposedly performed.[49] Again, we disagree.

When allegations in the information are vague or indefinite, the remedy of the accused is not a motion to quash, but a motion for a bill of particulars.[50] The pertinent provision in the Rules of Court is Section 9 of Rule 116, which we quote:

“Section 9. Bill of particulars. -- The accused may, before arraignment, move for a bill of particulars to enable him properly to plead and prepare for trial. The motion shall specify the alleged defects of the complaint or information and the details desired.”

The rule merely requires the information to describe the offense with sufficient particularity as to apprise the accused of what they are being charged with and to enable the court to pronounce judgment. [51] The particularity must be such that persons of ordinary intelligence may immediately know what is meant by the information.[52]

While it is fundamental that every element of the offense must be alleged in the information,[53] matters of evidence -- as distinguished from the facts essential to the nature of the offense -- need not be averred.[54] Whatever facts and circumstances must necessarily be alleged are to be determined by reference to the definition and the essential elements of the specific crimes.[55]

In the instant case, a cursory reading of the Information shows that the elements of a violation of Section 5 of RA 3019 have been stated sufficiently. Likewise, the allegations describe the offense committed by petitioner with such particularity as to enable him to prepare an intelligent defense. Details of the acts he committed are evidentiary matters that need not be alleged in the Information.

Third Issue:

Preliminary Investigation

Clearly, petitioner already brought the issue of lack of preliminary investigation when he questioned before this Court in GR No. 128317 the Sandiganbayan’s Order giving him 15 days to file a Motion for Reinvestigation with the Office of the Special Prosecutor.[56] Citing *Cojuangco v. Presidential Commission on Good Government*,[57] he undauntedly averred that he was deprived of his right to a preliminary investigation, because the PCGG acted both as complainant and as investigator.[58]

In the case cited above, this Court declared that while PCGG had the power to conduct a preliminary investigation, the latter could not do so with the “cold neutrality of an impartial judge” in cases in which it was the agency that had gathered evidence and subsequently filed the complaint.[59] On that basis, this Court nullified the preliminary investigation conducted by PCGG and directed the transmittal of the records to the Ombudsman for appropriate action.

It is readily apparent that Cojuangco does not support the quashal of the Information against herein petitioner. True, the PCGG initiated the present Complaint against him; hence, it could not properly conduct the preliminary investigation. However, he was accorded his rights -- the Sandiganbayan suspended the trial and afforded him a reinvestigation by the Ombudsman. The procedure outlined in Cojuangco was thus followed.

The Sandiganbayan’s actions are in accord also with *Raro v. Sandiganbayan*,[60] which held that the failure to conduct a valid preliminary investigation would not warrant the quashal of an information. If the information has already been filed, the proper procedure is for the Sandiganbayan to hold the trial in abeyance while the preliminary investigation is being conducted or completed.[61]

Fourth Issue:

Prescription

The issue of prescription was the principal basis of the Motion to Quash filed by petitioner with the Sandiganbayan on October 8, 1999.[62] Such issue should be disregarded at this stage, since he failed to challenge its ruling debunking his Motion within the 60-day period for the filing of a petition for certiorari. A party may not circumvent this rule by filing a subsequent motion that raises the same issue and the same arguments.

Furthermore, it is easy to see why this argument being raised by petitioner is utterly unmeritorious. He points out that according to the Information, the offense was committed “during the period from July 16, 1975 to July 29, 1975.” He argues that when the Information was filed on July 12, 1989,[63] prescription had already set in, because the prescriptive period for a violation of Republic Act No. 3019 is only ten (10) years from the time the offense was allegedly committed. The increase of this prescriptive period to fifteen (15) years took effect only on March 16, 1982, upon the enactment of Batas Pambansa Blg. 195.[64]

Act No. 3326, as amended,[65] governs the prescription of offenses penalized by special laws. Its pertinent provision reads:

“Sec. 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same not be known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

“The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.”

Consistent with the provision quoted above, this Court has previously reckoned the prescriptive period of cases involving RA 3019 (committed prior to the February 1986 EDSA Revolution) from the discovery of the violation.[66] In *Republic v. Desierto*, the Court explained:

“This issue confronted this Court anew, albeit in a larger scale, in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*. In the said recent case, the Board of Directors of the Philippine Seeds, Inc. and Development Bank of the Philippines were charged with violation of paragraphs (e) and (g) of Section 3 of RA No. 3019, by the Presidential Ad Hoc Fact-Finding Committee on Behest Loans, created by then President Fidel V. Ramos to investigate and to recover the so-called ‘Behest Loans’, where the Philippine

Government guaranteed several foreign loans to corporations and entities connected with the former President Marcos. x x x In holding that the case had not yet prescribed, this Court ruled that: ‘In the present case, it was well-nigh impossible for the State, the aggrieved party, to have known the violations of RA No. 3019 at the time the questioned transactions were made because, as alleged, the public officials concerned connived or conspired with the ‘beneficiaries of the loans.’ Thus, we agree with the COMMITTEE that the prescriptive period for the offenses with which the respondents in OMB-0-96-0968 were charged should be computed from the discovery of the commission thereof and not from the day of such commission.

x x x x x x x x

‘People v. Duque is more in point, and what was stated there stands reiteration: In the nature of things, acts made criminal by special laws are frequently not immoral or obviously criminal in themselves; for this reason, the applicable statute requires that if the violation of the special law is not known at the time, the prescription begins to run only from the discovery thereof, i.e., discovery of the unlawful nature of the constitutive act or acts.’ (Italics supplied)

“There are striking parallelisms between the said Behest Loans Case and the present one which lead us to apply the ruling of the former to the latter. First, both cases arose out of seemingly innocent business transactions; second, both were ‘discovered’ only after the government created bodies to investigate these anomalous transactions; third, both involve prosecutions for violations of RA No. 3019; and, fourth, in both cases, it was sufficiently raised in the pleadings that the respondents conspired and connived with one another in order to keep the alleged violations hidden from public scrutiny.

“This Court’s pronouncement in the case of *Domingo v. Sandiganbayan* is quite relevant and instructive as to the date when the discovery of the offense should be reckoned, thus:

‘In the present case, it was well-nigh impossible for the government, the aggrieved party, to have known the violations committed at the time the questioned transactions were made because both parties to the transactions were allegedly in conspiracy to perpetuate fraud against the government. The alleged anomalous transactions could only have been discovered after the February 1986 Revolution when one of the original respondents, then President Ferdinand Marcos, was ousted from office. Prior to said date, no person would have dared to question the legality or propriety of those transactions. Hence, the counting of the prescriptive period would commence from the date of discovery of the offense, which could have been between February 1986 after the EDSA Revolution and 26 May 1987 when the initiatory complaint was filed.’”[67]

The above pronouncement is squarely applicable to the present case. The general rule that prescription shall begin to run from the day of the commission of the crime cannot apply to the present case. It is not legally prudent to charge the State, the aggrieved party, with knowledge of the violation of RA 3019 at the time the alleged intervention was made. The accused is the late President Ferdinand E. Marcos’ brother-in-law. He was charged with intervening in a sale involving a private corporation, the majority stocks of which was allegedly owned by President Marcos.

Prior to February 1986, no person was expected to have seriously dared question the legality of the sale or would even have thought of investigating petitioner’s alleged involvement in the transaction. It was only after the creation[68] of PCGG[69] and its exhaustive investigations that the alleged crime was discovered. This led to the initiation on November 29, 1988 of a Complaint against former President Marcos and petitioner for violation of the Anti-Graft and Corrupt Practices Act. Consequently, the filing of the Information on July 12, 1989 was well within the prescriptive period of ten years from the discovery of the offense.

Fifth Issue

Immunity from Prosecution

Petitioner argues that he enjoys derivative immunity, because he allegedly served as a high-ranking naval officer -- specifically, as naval aide-de-camp -- of former President Marcos.[70] He relies on Section 17 of Article VII of the 1973 Constitution, as amended, which we quote:

“The President shall be immune from suit during his tenure. Thereafter, no suit whatsoever shall lie for official acts done by him or by others pursuant to his specific orders during his tenure.

“x x x x x x x x”

As the Sandiganbayan aptly pointed out, the above provision is not applicable to petitioner because the immunity amendment became effective only in 1981 while the alleged crime happened in 1975.

In *Estrada v. Desierto*,^[71] this Court exhaustively traced the origin of executive immunity in order to determine the extent of its applicability. We explained therein that executive immunity applied only during the incumbency of a President. It could not be used to shield a non-sitting President from prosecution for alleged criminal acts done while sitting in office. The reasoning of petitioner must therefore fail, since he derives his immunity from one who is no longer sitting as President. Verily, the felonious acts of public officials and their close relatives “are not acts of the State, and the officer who acts illegally is not acting as such but stands on the same footing as any other trespasser.”

In sum, petitioner utterly fails to show that the Sandiganbayan gravely abused its discretion in issuing the assailed Resolutions.^[72] On the contrary, it acted prudently, in accordance with law and jurisprudence.

WHEREFORE, the Petition is DISMISSED, and the questioned Resolutions of the Sandiganbayan AFFIRMED. Costs against petitioner.

SO ORDERED.

Davide, Jr., C.J., Quisumbing, Carpio, Austria-Martinez, Carpio-Morales, Callejo, Sr., and Azcuna, JJ., concur. Puno, Ynares-Santiago, and Sandoval-Gutierrez, JJ., in the result.

Corona, J., on leave.

Tinga, J., in the result. Please see separate opinion.

Chico-Nazario, J., no part. Ponente of assailed SB Resolutions.

[1] Rollo, pp. 3-55.

[2] *Id.*, pp. 56-62.

[3] *Id.*, pp. 63-68. Fifth Division. Penned by Justice Minita V. Chico-Nazario (chairman), with the concurrence of Justices Ma. Cristina G. Cortez-Estrada and Francisco H. Villaruz Jr. (members).

[4] Sandiganbayan Resolution, p. 5; rollo, p. 62.

[5] Anti-Graft and Corrupt Practices Act.

[6] Sandiganbayan Resolution, pp. 1-3; rollo, pp. 56-60.

[7] *Id.*, p. 60.

[8] *Ibid.*

[9] *Id.*, p. 64.

[10] *Id.*, p. 66.

[11] This case was deemed submitted for resolution on March 6, 2003, upon this Court's receipt of petitioner's Memorandum, signed by Atty. Enrico Q. Fernando. The Memorandum of the Office of the Ombudsman, signed by Deputy Special Prosecutor Robert E. Kallos, Director Rodrigo V. Coquia, and Special Prosecution Officer Elvira C. Chua, was received by this Court on January 30, 2003. The Memorandum of the Office of the Solicitor General, signed by Solicitor General Alfredo L. Benipayo, Assistant Solicitor General Alexander G. Gesmundo, and Associate Solicitor Raymond C. de Lemos, was received on February 19, 2003.

[12] Petitioner's Memorandum, p. 6.

[13] On October 8, 1999, petitioner had already filed a Motion to Quash, which was denied by the Sandiganbayan on February 9, 2000. Then on June 19, 2001, he filed a Motion to Dismiss.

[14] A motion for reconsideration is generally required prior to the filing of a petition for certiorari to allow the tribunal an opportunity to correct its assigned errors (*Lasco v. United Nations Revolving Fund for Natural Resources Exploration*, 241 SCRA 681, 684, February 23, 1995; *Butuan Bay Wood Export Corp. v. CA*, 297 SCRA 297, 305, April 28, 1980). Being interlocutory, the order denying a motion to quash is not appealable. The Order may, however, be reviewed in the ordinary course of law by an appeal from the judgment after trial. (*Tan Jr. v. Sandiganbayan*, 354 Phil. 463, 470, July 10, 1998; *Cruz v. CA*, 194 SCRA 145, 152, February 18, 1991; *Bulaong v. CA*, 181 SCRA 618, 622, January 30, 1990; *Gamboa v. Cruz*, 162 Phil. 642, 652, June 27, 1988.)

[15] §4, Rule 65 of the Rules of Court.

[16] *Tan Jr. v. Sandiganbayan*, 354 Phil. 463, 470, July 10, 1998; *Cruz v. CA*, 194 SCRA 145, 152, February 18, 1991; *Bulaong v. CA*, 181 SCRA 618, 622, January 30, 1990.

[17] Governed by Rule 117.

[18] Under Rule 16.

[19] §9, Rule 117 of the Rules of Court, states: "The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g) and (i) of section 3 of this Rule." The exceptions refer to the following grounds: the facts do not constitute an offense, lack of jurisdiction over the offense charged, extinction of the offense or penalty, and double jeopardy.

[20] "The overbreadth doctrine x x x decrees that 'a governmental purpose may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.'" Separate Opinion of Mr. Justice Vicente V. Mendoza in *Estrada v. Sandiganbayan*, 421 Phil. 290, 430, November 19, 2001 (citing *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]).

[21] 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." Separate Opinion of Mr. Justice Mendoza in *Estrada v. Sandiganbayan* 421 Phil. 290, 429-430, November 19, 2001 (citing *Connally v. General Constr. Co.*, 269 U.S. 385, 391, 70 L. Ed. 328 [1926]; in turn cited in *Ermita-Malate Hotel and Motel Operators Ass'n v. City Mayor*, 20 SCRA 849, 867 [1967]).

[22] Separate Opinion of Mr. Justice Mendoza in *Estrada v. Sandiganbayan*, *supra*.

- [23] Separate Opinion of Mr. Justice Panganiban in *Estrada v. Sandiganbayan*, *supra*.
- [24] 271 US 500, June 7, 1926.
- [25] 207 SCRA 712, March 31, 1992.
- [26] 270 SCRA 106, March 19, 1997.
- [27] 401 U.S. 37, 52-53, 27 L. Ed. 2d 669, 680 (1971), per Black, J.
- [28] Separate Opinion of Mr. Justice Mendoza in *Estrada v. Sandiganbayan*, *supra*.
- [29] Petitioner's Memorandum, p. 9.
- [30] *Id.*, p. 11.
- [31] *Heirs of Juancho Ardon v. Reyes*, 210 Phil. 187, 207, October 26, 1983; *Peralta v. Commission on Elections*, 82 SCRA 30, 55, March 11, 1978; *Ermita-Malate Hotel & Motel Operations Association, Inc. v. Hon. City Mayor of Manila*, 127 Phil. 306, 314, July 31, 1967.
- [32] *Estrada v. Sandiganbayan*, *supra*; *Heirs of Juancho Ardon v. Reyes*, *supra*; *Peralta v. Commission on Elections*, *supra*.
- [33] *Heirs of Juancho Ardon v. Reyes*, *supra*; *Peralta v. Commission on Elections*, *supra*.
- [34] 204 SCRA 516, December 2, 1991.
- [35] *Id.*, p. 523, per Cruz, J.
- [36] Citing *People v. Nazario*, 165 SCRA 186, 195-196, August 31, 1988.
- [37] *Ibid.*
- [38] Citing *State v. Hill*, 189 Kan 403, 369 P2d 365, 91 ALR 2d 750.
- [39] *Estrada v. Sandiganbayan*, *supra*, p. 352, per Bellosillo, J.
- [40] 349 Phil. 434, January 29, 1998.
- [41] *Id.*, p. 462, per Romero, J.
- [42] *Ibid.*
- [43] *Caltex v. Palomar*, 18 SCRA 247, September 29, 1966, *Estrada v. Sandiganbayan*, *supra*, p. 443.
- [44] Citing 82 CJS 68, p. 113; *People v. Ring*, 70 P. 2d 281, 26 Cal. App 2d Supp. 768.
- [45] Citing *Mustang Lumber, Inc. v. Court of Appeals*, 257 SCRA 430, 448, June 18, 1996.
- [46] Citing *PLDT v. Eastern Telecommunications Phil., Inc.*, 213 SCRA 16, 26, August 27, 1992.
- [47] *Estrada v. Sandiganbayan*, *supra*, pp. 347-348.
- [48] Webster's Third New International Dictionary, 1993 ed., p. 11.
- [49] Petitioner's Memorandum, p. 14.
- [50] *Dans v. People*, *supra*, p. 461.
- [51] *Estrada v. Sandiganbayan*, 427 Phil. 820, 858, February 26, 2002; *People v. Arcillas*, 348 SCRA 729, 733,

December 27, 2000; U.S. v. Go Chanco, 23 Phil. 641, 645, December 28, 1912.

[52] People v. Arcillas, supra.

[53] Naya v. Abing, 398 SCRA 364, 369, February 27, 2003; Estrada v. Sandiganbayan, supra; Balitaan v. CFI of Batangas, Branch II, 201 Phil. 311, 322, July 30, 1982.

[54] Balitaan v. CFI of Batangas, Branch II, supra, p. 323; People v. Arbois, 138 SCRA 24, 32, August 5, 1985.

[55] Naya v. Abing, supra, p. 369; Estrada v. Sandiganbayan, supra, p. 859; Balitaan v. CFI of Batangas, Branch II, supra, p. 322.

[56] Sandiganbayan Resolution, dated November 20, 2001, p. 2 (supra, p. 59); Office of the Special Prosecutor's Comment, p. 5 (rollo, p. 201); Comment of the Office of the Solicitor General, p. 8 (rollo, p. 224).

[57] 190 SCRA 226, October 2, 1990.

[58] Petitioner's Memorandum, pp. 21-22.

[59] Cojuangco v. Presidential Commission on Good Government, supra, p. 255; See also Republic v. Desierto, 416 Phil. 59, 65, August 23, 2001.

[60] 390 Phil. 917, July 14, 2000.

[61] Id., p. 941.

[62] Sandiganbayan Resolution dated February 9, 2000; rollo, p. 158.

[63] Petitioner's Memorandum, p. 24.

[64] Ibid.

[65] An Act to Establish Periods of Prescription for Violations Penalized by Special Acts and Municipal Ordinances and to Provide When Prescription Shall Begin to Run.

[66] Salvador v. Desierto, GR No. 135249, January 16, 2004; Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, 415 Phil. 723, August 22, 2001.

[67] Republic v. Desierto, supra, pp. 76-78, per De Leon Jr., J.

[68] On February 28, 1986, by virtue of Executive Order No. 1.

[69] This Commission was tasked with the recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, during his administration; the investigation of cases of graft and corruption; and adoption of safeguards and institution of adequate measures to prevent the occurrence of corruption.

[70] Petitioner's Memorandum, p. 31.

[71] 353 SCRA 452, 516-524, March 2, 2001, per Puno, J.

[72] Land Bank of the Philippines v. Court of Appeals, supra; De Baron v. Court of Appeals, 368 SCRA 407, 415, October 26, 2001; Intestate Estate of Carmen de Luna v. Intermediate Appellate Court, 170 SCRA 246, 254, February 13, 1989; Butuan Bay Wood Export Corp. v. Court of Appeals, 97 SCRA 297, 303, April 28, 1980.

SEPARATE OPINION

TINGA, J.:

I concur in the result of the ponencia and the proposition that Section 5 of the Anti-Plunder Law is constitutional. The validity of the provision has been passed upon by the Court before in *Estrada v. Sandiganbayan*.^[1] I also agree with the ponencia's reiteration of the ruling in *Estrada* that Section 5 is receptive to the basic principle in statutory construction that words should be construed in their ordinary and usual meaning.^[2]

However, with all due respect, I raise serious objections to the ponencia's holding that the so-called "void for vagueness" doctrine has special application only to free speech cases,^[3] and the undeclared proposition that penal laws may not be stricken down on the ground of ambiguity.^[4] I am aware that the assertions rely upon the separate opinions of the herein ponente^[5] and Mr. Justice Vicente Mendoza^[6] in *Estrada*. I am also aware that the critical portion of Mr. Justice Mendoza's separate opinion in *Estrada* was cited with approval by Mr. Justice Bellosillo's ponencia therein.^[7]

The incontrovertible reality though is that the majority's pronouncement in *Estrada* that penal statutes cannot be challenged on vagueness grounds did not form part of the *ratio decidendi*. The ratio, in the words of Justice Bellosillo, was: "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,"^[8] and thus the law does not suffer from unconstitutionality. The discussion on the vagueness aspect was not decisive of the main issue and, therefore, clearly *obiter dictum*. I submit that it is erroneous to resolve the present petition on the basis of that dictum in *Estrada*.

As the *obiter dictum* in *Estrada* is needlessly made a ratio in the present case, the ponencia herein has even unwittingly elevated to doctrinal level the proposition that the constitutionality of penal laws cannot be challenged on the ground of vagueness. I humbly submit that the stance is flawed and contrary to fundamental principles of due process.

The Bill of Rights occupies a position of primacy in the fundamental law.^[9] It is thus sacrosanct in this jurisdiction that no person shall be deprived of life, liberty or property without due process of law.^[10]

A challenge to a penal statute premised on the argument that the law is vague is a proper invocation of the due process clause. A statute that lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the due process clause, for failure to accord persons fair notice of the conduct to avoid.^[11] As held by the Court in *People v. Dela Piedra*:^[12]

Due process requires 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 its penalties. A criminal statute that "fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute," or is so indefinite that "it encourages arbitrary and erratic arrests and convictions," is void for vagueness. The constitutional vice in a vague or indefinite statute is the injustice to the accused in placing him on trial for an offense, the nature of which he is given no fair warning.^[13]

It should also be reckoned that the Bill of Rights likewise guarantees that no person shall be held to answer for a criminal offense without due process of law,^[14] and that the accused enjoys the right to be informed of the nature and cause of the accusation against him or her.^[15] The Bill of Rights ensures the fullest measure of protection to an accused. If a particular mode of constitutional challenge, such as one predicated on the "void for vagueness" doctrine, is available to an ordinary person deprived of property or means of expression, then more so should it be accessible to one who is in jeopardy of being deprived of liberty or of life.^[16]

“Vagueness” and “Overbreadth” Are Distinct Concepts

A fundamental flaw, to my mind, in the analysis employed by the ponencia and some of the separate opinions in Estrada is the notion that the “vagueness” and “overbreadth” doctrines are the same and should be accorded similar treatment. This is erroneous.

Mr. Justice Kapunan, in his dissenting opinion in Estrada, offers a correct distinction between “vagueness” and “overbreadth”:

A view has been proffered that “vagueness and overbreadth doctrines are not applicable to penal laws.” These two concepts, while related, are distinct from each other. On one hand, the doctrine of overbreadth applies generally to statutes that infringe upon freedom of speech. On the other hand, the “void-for-vagueness” doctrine applies to criminal laws, not merely those that regulate speech or other fundamental constitutional right. (not merely those that regulate speech or other fundamental constitutional rights.) 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.[17]

This view should be sustained, especially in light of the fact that the “void for vagueness” doctrine has long been sanctioned as a means to invalidate penal statutes.

“Void For Vagueness” Invalidation of Penal Statutes has Long-Standing Jurisprudential History

As early as 1926, the United States Supreme Court held in *Connally v. General Construction Co.*, thus: [18]

That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its 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 of law.

Thus in *Connally*, a statute prescribing penalties for violation of an eight-hour workday law was voided, presenting as it did, a “double uncertainty, fatal to its validity as a criminal statute.”[19]

In *Lanzetta v. State of New Jersey*,[20] a challenge was posed to a statute defining a “gangster” and prescribing appropriate penalties, for being void for vagueness. The U.S. Supreme Court ruled that the definition of a “gang” under the statute was vague, and the statute void for vagueness. It was of no moment that the information against the accused described the offense with particularity.

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. (*United States v. Reese*, 92 U.S. 214, 221; *Czarra v. Board of Medical Supervisors*, 25 App.D.C. 443, 453.) It is the statute, not the accusation under it, that prescribes the rule to govern conduct and warns against transgression. (See *Stromberg v. California*, 283 U.S. 359, 368, 51 S.Ct. 532, 535, 73 A.L. R. 1484; *Lovell v. Griffin*, 303 U.S. 444, 58 S.Ct. 666.) 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.[21] (Emphasis supplied)

In *Bouie v. City of Columbia*,[22] civil rights protesters were charged with violating a criminal trespass statute proscribing entry upon the lands of another after notice prohibiting such entry. A state court construed the statute as applicable to the act of remaining on the premises of another after receiving notice to leave. The U.S. Supreme Court reversed, applying again the “void for vagueness” doctrine. Said Court admitted that “typical applications of the principle, the uncertainty as to the statute's prohibition resulted from vague or overbroad language in the statute itself.”[23] Yet the Court noted that “[t]here can be no doubt that a deprivation of the right of fair warning

can result not only from vague statutory language but also from an unforeseeable and retroactive judicial expansion of narrow and precise statutory language.”[24] Accordingly, the Court overturned the convictions, holding that “the crime for which [they] were convicted was not enumerated in the statute at the time of their conduct,” thus denying the accused due process of law.[25]

In *Papachristou v. City of Jacksonville*,[26] a statute penalizing vagrancy was voided by the U.S. Supreme Court, again for being vague:

This ordinance is void for vagueness, both in the sense that it “fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute,” (*United States v. Harriss*, 347 U.S. 612, 617), and because it encourages arbitrary and erratic arrests and convictions (*Thornhill v. Alabama*, 310 U.S. 88; *Herndon v. Lowry*, 301 U.S. 242).[27]

Kolender v. Lawson[28] involves another affirmation of the well-established doctrine. There, the US Supreme Court invalidated a loitering statute requiring a loiterer to produce credible and reliable identification when requested by a peace officer. It elucidated:

Although the doctrine focuses on both actual notice to citizens and arbitrary enforcement, we have recognized recently that the more important aspect of the vagueness doctrine “is not actual notice, but the other principal element of the doctrine—the requirement that a legislature establish minimal guidelines to govern law enforcements. Where the legislature fails to provide such minimal guidelines, a criminal statute may permit “a standardless sweep [that] allows policemen, prosecutors and juries to pursue their personal predilections.”[29]

In the fairly recent case of *City of Chicago v. Morales*,[30] the U.S. Supreme Court affirmed a lower court ruling invalidating as void for vagueness an ordinance prohibiting “criminal street gang members” from loitering in public places, as well as the conviction based on the invalidated ordinance. The US Court again asserted:

For it is clear that the vagueness of this enactment makes a facial challenge appropriate. This is not an ordinance that “simply regulates business behavior and contains a scienter requirement.” (See *Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U. S. 489, 499 (1982)). It is a criminal law that contains no mens rea requirement (see *Colautti v. Franklin*, 439 U. S. 379, 395 (1979)), and infringes on constitutionally protected rights (see *id.*, at 391). When vagueness permeates the text of such a law, it is subject to facial attack. [22]

Vagueness may invalidate a criminal law for either of two independent reasons. First, it may fail to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits; second, it may authorize and even encourage arbitrary and discriminatory enforcement. (See *Kolender v. Lawson*, 461 U. S., at 357).[31]

Given the wealth of jurisprudence invalidating penal statutes for suffering from vagueness, it is mystifying why the notion that the doctrine applies only to “free-speech” cases has gained a foothold in this Court. It might be argued that the above-cited cases are foreign jurisprudence, inapplicable to this jurisdiction. Yet it is submitted that the rule is applicable here, not because of its repeated affirmation by American courts, but because such rule is lucidly consistent with our own fundamental notions of due process, as enunciated in our own Constitution.

What then is the standard of due process which must exist both as a procedural and as substantive requisite to free the challenged ordinance, or any government 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 reasons and result in sheer oppression. Due process is thus hostile to any official action marred by lack of reasonableness. Correctly has it 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." [32]

The dissent of Justice White, joined by Justice Rehnquist, in *Kolender v. Lawson* finds some kinship with Mr. Justice Mendoza's views in *Estrada*, insofar as they point out a distinction between the "vagueness" doctrine, as applied to criminal statutes, on one hand, and as applied to US First Amendment cases, on the other.

The usual rule is that the alleged vagueness of a criminal statute must be judged in light of the conduct that is charged to be violative of the statute. If the actor is given sufficient notice that his conduct is within the proscription of the statute, his conviction is not vulnerable on vagueness grounds, even if as applied to other conduct, the law would be unconstitutionally vague. None of our cases "suggests that one who has received fair warning of the criminality of his own conduct from the statute in question is nonetheless entitled to attack it because the language would not give similar fair warning ;with respect to other conduct which might be within its broad and literal ambit. One to whose conduct a statute clearly applies may not successfully challenge it for vagueness." The correlative rule is that a criminal statute is not unconstitutionally vague on its face unless it is "impermissibly vague in all of its applications."

These general rules are equally applicable to cases where First Amendment or other "fundamental" interests are involved. The Court has held that in such circumstances "more precision in drafting may be required because of the vagueness doctrine in the case of regulation of expression, a "greater degree of specificity" is demanded than in other contexts. But the difference in such cases "relates to how strict a test of vagueness shall be applied in judging a particular criminal statute." It does not permit the challenger of the statute to confuse vagueness and overbreadth by attacking the enactment as being vague as applied to conduct other than his own. Of course, if his own actions are themselves protected by the First Amendment or other constitutional provision, or if the statute does not fairly warn that it is proscribed, he may not be convicted. But it would be unavailing for him to claim that although he knew his own conduct was unprotected and was plainly enough forbidden by the statute, others may be in doubt as to whether their acts are banned by the law. [33] (Emphasis supplied)

Still, the quoted dissenting opinion concedes the applicability of the "void for vagueness" rule in striking infirm criminal statutes. It just enunciates a greater demand for "specificity" in statutes which may infringe on free speech protections.

Moreover, Mr. Justice Mendoza likewise invoked American jurisprudence in support of his view that the overbreadth and vagueness doctrines apply only to free speech cases. [34] He cites, among others, *U.S. v. Salerno* [35] and *Broadrick v. Oklahoma*. [36] In *Salerno*, the US Supreme Court notes that the "overbreadth" doctrine was inapplicable outside the context of the First Amendment. [37] Notably though, the US Court did not make the same assertion as to the "vagueness" doctrine. Had it done so in *Salerno*, it would have been incongruent with its previous rulings, as well as with its subsequent ones.

Broadrick v. Oklahoma did not pertain to a challenge to a penal statute, but rather an Oklahoma law restricting the political activities of that state's classified civil servants. [38] Again, *Broadrick* may advert to a correct interpretation of the "overbreadth" doctrine. However, in the face of numerous jurisprudence affirming the "vagueness" challenge of American penal laws neither *Broadrick* nor *Salerno* can be utilized to assert a converse rule.

Mr. Justice Mendoza's opinion also cites from the American constitutional law textbook of Sullivan and Gunther, to assert that "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.”[39] This may be a correct restatement of the American rule. Yet, it does not necessarily mean that penal laws are not susceptible to a “void for vagueness” challenge. In fact, in the same page cited in Mr. Justice Mendoza’s opinion, Sullivan and Gunther cite cases wherein American penal laws were stricken down for being vague, such as *Connally v. General Construction Co.*, *Kolender v. Lawson*, and *Papachristou v. Jacksonville*. [40]

The same citation likewise refers to the odd situation wherein unlike in First Amendment cases, due process invalidations for vagueness apply only to a particular defendant. Sullivan and Gunther posit that the broader protection afforded in First Amendment cases follow from “a special concern about the ‘chilling effect’ of vague statutes on protected speech.”[41] However, the ponencia latches onto this distinction in order to foist the bugaboo of “mass acquittal” of criminals due to the facial invalidation of criminal statutes.[42] Moreover, the ponencia asserts that such invalidation would constitute a departure from the usual requirement of actual case and controversy and permit decisions to be made in a sterile abstract context having no factual concreteness.[43]

Such concerns are overwrought. In this jurisdiction, judicial review over the constitutionality of statutes, penal or otherwise, avails only upon the concurrence of (1) the existence of an appropriate case; (2) an interest personal and substantial by the party raising the constitutional question; (3) a plea that the function be exercised at the earliest opportunity; and (4) a necessity that the constitutional question be passed upon in order to decide the case.[44] Challenges to the validity of laws are not lightly undertaken, and the non-existence of any of the four conditions precedent bar a successful challenge. Surely, not just anybody picked off the street prepossesses the requisite standing, nor could just any case present itself as the proper vehicle for a constitutional attack.

These conditions precedent successfully weigh the concerns of the State, fearful of instabilities brought by frequent invalidations of the laws it passes, and with the basic component of justice that a person to whom a wrong is done by the State can seek vindication from the courts. Our basic jurisprudential barrier has shielded this Court for generations from exercising unwarranted and unmitigated judicial review. There is no need to further raise the bar for review, especially on such flimsy foundations, lest we insulate ourselves from the pleas of the truly prejudiced, truly injured, truly violated.

At the same time, the ponencia raises the concern that the invalidation of a void law will unnecessarily benefit those without actual cases or controversies. It must be remembered though that the Court will not unhesitatingly strike down a statute if a narrower alternative affording the same correct relief is available. Within the confines of this discretion, all the tools of searching inquiry are at the Court’s disposal to carve as narrow a rule as necessary.

Still and all, if there is no alternative but to strike down a void law, there should be no hesitation on the part of this Court in ruling it so, no matter the effective scope and reach of the decision. The State has no business promulgating void laws, which stick out like a cancer infecting our constitutional order. When faced with the proper opportunity, it is the Court’s duty to excise the tumor no matter how painful. Unfortunately, the solution advocated by the ponencia barring penal statutes from “void for vagueness” assaults hides the patient from the doctor.

People v. Dela Piedra, earlier cited,[45] did not invalidate the statute questioned therein on the “void for vagueness” ground. Yet it affirms that the “void for vagueness” challenge to a penal law may be sustained if the statute contravenes due process. The circumstance, as the ponencia herein points out, that no penal law has been declared unconstitutional on the ground of ambiguity, does not mean that no penal law can ever be invalidated on that ground.

As long as the due process clause remains immanent in our Constitution, its long reach should be applied to deter and punish unwarranted deprivations of life, liberty or property. Violations of due process are myriad, ranging as

they do from the simple to the complicated, from the isolated to the intermittent, from the abashed to the brazen. No advance statement can outrightly cast an act as beyond the ambit of the due process clause, especially when applied to the lot of an accused, for such is simply presumptuous and anathema to the spirit of fair play.

I may disagree with the eventual conclusions of Justices Kapunan, Ynares-Santiago and Sandoval-Gutierrez in the Estrada case that Section 5 of the Anti-Plunder Law is void for vagueness. Yet, I submit that their inquiry as to whether the said criminal statute was void for being vague is a juristic exercise worth pursuing. If the ponencia affirms the earlier erroneous pronouncement as asserted in the main by Mr. Justice Mendoza in Estrada, then I express the same fear articulated by Mr. Justice Kapunan in his dissent, that “such stance is tantamount to saying that no criminal law can be challenged however repugnant it is to the constitutional right to due process.”[46]

[1] Estrada v. Sandiganbayan, 421 Phil. 290 (2001). The author of this Separate Opinion was not yet a member of the Court when the Estrada case was decided.

[2] Page 19, ponencia. See also Estrada v. Sandiganbayan, id. at 348.

[3] Page 12, ponencia.

[4] Page 13, ponencia.

[5] Estrada v. Sandiganbayan, supra note 1 at 451-482.

[6] Id. at 421-450

[7] Id. at 353-356.

[8] Id. at 343. The main opinion in Estrada continued: “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 the 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 of combination of act enumerated in Sec. 1, par. (d), of the Plunder Law.” Id. at 344.

[9] People v. Tudtud, G.R. No. 144037, 26 September 2003.

[10] Section 1, Article III, Constitution.

[11] People v. Nazario, G.R. No. L-44143, 31 August 1988, 165 SCRA 186, 195; citing L. Tribe, American Constitutional Law 718 (1978). See also Connally v. General Construction Co., 269 U.S. 385, 391. Such statute also violates the Constitution for leaving law enforcers unbridled discretion in carrying out its provisions and becoming an arbitrary flexing of the government muscle. People v. Nazario, *ibid*.

[12] G.R. No. 121777, 24 January 2001, 350 SCRA 163.

[13] Id. at 175-176.

[14] Section 14(1), Article III, Constitution. See also Pagasian v. Azura, G.R. No. RTJ-89, 17 April 1990, 184 SCRA 291, 393; People v. Kidagan, G.R. Nos. G.R. 88753-54, 20 August 1990, 188 SCRA 763, 768.

[15] Section 14(2), Article III, Constitution. See e.g., People v. Pailano, G.R. No. 43602, 31 January 1989, 169 SCRA 649, 653-654; People v. Barte, G.R. No. 103211, 28 February 1994, 230 SCRA 401, 411.

[16] “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 challenged 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.” J. Kapunan, dissenting, *Estrada v. Sandiganbayan*, supra note 1, at 383.

[17] *Estrada v. Sandiganbayan*, supra note 1, J. Kapunan, dissenting, at 382-384.

[18] 269 U.S. 385, 393 (1926).

[19] *Ibid.*

[20] 306 U.S. 451 (1939).

[21] *Id.* at 453.

[22] 378 U.S. 347 (1964).

[23] *Id.* at 351.

[24] *Id.* at 352.

[25] *Id.* at 363.

[26] 405 U.S. 156 (1972).

[27] *Id.* at 162.

[28] 461 U.S. 352 (1983).

[29] *Id.* at 358.

[30] Case No. 97-1121, 10 June 1999.

[31] Case No. 97-1121, 10 June 1999.

[32] *Ermita-Malate Hotel and Motel Operators Association v. City Mayor*, 127 Phil. 306, 318-319 (1967).

[33] *Kolender v. Lawson*, J. White, dissenting, 461 U.S. 352, 369-370 (1983).

[34] *Estrada v. Sandiganbayan*, supra note 1, J. Mendoza, concurring, at 430-431.

[35] 481 U.S. 739 (1987).

[36] 413 U.S. 601 (1973).

[37] *U.S. v. Salerno*, 481 U.S. 739, 745.

[38] 413 U.S. 601 (1973).

[39] Estrada v. Sandiganbayan, supra note 1, J. Mendoza, concurring, at 431-432.

[40] K. Sullivan and G. Gunther. CONSTITUTIONAL LAW 1299 (14th ed., 2001)

[41] Ibid.

[42] Ponencia, p. 14.

[43] Ibid.

[44] Dumlao v. COMELEC, G.R. No. L-52245, 22 January 1980, 95 SCRA 392, 400.

[45] Supra note 11.

[46] Estrada v. Sandiganbayan, supra note 1, J. Kapunan, dissenting, at 483.

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