PRESIDENTIAL DECREE NO. 533 August 8, 1974
THE ANTI-CATTLE RUSTLING LAW OF 1974

I. FULL TEXT OF P. D. NO. 533

WHEREAS, large cattle are indispensable to the livelihood and economic growth of our people, particularly the agricultural workers, because such large cattle are the work animals of our farmers and the source of fresh meat and dairy products for our people, and provide raw material for our tanning and canning industries;

WHEREAS, reports from the law-enforcement agencies reveal that there is a resurgence of thievery of large cattle, commonly known as "cattle rustling", especially in the rural areas, thereby directly prejudicing the livelihood of the agricultural workers and adversely affecting our food production program for self-sufficiency in rice, corn and other staple crops, as well as in fresh meat;

WHEREAS, there is an urgent need to protect large cattle raising industry and small time large cattle owners and raisers from the nefarious activities of lawless elements in order to encourage our hardworking cattle raisers and farmers to raise more cattle and concentrate in their agricultural works, thus increasing our source of meat and dairy products as well as agricultural production and allied industries which depend on the cattle raising industry;
NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution and pursuant to Proclamations No. 1081, dated September 21, 1972 and No. 1104, dated January 17, 1973 and General Order No. 1 dated September 22, 1972, do hereby order and decree as part of the law of the land, the following:

Sec. 1. Title. This Decree shall be known as the "Anti-Cattle Rustling Law of 1974."
Sec. 2. Definition of terms. The following terms shall mean and be understood to be as herein defined:
a. Large cattle as herein used shall include the cow, carabao, horse, mule, ass, or other domesticated member of the bovine family.
b. Owner/raiser shall include the herdsman, caretaker, employee or tenant of any firm or entity engaged in the raising of large cattle or other persons in lawful possession of such large cattle.

c. Cattle rustling is the taking away by any means, method or scheme, without the consent of the owner/raiser, of any of the above-mentioned animals whether or not for profit or gain, or whether committed with or without violence against or intimidation of any person or force upon things. It includes the killing of large cattle, or taking its meat or hide without the consent of the owner/raiser.

d.

Sec. 3. Duty of owner/raiser to register. The owner/raiser shall, before the large cattle belonging to him shall attain the age of six months, register the same with the office of the city/municipal treasurer where such large cattle are raised. The city/municipality concerned may impose and collect the fees authorized by existing laws for such registration and the issuance of a certificate of ownership to the owner/raiser.

Sec. 4. Duty of city/municipal treasurers and other concerned public officers and employees. All public officials and employees concerned with the registration of large cattle are required to observe strict adherence with pertinent provisions of Chapter 22, Section 511 to 534, of the Revised Administrative Code, except insofar as they may be inconsistent with the provisions of this Decree.

Sec. 5. Permit to buy and sell large cattle. No person, partnership, association, corporation or entity shall engage in the business of buy and sell of large cattle without first securing a permit for the said purpose from the Provincial Commander of the province where it shall conduct such business and the city/municipal treasurer of the place of residence of such person, partnership, association, corporation or entity. The permit shall only be valid in such province.

Sec. 6. Clearance for shipment of large cattle. Any person, partnership, association, corporation or entity desiring to ship or transport large cattle, its hides, or meat, from one province to another shall secure a permit for such purpose from the Provincial Commander of the province where the large cattle is registered. Before issuance of the permit herein prescribed, the Provincial Commander shall require the submission of the certificate of ownership as prescribed in Section 3 hereof, a certification from the Provincial Veterinarian to the effect that such large cattle, hides or meat are free from any disease; and such other documents or records as may be necessary. Shipment of large cattle, its hides or meat from one city/municipality to another within the same province may be done upon securing permit from the city/municipal treasurer of the place of origin.

Sec. 7. Presumption of cattle rustling. Every person having in his possession, control or custody of large cattle shall, upon demand by competent authorities, exhibit the documents prescribed in the preceding sections. Failure to exhibit the required documents shall be prima facie evidence that the large cattle in his possession, control or custody are the fruits of the crime of cattle rustling.

Sec. 8. Penal provisions. Any person convicted of cattle rustling as herein defined shall, irrespective of the value of the large cattle involved, be punished by prision mayor in its maximum period to reclusion temporal in its medium period if the offense is committed without violence against or intimidation of persons or force upon things. If the offense is committed with violence against or intimidation of persons or force upon things, the penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed. If a person is seriously injured or killed as a result or on the occasion of the commission of cattle rustling, the penalty of reclusion perpetua to death shall be imposed.

When the offender is a government official or employee, he shall, in addition to the foregoing penalty, be disqualified from voting or being voted upon in any election/referendum and from holding any public office or employment.
When the offender is an alien, he shall be deported immediately upon the completion of the service of his sentence without further proceedings.
Sec. 9. Rules and Regulations to be promulgated by the Chief of Constabulary. The chief of Constabulary shall promulgate the rules and regulations for the effective implementation of this Decree.

Sec. 10. Repealing clause. The provisions of Articles 309 and 310 of Act No. 3815, otherwise known as the Revised Penal Code, as amended, all laws, decrees, orders, instructions, rules and regulations which are inconsistent with this Decree are hereby repealed or modified accordingly.
Sec. 11. Effectivity. This Decree shall take effect upon approval.

Done in the City of Manila, this 8th day of August, in the year of Our Lord, nineteen hundred and seventy-four.

II. EXPLANATIONS:

DEFINITION OF TERMS.

a. **Large cattle** as herein used shall include the cow, carabao, horse, mule, ass, or other domesticated member of the bovine family.

b. **Owner/raiser** shall include the herdsman, caretaker, employee or tenant of any firm or entity engaged in the raising of large cattle or other persons in lawful possession of such large cattle.

c. **Cattle rustling** is the taking away by any means, method or scheme, without the consent of the owner/raiser, of any of the above-mentioned animals whether or not for profit or gain, or whether committed with or without violence against or intimidation of any person or force upon things. It includes the killing of large cattle, or taking its meat or hide without the consent of the owner/raiser.

WHAT IS THE DUTY OF OWNER/RAISER TO REGISTER.?

The owner/raiser shall, before the large cattle belonging to him shall attain the age of six months, register the same with the office of the city/municipal treasurer where such large cattle are raised. The city/municipality concerned may impose and collect the fees authorized by existing laws for such registration and the issuance of a certificate of ownership to the owner/raiser.

WHAT IS THE DUTY OF CITY MUNICIPAL TREASURER?

Duty of city/municipal treasurers and other concerned public officers and employees. All public officials and employees concerned with the registration of large cattle are required to observe strict adherence with pertinent provisions of Chapter 22, Section 511 to 534, of the Revised Administrative Code, except insofar as they may be inconsistent with the provisions of this Decree.

WHAT ARE THE PERMITS/CLEARANCE REQUIRED IN DEALING WITH LARGE CATTLE?

- **Permit to buy and sell large cattle**. No person, partnership, association, corporation or entity shall engage in the business of buy and sell of large cattle without first securing a permit for the said purpose from **the Provincial Commander** of the

province where it shall conduct such business and the **city/municipal treasurer** of the place of residence of such person, partnership, association, corporation or entity. The permit shall only be valid in such province.

- **Clearance for shipment of large cattle.** Any person, partnership, association, corporation or entity desiring to ship or transport large cattle, its hides, or meat, from one province to another shall secure a permit for such purpose from the **Provincial Commander** of the province where the large cattle is registered. Before issuance of the permit herein prescribed, the Provincial Commander shall require the submission of the certificate of ownership as prescribed in Section 3 hereof, a **certification** from the **Provincial Veterinarian** to the effect that such large cattle, hides or meat are free from any disease; and such other documents or records as may be necessary. Shipment of large cattle, its hides or meat from one city/municipality to another within the same province may be done upon securing permit **from the city/municipal treasurer** of the place of origin.

WHEN IS THERE A PRESUMPTION OF CATTLE RUSTLING?

Every person having in his possession, control or custody of large cattle shall, upon demand by competent authorities, exhibit the documents prescribed in the preceding sections. Failure to exhibit the required documents shall be prima facie evidence that the large cattle in his possession, control or custody are the fruits of the crime of cattle rustling.

WHAT ARE THE PENALTIES TO BE IMPOSED?

Any person convicted of cattle rustling as herein defined shall, irrespective of the value of the large cattle involved, be punished by prision mayor in its maximum period to reclusion temporal in its medium period if the offense is committed without violence against or intimidation of persons or force upon things. If the offense is committed with violence against or intimidation of persons or force upon things, the penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed. If a person is seriously injured or killed as a result or on the occasion of the commission of cattle rustling, the penalty of reclusion perpetua to death shall be imposed.

When the offender is a government official or employee, he shall, in addition to the foregoing penalty, be disqualified from

voting or being voted upon in any election/referendum and from holding any public office or employment.
When the offender is an alien, he shall be deported immediately upon the completion of the service of his sentence without further proceedings.

WHO ISSUES THE RULES AND REGULATION CONCERNING THE IMPLEMENTATION OF PD. 533?

Rules and Regulations to be promulgated by the Chief of Constabulary. The chief of Constabulary shall promulgate the rules and regulations for the effective implementation of this Decree.

III. JURISPRUDENCE

G.R. Nos. L-66401-03 February 13, 1991

PEOPLE OF THE PHILIPPINES, plaintiff-appellee,

vs.

FRANCISCO MARTINADA, BONIFACIO MESIAS, BONDOY MORATO, and TWO JOHN DOES, defendants.
FRANCISCO MARTINADA and BONIFACIO MESIAS, defendants-appellants.

The Solicitor General for plaintiff-appellee.
Francis H. Jardeleza for defendants-appellants.

PARAS, J.:p

This is a mandatory review of the decision of the Regional Trial Court, Branch XV at Palo, Leyte in Criminal Cases Nos. BN-1886, BN 1886-A and BN-1886-B.
In three separate informations, appellants Francisco Martinada and Bonifacio Mesias, together with one Bondoy Maroto and two John Does were all charged with (a) qualified theft of large cattle or cattle rustling; (b) illegal possession of firearms and (c) frustrated murder.
The trial court, after joint trial, found the appellants guilty as charged and sentenced them accordingly, as follows:

WHEREFORE, judgment is hereby rendered, finding the two accused, Francisco Martinada and Bonifacio Mesias, GUILTY beyond doubt of Qualified Theft of Large Cattle as charged in the information (Criminal Case No. BN-1886) with the aggravating circumstances of Recidivism and by a band, and as provided for in P.D. No. 533, otherwise known as the ANTI-CATTLE RUSTLING LAW of 1974, hereby sentences both accused to the Maximum Penalty of DEATH, to indemnify the Spouses Alejandro Naboya and Segundina Elias the sum of P 2,500.00 without subsidiary imprisonment in case of insolvency and for each to pay one-half (1/2) of the costs.

WHEREFORE, judgment is hereby rendered, finding the two accused Francisco Martinada and Bonifacio Mesias, GUILTY beyond reasonable doubt of Illegal Possession of Firearms as charged in the Information (in Criminal Case No. BN-1886-A) and hereby sentences both accused to an indeterminate penalty of not less the FIVE (5) years of Prision Correccional as Minimum to not more than TEN (10)

YEARS of Prision Mayor as Maximum, and for each to pay one-half (1/2) of the costs.

WHEREFORE, judgment is hereby rendered, finding the two accused, Francisco Martinada and Bonifacio Mesias, GUILTY beyond reasonable doubt of the crime of Frustrated Murder as charged in the Information (in Criminal Case No. BN-1886-B) with the qualifying circumstance of treachery and hereby sentences both accused to an indeterminate penalty of not less than SIX (6) YEARS and ONE (1) DAY of Prision Mayor as Maximum to not more than TWELVE (12) YEARS, FIVE (5) MONTHS and ELEVEN (11) DAYS of Reclusion Temporal as Maximum and each to pay one-half (1/2) of the costs. (pp. 18-19, Rollo)

Accused Bondoy Maroto was not arrested and is still at large. Even as the death penalty was meted out only in Criminal Case No. 1886 for cattle rustling, appellants still filed their brief with this Court in all three criminal cases since the crimes were committed on the same occasion, the factual allegations in the three cases are intertwined and they were heard jointly.

It appears that at about midnight of February 13, 1982, Segundina Naboya was awakened by the barking of their dog; that her husband Alejandro, herein victim, descended from their house after having been awakened by a gun report; that at about the same time, Pascual Naboya, brother of Alejandro Naboya who was residing about 50 meters away from the latter's house, also heard the barking of the dog; that Pascual stepped down from his house to verify why the dog was barking, whereupon, he heard a gun burst which made him walk towards Alejandro's house armed with a bolo; that he heard a second shot and then saw Alejandro already lying on. the ground; that the victim was hit at the neck; that Segundina recognized Mesias and Martinada as the assailants; that Pascual Naboya also recognized Martinada, Mesias and Maroto as the culprits; that after Alejandro was shot, appellant Martinada untied the carabao and the latter and his companions took the carabao away; and that the victim's wound required seven to nine days to heal.

Appellants impute these errors to the trial court:

1. The trial court erred in ruling that the guilt of appellants Martinada and Mesias was proven beyond reasonable doubt.
2. The trial court erred in incorporating into the record and making as part of its decision the unsolicited fact of the alleged previous convictions for qualified theft of large cattle and illegal possession of firearms of appellants Martinada and Mesias, and thus violated their constitutional right to be informed of the cause and nature of the accusation against them and to a fair and just trial before a neutral and objective judge.

3. The trial court erred in holding that the shooting of Alejandro Naboya was attended by treachery and in not ruling that the crime committed was at most attempted homicide.

In their attempt to impeach prosecution witnesses Segundina Naboya, Alejandro Naboya and Pascual Naboya, appellants have actually assailed the credibility of these witnesses for the purpose of destroying the latter's positive Identification of said appellants.
Appellants seem to forget the moth-eaten fundamental principle that the findings of the lower court which had the best opportunity to hear and observe the witnesses testify and to weigh their testimonies are given the highest respect and recognition by the appellate court.

This Court has thus held in the case of People v. Trigo, No. 76515, June 14, 1989 (174 SCRA 93) that on the matter of witnesses' credibility, appellate courts give weight and the highest degree of respect to trial courts' findings in criminal prosecution, because the latter are in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial.
Thus, too, in the case of Matabuena v. Court of Appeals, No. 76542, May 5, 1989 (173 SCRA 170), this Court ruled that absent any substantial proof that the trial court's decision was grounded entirely on speculations, surmises or conjectures, the same must be accorded full consideration and respect. This should be so because the trial court is, after all, in a much better position to observe and correctly appreciate the respective parties' evidence as they were presented.

On the alleged inconsistencies in the declarations of the prosecution witnesses, this Court sustains the submission of the Solicitor General that they are very minor and insignificant and do not in any way alter the fact that Alejandro was shot by the appellants and that the carabao was stolen.
Significantly, this Court has repeatedly declared that inconsistencies of witnesses on minor details do not detract from the positiveness of the identification of appellants (People vs. Alvarez, No. 70446, Jan. 31, 1989); that minor inconsistencies do not affect the witness' credibility; that they strengthen rather than weaken the witness' credibility (Medios vs. Court of Appeals, No. 79570, Jan. 31, 1989); and, that contradiction in the testimonies of witnesses instead of suggesting prevarication, indicates veracity, thereby bolstering the probative value of the testimonies as a whole (Ebajon vs. Court of Appeals, Nos. 77930-31, Feb. 9, 1989).

With respect to the alleged delay or failure of witnesses Segundina Naboya and Pascual Naboya to immediately report the identity of the assailants, this Court finds such delayed reporting to have been sufficiently explained.
It should be noted that appellants never refuted, and even conceded the veracity of the sworn statement of Segundina executed on February 25, 1982 wherein she explained that it took her twelve days to report the identity of the perpetrators of the crime because she was so busy attending to her husband Alejandro who was then confined in the hospital. Even on cross-examination, she confirmed her declarations in the aforesaid sworn statement. This Court takes note of the fact that appellant Mesias adopted the said sworn statement as part of his evidence.

Emphatically also, as per Dr. Bugho's testimony, Alejandro's wound was fatal since it could have caused the latter's death had it not been for the timely medical intervention or treatment administered to the victim. Needless to say, for a wife whose husband was in imminent danger of dying, the natural and instinctive reaction was for the wife to be by her husband's side and to give her utmost care and attention in the effort to save his life. All other things like the reporting of the assailants' identity can be set aside; what mattered most was her husband's survival. Hence, the moment Alejandro was pronounced out of danger, Segundina immediately went to the police to execute her sworn statement.

Notably, this Court has reiterated the well-entrenched pronouncement that delay of witnesses in informing others of what they know about a criminal offense will not affect their credibility, where delay is satisfactorily explained. (People vs. Andres, No. 75355; 155 SCRA 290) Likewise, in the case of People vs. Pacabes, 137 SCRA 158, the Court held that it is not uncommon for a witness to a crime to show some reluctance about getting involved in a criminal case. Indeed, the natural reticence of most people to get involved in a criminal case is of judicial notice.

Very much in point is the case of People vs. Molato, No. 66634, Feb. 27, 1989; 170 SCRA 640, where this Court declared that there is no reason to doubt the widow's testimony as she was able to positively identify the assailant as the accused through the flashlight that her husband beamed at appellant even as the latter flashed his light at the victim. The place was illuminated by the flashlights of the two so that it is not impossible for the widow to recognize the appellant and his companion from a mere distance of four meters nor the other witness to identify the two assailants.

The belated reporting of witness Pascual Naboya does not contradict the aforestated explanation of Segundina because the

former acted independently of the latter's course of action and he did not so for a different reason-because of fear. This simply shows that both witnesses made their separate reports without prior consultation or arrangement with each other. Clearly, each was motivated by a distinct and independent reason for the delayed reporting.
Whether the barking of the dog or the gun report awakened Segundina and Pascual is another matter where the alleged inconsistencies or variations in the declarations of the witnesses should be considered petty so as to affect substantially the weight of their testimony. whether it was the barking of the dog or the gunshot which jolted Segundina, Alejandro and Pascual from their sleep would not really matter; what is important is that they were all awakened by something unusual in the middle of the night and the cause was the presence of armed men within the premises. Note also that the declarations of Segundina and Pascual that the barking of the dog woke them up are corroborative. Possibly, Alejandro was sleeping so deeply that he did not hear the dog's bark but when a gunshot rang, the loud impact awakened him.

Another alleged trivial discrepancy is the place or location where Alejandro was shot. While Segundina stated that Alejandro was shot on the ground about eight meters from her, the latter declared that he was hit inside his house at a distance of about two meters from Segundina. Whether or not the victim was shot while in the house or on the ground is again insignificant and such minor inconsistency would not and did not alter the fact that Alejandro was fired upon by the assailants from which he suffered a fatal wound. This discrepancy all the more proves that Alejandro and Segundina were not coached nor rehearsed in order to give a consistent testimony. The fact that their statements varied proves that they were telling the truth and the same were not a concoction as would have been normally expected of husband and wife.

Thus, in a long line of cases this Court has ruled that alleged contradictions and inconsistencies pointed out by the accused in the testimony of prosecution witnesses relating to minor details do not destroy the credibility of witnesses. On the contrary, they indicate that said witnesses were telling the truth and not previously rehearsed.
Appellant's claim that Alejandro should have been in an equal position and opportunity (as Segundina) to recognize appellant Martinada is inaccurate considering that when the victim was going down the house, a flashlight was beamed at his face which had the effect of blinding him temporarily. However,, in a moonlit night and within a distance of a few meters, both Segundina and Pascual positively identified the appellants.

Notably, appellants' defense of alibi has not been substantiated because their alibis were never supported by any witness nor even by their own family members whom they were allegedly with that evening when the offenses were committed. This Court has consistently held that alibi cannot prevail over positive identification of prosecution witnesses and that alibi to be given full faith and credit must be clearly established and must not leave any doubt as to its plausibility and verity. (People vs. Serante, L-46724, 52 SCRA 525).

The contention of appellants that the trial court should not have considered the aggravating circumstance of recidivism since said circumstance was not alleged in the information nor copies of previous sentences rendered against the accused were presented at the trial is not altogether correct. While it is true that to prove recividism, it is necessary to allege the same in the information and to attach thereto certified copies of the sentences rendered against the accused, such aggravating circumstance may still be given credence by the trial court if the accused does not object to the presentation of evidence on the fact of recidivism.

The records reveal that during the trial, the lower court made sufficient reference to the previous cases when it declared that appellant Martinada had been convicted and sentenced to fifty eight years of imprisonment for four cases of qualified theft of large cattle for illegal possession of firearm; and, that such sentence has become final and executory.
Evidently, appellants never objected to the reference to the previous cases, nor did they deny that they were the same persons convicted in said cases. The referral made by the trial court should be relied upon because, after all, the records of prior cases are part of the court records which could be verified and produced readily.

In the case of People vs. Monteverde (142 SCRA 668), this Court declared that the trial court properly appreciated recidivism as an aggravating circumstance although not alleged in the information because the same was proved by evidence.
With regard to the shooting of Alejandro Naboya, this incident should have been considered by the trial court as a qualifying aggravating circumstance to the crime of cattle rustling. Since the information did not allege the fact of Alejandro's injury, the same can no longer be appreciated in the case of cattle rustling. The appellants therefore can be held guilty under Criminal Case No. 1886 only of simple cattle rustling, with the aggravating circumstance of recidivism.

It goes without saying that the trial court should not have convicted accused Martinada and Mesias of the came of Frustrated Murder

since this crime should have been absorbed in the crime of cattle rustling, thereby qualifying the latter.

Section 8 of P.D. No. 533, otherwise known as Anti-Cattle Rustling Law of 1974, provides, to wit:

Sec. 8. Penal provisions. Any person convicted of cattle rustling as herein defined shall, irrespective of the value of the large cattle involved, be punished by prision mayor in its maximum period to reclusion temporal in its medium period of the offense is committed without violence against or intimidation of persons or force upon things. If the offense is committed with violence against or intimidation of person or force upon things, the penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed. If a person is seriously injured or killed as a result or on the occasion of the commission of cattle rustling, the penalty of reclusion perpetua to death shall be imposed. . . . (pp. 12-13, decision)

The circumstances of "committed with violence against or intimidation of persons or force upon things and a person was seriously injured or killed as a result or on the occasion of the commission of cattling rustling" are no doubt qualifying aggravating circumstances as they "not only give the clime committed its proper and exclusive name but also place the author thereof in such a situation as to deserve no other penalty than that especially prescribed for said crime. (People v. Bayot, 64 Phil. 269,273 [1973]) (p. 13, decision) Thus, the trial court could no longer convict separately accused Martinada and Mesias of the crime of Frustrated Murder, otherwise there would be double jeopardy.

This Court finds merit in the submission of the Solicitor General that graduation of penalties as determined by the presence of aggravating and mitigating circumstances still applies. The Solicitor General thus justifies his contention:

P.D. No 533, in the context of Article 10 of the Revised Penal Code, which reads, to wit:

Art. 10. Offenses not subject to the provisions of this Code. Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary.

which provision is the basis of the principle relied upon by the appellants, as enunciated in the cited case of People v. Respecio, 107 Phil. 995, 996, [1960], is not a special law.

As will be noted, P.D. No. 553 merely modified the penalties provided for qualified theft of large cattle under Article 310 of the Revised Penal Code, imposing stiffer penalties thereon under special circumstances. In other words, P.D. No. 553, served only the purpose of amending Articles 309 and 310 of the Revised Penal Code. This is explicit under Section 10 of the said Decree, to wit:

Sec. 10. Repealing clause. The provisions of Article 309 and 310 of Act No. 3815, otherwise known as the Revised Penal Code, as amended, . . . which are inconsistent with this Decree are thereby repealed or modified accordingly. (p. 121, Rollo)

WHEREFORE, for the offense of simple cattle rustling with the aggravating circumstance of recividism, and applying the Indeterminate Sentence Law the appellants are hereby sentenced to 4 years, 2 months and 1 day of Prision Correccional as minimum to 14 years, 8 months and 1 day of Reclusion Temporal as maximum and for the crime of illegal possession of firearms, they are hereby sentenced to Five (5) Years of Prision Correccional as minimum to Ten (10) years of Prision Mayor as maximum.

SO ORDERED.

Melencio-Herrera, Padilla, Sarmiento and Regalado, JJ., concur.

PRESIDENTIAL DECREE NO. 1612 March 2, 1979
ANTI-FENCING LAW OF 1979

I. FULL TEXT OF PD 1612

WHEREAS, reports from law enforcement agencies reveal that there is rampant robbery and thievery of government and private properties;

WHEREAS, such robbery and thievery have become profitable on the part of the lawless elements because of the existence of ready buyers, commonly known as fence, of stolen properties;

WHEREAS, under existing law, a fence can be prosecuted only as an accessory after the fact and punished lightly;

WHEREAS, is imperative to impose heavy penalties on persons who profit by the effects of the crimes of robbery and theft.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines by virtue of the powers vested in me by the Constitution, do hereby order and decree as part of the law of the land the following:

Sec. 1. Title. This decree shall be known as the Anti-Fencing Law.

Sec. 2. Definition of Terms. The following terms shall mean as follows:

a. "Fencing" is the act of any person who, with intent to gain for himself or for another, shall buy, receive, possess, keep, acquire, conceal, sell or dispose of, or shall buy and sell, or in any other manner deal in any article, item, object or anything of value which he knows, or should be known to him, to have been derived from the proceeds of the crime of robbery or theft.

b. "Fence" includes any person, firm, association corporation or partnership or other organization who/which commits the act of fencing.

Sec. 3. Penalties. Any person guilty of fencing shall be punished as hereunder indicated:

a) The penalty of prision mayor, if the value of the property involved is more than 12,000 pesos but not exceeding 22,000 pesos; if the value of such property exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, the penalty shall be termed reclusion temporal and the accessory penalty pertaining thereto provided in the Revised Penal Code shall also be imposed.

b) The penalty of prision correccional in its medium and maximum periods, if the value of the property robbed or stolen is more than 6,000 pesos but not exceeding 12,000 pesos.

c) The penalty of prision correccional in its minimum and medium periods, if the value of the property involved is more than 200 pesos but not exceeding 6,000 pesos.

d) The penalty of arresto mayor in its medium period to prision correccional in its minimum period, if the value of the property involved is over 50 pesos but not exceeding 200 pesos.

e) The penalty of arresto mayor in its medium period if such value is over five (5) pesos but not exceeding 50 pesos.

f) The penalty of arresto mayor in its minimum period if such value does not exceed 5 pesos.

Sec. 4. Liability of Officials of Juridical Persons. If the fence is a partnership, firm, corporation or association, the president or the manager or any officer thereof who knows or should have known the commission of the offense shall be liable.

Sec. 5. Presumption of Fencing. Mere possession of any good, article, item, object, or anything of value which has been the subject of robbery or thievery shall be prima facie evidence of fencing.

Sec. 6. Clearance/Permit to Sell/Used Second Hand Articles. For purposes of this Act, all stores, establishments or entities dealing in the buy and sell of any good, article item, object of anything of value obtained from an unlicensed dealer or supplier thereof, shall before offering the same for sale to the public, secure the necessary clearance or permit from the station commander of the Integrated National Police in the town or city where such store, establishment or entity is located. The Chief of Constabulary/Director General, Integrated National Police shall promulgate such rules and regulations to carry out the provisions of this section. Any person who fails to secure the clearance or permit required by this section or who violates any of the provisions of the rules and

regulations promulgated thereunder shall upon conviction be punished as a fence.

Sec. 7. Repealing Clause. All laws or parts thereof, which are inconsistent with the provisions of this Decree are hereby repealed or modified accordingly.
Sec. 8. Effectivity. This Decree shall take effect upon approval.
Done in the City of Manila, this 2nd day of March, in the year of Our Lord, nineteen hundred and seventy-nine.

RULES AND REGULATIONS TO CARRY OUT THE PROVISIONS OF SECTION 6 OF PRESIDENTIAL DECREE NO. 1612, KNOWN AS THE ANTI-FENCING LAW.

Pursuant to Section 6 of Presidential Decree No. 1612, known as the Anti-Fencing Law, the following rules and regulations are hereby promulgated to govern the issuance of clearances/permits to sell used secondhand articles obtained from an unlicensed dealer or supplier thereof:

I. Definition of Terms
1. "Used secondhand article" shall refer to any goods, article, item, object or anything of value obtained from an unlicensed dealer or supplier, regardless of whether the same has actually or in fact been used.
2. "Unlicensed dealer/supplier" shall refer to any persons, partnership, firm, corporation, association or any other entity or establishment not licensed by the government to engage in the business of dealing in or of supplying the articles defined in the preceding paragraph.

3. "Store", "establishment" or "entity" shall be construed to include any individual dealing in the buying and selling used secondhand articles, as defined in paragraph hereof.
4. "Buy and Sell" refer to the transaction whereby one purchases used secondhand articles for the purpose of resale to third persons.
5. "Station Commander" shall refer to the Station Commander of the Integrated National Police within the territorial limits of the town or city district where the store, establishment or entity dealing in the buying and selling of used secondhand articles is located.

II. Duty to Procure Clearance or Permit
1. No person shall sell or offer to sell to the public any used secondhand article as defined herein without first securing a clearance or permit for the purpose from the proper Station Commander of the Integrated National Police.
2. If the person seeking the clearance or permit is a partnership, firm, corporation, or association or group of individuals, the clearance or permit shall be obtained by or in the name of the president, manager or other responsible officer-in-charge thereof.

3. If a store, firm, corporation, partnership, association or other establishment or entity has a branch or subsidiary and the used secondhand article is acquired by such branch or subsidiary for sale to the public, the said branch or subsidiary shall secure the required clearance or permit.

4. Any goods, article, item, or object or anything of value acquired from any source for which no receipt or equivalent document evidencing the legality of its acquisition could be presented by the present possessor or holder thereof, or the covering receipt, or equivalent document, of which is fake, falsified or irregularly obtained, shall be presumed as having been acquired from an unlicensed dealer or supplier and the possessor or holder thereof must secure the required clearance or permit before the same can be sold or offered for sale to the public.

III. Procedure for Procurement of Clearances or Permits

1. The Station Commanders concerned shall require the owner of a store or the president, manager or responsible officer-in-charge of a firm, establishment or other entity located within their respective jurisdictions and in possession of or having in stock used secondhand articles as defined herein, to submit an initial affidavit within thirty (30) days from receipt of notice for the purpose thereof and subsequent affidavits once every fifteen (15) days within five (5) days after the period covered, which shall contain:

a. A complete inventory of such articles acquired daily from whatever source and the names and addresses of the persons from whom such articles were acquired.
b. A full list of articles to be sold or offered for sale as well as the place where the date when the sale or offer for sale shall commence.
c. The place where the articles are presently deposited or kept in stock.

The Station Commander may, at his discretion when the circumstances of each case warrant, require that the affidavit submitted be accompanied by other documents showing proof of legitimacy of the acquisition of the articles.

2. A party required to secure a clearance or permit under these rules and regulations shall file an application therefor with the Station Commander concerned. The application shall state:
a. The name, address and other pertinent circumstances of the persons, in case of an individual or, in the case of a firm, corporation, association, partnership or other entity, the name, address and other pertinent circumstances of the president, manager or officer-in-charge.
b. The article to be sold or offered for sale to the public and the name and address of the unlicensed dealer or supplier from whom such article was acquired.

In support of the application, there shall be attached to it the corresponding receipt or other equivalent document to show proof of the legitimacy of acquisition of the article.

3. The Station Commander shall examine the documents attached to the application and may require the presentation of other additional documents, if necessary, to show satisfactory proof of the legitimacy of acquisition of the article, subject to the following conditions:
a. If the legitimacy of acquisition of any article from an unlicensed source cannot be satisfactorily established by the documents presented, the Station Commander shall, upon approval of the INP Superintendent in the district and at the expense of the party seeking the clearance/permit,

cause the publication of a notice in a newspaper of general circulation for two (2) successive days enumerating therein the articles acquired from an unlicensed dealer or supplier, the names and addresses of the persons from whom they were acquired and shall state that such articles are to be sold or offered for sale to the public at the address of the store, establishment or other entity seeking the clearance/permit. In places where no newspapers are in general circulation, the party seeking the clearance or permit shall, instead, post a notice daily for one week on the bulletin board of the municipal building of the town where the store, firm, establishment or entity concerned is located or, in the case of an individual, where the articles in his possession are to be sold or offered for sale.

b. If after 15 days, upon expiration of the period of publication or of the notice referred to in the preceding paragraph, no claim is made with respect to any of the articles enumerated in the notice, the Station Commander shall issue the clearance or permit sought.

c. If, before expiration of the same period for publication of the notice or its posting, it shall appear that any of the articles in question is stolen property, the Station Commander shall hold the article in restraint as evidence in any appropriate case to be filed. Articles held in restraint shall be kept and disposed of as the circumstances of each case permit, taking into account all considerations of right and justice in the case. In any case where any article is held in restraint, it shall be the duty of the Station Commander concerned to advise/notify the Commission on Audit of the case and comply with such procedure as may be proper under applicable existing laws, rules and regulations.

4. The Station Commander concerned shall, within seventy-two (72) hours from receipt of the application, act thereon by either issuing the clearance/permit requested or denying the same. Denial of an application shall be in writing and shall state in brief the reason/s therefor.

5. The application, clearance/permit or the denial thereof, including such other documents as may be pertinent in the implementation of Section 6 of P.D. No. 1612 shall be in the forms prescribed in Annexes "A", "B", "C", "D", and "E" hereof, which are made integral parts of these rules and regulations.

6. For the issuance of clearances/permit required under Section 6 of P.D. No. 1612, no fee shall be charged.

IV. Appeals

Any party aggrieved by the action taken by the Station Commander may elevate the decision taken in the case to the proper INP District Superintendent and, if he is still dissatisfied therewith may take the same on appeal to the INP Director. The decision of the INP Director may also be appealed to the INP Director-General whose decision may likewise be appealed to the Minister of National Defense. The decision of the Minister of National Defense on the case shall be final. The appeal against the decision taken by a Commander lower than the INP Director-General should be filed to the next higher Commander within ten (10) days from receipt of notice of the decision. The decision of the INP Director-General should be appealed within fifteen (15) days from receipt of notice of the decision.

V. Penalties

1. Any person who fails to secure the clearance or permit required by Section 6 of P.D. 1612 or who violates any of the provisions of these rules and regulations shall upon conviction be punished as a fence.

2. The INP Director-General shall recommend to the proper authority the cancellation of the business license of the erring individual, store, establishment or the entity concerned.

3. Articles obtained from unlicensed sources for sale or offered for sale without prior compliance with the provisions of Section 6 of P.D. No. 1612 and with these rules and regulations shall be held in restraint until satisfactory evidence or legitimacy of acquisition has been established.

4. Articles for which no satisfactory evidence of legitimacy of acquisition is established and which are found to be stolen property shall likewise be held under restraint and shall, furthermore, be subject to confiscation as evidence in the appropriate case to be filed. If, upon termination of the case, the same is not claimed by their legitimate owners, the article/s shall be forfeited in favor of the government and made subject to disposition as the circumstances warrant in accordance with applicable existing laws, rules and regulations. The Commission on Audit shall, in all cases, be notified.

5. Any personnel of the Integrated National Police found violating the provisions of Section 6 of P.D. No. 1612 or any of its implementing rules and regulations or who, in any manner whatsoever, connives with or through his negligence or inaction makes possible the commission of such violations by any party required to comply with the law and its implementing rules and regulations, shall be prosecuted criminally without prejudice to the imposition of administrative penalties.

VI. Visitorial Power

It shall be the duty of the owner of the store or of the president, manager or responsible officer-in-charge of any firm, establishment or other entity or of an individual having in his premises articles to be sold or offered for sale to the public to allow the Station Commander or his authorized representative to exercise visitorial powers. For this purpose, however, the power to conduct visitations shall be exercise only during office or business hours and upon authority in writing from and by the INP Superintendent in the district and for the sole purpose of determining whether articles are kept in possession or stock contrary to the intents of Section 6 of P.D. No. 1612 and of these rules and regulations.

VII. Other Duties Imposed Upon Station Commanders and INP District Superintendent and Directors Following Action on Applications for Clearances or Permits

1. At the end of each month, it shall be the duty of the Station Commander concerned to:

a. Make and maintain a file in his office of all clearances/permit issued by him.

b. Submit a full report to the INP District Superintendent on the number of applications for clearances or permits processed by his office, indicating therein the number of clearances/permits issued and the

number of applications denied. The report shall state the reasons for denial of an application and the corresponding follow-up actions taken and shall be accompanied by an inventory of the articles to be sold or offered for sale in his jurisdiction.

2. The INP District Superintendent shall, on the basis of the reports submitted by the Station Commander, in turn submit quarterly reports to the appropriate INP Director containing a consolidation of the information stated in the reports of Station Commanders in his jurisdiction.

3. Reports from INP District Superintendent shall serve as basis for a consolidated report to be submitted semi-annually by INP Directors to the Director-General, Integrated National Police.

4. In all cases, reports emanating from the different levels of the Integrated National Police shall be accompanied with full and accurate inventories of the articles acquired from unlicensed dealers or suppliers and proposed to be sold or offered for sale in the jurisdictions covered by the report.

These implementing rules and regulations, having been published in a newspaper of national circulation, shall take effect on June 15, 1979.

FOR THE CHIEF OF CONSTABULARY DIRECTOR-GENERAL, INP:

II. EXPLANATIONS

Q. What is fencing?

A. "Fencing" is the act of any person who, with intent to gain for himself or for another, shall buy, receive, possess, keep, acquire, conceal, sell or dispose of, or shall buy and sell, or in any other manner deal in any article, item, object or anything of value which he knows, or should be known to him, to have been derived from the proceeds of the crime of robbery or theft. Sec. 2

Q. Who may be liable for the anti-fencing law?

A. "Fence" includes any person, firm, association, corporation or partnership or other organization who/which commits the act of fencing. Sec. 2 b.

Q. Who are liable if the subject is a juridical person (e.g. Company, partnership and association) under the anti- fencing law?

A. The president or the manager or any officer thereof who knows or should have known the commission of the offense shall be liable.

Q. What constitutes a prima facie case for the crime of fencing?

A. Mere possession of any good, article, item, object, or anything of value which has been the subject of robbery or thievery shall be prima facie evidence of fencing. Sec. 5.

Q. Who are obliged to secure a prior clearance/permit to sell second hand articles?

A. All stores, establishments or entities dealing in the buy and sell of any good, article item, object of anything of value obtained from an unlicensed dealer or supplier thereof, shall before offering the same for sale to the public, secure the necessary clearance or permit from the station commander of the Integrated National Police in the town or city where such store, establishment or entity is located.

Q. Who bears the responsibility of issuing permit or clearance to sell second hand items?

A. The station commander of the Integrated National Police in the town or city where such store, establishment or entity is located.

Q. What are considered as “used secondhand article”?

A. shall refer to any goods, article, item, object or anything of value obtained from an unlicensed dealer or supplier, regardless of whether the same has actually or in fact been used. Rules and Regulation of P.D. 1612

Q. DEFINE "UNLICENSED DEALER/SUPPLIER"?

A. Shall refer to any persons, partnership, firm, corporation, association or any other entity or establishment not licensed by the government to engage in the business of dealing in or of supplying the articles defined in the preceding paragraph.

Q. May an individual engaged in buying and selling of second hand items be considered as "store" under pd. 1612?

A. Yes. **"**Store", "establishment" or "entity" shall be construed to include any individual dealing in the buying and selling used secondhand articles, as defined in paragraph hereof.

Q. Define "buy and sell"?

A. Shall refer to the transaction whereby one purchases used secondhand articles for the purpose of resale to third persons.

Q. Define "station commander" under PD 1612?

A. "Station Commander" shall refer to the Station Commander of the Integrated National Police within the territorial limits of the town or city district where the store, establishment or entity dealing in the buying and selling of used secondhand articles is located.

Q. If the applicant for clearance or permit is a corporation, association or firm, under whose name shall it be issued?

A. If the person seeking the clearance or permit is a partnership, firm, corporation, or association or group of individuals, the clearance or permit shall be obtained by or in the name of the president, manager or other responsible officer-in-charge thereof.

Q. If a store, firm, corporation, partnership, association or other establishment or entity has a branch or subsidiary and the used secondhand article is acquired by such branch or subsidiary for sale to the public, is there a need to secure another permit or clearance for its branch?

A. Yes. Said branch or subsidiary shall secure the required clearance or permit. II par. 3

Q. What are the procedures for the procurement of clearances or permits?

A. STEP 1 .The **Station Commanders** concerned shall require the owner of a store or the president, manager or responsible officer-in-charge of a firm, establishment or other entity located within their respective jurisdictions and in possession of or having in stock used secondhand articles as defined herein to submit:

a. an initial affidavit **within thirty (30) days** from **receipt of notice** for the purpose thereof and

b. subsequent affidavits **once every fifteen (15) days** within five (5) days after the period covered, which shall contain:

c. A **complete inventory of such articles** acquired daily from whatever **source** and the **names and addresses** of the persons from whom such articles were acquired.

d. A full **list of articles** to be sold or offered for sale as well as **the place** where **the date** when the sale or offer for sale shall commence.

e. The **place** where the articles are **presently deposited** or kept in stock.

STEP 2 - A party required to **secure a clearance or permit** under these rules and regulations shall file an **application** therefor with the Station Commander concerned. The application shall state:

a. The name, address and other pertinent circumstances of the persons, in case of an individual or, in the case of a firm, corporation, association, partnership or other entity, the name, address and other pertinent circumstances of the president, manager or officer-in-charge.

b. The article to be sold or offered for sale to the public and the name and address of the unlicensed dealer or supplier from whom such article was acquired.

c. In support of the application, there shall be attached to it the corresponding receipt or other equivalent document to show proof of the legitimacy of acquisition of the article.

STEP 3- The Station Commander shall examine the documents attached to the application and may require the presentation of other additional documents, if necessary, to show satisfactory proof of the legitimacy of acquisition of the article, subject to the following conditions:

a. If the legitimacy of acquisition of any article from an unlicensed source cannot be satisfactorily established by the documents presented, the Station Commander shall, upon approval of the INP Superintendent in the district and at the expense of the party seeking the clearance/permit, cause the publication of a notice in a newspaper of general circulation for two (2) successive days enumerating therein the articles acquired from an unlicensed dealer or supplier, the names and addresses of the persons from whom they were acquired and shall state that such articles are to be sold or offered for sale to the public at the address of the store, establishment or other entity seeking the clearance/permit. In places where no newspapers are in general circulation, the party seeking the clearance or permit shall, instead, post a notice daily for one week on the bulletin board of the municipal building of the town where the store, firm, establishment or entity concerned is located or, in the case of an individual, where the articles in his possession are to be sold or offered for sale.

b. If after 15 days, upon expiration of the period of publication or of the notice referred to in the preceding paragraph, no claim is made with respect to any of the articles enumerated in the notice, the Station Commander shall issue the clearance or permit sought.

c. If, before expiration of the same period for publication of the notice or its posting, it shall appear that any of the articles in question is stolen property, the Station Commander **shall hold the article in restraint as evidence in any appropriate case to be filed**. Articles held in restraint shall be kept and disposed of as the circumstances of each case permit, taking into account all considerations of right and justice in the case. In any case where any article is held in restraint, it shall be the duty of the Station Commander concerned to advise/notify the Commission on Audit of the case and comply with such procedure as may be proper under applicable existing laws, rules and regulations.

STEP 4- The Station Commander concerned shall, within seventy-two (72) hours from receipt of the application**, act thereon by either issuing the clearance/permit requested or denying the same.** Denial of an application shall be in writing and shall state in brief the reason/s therefor.

Q. In cases wherein the permit or clearance is denied by the station commander what is the remedy available to the applicant?

A. Any party aggrieved by the action taken by the Station Commander may elevate the decision taken in the case to the proper **INP District Superintendent (now to the PD's or DD's)** and, if he is still dissatisfied therewith may take the same on appeal to the **INP Director (now RD's)** . The decision of the INP Director may also be appealed to the INP Director-General (**now Chief,PNP**) whose decision may likewise be appealed to the Minister of National Defense (**now DILG Secretary**). The decision of the Minister of National Defense (**DILG Secretary**) on the case shall be final. The appeal against the decision taken by a Commander lower than the INP Director-General should be filed to the next higher Commander within ten (10) days from receipt of notice of the decision. The decision of the INP Director-General **should be appealed within fifteen (15) days from receipt of notice of the decision**

Q. What is the extent of the visitorial power of the station commander?

A. It shall be the duty of the owner of the store or of the president, manager or responsible officer-in-charge of any firm, establishment or other entity or of an individual having in his premises articles to be sold or offered for sale to the public **to allow the Station Commander or his authorized representative to exercise visitorial powers**. For this purpose, however, the power to conduct visitations shall **be exercise only during office or business hours and upon authority in writing from and by the INP Superintendent in the district a**nd for the sole purpose of determining whether articles are kept in possession or stock contrary to the intents of Section 6 of P.D. No. 1612 and of these rules and regulations.

Q. What are other duties imposed upon the station commanders and district directors following action on applications for clearances?

A. 1. At the end of each month, it shall be the duty of the Station Commander concerned to:

a. Make and maintain a **file** in his office of all clearances/permit issued by him.

b. Submit a full **report** to the INP District Superintendent on the number of applications for clearances or permits processed by his office, indicating therein the number of clearances/permits issued and the number of applications denied. The report shall state the reasons for denial of an application and the corresponding follow-up actions taken and shall be accompanied by an inventory of the articles to be sold or offered for sale in his jurisdiction.

2. The INP District Superintendent shall, on the basis of the reports submitted by the Station Commander, in turn submit quarterly reports to the appropriate INP Director containing a consolidation of the information stated in the reports of Station Commanders in his jurisdiction.

3. Reports from INP District Superintendent shall serve as basis for a consolidated report to be submitted semi-annually by INP Directors to the Director-General, Integrated National Police.

4. In all cases, reports emanating from the different levels of the Integrated National Police shall be accompanied with full and accurate inventories of the articles acquired from unlicensed dealers or suppliers and proposed to be sold or offered for sale in the jurisdictions covered by the report.

Q. What are the penalties to be imposed under p.d. 1612?

A. Penalties 1. Any person who fails to secure the clearance or permit required by Section 6 of P.D. 1612 or who violates any of the provisions of these rules and regulations shall upon conviction be punished as a fence.

2. The INP Director-General shall recommend to the proper authority the cancellation of the business license of the erring individual, store, establishment or the entity concerned.

3. Articles obtained from unlicensed sources for sale or offered for sale without prior compliance with the provisions of Section 6 of P.D. No. 1612 and with these rules and regulations shall be held in restraint until satisfactory evidence or legitimacy of acquisition has been established.

4. Articles for which no satisfactory evidence of legitimacy of acquisition is established and which are found to be stolen property shall likewise be held under restraint and shall, furthermore, be subject to confiscation as evidence in the appropriate case to be filed. If, upon termination of the case, the same is not claimed by their legitimate owners, the article/s shall be forfeited in favor of the government and made subject to disposition as the circumstances warrant in accordance with applicable existing laws, rules and regulations. The Commission on Audit shall, in all cases, be notified.

5. Any personnel of the Integrated National Police found violating the provisions of Section 6 of P.D. No. 1612 or any of its implementing rules and regulations or who, in any manner whatsoever, connives with or through his negligence or inaction makes possible the commission of such violations by any party required to comply with the law and its implementing rules and regulations, shall be prosecuted criminally without prejudice to the imposition of administrative penalties.

III. SAMPLE AFFIDAVIT/FORMS:

INITIAL AFFIDAVIT REQUIRED BY P.D. 1612

REPUBLIC OF THE PHILIPPINES)
MUNICIPALITY OF SAN JUAN M.M.)

AFFIDAVIT

I, James Dean of legal age, Chinese Citizen, married, with business address at 490 Connecticut St., Greenhills, San Juan, Metro Manila, after having been sworn in oath depose and say:

1. That I am the registered owner of the SAVE ON SURPLUS SHOP S.O.S. situated in the abovementioned address;

2. That I am engage in the buying and selling second hand goods with the following inventory and description:

TYPE	QUANTITY

Monitor,	200 pcs.
CPU	50
AVR	100
Printer	30
Computer Table	5

3. That I have acquired said goods from _____ with address at_____;

4. That I am intending to sell said goods on _____ at_____;

5. That said goods are now in place at _____ and readily available for inspection by the Station Commander pursuant to P.D. 1612;

6. That I am executing this affidavit to attest to the truthfulness of the foregoing facts and for the purpose of obtaining the necessary clearance pursuant to P.D. 1612.

FURTHER AFFIANT SAYETH NAUGHT.

JAMES DEAN
AFFIANT

SUBSCRIBED AND SWORN TO before me this ___day of July at _____ .

NOTARY PUBLIC

APPLICATION FORM UNDER P.D. 1612

NAME OF APPLICANT :_____
(*For Individual*)

FOR CORPORATIONS: _____
(Name of *President or Manager or Officer in Charge*)
ADDRESS:_____
_____

List of Articles to be sold:

Quantity	Description	Source/s Dealers' Name Address

Mark One / Attached proof of legitimacy of acquisition:

Official Reciept _____ Deed of Donation:_____
Sales Invoice _____ Others/ Specify _____
Deed of Sale _____ _____

CERTIFIED CORRECT BY: _____DATE:_____

Republic of the Philippines
NATIONAL POLICE COMMISSION
PHILIPPINE NATIONAL POLICE
POLICE REGIONAL OFFICE _____
_____PROVINCIAL POLICE OFFICE

DATE:_____

DENIAL OF APPLICATION FOR CLEARANCE UNDER PD 1612

The Application for Clearance under PD 1612, filed before this office by _____ on _____day of _____ 2003, is hereby DENIED due to the following reasons to wit:

_____Failure to present a complete inventory of second hand goods and source of goods.
_____ Failure to attach the required proof of legitimacy of acquisition.
_____ Failure to cause the publication of a notice in a newspaper of general circulation for two (2) successive days enumerating therein the articles acquired from an unlicensed dealer or supplier, the names and addresses of the persons from whom they were acquired and shall state that such articles are to be sold or offered for sale to the public at the address of the store, establishment or other entity seeking the clearance/permit .
_____The Goods or articles are included in the list of reported stolen goods.

Other Reasons for DENIAL:_____
_____

ROY G MONEDA
Police Senior Inspector

SAMPLE OF APPEAL FORM

Republic of the Philippines
NATIONAL POLICE COMMISSION
PHILIPPINE NATIONAL POLICE
POLICE REGIONAL OFFICE_____
_____ PROVINCIAL POLICE OFFICE

RE: **APPEAL ON THE DECISION OF DENIAL OF CLEARANCE UNDER PD 1612.**

Comes now, the undersigned appellant unto this Office, respectfully moves and pray that the subject Decision of DENIAL by the _____ Police Office, be REVERSED AND SET ASIDE to the following reasons to wit:

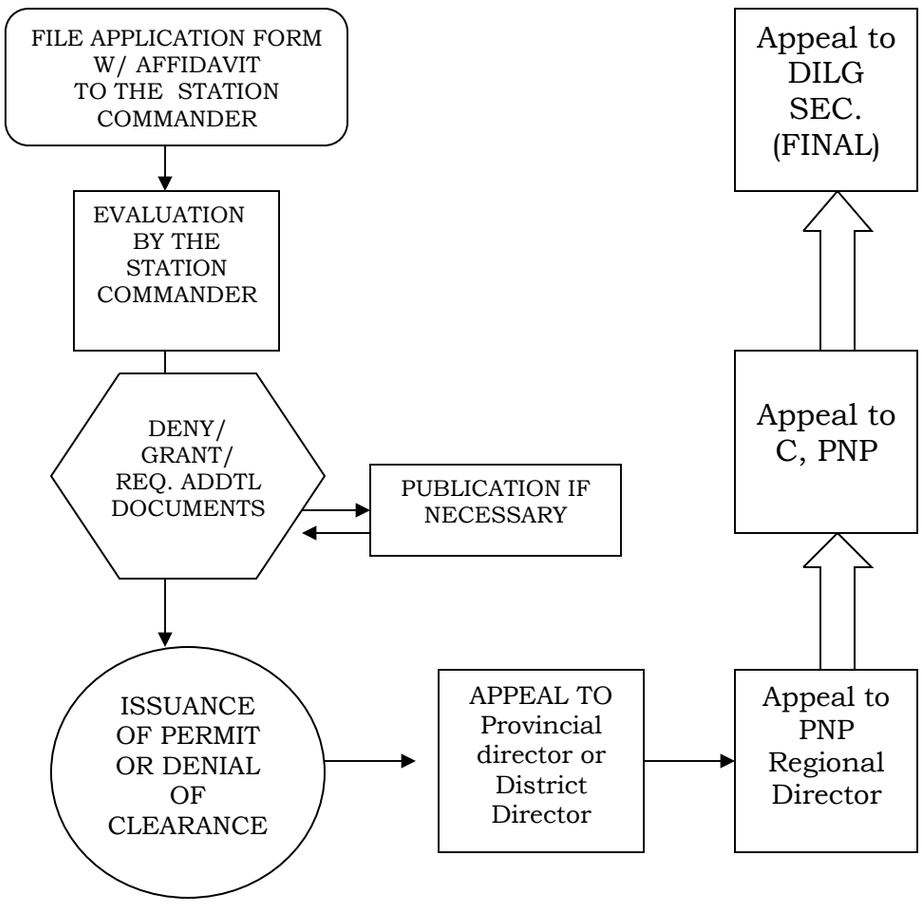
1. That all the requirements for under PD 1612 has been fully complied;
2. That the reason for the DENIAL has become moot and academic when the Proof of Legitimacy was later on presented. Attached herewith is a copy of Deed of Absolute sale as Annex "A"
3. That the Station Commander Failed to appreciate all the documents which the undersigned has submitted;
4. That the required publication was already been satisfied. Attached herewith is the affidavit of Publication as Annex "B"

Wherefore, premises considered, it is respectfully prayed that the DENIAL OF CLEARANCE be set aside and a new clearance be issued in favor of the Undersigned.

Manila, March 4, 1999.

ALEX T. SANTOS
Appellant

IV. FLOW CHART IN THE ISSUANCE OF CLEARANCE UNDER PD 1612



V. JURISPRUDENCE ON ANTI-FENCING LAW

CASE # 1

G.R. No. 77368 October 5, 1993

THE PEOPLE OF THE PHILIPPINES, petitioner,

vs.

HON. JOSE C. DE GUZMAN, PRESIDING JUDGE OF REGIONAL TRIAL COURT OF QUEZON CITY, BRANCH 93, AND SPOUSES DANILO A. ALCANTARA AND ISABELITA ESGUERRA-ALCANTARA, respondents.

The Solicitor General for petitioner.

VITUG, J.:p

Is the crime of "fencing" a continuing offense that could allow the filing of an information therefor in the place where the robbery or theft is committed and not necessarily where the property, unlawfully taken is found to have later been acquired?

The above query is the sole issue in this Petition for certiorari and mandamus filed by the People of the Philippines, praying for the reversal, annulment and setting aside of the Order of 28 February 1986 1 of the respondent Judge, who has ruled in the negative, as well as his Order, dated 21 March 1986, 2 denying the motion for reconsideration. The petitioner prays that the respondent Judge be directed to assume jurisdiction over, and to proceed with the trial of, the criminal case.

On 09 September 1985, robbery was committed in Quezon City in the house of Jose L. Obillos, Sr., where various pieces of precious jewelry alleged to be worth millions of pesos were taken. An information, dated 30 September 1985, was instituted against the perpetrators in the Regional Trial Court of Quezon City, Branch 101, docketed thereat asCriminal Case No. G.R. No. 42078. 3

Subsequently, an information, dated 22 October 1985, for violation of Presidential Decree No. 1612, otherwise known as the "Anti-Fencing Law," was also filed with the Regional Trial Court of Quezon City, Branch 93, docketed as Criminal Case No. 42433, against herein respondent spouses Danilo A. Alcantara and Isabelita Esguerra-Alcantara, from whose possession the jewelries stolen were recovered in Antipolo, Rizal. 4

The trial court, acting on the motion to quash filed by the accused [now private respondents], issued the now questioned order of 28 February 1986, viz:

Before the Court is a Motion to Quash, filed by the accused thru counsel, praying that the information filed against both accused be quashed, on the ground that the Court has no jurisdiction to try the offense charged. Among others, the motion alleges, that as per police investigation, the crime took place in Antipolo, Rizal. For this reason, Violation of Presidential Decree No. 1612 is an independent crime, separate and distinct from that of Robbery. The accused claims, likewise, that jurisdiction to try the same is with the Court within which territorial jurisdiction, the alleged fencing took place.

The Prosecution filed an opposition thereto, alleging among others, that there is nothing in the law which prohibits the filing of a case of fencing in the court under whose jurisdiction the principal offense of robbery was committed. The prosecution claims further, that the consideration in the enactment of PD 1612 was to impose a heavier penalty on persons who profit by the effects of the crimes robbery or theft.

On this point, we should not lose sight of the fact that in all criminal prosecutions, the action shall be instituted and tried in the court of the Municipality or Province

wherein the offense was committed, or anyone of the essential ingredients thereof took place. 5

Since the alleged act of fencing took place in Antipolo, Rizal, outside the territorial jurisdiction of this Court, and considering that all criminal prosecutions must be instituted and tried in the Municipality or Province where the offense took place, this Court, necessarily, does not have jurisdiction over the instant case.
Wherefore, the above-entitled case is hereby QUASHED, without prejudice to the filing of the corresponding action against the accused in the Court having proper jurisdiction.

The private prosecutor's motion for reconsideration was denied in the court's order of 21 March 1986.

Hence, the instant petition.
The Solicitor General argues that since an essential element of the crime of fencing is the commission of robbery, in this case committed in Quezon City, the information therefor filed in said City accords with the provisions of Rule 110 of the 1985 Rules on Criminal Procedure, and the refusal of the Court a quo to assume and exercise jurisdiction thereover constitutes a serious error of law and a grave abuse of discretion. He theorizes that fencing is a "continuing offense." He explains that the Anti-Fencing Law has been enacted for the purpose of imposing a heavier penalty on persons who profit from the effects of the crime of robbery or theft, no longer merely as accessories under Article 19, paragraph 1, of the Revised Penal Code, but as equally guilty with the perpetrators of the robbery or theft itself.

In People vs. Ledesma, 6 we said:

. . . A "continuous crime" is a single crime consisting of a series ofacts arising from a single criminal resolution or intent not susceptible of division. According to Cuello Calon, when the actor, there being unity of purpose and of right violated, commits diverse acts each of which, although of a delictual character merely constitutes a partial execution of a single particular delict, such concurrence of delictual acts is called a "delito continuado." For it to exist there should be plurality of acts performed separately during a period of time; unity of penal provision infringed upon or violated; unity of criminal intent or purpose, which means that two or more violations of the same penal provision are united in one and the same intent leading to the perpetration of the same criminal purpose or aim.

Robbery is the taking of personal property belonging to another, with intent to gain, by means of violence against or intimidation of any person, or using force upon anything. 7 "Fencing", upon the other hand, is the act of any person who, with intent to gain for himself or for another, shall buy, receive, possess, keep, acquire, conceal, sell or dispose of, or shall buy and sell, or in any other manner deal in any article, item, object or anything of value which he knows, or should be known to him, to have been derived from the proceeds of the crime of robbery or theft. 8

The crimes of robbery and fencing are clearly then two distinct offenses. The law on fencing does not require the accused to have participated in the criminal design to commit, or to have been in any wise involved in the commission of, the

crime of robbery or theft. Neither is the crime of robbery or theft made to depend on an act of fencing in order that it can be consummated. True, the object property in fencing must have been previously taken by means of either robbery or theft but the place where the robbery or theft occurs is inconsequential. It may not be suggested, for instance, that, in the crime of bigamy which presupposes a prior subsisting marriage of an accused, the case should thereby be triable likewise at the place where the prior marriage has been contracted. 9

We are not unaware of a number of instances 10 when the Court would allow a change of venue in criminal cases "whenever the interest of justice and truth so demand, and there are serious and weighty reasons to believe that a trial by the court that originally had jurisdiction over the case would not result in a fair and impartial trial and lead to a miscarriage of justice." 11 Here, however, we do not see the attendance of such compelling circumstances, nor are we prepared to state that the lower court gravely abused its discretion in its questioned orders.

WHEREFORE, the instant petition for certiorari and mandamus is DISMISSED, and the orders appealed from are hereby AFFIRMED.
SO ORDERED.

Feliciano, Bidin, Romero and Melo, JJ., concur.

G.R. No. 122195 July 23, 1998

NATIONAL POWER CORPORATION, petitioner,

vs.

COURT OF APPEALS and DENNIS COO, respondents.

MENDOZA, J.:p

Petitioner seeks a review of the decision 1 of the Court of Appeals which affirmed with modification the decision of the Regional Trial Court of Bacolod City, Branch 51, and the subsequent resolution which denied petitioner's motion for reconsideration.

It appears that on July 23, 1984, private respondent Dennis Coo purchased six (6) tons of assorted scrap aluminum wires and allied accessories from the New Alloy Metal Company in Manila. The assorted goods were shipped to Bacolod City and were there received by Coo on July 30, 1984. However, the next day, July 31, 1984, the goods were seized by elements of the 331st PC from Coo's residence and deposited in the PC headquarters. 2

On August 6, 1984, the PC Provincial Commander filed a criminal complaint against Coo for violation of the anti-fencing law. However, the Investigating Fiscal dismissed it for insufficiency of evidence. 3 Upon representation of petitioner NPC, the complaint was re-investigated, 4 resulting in the filing of an Information before the Regional Trial Court of Bacolod City, Branch 48.

On August 23, 1985, the trial court rendered a decision acquitting Coo on the ground that the wares belonged to him. 5 Notwithstanding this decision, petitioner got the property from the PC Headquarters. 6 Private respondent wrote petitioner NPC demanding the return of the wares. Because of petitioner's refusal to return the subject property, private respondent Coo filed a complaint for replevin against NPC and its officers in the Regional Trial Court of BacolodCity. 7

After posting a surety bond for P120,000.00, Coo was able to obtain possession of the seized items on August 5, 1986. 8 After trial, Coo was declared the owner and possessor of the aluminum wires and allied accessories. 9

On appeal the Court of Appeals affirmed the trial court's decision with the modification that Alfredo Arzaga, Jr. and Zosimo Briones, NPC's Branch Manager and NPC's officer-in-charge for Negros Occidental, respectively, were absolved from any liability in their personal capacity and the awards of compensatory and moral damages were deleted. Instead, NPC was ordered to pay nominal damages and attorney's fees. 10

NPC moved for reconsideration but its motion was denied. Hence, this petition for review on certiorari. 11

Petitioner contends that the Court of Appeals erred in relying on the decision in the criminal case acquitting Dennis Coo for its ruling that the aluminum conductor wires in question belonged to him. Petitioner claims that the acquittal was based on reasonable doubt and, therefore, was not conclusive of the ownership of the goods. On the other hand, according to petitioner, the following facts support its claim that the aluminum wires bought by Coo from the New Alloy Metal Company were different from those seized by the PC from Coo and delivered to NPC: 12

1. The sales invoice as well as the way bill submitted by private respondent indicates that the assorted scrap aluminum wires were delivered to private respondent Coo's factory while the property seized by the PC was found in Coo's residence.
2. The sales invoice covers only six (6) tons of scrap aluminum wires while the properly seized by the PC weighs nine (9) tons.
3. The sales invoice only states "aluminum wires," while the property seized from Coo's residence consisted not only of aluminum wires but included transmission hardware as well.

4. The "fact" that in the entire Philippines only petitioner NPC imports and uses aluminum conductor wires rated 795 MCR ACSR and 336 MCR ACSR.

From these premises, NPC concludes that the property seized by the PC and later turned over to it is not the same as that covered by the sales invoice and the way bill which private respondent presented in court. 13 The Court of Appeals thus overlooked or misapprehended the aforesaid material facts. 14

Petitioner also contends that although it may be argued that private respondent uses aluminum wires as raw materials in manufacturing kitchen utensils, the business in which he is engaged, he has not explained why he also purchased transmission line hardware which his business obviously does not need. It maintains that the aluminum conductor wires and handware were pilfered from its transmission towers which had been blown down. 15

Private respondent denies petitioner's allegations and argues that the issues raised by the petitioners are factual and insubstantial.

We find the petition to be without merit.

First. It should be pointed out that the petitioner does not dispute the value of the invoice and way bill either here or in the court below. Neither does it question their genuineness. What it questions is whether the property subject of the case is the same property covered by the said documents.

Petitioner calls attention to the fact that the goods covered by the documents were delivered to private respondent's warehouse, whereas the goods seized by the PC were taken from his residence. 16 This has, however, already been explained by Coo during cross-examination 17 at the trial of the case: The goods were moved to his residence because the warehouse had already become overcrowded. In addition, petitioner points out that the documents only cover six (6) tons of scrap aluminum, while what was seized weighed nine (9) tons. 18

In his Comment, private respondent Coo points out that the receipt issued by the PC raiding team listed the items seized from Coo a five (5) tons of assorted aluminum conductor wires. 19
Indeed, the affidavit 20 of a member of the PC raiding team, which is appended to the private respondent's Rejoinder in this case, states that the property seized weighed "about 5 tons." This has not been denied by petitioner. Moreover, it is important to note that in the stipulation of facts, both the petitioner and private respondent agreed that the very same property subject of the criminal case is the property subject of the present civil case, without reference to its weight. 21 The records do not in fact show that this question was ever raised in the court below. It was only in the petitioner's Appellants-Brief 22 in the Court of Appeals where such a question was raised. Clearly, the records do not support the claim that the property seized from private respondent's residence weight nine (9) tons. 23

Petitioner makes much of the fact that the documents state "scrap aluminum" while the property seized consisted of "aluminum conductor wires and transmission hardware." 24 Thus, the invoice and way bill show that they cover "Scrap asst. alum. wire" /"Assorted Scrap alum. wires." 25 The word "scrap' is define as "manufactured articles or parts rejected for imperfection or discarded because of excessive wear or lack of demand and useful only as raw material for reprocessing." 26 The term is broad enough to cover different types of property as long as they are rejected or discarded and useful only as raw material for reprocessing. Indeed, the petitioner's own witness, Rolando Bulfa, a property custodian of petitioner, described the property turned over by the PC to PNC as "all already broken." 27 Thus, the fact that the documents describe the property a "scrap" is consistent with the description given by petitioner's own witness. It is of no moment that the seized property consisted of aluminum wires and transmission hardware. What is important is the condition of the materials, that is, all broken up and hence useful only as raw material for reprocessing.

It should also be pointed out that it is common practice for scrap material to be sold and bought by lot. They are not normally bought sorted out. Hence, it is quite possible that transmission hardware formed part of the property sold to private respondent Coo. It is not surprising that aluminum conductor wires are attached to such hardware. As for the fact that the documents refer specifically to said wires and not the hardware, it is understandable since the wires were the ones private respondent Coo primarily wanted to buy form the establishment.

Lastly, petitioner points out that if Coo claims the property to be needed as raw material in the manufacture of kitchen utensils, it cannot be argued that transmission hardware would also be needed. 28
This is mere opinion. Moreover, as already pointed out, it is a practice that scrap material is bought by lot. Hence, assuming petitioner is correct that transmission hardware is not needed in private respondent's business, the fact that such type of ware is found with the aluminum scrap wires seized from private respondent's residence is not enough to find that the subject property belonged to it and not to private respondent.

As a general rule, findings of fact of the Court of Appeals are binding and conclusive upon the Supreme Court, and the Court will not normally disturb such factual unless the findings of the court are palpably unsupported by the evidence on record or unless the judgment itself is based on a misapprehension of facts. 29

The present case not falling under the exceptions, the general rule applies. Petitioner claims to be the only entity in the Philippines that imports and uses aluminum conductor wires such as those subject of the presentcontroversy, 30 and that the purchase price for the aluminum wires indicated in the invoice presented by private respondent Coo was only P5.00 per kilo when the going price for aluminum scrap during 1984 was already P19.00 a kilo.
These are mere allegations of witnesses who are not experts. They are not supported by any evidence. The witnesses cannot even state with certainty that the property belongs to NPC. All they can say that the subject property is similar to that used by petitioner NPC in its power transmission lines.

Anent the claim that NPC has exclusive access to the type of aluminum wires subject of the case, the Court of Appeals found that the petitioner conducts public biddings, 31 thus implying that petitioner does not have exclusive access to the material in question.

The trial court correctly found that private respondent Coo had proven by a preponderance of evidence that he and not petitioner NPC is entitled to the possession of the subject property. It pointed out that while private respondent had consistently presented his documentary evidence showing his purchase of the property and its delivery to his residence, petitioner merely relied on mere opinions and assumptions unsupported by any concrete evidence. It correctly observed that while there may be no denying the fact that the petitioner may be using a similar type of hardware as that involved in the present case, no iota of evidence was ever presented to show that the particular items involved in the case belong to it. 32

As against documents presented by the private respondent and the judgment in the criminal case acquitting him, the petitioner presented only its employees whose testimonies consisted merely of assumptions and opinions.

By preponderance of evidence is meant simply evidence which is of greater weight, or more convincing than that which is offered in opposition to it. 33

Clearly, private respondent Coo has provided evidence of greater weight than the petitioner relevant to the determination of who is entitled to the possession of the subject property.

At any rate, in a case for replevin, it is sufficient that the plaintiff prove entitlement to legal possession. It is not necessary to prove ownership.

It is worth stressing at this point, that a suit for replevin is founded solely on the claim that the defendant wrongfully withholds the property sought to be recovered. It lies to recover possession of personal chattels that are unlawfully detained. "To detain" is defined as to mean "to hold or keep in custody," and it has been held that there is tortious taking whenever there is an unlawful meddling with the property, or an exercise or claim of dominion over it, without any pretense of authority or right; this, without manual seizing of the property is sufficient. Under the Rules of Court, it is indispensable in replevin proceeding that the plaintiff must show by his own affidavit that he is entitled to the possession of property, that the property is wrongfully detained by the defendant, alleging the cause of detention, that the same has not been taken for tax assessment, or seized under execution, or attachment, or if so seized, that it is exempt from such seizure, and the actual value of the property. 34

A perusal of the way bill shows that the consignee is private respondent. Hence, it is sufficient to support the claim that private respondent is entitled to a writ of replevin. It is evidence that he is entitled to the possession of the property subject of this case.
Anent the requirement that the personal property be unlawfully detained by another not entitled to its possession, it is to be remembered that petitioner NPC was the complainant in the criminal case against private respondent and, as such, knew of the decision in the case. As a consequence of the said decision, private respondent Coo should have been given possession of the subject property. 35 However, petitioner NPC refused to relinquish possession of the same even after the decision in the criminal case declaring Coo to be the owner of the goods. It is thus wrongfully withholding possession of the property, thus entitling private respondent to the writ of replevin.

Second. The petitioner also assigns as error respondent Court of Appeals' order to pay respondent Coo nominal damages and attorney's fees. Petitioner contends that it cannot be held liable for damages because the law requires that one be injure by a wrongful act or omission of another in order to be entitled to compensation. It argues that it was not guilty of any wrongful act but that it was merely exercising its legal right when it recovered possession of the aluminum wires and the hardware. At any rate, it is claimed, petitioner acted in good faith when it refused to release the said property. 36

As already discussed, after private respondent Coo had shown that he was entitled to possession of the property, it became the duty of petitioner to yield possession of the goods. Article 2221 of the Civil Code provides:

Art. 2221. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.

Based on this provision petitioner is liable to private respondent for nominal damages.

Nor did the Court of Appeals err in awarding attorney's fees to private respondent, considering that petitioner's refusal to return the property compelled private respondent to incur expenses to protect his interest. 37 Moreover, petitioner acted in gross and evident bad faith in refusing to satisfy private respondent's plainly valid, just, and demandable claim. 38
In view of the foregoing ruling, the contention that the Court of Appeals erred in not awarding expenses of litigation and attorney's fees in favor of petitioner NPC is clearly without merit. 39

WHEREFORE, the decision dated March 28, 1995 and the resolution dated September 29, 1995 of the Court of Appeals are AFFIRMED.
SO ORDERED.

Regalado, Melo, Puno and Martinez, JJ., concur.

REPUBLIC ACT NO. 8049

AN ACT REGULATING HAZING AND OTHER FORMS OF INITIATION RITES IN FRATERNITIES, SORORITIES, AND OTHER ORGANIZATIONS AND PROVIDING PENALTIES THEREFOR

I. FULL TEXT OF R.A. 8049 June 7, 1995

Sec. 1. Hazing as used in this Act is an initiation rite or practice as a prerequisite for admission into membership in a fraternity, sorority or organization by placing the recruit, neophyte or applicant in some embarrassing or humiliating situations such as forcing him to do menial, silly, foolish and similar tasks or activities or otherwise subjecting him to physical or psychological suffering or injury.

The term organization shall include any club or the Armed Forces of the Philippines, Philippine National Police, Philippine Military Academy, or officer and cadet corp of the Citizen's Military Training, or Citizen's Army Training. The physical, mental and psychological testing and training procedure and practices to determine and enhance the physical, mental and psychological fitness of prospective regular members of the Armed Forces of the Philippines and the Philippine National Police as approved by the Secretary of National Defense and the National Police Commission duly recommended by the Chief of Staff, Armed Forces of the Philippines and the Director General of the Philippine National Police shall not be considered as hazing for the purposes of this Act.

Sec. 2. No hazing or initiation rites in any form or manner by a fraternity, sorority or organization shall be allowed without prior written notice to the school authorities or head of organization seven (7) days before the conduct of such initiation. The written notice shall indicate the period of the initiation activities which shall not exceed three (3) days, shall include the names of those to be subjected to such activities, and shall further contain an undertaking that no physical violence be employed by anybody during such initiation rites.

Sec. 3. The head of the school or organization or their representatives must assign at least two (2) representatives of the school or organization, as the case may be, to be present during the initiation. It is the duty of such representative to see to it that no physical harm of any kind shall be inflicted upon a recruit, neophyte or applicant.

Sec. 4. It the person subjected to hazing or other forms of initiation rites suffers any physical injury or dies as a result thereof, the officers and members of the fraternity, sorority or organization who actually participated in the infliction of physical harm shall be liable as principals. The person or persons who participated in the hazing shall suffer.

(a)The penalty of reclusion perpetua if death, rape, sodomy or mutilation results therefrom.

(b) The penalty of reclusion temporal in its maximum period if in consequence of the hazing the victim shall become insane, imbecile, impotent or blind.

(c)The penalty of reclusion temporal in its medium period if in consequence of the hazing the victim shall have lost the use of speech or the power to hear or to smell, or shall have lost an eye, a hand, a foot, an arm or a leg or shall have lost the use of any such member shall have become incapacitated for the activity or work in which he was habitually engaged.

(d) The penalty of reclusion temporal in its minimum period if in consequence of the hazing the victim shall become deformed or shall have lost any other part of his body, or shall have lost the use thereof, or shall have been ill or incapacitated for the performance of the activity or work in which he has habitually engaged for a period of more than ninety (90) days.

(e)The penalty of prison mayor in its maximum period if in consequence of the hazing the victim shall have been ill or

incapacitated for the performance on the activity or work in which he was habitually engaged for more than thirty (30) days.

(f) The penalty of prison mayor in its medium period if in consequence of the hazing the victim shall have been ill or incapacitated for the performance of the activity or work in which he was habitually engaged for ten (10) days or more, or that the injury sustained shall require medical attendance for the same period.

(g)The penalty of prison mayor in its minimum period if in consequence of the hazing the victim shall have been ill or incapacitated for the performance of the activity or work in which he was habitually engaged from one (1) to nine (9) days, or that the injury sustained shall require medical attendance for the same period.

(h)The penalty of prison correccional in its maximum period if in consequence of the hazing the victim shall sustained physical injuries which do not prevent him from engaging in his habitual activity or work nor require medical attendance.

The responsible officials of the school or of the police, military or citizen's army training organization, may impose the appropriate administrative sanctions on the person or persons charged under this provision even before their conviction.

The maximum penalty herein provided shall be imposed in any of the following instances:

a) when the recruitment is accompanied by force, violence, threat, intimidation or deceit on the person of the recruit who refuses to join.

b) when the recruit, neophyte or applicant initially consent to join but upon learning that hazing will be committed on his person, is prevented from quitting;

c) when the recruit, neophyte or applicant having undergone hazing is prevented from reporting the unlawful act to his parents or guardians, to the proper school authorities, or to the police authorities, through force, violence, threat or intimidation;

d) when the hazing is committed outside of the school or institution; or

e) when the victim is below twelve (12) years of age at the time of the hazing,

The owner of the place where hazing is conducted shall be liable as an accomplice, when he has actual knowledge of the hazing conducted therein but failed to take any action to prevent the same from occurring. It the hazing is held in the home of one of the officers or members of the fraternity, group, or organization, the parents shall be held liable as principals when they have actual knowledge of the hazing conducted therein but failed to take any action to prevent the same from occurring.

The school authorities including faculty members who consent to the hazing or who have actual knowledge thereof, but failed to take any action to prevent the same from occurring shall be punished as accomplices for the acts of hazing committed by the perpetrators.

The officers, former officers, or alumni of the organization, group, fraternity or sorority who actually planned the hazing although not present when the acts constituting the hazing were committed shall be liable as principals. Officers or members of an organization, group, fraternity or sorority who knowingly cooperated in carrying out the hazing by including the victim to be present thereat shall be liable as principals. A fraternity or sorority's adviser which is present when the acts constituting the hazing were committed and failed to take any action to prevent the same from occurring shall be liable as principals.

The presence of any person during the hazing is prima facie evidence of participation therein as a principal unless he prevented the commission of the acts punishable herein.

Any person charged under this provision shall not be entitled to the mitigating circumstance that there was no intention to commit so grave a wrong.

This section shall apply to the president, manager, director or other responsible officer of a corporation engaged in hazing as a requirement for employment in the manner provided herein.

Sec. 5. If any provision or part of this Act is declared invalid or unconstitutional, the other parts or provisions thereof shall remain valid and effective.

Sec. 6. All laws, orders, rules of regulations which are inconsistent with or contrary to the provisions of this Act are hereby amended or repealed accordingly.

Sec. 7. This Act shall take effect fifteen (15) days after its publication in at least two (2) national newspapers of general circulation.

JOSE DE VENECIA, JR. Speaker of the House

EDGARDO J. ANGARA President of the Senate

This Act, which is a consolidation of Senate Bill No. 176 and House Bill No. 12401 was finally passed by the Senate and the House of Representatives on June 2, 1995.

CAMILO L. SABIO General Secretary of the Senate

EDGARDO E. TUMANGAN Secretary House of Representatives

Approved: JUNE 07, 1995

FIDEL V. RAMOS President of the Philippines

II. EXPLANATIONS.

WHAT IS HAZING UNDER R.A. 8049?

Hazing, as used in this Act, is an initiation rite or practice as a prerequisite for admission into membership in a fraternity, sorority or organization by placing the recruit, neophyte or applicant in some embarrassing or humiliating situations such as forcing him to do menial, silly, foolish and other similar tasks or activities or otherwise subjecting him to physical or psychological suffering or injury.

WHAT IS THE SCOPE OF THE TERM ORGANIZATION AS USED UNDER R.A. 8049?

The term "organization" shall include any club or the Armed Forces of the Philippines, Philippine National Police, Philippine Military Academy, or officer and cadet corp of the Citizen's Military Training and Citizen's Army Training. The physical, mental and psychological testing and training procedure and practices to determine and enhance the physical, mental and psychological fitness of prospective regular members of the Armed Forces of the Philippines and the Philippine National Police as approved ny the Secretary of National Defense and the National Police Commission duly recommended by the Chief of Staff, Armed Forces of the Philippines and the Director General of the Philippine National Police shall not be considered as hazing for the purposes of this Act.

WHAT ARE THE REQUISITES PRIOR TO THE CONDUCT OF HAZING AND INITIATION RITES?

No hazing or initiation rites in any form or manner by a fraternity, sorority or organization shall be allowed without prior written

notice to the school authorities or head of organization seven (7) days before the conduct of such initiation. The written notice shall indicate the period of the initiation activities which shall not exceed three (3) days, shall include the names of those to be subjected to such activities, and shall further contain an undertaking that no physical violence be employed by anybody during such initiation rites.

WHAT IS THE ROLE OF THE HEAD OF SCHOOL OR ORGANIZATION IN INITIATION?

The head of the school or organization or their representatives must assign at least two (2) representatives of the school or organization, as the case may be, to be present during the initiation. It is the duty of such representative to see to it that no physical harm of any kind shall be inflicted upon a recruit, neophyte or applicant.

WHAT ARE LIABILITIES OF THE OFFICERS AND MEMBERS OF THE FRATERNITY OR SORORITY WHO PARTICIPATED IN THE INFLICTION OF PHYSICAL HARM?

If the person subjected to hazing or other forms of initiation rites suffers any physical injury or dies as a result thereof, the officers and members of the fraternity, sorority or organization who actually participated in the infliction of physical harm shall be liable as principals. The person or persons who participated in the hazing shall suffer:

1. The penalty of *reclusion perpetua* (life imprisonment) if death, rape, sodomy or mutilation results there from.

2. The penalty of *reclusion temporal* in its maximum period (17 years, 4 months and 1 day to 20 years) if in consequence of the hazing the victim shall become insane, imbecile, impotent or blind.

3. The penalty of *reclusion temporal* in its medium period (14 years, 8 months and one day to 17 years and 4 months) if in consequence of the hazing the victim shall have lost the use of speech or the power to hear or to smell, or shall have lost an eye, a hand, a foot, an arm or a leg or shall have lost the use of any such member shall have become incapacitated for the activity or work in which he was habitually engaged.

4. The penalty of *reclusion temporal* in its minimum period (12 years and one day to 14 years and 8 months) if in consequence of the hazing the victim shall become deformed or shall have lost any other part of his body, or shall have lost the use thereof, or shall have been ill or incapacitated for the performance on the activity or work in which he was habitually engaged for a period of more than ninety (90) days.

5. The penalty of *prison mayor* in its maximum period (10 years and one day to 12 years) if in consequence of the hazing the victim shall have been ill or incapacitated for the performance on the activity or work in which he was habitually engaged for a period of more than thirty (30) days.

6. The penalty of *prison mayor* in its medium period (8 years and one day to 10 years) if in consequence of the hazing the victim shall have been ill or incapacitated for the performance on the activity or work in which he was habitually engaged for a period of ten (10) days or more, or that the injury sustained shall require medical assistance for the same period.

7. The penalty of *prison mayor* in its minimum period (6 years and one day to 8 years) if in consequence of the hazing the victim shall have been ill or incapacitated for the performance on the activity or work in which he was habitually engaged from one (1) to nine (9) days, or that the injury sustained shall require medical assistance for the same period.

8. The penalty of *prison correccional* in its maximum period (4 years, 2 months and one day to 6 years) if in consequence of the hazing the victim sustained physical injuries which do not prevent him from engaging in his habitual activity or work nor require medical attendance.

WHAT IS THE RESPONSIBILITY OF SCHOOL OFFICIAL OR OF THE POLICE, MILITARY WHEN HAZING IS COMMITTED?

The responsible officials of the school or of the police, military or citizen's army training organization, **may impose the appropriate administrative sanctions** on the person or the persons charged under this provision even before their conviction. The maximum penalty herein provided shall be imposed in any of the following instances:

(a) when the recruitment is accompanied by force, violence, threat, intimidation or deceit on the person of the recruit who refuses to join;

(b) when the recruit, neophyte or applicant initially consents to join but upon learning that hazing will be committed on his person, is prevented from quitting;

(c) when the recruit, neophyte or applicant having undergone hazing is prevented from reporting the unlawful act to his parents or guardians, to the proper school authorities, or to the police authorities, through force, violence, threat or intimidation;

(d) when the hazing is committed outside of the school or institution; or

(e) when the victim is below twelve (12) years of age at the time of the hazing.

IS THE OWNER OF THE PLACE WHERE HAZING IS CONDUCTED LIABLE?

The owner of the place where hazing is conducted shall be liable as an **accomplice,** when he has actual knowledge of the hazing conducted therein but failed to take any action to prevent the same from occurring. If the hazing is held in the home of one of the officers or members of the fraternity, group, or organization, the parents shall be held liable as principals when they have actual knowledge of the hazing conducted therein but failed to take any action to prevent the same from occurring.

The **school authorities** including faculty members who consent to the hazing or who have actual knowledge thereof, but failed to take any action to prevent the same from occurring shall be punished as **accomplices** for the acts of hazing committed by the perpetrators.

The **officers, former officers, or alumni of the organization**, group, fraternity or sorority who actually planned the hazing although not present when the acts constituting the hazing were committed shall be liable as **principals**. A fraternity or sorority's adviser who is present when the acts constituting the hazing were committed and failed to take action to prevent the same from occurring shall be liable as principal.

IS MERE PRESENCE DURING THE HAZING A PRIMA FACIE EVIDENCE OF PARTICIPATION IN HAZING?

The presence of any person during the hazing is *prima facie* evidence of participation therein as principal unless he prevented the commission of the acts punishable herein.

CAN A PERSON ACCUSED UNDER THE HAZING LAW CLAIM OF THE MITIGATING CIRCUMSTANCE THAT HE WAS "NO INTENTION TO COMMIT SO GRAVE A WRONG?"

Any person charged under this provision shall not be entitled to the mitigating circumstance that there was no intention to commit so grave a wrong.

This section shall apply to the president, manager, director or other responsible officer of a corporation engaged in hazing as a requirement for employment in the manner provided herein.

III. JURISPRUDENCE

B.M. No. 810 January 27, 1998

IN RE: PETITION TO TAKE THE LAWYER'S OATH BY ARTHUR M. CUEVAS, JR.

R E S O L U T I O N

FRANCISCO, J.:p

Petitioner Arthur M. Cuevas, Jr., recently passed the 1996 Bar Examinations 1. His oath-taking was held in abeyance in view of the Court's resolution dated August 27, 1996 which permitted him to take the Bar Examinations "subject to the condition that should (he) pass the same, (he) shall not be allowed to take the lawyer's oath pending approval of the Court . . ." due to his previous conviction for Reckless Imprudence Resulting In Homicide. The conviction stemmed from petitioner's participation in the initiation rites of the LEX TALIONIS FRATERNITAS, a fraternity in the SAN BEDA COLLEGE OF LAW, sometime in September 1991, where Raul I. Camaligan, a neophyte, died as a result of the personal violence inflicted upon him. Thereafter, petitioner applied for and was granted probation. On May 10, 1995, he was discharged from probation and his case considered closed and terminated.

In this petition, received by the Court on May 5, 1997, petitionerprays that "he be allowed to take his lawyer's oath at the Court's most convenient time" 2 attaching thereto the Order dated May 16, 1995 of the Regional Trial Court, Branch 10 of Antique discharging him from his probation, and certifications attesting to his righteous, peaceful and law abiding character issued by: (a) the Mayor of the Municipality of Hamtic, Antique; (b) the Officer-in-Charge of Hamtic Police Station; (c) the Sangguniang Kabataan of Pob. III, Hamtic, through its chairman and officers; (d) a member of the IBP Iloilo Chapter; (e) the Parish Priest and Vicar General of St. Joseph Cathedral, San Jose, Antique; and (f) the President of the Parish Pastoral Council,

Parish of Sta. Monica, Hamtic, Antique. On July 15, 1997, the Court, before acting on petitioner's application, resolved to require Atty. Gilbert D. Camaligan, father of the deceased hazing victim Raul I. Camaligan, to comment thereon. In compliance with the Court's directive, Atty. Gilbert D. Camaligan filed his comment which states as follows:

1 He fully appreciates the benign concern given by this Hon. Court in allowing him to comment to the pending petition of Arthur M. Cuevas to take the lawyer's oath, and hereby expresses his genuine gratitude to such gesture.

2 He conforms completely to the observation of the Hon. Court in its resolution dated March 19, 1997 in Bar Matter No. 712 that the infliction of severe physical injuries which approximately led to the death of the unfortunate Raul Camaligan was deliberate (rather than merely accidental or inadvertent) thus, indicating serious character flaws on the part of those who inflicted such injuries. This is consistent with his stand at the outset of the proceedings of the criminal case against the petitioner and his co-defendants that they are liable not only for the crime of homicide but murder, since they took advantage of the neophytes' helpless and defenseless condition when they were "beaten and kicked to death like a useless stray dog", suggesting the presence of abuse of confidence, taking advantage of superior strength and treachery (People vs. Gagoco, 58 Phil. 524).

3 He, however, has consented to the accused-students' plea of guilty to the lesser offense of reckless imprudence resulting to the homicide, including the petitioner, out of pity to their mothers and a pregnant wife of the accused who went together at his house in Lucena City, literally kneeling, crying and begging for forgiveness for their sons, on a Christmas day in 1991 and on Maundy Thursday in 1992, during which they reported that the father of one of the accused died of heart attack upon learning of his son's involvement in the case.

4 As a Christian, he has forgiven the petitioner and his co-defendants in the criminal case for the death of his son. But as a loving father, who lost a son in whom he has high hope to become a good lawyer to succeed him, he still feels the pain of

his untimely demise, and the stigma of the gruesome manner of taking his life. This he cannot forget.

5 He is not, right now, in a position to say whether petitioner, since then has become morally fit for admission to the noble profession of the law. He politely submits this matter to the sound and judicious discretion of the Hon. Court. 3

At the outset, the Court shares the sentiment of Atty. Gilbert D. Camaligan and commiserates with the untimely death of his son. Nonetheless, Atty. Gilbert D. Camaligan admits that "[h]e is not, right now, in a position to say whether petitioner since then has become morally fit . . ." and submits petitioner's plea to be admitted to the noble profession of law to the sound and judicious discretion of the Court.

The petition before the Court requires the balancing of the reasons for disallowing or allowing petitioner's admission to the noble profession of law. His deliberate participation in the senseless beatings over a helpless neophyte which resulted to the latter's untimely demise indicates absence of that moral fitness required for admission to the bar. And as the practice of law is a privilege extended only to the few who possess the high standards of intellectual and moral qualifications the Court is duty bound to prevent the entry of undeserving aspirants, as well as to exclude those who have been admitted but have become a disgrace to the profession. The Court, nonetheless, is willing to give petitioner a chance in the same manner that it recently allowed Al Caparros Argosino, petitioner's co-accused below, to take the lawyer's oath. 4

Petitioner Arthur M. Cuevas, Jr.'s discharge from probation without any infraction of the attendant conditions therefor and the various certifications attesting to his righteous, peaceful and civic-oriented character prove that he has taken decisive steps to purge himself of his deficiency in moral character and atone for the unfortunate death of Raul I. Camaligan. The Court is prepared to give him the benefit of the doubt, taking judicial notice of the general tendency of the youth to be rash, temerarious and uncalculating. 5 Let it be stressed to herein petitioner that the lawyer's oath is not a mere formality recited for a few minutes in the glare of flashing cameras and before the presence of select witnesses. Petitioner is exhorted to conduct himself beyond reproach at all times and to live strictly according to his oath and the Code of Professional Responsibility. And, to paraphrase Mr. Justice Padilla's comment in the sister case of Re: Petition of Al Agrosino To Take Lawyer's Oath, Bar

Matter No. 712, March 19, 1997, "[t]he Court sincerely hopes that" Mr. Cuevas, Jr., "will continue with the assistance he has been giving to his community. As a lawyer he will now be in a better position to render legal and other services to the more unfortunate members of society" 6.

ACCORDINGLY, the Court hereby resolved to allow petitioner Arthur M.. Cuevas, Jr., to take the lawyer's oath and to sign the Roll of Attorneys on a date to be set by the Court, subject to the payment of appropriate fees. Let this resolution be attached to petitioner's personal records in the Office of the Bar Confidant.

SO ORDERED.

Narvasa, C.J., Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban and Martinez, JJ., concur.

REPUBLIC ACT NO. 9160

AN ACT DEFINING THE CRIME OF MONEY LAUNDERING, PROVIDING PENALTIES THEREFOR AND FOR OTHER PURPOSES

I. FULL TEXT OF R.A. 9160

SECTION 1. *Short Title*. – This Act shall be known as the *"Anti-Money Laundering Act of 2001."*

SEC. 2. *Declaration of Policy*. – It is hereby declared the policy of the State to protect and preserve the integrity and confidentiality of bank accounts and to ensure that the Philippines shall not be used as a money laundering site for the proceeds of any unlawful activity. Consistent with its foreign policy, the State shall extend cooperation in transnational investigations and prosecutions of persons involved in money laundering activities wherever committed.

SEC. 3. *Definitions.* – For purposes of this Act, the following terms are hereby defined as follows:

(a) "Covered institution" refers to:

(1) banks, non-banks, quasi-banks, trust entities, and all other institutions and their subsidiaries and affiliates supervised or regulated by the Bangko Sentral ng Pilipinas (BSP);

(2) insurance companies and all other institutions supervised or regulated by the Insurance Commission; and

(3)

a. securities dealers, brokers, salesmen, investment houses and other similar entities managing securities or rendering services as investment agent, advisor, or consultant;

b. mutual funds, close-end investment companies, common trust funds, pre-need companies and other similar entities;

c. foreign exchange corporations, money changers, money payment, remittance, and transfer companies and other similar entities; and

d. other entities administering or otherwise dealing in currency, commodities or financial derivatives based thereon, valuable objects, cash substitutes and other similar monetary instruments or property supervised or regulated by the Securities and Exchange Commission.

(b) *"Covered transaction"* is a single, series, or combination of transactions involving a total amount in excess of Four Million Philippine pesos (PhP4,000,000.00) or an equivalent amount in foreign currency based on the prevailing exchange rate within five (5) consecutive banking days except those between a covered institution and a person who, at the time of the transaction was a properly identified client and the amount is commensurate with the business or financial capacity of the client; or those with an underlying legal or trade obligation, purpose, origin or economic justification.

It likewise refers to a single, series or combination or pattern of unusually large and complex transactions in excess of Four Million Philippine pesos (PhP4,000,000.00) especially cash deposits and investments having no credible purpose or origin, underlying trade obligation or contract.

(c) *"Monetary instrument"* refers to:

(1) coins or currency of legal tender of the Philippines, or of any other country;

(2) drafts, checks and notes;

(3) securities or negotiable instruments, bonds, commercial papers, deposit certificates, trust certificates, custodial receipts or deposit substitute instruments, trading orders, transaction tickets and confirmations of sale or investments and money market instruments; and

(4) other similar instruments where title thereto passes to another by endorsement, assignment or delivery.

(d) *"Offender"* refers to any person who commits a money laundering offense.

(e) *"Person"* refers to any natural or juridical person.

(f) *"Proceeds"* refers to an amount derived or realized from an unlawful activity.

(g) *"Supervising Authority"* refers to the appropriate supervisory or regulatory agency, department or office supervising or regulating the covered institutions enumerated in Section 3(a).

(h) *"Transaction"* refers to any act establishing any right or obligation or giving rise to any contractual or legal relationship between the parties thereto. It also includes any movement of funds by any means with a covered institution.

(i) *"Unlawful activity"* refers to any act or omission or series or combination thereof involving or having relation to the following:

(1) Kidnapping for ransom under Article 267 of Act No. 3815, otherwise known as the Revised Penal Code, as amended;

(2) Sections 3, 4, 5, 7, 8 and 9 of Article Two of Republic Act No. 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972;

(3) Section 3 paragraphs B, C, E, G, H and I of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act;

(4) Plunder under Republic Act No. 7080, as amended;

(5) Robbery and extortion under Articles 294, 295, 296, 299, 300, 301 and 302 of the Revised Penal Code, as amended;

(6) Jueteng and Masiao punished as illegal gambling under Presidential Decree No. 1602;

(7) Piracy on the high seas under the Revised Penal Code, as amended and Presidential Decree No. 532;

(8) Qualified theft under Article 310 of the Revised Penal Code, as amended;

(9) Swindling under Article 315 of the Revised Penal Code, as amended;

(10) Smuggling under Republic Act Nos. 455 and 1937;

(11) Violations under Republic Act No. 8792, otherwise known as the Electronic Commerce Act of 2000;

(12) Hijacking and other violations under Republic Act No. 6235; destructive arson and murder, as defined under the Revised Penal Code, as amended, including those perpetrated by terrorists against non-combatant persons and similar targets;

(13) Fraudulent practices and other violations under Republic Act No. 8799, otherwise known as the Securities Regulation Code of 2000;

(14) Felonies or offenses of a similar nature that are punishable under the penal laws of other countries.

SEC. 4. *Money Laundering Offense.* – Money laundering is a crime whereby the proceeds of an unlawful activity are transacted, thereby making them appear to have originated from legitimate sources. It is committed by the following:

(a) Any person knowing that any monetary instrument or property represents, involves, or relates to, the proceeds of any unlawful activity, transacts or attempts to transact said monetary instrument or property.

(b) Any person knowing that any monetary instrument or property involves the proceeds of any unlawful activity, performs or fails to perform any act as a result of which he facilitates the offense of money laundering referred to in paragraph (a) above.

(c) Any person knowing that any monetary instrument or property is required under this Act to be disclosed and filed with the Anti-Money Laundering Council (AMLC), fails to do so.

SEC. 5. *Jurisdiction of Money Laundering Cases*. – The regional trial courts shall have jurisdiction to try all cases on money laundering. Those committed by public officers and private persons who are in conspiracy with such public officers shall be under the jurisdiction of the Sandiganbayan.

SEC. 6. *Prosecution of Money Laundering.* –

(a) Any person may be charged with and convicted of both the offense of money laundering and the unlawful activity as herein defined.

(b) Any proceeding relating to the unlawful activity shall be given precedence over the prosecution of any offense or violation under this Act without prejudice to the freezing and other remedies provided.

SEC. 7. *Creation of Anti-Money Laundering Council (AMLC).* – The Anti-Money Laundering Council is hereby created and shall be composed of the Governor of the Bangko Sentral ng Pilipinas as chairman, the Commissioner of the Insurance Commission and the Chairman of the Securities and Exchange Commission as members. The AMLC shall act unanimously in the discharge of its functions as defined hereunder:

(1) to require and receive covered transaction reports from covered institutions;

(2) to issue orders addressed to the appropriate Supervising Authority or the covered institution to determine the true identity of the owner of any monetary instrument or property subject of a covered transaction report or request for assistance from a foreign State, or believed by the Council, on the basis of substantial evidence, to be, in whole or in part, wherever located, representing, involving, or related to, directly or indirectly, in any manner or by any means, the proceeds of an unlawful activity;

(3) to institute civil forfeiture proceedings and all other remedial proceedings through the Office of the Solicitor General;

(4) to cause the filing of complaints with the Department of Justice or the Ombudsman for the prosecution of money laundering offenses;

(5) to initiate investigations of covered transactions, money laundering activities and other violations of this Act;

(6) to freeze any monetary instrument or property alleged to be proceeds of any unlawful activity;

(7) to implement such measures as may be necessary and justified under this Act to counteract money laundering;

(8) to receive and take action in respect of, any request from foreign states for assistance in their own anti-money laundering operations provided in this Act;

(9) to develop educational programs on the pernicious effects of money laundering, the methods and techniques used in money laundering, the viable means of preventing money laundering and the effective ways of prosecuting and punishing offenders; and

(10) to enlist the assistance of any branch, department, bureau, office, agency or instrumentality of the government, including government-owned and -controlled corporations, in undertaking any and all anti-money laundering operations, which may include the use of its personnel, facilities and resources for the more resolute prevention, detection and investigation of money laundering offenses and prosecution of offenders.

SEC. 8. *Creation of a Secretariat.* – The AMLC is hereby authorized to establish a secretariat to be headed by an Executive Director who shall be appointed by the Council for a term of five (5) years. He must be a member of the Philippine Bar, at least thirty-five (35) years of age and of good moral character, unquestionable integrity and known probity. All members of the Secretariat must have served for at least five (5) years either in the Insurance Commission, the Securities and Exchange Commission or the Bangko Sentral ng Pilipinas (BSP) and shall hold full-time permanent positions within the BSP.

SEC. 9. *Prevention of Money Laundering; Customer Identification Requirements and Record Keeping.* –

(a) *Customer Identification.* - Covered institutions shall establish and record the true identity of its clients based on official documents. They shall maintain a system of verifying the true identity of their clients and, in case of corporate clients, require a system of verifying their legal existence and organizational structure, as well as the authority and identification of all persons purporting to act on their behalf.

The provisions of existing laws to the contrary notwithstanding, anonymous accounts, accounts under fictitious names, and all other similar accounts shall be absolutely prohibited. Peso and foreign currency non-checking numbered accounts shall be allowed. The BSP may conduct annual testing solely limited to

the determination of the existence and true identity of the owners of such accounts.

(b) *Record Keeping.* - All records of all transactions of covered institutions shall be maintained and safely stored for five (5) years from the dates of transactions. With respect to closed accounts, the records on customer identification, account files and business correspondence, shall be preserved and safely stored for at least five (5) years from the dates when they were closed.

(c) *Reporting of Covered Transactions.* - Covered institutions shall report to the AMLC all covered transactions within five (5) working days from occurrence thereof, unless the Supervising Authority concerned prescribes a longer period not exceeding ten (10) working days.

When reporting covered transactions to the AMLC, covered institutions and their officers, employees, representatives, agents, advisors, consultants or associates shall not be deemed to have violated Republic Act No. 1405, as amended; Republic Act No. 6426, as amended; Republic Act No. 8791 and other similar laws, but are prohibited from communicating, directly or indirectly, in any manner or by any means, to any person the fact that a covered transaction report was made, the contents thereof, or any other information in relation thereto. In case of violation thereof, the concerned officer, employee, representative, agent, advisor, consultant or associate of the covered institution, shall be criminally liable.

However, no administrative, criminal or civil proceedings, shall lie against any person for having made a covered transaction report in the regular performance of his duties and in good faith, whether or not such reporting results in any criminal prosecution under this Act or any other Philippine law.

When reporting covered transactions to the AMLC, covered institutions and their officers, employees, representatives, agents, advisors, consultants or associates are prohibited from communicating, directly or indirectly, in any manner or by any means, to any person, entity, the media, the fact that a covered transaction report was made, the contents thereof, or any other information in relation thereto. Neither may such reporting be published or aired in any manner or form by the mass media, electronic mail, or other similar devices. In case of violation thereof, the concerned officer, employee, representative, agent, advisor, consultant or associate of the covered institution, or media shall be held criminally liable.

SEC. 10. *Authority to Freeze.* – Upon determination that probable cause exists that any deposit or similar account is in any way related to an unlawful activity, the AMLC may issue a freeze order, which shall be effective immediately, on the account for a period not exceeding fifteen (15) days. Notice to the depositor that his account has been frozen shall be issued simultaneously with the issuance of the freeze order. The depositor shall have seventy-two (72) hours upon receipt of the notice to explain why the freeze order should be lifted. The AMLC has seventy-two (72) hours to dispose of the depositor's explanation. If it fails to act within seventy-two (72) hours from receipt of the depositor's explanation, the freeze order shall automatically be dissolved. The fifteen (15)-day freeze order of the AMLC may be extended upon order of the court, provided that the fifteen (15)-day period shall be tolled pending the court's decision to extend the period.

No court shall issue a temporary restraining order or writ of injunction against any freeze order issued by the AMLC except the Court of Appeals or the Supreme Court.

SEC. 11. *Authority to Inquire into Bank Deposits.* – Notwithstanding the provisions of Republic Act No. 1405, as amended; Republic Act No. 6426, as amended; Republic Act No. 8791, and other laws, the AMLC may inquire into or examine any particular deposit or investment with any banking institution or non-bank financial institution upon order of any competent court in cases of violation of this Act when it has been established that there is probable cause that the deposits or investments involved are in any way related to a money laundering offense: *Provided*, That this provision shall not apply to deposits and investments made prior to the effectivity of this Act.

SEC. 12 *Forfeiture Provisions.* –

(a) *Civil Forfeiture.* - When there is a covered transaction report made, and the court has, in a petition filed for the purpose ordered seizure of any monetary instrument or property, in whole or in part, directly or indirectly, related to said report, the Revised Rules of Court on civil forfeiture shall apply.

(b) *Claim on Forfeited Assets.* - Where the court has issued an order of forfeiture of the monetary instrument or property in a criminal prosecution for any money laundering offense defined under Section 4 of this Act, the offender or any other person claiming an interest therein may apply, by verified petition, for a declaration that the same legitimately belongs to him and for segregation or exclusion of the monetary instrument or property corresponding thereto. The verified petition shall be filed with the court which rendered the judgment of conviction and order of forfeiture, within fifteen (15) days from the date of the order of forfeiture, in default of which the said order shall become final and executory. This provision shall apply in both civil and criminal forfeiture.

(c) *Payment in Lieu of Forfeiture.* - Where the court has issued an order of forfeiture of the monetary instrument or property subject of a money laundering offense defined under Section 4, and said order cannot be enforced because any particular monetary instrument or property cannot, with due diligence, be located, or it has been substantially altered, destroyed, diminished in value or otherwise rendered worthless by any act or omission, directly or indirectly, attributable to the offender, or it has been concealed, removed, converted or otherwise transferred to prevent the same from being found or to avoid forfeiture thereof, or it is located outside the Philippines or has been placed or brought outside the jurisdiction of the court, or it has been commingled with other monetary instruments or property belonging to either the offender himself or a third person or entity, thereby rendering the same difficult to identify or be segregated for purposes of forfeiture, the court may, instead of enforcing the order of forfeiture of the monetary instrument or property or part thereof or interest therein, accordingly order the convicted offender to pay an amount equal to the value of said monetary instrument or property. This provision shall apply in both civil and criminal forfeiture.

SEC. 13. *Mutual Assistance among States.* –

(a) *Request for Assistance from a Foreign State.* - Where a foreign State makes a request for assistance in the investigation or prosecution of a money laundering

offense, the AMLC may execute the request or refuse to execute the same and inform the foreign State of any valid reason for not executing the request or for delaying the execution thereof. The principles of mutuality and reciprocity shall, for this purpose, be at all times recognized.

(b) *Powers of the AMLC to Act on a Request for Assistance from a Foreign State*. - The AMLC may execute a request for assistance from a foreign State by: (1) tracking down, freezing, restraining and seizing assets alleged to be proceeds of any unlawful activity under the procedures laid down in this Act; (2) giving information needed by the foreign State within the procedures laid down in this Act; and (3) applying for an order of forfeiture of any monetary instrument or property in the court: *Provided,* That the court shall not issue such an order unless the application is accompanied by an authenticated copy of the order of a court in the requesting State ordering the forfeiture of said monetary instrument or property of a person who has been convicted of a money laundering offense in the requesting State, and a certification or an affidavit of a competent officer of the requesting State stating that the conviction and the order of forfeiture are final and that no further appeal lies in respect of either.

(c) *Obtaining Assistance from Foreign States.* - The AMLC may make a request to any foreign State for assistance in (1) tracking down, freezing, restraining and seizing assets alleged to be proceeds of any unlawful activity; (2) obtaining information that it needs relating to any covered transaction, money laundering offense or any other matter directly or indirectly related thereto; (3) to the extent allowed by the law of the foreign State, applying with the proper court therein for an order to enter any premises belonging to or in the possession or control of, any or all of the persons named in said request, and/or search any or all such persons named therein and/or remove any document, material or object named in said request: *Provided*, That the documents accompanying the request in support of the application have been duly authenticated in accordance with the applicable law or regulation of the foreign State; and (4) applying for an order of forfeiture of any monetary instrument or property in the proper court in the foreign State: *Provided,* That the request is accompanied by an authenticated copy of the order of the regional trial court ordering the forfeiture of said monetary instrument or property of a convicted offender and an affidavit of the clerk of court stating that the conviction and the order of forfeiture are final and that no further appeal lies in respect of either.

(d) *Limitations on Requests for Mutual Assistance.* - The AMLC may refuse to comply with any request for assistance where the action sought by the request contravenes any provision of the Constitution or the execution of a request is likely to prejudice the national interest of the Philippines unless there is a treaty between the Philippines and the requesting State relating to the provision of assistance in relation to money laundering offenses.

(e) *Requirements for Requests for Mutual Assistance from Foreign States.* - A request for mutual assistance from a foreign State must (1) confirm that an investigation or prosecution is being conducted in respect of a money launderer named therein or that he has been convicted of any money laundering offense; (2) state the grounds on which any person is being investigated or prosecuted for money laundering or the details of his conviction; (3) give sufficient particulars as to the identity of said person; (4) give particulars sufficient to identify any covered institution believed to have any information, document, material or object which may be of assistance to the investigation or prosecution;

(5) ask from the covered institution concerned any information, document, material or object which may be of assistance to the investigation or prosecution; (6) specify the manner in which and to whom said information, document, material or object obtained pursuant to said request, is to be produced; (7) give all the particulars necessary for the issuance by the court in the requested State of the writs, orders or processes needed by the requesting State; and (8) contain such other information as may assist in the execution of the request.

(f) *Authentication of Documents.* - For purposes of this Section, a document is authenticated if the same is signed or certified by a judge, magistrate or equivalent officer in or of, the requesting State, and authenticated by the oath or affirmation of a witness or sealed with an official or public seal of a minister, secretary of State, or officer in or of, the government of the requesting State, or of the person administering the government or a department of the requesting territory, protectorate or colony. The certificate of authentication may also be made by a secretary of the embassy or legation, consul general, consul, vice consul, consular agent or any officer in the foreign service of the Philippines stationed in the foreign State in which the record is kept, and authenticated by the seal of his office.

(g) *Extradition.* - The Philippines shall negotiate for the inclusion of money laundering offenses as herein defined among extraditable offenses in all future treaties.

SEC. 14. *Penal Provisions.* – (a) *Penalties for the Crime of Money Laundering.* - The penalty of imprisonment ranging from seven (7) to fourteen (14) years and a fine of not less than Three Million Philippine pesos (PhP3,000,000.00) but not more than twice the value of the monetary instrument or property involved in the offense, shall be imposed upon a person convicted under Section 4(a) of this Act.

The penalty of imprisonment from four (4) to seven (7) years and a fine of not less than One million five hundred thousand Philippine pesos (PhP1,500,000.00) but not more than Three million Philippine pesos (PhP3,000,000.00), shall be imposed upon a person convicted under Section 4(b) of this Act.

The penalty of imprisonment from six (6) months to four (4) years or a fine of not less than One hundred thousand Philippine pesos (PhP100,000.00) but not more than Five hundred thousand Philippine pesos (PhP500,000.00), or both, shall be imposed on a person convicted under Section 4(c) of this Act.

(b) *Penalties for Failure to Keep Records.* - The penalty of imprisonment from six (6) months to one (1) year or a fine of not less than One hundred thousand Philippine pesos (PhP100,000.00) but not more than Five hundred thousand Philippine pesos (PhP500,000.00), or both, shall be imposed on a person convicted under Section 9(b) of this Act.

(c) *Malicious Reporting.* - Any person who, with malice, or in bad faith, reports or files a completely unwarranted or false information relative to money laundering transaction against any person shall be subject to a penalty of six (6) months to four (4) years imprisonment and a fine of not less than One hundred thousand Philippine pesos (PhP100,000.00) but not more than Five hundred thousand Philippine pesos (PhP500,000.00), at the discretion of the court: *Provided*, That the offender is not entitled to avail the benefits of the Probation Law.

If the offender is a corporation, association, partnership or any juridical person, the penalty shall be imposed upon the responsible officers, as the case may be, who participated in the commission of the crime or who shall have knowingly permitted or failed to prevent its commission. If the offender is a juridical person, the court may suspend or revoke its license. If the offender is an alien, he shall, in addition to the penalties herein prescribed, be deported without further proceedings after serving the penalties herein prescribed. If the offender is a public official or employee, he shall, in addition to the penalties prescribed herein, suffer perpetual or temporary absolute disqualification from office, as the case may be.

Any public official or employee who is called upon to testify and refuses to do the same or purposely fails to testify shall suffer the same penalties prescribed herein.

(d) *Breach of Confidentiality.* - The punishment of imprisonment ranging from three (3) to eight (8) years and a fine of not less than Five hundred thousand Philippine pesos (PhP500,000.00) but not more than One million Philippine pesos (PhP1,000,000.00), shall be imposed on a person convicted for a violation under Section 9(c).

SEC. 15. *System of Incentives and Rewards.* – A system of special incentives and rewards is hereby established to be given to the appropriate government agency and its personnel that led and initiated an investigation, prosecution and conviction of persons involved in the offense penalized in Section 4 of this Act.

SEC. 16. *Prohibitions Against Political Harassment.* – This Act shall not be used for political persecution or harassment or as an instrument to hamper competition in trade and commerce.

No case for money laundering may be filed against and no assets shall be frozen, attached or forfeited to the prejudice of a candidate for an electoral office during an election period.

SEC. 17. *Restitution.* – Restitution for any aggrieved party shall be governed by the provisions of the New Civil Code.

SEC. 18. *Implementing Rules and Regulations.* – Within thirty (30) days from the effectivity of this Act, the Bangko Sentral ng Pilipinas, the Insurance Commission and the Securities and Exchange Commission shall promulgate the rules and regulations to implement effectively the provisions of this Act. Said rules and regulations shall be submitted to the Congressional Oversight Committee for approval.

Covered institutions shall formulate their respective money laundering prevention programs in accordance with this Act including, but not limited to, information dissemination on money laundering activities and its prevention, detection and reporting, and the training of responsible officers and personnel of covered institutions.

SEC. 19. *Congressional Oversight Committee.* – There is hereby created a Congressional Oversight Committee composed of seven (7) members from the Senate and seven (7) members from the House of Representatives. The members from the Senate shall be appointed by the Senate President based on

the proportional representation of the parties or coalitions therein with at least two (2) Senators representing the minority. The members from the House of Representatives shall be appointed by the Speaker also based on proportional representation of the parties or coalitions therein with at least two (2) members representing the minority.

The Oversight Committee shall have the power to promulgate its own rules, to oversee the implementation of this Act, and to review or revise the implementing rules issued by the Anti-Money Laundering Council within thirty (30) days from the promulgation of the said rules.

SEC. 20. *Appropriations Clause*. – The AMLC shall be provided with an initial appropriation of Twenty-five million Philippine pesos (PhP25,000,000.00) to be drawn from the national government. Appropriations for the succeeding years shall be included in the General Appropriations Act.

SEC. 21. *Separability Clause.* – If any provision or section of this Act or the application thereof to any person or circumstance is held to be invalid, the other provisions or sections of this Act, and the application of such provision or section to other persons or circumstances, shall not be affected thereby.

SEC. 22. *Repealing Clause.* – All laws, decrees, executive orders, rules and regulations or parts thereof, including the relevant provisions of Republic Act No. 1405, as amended; Republic Act No. 6426, as amended; Republic Act No. 8791, as amended and other similar laws, as are inconsistent with this Act, are hereby repealed, amended or modified accordingly.

SEC. 23. *Effectivity.* – This Act shall take effect fifteen (15) days after its complete publication in the Official Gazette or in at least two (2) national newspapers of general circulation.

The provisions of this Act shall not apply to deposits and investments made prior to its effectivity.

Approved:

(Sgd.) FRANKLIN M. DRILON
President of the Senate

(Sgd.) JOSE DE VENECIA JR.
Speaker of the House of Representatives

This Act which is a consolidation of House Bill No. 3083 and Senate Bill No. 1745 was finally passed by the House of Representatives and the Senate on September 29, 2001.

(Sgd.) OSCAR G. YABES
Secretary of the Senate

(Sgd.) ROBERTO P. NAZARENO
Secretary-General House of Representatives

Approved:

II. RULES AND REGULATIONS IMPLEMENTING THE ANTI-MONEY LAUNDERING ACT OF 2001 (Republic Act No. 9160)

RULE 1
POLICY AND APPLICATION

Section 1. *Title*. - These Rules shall be known and cited as the *"Rules and Regulations Implementing Republic Act No. 9160"* (the Anti-Money Laundering Act of 2001 [AMLA]).

Sec. 2. *Purpose.* - These Rules are promulgated to prescribe the procedures and guidelines for the implementation of the AMLA.

Sec. 3. *Declaration of Policy.* – It is the policy of the State that:

(a) The integrity and confidentiality of bank accounts shall be protected and preserved;

(b) The Philippines shall not be used as a money laundering site for the proceeds of any unlawful activity; and

(c) Consistent with its foreign policy, the Philippines shall extend cooperation in transnational investigations and prosecutions of persons involved in money laundering activities wherever committed.

Sec. 4. *Definition of Terms*. -

(a) *"Covered institutions"* refer to the following:

(1) Banks, offshore banking units, quasi-banks, trust entities, non-stock savings and loan associations, pawnshops, and all other institutions including their subsidiaries and affiliates supervised and/or regulated by the Bangko Sentral ng Pilipinas (BSP).

A subsidiary means an entity more than fifty percent (50%) of the outstanding voting stock of which is owned by a bank, quasi-bank, trust entity or any other institution supervised or regulated by the BSP.

An affiliate means an entity at least twenty percent (20%) but not exceeding fifty percent (50%) of the voting stock of which is owned by a bank, quasi-bank, trust entity, or any other institution supervised and/or regulated by the BSP.

(2) Insurance companies, insurance agents, insurance brokers, professional reinsurers, reinsurance brokers, holding companies, holding company systems and all other persons and entities supervised and/or regulated by the Insurance Commission (IC).

An insurance company includes those entities authorized to transact insurance business in the Philippines, whether life or non-life and whether domestic, domestically incorporated or branch of a foreign entity. A contract of insurance is an agreement whereby one undertakes for a consideration to indemnify another against loss, damage or liability arising from an unknown or contingent event. Transacting insurance business includes making or proposing to make, as insurer, any insurance contract, or as surety, any contract of suretyship as a vocation and not as merely incidental to any other legitimate business or activity of the surety, doing any kind of business specifically recognized as constituting the doing of an insurance business within the meaning of Presidential Decree (P. D.) No. 612, as amended, including a reinsurance business and doing or proposing to do any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of P. D. No. 612, as amended.

An insurance agent includes any person who solicits or obtains insurance on behalf of any insurance company or transmits for a person other than himself an application for a policy or contract of insurance to or from such company or offers or assumes to act in the negotiation of such insurance.

An insurance broker includes any person who acts or aids in any manner in soliciting, negotiating or procuring the making of any insurance contract or in placing risk or taking out insurance, on behalf of an insured other than himself.

A professional reinsurer includes any person, partnership, association or corporation that transacts solely and exclusively reinsurance business in the Philippines, whether domestic, domestically incorporated or a branch of a foreign entity. A contract of reinsurance is one by which an insurer procures a third person to insure him against loss or liability by reason of such original insurance.

A reinsurance broker includes any person who, not being a duly authorized agent, employee or officer of an insurer in which any reinsurance is effected, acts or aids in any manner in negotiating contracts of reinsurance or placing risks of effecting reinsurance, for any insurance company authorized to do business in the Philippines.

A holding company includes any person who directly or indirectly controls any authorized insurer.

A holding company system includes a holding company together with its controlled insurers and controlled persons.

(3) (i) Securities dealers, brokers, salesmen, associated persons of brokers or dealers, investment houses, investment agents and consultants, trading advisors, and other entities managing securities or rendering similar services, (ii) mutual funds or open-end investment companies, close-end investment companies, common trust funds, pre-need companies or issuers and other similar entities; (iii) foreign exchange corporations, money changers, money payment, remittance, and transfer companies and other similar entities, and (iv) other entities administering or otherwise dealing in currency, commodities or financial derivatives based thereon, valuable objects, cash substitutes and other similar monetary instruments or property supervised and/or regulated by the Securities and Exchange Commission (SEC).

A securities broker includes a person engaged in the business of buying and selling securities for the account of others.

A securities dealer includes any person who buys and sells securities for his/her account in the ordinary course of business.

A securities salesman includes a natural person, employed as such or as an agent, by a dealer, issuer or broker to buy and sell securities.

An associated person of a broker or dealer includes an employee thereof who directly exercises control of supervisory authority, but does not include a salesman, or an agent or a person whose functions are solely clerical or ministerial.

An investment house includes an enterprise which engages or purports to engage, whether regularly or on an isolated basis, in the underwriting of securities of another person or enterprise, including securities of the Government and its instrumentalities.

A mutual fund or an open-end investment company includes an investment company which is offering for sale or has outstanding, any redeemable security of which it is the issuer.

A closed-end investment company includes an investment company other than open-end investment company.

A common trust fund includes a fund maintained by an entity authorized to perform trust functions under a written and formally established plan, exclusively for the collective investment and reinvestment of certain money representing participation in the plan received by it in its capacity as trustee, for the purpose of administration, holding or management of such funds and/or properties for the use, benefit or advantage of the trustor or of others known as beneficiaries.

A pre-need company or issuer includes any corporation supervised and/or regulated by the SEC and is authorized or licensed to sell or offer for sale pre-need plans.

A foreign exchange corporation includes any enterprise which engages or purports to engage, whether regularly or on an isolated basis, in the sale and purchase of foreign currency notes and such other foreign-currency denominated non-bank deposit transactions as may be authorized under its articles of incorporation.

An investment agent or consultant or trading advisor includes any person who is engaged in the business of advising others as to the value of any security and the advisability of trading in any security or in the business of issuing reports or making analysis of capital markets. However, in case the issuance of reports or the rendering of the analysis of capital markets is solely incidental to the conduct of the business or profession of banks, trust companies, journalists, reporters, columnists, editors, lawyers, accountants, teachers, and publishers of newspapers and business or financial publications of general and regular circulation, including their employees, they shall not be deemed to be investment agents or consultants or trade advisors within the contemplation of the AMLA and these Rules.

A money changer includes any person in the business of buying or selling foreign currency notes.

A money payment, remittance and transfer company includes any person offering to pay, remit or transfer or transmit money on behalf of any person to another person.

(b) *"Customer"* refers to any person or entity that keeps an account, or otherwise transacts business, with a covered institution and any person or entity on whose behalf an account is maintained or a transaction is conducted, as well as the beneficiary of said transactions. A customer also includes the beneficiary of a trust, an investment fund, a pension fund or a company or person whose assets are managed by an asset manager, or a grantor of a trust. It includes any insurance policy holder, whether actual or prospective.

(c) *"Monetary Instrument"* refers to:

(1) Coins or currency of legal tender of the Philippines, or of any other country;

(2) Drafts, checks and notes;

(3) Securities or negotiable instruments, bonds, commercial papers, deposit certificates, trust certificates, custodial receipts or deposit substitute instruments, trading orders, transaction tickets and confirmations of sale or investments and money market instruments;

(4) Other similar instruments where title thereto passes to another by endorsement, assignment or delivery; and

(5) Contracts or policies of insurance, life or non-life, and contracts of suretyship.

(d) *"Offender"* refers to any person who commits a money laundering offense.

(e) *"Person"* refers to any natural or juridical person.

(f) *"Proceeds"* refers to an amount derived or realized from an unlawful activity. It includes:

(1) All material results, profits, effects and any amount realized from any unlawful activity;

(2) All monetary, financial or economic means, devices, documents, papers or things used in or having any relation to any unlawful activity; and

(3) All moneys, expenditures, payments, disbursements, costs, outlays, charges, accounts, refunds and other similar items for the financing, operations, and maintenance of any unlawful activity.

(g) *"Property"* includes any thing or item of value, real or personal, tangible or intangible, or any interest therein or any benefit, privilege, claim or right with respect thereto.

(h) *"Supervising Authority"* refers to the BSP, the SEC and the IC. Where the SEC supervision applies only to the incorporation of the registered institution, within the limits of the AMLA, the SEC shall have the authority to require and ask assistance from the government agency having regulatory power and/or licensing authority over said covered institution for the implementation and enforcement of the AMLA and these Rules.

(i) *"Transaction"* refers to any act establishing any right or obligation or giving rise to any contractual or legal relationship between the parties thereto. It also includes any movement of funds by any means with a covered institution.

Sec. 5. *Limitations of the Rules.* -

(a) The provisions of the AMLA and these Rules shall not apply to deposits, investments, and all other accounts of customers with covered institutions that were opened or created prior to the effectivity of the AMLA on October 17, 2001. Hence, no covered transaction reports, investigation and prosecution of money laundering cases, or any other action authorized under the AMLA, may be undertaken with respect to such deposits, investments and accounts as well as transactions or circumstances in relation thereto, that have been completed prior to October 17, 2001. However, the AMLA and these Rules shall apply to all movements of funds respecting such deposits, investments and accounts as well as transactions or circumstances in relation thereto, that are initiated or commenced on or after October 17, 2001.

(b) The AMLA and these Rules shall not be used for political persecution or harassment or as an instrument to hamper competition in trade and commerce.

RULE 2
COMPOSITION AND PROCEEDINGS OF
THE ANTI-MONEY LAUNDERING COUNCIL

Section 1. *Composition*. – The members of the Anti-Money Laundering Council (AMLC) created under the AMLA shall be the Governor of the BSP, the Insurance Commissioner and the Chairman of the SEC. The Governor of the BSP shall be the Chairman.

Sec. 2. *Collegiality.* – The AMLC is a collegial body where the Chairman and the members of the AMLC are entitled to one (1) vote each.

Sec. 3. *Unanimous Decision.* – The AMLC shall act unanimously in discharging its functions as defined in the AMLA and in these Rules. However, in the case of the incapacity, absence or disability of any member to discharge his functions, the officer duly designated or authorized to discharge the functions of the Governor of the BSP, the Chairman of the SEC or the Insurance Commissioner, as the case may be, shall act in his stead in the AMLC.

Sec. 4. *Delegation of Authority.* – Action on routinary administrative matters may be delegated to any member of the AMLC or to any ranking official of the Secretariat under such guidelines as the AMLC may determine.

Sec. 5. *Secretariat.* –

(a) The Secretariat shall be headed by an Executive Director who shall be appointed by the AMLC for a term of five (5) years. He must be a member of the Philippine Bar, at least thirty-five (35) years of age and of good moral character, unquestionable integrity and known probity. He shall be considered a regular employee of the BSP with the rank of Assistant Governor, and shall be entitled to such benefits and subject to such rules and regulations as are applicable to officers of similar rank.

(b) Other than the Executive Director whose qualifications are provided for in the preceding paragraph, in organizing the Secretariat, the AMLC may only choose from among those who have served, continuously or cumulatively, for at least five (5) years in the BSP, the SEC or the IC, but who need not be incumbents therein at the time of their appointment in the Secretariat. All members of the Secretariat shall be considered regular employees of the BSP and shall be entitled to such benefits and subject to such rules and regulations as are applicable to BSP employees of similar rank.

Sec. 6. *Detail and Secondment of Personnel.* – The AMLC is authorized under Section 7 (10) of the AMLA to enlist the assistance of the BSP, the SEC or the IC or any other branch, department, bureau, office, agency or instrumentality of the government, including government-owned and –controlled corporations, in undertaking any and all anti-money laundering operations. This includes the use

of any member of their personnel who may be detailed or seconded to the AMLC, subject to existing laws and Civil Service Rules and Regulations.

Sec. 7. *Confidentiality of Proceedings.* – The members of the AMLC, the Executive Director, and all the members of the Secretariat, whether permanent, on detail or on secondment, shall not reveal in any manner except under orders of the court, the Congress or any government office or agency authorized by law, or under such conditions as may be prescribed by the AMLC, any information known to them by reason of their office. In case of violation of this provision, the person shall be punished in accordance with the pertinent provisions of R. A. Nos. 3019, 6713 and 7653.

Sec. 8. *Meetings.* – The AMLC shall meet every first Monday of the month or as often as may be necessary at the call of the Chairman. Subject to the rule on confidentiality in the immediately preceding section, the meetings of the AMLC may be conducted through modern technologies such as, but not limited to, teleconferencing and video-conferencing.

Sec. 9. *Budget.* – The budget appropriated by the Congress shall be used to defray operational expenses of the AMLC, including indemnification for legal costs and expenses reasonably incurred for the services of external counsel or in connection with any civil, criminal or administrative action, suit or proceedings to which members of the AMLC and the Executive Director and other members of the Secretariat may be made a party by reason of the performance of their functions or duties.

RULE 3
POWERS OF THE AMLC

Section 1. *Authority to Initiate Investigations on the Basis of Voluntary Citizens' Complaints and Government Agency Referrals.* -

(a) Any person, including covered institutions not subject to any account secrecy laws and branches, departments, bureaus, offices, agencies and instrumentalities of the government, including government-owned and – controlled corporations, may report to the AMLC any activity that engenders reasonable belief that any money laundering offense under Section 4 of the AMLA and defined under Rule 4 of these Rules is about to be, is being or has been committed.

(b) The person so reporting shall file a Voluntary Citizens' Complaint (VCC) or Government Referral (GR) in the form prescribed by the AMLC. The VCC and GR forms shall indicate that the members of the AMLC, the Executive Director and all the members of the Secretariat are bound by the confidentiality rule provided in Section 7, Rule 2 of these Rules. The VCC shall be signed by the complainant. The GR shall be signed by the authorized representative of the government agency concerned, indicating his current position and rank therein.

(c) Any person who files a VCC or GR shall not incur any liability for all their acts in relation thereto that were done in good faith. However, any person who, with malice, or in bad faith, reports or files a completely unwarranted or false information relative to any money laundering

transaction against any person shall be subject to the penalties provided for under Section 14 (c) of the AMLA.

(d) On the basis of the VCC or GR, the AMLC may initiate investigation thereof, and based on the evidence gathered, the AMLC may cause the filing of criminal complaints with the Department of Justice or the Ombudsman for the prosecution of money laundering offenses.

Sec. 2. *Authority to Initiate Investigations on the Basis of Covered Transaction Reports.* -

(a) *Covered Transactions*. The mandatory duty and obligation of covered institutions to make reports to the AMLC covers the following transactions:

(1) A single transaction involving an amount in excess of Four million Philippine pesos (Php4,000,000.00) or an equivalent amount in foreign currency based on the prevailing exchange rate where the client is not properly identified and/or the amount is not commensurate with his business or financial capacity.

(2) A single transaction involving an amount in excess of Four million Philippine pesos (Php4,000,000.00) or an equivalent amount in foreign currency based on the prevailing exchange rate which has no underlying legal or trade obligation, purpose, origin, or economic justification.

(3) A series or combination of transactions conducted within five (5) consecutive banking days aggregating to a total amount in excess of Four million Philippine pesos (Php4,000,000.00) or an equivalent in foreign currency based on the prevailing exchange rate where the client is not properly identified and/or the amount is not commensurate with his business or financial capacity.

(4) A series or combination of transactions conducted within five (5) consecutive banking days aggregating to a total amount in excess of Four million Philippine pesos (Php4,000,000.00) or an equivalent in foreign currency based on the prevailing exchange rate exchange rate where most, if not all the transactions, do not have any underlying legal or trade obligation, purpose, origin, or economic justification.

(5) A single unusually large and complex transaction in excess of Four million Philippine pesos (Php4,000,000.00), especially a cash deposit or investment having no credible purpose or origin, underlying trade obligation or contract, regardless of whether or not the client is properly identified and/or the amount is commensurate with his business or financial capacity.

(6) A series, combination or pattern of unusually large and complex transactions aggregating to, without reference to any period, a total amount in excess of Four million Philippine pesos (Php4,000,000.00), especially cash deposits and/or investments having no credible purpose or origin, underlying trade obligation or contract, regardless of whether or not the client is properly identified and/or the amount is commensurate with his business or financial capacity.

(b) *Obligation to Report Covered Transactions*. All covered institutions supervised or regulated by the BSP, the SEC and the IC shall report all covered transactions to the AMLC within five (5) working days from the date of the transaction or from the date when the covered institution concerned gained/acquired information/knowledge that the transaction is a covered transaction.

(c) *Covered Transaction Report Form*. The Covered Transaction Report (CTR) shall be in the form prescribed by the appropriate Supervising Authority and approved by the AMLC. It shall be signed by the employee(s) who dealt directly with the customer in the transaction and/or who made the initial internal report within the covered institution, the compliance officer or his equivalent, and a senior official of the bank with a rank not lower than senior vice-president. The CTR shall be filed with the AMLC in a central location, to be determined by the AMLC, as indicated in the instructions on the CTR form.

(d) *Exemption from Bank Secrecy Laws*. When reporting covered transactions to the AMLC, banks and their officers, employees, representatives, agents, advisors, consultants or associates shall not be deemed to have violated R. A. No. 1405, as amended, R. A. No. 6426, as amended, R. A. No. 8791 and other similar laws.

(e) *Safe Harbor Provision.* No administrative, criminal or civil proceedings shall lie against any person for having made a covered transaction report in the regular performance of his duties and in good faith, whether or not such reporting results in any criminal prosecution under the AMLA or any other Philippine law.

(f) *Filing of Criminal Complaints*. On the basis of the CTR, the AMLC may initiate investigation thereof, and based on the evidence gathered, the AMLC may cause the filing of criminal complaints with the Department of Justice or the Ombudsman for the prosecution of money laundering offenses.

(g) *Malicious Reporting.* Any person who, with malice, or in bad faith, reports or files a completely unwarranted or false information relative to any money laundering transaction against any person, shall be subject to a penalty of imprisonment from six (6) months to four (4) years and a fine of not less than One hundred thousand Philippine pesos (Php100,000.00) but not more than Five hundred thousand Philippine pesos (Php500,000.00), at the discretion of the court: *Provided,* That the offender is not entitled to avail of the benefits under the Probation Law.

If the offender is a corporation, association, partnership or any juridical person, the penalty shall be imposed upon the responsible officers, as the case may be, who participated or failed to prevent its commission. If the offender is a juridical person, the court may suspend or revoke its license. If the offender is an alien, he shall, in addition to the penalties herein prescribed, be deported without further proceedings after serving the penalties herein prescribed. If the offender is a public official or employee, he shall, in addition to the penalties prescribed herein, suffer perpetual or temporary absolute disqualification from office, as the case may be.

(h) *Breach of Confidentiality.* When reporting covered transactions to the AMLC, covered institutions and their officers, employees, representatives, agents, advisors, consultants or associates are prohibited from communicating, directly or indirectly, in any manner or by any means, to any person, entity, or the media, the fact that a covered transaction report was made, the contents thereof, or any other information in relation thereto. Neither may such reporting be published or aired in any manner or form by the mass media, electronic mail, or other similar devices. Violation of this provision shall constitute the offense of breach of confidentiality punished under Section 14 (d) of the AMLA with imprisonment from three (3) to eight (8) years and a fine of not less than Five hundred thousand Philippine pesos (Php500,000.00) but not more than One million Philippine pesos (Php1,000,000.00).

(i) *File of Covered Transactions.* – Covered institutions shall maintain a complete file on all covered transactions that have been reported to the AMLC. Covered institutions shall undertake the necessary adequate security measures to ensure the confidentiality of such file. The file of covered transactions shall be kept for at least five (5) years: *Provided,* That if money laundering cases based thereon have been filed in court, the file must be retained beyond the five(5)-year period until it is confirmed that the case has been finally resolved or terminated by the court.

Sec. 3. *Authority to Freeze Accounts.* –

(a) The AMLC is authorized under Sections 6 (6) and 10 of the AMLA to freeze any account or any monetary instrument or property subject thereof upon determination that probable cause exists that the same is in any way related to any unlawful activity and/or money laundering offense. The AMLC may freeze any account or any monetary instrument or property subject thereof prior to the institution or in the course of, the criminal proceedings involving the unlawful activity and/or money laundering offense to which said account, monetary instrument or property is any way related. For purposes of Section 10 of the AMLA and Section 3, Rule 3 of these Rules, probable cause includes such facts and circumstances which would lead a reasonably discreet, prudent or cautious man to believe that an unlawful activity and/or a money laundering offense is about to be, is being or has been committed and that the account or any monetary instrument or property subject thereof sought to be frozen is in any way related to said unlawful activity and/or money laundering offense.

(b) The freeze order on such account shall be effective immediately for a period not exceeding fifteen (15) days.

(c) The AMLC must serve notice of the freeze order upon the covered institution concerned and the owner or holder of the deposit, investment or similar account, simultaneously with the issuance thereof. Upon receipt of the notice of the freeze order, the covered institution concerned shall immediately stop, freeze, block, suspend or otherwise place under its absolute control the account and the monetary instrument or property subject thereof.

(d) The owner or holder of the account so notified shall have a non-extendible period of seventy-two (72) hours upon receipt of the notice to file a verified explanation with the AMLC why the freeze order should be lifted. Failure of the owner or holder of the account to file such verified explanation shall be deemed waiver of his right to question the freeze order.

(e) The AMLC shall have seventy-two (72) hours from receipt of the written explanation of the owner or holder of the frozen account to resolve the same. If the AMLC fails to act within said period, the freeze order shall automatically be dissolved. However, the covered institution shall not lift the freeze order without securing official confirmation from the AMLC.

(f) Before the fifteen (15)-day period expires, the AMLC may apply in court for an extension of said period. Upon the timely filing of such application and pending the decision of the court to extend the period, said period shall be suspended and the freeze order shall remain effective.

(g) In case the court denies the application for extension, the freeze order shall remain effective only for the balance of the fifteen (15)-day period.

(h) No court shall issue a temporary restraining order or writ of injunction against any freeze order issued by the AMLC or any court order extending period of effectivity of the freeze order except the Court of Appeals or the Supreme Court.

(i) No assets shall be frozen to the prejudice of a candidate for an electoral office during an election period.

Sec. 4. *Authority to Inquire into Accounts*. –

(a) The AMLC is authorized under Section 7 (2) of the AMLA to issue orders addressed to the appropriate Supervising Authority or any covered institution to determine and reveal the true identity of the owner of any monetary instrument or property subject of a covered transaction report, or a request for assistance from a foreign State, or believed by the AMLC, on the basis of substantial evidence, to be, in whole or in part, wherever located, representing, involving, or related to, directly or indirectly, in any manner or by any means, the proceeds of an unlawful activity. For purposes of the AMLA and these Rules, substantial evidence includes such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

(b) In case of any violation of the AMLA involving bank deposits and investments, the AMLC may inquire into or examine any particular deposit or investment with any banking institution or non-bank financial institution upon order of any competent court when the AMLC has established that there is probable cause that the deposits or investments involved are in any way related to any unlawful activity and/or money laundering offense. The AMLC may file the application for authority to inquire into or examine any particular bank deposit or investment in court, prior to the institution or in the course of, the criminal proceedings involving the unlawful activity and/or money laundering offense to which said bank deposit or investment is any way related. For purposes of Section 11 of the AMLA

and Section 4, Rule 3 of these Rules, probable cause includes such facts and circumstances which would lead a reasonably discreet, prudent or cautious man to believe that an unlawful activity and/or a money laundering offense is about to be, is being or has been committed and that the bank deposit or investment sought to be inquired into or examined is in any way related to said unlawful activity and/or money laundering offense.

Sec. 5. *Authority to Institute Civil Forfeiture Proceedings.* – The AMLC is authorized under Section 7 (3) of the AMLA to institute civil forfeiture proceedings and all other remedial proceedings through the Office of the Solicitor General.

Sec. 6. *Authority to Assist the United Nations and other International Organizations and Foreign States.* – The AMLC is authorized under Sections 7 (8) and 13 (b) and (d) of the AMLA to receive and take action in respect of any request of foreign states for assistance in their own anti-money laundering operations. It is also authorized under Section 7 (7) of the AMLA to cooperate with the National Government and/or take appropriate action in respect of conventions, resolutions and other directives of the United Nations (UN), the UN Security Council, and other international organizations of which the Philippines is a member. However, the AMLC may refuse to comply with any such request, convention, resolution or directive where the action sought therein contravenes the provision of the Constitution or the execution thereof is likely to prejudice the national interest of the Philippines.

Sec. 7. *Authority to Develop and Implement Educational Programs.* – The AMLC is authorized under Section 7 (9) of the AMLA to develop educational programs on the pernicious effects of money laundering, the methods and techniques used in money laundering, the viable means of preventing money laundering and the effective ways of prosecuting and punishing offenders. The AMLC shall conduct nationwide information campaigns to heighten awareness of the public of their civic duty as citizens to report any and all activities which engender reasonable belief that a money laundering offense under Section 4 of the AMLA is about to be, is being or has been committed.

Sec. 8. *Authority to Issue, Clarify and Amend the Rules and Regulations Implementing R. A. No. 9160.* – The AMLC is authorized under Sections 7 (7), 18 and 19 of the AMLA to promulgate as well as clarify and/or amend, as may be necessary, these Rules. The AMLC may make appropriate issuances for this purpose.

Sec. 9. *Authority to Establish Information Sharing System.* – Subject to such limitations as provided for by law, the AMLC is authorized under Section 7 (7) of the AMLA to establish an information sharing system that will enable the AMLC to store, track and analyze money laundering transactions for the resolute prevention, detection and investigation of money laundering offenses. For this purpose, the AMLC shall install a computerized system that will be used in the creation and maintenance of an information database. The AMLC is also authorized, under Section 7 (9) of the AMLA to enter into memoranda of agreement with the intelligence units of the Armed Forces of the Philippines, the Philippine National Police, the Department of Finance, the Department of Justice, as well as their attached agencies, and other domestic or transnational governmental or non-governmental organizations or groups for sharing of all information that may, in any way, facilitate the resolute prevention, investigation

and prosecution of money laundering offenses and other violations of the AMLA.

Sec. 10. *Authority to Establish System of Incentives and Rewards.* – The AMLC is authorized under Section 15 of the AMLA to establish a system of special incentives and rewards to be given to the appropriate government agency and its personnel that led and initiated the investigation, prosecution, and conviction of persons involved in money laundering offenses under Section 4 of the AMLA. Any monetary reward shall be made payable out of the funds appropriated by Congress.

Sec. 11. *Other Inherent, Necessary, Implied or Incidental Powers.* – The AMLC shall perform such other functions and exercise such other powers as may be inherent, necessary, implied or incidental to the functions assigned, and powers granted, to it under the AMLA for the purpose of carrying out the declared policy of the AMLA.

RULE 4
MONEY LAUNDERING OFFENSES

Section 1. *Money Laundering Offenses and their Corresponding Penalties.* – Money laundering is a crime whereby the proceeds of an unlawful activity are transacted, thereby making them appear to have originated from legitimate sources. It is a process comprising of three (3) stages, namely, placement or the physical disposal of the criminal proceeds, layering or the separation of the criminal proceeds from their source by creating layers of financial transactions to disguise the audit trail, and integration or the provision of apparent legitimacy to the criminal proceeds. Any transaction involving such criminal proceeds or attempt to transact the same during the placement, layering or integration stage shall constitute the crime of money laundering.

(a) When it is committed by a person who, knowing that any monetary instrument or property represents, involves, or relates to, the proceeds of any unlawful activity, transacts or attempts to transact said monetary instrument or property, the penalty is imprisonment from seven (7) to fourteen (14) years and a fine of not less than Three million Philippine pesos (Php3,000,000.00) but not more than twice the value of the monetary instrument or property involved in the offense.

(b) When it is committed by a person who, knowing that any monetary instrument or property involves the proceeds of any unlawful activity, performs or fails to perform any act, as a result of which he facilitates the offense of money laundering referred to in paragraph (a) above, the penalty is imprisonment from four (4) to seven (7) years and a fine of not less than One million five hundred thousand Philippine pesos (Php1,500,000.00) but not more than Three million Philippine pesos (Php3,000,000.00).

(c) When it is committed by a person who, knowing that any monetary instrument or property is required under this Act to be disclosed and filed with the AMLC, fails to do so, the penalty is imprisonment from six (6) months to four (4) years or a fine of not less than One hundred thousand Philippine pesos (Php100,000.00) but not more than Five hundred thousand Philippine pesos (Php500,000.00), or both.

Sec. 2. *Unlawful Activities.* - These refer to any act or omission or series or combination thereof involving or having relation to the following:

(a) Kidnapping for ransom under Article of Act No. 3815, the Revised Penal Code, as amended;

(b) Robbery and extortion under Articles 294, 295, 296, 299, 300, 301 and 302 of the same Code;

(c) Qualified theft under Article 310 of the same Code;

(d) Swindling under Article 315 of the same Code;

(e) Piracy on the high seas under the same Code and Presidential Decree (P.D.) No. 532;

(f) Destructive arson and murder as defined under the same Code and hijacking and other violations under Republic Act (R. A.) No. 6235, including those perpetrated by terrorists against non-combatant persons and similar targets;

(g) Jueteng and Masiao punished as illegal gambling under P.D. No. 1602;

(h) Smuggling under R. A. Nos. 455 and 1937;

(i) Section 3, paragraphs B, C, E, G, H and I of R. A. No. 3019, the Anti-Graft and Corrupt Practices Act, as amended;

(j) Sections 3, 4, 5, 7, 8 and 9 of Article Two of R. A. No. 6425, the Dangerous Drugs Act of 1972 as amended;

(k) Plunder under R. A. No. 7080, as amended;

(l) Violations under R. A. No. 8792, the Electronic Commerce ct of 2000;

(m) Fraudulent practices and other violations under R. A. No. 8799, the Securities Regulation Code of 2000; and

(n) Felonies or offenses of a similar nature that are punishable under the penal laws of other countries.

Sec. 3. *Jurisdiction of Money Laundering Cases*. – The Regional Trial Courts shall have the jurisdiction to try all cases on money laundering. Those committed by public officers and private persons who are in conspiracy with such public officers shall be under the jurisdiction of the Sandiganbayan.

Sec. 4. *Prosecution of Money Laundering*. –

(a) Any person may be charged with and convicted of both the offense of money laundering and the unlawful activity as defined under Section 3 (i) of the AMLA.

(b) Any proceeding relating to the unlawful activity shall be given precedence over the prosecution of any offense or violation under the AMLA without prejudice to the issuance by the AMLC of a freeze order with respect to the deposit, investment or similar account involved therein and resort to other remedies provided under the AMLA.

(c) Knowledge of the offender that any monetary instrument or property represents, involves, or relates to the proceeds of an unlawful activity or that any monetary instrument or property is required under the AMLA to be disclosed and filed with the AMLC, may be established by direct evidence or inferred from the attendant circumstances.

(d) All the elements of every money laundering offense under Section 4 of the AMLA must be proved by evidence beyond reasonable doubt, including the element of knowledge that the monetary instrument or property represents, involves or relates to the proceeds of any unlawful activity. No element of the unlawful activity, however, including the identity of the perpetrators and the details of the actual commission of the

unlawful activity need be established by proof beyond reasonable doubt. The elements of the offense of money laundering are separate and distinct from the elements of the felony or offense constituting the unlawful activity.

(e) No case for money laundering may be filed to the prejudice of a candidate for an electoral office during an election period. However, this prohibition shall not constitute a bar to the prosecution of any money laundering case filed in court before the election period.

(f) The AMLC may apply, in the course of the criminal proceedings, for provisional remedies to prevent the monetary instrument or property subject thereof from being removed, concealed, converted, commingled with other property or otherwise to prevent its being found or taken by the applicant or otherwise placed or taken beyond the jurisdiction of the court. However, no assets shall be attached to the prejudice of a candidate for an electoral office during an election period.

(g) Where there is conviction for money laundering under Section 4 of the AMLA, the court shall issue a judgment of forfeiture in favor of the Government of the Philippines with respect to the monetary instrument or property found to be proceeds of one or more unlawful activities. However, no assets shall be forfeited to the prejudice of a candidate for an electoral office during an election period.

(h) Restitution for any aggrieved party shall be governed by the provisions of the New Civil Code.

RULE 5
PREVENTION OF MONEY LAUNDERING

Section 1. *Customer Identification Requirements.* –

(a) *True Identity of Individuals as Clients:* Covered institutions shall establish appropriate systems and methods based on internationally compliant standards and adequate internal controls for verifying and recording the true and full identity of their customers.

For this purpose, they shall develop clear customer acceptance policies and procedures when conducting business relations or specific transactions, such as, but not limited to, opening of deposit accounts, accepting deposit substitutes, entering into trust and other fiduciary transactions, renting of safety deposit boxes, performing remittances and other large cash transactions.

When dealing with customers who are acting as trustee, nominee, agent or in any capacity for and on behalf of another, covered institutions shall verify and record the true and full identity of the person(s) on whose behalf a transaction is being conducted. Covered institutions shall also establish and record the true and full identity of such trustees, nominees, agents and other persons and the nature of their capacity and duties. In case a covered institution has doubts as to whether such persons are being used as dummies in circumvention of existing laws, it shall

immediately make the necessary inquiries to verify the status of the business relationship between the parties.

(b) *Minimum Information/Documents required for Individual Customers*. Covered institutions shall require customers to produce original documents of identity issued by an official authority, preferably bearing a photograph of the customer. Examples of such documents are identity cards and passports. Where practicable, file copies of documents of identity are to be kept. Alternatively, the identity card or passport number and/or other relevant details are to be recorded. The following minimum information/documents shall be obtained from individual customers:

(1) Name;
(2) Present address;
(3) Permanent address;
(4) Date and place of birth;
(5) Nationality;
(6) Nature of work and name of employer or nature of self-employment/business;
(7) Contact numbers;
(8) Tax identification number, Social Security System number or Government Service and Insurance System number;
(9) Specimen signature;
(10) Source of fund(s); and
(11) Names of beneficiaries in case of insurance contracts and whenever applicable.

(c) *Minimum Information/Documents Required for Corporate and Juridical Entities*. Before establishing business relationships, covered institutions shall endeavor to ensure that the customer that is a corporate or juridical entity has not been or is not in the process of being, dissolved, wound up or voided, or that its business or operations has not been or is not in the process of being, closed, shut down, phased out, or terminated. Dealings with shell companies and corporations, being legal entities which have no business substance in their own right but through which financial transactions may be conducted, should be undertaken with extreme caution. The following minimum information/documents shall be obtained from customers that are corporate or juridical entities, including shell companies and corporations:

(1) Articles of Incorporation/Partnership;
(2) By-laws;
(3) Official address or principal business address;
(4) List of directors/partners;
(5) List of principal stockholders owning at least two percent (2%) of the capital stock;
(6) Contact numbers;
(7) Beneficial owners, if any; and
(8) Verification of the authority and identification of the person purporting to act on behalf of the client.

(d) *Verification without Face-to-Face Contact.* – To the extent and through such means allowed under existing laws and applicable rules and

regulations of the BSP, the SEC and the IC, covered institutions may create new accounts without face-to-face contact. However, such new accounts shall not be valid and effective unless the customer complies with the requirements under the two (2) immediately preceding subsections and such other requirements that have been or will be imposed by the BSP, the SEC and the IC, as the case may be, pursuant to Rule 5 of these Rules and/or their respective charters, within ten (10) days from the creation of the new accounts. Unless such requirements have been fully complied with, no transaction shall be honored by any covered institution respecting an account created without face-to-face contact.

(e) *Acquisition of Another Covered Institution.* – When a covered institution acquires the business of another covered institution, either in whole or as a product portfolio, it is not necessary for the identity of all existing customers to be re-established: *Provided,* That all customer account records are acquired with the business and due diligence inquiries do not raise any doubt as to whether or not the acquired business has fully complied with all the requirements under the AMLA and these Rules.

(f) *Risk-monitoring and Review*. Covered institutions shall adopt programs for on-going monitoring of high-risk accounts and risk management, subject to such rules and regulations as may be prescribed by the appropriate Supervising Authority. Regular reviews of customer base should be undertaken to ensure that the nature of accounts and potential risks are properly identified, monitored and controlled.

(g) *Prohibition against Certain Accounts*. Covered institutions shall maintain accounts only in the true name of the account owner or holder. The provisions of existing laws to the contrary notwithstanding, anonymous accounts, accounts under fictitious names, incorrect name accounts and all other similar accounts shall be absolutely prohibited.

(h) *Numbered Accounts.* Peso and foreign currency non-checking numbered accounts shall be allowed: *Provided,* That the true identity of the customer is satisfactorily established based on official and other reliable documents and records, and that the information and documents required under Section 1 (b) and (c) of Rule 5 of these Rules are obtained and recorded by the covered institution. The BSP may conduct annual testing for the purpose of determining the existence and true identity of the owners of such accounts.

Sec. 2. *Recordkeeping Requirements.* – Covered transactions shall prepare and maintain documentation on their customer accounts, relationships and transactions such that any account, relationship or transaction can be so reconstructed as to enable the AMLC, the law enforcement and prosecutorial authorities, and/or the courts to establish an audit trail for money laundering.

(a) *Existing and New Accounts and New Transactions.* All records of existing and new accounts and of new transactions shall be maintained and safely stored for five (5) years from October 17, 2001 or from the dates of the accounts or transactions, whichever is later.

(b) *Closed Accounts.* With respect to closed accounts, the records on customer identification, account files and business correspondence shall

be preserved and safely stored for at least five (5) years from the dates when they were closed.

(c) *Retention of Records in Case a Money Laundering Case Has Been Filed in Court.* – If a money laundering case based on any record kept by the covered institution concerned has been filed in court, said file must be retained beyond the period stipulated in the two (2) immediately preceding subsections, as the case may be, until it is confirmed that the case has been finally resolved or terminated by the court.

(d) *Form of Records.* – Records shall be retained as originals or certified true copies on paper, microfilm or electronic form: *Provided,* That such forms are admissible in court pursuant to existing laws and the applicable rules promulgated by the Supreme Court.

(e) *Penalties for Failure to Keep Records*. The penalty of imprisonment from six (6) months to one (1) year or a fine of not less than One hundred thousand Philippine pesos (Php100,000.00) but not more than Five hundred thousand Philippine pesos (Php500,000.00), or both, shall be imposed on a person convicted for a violation of Section 9 (b) of the AMLA.

Sec. 3. *Money Laundering Prevention Programs.* – Covered institutions shall formulate their respective money laundering prevention programs in accordance with Section 9 and other pertinent provisions of the AMLA and Sections 1 and 2 of Rules 3 and 4 and other pertinent provisions of these Rules, subject to such guidelines as may be prescribed by the Supervising Authority and approved by the AMLC. Every covered institution shall submit its own money laundering program to the Supervising Authority concerned within a non-extendible period of sixty (60) days from the date of effectivity of these Rules.

Every money laundering program shall establish detailed procedures implementing a comprehensive, institution-wide "know-your-client" policy, set-up an effective dissemination of information on money laundering activities and their prevention, detection and reporting, adopt internal policies, procedures and controls, designate compliance officers at management level, institute adequate screening and recruitment procedures, and set-up an audit function to test the system.

Covered institutions shall adopt, as part of their money laundering programs, a system of flagging and monitoring transactions that qualify as covered transactions except that they involve amounts below the threshold to facilitate the process of aggregating them for purposes of future reporting of such transactions to the AMLC when their aggregated amounts breach the threshold. Covered institutions not subject to account secrecy laws shall incorporate in their money laundering programs the provisions of Section 1, Rule 3 of these Rules and such other guidelines for the voluntary reporting to the AMLC of all transactions that engender the reasonable belief that a money laundering offense is about to be, is being, or has been committed.

Sec. 4. *Training of Personnel.* – Covered institutions shall provide all their responsible officers and personnel with efficient and effective training and continuing education programs to enable them to fully comply with all their obligations under the AMLA and these Rules.

RULE 6
FORFEITURE

Section 1. *Civil Forfeiture.* - When there is a covered transaction report made, and the court has, in a petition filed for the purpose ordered seizure of any monetary instrument or property, in whole or in part, directly or indirectly, related to said report, the Revised Rules of Court on civil forfeiture shall apply. However, no assets shall be forfeited to the prejudice of a candidate for an electoral office during an election period.

Sec. 2. *Claim on Forfeited Assets.* - Where the court has issued an order of forfeiture of the monetary instrument or property in a criminal prosecution for any money laundering offense under Section 4 of the AMLA, the offender or any other person claiming an interest therein may apply, by verified petition, for a declaration that the same legitimately belongs to him and for segregation or exclusion of the monetary instrument or property corresponding thereto. The verified petition shall be filed with the court which rendered the judgment of conviction and order of forfeiture, within fifteen (15) days from the date of the order of forfeiture, in default of which the said order shall become final and executory. This provision shall apply in both civil and criminal forfeiture.

Sec. 3. *Payment in lieu of Forfeiture*. - Where the court has issued an order of forfeiture of the monetary instrument or property subject of a money laundering offense under Section 4 of the AMLA, and said order cannot be enforced because any particular monetary instrument or property cannot, with due diligence, be located, or it has been substantially altered, destroyed, diminished in value or otherwise rendered worthless by any act or omission, directly or indirectly, attributable to the offender, or it has been concealed, removed, converted or otherwise transferred to prevent the same from being found or to avoid forfeiture thereof, or it is located outside the Philippines or has been placed or brought outside the jurisdiction of the court, or it has been commingled with other monetary instruments or property belonging to either the offender himself or a third person or entity, thereby rendering the same difficult to identify or be segregated for purposes of forfeiture, the court may, instead of enforcing the order of forfeiture of the monetary instrument or property or part thereof or interest therein, accordingly order the convicted offender to pay an amount equal to the value of said monetary instrument or property. This provision shall apply in both civil and criminal forfeiture.

RULE 7
MUTUAL ASSISTANCE AMONG STATES

Section 1. *Request for Assistance from a Foreign State*. - Where a foreign state makes a request for assistance in the investigation or prosecution of a money laundering offense, the AMLC may execute the request or refuse to execute the same and inform the foreign state of any valid reason for not executing the request or for delaying the execution thereof. The principles of mutuality and reciprocity shall, for this purpose, be at all times recognized.

Sec. 2. *Powers of the AMLC to Act on a Request for Assistance from a Foreign State*. - The AMLC may execute a request for assistance from a foreign state by: (a) tracking down, freezing, restraining and seizing assets alleged to be proceeds of any unlawful activity under the procedures laid down in the AMLA and in these Rules; (b) giving information needed by the foreign state within the procedures laid down in the AMLA and in these Rules; and (c) applying for an order of forfeiture of any monetary instrument or property in the court: *Provided,* That the court shall not issue such an order unless the application is accompanied by an authenticated copy of the order of a court in the requesting state ordering the forfeiture of said monetary instrument or property of a person who has been convicted of a money laundering offense in the requesting state, and a certification or an affidavit of a competent officer of the requesting state stating that the conviction and the order of forfeiture are final and that no further appeal lies in respect of either.

Sec. 3. *Obtaining Assistance From Foreign States*. - The AMLC may make a request to any foreign state for assistance in (a) tracking down, freezing, restraining and seizing assets alleged to be proceeds of any unlawful activity; (b) obtaining information that it needs relating to any covered transaction, money laundering offense or any other matter directly or indirectly related thereto; (c) to the extent allowed by the law of the foreign state, applying with the proper court therein for an order to enter any premises belonging to or in the possession or control of, any or all of the persons named in said request, and/or search any or all such persons named therein and/or remove any document, material or object named in said request: *Provided,* That the documents accompanying the request in support of the application have been duly authenticated in accordance with the applicable law or regulation of the foreign state; and (d) applying for an order of forfeiture of any monetary instrument or property in the proper court in the foreign state: *Provided,* That the request is accompanied by an authenticated copy of the order of the Regional Trial Court ordering the forfeiture of said monetary instrument or property of a convicted offender and an affidavit of the clerk of court stating that the conviction and the order of forfeiture are final and that no further appeal lies in respect of either.

Sec. 4. *Limitations on Requests for Mutual Assistance*. - The AMLC may refuse to comply with any request for assistance where the action sought by the request contravenes any provision of the Constitution or the execution of a request is likely to prejudice the national interest of the Philippines, unless there is a treaty between the Philippines and the requesting state relating to the provision of assistance in relation to money laundering offenses.

Sec. 5. *Requirements for Requests for Mutual Assistance from Foreign States*. - A request for mutual assistance from a foreign state must (a) confirm that an investigation or prosecution is being conducted in respect of a money launderer named therein or that he has been convicted of any money laundering offense; (b) state the grounds on which any person is being investigated or prosecuted for money laundering or the details of his conviction; (c) give sufficient particulars as to the identity of said person; (d) give particulars sufficient to identify any covered institution believed to have any information, document, material or object which may be of assistance to the investigation or prosecution; (e) ask from the covered institution concerned any information, document, material or object which may be of assistance to the investigation or prosecution; (f) specify the manner in which and to whom said information, document, material or object obtained pursuant to said request, is to be produced; (g) give

all the particulars necessary for the issuance by the court in the requested state of the writs, orders or processes needed by the requesting state; and (8) contain such other information as may assist in the execution of the request.

Sec. 6. *Authentication of Documents*. - For purposes of Section 13 of the AMLA and Rule 7 of these Rules, a document is authenticated if the same is signed or certified by a judge, magistrate or equivalent officer in or of, the requesting state, and authenticated by the oath or affirmation of a witness or sealed with an official or public seal of a minister, secretary of state, or officer in or of, the government of the requesting state, or of the person administering the government or a department of the requesting territory, protectorate or colony. The certificate of authentication may also be made by a secretary of the embassy or legation, consul general, consul, vice consul, consular agent or any officer in the foreign service of the Philippines stationed in the foreign state in which the record is kept, and authenticated by the seal of his office.

Sec. 7. *Extradition*. – The Philippines shall negotiate for the inclusion of money laundering offenses as defined under Section 4 of the AMLA among the extraditable offenses in all future treaties.

RULE 8
AMENDMENTS AND EFFECTIVITY

Section 1. *Amendments*. – These Rules or any portion thereof may be amended by unanimous vote of the members of the AMLC and approved by the Congressional Oversight Committee as provided for under Section 19 of the AMLA.

Sec. 2. *Effectivity*. – These Rules shall take effect after its approval by the Congressional Oversight Committee and fifteen (15) days after the completion of its publication in the *Official Gazette* or in a newspaper of general circulation.

III. EXPLANATIONS

I . DEFINITIONS:

(a) "Covered institution" refers to:

(1) banks, non-banks, quasi-banks, trust entities, and all other institutions and their subsidiaries and affiliates supervised or regulated by the Bangko Sentral ng Pilipinas (BSP);

(2) insurance companies and all other institutions supervised or regulated by the Insurance Commission; and

(3)

a. securities dealers, brokers, salesmen, investment houses and other similar entities managing securities or rendering services as investment agent, advisor, or consultant;

b. mutual funds, close-end investment companies, common trust funds, pre-need companies and other similar entities;

c. foreign exchange corporations, money changers, money payment, remittance, and transfer companies and other similar entities; and

d. other entities administering or otherwise dealing in currency, commodities or financial derivatives based thereon, valuable objects, cash substitutes and other similar monetary instruments

or property supervised or regulated by the Securities and Exchange Commission.

(b) ***"Covered transaction"*** is a single, series, or combination of transactions involving a total amount in excess of Four Million Philippine pesos (PhP4,000,000.00) or an equivalent amount in foreign currency based on the prevailing exchange rate within five (5) consecutive banking days except those between a covered institution and a person who, at the time of the transaction was a properly identified client and the amount is commensurate with the business or financial capacity of the client; or those with an underlying legal or trade obligation, purpose, origin or economic justification.

It likewise refers to a single, series or combination or pattern of unusually large and complex transactions in excess of Four Million Philippine pesos (PhP4,000,000.00) especially cash deposits and investments having no credible purpose or origin, underlying trade obligation or contract.

II. MONETARY INSTRUMENT WHICH MAY BE SUBJECT OF MONEY LAUNDERING.

(c**)** ***"Monetary instrument"*** refers to:

(1) coins or currency of legal tender of the Philippines, or of any other country;

(2) drafts, checks and notes;

(3) securities or negotiable instruments, bonds, commercial papers, deposit certificates, trust certificates, custodial receipts or deposit substitute instruments, trading orders, transaction tickets and confirmations of sale or investments and money market instruments; and

(4) other similar instruments where title thereto passes to another by endorsement, assignment or delivery.

(d) ***"Offender"*** refers to any person who commits a money laundering offense.

(e) ***"Person"*** refers to any natural or juridical person.

(f) ***"Proceeds"*** refers to an amount derived or realized from an unlawful activity.

(g) ***"Supervising Authority"*** refers to the appropriate supervisory or regulatory agency, department or office supervising or regulating the covered institutions enumerated in Section 3(a).

(h) ***"Transaction"*** refers to any act establishing any right or obligation or giving rise to any contractual or legal relationship between the parties thereto. It also includes any movement of funds by any means with a covered institution.

III. UNLAWFUL ACTIVITIES HAVING RELATION TO MONEY LAUNDERING?

(i) ***Unlawful activity"*** refers to any act or omission or series or combination thereof involving or having relation to the following:

(1) Kidnapping for ransom under Article 267 of Act No. 3815, otherwise known as the Revised Penal Code, as amended;

(2) Sections 3, 4, 5, 7, 8 and 9 of Article Two of Republic Act No. 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972;

(3) Section 3 paragraphs B, C, E, G, H and I of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act;

(4) Plunder under Republic Act No. 7080, as amended;

(5) Robbery and extortion under Articles 294, 295, 296, 299, 300, 301 and 302 of the Revised Penal Code, as amended;

(6) Jueteng and Masiao punished as illegal gambling under Presidential Decree No. 1602;

(7) Piracy on the high seas under the Revised Penal Code, as amended and Presidential Decree No. 532;

(8) Qualified theft under Article 310 of the Revised Penal Code, as amended;

(9) Swindling under Article 315 of the Revised Penal Code, as amended;

(10) Smuggling under Republic Act Nos. 455 and 1937;

(11) Violations under Republic Act No. 8792, otherwise known as the Electronic Commerce Act of 2000;

(12) Hijacking and other violations under Republic Act No. 6235; destructive arson and murder, as defined under the Revised Penal Code, as amended, including those perpetrated by terrorists against non-combatant persons and similar targets;

(13) Fraudulent practices and other violations under Republic Act No. 8799, otherwise known as the Securities Regulation Code of 2000;

(14) Felonies or offenses of a similar nature that are punishable under the penal laws of other countries.

III. NATURE OF THE CRIME OF MONEY LAUNDERING.

Money laundering is a crime whereby the proceeds of an unlawful activity are transacted, thereby making them appear to have originated from legitimate sources. It is committed by the following:

(a) Any person knowing that any monetary instrument or property represents, involves, or relates to, the proceeds of any unlawful activity, transacts or attempts to transact said monetary instrument or property.

(b) Any person knowing that any monetary instrument or property involves the proceeds of any unlawful activity, performs or fails to perform any act as a result of which he facilitates the offense of money laundering referred to in paragraph (a) above.

(c) Any person knowing that any monetary instrument or property is required under this Act to be disclosed and filed with the Anti-Money Laundering Council (AMLC), fails to do so.

IV. COURT OF JURISDICTION OVER CASES OF MONEY LAUNDERING.

The regional trial courts shall have jurisdiction to try all cases on money laundering. Those committed by public officers and private persons who are in conspiracy with such public officers shall be under the jurisdiction of the Sandiganbayan.

WHO MAY BE PROSECUTED FOR MONEY LAUNDERING?

(a) Any person may be charged with and convicted of both the offense of money laundering and the unlawful activity as herein defined.

(b) Any proceeding relating to the unlawful activity shall be given precedence over the prosecution of any offense or violation under this Act without prejudice to the freezing and other remedies provided.

V. THE POWERS OF AMLC?

SEC. 7. *Creation of Anti-Money Laundering Council (AMLC).* – The Anti-Money Laundering Council is hereby created and shall be composed of the Governor of the Bangko Sentral ng Pilipinas as chairman, the Commissioner of the Insurance Commission and the Chairman of the Securities and Exchange Commission as members. The AMLC shall act unanimously in the discharge of its functions as defined hereunder:

(1) to require and receive covered transaction reports from covered institutions;

(2) to issue orders addressed to the appropriate Supervising Authority or the covered institution to determine the true identity of the owner of any monetary instrument or property subject of a covered transaction report or request for assistance from a foreign State, or believed by the Council, on the basis of substantial evidence, to be, in whole or in part, wherever located, representing, involving, or related to, directly or indirectly, in any manner or by any means, the proceeds of an unlawful activity;

(3) to institute civil forfeiture proceedings and all other remedial proceedings through the Office of the Solicitor General;

(4) to cause the filing of complaints with the Department of Justice or the Ombudsman for the prosecution of money laundering offenses;

(5) to initiate investigations of covered transactions, money laundering activities and other violations of this Act;

(6) to freeze any monetary instrument or property alleged to be proceeds of any unlawful activity;

(7) to implement such measures as may be necessary and justified under this Act to counteract money laundering;

(8) to receive and take action in respect of, any request from foreign states for assistance in their own anti-money laundering operations provided in this Act;

(9) to develop educational programs on the pernicious effects of money laundering, the methods and techniques used in money laundering, the viable means of preventing money laundering and the effective ways of prosecuting and punishing offenders; and

(10) to enlist the assistance of any branch, department, bureau, office, agency or instrumentality of the government, including government-owned and -controlled corporations, in undertaking any and all anti-money laundering operations, which may include the use of its personnel, facilities and resources for the more resolute prevention, detection and investigation of money laundering offenses and prosecution of offenders.

VI. MEASURES TO BE UNDERTAKEN BY BANKS AND UNDER FINANCIAL INSTITUTION TO PREVENT MONEY LAUNDERING.

(a) ***Customer Identification***. - Covered institutions shall establish and record the true identity of its clients based on official documents. They shall maintain a system of verifying the true identity of their clients and, in case of corporate clients, require a system of verifying their legal existence and organizational structure, as well as the authority and identification of all persons purporting to act on their behalf.

The provisions of existing laws to the contrary notwithstanding, anonymous accounts, accounts under fictitious names, and all other similar accounts shall be absolutely prohibited. Peso and foreign currency non-checking numbered accounts shall be allowed. The BSP may conduct annual testing solely limited to the determination of the existence and true identity of the owners of such accounts.

(b) ***Record Keeping***. - All records of all transactions of covered institutions shall be maintained and safely stored for five (5) years from the dates of transactions. With respect to closed accounts, the records on customer identification, account files and business correspondence, shall be preserved and safely stored for at least five (5) years from the dates when they were closed.

(c) ***Reporting of Covered Transactions***. - Covered institutions shall report to the AMLC all covered transactions within five (5) working days from occurrence thereof, unless the Supervising Authority concerned prescribes a longer period not exceeding ten (10) working days.

When reporting covered transactions to the AMLC, covered institutions and their officers, employees, representatives, agents, advisors, consultants or associates shall not be deemed to have violated Republic Act No. 1405, as amended; Republic Act No. 6426, as amended; Republic Act No. 8791 and other similar laws, but are prohibited from communicating, directly or indirectly, in any manner or by any means, to any person the fact that a covered transaction report was made, the contents thereof, or any other information in relation thereto. In case of violation thereof, the concerned officer, employee, representative, agent, advisor, consultant or associate of the covered institution, shall be criminally liable.

However, no administrative, criminal or civil proceedings, shall lie against any person for having made a covered transaction report in the regular performance of his duties and in good faith, whether or not such reporting results in any criminal prosecution under this Act or any other Philippine law.

When reporting covered transactions to the AMLC, covered institutions and their officers, employees, representatives, agents, advisors, consultants or associates are prohibited from communicating, directly or indirectly, in any manner or by any means, to any person, entity, the media, the fact that a covered transaction report was made, the contents thereof, or any other information in relation thereto. Neither may such reporting be published or aired in any manner or form by the mass media, electronic mail, or other similar devices. In case of violation thereof, the concerned officer, employee, representative, agent, advisor, consultant or associate of the covered institution, or media shall be held criminally liable.

AUTHORITY TO FREEZE THE ACCOUNTS OF MONEY –LAUNDERERS:

Upon determination that probable cause exists that any deposit or similar account is in any way related to an unlawful activity, the AMLC may issue a freeze order, which shall be effective immediately, on the account for a period not exceeding fifteen (15) days.

Step 1. Notice to the depositor that his account has been frozen shall be issued simultaneously with the issuance of the freeze order.

Step 2. The depositor shall have seventy-two (72) hours upon receipt of the notice to explain why the freeze order should be lifted.

Step 3. The AMLC has seventy-two (72) hours to dispose of the depositor's explanation. If it fails to act within seventy-two (72) hours from receipt of the depositor's explanation, the freeze order shall automatically be dissolved.

Step 4. The fifteen (15)-day freeze order of the AMLC may be extended upon order of the court, provided that the fifteen (15)-day period shall be tolled pending the court's decision to extend the period.

MAY THE COURT ISSUE TRO OR WRIT OF INJUNCTION AGAINST FREEZE ORDER ISSUED BY AMLC?

No court shall issue a temporary restraining order or writ of injunction against any freeze order issued by the AMLC except the Court of Appeals or the Supreme Court.

WHEN MAY THE AMLC INQUIRE OR EXAMINE BANK ACCOUNTS?

Notwithstanding the provisions of Republic Act No. 1405, as amended; Republic Act No. 6426, as amended; Republic Act No. 8791, and other laws, the AMLC may inquire into or examine any particular deposit or investment with any banking institution or non-bank financial institution upon order of any competent court in cases of violation of this Act when it has been established that there is probable cause that the deposits or investments involved are in any way related to a money laundering offense: *Provided*, That this provision shall not apply to deposits and investments made prior to the effectivity of this Act.

WHAT ARE THE FORFEITURES UNDER R.A. 9160?

a) ***Civil Forfeiture***. - When there is a covered transaction report made, and the court has, in a petition filed for the purpose ordered seizure of any monetary instrument or property, in whole or in part, directly or indirectly, related to said report, the Revised Rules of Court on civil forfeiture shall apply.

(b) ***Claim on Forfeited Assets***. - Where the court has issued an order of forfeiture of the monetary instrument or property in a criminal prosecution for any money laundering offense defined under Section 4 of this Act, the offender or any other person claiming an interest therein may apply, by verified petition, for a declaration that the same legitimately belongs to him and for segregation or exclusion of the monetary instrument or property corresponding thereto. The verified petition shall be filed with the court which rendered the judgment of conviction and order of forfeiture, within fifteen (15) days from the date of the order of forfeiture, in default of which the said order shall become final and executory. This provision shall apply in both civil and criminal forfeiture.

(**c)** ***Payment in Lieu of Forfeiture***. - Where the court has issued an order of forfeiture of the monetary instrument or property subject of a money laundering offense defined under Section 4, and said order cannot be enforced because any particular monetary instrument or property cannot, with due diligence, be located, or it has been substantially altered, destroyed, diminished in value or otherwise rendered worthless by any act or omission, directly or indirectly, attributable to the offender, or it has been concealed, removed, converted or otherwise transferred to prevent the same from being found or to avoid forfeiture thereof, or it is located outside the Philippines or has been placed or brought outside the jurisdiction of the court, or it has been commingled with other monetary instruments or property belonging to either the offender himself or a third person or entity, thereby rendering the same difficult to identify or be segregated for purposes of forfeiture, the court may, instead of enforcing the order of forfeiture of the monetary instrument or property or part thereof or interest therein, accordingly order the convicted offender to pay an amount equal to the value of said monetary instrument or property. This provision shall apply in both civil and criminal forfeiture.

IS THE AMLC AUTHORIZED TO REQUEST FOR ASSISTANCE FROM FOREIGN STATES TO FREEZE, TRACK DOWN AND SEIZE ASSETS ALLEGED TO BE PROCEEDS OF ILLEGAL ACTIVITY?

(a) ***Request for Assistance from a Foreign State.*** - Where a foreign State makes a request for assistance in the investigation or prosecution of a money laundering offense, the AMLC may execute the request or refuse to execute the same and inform the foreign State of any valid reason for not executing the request or for delaying the execution thereof. The principles of mutuality and reciprocity shall, for this purpose, be at all times recognized.

(b) ***Powers of the AMLC to Act on a Request for Assistance from a Foreign State.*** - The AMLC may execute a request for assistance from a foreign State by: (1) tracking down, freezing, restraining and seizing assets alleged to be proceeds of any unlawful activity under the procedures laid down in this Act; (2) giving information needed by the foreign State within the procedures laid down in this Act; and (3) applying for an order of forfeiture of any monetary instrument or property in the court: *Provided,* That the court shall not issue such an order unless the application is accompanied by an authenticated copy of the order of a court in the requesting State ordering the forfeiture of said monetary instrument or property of a person who has been convicted of a money laundering offense in the requesting State, and a certification or an affidavit of a competent officer of the requesting State stating that the conviction and the order of forfeiture are final and that no further appeal lies in respect of either.

(c) ***Obtaining Assistance from Foreign States.*** - The AMLC may make a request to any foreign State for assistance in (1) tracking down, freezing, restraining and seizing assets alleged to be proceeds of any unlawful activity; (2) obtaining information that it needs relating to any covered transaction, money laundering offense or any other matter directly or indirectly related thereto; (3) to the extent allowed by the law of the foreign State, applying with the proper court therein for an order to enter any premises belonging to or in the possession or control of, any or all of the persons named in said request, and/or search any or all such persons named therein and/or remove any document, material or object named in said request: *Provided*, That the documents accompanying the request in support of the application have been duly authenticated in accordance with the applicable law or regulation of the foreign State; and (4) applying for an order of forfeiture of any monetary instrument or property in the proper court in the foreign State: *Provided,* That the request is accompanied by an authenticated copy of the order of the regional trial court ordering the forfeiture of said monetary instrument or property of a convicted offender and an affidavit of the clerk of

court stating that the conviction and the order of forfeiture are final and that no further appeal lies in respect of either.

WHEN MAY THE AMLC REFUSE ON REQUEST OF MUTUAL ASSISTANCE SOUGHT BY OTHER STATES?

(d) *Limitations on Requests for Mutual Assistance*. - The AMLC may refuse to comply with any request for assistance where the action sought by the request contravenes any provision of the Constitution or the execution of a request is likely to prejudice the national interest of the Philippines unless there is a treaty between the Philippines and the requesting State relating to the provision of assistance in relation to money laundering offenses.

WHAT ARE THE REQUIREMENTS FOR REQUEST FOR MUTUAL ASSISTANCE OF FOREIGN STATES?

A request for mutual assistance from a foreign State must

(1) confirm that an investigation or prosecution is being conducted in respect of a money launderer named therein or that he has been convicted of any money laundering offense;

(2) state the grounds on which any person is being investigated or prosecuted for money laundering or the details of his conviction;

(3) give sufficient particulars as to the identity of said person;

(4) give particulars sufficient to identify any covered institution believed to have any information, document, material or object which may be of assistance to the investigation or prosecution;

(5) ask from the covered institution concerned any information, document, material or object which may be of assistance to the investigation or prosecution;

(6) specify the manner in which and to whom said information, document, material or object obtained pursuant to said request, is to be produced;

(7) give all the particulars necessary for the issuance by the court in the requested State of the writs, orders or processes needed by the requesting State; and

(8) contain such other information as may assist in the execution of the request.

WHAT IS THE POLICY CONCERNING AUTHENTICATION OF DOCUMENTS UNDER THIS ACT ?

a document is authenticated if the same is signed or certified by a judge, magistrate or equivalent officer in or of, the requesting State, and authenticated by the oath or affirmation of a witness or sealed with an official or public seal of a minister, secretary of State, or officer in or of, the government of the requesting State, or of the person administering the government or a department of the requesting territory, protectorate or colony. The certificate of authentication may also be made by a secretary of the embassy or legation, consul general, consul, vice consul, consular agent or any officer in the foreign service of the Philippines stationed in the foreign State in which the record is kept, and authenticated by the seal of his office.

WHAT ARE THE PENALTIES FOR THE CRIME OF MONEY LAUNDERING?

The penalty of imprisonment ranging from seven (7) to fourteen (14) years and a fine of not less than Three Million Philippine pesos (PhP3,000,000.00) but not more than twice the value of the monetary instrument or property involved in the offense, shall be imposed upon a person convicted under Section 4(a) of this Act.

The penalty of imprisonment from four (4) to seven (7) years and a fine of not less than One million five hundred thousand Philippine pesos (PhP1,500,000.00) but not more than Three million Philippine pesos (PhP3,000,000.00), shall be imposed upon a person convicted under Section 4(b) of this Act.

The penalty of imprisonment from six (6) months to four (4) years or a fine of not less than One hundred thousand Philippine pesos (PhP100,000.00) but not more than Five hundred thousand Philippine pesos (PhP500,000.00), or both, shall be imposed on a person convicted under Section 4(c) of this Act.

(b) ***Penalties for Failure to Keep Records.*** - The penalty of imprisonment from six (6) months to one (1) year or a fine of not less than One hundred thousand Philippine pesos (PhP100,000.00) but not more than Five hundred thousand Philippine pesos (PhP500,000.00), or both, shall be imposed on a person convicted under Section 9(b) of this Act.

(c) ***Malicious Reporting***. - Any person who, with malice, or in bad faith, reports or files a completely unwarranted or false information relative to money laundering transaction against any person shall be subject to a penalty of six (6) months to four (4) years imprisonment and a fine of not less than One hundred thousand Philippine pesos (PhP100,000.00) but not more than Five hundred thousand Philippine pesos (PhP500,000.00), at the discretion of the court: *Provided*, That the offender is not entitled to avail the benefits of the Probation Law.

If the offender is a corporation, association, partnership or any juridical person, the penalty shall be imposed upon the responsible officers, as the case may be, who participated in the commission of the crime or who shall have knowingly permitted or failed to prevent its commission. If the offender is a juridical person, the court may suspend or revoke its license. If the offender is an alien, he shall, in addition to the penalties herein prescribed, be deported without further proceedings after serving the penalties herein prescribed. If the offender is a public official or employee, he shall, in addition to the penalties prescribed herein, suffer perpetual or temporary absolute disqualification from office, as the case may be.

Any public official or employee who is called upon to testify and refuses to do the same or purposely fails to testify shall suffer the same penalties prescribed herein.

(d) ***Breach of Confidentiality***. - The punishment of imprisonment ranging from three (3) to eight (8) years and a fine of not less than Five hundred thousand Philippine pesos (PhP500,000.00) but not more than One million Philippine pesos (PhP1,000,000.00), shall be imposed on a person convicted for a violation under Section 9(c).

WHO ARE ENTITLED TO REWARDS?

A system of special incentives and rewards is hereby established to be given to the appropriate government agency and its personnel that led and initiated an investigation, prosecution and conviction of persons involved in the offense penalized in Section 4 of this Act.

CAN THE AMLC FREEZE THE ASSETS OF CANDIDATE FOR ELECTORAL OFFICE DURING ELECTION PERIOD?

This Act shall not be used for political persecution or harassment or as an instrument to hamper competition in trade and commerce.

No case for money laundering may be filed against and no assets shall be frozen, attached or forfeited to the prejudice of a candidate for an electoral office during an election period.

MAY THIS LAW BE APPLIED RETROACTIVELY?

The provisions of this Act shall not apply to deposits and investments made prior to its effectivity.

REPUBLIC ACT NO. 7832

AN ACT PENALIZING THE PILFERAGE OF ELECTRICITY AND THEFT OF POWER TRANSMISSION LINES/MATERIALS, RATIONALIZING SYSTEM LOSSES BY PHASING OUT PILFERAGE LOSSES AS A COMPONENT THEREOF, AND FOR OTHER PURPOSES.

I. FULL TEXT OF R.A. 7832

Sec. 1. Short Title. This Act shall be referred to as the "Anti-electricity and Electric Transmission Lines/Materials Pilferage Act of 1994."

Sec. 2. Illegal Use of Electricity. It is hereby declared unlawful for any person, whether natural or juridical, public or private, to:

(a) Tap, make or cause to be made any connection with overhead lines, service drops, or other electric service wires, without previous authority or consent of the private electric utility or rural electric cooperative concerned;

(b) Tap, make or cause to be made any connection to the existing electric service facilities of any duly registered consumer without the latter's or the electric utility's consent or authority;

(c) Tamper, install or use a tampered electrical meter, jumper, current reversing transformer, shorting or shunting wire, loop connection or any other device which interferes with the proper or accurate registry metering of electric current or otherwise results in its diversion in a manner whereby electricity is stolen or wasted;

(d) Damage or destroy an electric meter equipment, wire or conduit or allow any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electric current; and
(e) Knowingly use or receive the direct benefit of electric service obtained through any of the acts mentioned in subsections (a), (b), (c), and (d) above.
Sec. 3. Theft of Electric Power Transmission Lines and Materials.
(a) It is hereby declared unlawful for any person to:

(1) Cut, saw, slice, separate, split, severe, smelt, or remove any electric power transmission line/material or meter from a tower, pole, any other installation or place of installation or any other place or site where it may be rightfully or lawfully stored, deposited, kept, stocked, inventoried, situated or located, without the consent of the owner, whether or not the act is done for profit or gain;
(2) Take, carry away or remove or transfer, with or without the use of a motor vehicle or other means of conveyance, any electric power transmission line/material or meter from a tower, pole, any other installation or place of installation, or any place or site where it may be rightfully or lawfully stored, deposited, kept, stocked, inventoried, situated or located, without the consent of the owner, whether or not the act is done for profit or gain;

(3) Store, possess or otherwise keep in his premises, custody or control, any electric power transmission line/material or meter without the consent of the owner, whether or not the act is done for profit or gain; and
(4) Load, carry, ship or move from one place to another, whether by land, air or sea, any electrical power transmission line/material, whether or not the act is done for profit or gain, without first securing a clearance/permit for the said purpose from its owner or the National Power Corporation, (NPC) or its regional office concerned, as the case may be.

(b) For purposes of this section, "electrical power transmission line/material" refers to electric power transmission steel towers, woodpoles, cables, wires, insulators, line hardwares, electrical conductors and other related items with a minimum voltage of sixty-nine kilovolts (69 kv), such as the following:
(1) Steel transmission line towers made of galvanized steel angular members and plates or creosoted and/or tunnelized woodpoles/concrete poles and designed to carry and support the conductors;

(2) Aluminum conductor steel reinforced (ACSR) in excess of one hundred (100) MCM;

(3) Overhead ground wires made of 7 strands of galvanized steel wires, 3.08 millimeters in diameter and designed to protect the electrical conductors from lightning strikes;
(4) Insulators made of porcelain or glass shell and designed to insulate the electrical conductors from steel towers or woodpoles; and
(5) Various transmission line hardwares and materials made of aluminum alloy or malleable steel and designed to interconnect the towers, conductors, ground wires, and insulators mentioned in subparagraphs (1), (2), (3), and (4) above for the safe and reliable operation of the transmission lines.

Sec. 4. Prima Facie Evidence. (a) The presence of any of the following circumstances shall constitute prima facie evidence of illegal use of electricity, as defined in this Act, by the person benefited thereby, and shall be the basis for, (1) the immediate disconnection by the electric utility to such person after due notice, (2) the holding of a preliminary investigation by the prosecutor and the subsequent filing in court of the pertinent information, and (3) the lifting of any temporary restraining order or injunction which have been issued against a private electric utility or rural electric cooperative:

(i) The presence of a bored hole on the glass cover of the electric meter, or at the back or any other part of said meter;
(ii) The presence inside the electric meter of salt, sugar and other elements that could result in the inaccurate registration of the meter's internal parts to prevent its accurate registration of consumption of electricity;
(iii) The existence of any wiring connection which affects the normal operation or registration of the electric meter;
(iv) The presence of a tampered, broken, of fake seal on the meter, or mutilated, altered, or tampered meter recording chart or graph, or computerized chart, graph or log;

(v) The presence in any part of the building or its premises which is subject to the control of the consumer or on the electric meter, of a current reversing transformer, jumper, shorting and/or shunting wise, and/or loop connection or any other similar device;
(vi) The mutilation, alteration, reconnection, disconnection, bypassing or tampering of instruments, transformers, and accessories;
(vii) The destruction of, or attempt to destroy, any integral accessory of the metering device box which encases an electric meter, or its metering accessories; and

(viii) The acceptance of money and/or other valuable consideration by any officer or employee of the electric utility concerned or the

making of such an offer to any such officer or employee for not reporting the presence of any of the circumstances enumerated in subparagraphs (i), (ii), (iii), (iv), (v), (vi), or (vii) hereof: Provided, however, That the discovery of any of the foregoing circumstances, in order to constitute prima facie evidence, must be personally witnessed and attested to by an officer of the law or a duly authorized representative of the Energy Regulatory Board (ERB).

(b) The possession, control or custody of electric power transmission line/material by any person, natural or juridical, not engaged in the transformation, transmission or distribution of electric power, or in the manufacture of such electric power transmission line/material shall be prima facie evidence that such line/material is the fruit of the offense defined in Section 3 hereof and therefore such line/material may be confiscated from the person in possession, control or custody thereof.

Sec. 5. Incentives. An incentive scheme by way of a monetary reward in the minimum amount of Five thousand pesos (P5,000) shall be given to any person who shall report to the NPC or police authorities any act which may constitute a violation of Section 3 hereof. The Department of Energy (DOE), in consultation with the NPC, shall issue the necessary guidelines for the proper implementation of this incentive scheme within thirty (30) days from the effectivity of this Act.

Sec. 6. Disconnection of Electric Service. The private electric utility or rural electric cooperative concerned shall have the right and authority to disconnect immediately the electric service after serving a written notice or warning to that effect without the need of a court or administrative order, and deny restoration of the same, when the owner of the house or establishment concerned or someone acting in his behalf shall have been caught en flagrante delicto doing any of the acts enumerated in Section 4(a) hereof, or when any of the circumstances so enumerated shall have been discovered for the second time: Provided, That in the second case, a written notice or warning shall have been issued upon the first discovery: Provided, further, That the electric service shall not be immediately disconnected or shall be immediately restored upon the deposit of the amount representing the differential billing by the person denied the service, with the private electric utility or rural electric cooperative concerned or with the competent court, as the case may be: Provided, furthermore, That it the court finds that illegal use of electricity has not been committed by the same person, the amount deposited shall be credited against future billings, with legal interest thereon chargeable against the private utility or rural electric cooperative, and the utility or cooperative shall be made to immediately pay such person double the value of

the payment or deposit with legal interest, which amount shall likewise be creditable against immediate future billings, without prejudice to any criminal, civil or administrative action that such person may be entitled to file under existing laws, rules and regulations: Provided, finally, That it the court finds the same person guilty of such illegal use of electricity, he shall, upon final judgment, be made to pay the electric utility or rural electric cooperative concerned double the value of the estimated electricity illegally used which is referred to in this section as differential billing.

For purposes of this Act, "differential billing" shall refer to the amount to be charged to the person concerned for the unfilled electricity illegal consumed by him as determined through the use of methodologies which utilize, among others, as basis for determining the amount of monthly electric consumption in kilowatt-hours to be billed, either: (a) the highest recorded monthly consumption within the five-year billing period preceding the time of the discovery, (b) the estimated monthly consumption as per the report of load inspection conducted during the time of discovery, (c) the higher consumption between the average consumptions before or after the highest drastic drop in consumption within the five-year billing period preceding the discovery, (d) the highest recorded monthly consumption within four (4) months after the time of discovery, or (e) the result of the ERB test during the time of discovery and, as basis for determining the period to be recovered by the differential billing, either: (1) the time when the electric service of the person concerned recorded an abrupt or abnormal drop in consumption, or (2) when there was a change in his service connection such as a change of meter, change of seal or reconnection, or in the absence thereof, a maximum of sixty (60) billing months, up to the time of discovery: Provided, however, That such period shall, in no case, be less than one (1) year preceding the date of discovery of the illegal use of electricity.

Sec. 7. Penalties. (a) Violation of Section 2 The penalty of prision mayor or a fine ranging from Ten thousand pesos (P10,000) to Twenty thousand pesos (P20,000) or both, at the discretion of the court, shall be imposed on any person found guilty of violation Section 2 hereof.

(b) Violation of Section 3 The penalty of reclusion temporal or a fine ranging from Fifty thousand pesos (P50,000) to One hundred thousand pesos (P100,000) or both, at the discretion of the court, shall be imposed on any person found guilty of violating Section 3 hereof.

(c) Provision common to violations of Section 2 and Section 3 hereof If the offense is committed by, or in connivance with, an

officer or employee of the power company, private electric utility or rural electric cooperative concerned, such officer or employee shall, upon conviction, be punished with a penalty one (1) degree higher than the penalty provided herein, and forthwith be dismissed and perpetually disqualified from employment in any public or private utility or service company and from holding any public office.

If, in committing any of the acts enumerated in Section 4 hereof, any of the other acts as enumerated is also committed, then the penalty next higher in degree as provided herein shall be imposed.
If the offense is committed by, or in connivance with an officer or employee of the electric utility concerned, such officer or employee shall, upon conviction, be punished with a penalty one (1) degree higher than the penalty provided herein, and forthwith be dismissed and perpetually disqualified from employment in any public or private utility or service company. Likewise, the electric utility concerned which shall have knowingly permitted or having knowledge of its commission shall have failed to prevent the same, or was otherwise guilty of negligence in connection with the commission thereof, shall be made to pay a fine not exceeding triple the amount of the "differential billing" subject to the discretion of the courts.

If the violation is committed by a partnership, firm corporation, association or any other legal entity, including a government-owned or -controlled corporation, the penalty shall be imposed on the president, manager and each of the officers thereof who shall have knowingly permitted, failed to prevent or was otherwise responsible for the commission of the offense.
Sec. 8. Authority to Impose Violation of Contract Sur-charges. A private electric utility or rural electric cooperative may impose surcharges, in addition to the value of the electricity pilfered, on the bills of any consumer apprehended for tampering with his electric meter/metering facility installed on his premises, as well as other violations of contract like direct connection, use of jumper, and other means of illicit usage of electricity found installed in the premises of the consumer. The surcharge for the violation of contract shall be collected from and paid by the consumer concerned as follows:

(a) First apprehension Twenty-five percent (25%) of the current bill as surcharge;
(b) Second apprehension Fifty percent (50%) of the current bill as surcharge; and
(c) Third and subsequent apprehensions One hundred percent (100%) of the current bill as surcharge.

The private electric utility or rural electric cooperative is authorized to discontinue the electric service in case the consumes is in arrears in the payment of the above imposed surcharges.
The term "apprehension" as used herein shall be understood to mean the discovery of the presence of any of the circumstances enumerated in Section 4 hereof in the establishment or outfit of the consumer concerned.

Sec. 9. Restriction on the Issuance of Restraining Orders or Writs of Injunction. No writ of injunction or restraining order shall be issued by any court against any private electric utility or rural electric cooperative exercising the right and authority to disconnect electric service as provided in this Act, unless there is prima facie evidence that the disconnection was made with evident bad faith or grave abuse of authority.
If, notwithstanding the provisions of this section, a court issues an injunction or restraining order, such injunction or restraining order shall be effective only upon the filing of a bond with the court which shall be in the form of cash or cashier's check equivalent to the "differential billing," penalties and other charges, or to the total value of the subject matter of the action: Provided, however, That such injunction or restraining order shall automatically be refused or, if granted, shall be dissolved upon filing by the public utility of a counterbond similar in form and amount as that above required: Provided, finally, That whenever such injunction is granted, the court issuing it shall, within ten (10) days from its issuance, submit a report to the Supreme Court setting forth in detail the grounds of reasons for its order.

Sec. 10. Rationalization of System Losses by Phasing out Pilferage Losses as a Component Thereof. There is hereby established a cap on the recoverable rate of system losses as follows:
(a) For private electric utilities,
(i) Fourteen and a half percent (14 1/2%) at the end of the first year following the effectivity of this Act;
(ii) Thirteen and one-fourth percent (13 1/4%) at the end of the second year following the effectivity of this Act;
(iii) Eleven and three-fourths percent (11 3/4%) at the end of the third year following the effectivity of this Act; and

(iv) Nine and a half percent (9 1/2%) at the end of the fourth year following the effectivity of this Act.
Provided, That the ERB is hereby authorized to determine at the end of the fourth year following the effectivity of this Act, and as often as necessary taking into account the viability of private electric utilities and the interest of the consumers, whether the caps herein or theretofore established shall be reduced further which shall, in no case, be lower than nine percent (9%) and

accordingly fix the date of the effectivity of the new caps: Provided, further, That in the calculation of the system loss, power sold by the NPC or any other entity that supplies power directly to a consumer and not through the distribution system of the private electric utility shall not be counted even if the billing for the said power used is through the private electric utility.

The term "power sold by NPC or any other entity that supplies power directly to a consumer" as used in the preceding paragraph shall for purposes of this section be deemed to be a sale directly to the consumer if: (1) the point of metering by the NPC or any other utility is less than one thousand (1,000) meters from the consumer, or (2) the consumer's electric consumption is three percent (3%) or more of the total load consumption of all the customers of the utility, or (3) there is no other consumer connected to the distribution line of the utility which connects to the NPC or any other utility point of metering to the consumer meter.

(b) For rural electric cooperatives:
(i) Twenty-two percent (22%) at the end of the first year following the effectivity of this Act;
(ii) Twenty percent (20%) at the end of the second year following the effectivity of this Act;
(iii) Eighteen percent (18%) at the end of the third year following the effectivity of this Act;
(iv) Sixteen percent (16%) at the end of the fourth year following the effectivity of this Act; and
(v) Fourteen percent (14%) at the end of the fifth year following the effectivity of this Act.

Provided, That the ERB is hereby authorized to determine at the end of the fifth year following the effectivity of this Act, and as often as is necessary, taking into account the viability of rural electric cooperatives and the interest of the consumers, whether the caps herein or therefore established shall be reduced further which shall, in no case, be lowest than nine percent (9%) and accordingly fix the date of the effectivity of the new caps.
Provided, finally, That in any case nothing in this Act shall impair the authority of the ERB to reduce or phase out technical or design losses as a component of system losses.

Sec. 11. Area of Coverage. The caps provided in Section 10 of this Act shall apply only to the area of coverage of private electric utilities and rural electric cooperatives as of the date of the effectivity of this Act.
The permissible levels of recovery for system losses in areas of coverage that may be added on by either a private electric utility or a rural electric cooperative shall be determined by the ERB.

Sec. 12. Recovery of Pilferage Losses. Any private electric utility or rural electric cooperative which recovers any amount of pilferage losses shall, within thirty (30) days from said recovery, report in writing and under oath to the ERB: (a) the fact of recovery, (b) the date thereof; (c) the name of the consumer concerned, (d) the amount recovered, (e) the amount of pilferage loss claimed, (f) the explanation for the failure to recover the whole amount claimed, and (g) such other particulars as may be required by the ERB: If there is a case pending in court for the recovery of a pilferage loss, no private electric utility or rural electric cooperative shall accept payment from the consumer unless so provided in a compromise agreement duly executed by the parties and approved by the court.

Sec. 13. Information Dissemination. The private electric utilities the rural electric cooperatives, the NPC, and the National Electrification Administration (NEA) shall, in cooperation with each other, undertake a vigorous campaign to inform, their consumers of the provisions of this Act especially Section 2, 3, 4, 5, 6, 7, and 8 hereof, within sixty (60) days from the effectivity of this Act and at least once a year thereafter, and to incorporate a faithful condensation of said provisions in the contracts with new consumers.

Sec. 14. Rules and Regulations. The ERB shall, within thirty (30) working days after the conduct of due hearings which must commence within thirty (30) working days upon the effectivity of this Act, issue the rules and regulations as may be necessary to ensure the efficient and effective implementation of the provisions of this Act, to induce but not limited to, the development of methodologies for computing the amount of electricity illegally used and the amount of payment or deposit contemplated in Section 7 hereof, as a result of the presence of the prima facie evidence discovered.

The ERB shall within the same period also issue rules and regulations on the submission of the reports required under Section 12 hereof and the procedure for the distribution to or crediting of consumers for recovered pilferage losses.

Sec. 15. Separability Clause. Any portion or provision of this Act which may be declared unconstitutional or invalid shall not have the effect of nullifying other portions or provisions hereof.

Sec. 16. Repealing Clause. The provisions in Presidential Decree No. 401, as amended by Batas Pambansa Blg. 876, penalizing the unauthorized installation of electrical connections, tampering and/or knowing use of tampered electrical meters or meter devices, and the theft of electricity are hereby expressly repealed. All other laws, ordinances, rules, regulations, and other issuances or parts thereof, which are inconsistent with this Act, are hereby repealed or modified accordingly.

Sec. 17. Effectivity Clause. This Act shall take effect thirty (30) days after its publication in the Official Gazette or in any two (2) national newspapers of general circulation.
Approved,

EDGARDO J. ANGARA JOSE DE VENECIA, JR. President of the Senate Speaker of the House of Representatives

This Act which is a consolidation of House Bill No. 11364 and Senate Bill No. 1237 was finally passed by the House of Representatives and the Senate on November 29, 1994 and December 6, 1994, respectively.

EDGARDO E. TUMANGAN CAMILO L. SABIO Secretary of the Senate Secretary General House of Representatives
Approved: December 08, 1994

FIDEL V. RAMOSPresident of the Philippines

II. EXPLANATIONS

Q. WHAT CONSTITUTE ILLEGAL USE OF ELECTRICITY?

Illegal Use of Electricity. – It is hereby declared unlawful for any person, whether natural or juridical, public or private, to:

(a) Tap, make or cause to be made any connection with overhead lines, service drops, or other electric service wires, without previous authority or consent of the private electric utility or rural electric cooperative concerned;

(b) Tap, make or cause to be made any connection to the existing electric service facilities of any duly registered consumer without the latter's or the electric utility's consent or authority;

(c) Tamper, install or use a tampered electrical meter, jumper, current reversing transformer, shorting or shunting wire, loop connection or any other device which interferes with the proper or accurate registry or metering of electric current or otherwise result in its diversion whereby electricity is stolen or wasted;

(d) Damage or destroy an electric meter, equipment, wire or conduit or allow any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electric current; and

(e) Knowingly use or receive the direct benefit of electric service through any of the acts mentioned in subsections (a), (b), (c), and (d) above.

Q. WHEN IS THERE THEFT OF ELECTRIC POWER TRANSMISSION LINES?

Sec. 3. *Theft of Electric Power Transmission Lines and Materials.* – (a) It is hereby declared unlawful for any person to:

(1) Cut, saw, slice, separate, slit, severe, smelt, or remove any power transmission line/material or meter from any tower, pole, any other installation or place of installation or any other place or site where it may be rightfully or lawfully stored, deposited, kept, stocked, inventoried,

situated or located, without the consent of the owner, whether or not the act is done for profit or gain;

(2) Take, carry away or remove or transfer, with or without the use of a motor vehicle or other means of conveyance, any electric power transmission line/material or meter from a tower, pole, any other installation or place of installation, or any place or site where it may be rightfully or lawfully stored, deposited, kept, stocked, inventoried, situated or located, without the consent of the owner, whether or not the act is done for profit or gain;

(3) Store, possess or otherwise keep in his premises, custody or control, any electric power transmission line/material or meter without the consent of the owner, whether or not the act is done for profit or gain; and

(4) Load, carry, ship or move from one place to another, whether by land, air or sea, any electrical power transmission line/material, whether or not the act is done for profit or gain, without first securing a clearance/permit for the said purpose from its owner or the National Power Corporation (NPC) or its regional office concerned, as the case may be.

DEFINITION OF "ELECTRICAL POWER TRANSMISSION LINE/MATERIAL"

For purposes of this section, *"electrical power transmission line/material"* refers to electric power transmission steel towers, woodpoles, cables, wires, insulators, line hardwares, electrical conductors and other related items with a minimum voltage of sixty-nine kilovolts (69 kv), such as the following:

(1) Steel transmission line towers made of galvanized steel angular members and plates or creosoted and/or tannelized woodpoles/concrete poles and designed to carry and support the conductors;

(2) Aluminum conductor steel reinforced (ACSR) in excess of 100 MCM;

(3) Overhead ground wires made of 7 strands of galvanized steel wires, 3.08 millimeters in diameter and designed to protect the electrical conductors from lightning strikes;

(4) Insulators made of porcelain or glass shell and designed to insulate the electrical conductors from steel towers or woodpoles; or

(5) Various transmission line hardwares and materials made of aluminum alloy or malleable steel and designed to interconnect the towers, conductors, ground wires, and insulators mentioned in subparagraphs (1), (2), (3), and (4) above for the safe and reliable operation of the transmission lines.

EVIDENCE NECESSARY IN THE PROSECUTION OF THE OFFENSE..

(i) The presence of a bored hole on the glass cover of the electric meter, or at the back or any other part of said meter;

(ii) The presence inside the electric meter of salt, sugar and other elements that could result in the inaccurate registration of the meter's internal parts to prevent its accurate registration of consumption of electricity;

(iii) The existence of any wiring connection which affects the normal operation or registration of the electric meter;

(iv) The presence of a tampered, broken, or fake seal on the meter, or mutilated, altered, or tampered meter recording chart or graph, or computerized chart, graph or log;

(v) The presence in any part of the building or its premises which is subject to the control of the consumer or on the electric meter, of a current reversing transformer, jumper, shorting and/or shunting wire, and/or loop connection or any other similar device;

(vi) The mutilation, alteration, reconnection, disconnection, bypassing or tampering of instruments, transformers, and accessories;

(vii) The destruction of, or attempt to destroy, any integral accessory of the metering device box which encases an electric meter, or its metering accessories; and

(viii) The acceptance of money and/or other valuable consideration by any officer or employee of the electric utility concerned or the making of such an offer to any such officer or employee for not reporting the presence of any of the circumstances enumerated in subparagraphs (i), (ii), (iii), (iv), (v), (vi), or (vii) hereof: Provided, however, That the discovery of any of the foregoing circumstances, in order to constitute prima facie evidence, must be personally witnessed and attested to by an officer of the law or a duly authorized representative of the Energy Regulatory Board (ERB).

(b) The possession, control, or custody of electric power transmission line/material by any person, natural or juridical, not engaged in the transformation, transmission or distribution of electric power, or in the manufacture of such electric power transmission line/material shall be prima facie evidence that such line/material is the fruit of the offense defined in Section 3 hereof and therefore such line/material may be confiscated from the person in possession, control or custody thereof.

REWARD OF THE INFORMANT

Any incentive scheme by way of a monetary reward in the amount of Five thousand pesos (P 5,000) shall be given to any person who shall report to the NPC or police authorities any act which may constitute a violation of Section 3 hereof. The Department of Energy (DOE), in consultation with the NPC, shall issue the necessary guidelines for the proper implementation scheme within thirty (3) days from the effectivity of this Act.

WHAT ARE THE POWERS GRANTED TO THE PRIVATE ELECTRIC UTILITY OR RURAL ELECTRIC COOPERATIVE?

1) the right and authority to disconnect immediately the electric service after serving a written notice or warning to that effect, without the need of a court or administrative order, and
2) deny restoration of the same, when the owner of the house or establishment of the same, when the owner of the house or establishment concerned or someone acting in his behalf shall have been caught *en flagrante delicto* doing any of the acts enumerated in Section 4 (a) hereof, or when any of the circumstances so enumerated shall have been discovered for the second time:

Provided, That in the second case, a written notice or warning shall have been issued upon the first discovery: *Provided, further,* That the electric service shall not be immediately disconnected or shall be immediately restored upon the deposit of the amount representing the differential billing by the person denied the service, with the private electric utility or rural electric cooperative concerned or with the competent court, as the case may be: *Provided, furthermore*, That if the court finds that illegal use of electricity has not been committed by the same person, the amount deposited shall be credited against future billings, with legal interest thereon chargeable against the private utility or rural electric cooperative, and the utility or cooperative shall be made to immediately pay such person double the value of the payment or deposit with legal interest, which amount shall likewise be creditable against immediate future billings, without prejudice to any criminal, civil or administrative action that such person may be entitled to under existing laws, rules and regulations: *Provided, finally,* That if the court finds the same person guilty of such illegal use of electricity, he shall, upon final judgment, be made to pay the electric utility or rural electric cooperative concerned double the value of the estimated electricity illegally used which is referred to in this section as differential billing.

For purposes of this Act, *"differential billing"* shall refer to the amount to be charged to the person concerned for the unbilled electricity illegally consumed by him as determined through the use of methodologies which utilize, among others, as basis for determining the amount of monthly electric consumption in kilowatt-hours to be billed either:

(a) the highest recorded monthly consumption within the five-year billing period preceding the time of discovery;

(b) the estimated monthly consumption as per the report of load inspection conducted during the time of discovery;

(c) the higher consumption between the average consumptions before or after the highest drastic drop in consumption within the five-year billing period preceding the discovery; (d) the highest recorded monthly consumption within four (4) months after the time of discovery, or (e) the result of the ERB test during the time of discovery and, as basis for determining the period to be recovered by the differential billing, either:

(1) the time when the electric service of the person concerned recorded an abrupt or abnormal drop in consumption, or

(2) when there was a change in his service connection such as change of meter, change of seal or reconnection, or in the absence thereof, a maximum of sixty (60) billing months, up to the time of discovery:

Provided, however, That such period shall, in no case, be less than one (1) year preceding the date of discovery of the illegal use of electricity.

WHAT ARE THE PENALTIES

The penalty of *prision mayor* or a fine ranging from Ten thousand pesos (P 10,000) to Twenty thousand pesos (P 20,000) or both, at the discretion of the court, shall be impose on any person found guilty of violating Section 2 hereof.

(b) Violation of Section 3 – The penalty of *reclusion temporal* or a fine ranging from Fifty thousand pesos (P 50,000) to One hundred thousand pesos (P 100,000) or both, at the discretion of the court, shall be imposed on any person found guilty of violating Section 3 hereof.

(c) Provisions common to violations of Section 2 and Section 3 hereof. – If the offense is committed by, or in connivance with an officer or employee of the power company, private electric utility, or rural electric cooperative concerned, such officer or employee shall, upon conviction, be punished with a penalty one (1) degree higher than the penalty provided herein, and shall forthwith be dismissed and perpetually disqualified from employment in any public or private electric utility or service company and from holding any public office.

If, in committing the acts enumerated in Section 4 hereof, any of the other acts as enumerated is also committed, then the penalty next higher in degree herein shall be imposed.

If the offense is committed by, or in connivance with the officer or employee of the electric utility concerned, such officer or employee shall, upon conviction, be punished with a penalty one (1) degree higher than the penalty provided herein, and forthwith be dismissed and perpetually disqualified from employment in any public or private utility or service company. Likewise, the electric utility concerned which shall have knowingly permitted or having knowledge of its commission shall have failed to prevent the same, or was otherwise guilty of negligence in connection with the commission thereof, shall be made to pay a fine not exceeding

triple the amount of the *"differential billing"* subject to the discretion of the courts.

If the violation is committed by a partnership, firm, corporation, association or any other legal entity, including a government-owned or –controlled corporation, the penalty shall be imposed on the president, manager and each of the officers thereof who shall have knowingly permitted, failed to prevent or was otherwise responsible for the commission thereof.

Authority to Impose Violation of Contract Surcharges.

– A private electric utility or rural electric cooperative may impose surcharges, in addition to the value of the electricity pilfered, on the bills of any consumer apprehended for tampering with his electric meter/metering facility installed on his premises, as well as other violations of contract like direct connections, use of jumper, and other means of illicit usage of electricity found installed in the premises of the consumer. The surcharge for the violation of contract shall be collected from and paid by the consumer concerned as follows:

(a) *First* apprehension – Twenty-five percent (25%) of the current bill as surcharge;

(b) *Second* apprehension – Fifty percent (50%) of the current bill as surcharge; and

(c) *Third* and *subsequent* apprehensions – One hundred percent (100%) of the current bill as surcharge.

The private electric utility or rural electric cooperative is authorized to discontinue the electric service in case the consumer is in arrears in the payment of the above imposed charges.

The term *"apprehension"* as used herein shall be understood to mean the discovery of the presence of any of the circumstances enumerated in Section 4 hereof in the establishment or outfit of the consumer concerned.

THE COURT IS NOT ALLOWED TO ISSUE RESTRAINING ORDER OR WRITS OF INJUNCTION AS A GENERAL RULE.

– No writ of injunction or restraining order shall be issued by any court against any private electric utility or rural electric cooperative exercising the right and authority to disconnect electric service as provided in this Act, unless there is *prima facie* evidence

that the disconnection was made with evident bad faith or grave abuse of authority.

If, notwithstanding the provisions of this section, a court issues an injunction or restraining order, such injunction or restraining order, such injunction or restraining order shall be effective only upon the filing of a bond with the court which shall be in the form of cash or a cashier's check equivalent to the "differential billing," penalties and other charge, or to the total value of the subject matter of the action: *Provided, however,* That such injunction or restraining order shall automatically be refused or, if granted, shall be dissolved upon filing by the public utility of a counterbond similar in form and amount as that above required: *Provided, finally,* That whenever such injunction is granted, the court issuing it shall, within ten (10) days from its issuance, submit a report to the Supreme Court setting forth in detail the grounds or reasons for its order.

Rationalization of System Losses by Phasing out Pilferage Losses as a Component Thereof. –

There is hereby established a cap on the recoverable rate of system losses as follows:

(a) For private electric utilities:

(i) Fourteen and a half percent (14 1/2%) at the end of the first year following the effectivity of this Act;

(ii) Thirteen and one-fourth (13 1/4%) at the end of the second year following the effectivity of this Act;

(iii) Eleven and three-fourths percent (11 3/4%) at the end of the third year following the effectivity of this Act; and

(iv) Nine and a half percent (9 1/2%) at the end of the fourth year following the effectivity of this Act.

Provided, That the ERB is hereby authorized to determine at the end of the fourth year following the effectivity of this Act, and as often as may be necessary taking into account the viability of private electric utilities and the interest of the consumers, whether the caps herein or theretofore established shall be reduced further, which shall, in no case, be lower than nine percent (9%) and accordingly fix the date of the effectivity of the new caps: *Provided, further,* That in the calculation of the system loss, power sold by NPC or any other entity that supplies power directly to the consumer and not through the distribution system of the private

electric utility shall not be counted even if the billing for the said power is used through the private electric utility.

The term *"power sold by NPC or any other entity that supplies electricity directly to a consumer"* as used in the preceding paragraph shall for purposes of this section be deemed to be a sale directly to the consumer if: (1) the point of metering by the NPC or any other utility is less than one thousand (1,000) meters from the consumer, or (2) the consumer's electric consumption is three percent (3%) or more of the total load consumption of all the customers of the utility, or (3) there is no other consumer connected to the distribution line of the utility which connects to the NPC or any other utility point of metering to the consuming meter.

(b) For rural electric cooperatives:

(i) Twenty-two percent (22%) at the end of the first year following the effectivity of this Act;

(ii) Twenty percent (20%) at the end of the second year following the effectivity of this Act;

(iii) Eighteen percent (18%) at the end of the third year following the effectivity of this Act;

(iv) Sixteen percent (16%) at the end of the fourth year following the effectivity of this Act; and

(v) Fourteen percent (14%) at the end of the third year following the effectivity of this Act.

Provided, That the ERB is hereby authorized to determine at the end of the fifth year following the effectivity of this Act, and as often as is necessary, taking into account the viability of rural electric cooperatives and the interest of consumers, whether the caps herein or theretofore established shall be reduced further which shall, in no case, be lower than nine percent (9%) and accordingly fix the date of the effectivity of the new caps.

Provided, finally, That in any case nothing in this Act shall impair the authority of the ERB to reduce or phase out technical or design losses as a component of system losses.

Area of Coverage. – The caps provided in Section 10 of this Act shall apply only to the area of coverage of private electric utilities and rural electric cooperatives as of the date of the effectivity of this Act.

The permissible levels of recovery for system losses in areas of coverage that may be added on by either a private electric utility or a rural electric cooperative shall be determined by the ERB.

Recovery of Pilferage Losses. – Any private electric utility or rural electric cooperative which recovers any amount of pilferage losses shall, within thirty (30) days from said recovery, report in writing and under oath to the ERB:

(a) the fact of recovery,

(b) the date thereof,

(c) the name of the consumer concerned,

(d) the amount recovered,

(e) the amount of pilferage loss claimed,

(f) the explanation for the failure to recover the whole amount claimed, and

(g) such other particulars as may be required by the ERB. If there is a case pending in court for the recovery of a pilferage loss, no private electric utility or rural electric cooperative shall accept payment from the consumer unless so provided in a compromise agreement duly executed by the parties and approved by the court.

Information Dissemination. – The private electric utilities, the rural electric cooperatives, the NPC, and the National Electrification Administration shall, in cooperation with each other, undertake a vigorous campaign to inform their consumers of the provisions of this Act especially Sections 2, 3, 4, 5, 6, 7, and 8 hereof, within sixty (60) days from the effectivity of this Act and at least once a year thereafter, and to incorporate a faithful condensation of said provisions in the contracts with new consumers.

III. JURISPRUDENCE

G.R. Nos. 79718-22 April 12, 1989

QUEZON ELECTRIC COOPERATIVE, petitioner,

vs.

NATIONAL LABOR RELATIONS COMMISSION, MAYNARDO TAÑADA, RENATO BACUBE, FLAVIANO O. AGUBANG, PETRONIO R. POBEDA, and RAMON A. PAREJA, respondents.

Justino C. Gimenez for petitioner.

The Solicitor General for public respondent.

De Guzman & Associates for private respondents.

CORTES, J.:p

Private respondents were employees of petitioner Quezon Electric Cooperative, holding the following positions:

Maynardo Tañada Disconnecting Officer

Renato Bacube Lineman

Flaviano Agubang Groundman

Petronio Pobeda Housewiring Estimator/Inspector

Ramon Pareja Bill Collector

In 1984, petitioner undertook the tracking down of pilferages of electricity. Among those investigated were its own employees, including private respondent herein, were found to have tampered meters and illegal connections in their houses resulting in the pilferage of electricity of said fourteen (14) employees, nine (9) agreed to resign and thereafter claimed the benefits due them. The five (5) private respondents did not, and were subsequently dismissed. Consequently, private respondents filed separate cases for illegal dismissal and non-payment or underpayment of benefits against petitioner.

In support of private respondents' dismissal, petitioner presented the following evidence:

MAYNARDO TANADA

Of the service wires (neutral and live), only the neutral wire could be pulled out from the built-in pipe in concrete, hence it is suspected there is an illegal tapping to the wire inside the conduit pipe installed in time of concreting leading to load side without passing through the meter. (Memorandum from Meter Calibration/ Replacement Crew, Annexes 5 & 5-A, Position Paper of the Petitioner). This is confirmed by the great disparity between estimated monthly KWH consumption of 127.8 per load survey and the actual registered consumption ranging from 32 to 45 KWH per month. (Annexes 6 & 7, Id.)

RENATO BACUBE

There was a trace that his house was jumpered because duplex wire was peeled off and a splice was left. (Annexes 5 and 5-A, Id.). He was also found using a different meter from the one issued for this house. (Memorandum from Chief Technical Services Section, Annex 10, Id.). The estimated monthly KWH consumption was 52 KW, while the registered consumption is 25 KWH per month. (Annexes 8 & 9, Id.).

FLAVIANO AGUBANG

Appliances that require large amount of electricity were directly tapped to the service drop. Thus, consumption does not register in the meter. (Annex 10, Id.).

PETRONIO R. POBEDA

His KWH meter was positioned upside down in such a way that the meter disc could hardly move, causing minimal registration of electricity consumed. (Annex 1-C, Id.).

RAMON A. PAREJA

Service drop was pelled off (Annex 1-D, Id.) where it could be reached easily by hand from a hole in the wall of his house. [Rollo, pp. 12-13; 63-64.]

The Labor Arbiter, while finding that there was basis to suspect private respondents of pilferage, nevertheless found that private respondents had been illegally dismissed and ordered their reinstatement with backwages, as the evidence proved insufficient to warrant their dismissal. The claims for unpaid or underpaid benefits were dismissed.

On appeal, public respondent National Labor Relations Commission dismissed petitioner's appeal and affirmed the decision of the Labor Arbiter. Petitioner's motion for reconsideration was subsequently denied. Hence, the instant petition.

In its petition, Quezon Electric Cooperative assails the finding of the Labor Arbiter, affirmed by the NLRC, that the evidence against private respondents was insufficient to warrant their dismissal, and thus ascribes to the NLRC grave abuse of discretion amounting to lack or excess of jurisdiction for sustaining the Labor Arbiter's decision to order their reinstatement with backwages.

In his comment, the Solicitor General expressed his agreement with the petitioner and recommended "that the petition be given due course and that the decision of the Labor Arbiter as affirmed by respondent NLRC be reversed and set aside and the dismissal of private respondents be ordered." [Rollo, p. 70.] He was of the view that there was sufficient basis to justify private respondents' dismissal.

The parties filed their respective memoranda and, in view of the Solicitor General's position, the NLRC was required to designate another lawyer to file its memorandum [Rollo, p. 101]. After the NLRC complied and filed its memorandum, the case was deemed submitted for decision.

After considering the facts as found by the Labor Arbiter and adopted by the NLRC, the arguments of the parties, the law and the jurisprudence on the matter, the Court finds that petitioner has failed to show that the NLRC gravely abused its discretion, amounting to lack or excess of jurisdiction, when it affirmed the decision of the Labor Arbiter.

Both petitioner and the Solicitor General argue that private respondents may be legally dismissed on the ground of loss of

confidence. In support thereof, they cite the leading cases of Galsim v. Philippine National Bank [G.R. No. L-23921, Au gust 29, 1969, 29 SCRA 293] and Reyes V. Zamora (G.R. No. L-46732, May 5, 1979, 90 SCRA 92].

In Reyes, supra, the Court stated:

> Loss of confidence is a valid ground for dismissing an employee, and proof beyond reasonable doubt of the employee's misconduct-apparently demanded by the Minister of Labor-is not required to dismiss him on this charge. It is sufficient if there is "Some basis" for such loss of confidence; or if the employer has reasonable grounds to believe, if not to entertain the moral conviction that the employee concerned is responsible for the misconduct and that the nature of his participation therein rendered him absolutely unworthy of the trust and confidence demanded by his position. [at p. 111.]

The Court finds petitioner's and the Solicitor General's reliance on the above-quoted rule misplaced. The facts of the instant case negate the application of the doctrine cited.

The basic premise for dismissal on the ground of loss of confidence is that the employee concerned holds a position of trust and confidence. It is the breach of this trust that results in the employer's loss of confidence in the employee. Thus, in Galsim, supra, the employee dismissed was a paying teller, while in Reyes, supra, the employee was the company's credit and collection manager. In both cases, the loss or misappropriation of money under their custody or control was involved. Similarly, in Nevans v. Court of Industrial Relations [G.R. No. L-21510, June 29, 1968, 23 SCRA 1321], another case cited by the Solicitor General, the employee dismissed on the ground of loss of confidence was the head checker of the company and the loss involved merchandise under his management and supervision.

Under the Labor Code, as amended, loss of confidence would be the result of "fraud or willful breach by the employee of the trust reposed on him by his employer or duly authorized representative," a just cause for termination under Article 282. It cannot be gainsaid that the breach of trust must be related to the performance of the employee's functions.

In the instant case, private respondents held no position involving trust and confidence, with the possible exception of Ramon Pareja who was a bill collector. But even then, Pareja was not being charged with the loss of money he had collected. ** Respondents were actually being accused by petitioner with the pilferage of electricity as consumers of the electric power it provided. This is clear from the report of petitioner's investigators who found the pilferage to have been effected through the electric wires leading to private respondents' residences and the meters attached thereto. Essentially, private respondents were dismissed for their non-payment of the electricity they allegedly consumed or, more graphically, for cheating on their electric bill. That the pilferage could have been effected even if private respondents were not employees of petitioner but were ordinary consumers is undisputed. Thus, while the pilferage could have been facilitated by their employment with petitioner, in that the knowledge necessary to effect the alleged meter-tampering and illegal connections could have been acquired in their employment, such did not necessarily make the alleged offense work-related.

Petitioner and the Solicitor General, however, point to a company policy (Policy No. 35) which makes pilferage by employees punishable with dismissal, to wit:

Coop employee-consumers found knowingly using tampered meters at his own residence, rented apartment or houses and using other devises in the pilferage of electricity should be punished by dismissal from the service [Comment, p. 4; Rollo, p. 64.]

However, the Court finds that even under this company policy, the dismissal of private respondents cannot be sustained. As found by the Labor Arbiter, whose decision was affirmed by the public respondent:

x x x

... [R]espondent (petitioner herein) has still to prove by clear and convincing evidence that the complainants (private respondents herein) were knowingly using the tampered meters or using other devices to pilfer electricity. This is the import of the company's policy. In the case at bar, there is no evidence to show that

complainants have been knowingly using the alleged devices to pilfer electricity. There is no evidence that the complainants were the ones who installed, made or caused the connection of the devices used in pilfering electricity.

x x x

[Rollo, p. 29; Emphasis supplied.]

The insufficiency of the evidence relied upon by petitioner is particularly apparent with regard to private respondents Tañada and Bacube. As found by the Labor Arbiter, the sole basis of petitioner in concluding that they have pilfered electricity was the disparity between their estimated monthly consumption and their actual consumption but petitioner had failed to show that the disparity could have resulted only if they had pilfered electricity [Rollo, p. 28.] On the other hand, in the case of Flaviano Agubang, there is even evidence to show that the alleged illegal connection was done by a lessee of the lower floor of his house ("silong") without his knowledge or consent [Ibid pp. 23-24.] Then, that Petronio Pobeda caused the installation of the defective meter in his residence is not conclusive, as he had allegedly just recently transferred thereto [Ibid., p. 25.] Finally, in Ramon Pareja's case, while it was suspected that he used a "jumper" since the service drop connection leading to his house was peeled off, no such illegal contraption was actually found [Ibid p. 26.] In sum, the evidence in support of petitioner's position that private respondents knowingly used tampered meters or devices to effect the pilferage of electric power is inconclusive.

It is a basic principle in the dismissal of employees that the burden of proof rests upon the employer to show that the dismissal of the employee is for a just cause, and failure to do so would necessarily mean that the dismissal is not justified [Polymedic General Hospital v. NLRC, G.R. No. 64190, January 31, 1985,134 SCRA 420; Asphalt and Cement Pavers, Inc. v. Leogardo, et al., G.R. No. 74563, June 20,1988.] Should the employer fail in discharging this duty, the dismissal of the employee cannot be sustained. This is consonant with the constitutional guarantee of security of tenure, as implemented in what is now Sec. 279 of the Labor Code, as amended.

In the instant case, public respondent NLRC and the Labor Arbiter have both found that petitioner had failed to prove a just cause for the dismissal of private respondents. After a careful consideration of the pleadings filed and the arguments raised by the parties and the Solicitor General, the Court finds no cogent reason to disturb this finding. As the Court had emphasized in Dangan v. NLRC [G.R. Nos. 63127-28, February 20, 1984,127 SCRA 706]:

It is perhaps timely to reiterate well-settled principles involving decisions of administrative agencies. Findings of quasi-judicial agencies which have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect but at times even finality if such findings are supported by substantial evidence. (Special Events and Central Shipping Office Workers Union v. San Miguel Corporation, 122 SCRA 557 citing International Hardwood and Veneer Co. of the Philippines v. Hon. Vicente Leogardo, et al., 117 SCRA 967; Genconsu Free Workers Union v. Inciong, 91 SCRA 311; Dy Keh Beng v. International Labor and Marine Union of the Phil., 90 SCRA 162). And in a catena of cases, this Court has held that the findings of facts of the National Labor Relations Commission are binding on the Court (Philippine Labor Alliance Council [PLAC] v. Bureau of Labor Relations, 75 SCRA 162; Pan-Phil. Life Insurance Co. v. NLRC, 114 SCRA 866; Pepsi-Cola Labor Union-BFLU-TUPAS Local Chapter No. 896 v. NLRC, 114 SCRA 960) if supported by substantial evidence (Reyes v. Philippine Duplicators, Inc., 109 SCRA 438). [at pp. 711-712.]

Ordinarily, an employee who is illegally terminated would be entitled to reinstatement to his former position with backwages. However, the Court is of the view that the circumstances of the instant case would render the reinstatement of private respondents inappropriate. Thus, in the recent case of Citytrust Finance Corporation v. NLRC [G.R. No. 75740, January 15, 1988, 157 SCRA 87], where the employer similarly failed to establish sufficient basis for the dismissal of the employee on the ground of lack of confidence, the Court awarded separation pay equivalent to one (1) month pay for every year of service instead of ordering reinstatement "so that he (the employee) can be spared the agony of having to work anew with petitioner (the employer) under an atmosphere of antipathy and antagonism and the petitioner does not have to endure the continued services of private respondent in whom it has lost confidence." [at p. 96.]

WHEREFORE, the instant petition is hereby DISMISSED. The Resolution of the NLRC dismissing the appeal from the Labor Arbiter's decision is AFFIRMED, with the modification (a) that private respondents shall be paid separation pay equivalent to one (1) month pay for every year of service in lieu of reinstatement and (b) that, in accordance with the Court's pronouncements, the award of backwages shall be limited to three (3) years, without qualification or deduction. This decision shall be IMMEDIATELY EXECUTORY.

SO ORDERED.

Fernan, (C.J.), Gutierrez, Jr. and Bidin, JJ., concur.

Feliciano, J., is on leave.

REPUBLIC ACT NO. 4200 June 19, 1965

AN ACT TO PROHIBIT AND PENALIZE WIRE TAPPING AND OTHER RELATED VIOLATIONS OF THE PRIVACY OF COMMUNICATION, AND FOR OTHER PURPOSES.

I. FULL TEXT

Sec. 1. It shall be unlawful for any person, not being authorized by all the parties to any private communication or spoken word, to tap any wire or cable, or by using any other device or arrangement, to secretly overhear, intercept, or record such communication or spoken word by using a device commonly known as a dictaphone or dictagraph or dictaphone or walkie-talkie or tape recorder, or however otherwise described:

It shall also be unlawful for any person, be he a participant or not in the act or acts penalized in the next preceding sentence, to knowingly possess any tape record, wire record, disc record, or any other such record, or copies thereof, of any communication or spoken word secured either before or after the effective date of this Act in the manner prohibited by this law; or to replay the same for any other person or persons; or to communicate the contents thereof, either verbally or in writing, or to furnish transcriptions

thereof, whether complete or partial, to any other person: Provided, That the use of such record or any copies thereof as evidence in any civil, criminal investigation or trial of offenses mentioned in section 3 hereof, shall not be covered by this prohibition.

Sec. 2. Any person who willfully or knowingly does or who shall aid, permit, or cause to be done any of the acts declared to be unlawful in the preceding section or who violates the provisions of the following section or of any order issued thereunder, or aids, permits, or causes such violation shall, upon conviction thereof, be punished by imprisonment for not less than six months or more than six years and with the accessory penalty of perpetual absolute disqualification from public office if the offender be a public official at the time of the commission of the offense, and, if the offender is an alien he shall be subject to deportation proceedings.

Sec. 3. Nothing contained in this Act, however, shall render it unlawful or punishable for any peace officer, who is authorized by a written order of the Court, to execute any of the acts declared to be unlawful in the two preceding sections in cases involving the crimes of treason, espionage, provoking war and disloyalty in case of war, piracy, mutiny in the high seas, rebellion, conspiracy and proposal to commit rebellion, inciting to rebellion, sedition, conspiracy to commit sedition, inciting to sedition, kidnapping as defined by the Revised Penal Code, and violations of Commonwealth Act No. 616, punishing espionage and other offenses against national security: Provided, That such written order shall only be issued or granted upon written application and the examination under oath or affirmation of the applicant and the witnesses he may produce and a showing: (1) that there are reasonable grounds to believe that any of the crimes enumerated hereinabove has been committed or is being committed or is about to be committed: Provided, however, That in cases involving the offenses of rebellion, conspiracy and proposal to commit rebellion, inciting to rebellion, sedition, conspiracy to commit sedition, and inciting to sedition, such authority shall be granted only upon prior proof that a rebellion or acts of sedition, as the case may be, have actually been or are being committed; (2) that there are reasonable grounds to believe that evidence will be obtained essential to the conviction of any person for, or to the solution of, or to the prevention of, any of such crimes; and (3) that there are no other means readily available for obtaining such evidence.

The order granted or issued shall specify: (1) the identity of the person or persons whose communications, conversations, discussions, or spoken words are to be overheard, intercepted, or recorded and, in the case of telegraphic or telephonic communications, the telegraph line or the telephone number involved and its location; (2)

the identity of the peace officer authorized to overhear, intercept, or record the communications, conversations, discussions, or spoken words; (3) the offense or offenses committed or sought to be prevented; and (4) the period of the authorization. The authorization shall be effective for the period specified in the order which shall not exceed sixty (60) days from the date of issuance of the order, unless extended or renewed by the court upon being satisfied that such extension or renewal is in the public interest.

All recordings made under court authorization shall, within forty-eight hours after the expiration of the period fixed in the order, be deposited with the court in a sealed envelope or sealed package, and shall be accompanied by an affidavit of the peace officer granted such authority stating the number of recordings made, the dates and times covered by each recording, the number of tapes, discs, or records included in the deposit, and certifying that no duplicates or copies of the whole or any part thereof have been made, or if made, that all such duplicates or copies are included in the envelope or package deposited with the court. The envelope or package so deposited shall not be opened, or the recordings replayed, or used in evidence, or their contents revealed, except upon order of the court, which shall not be granted except upon motion, with due notice and opportunity to be heard to the person or persons whose conversation or communications have been recorded.

The court referred to in this section shall be understood to mean the Court of First Instance within whose territorial jurisdiction the acts for which authority is applied for are to be executed.

Sec. 4. Any communication or spoken word, or the existence, contents, substance, purport, effect, or meaning of the same or any part thereof, or any information therein contained obtained or secured by any person in violation of the preceding sections of this Act shall not be admissible in evidence in any judicial, quasi-judicial, legislative or administrative hearing or investigation.

Sec. 5. All laws inconsistent with the provisions of this Act are hereby repealed or accordingly amended.

Sec. 6. This Act shall take effect upon its approval.

Approved: June 19, 1965

II. EXPLANATIONS

WHAT ARE CONSIDERED ILLEGAL ACTS UNDER PD 4200?

It shall be unlawful for any person, not being authorized by all the parties to any private communication or spoken word:

(1) to tap any wire or cable, or by using any other device or arrangement,

(2) to secretly overhear, intercept, or record such communication or spoken word by using a device commonly known as a dictaphone or dictagraph or dictaphone or walkie-talkie or tape recorder, or however otherwise described:

(3) It shall also be unlawful for any person, be he a participant or not in the act or acts penalized in the next preceding sentence,

(4) to knowingly possess any tape record, wire record, disc record, or any other such record, or copies thereof, of any communication or spoken word secured either before or after the effective date of this Act in the manner prohibited by this law; or

(5) to replay the same for any other person or persons; or

(6) to communicate the contents thereof, either verbally or in writing, or to furnish transcriptions thereof, whether complete or partial, to any other person: Provided, That the use of such record or any copies thereof as evidence in any civil, criminal investigation or trial of offenses mentioned in section 3 hereof, shall not be covered by this prohibition.

(7) Any person who willfully or knowingly does or who shall aid, permit, or cause to be done any of the acts declared to be unlawful in the preceding section or who violates the provisions of the following section or of any order issued thereunder, or aids, permits, or causes such violation shall, upon conviction thereof, be punished by imprisonment for not less than six months or more than six years and with the accessory penalty of perpetual absolute disqualification from public office if the offender be a public

official at the time of the commission of the offense, and, if the offender is an alien he shall be subject to deportation proceedings.

WHEN IS WIRE TAPPING PERMISSIBLE OR WHAT IS THE EXEMPTION TO THE GENERAL RULE?

When the is a Court Order to execute any of the acts declared to be unlawful in the two preceding sections in cases involving the crimes of treason, espionage, provoking war and disloyalty in case of war, piracy, mutiny in the high seas, rebellion, conspiracy and proposal to commit rebellion, inciting to rebellion, sedition, conspiracy to commit sedition, inciting to sedition, kidnapping as defined by the Revised Penal Code, and violations of Commonwealth Act No. 616, punishing espionage and other offenses against national security:

Provided, That such written **order shall only be issued or granted upon written application and the examination under oath or affirmation of the applicant and the witnesses he may produce and a showing:**

(1) that there are reasonable grounds to believe that any of the crimes enumerated hereinabove has been committed or is being committed or is about to be committed: Provided, however, That in cases involving the offenses of rebellion, conspiracy and proposal to commit rebellion, inciting to rebellion, sedition, conspiracy to commit sedition, and inciting to sedition, such authority shall be granted only upon prior proof that a rebellion or acts of sedition, as the case may be, have actually been or are being committed;

(2) that there are reasonable grounds to believe that evidence will be obtained essential to the conviction of any person for, or to the solution of, or to the prevention of, any of such crimes; and

(3) that there are no other means readily available for obtaining such evidence.

The order granted or issued shall specify:

(1) the identity of the person or persons whose communications, conversations, discussions, or spoken words are to be overheard, intercepted, or recorded and, in the case of telegraphic or telephonic communications, the telegraph line or the telephone number involved and its location;

(2) the identity of the peace officer authorized to overhear, intercept, or record the communications, conversations, discussions, or spoken words;

(3) the offense or offenses committed or sought to be prevented; and

(4) the period of the authorization. The authorization shall be effective for the period specified in the order which shall not exceed sixty (60) days from the date of issuance of the order, unless extended or renewed by the court upon being satisfied that such extension or renewal is in the public interest.

All recordings made under court authorization shall, within forty-eight hours after the expiration of the period fixed in the order, be deposited with the court in a sealed envelope or sealed package, and shall be accompanied by an affidavit of the peace officer granted such authority stating the number of recordings made, the dates and times covered by each recording, the number of tapes, discs, or records included in the deposit, and certifying that no duplicates or copies of the whole or any part thereof have been made, or if made, that all such duplicates or **copies** are included in the envelope or package deposited with the court. The envelope or package so deposited shall not be opened, or the recordings replayed, or used in evidence, or their contents revealed, except upon order of the court, which shall not be granted except upon motion, with due notice and opportunity to be heard to the person or persons whose conversation or communications have been recorded.

The court referred to in this section shall be understood to mean the Court of First Instance within whose territorial jurisdiction the acts for which authority is applied for are to be executed.

WHAT IS THE EFFECT OF THIS LAW IF THE EVIDENCE WAS OBTAINED IN VIOLATION OF THIS LAW?

Any communication or spoken word, or the existence, contents, substance, purport, effect, or meaning of the same or any part thereof, or any information **therein contained obtained or secured by any person in violation of the preceding sections of this Act shall not be admissible in evidence in any judicial**, quasi-judicial, legislative or administrative hearing or investigation.

III. JURISPRUDENCE

G.R. No. 93833 September 28, 1995

SOCORRO D. RAMIREZ, petitioner,

vs.

HONORABLE COURT OF APPEALS, and ESTER S. GARCIA, respondents.

KAPUNAN, J.:p

A civil case damages was filed by petitioner Socorro D. Ramirez in the Regional Trial Court of Quezon City alleging that the private respondent, Ester S. Garcia, in a confrontation in the latter's office, allegedly vexed, insulted and humiliated her in a "hostile and furious mood" and in a manner offensive to petitioner's dignity and personality," contrary to morals, good customs and public policy." 1
In support of her claim, petitioner produced a verbatim transcript of the event and sought moral damages, attorney's fees and other expenses of litigation in the amount of P610,000.00, in addition to costs, interests and other reliefs awardable at the trial court's

discretion. The transcript on which the civil case was based was culled from a tape recording of the confrontation made by petitioner. 2 The transcript reads as follows:

Plaintiff Soccoro D. Ramirez (Chuchi) Good Afternoon M'am.
Defendant Ester S. Garcia (ESG) Ano ba ang nangyari sa 'yo, nakalimot ka na kung paano ka napunta rito, porke member ka na, magsumbong ka kung ano ang gagawin ko sa 'yo.

CHUCHI Kasi, naka duty ako noon.
ESG Tapos iniwan no. (Sic)
CHUCHI Hindi m'am, pero ilan beses na nila akong binalikan, sabing ganoon
ESG Ito and (sic) masasabi ko sa 'yo, ayaw kung (sic) mag explain ka, kasi hanggang 10:00 p.m., kinabukasan hindi ka na pumasok. Ngayon ako ang babalik sa 'yo, nag-aaply ka sa States, nag-aaply ka sa review mo, kung kakailanganin ang certification mo, kalimutan mo na kasi hindi ka sa akin makakahingi.

CHUCHI Hindi M'am. Kasi ang ano ko talaga noon i-cocontinue ko up to 10:00 p.m.
ESG Bastos ka, nakalimutan mo na kung paano ka pumasok dito sa hotel. Magsumbong ka sa Union kung gusto mo. Nakalimutan mo na kung paano ka nakapasok dito "Do you think that on your own makakapasok ka kung hindi ako. Panunumbyoyan na kita (Sinusumbatan na kita).
CHUCHI Itutuloy ko na M'am sana ang duty ko.
ESG Kaso ilang beses na akong binabalikan doon ng mga no (sic) ko.

ESG Nakalimutan mo na ba kung paano ka pumasok sa hotel, kung on your own merit alam ko naman kung gaano ka "ka bobo" mo. Marami ang nag-aaply alam kong hindi ka papasa.
CHUCHI Kumuha kami ng exam noon.
ESG Oo, pero hindi ka papasa.
CHUCHI Eh, bakit ako ang nakuha ni Dr. Tamayo
ESG Kukunin ka kasi ako.
CHUCHI Eh, di sana
ESG Huwag mong ipagmalaki na may utak ka kasi wala kang utak. Akala mo ba makukuha ka dito kung hindi ako.
CHUCHI Mag-eexplain ako.

ESG Huwag na, hindi ako mag-papa-explain sa 'yo, makaalala ka kung paano ka puma-rito. "Putang-ina" sasabi-sabihin mo kamag-anak ng nanay at tatay mo ang mga magulang ko.
ESG Wala na akong pakialam, dahil nandito ka sa loob, nasa labas ka puwede ka ng hindi pumasok, okey yan nasaloob ka umalis ka doon.

CHUCHI Kasi M'am, binbalikan ako ng mga taga Union.
ESG Nandiyan na rin ako, pero huwag mong kalimutan na hindi ka makakapasok kung hindi ako. Kung hindi mo kinikilala yan okey lang sa akin, dahil tapos ka na.

CHUCHI Ina-ano ko m'am na utang na loob.
ESG Huwag na lang, hindi mo utang na loob, kasi kung baga sa no, nilapastangan mo ako.
CHUCHI Paano kita nilapastanganan?
ESG Mabuti pa lumabas ka na. Hindi na ako makikipagusap sa 'yo. Lumabas ka na. Magsumbong ka. 3

As a result of petitioner's recording of the event and alleging that the said act of secretly taping the confrontation was illegal, private respondent filed a criminal case before the Regional Trial Court of Pasay City for violation of Republic Act 4200, entitled "An Act to prohibit and penalize wire tapping and other related violations of private communication, and other purposes." An information charging petitioner of violation of the said Act, dated October 6, 1988 is quoted herewith:

INFORMATION

The Undersigned Assistant City Fiscal Accusses Socorro D. Ramirez of Violation of Republic Act No. 4200, committed as follows:

That on or about the 22nd day of February, 1988, in Pasay City Metro Manila, Philippines, and within the jurisdiction of this honorable court, the above-named accused, Socorro D. Ramirez not being authorized by Ester S. Garcia to record the latter's conversation with said accused, did then and there willfully, unlawfully and feloniously, with the use of a tape recorder secretly record the said conversation and thereafter communicate in writing the contents of the said recording to other person.

Contrary to law.
Pasay City, Metro Manila, September 16, 1988.

MARIANO M. CUNETAAsst. City Fiscal

Upon arraignment, in lieu of a plea, petitioner filed a Motion to Quash the Information on the ground that the facts charged do not constitute an offense, particularly a violation of R.A. 4200. In an order May 3, 1989, the trial court granted the Motion to Quash, agreeing with petitioner that 1) the facts charged do not constitute an offense under R.A. 4200; and that 2) the violation punished by R.A. 4200 refers to a the taping of a communication by a person

other than a participant to the communication. 4

From the trial court's Order, the private respondent filed a Petition for Review on Certiorari with this Court, which forthwith referred the case to the Court of Appeals in a Resolution (by the First Division) of June 19, 1989.
On February 9, 1990, respondent Court of Appeals promulgated its assailed Decision declaring the trial court's order of May 3, 1989 null and void, and holding that:

[T]he allegations sufficiently constitute an offense punishable under Section 1 of R.A. 4200. In thus quashing the information based on the ground that the facts alleged do not constitute an offense, the respondent judge acted in grave abuse of discretion correctible by certiorari. 5

Consequently, on February 21, 1990, petitioner filed a Motion for Reconsideration which respondent Court of Appeals denied in its Resolution 6 dated June 19, 1990. Hence, the instant petition.
Petitioner vigorously argues, as her "main and principal issue" 7 that the applicable provision of Republic Act 4200 does not apply to the taping of a private conversation by one of the parties to the conversation. She contends that the provision merely refers to the unauthorized taping of a private conversation by a party other than those involved in the communication. 8 In relation to this, petitioner avers that the substance or content of the conversation must be alleged in the Information, otherwise the facts charged would not constitute a violation of R.A. 4200. 9 Finally, petitioner agues that R.A. 4200 penalizes the taping of a "private communication," not a "private conversation" and that consequently, her act of secretly taping her conversation with private respondent was not illegal under the said act. 10

We disagree.
First, legislative intent is determined principally from the language of a statute. Where the language of a statute is clear and unambiguous, the law is applied according to its express terms, and interpretation would be resorted to only where a literal interpretation would be either impossible 11 or absurb or would lead to an injustice. 12
Section 1 of R.A. 4200 entitled, " An Act to Prohibit and Penalized Wire Tapping and Other Related Violations of Private Communication and Other Purposes," provides:

Sec. 1. It shall be unlawfull for any person, not being authorized by all the parties to any private communication or spoken word, to tap any wire or cable, or by using any other device or arrangement,

to secretly overhear, intercept, or record such communication or spoken word by using a device commonly known as a dictaphone or dictagraph or detectaphone or walkie-talkie or tape recorder, or however otherwise described.

The aforestated provision clearly and unequivocally makes it illegal for any person, not authorized by all the parties to any private communication to secretly record such communication by means of a tape recorder. The law makes no distinction as to whether the party sought to be penalized by the statute ought to be a party other than or different from those involved in the private communication. The statute's intent to penalize all persons unauthorized to make such recording is underscored by the use of the qualifier "any". Consequently, as respondent Court of Appeals correctly concluded, "even a (person) privy to a communication who records his private conversation with another without the knowledge of the latter (will) qualify as a violator" 13 under this provision of R.A. 4200.

A perusal of the Senate Congressional Records, moreover, supports the respondent court's conclusion that in enacting R.A. 4200 our lawmakers indeed contemplated to make illegal, unauthorized tape recording of private conversations or communications taken either by the parties themselves or by third persons. Thus:

xxx xxx xxx

Senator Tañada: That qualified only "overhear".
Senator Padilla: So that when it is intercepted or recorded, the element of secrecy would not appear to be material. Now, suppose, Your Honor, the recording is not made by all the parties but by some parties and involved not criminal cases that would be mentioned under section 3 but would cover, for example civil cases or special proceedings whereby a recording is made not necessarily by all the parties but perhaps by some in an effort to show the intent of the parties because the actuation of the parties prior, simultaneous even subsequent to the contract or the act may be indicative of their intention. Suppose there is such a recording, would you say, Your Honor, that the intention is to cover it within the purview of this bill or outside?

Senator Tañada: That is covered by the purview of this bill, Your Honor.
Senator Padilla: Even if the record should be used not in the prosecution of offense but as evidence to be used in Civil Cases or special proceedings?

Senator Tañada: That is right. This is a complete ban on tape recorded conversations taken without the authorization of all the parties.
Senator Padilla: Now, would that be reasonable, your Honor?
Senator Tañada: I believe it is reasonable because it is not sporting to record the observation of one without his knowing it and then using it against him. It is not fair, it is not sportsmanlike. If the purpose; Your honor, is to record the intention of the parties. I believe that all the parties should know that the observations are being recorded.

Senator Padilla: This might reduce the utility of recorders.
Senator Tañada: Well no. For example, I was to say that in meetings of the board of directors where a tape recording is taken, there is no objection to this if all the parties know. It is but fair that the people whose remarks and observations are being made should know that the observations are being recorded.
Senator Padilla: Now, I can understand.
Senator Tañada: That is why when we take statements of persons, we say: "Please be informed that whatever you say here may be used against you." That is fairness and that is what we demand. Now, in spite of that warning, he makes damaging statements against his own interest, well, he cannot complain any more. But if you are going to take a recording of the observations and remarks of a person without him knowing that it is being taped or recorded, without him knowing that what is being recorded may be used against him, I think it is unfair.

xxx xxx xxx

(Congression Record, Vol. III, No. 31, p. 584, March 12, 1964)
Senator Diokno: Do you understand, Mr. Senator, that under Section 1 of the bill as now worded, if a party secretly records a public speech, he would be penalized under Section 1? Because the speech is public, but the recording is done secretly.
Senator Tañada: Well, that particular aspect is not contemplated by the bill. It is the communication between one person and another person not between a speaker and a public.

xxx xxx xxx

(Congressional Record, Vol. III, No. 33, p. 626, March 12, 1964)

xxx xxx xxx

The unambiguity of the express words of the provision, taken together with the above-quoted deliberations from the Congressional Record, therefore plainly supports the view held by

the respondent court that the provision seeks to penalize even those privy to the private communications. Where the law makes no distinctions, one does not distinguish.
Second, the nature of the conversations is immaterial to a violation of the statute. The substance of the same need not be specifically alleged in the information. What R.A. 4200 penalizes are the acts of secretly overhearing, intercepting or recording private communications by means of the devices enumerated therein. The mere allegation that an individual made a secret recording of a private communication by means of a tape recorder would suffice to constitute an offense under Section 1 of R.A. 4200. As the Solicitor General pointed out in his COMMENT before the respondent court: "Nowhere (in the said law) is it required that before one can be regarded as a violator, the nature of the conversation, as well as its communication to a third person should be professed." 14

Finally, petitioner's contention that the phrase "private communication" in Section 1 of R.A. 4200 does not include "private conversations" narrows the ordinary meaning of the word "communication" to a point of absurdity. The word communicate comes from the latin word communicare, meaning "to share or to impart." In its ordinary signification, communication connotes the act of sharing or imparting signification, communication connotes the act of sharing or imparting, as in a conversation, 15 or signifies the "process by which meanings or thoughts are shared between individuals through a common system of symbols (as language signs or gestures)" 16 These definitions are broad enough to include verbal or non-verbal, written or expressive communications of "meanings or thoughts" which are likely to include the emotionally-charged exchange, on February 22, 1988, between petitioner and private respondent, in the privacy of the latter's office. Any doubts about the legislative body's meaning of the phrase "private communication" are, furthermore, put to rest by the fact that the terms "conversation" and "communication" were interchangeably used by Senator Tañada in his Explanatory Note to the bill quoted below:

It has been said that innocent people have nothing to fear from their conversations being overheard. But this statement ignores the usual nature of conversations as well the undeniable fact that most, if not all, civilized people have some aspects of their lives they do not wish to expose. Free conversations are often characterized by exaggerations, obscenity, agreeable falsehoods, and the expression of anti-social desires of views not intended to be taken seriously. The right to the privacy of communication, among others, has expressly been assured by our Constitution. Needless to state here, the framers of our Constitution must have recognized the nature of conversations between individuals and the significance of man's

spiritual nature, of his feelings and of his intellect. They must have known that part of the pleasures and satisfactions of life are to be found in the unaudited, and free exchange of communication between individuals free from every unjustifiable intrusion by whatever means.17

In Gaanan vs. Intermediate Appellate Court, 18 a case which dealt with the issue of telephone wiretapping, we held that the use of a telephone extension for the purpose of overhearing a private conversation without authorization did not violate R.A. 4200 because a telephone extension devise was neither among those "device(s) or arrangement(s)" enumerated therein, 19 following the principle that "penal statutes must be construed strictly in favor of theaccused." 20 The instant case turns on a different note, because the applicable facts and circumstances pointing to a violation of R.A. 4200 suffer from no ambiguity, and the statute itself explicitly mentions the unauthorized "recording" of private communications with the use of tape-recorders as among the acts punishable.

WHEREFORE, because the law, as applied to the case at bench is clear and unambiguous and leaves us with no discretion, the instant petition is hereby DENIED. The decision appealed from is AFFIRMED. Costs against petitioner.
SO ORDERED.

Padilla, Davide, Jr. and Bellosillo JJ., concur.
Hermosisima, Jr., J., is on leave.

REPUBLIC ACT NO. 3019 August 17, 1960
ANTI-GRAFT AND CORRUPT PRACTICES ACT

I. FULL TEXT OF R.A. 3019

Sec. 1. Statement of policy. It is the policy of the Philippine Government, in line with the principle that a public office is a public trust, to repress certain acts of public officers and private persons alike which constitute graft or corrupt practices or which may lead thereto.
Sec. 2. Definition of terms. As used in this Act, that term

(a)"Government" includes the national government, the local governments, the government-owned and government-controlled corporations, and all other instrumentalities or agencies of the Republic of the Philippines and their branches.

(b) "Public officer" includes elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government as defined in the preceding subparagraph.

(c)"Receiving any gift" includes the act of accepting directly or indirectly a gift from a person other than a member of the public officer's immediate family, in behalf of himself or of any member of his family or relative within the fourth civil degree, either by consanguinity or affinity, even on the occasion of a family celebration or national festivity like Christmas, if the value of the gift is under the circumstances manifestly excessive.

(d) "Person" includes natural and juridical persons, unless the context indicates otherwise.

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)Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense.

(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 part, 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.

(e)Causing any undue injury to any party, including the Government, 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. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

(f) Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.
(g)Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

(h)Director or indirectly having financing 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.
(i) Directly or indirectly becoming interested, for personal gain, or having a material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which exercises discretion in such approval, even if he votes against the same or does not participate in the action of the board, committee, panel or group.

Interest for personal gain shall be presumed against those public officers responsible for the approval of manifestly unlawful, inequitable, or irregular transaction or acts by the board, panel or group to which they belong.
(j) Knowingly approving or granting any license, permit, privilege or benefit in favor of any person not qualified for or not legally entitled to such license, permit, privilege or advantage, or of a mere representative or dummy of one who is not so qualified or entitled.

(k)Divulging valuable information of a confidential character, acquired by his office or by him on account of his official position to unauthorized persons, or releasing such inform

The person giving the gift, present, share, percentage or benefit referred to in subparagraphs (b) and (c); or offering or giving to

the public officer the employment mentioned in subparagraph (d); or urging the divulging or untimely release of the confidential information referred to in subparagraph (k) of this section shall, together with the offending public officer, be punished under Section nine of this Act and shall be permanently or temporarily disqualified in the discretion of the Court, from transacting business in any form with the Government.

Sec. 4. Prohibition on private individuals. (a) It shall be unlawful for any person having family or close personal relation with any public official to capitalize or exploit or take advantage of such family or close personal relation by directly or indirectly requesting or receiving any present, gift or material or pecuniary advantage from any other person having some business, transaction, application, request or contract with the government, in which such public official has to intervene. Family relation shall include the spouse or relatives by consanguinity or affinity in the third civil degree. The word "close personal relation" shall include close personal friendship, social and fraternal connections, and professional employment all giving rise to intimacy which assures free access to such public officer.

(b) It shall be unlawful for any person knowingly to induce or cause any public official to commit any of the offenses defined in Section 3 hereof.

Sec. 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.

Sec. 6. Prohibition on Members of Congress. It shall be unlawful hereafter for any Member of the Congress during the term for which he has been elected, to acquire or receive any personal

pecuniary interest in any specific business enterprise which will be directly and particularly favored or benefited by any law or resolution authored by him previously approved or adopted by the Congress during the same term.
The provision of this section shall apply to any other public officer who recommended the initiation in Congress of the enactment or adoption of any law or resolution, and acquires or receives any such interest during his incumbency.

It shall likewise be unlawful for such member of Congress or other public officer, who, having such interest prior to the approval of such law or resolution authored or recommended by him, continues for thirty days after such approval to retain such interest.
Sec. 7. Statement of assets and liabilities. Every public officer, within thirty days after the approval of this Act or after assuming office, and within the month of January of every other year thereafter, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of the corresponding Department Head, or in the case of a Head of Department or chief of an independent office, with the Office of the President, or in the case of members of the Congress and the officials and employees thereof, with the Office of the Secretary of the corresponding House, a true detailed and sworn statement of assets and liabilities, including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year: Provided, That public officers assuming office less than two months before the end of the calendar year, may file their statements in the following months of January.

Sec. 8. Dismissal due to unexplained wealth. If in accordance with the provisions of Republic Act Numbered One thousand three hundred seventy-nine, a public official has been found to have acquired during his incumbency, whether in his name or in the name of other persons, an amount of property and/or money manifestly out of proportion to his salary and to his other lawful income, that fact shall be a ground for dismissal or removal. Properties in the name of the spouse and unmarried children of such public official may be taken into consideration, when their acquisition through legitimate means cannot be satisfactorily shown. Bank deposits shall be taken into consideration in the enforcement of this section, notwithstanding any provision of law to the contrary.

Sec. 9. Penalties for violations. (a) Any public officer or private person committing any of the unlawful acts or omissions

enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than one year nor more than ten years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.

Any complaining party at whose complaint the criminal prosecution was initiated shall, in case of conviction of the accused, be entitled to recover in the criminal action with priority over the forfeiture in favor of the Government, the amount of money or the thing he may have given to the accused, or the value of such thing.

(b) Any public officer violation any of the provisions of Section 7 of this Act shall be punished by a fine of not less than one hundred pesos nor more than one thousand pesos, or by imprisonment not exceeding one year, or by both such fine and imprisonment, at the discretion of the Court.

The violation of said section proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public officer, even if no criminal prosecution is instituted against him.

Sec. 10. Competent court. Until otherwise provided by law, all prosecutions under this Act shall be within the original jurisdiction of the proper Court of First Instance.

Sec. 11. Prescription of offenses. All offenses punishable under this Act shall prescribe in ten years.

Sec. 12. Termination of office. No public officer shall be allowed to resign or retire pending an investigation, criminal or administrative, or pending a prosecution against him, for any offense under this Act or under the provisions of the Revised Penal Code on bribery.

Sec. 13. Suspension and loss of benefits. Any public officer against whom any criminal prosecution under a valid information under this Act or under the provisions of the Revised Penal Code on bribery is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him.

Sec. 14. Exception. Unsolicited gifts or presents of small or insignificant value offered or given as a mere ordinary token of

gratitude or friendship according to local customs or usage, shall be excepted from the provisions of this Act.

Nothing in this Act shall be interpreted to prejudice or prohibit the practice of any profession, lawful trade or occupation by any private person or by any public officer who under the law may legitimately practice his profession, trade or occupation, during his incumbency, except where the practice of such profession, trade or occupation involves conspiracy with any other person or public official to commit any of the violations penalized in this Act.

Sec. 15. Separability clause. If any provision of this Act or the application of such provision to any person or circumstances is declared invalid, the remainder of the Act or the application of such provision to other persons or circumstances shall not be affected by such declaration.

Sec. 16. Effectivity. This Act shall take effect on its approval, but for the purpose of determining unexplained wealth, all property acquired by a public officer since he assumed office shall be taken into consideration.

Approved: August 17, 1960

II. EXPLANATION.

I. Definition of terms.

(a) "Government" includes the national government, the local governments, the government-owned and government-controlled corporations, and all other instrumentalities or agencies of the Republic of the Philippines and their branches.

(b) "Public officer" includes elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government as defined in the preceding subparagraph.

(c) "Receiving any gift" includes the act of accepting directly or indirectly a gift from a person other than a member of the public officer's immediate family, in behalf of himself or of any member of his family or relative within the fourth civil degree, either by consanguinity or affinity, even on the occasion of a family celebration or national festivity like Christmas, if the value of the gift is under the circumstances manifestly excessive.

(d) "Person" includes natural and juridical persons, unless the context indicates otherwise.

II. 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) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense.

(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 part, 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.

(e) Causing any undue injury to any party, including the Government, 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. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

(f) Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

(h) Director or indirectly having financing 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.

(i) Directly or indirectly becoming interested, for personal gain, or having a material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which exercises discretion in such approval, even if he votes against the same or does not participate in the action of the board, committee, panel or group.

Interest for personal gain shall be presumed against those public officers responsible for the approval of manifestly unlawful, inequitable, or irregular transaction or acts by the board, panel or group to which they belong.

(j) Knowingly approving or granting any license, permit, privilege or benefit in favor of any person not qualified for or not legally entitled to such license, permit, privilege or advantage, or of a mere representative or dummy of one who is not so qualified or entitled.

(k) Divulging valuable information of a confidential character, acquired by his office or by him on account of his official position to unauthorized persons, or releasing such information in advance of its authorized release date.

The person giving the gift, present, share, percentage or benefit referred to in subparagraphs (b) and (c); or offering or giving to the public officer the employment mentioned in subparagraph (d); or urging the divulging or untimely release of the confidential information referred to in subparagraph (k) of this section shall, together with the offending public officer, be punished under Section nine of this Act and shall be permanently or temporarily disqualified in the discretion of the Court, from transacting business in any form with the Government.

III. Prohibition on private individuals.

(a) It shall be unlawful for any person having family or close personal relation with any public official to capitalize or exploit or take advantage of such family or close personal relation by directly or indirectly requesting or receiving any present, gift or material or pecuniary advantage from any other person having some business, transaction, application, request or contract with the government, in which such public official has to intervene. Family relation shall include the spouse or relatives by consanguinity or affinity in the third civil degree. The word "close personal relation" shall include close personal friendship, social and fraternal connections,

and professional employment all giving rise to intimacy which assures free access to such public officer.

(b) It shall be unlawful for any person knowingly to induce or cause any public official to commit any of the offenses defined in Section 3 hereof.

IV. 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.

V. Prohibition on Members of Congress.

It shall be unlawful hereafter for any Member of the Congress during the term for which he has been elected, to acquire or receive any personal pecuniary interest in any specific business enterprise which will be directly and particularly favored or benefited by any law or resolution authored by him previously approved or adopted by the Congress during the same term.
The provision of this section shall apply to any other public officer who recommended the initiation in Congress of the enactment or adoption of any law or resolution, and acquires or receives any such interest during his incumbency.

It shall likewise be unlawful for such member of Congress or other public officer, who, having such interest prior to the approval of such law or resolution authored or recommended by him, continues for thirty days after such approval to retain such interest.

VI. Statement of assets and liabilities.

Every public officer, within thirty days after the approval of this Act or after assuming office, and within the month of January of every other year thereafter, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of the corresponding Department Head, or in the case of a Head of Department or chief of an independent office, with the Office of the President, or in the case of members of the Congress and the officials and employees thereof, with the Office of the Secretary of the corresponding House, a true detailed and sworn statement of assets and liabilities, including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year: Provided, That public officers assuming office less than two months before the end of the calendar year, may file their statements in the following months of January.

VII. Dismissal due to unexplained wealth.

If in accordance with the provisions of Republic Act Numbered One thousand three hundred seventy-nine, a public official has been found to have acquired during his incumbency, whether in his name or in the name of other persons, an amount of property and/or money manifestly out of proportion to his salary and to his other lawful income, that fact shall be a ground for dismissal or removal. Properties in the name of the spouse and unmarried children of such public official may be taken into consideration, when their acquisition through legitimate means cannot be satisfactorily shown. Bank deposits shall be taken into consideration in the enforcement of this section, notwithstanding any provision of law to the contrary.

VIII. Penalties

(a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than one year nor more than ten years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.

Any complaining party at whose complaint the criminal prosecution was initiated shall, in case of conviction of the accused, be entitled to recover in the criminal action with priority over the forfeiture in favor of the Government, the amount of money or the thing he may have given to the accused, or the value of such thing.

(b) Any public officer violation any of the provisions of Section 7 of this Act shall be punished by a fine of not less than one hundred pesos nor more than one thousand pesos, or by imprisonment not exceeding one year, or by both such fine and imprisonment, at the discretion of the Court.

The violation of said section proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public officer, even if no criminal prosecution is instituted against him.

VIII. Competent court.

Until otherwise provided by law, all prosecutions under this Act shall be within the original jurisdiction of the proper Court of First Instance.

IX. Prescription of offenses.

All offenses punishable under this Act shall prescribe in ten years.

X. Termination of office.

No public officer shall be allowed to resign or retire pending an investigation, criminal or administrative, or pending a prosecution against him, for any offense under this Act or under the provisions of the Revised Penal Code on bribery.

XI. Suspension and loss of benefits.

Any public officer against whom any criminal prosecution under a valid information under this Act or under the provisions of the Revised Penal Code on bribery is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him.

Exception.

Unsolicited gifts or presents of small or insignificant value offered or given as a mere ordinary token of gratitude or friendship according to local customs or usage, shall be excepted from the provisions of this Act.

Nothing in this Act shall be interpreted to prejudice or prohibit the practice of any profession, lawful trade or occupation by any private person or by any public officer who under the law may legitimately practice his profession, trade or occupation, during his incumbency, except where the practice of such profession, trade or occupation involves conspiracy with any other person or public official to commit any of the violations penalized in this Act.

III. JURISPRUDENCE

G.R. No. 96131 September 6, 1991

CORAZON C. GONZAGA, petitioner,

vs.

THE HONORABLE SANDIGANBAYAN (FIRST DIVISION), THE PEOPLE OF THE PHILIPPINES, and THE DEPARTMENT OF EDUCA PETITION CULTURE AND SPORTS, respondents.

Prospers A. Crescini for petitioner.

PADILLA, J.:p

Assailed in this petition for review on certiorari are two (2) resolutions of the Sandiganbayan, dated 10 September 1990 and 30 October 1990, respectively, rendered in Criminal Case No. 14404, entitled "People vs. Corazon C. Gonzaga" (For: Malversation under Article 217 of the Revised Penal Code). The resolution dated 10 September 1990 granted the prosecution's motion to suspend accused-petitioner', pendente lite, from her position as school principal of Malabon Municipal High School, Malabon, Metro Manila. The resolution dated 30 October 1990 denied accused-petitioner's motion for reconsideration of the 10 September 1990 resolution.

Petitioner alleges in her present petition 1 that a complaint for malversation of public funds was filed against her, in her capacity as School Principal of the Malabon Municipal High School, Malabon, Metro Manila. The complaint was filed before the Ombudsman by the Municipal Administrator of the Municipality of Malabon, based on the audit report of the Commission on Audit, wherein petitioner as an accountable officer is alleged to have incurred a shortage of P15,188.37; that an information 2 dated 2 March 1990 was thereafter filed against petitioner before the Sandiganbayan for the crime of malversation of public funds under Article 217 of the Revised Penal Code; 3 that before she could be arraigned, accused-petitioner filed with respondent court a motion for re-investigation, which motion was denied by said court in its resolution dated 2 July 1990; 4 that on 17 August 1990, accused-petitioner pleaded not guilty to the crime charged; and that on the same date, the prosecution filed a motion seeking to suspend, pendente lite, the accused as school principal of the above-named school, 5 on the basis of Section 13, Republic Act 3019 ("Anti-Graft and Corrupt Practices Act"), as amended by Batas Pambansa Blg. 195. 6

The resolution dated 10 September 1990 granted the prosecutions motion to suspend the accused, pendente lite, the dispositive portion of which reads:

IN VIEW OF THE FOREGOING, accused CORAZON GONZAGA is hereby suspended pendente lite from her position as Principal of the Malabon National High School, Malabon, Metro Manila and from such other public positions that she maybe holding, effective immediately upon notice hereof.

Let a copy of the Resolution be furnished to the Secretary of the Department of Education, Culture and Sports, Intramuros, Manila for implementation thereof and to inform this Court of the action he has taken thereon within five (5) days from receipt hereof. 7

Petitioner's motion for reconsideration of the above-quoted resolution was, as aforestated, denied by the respondent court in its resolution dated 30 October 1990, dispositive part of which reads:

Considering the mandatory character of Sec. 13 of R.A. No. 3019 and the various decisions of the Supreme Court upholding the validity of the same, accused Gonzaga's Motion for Reconsideration of the resolution of this Court dated September 10, 1990 suspending her pendente lite is denied. 8

In the present petition, petitioner questions the validity of the suspension imposed on her as school principal of Malabon Municipal High School by the aforestated resolutions of the respondent court.

We find merit in the petition.

It will be noted that in the questioned resolutions, respondent court imposed on petitioner an indefinite period of suspension, pendente lite, from her mentioned office, on the basis of Section 13, Rep. Act 3019, as amended, earlier quoted. Petitioner at the outset contends that Section 13 of Rep. Act 3019, as amended, is unconstitutional as the suspension provided thereunder partake of a penalty even before a judgment of conviction is reached, and is thus violative of her constitutional right to be presumed innocent.

We do not accept the contention because: firstly, under Section 13, Rep. Act 3019, suspension of a public officer upon the filing of a valid information is mandatory. 9 What the Constitution rejects is a preventive suspension of indefinite duration as it raises, at the very least, questions of denial of due process and equal protection of the laws; in other words, preventive suspension is justifiable for as long as its continuance is for a reasonable length of time; 10 secondly, preventive suspension is not a penalty; 11 a person under preventive suspension, especially in a criminal action, remains entitled to the constitutional presumption of innocence as his culpability must still be established established 12 thirdly, the rule is that every law has in its favor the presumption of validity, and that to declare a law unconstitutional, the basis for such a declaration must be clearly established. 13

The issue in this case, as we see it, is not whether Section 13, Rep. Act 3019 is valid or not, but rather whether the same is constitutionally applied in relation to the surrounding circumstances. 14

It is worthy to note that even prior to the cases of Deloso (1988) and Doromal (1989), to be discussed shortly, pronouncements had already been made by the Court in the cases of Garcia (1962) and Layno (1985) 15 to the effect that a preventive suspension lasting for an unreasonable length of time violates the Constitution. In the more recent cases of Deloso vs. Sandiganbayan, and Doromal vs. Sandiganbayan, 16 suspension under Section 13 of Rep. Act 3019 was held as limited to a maximum period of ninety (90) days, in consonance with Section 42 of Pres. Decree No. 807 (otherwise known as the "Civil Service Decree"). 17 We see no cogent reason why the same rule should not apply to herein petitioner.

In fact, the recommendation of the Solicitor General (counsel for public respondent) is that, inasmuch as the suspension mentioned under Section 13 of Rep. Act 3019 is understood as limited to a maximum duration of ninety (90) days, the order of suspension imposed on petitioner, having been rendered on 10 September 1990, should now be lifted, as suspension has already exceeded the maximum period of ninety (90) days.

All told, preventive suspension is not violative of the Constitution as it is not a penalty. In fact, suspension particularly under Section 13 of Rep. Act 3019 is mandatory once the validity of the information is determined. 18 What the Constitution abhors is an indefinite preventive suspension as it violates the due process and equal protection clauses, 19 and the right of public officers and employees to security of tenure. 20

Henceforth, considering that the persons who can be charged under Rep. Act 3019, as amended, include elective and appointive officers and employees, and futher taking into account the rulings in the Deloso and Doromal cases, the ninety (90)-day maximum period for suspension under Section 13 of the said Act shall apply to all those who are validly charged under the said Act, whether elective or appointive officer or employee as defined in Section 2(b) of Rep. Act 3019. 21

To the extent that there may be cases of indefinite suspension imposed either under Section 13 of Rep. Act 3019, or Section 42 of Pres. Decree 807, it is best for the guidance of all concerned that this Court set forth the rules on the period of preventive suspension under the aforementioned laws, as follows:

1. Preventive suspension under Section 13, Rep. Act 3019 as amended shall be limited to a maximum period of ninety (90) days, from issuance thereof, and this applies to all public officers, (as defined in Section 2(b) of Rep. Act 3019) who are validly charged under said Act.
2. Preventive suspension under Section 42 of Pres. Decree 807 shall apply to all officers or employees whose positions are embraced in the Civil Service, as provided under Sections 3 and 4 of Id Pres. Decree 807; 22 and shall be limited to a maximum period of ninety (90) days from issuance, except where there is delay in the disposition of the case, which is due to the fault, negligence or petition of the respondent, in which case the period of delay shall not be counted in computing the period of suspension herein stated; provided that if the person suspended is a presidential appointee, 23 the continuance of his suspension shag be for a reasonable time as the circumstances of the case may warrant.

WHEREFORE, the petition is GRANTED and the questioned resolutions of the respondent Sandiganbayan, dated 10 September 1990 and 30 October 1990, are hereby SET ASIDE. Petitioner may re-assume the position of school principal of the Malabon Municipal High School, Malabon Metro Manila without prejudice to the continuation of trial on the merits of the pending case against her in the Sandiganbayan, unless there are other supervening legal grounds which would prevent such re-assumption of office.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Bidin, Grino-Aquino, Medialdea, Regalado and Davide, Jr., JJ., concur.
Feliciano and Sarmiento, JJ., is on leave.

REPUBLIC ACT NO. 7659

AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL LAWS, AND FOR OTHER PURPOSES

II. I. FULL TEXT

WHEREAS, the Constitution, specifically Article III, Section 19 paragraph (1) thereof, states *"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"*;

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;

WHEREAS, due to the alarming upsurge of such crimes which has resulted not only in the loss of human lives and wanton destruction of property but also affected the nation's efforts towards sustainable economic development and prosperity while at the same time has undermined the people's faith in the Government and the latter's ability to maintain peace and order in the country;

WHEREAS, the Congress, in the interest of justice, public order and the rule of law, and the need to rationalize and harmonize the penal sanctions for heinous crimes, finds compelling reasons to impose the death penalty for said crimes; chanrobles virtual law library

Now, therefore,

Sec. 1. *Declaration of Policy*. - It is hereby declared the policy of the State to foster and ensure not only obedience to its authority, but also to adopt such measures as would effectively promote the maintenance of peace and order, the protection of life, liberty and property, and the promotion of the general welfare which are essential for the enjoyment by all the people of the blessings of democracy in a just and humane society;

Sec. 2. Article 114 of the Revised Penal Code, as amended, is hereby amended to read as follows:

"Art. 114. *Treason.* - Any Filipino citizen who levies war against the Philippines or adheres to her enemies giving them aid or comfort within the Philippines or elsewhere, shall be punished by *reclusion perpetua* to death and shall pay a fine not to exceed 100,000 pesos.

"No person shall be convicted of treason unless on the testimony of two witnesses at least to the same overt act or on confession of the accused in open court.

"Likewise, an alien, residing in the Philippines, who commits acts of treason as defined in paragraph 1 of this Article shall be punished by *reclusion temporal* to death and shall pay a fine not to exceed 100,000 pesos."

Sec. 3. Section Three, Chapter One, Title One of Book Two of the same Code is hereby amended to read as follows:

"Section Three. - Piracy and mutiny on the high seas
or in the Philippine waters

"Art. 122. *Piracy in general and mutiny on the high seas or in the Philippine waters.* - The penalty of *reclusion perpetua* shall be inflicted upon any person who, on the high seas, or in the Philippine waters, shall attack or seize a vessel or, not being a member of its complement nor a passenger, shall seize the whole or part of the cargo of said vessel, its equipment or passengers.

The same penalty shall be inflicted in case of mutiny on the high seas or in the Philippine waters.

"Art. 123. *Qualified piracy.* - The penalty of reclusion perpetua to death shall be imposed upon those who commit any of the crimes referred to in the preceding article, under any of the following circumstances:

"1. Whenever they have seized a vessel by boarding or firing upon the same;

"2. Whenever the pirates have abandoned their victims without means of saving themselves or;

"3. Whenever the crime is accompanied by murder, homicide, physical injuries or rape."

Sec. 4. There shall be incorporated after Article 211 of the same Code a new article to read as follows:

"Art. 211-A. *Qualified Bribery.* - If any public officer is entrusted with law enforcement and he refrains from arresting or prosecuting an offender who has committed a crime punishable by *reclusion perpetua* and/or death in consideration of any offer, promise, gift or present, he shall suffer the penalty for the offense which was not prosecuted.

"If it is the public officer who asks or demands such gift or present, he shall suffer the penalty of death."

Sec. 5. The penalty of death for parricide under Article 246 of the same Code is hereby restored, so that it shall read as follows:

"Art. 246. *Parricide.* - Any person who shall kill his father, mother, or child, whether legitimate of illegitimate, or any of his ascendants, or

descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of reclusion perpetua to death."

Sec. 6. Article 248 of the same Code is hereby amended to read as follows:

"Art. 248. *Murder.* - Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:

"1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

"2. In consideration of a price, reward or promise.

"3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.

"4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.

"5. With evident premeditation.

"6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse."

Sec. 7. Article 255 of the same Code is hereby amended to read as follows:

"Art. 255. *Infanticide.* - The penalty provided for parricide in Article 246 and for murder in Article 248 shall be imposed upon any person who shall kill any child less than three days of age.

"If any crime penalized in this Article be committed by the mother of the child for the purpose of concealing her dishonor, she shall suffer the penalty of *prision mayor* in its medium and maximum periods, and if said crime be committed for the same purpose by the maternal grandparents or either of them, the penalty shall be *reclusion temporal*." chanrobles virtual law library

Sec. 8. Article 267 of the same Code is hereby amended to read as follows:

"Art. 267. *Kidnapping and serious illegal detention.* - Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:

"1. If the kidnapping or detention shall have lasted more than three days.

"2. If it shall have been committed simulating public authority.

"3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.

"4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.
"The penalty shall be death penalty where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.

"When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed."
Sec. 9. Article 294 of the same Code is hereby amended to read as follows:
"Art. 294. *Robbery with violence against or intimidation of persons; Penalties.* - Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:
"1. The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

"2. The penalty of *reclusion temporal* in its medium period to reclusion perpetua, when or if by reason or on occasion of such robbery, any of the physical injuries penalized in subdivision I of Article 263 shall have been inflicted.

"3. The penalty of reclusion temporal, when by reason or on occasion of the robbery, any of the physical injuries penalized in subdivision 2 of the article mentioned in the next preceding paragraph, shall have been inflicted.

"4. The penalty of prision mayor in its maximum period to *reclusion temporal* in its medium period, if the violence or intimidation employed in the commission of the robbery shall have been carried to a degree clearly unnecessary for the commission of the crime, or when in the course of its execution, the offender shall have inflicted upon any person not responsible for its commission any of the physical injuries covered by subdivisions 3 and 4 of said Article 263.

"5. The penalty of *prision correccional* in its maximum period to *prision mayor* in its medium period in other cases."
Sec. 10. Article 320 of the same Code is hereby amended to read as follows:

"Art. 320. *Destructive Arson.* - The penalty of reclusion perpetua to death shall be imposed upon any person who shall burn:
"1. One (1) or more buildings or edifices, consequent to one single act of burning, or as a result of simultaneous burnings, committed on several or different occasions. chanrobles virtual law library

"2. Any building of public or private ownership, devoted to the public in general or where people usually gather or congregate for a definite purpose such as, but not limited to, official governmental function or business, private transaction, commerce trade workshop, meetings and conferences, or merely incidental to a definite purpose such as but not limited to hotels, motels, transient dwellings, public conveyances or stops or terminals, regardless of whether the offender had knowledge that there are persons in said building or edifice at the time it is set on fire and regardless also of whether the building is actually inhabited or not.

"3. Any train or locomotive, ship or vessel, airship or airplane, devoted to transportation or conveyance, or for public use, entertainment or leisure.

"4. Any building, factory, warehouse installation and any appurtances thereto, which are devoted to the service of public utilities.

"5. Any building the burning of which is for the purpose of concealing or destroying evidence of another violation of law, or for the purpose of concealing bankruptcy or defrauding creditors or to collect from insurance.

"Irrespective of the application of the above enumerated qualifying circumstances, the penalty of *reclusion perpetua* to death shall likewise be imposed when the arson is perpetrated or committed by two (2) or more persons or by a group of persons, regardless of whether their purpose is merely to burn or destroy the building or the burning merely constitutes an overt act in the commission or another violation of law.
"The penalty of *reclusion perpetua* to death shall also be imposed upon any person who shall burn:
"1. Any arsenal, shipyard, storehouse or military powder or fireworks factory, ordnance, storehouse, archives or general museum of the Government.

"2. In an inhabited place, any storehouse or factory of inflammable or explosive materials.
"If as a consequence of the commission of any of the acts penalized under this Article, death results, the mandatory penalty of death shall be imposed."
Sec. 11. Article 335 of the same Code is hereby amended to read as follows:

"Art. 335. *When and how rape is committed.* - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:
"1. By using force or intimidation;

"2. When the woman is deprived of reason or otherwise unconscious; and

"3. When the woman is under twelve years of age or is demented.
"The crime of rape shall be punished by *reclusion perpetua.*

"Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

"When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

"When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.

"The death penalty shall also be imposed it the crime of rape is committed with any of the following attendant circumstances:
"1. when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim.

"2. when the victim is under the custody of the police or military authorities.

"3. when the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity.

"4. when the victim is a religious or a child below seven (7) years old.

"5. when the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease. chanrobles virtual law library

"6. when committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.

"7. when by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation."

Sec. 12. Section 2 of Republic Act No. 7080 (An Act Defining and

Penalizing the Crime of Plunder) is hereby amended to read as follows:

"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 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."

Sec. 13. Sections 3, 4, 5, 6, 7, 8 and 9, of Article II of Republic Act No. 6425, as amended, known as the Dangerous Drugs Act 1972, are hereby amended to read as follows:

"Sec. 3. *Importation of Prohibited Drugs.* - The penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall import or bring into the Philippines any prohibited drug.

"Sec. 4. *Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs.* - The penalty of reclusion perpetua to death and a fine from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as a broker in any of such transactions.

"Notwithstanding the provisions of Section 20 of this Act to the contrary, if the victim of the offense is a minor, or should a prohibited drug involved in any offense under this Section be the proximate cause of the death of a victim thereof, the maximum penalty herein provided shall be imposed.

"Sec. 5. *Maintenance of a Den, Dive or Resort for Prohibited Drug Users.* - The penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person or group of persons who shall maintain a den, dive or resort where any prohibited drug is used in any form or where such prohibited drugs in quantities specified in Section 20, Paragraph 1 of this Act are found.

"Notwithstanding the provisions of Section 20 of this Act to the contrary, the maximum of the penalty shall be imposed in every case where a prohibited drug is administered, delivered or sold to a minor who is allowed to use the same in such place.

"Should a prohibited drug be the proximate cause of the death of a person using the same in such den, dive or resort, the maximum penalty herein provided shall be imposed on the maintainer notwithstanding the provisions of Section 20 of this Act to the contrary.

"Sec. 7. *Manufacture of Prohibited Drug.* - The penalty of reclusion perpetua to death and fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall engage in the manufacture of any prohibited drug.

"Sec. 8. *Possession or Use of Prohibited Drugs.* - The penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall possess or use any prohibited drug subject to the provisions of Section 20 hereof.

"Sec. 9. *Cultivation of Plants which are Sources of Prohibited Drugs.* - The penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who shall plant, cultivate or culture any medium Indian hemp, opium poppy (papaver somniferum), or any other plant which is or may hereafter be classified as dangerous drug or from which any dangerous drug may be manufactured or derived.

"The land or portions hereof, and/or greenhouses on which any of said plants is cultivated or cultured shall be confiscated and escheated to the State, unless the owner thereof can prove that he did not know such cultivation or culture despite the exercise of due diligence on his part.

"If the land involved in is part of the public domain, the maximum of the penalties herein provided shall be imposed upon the offender."

Sec. 14. Sections 14, 14-A, and 15 of Article III of Republic Act No. 6425, as amended, known as the Dangerous Drugs Act of 1972, are hereby amended to read as follows:
"Sec. 14. *Importation of Regulated Drugs.* - The penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall import or bring any regulated drug in the Philippines.

"Sec. 14-A. *Manufacture of Regulated Drugs.* - The penalty of

reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall engage in the manufacture of any regulated drug.

"Sec. 15. *Sale, Administration, Dispensation, Delivery, Transportation and Distribution of Regulated Drugs.* - The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall sell, dispense, deliver, transport or distribute any regulated drug.

"Notwithstanding the provisions of Section 20 of this Act to the contrary, if the victim of the offense is a minor, or should a regulated drug involved in any offense under this Section be the proximate cause of the death of a victim thereof, the maximum penalty herein provided shall be imposed."chanrobles virtual law library

Sec. 15. There shall be incorporated after Section 15 of Article III of Republic Act No. 6425, as amended, known as the Dangerous Drug Act of 1972, a new section to read as follows:

"Sec. 15-a. *Maintenance of a den, dive or resort for regulated drug users.* - The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person or group of persons who shall maintain a den, dive or resort where any regulated drugs is used in any form, or where such regulated drugs in quantities specified in Section 20, paragraph 1 of this Act are found.

"Notwithstanding the provisions of Section 20 of this Act to the contrary, the maximum penalty herein provided shall be imposed in every case where a regulated drug is administered, delivered or sold to a minor who is allowed to use the same in such place.

"Should a regulated drug be the proximate cause of the death of a person using the same in such den, dive or resort, the maximum penalty herein provided shall be imposed on the maintainer notwithstanding the provisions of Section 20 of this Act to the contrary."

Sec. 16. Section 16 of Article III of Republic Act No. 6425, as amended, known as the Dangerous Drugs Act No. 6425, is amended to read as follows:

"Sec. 16. *Possession or Use of Regulated Drugs.* - The penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who shall possess or use any regulated drug without the corresponding license or prescription, subject to the provisions of Section 20 hereof.

Sec. 17. Section 20, Article IV of Republic Act No. 6425, as amended, known as the Dangerous Drugs Act of 1972, is hereby amended to read as follows:

"Sec. 20. *Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instruments of the Crime.* - The penalties for offenses under Section 3, 4, 7, 8 and 9 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved is in any of the following quantities:

1. 40 grams or more of opium;

2. 40 grams or more of morphine;

3. 200 grams or more of shabu or methylamphetamine hydrochloride;

4. 40 grams or more of heroin;

5. 750 grams or more of indian hemp or marijuana;

6. 50 grams or more of marijuana resin or marijuana resin oil;

7. 40 grams or more of cocaine or cocaine hydrochloride; or

8. In the case of other dangerous drugs, the quantity of which is far beyond therapeutic requirements, as determined and promulgated by the Dangerous Drugs Board, after public consultations/hearings conducted for the purpose.

"Otherwise, if the quantity involved is less than the foregoing quantities, the penalty shall range from prision correccional to reclusion perpetua depending upon the quantity.

"Every penalty imposed for the unlawful importation, sale, administration, delivery, transportation or manufacture of dangerous drugs, the cultivation of plants which are sources of dangerous drugs and the possession of any opium pipe and other paraphernalia for dangerous drugs shall carry with it the confiscation and forfeiture, in favor of the Government, of all the proceeds of the crime including but not limited to money and other obtained thereby and the instruments or tools with which it was committed, unless they are the property of a third person not liable for the offense, but those which are not of lawful commerce shall be ordered destroyed without delay. Dangerous drugs and plant sources of such drugs as well as the proceeds or instruments of the crime so confiscated and forfeited in favor of the Government shall be turned over to the Board for proper disposal without delay.

"Any apprehending or arresting officer who misappropriates or misapplies or fails to account for seized or confiscated dangerous drugs or plant-sources of dangerous drugs or proceeds or instruments of the crime as are herein defined shall after conviction be punished by the penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos."

Sec. 18. There shall be incorporated after Section 20 of Republic Act No. 6425, as amended, known as the Dangerous Drugs Act of 1972, a new section to read as follows:

"Sec. 20-A. *Plea-bargaining Provisions.* - Any person charged under any provision of this Act where the imposable penalty is *reclusion perpetua* to death shall not be allowed to avail of the provision on plea bargaining."

Sec. 19. Section 24 of Republic Act No. 6425, as amended, known as the Dangerous Drugs Act of 1972, is hereby amended to read as follows:

"Sec. 24. *Penalties for Government Official and Employees and Officers and Members of Police Agencies and the Armed Forces, 'Planting' of Evidence.* - The maximum penalties provided for Section 3, 4(1), 5(1), 6, 7, 8, 9, 11, 12 and 13 of Article II and Sections 14, 14-A, 15(1), 16 and 19 of Article III shall be imposed, if those found guilty of any of the said offenses are government officials, employees or officers, including members of police agencies and the armed forces.

"Any such above government official, employee or officer who is found guilty of "planting" any dangerous drugs punished in Sections 3, 4, 7, 8, 9 and 13 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act in the person or in the immediate vicinity of another as evidence to implicate the latter, shall suffer the same penalty as therein provided."

Sec. 20. Sec. 14 of Republic Act No. 6539, as amended, known as the Anti-Carnapping Act of 1972, is hereby amended to read as follows:

"Sec. 14. *Penalty for Carnapping.* - Any person who is found guilty of carnapping, as this term is defined in Section Two of this Act, shall, irrespective of the value of motor vehicle taken, be punished by imprisonment for not less than fourteen years and eight months and not more than seventeen years and four months, when the carnapping is committed without violence or intimidation of persons, or force upon things; and by imprisonment for not less than seventeen years and four months and not more than thirty years, when the carnapping is committed by means of violence against or intimidation of any person, or force upon things; and the penalty of *reclusion perpetua* to death shall be imposed when the owner, driver or occupant of the carnapped motor vehicle is killed or raped in the course of the commission of the carnapping or on the occasion thereof."

Sec. 21. Article 27 of the Revised Penal Code, as amended, is hereby amended to read as follows:
"Art. 27. *Reclusion perpetua.* - The penalty of reclusion perpetua shall be from twenty years and one day to forty years. chanrobles virtual law library

"*Reclusion temporal.* - The penalty of reclusion temporal shall be from twelve years and one day to twenty years.
Prision mayor and temporary disqualification. - The duration of the penalties of prision mayor and temporary disqualification shall be from six years and one day to twelve years, except when the penalty of disqualification is imposed as an accessory penalty, in which case, it shall be that of the principal penalty.

"Prision correccional, suspension, and destierro. - The duration of the penalties of prision correccional, suspension, and destierro shall be from six months and one day to six years, except when the suspension is imposed as an accessory penalty, in which case, its duration shall be that of the principal penalty.

Arresto mayor. - The duration of the penalty of arresto mayor shall be from one month and one day to six months.

Arresto menor. - The duration of the penalty of arresto menor shall be from one day to thirty days.

Bond to keep the peace. - The bond to keep the peace shall be required to cover such period of time as the court may determine."
Sec. 22. Article 47 of the same Code is hereby amended to read as follows:
"Art. 47. *In what cases the death penalty shall not be imposed; Automatic review of the Death Penalty Cases.* - The death penalty shall be imposed in all cases in which it must be imposed under existing laws, except when the guilty person is below eighteen (18) years of age at the time of the commission of the crime or is more than seventy years of age or when upon appeal or automatic review of the case by the Supreme Court, the required majority vote is not obtained for the imposition of the death penalty, in which cases the penalty shall be *reclusion perpetua*.

"In all cases where the death penalty is imposed by the trial court, the records shall be forwarded to the Supreme Court for automatic review and judgment by the Court *en banc*, within twenty (20) days but not earlier than fifteen (15) days after promulgation of the judgment or notice of denial of any motion for new trial or reconsideration. The transcript shall also be forwarded within ten (10) days from the filing thereof by the stenographic reporter."
Sec. 23. Article 62 of the same Code, as amended, is hereby amended to read as follows:

"Art. 62. *Effects of the attendance of mitigating or aggravating circumstances and of habitual delinquency.* - Mitigating or aggravating circumstances and habitual delinquency shall be taken into account for the purpose of diminishing or increasing the penalty in conformity with the following rules:
"1. Aggravating circumstances which in themselves constitute a crime specially punishable by law or which are included by the law in defining a crime and prescribing the penalty therefor shall not be taken into account for the purpose of increasing the penalty.

"1(a). When in the commission of the crime, advantage was taken by the offender of his public position, the penalty to be imposed shall be in its maximum regardless of mitigating circumstances. chanrobles virtual law library

"The maximum penalty shall be imposed if the offense was committed by any group who belongs to an organized/syndicated crime group.

"An organized/syndicated crime group means a group of two or more persons collaborating, confederating or mutually helping one another for purposes of gain in the commission of any crime.

"2. The same rule shall apply with respect to any aggravating circumstances inherent in the crime to such a degree that it must of necessity accompany the commission thereof.

"3. Aggravating or mitigating circumstances which arise from the moral attributes of the offender, or from his private relations with the offended party, of from any other personal cause, shall only serve to aggravate or mitigate the liability of the principals, accomplices and accessories as to whom such circumstances are attendant.

"4. The circumstances which consist in the material execution of the act, or in the means employed to accomplish it, shall serve to aggravate or mitigate the liability of those persons only who had knowledge of them at the time of the execution of the act or their cooperation therein.

"5. Habitual delinquency shall have the following effects:

"(a) Upon a third conviction the culprit shall be sentenced to the penalty provided by law for the last crime of which he be found guilty and to the additional penalty of *prision correccional* in its medium and maximum periods;

"(b) Upon a fourth conviction, the culprit shall be sentenced to the penalty provided for the last crime or which he be found guilty and to the additional penalty of prision mayor in its minimum and medium

periods; and

"(c) Upon a fifth or additional conviction, the culprit shall be sentenced to the penalty provided for the last crime of which he be found guilty and to the additional penalty of *prision mayor* in its maximum period to *reclusion temporal* in its minimum period.
"Notwithstanding the provisions of this article, the total of the two penalties to be imposed upon the offender, in conformity herewith, shall in no case exceed 30 years.

"For purposes of this article, a person shall be deemed to be a habitual delinquent, if within a period of ten years from the date of his release or last conviction of the crimes of serious or less serious physical injuries, r*obo, hurto, estafa* or falsification, he is found guilty of any of said crimes a third time or oftener."
Sec. 24. Article 81 of the same Code, as amended, is hereby amended to read as follows:
"Art. 81. *When and how the death penalty is to be executed.* - The death sentence shall be executed with preference to any other and shall consist in putting the person under sentence to death by electrocution. The death sentence shall be executed under the authority of the Director of Prisons, endeavoring so far as possible to mitigate the sufferings of the person under the sentence during electrocution as well as during the proceedings prior to the execution.chanrobles virtual law library

"If the person under sentence so desires, he shall be anaesthesized at the moment of the execution.

"As soon as facilities are provided by the Bureau of Prisons, the method of carrying out the sentence shall be changed to gas poisoning.

"The death sentence shall be carried out not later than one (1) year after the judgment has become final."
Sec. 25. Article 83 of the same Code is hereby amended to read as follows:
"Art. 83. *Suspension of the execution of the death sentence.* - The death sentence shall not be inflicted upon a woman while she is pregnant or within one (1) year after delivery, nor upon any person over seventy years of age. In this last case, the death sentence shall be commuted to the penalty of *reclusion perpetua* with the accessory penalties provided in Article 40.

"In all cases where the death sentence has become final, the records of the case shall be forwarded immediately by the Supreme Court to the Office of the President for possible exercise of the pardoning power."

Sec. 26. All laws, presidential decrees and issuances, executive orders, rules and regulations or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

Sec. 27. If, for any reason or reasons, any part of the provision of this Act shall be held to be unconstitutional or invalid, other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

Sec. 28. This Act shall take effect fifteen (15) days after its publication in two (2) national newspapers of general circulation. The publication shall not be later than seven (7) days after the approval hereof. chanrobles virtual law library

Approved: December 13, 1993

II. JURISPRUDENCE

G.R. No. 120549 May 6, 1997

PEOPLE OF THE PHILIPPINES, plaintiff-appellee,

vs.

ENRIQUITO UNARCE, accused-appellant.

R E S O L U T I O N

MELO, J.:p

There is seemingly an error in our decision of April 4, 1997 which bears on the imposable penalty.
Republic Act No. 7659, the law re-imposing the death penalty, should not have been applied for said statute took effect only on December 31, 1993, while the crime of murder herein involved was committed on November 16, 1992.
The Court thus motu proprio corrects itself by modifying the last paragraph and the dispositive portion of the decision dated April 4, 1997, to read:

Considering that the crime of murder was committed on November 16, 1992, Republic Act No. 7659, "An Act To Impose The Death Penalty On Certain Heinous Crimes, Amending For That Purpose The Revised Penal Code, As Amended, Other Special Penal Laws, And For Other Purposes", which was enacted on December 31, 1993, does not apply. The applicable legal provision is Article 248 of the Revised Penal Code, before its latest amendment which imposed the penalty of reclusion temporal in its maximum period to death for the crime of murder.

In view of the presence of the mitigating circumstance of voluntary surrender, the proper penalty is reclusion temporal in its maximum period which is the minimum period of the prescribed penalty of reclusion temporal maximum to death in conformity with said Article 248, before its amendment, in relation to Article 64(2).
Applying the Indeterminate Sentence Law, the imposable penalty is an indeterminate sentence within the range of prision mayor in its maximum period, as the minimum, to reclusion temporal in its maximum period, as the maximum, (People vs. Sarol, 139 SCRA 125 [1985]).

WHEREFORE, the decision appealed from is hereby MODIFIED, and accused-appellant is hereby sentenced to suffer the indeterminate penalty of ten (10) years and one (1) day of prision mayor, as minimum, to seventeen (17) years, four (4) months, and one (1) day of reclusion temporal, as maximum (People vs. Sarol, supra).

Cost against appellant.
SO ORDERED.

Narvasa, C.J., Davide, Jr., Francisco and Panganiban, JJ., concur.

PRESIDENTIAL DECREE NO. 2018 (As amended)

DECREE MAKING ILLEGAL RECRUITMENT A CRIME OF ECONOMIC SABOTAGE AND PUNISHABLE WITH LIFE IMPRISONMENT

III. I. FULL TEXT

WHEREAS, despite existing provisions of law and the continuing efforts to eliminate them, illegal recruiters, have continued to proliferate and victimize unwary workers;

WHEREAS, illegal recruiters have defrauded and caused untold sufferings to thousands of Filipino workers and their families;

WHEREAS, experience shows that because of light penalties, illegal recruiters have become more callous and bolder in their modus operandi and usually carry out their activities as syndicates or in large scale;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order:

Section 1. Articles 38 and 39 of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines, is hereby further amended to read as follows:

"Art. 38. *Illegal Recruitment.* - (a) Any recruitment activities, including the prohibited practices enumerated under Article 34 of this Code, to be undertaken by non-licensees or non-holders of authority shall be deemed illegal and punishable under Article 39 of this Code. The Ministry of Labor and Employment or any law enforcement officers may initiate complaints under this Article.

(b) Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic

sabotage and shall be penalized in accordance with Article 39 hereof.

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 defined under this first paragraph hereof. Illegal recruitment is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

(c) The Minister of Labor and Employment or his duly authorized representatives shall have the power to cause the arrest and detention of such non-licensee or non-holder of authority if after investigation it is determined that his activities constitute a danger to national security and public order or will lead to further exploitation of job-seekers. The Minister shall order the search of the office or premises and seizure of documents paraphernalia, properties and other implements used in illegal recruitment activities and the closure of companies, establishment and entities found to be engaged in the recruitment of workers for overseas employment, without having been licensed or authorized to do so.

"Art. 39. *Penalties.* - (a) The penalty of imprisonment and a fine of One Hundred Thousand Pesos (P100,000) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein;

(b) Any licensee or holder of authority found violating or causing another to violate any provision of this Title or its implementing rules and regulations shall, upon conviction thereof, suffer the penalty of imprisonment of not less than two years nor more than five years or a fine of not less than P10,000 nor more than P50,000 or both such imprisonment and fine, at the discretion of the court;

(c) Any person who is neither a licensee nor a holder of authority under this Title found violating any provision thereof or its implementing rules and regulations shall, upon conviction thereof, suffer the penalty of imprisonment of not less than four years nor more than eight years or a fine of not less than P20,000 nor more than P100,000 or both such imprisonment and fine, at the discretion of the Court;

(d) If the offender is a corporation, partnership, association or entity, the penalty shall be imposed upon the officer or officers of the corporation, partnership, association or entity responsible for violation; and if such officer is an alien, he shall, in addition

to the penalties herein prescribed be deported without further proceedings;

(e) In every case, conviction shall cause and carry the automatic revocation of the license or authority and all the permits and privileges granted to such person or entity under this Title, and the forfeiture of the cash and surety bonds in favor of the Overseas Employment Development Board or the National Seamen Board, as the case may be, both of which are authorized to use the same exclusively to promote their objectives.

Section 2. This Decree shall take effect immediately.

Done in the City of Manila, this 26th day of January, 1986.

II. EXPLANATION

WHAT IS ILLEGAL RECRUITMENT?

Illegal Recruitment. (a) Any recruitment activities, including the prohibited practices enumerated under Article 34 of this Code, to be undertaken by non-licensees or non-holders of authority shall be deemed illegal and punishable under Article 39 of this Code. The Ministry of Labor and Employment or any law enforcement officers may initiate complaints under this Article.

WHEN IS ILLEGAL RECRUITMENT CONSIDERED ECONOMIC SABOTAGE?

Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage and shall be penalized in accordance with Article 39 hereof.

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 defined under this first paragraph hereof. Illegal recruitment is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

WHAT ARE THE POWERS OF SECRETARY OF THE DEPARTMENT OF LABOR AND EMPLOYMENT?

The Minister of Labor and Employment or his duly authorized representatives shall have the power:

- To cause the arrest and detention of such non-license or non-holder of authority if after investigation it is determined that his activities constitute a danger to national security and public order or will lead to further exploitation of job-seekers.

- The Minister shall order the search of the office or premises and seizure of documents paraphernalia, properties and other implements used in illegal recruitment activities and the closure of companies, establishment and entities found to be engaged in the recruitment of workers for overseas employment, without having been licensed or authorized to do so.

WHAT ARE THE APPLICABLE PENALTIES UNDER P.D. 2018?

(a) The penalty of the imprisonment and a fine of One Hundred Thousand Pesos (P100,000) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein;

(b) Any licensee or holder of authority found violating or causing another to violate any provision of this Title or its implementing rules and regulations shall, upon conviction thereof, suffer the penalty of imprisonment of not less than two years nor more than five years or a fine of not less than P10,000 nor more than P50,000 or both such imprisonment and fine, at the discretion of the Court;

(c) Any person who is neither a licensee nor a holder of authority under this Title found violating any provision thereof or its implementing rules and regulations shall, upon conviction thereof, suffer the penalty of imprisonment of not less than four years nor more than eight years or a fine of not less than P20,000 nor more than P100,000 or both such imprisonment and fine, at the discretion of the Court;

(d) If the offender is a corporation, partnership, association or entity, the penalty shall be imposed upon the officer or officers of the corporation, partnership, association or entity responsible for violation; and if such officer is an alien, he shall, in addition to the penalties herein prescribed be deported without further proceedings;

(e) In every case, conviction shall cause and carry the automatic revocation of the license or authority and all the permits and privileges granted to such person or entity under this Title, and the forfeiture of the cash and surety bonds in favor of the Overseas Employment Development Board or the National Seamen Board, as the case may be, both of which are authorized to use the same exclusively to promote their objectives'.

III. JURISPRUDENCE

Republic of the Philippines

SUPREME COURT
Manila

THIRD DIVISION

G.R. No. 107084 May 15, 1998

PEOPLE OF THE PHILIPPINES, plaintiff-appellee,

vs.

DELIA SADIOSA y CABENTA, accused-appellant.

ROMERO, J.:p

Accused-appellant Delia Sadiosa was charged with "illegal recruitment" in an information that reads:

That on or about and during the period comprise (sic) from January 1992 to March 1992, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above named accused Delia Sadiosa y Cabenta, well knowing that she is not a duly licensed job recruiter, by means of false representations and fraudulent allegations to the effect that she could secure employment as domestic helpers abroad for Benilda Sabado y Domingo, Marcela Tabernero y Manzano, Erly Tuliao y Sabado and Cely Navarro y Manzano, did then and there willfully (sic), unlawfully and feloniously recruit aforesaid persons and collected from them the amount of P8,000.00 each, which amount were given to the accused by the aforesaid complainants upon receipt of which, far from complying with her obligation aforestated, accused

appropriated for herself the said amount and failed to deploy complainants abroad.

Contrary to law. 1

Upon arraignment, accused-appellant pleaded "not guilty." 2 At the trial that ensued, the prosecution proved the following operative facts and circumstances surrounding the commission of the crime:
Arsenia Conse went to Bayombong, Nueva Ecija in early 1992 where she met the four complainants, Cely Navarro, Marcela Manzano, Erly Tuliao and Benilda Domingo. She enticed the four to apply for overseas employment informing them that she had a cousin who could send them to Kuwait as domestic helpers. Apparently convinced by Arsenia Conse, the four went with her on February 5, 1992 to Manila. Upon arrival, they proceeded to Room 210, Diamond Building, Libertad St., Pasay City where Arsenia Conse introduced the group to accused-appellant Delia Sadiosa. The four then applied for work as domestic helpers. 3

On that occasion, accused-appellant assured the four that she could dispatch them to Kuwait 4 and forthwith demanded P8,000.00 from each of them for processing fee and P1,000.00 for passport (P1,500.00 from complainant Cely Navarro). 5 She assured the group that she would facilitate the processing of all the necessary documents needed by them. She further promised them that upon payment of the required fees, they would be able to leave for Kuwait immediately.

The four did give accused-appellant the money demanded although on different dates. The latter issued the corresponding receipts 6 therefor. Again, she assured them that they could leave for Kuwait on different dates: Cely Navarro and Erly Tuliao on February 17, 1992 which was rescheduled twice on February 19, 1992 and on February 25, 1992, 7 and Benilda Domingo and Marcela Manzano on March 17, 1992 which was moved twice on February 24, 1992 and on March 17, 1992. 8 However, not one of them was able to leave for Kuwait. When they asked for the return of their money, accused-appellant refused and ignored their demand. Consequently, the four filed the complaint for illegal recruitment against accused-appellant.

In addition to the complainants' testimonies, the prosecution presented Virginia Santiago, a Senior Officer in the Licensing Branch and Inspection Division of the Philippine Overseas Employment Administration (POEA). She testified that accused-appellant was neither licensed nor authorized to recruit workers for overseas employment. 9

Accused-appellant herself took the witness stand and testified in her defense. She resolutely denied having a hand in the illegal recruitment, claiming that she merely received the money on behalf of one Mrs. Ganura 10 who owned the recruitment agency called Staff Organizers, Inc. She accepted the money in her capacity as an officer of the said recruitment agency. To bolster this claim, she presented evidence that she remitted the money to Mrs. Ganura worth P25,000.00 11 although she failed to remit the remaining amount of P8,000.00 since she was already in detention. 12 Accused-appellant further claimed that although she was not listed in the POEA as an employee of the recruitment agency of Mrs. Ganura, she had a special power of attorney issued by her employer to receive payments from applicants.

The trial court found accused-appellant guilty of illegal recruitment in large scale defined by Article 38 (b) and penalized under Article 39 (a) of the Labor Code, as amended by Presidential Decree Nos. 1920 and 2018 and disposed of said case as follows:

WHEREFORE, the accused is found guilty beyond reasonable doubt of the charge in the information and is hereby sentenced to life imprisonment and pay a fine of P100,000.00. The accused is hereby ordered to indemnify Benilda Sabado y Domingo, the sum of P8,000.00; Marcela Tabernero y Manzano, the sum of P8,000.00; Erly Tuliao y Sabado, the sum of P8,000.00 and Cely Navarro y Manzano, the sum of P8,000.00. To pay the costs. 13

Accused-appellant now assails the trial court's Decision with the following assignment of errors:

I

THE LOWER COURT ERRED IN NOT STATING CLEARLY AND DISTINCTLY THE FACTS AND THE LAW ON WHICH ITS JUDGMENT CONVICTING THE ACCUSED-APPELLANT WAS BASED;

II

THE LOWER COURT ERRED IN NOT DISMISSING MOTU PROPRIO THE INFORMATION FOR NOT CONFORMING SUBSTANTIALLY TO THE PRESCRIBED FORM, PARTICULARLY AS TO THE DESIGNATION OF THE OFFENSE AND CAUSE OF THE ACCUSATION;

III

THE LOWER COURT ERRED IN NOT DISMISSING MOTU PROPRIO THE INFORMATION IN VIEW OF ITS INCONSISTENT AND CONTRADICTORY,

CONFLICTING AND IRRECONCILABLE CHARGES OF "ILLEGAL RECRUITMENT", ESTAFA UNDER ARTICLE 315, PARAGRAPH 1(b) AND ESTAFA UNDER THE SAME ARTICLE BUT UNDER PARAGRAPH 2(a) OF THE REVISED PENAL CODE AND IN CONDUCTING TRIAL THEREUNDER;

IV

THE LOWER COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT AND IN CONVICTING HER OF THE "THE CHARGE IN THE INFORMATION";

V

THE LOWER COURT ERRED IN NOT FINDING THAT THE LIABILITY OF THE ACCUSED-APPELLANT, IF ANY, IS ONLY CIVIL, NOT CRIMINAL IN NATURE;

VI

THE LOWER COURT ERRED IN ORDERING THE ACCUSED-APPELLANT TO INDEMNIFY THE PRIVATE COMPLAINANTS THE SUM OF P8,000.00 EACH.

Appellant clearly focuses on the validity and sufficiency of both the information filed against her and the decision rendered in due course by the trial court. She asserts that there was a violation of the constitutional mandate that a judgment of conviction must state clearly and distinctly the facts and the law on which it is based. With regard to the information filed against her, appellant contends that it did not substantially conform to the prescribed form, particularly as to the designation of the offense and cause of accusation. It should be observed in the aforequoted information that its caption indicates that she is being charged with "illegal recruitment" only while the allegations therein substantiate the crimes of illegal recruitment and estafa committed by fraud or deceit.

It is well-settled in our jurisprudence that the information is sufficient where it clearly states the designation of the offense by the statute and the acts or omissions complained of as constituting the offense. 14 However, there is no need to specify or refer to the particular section or subsection of the statute that was violated by the accused. No law requires that in order that an accused may be convicted, the specific provision penalizing the act charged should be mentioned in the information. 15 What identifies the charge is the actual recital of the facts and not that designated by the fiscal in the preamble thereof. It is not even necessary for the protection of the substantial rights of the accused, nor the effective

preparation of his defense, that the accused be informed of the technical name of the crime of which he stands charged. He must look to the facts alleged. 16

In the instant case, the information filed against accused-appellant sufficiently shows that it is for the crime of illegal recruitment in large scale, as defined in Art. 38 (b) of the Labor Code and penalized in Art. 39 of the same Code although it is designated as for "illegal recruitment" only. Under the Code, the essential elements of the crime of illegal recruitment in large scale are as follows:

(1) the accused engages in the recruitment and placement of workers, as defined under Article 13 (b) or in any prohibited activities under Article 34 of the Labor Code;
(2) accused has not complied with the guidelines issued by the Secretary of Labor and Employment, particularly with respect to the securing of a license or an authority to recruit and deploy workers, whether locally or overseas; and
(3) accused commits the same against three (3) or more persons, individually or as a group. 17

All these elements are to be found in the information. It alleges that accused-appellant, knowing fully well that she was "not a duly licensed job recruiter," falsely represented that she could "secure employment as domestic helpers abroad" for the four complainants.
As such, the purpose of the requirement under Sec. 8, Rule 110 18 to inform and apprise the accused of the true crime of which she was charged, 19 has been complied with. The main purpose of the requirement that the acts or omissions complained of as constituting an offense must be stated in ordinary and concise language is to enable a person of common understanding to know what offense is intended to be charged so that he could suitably prepare for his defense. It is also required so that the trial court could pronounce the proper judgment. 20 This gives substance to the constitutional guarantee that in all criminal prosecutions, the accused shall be informed of the nature and cause of the accusation against him. 21

In the instant case, the Court agrees with the Solicitor General that accused-appellant was fully accorded the right to be informed of the charges against her. The fact that she put up the defense of having accepted the money only in her capacity as an officer of the recruitment agency shows that she fully understood the nature and cause of the accusation against her.
Furthermore, it is incorrect for accused-appellant to maintain that the information filed against her contained conflicting and irreconcilable charges of illegal recruitment, estafa under Article

315 par. 1(b) of the Revised Penal Code and estafa under the same article but under par. 2 (a) thereof. While on its face the allegations in the information may constitute estafa, this Court agrees with the Solicitor General that it merely describes how accused-appellant was able to consummate the act of illegal recruitment through false and fraudulent representation by pretending that she was a duly-licensed recruiter who could secure employment for complainants in Kuwait. These allegations in the information therefore do not render the information defective or multiplicitous.

It is apropos to underscore the firmly established jurisprudence that a person who has committed illegal recruitment may be charged and convicted separately of illegal recruitment under the Labor Code and estafa under Article 315 of the Revised Penal Code. 22 The crime of illegal recruitment is malum prohibitum where the criminal intent of the accused is not necessary for conviction, while estafa is malum in se where the criminal intent of the accused is necessary for conviction. 23

In other words, a person convicted under the Labor Code may be convicted of offenses punishable by other laws. 24 However, any person or entity which in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement. 25 When the persons recruited are three or more, the crime becomes illegal recruitment in large scale under Art. 38 (b) of the Labor Code. In both bases, it is the lack of a necessary license or permit that renders such recruitment activities unlawful and criminal. 26

In the case at bar, accused-appellant could have been validly charged separately with estafa under the same set of facts in the illegal recruitment case, but she was fortunate enough not to have been so charged. Nevertheless, there is no doubt from a reading of the information, that it accurately and clearly avers all of the ingredients that constitute illegal recruitment in large scale. The prosecutor simply captioned the information with the generic name of the offense under the Labor Code illegal recruitment. No misconceptions would have been engendered had he been more accurate in the drafting of the information considering that there are at least four kinds of illegal recruitment under the law. 27 One is simple illegal recruitment committed by a licensee or holder of authority. The law penalizes such offender with imprisonment of "not less than two years nor more than five years or a fine of not less than P10,000 nor more than P50,000, or both such imprisonment and fine." Any person "who is neither a licensee nor a holder of authority" commits the second type of illegal recruitment. The penalty imposed for such offense is "imprisonment of not less

than four years nor more than eight years or a fine of not less than P20,000 nor more than P100,000 or both such imprisonment and fine at the discretion of the court." The third type of illegal recruitment refers to offenders who either commit the offense alone or with another person against three or more persons individually or as a group. A syndicate or a group of three or more persons conspiring and confederating with one another in carrying out the act circumscribed by the law commits the fourth type of illegal recruitment by the law. For the third and fourth types of illegal recruitment the law prescribes the penalty of life imprisonment and a fine of P100,000.

Hence, to avoid misconception and misinterpretation of the information, the prosecutor involved in this case should have indicated in its caption, the offense he had clearly alleged in its body, that the crime charged was for illegal recruitment in large scale. However, such omission or lack of skill of the prosecutor who crafted the information should not deprive the people of the right to prosecute a crime with so grave a consequence against the economic life of the aggrieved parties. What is important is that he did allege in the information the facts sufficient to constitute the offense of illegal recruitment in large scale.

As regards accused-appellant's contention that the questioned decision is void because it failed to state clearly and distinctly the facts and the law on which it was based, this Court is not inclined to grant credence thereto.
The constitutional requirement that every decision must state distinctly and clearly the factual and legal bases therefor should indeed be the primordial concern of courts and judges. Be that as it may, there should not be a mechanical reliance on this constitutional provision. The courts and judges should be allowed to synthesize and to simplify their decisions considering that at present, courts are harassed by crowded dockets and time constraints. Thus, the Court held in Del Mundo v. Court of Appeals:

It is understandable that courts with heavy dockets and time constraints, often find themselves with little to spare in the preparation of decisions to the extent most desirable. We have thus pointed out that judges might learn to synthesize and to simplify their pronouncements. Nevertheless, concisely written such as they may be, decisions must still distinctly and clearly express at least in minimum essence its factual and legal bases. 28

In Nicos Industrial Corporation v. Court of Appeals, 29 the Court states the reason for the constitutional requirements thus:

It is a requirement of due process that the parties to a litigation be informed of how it was decided, with an explanation of the factual and legal reasons that led to the conclusions of the court. The court cannot simply say that judgment is rendered in favor of X and against Y and just leave it at that without any justification whatsoever for its action. The losing party is entitled to know why he lost, so he may appeal to a higher court, if permitted, should he believe that the decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached and is especially prejudicial to the losing party, who is unable to pinpoint the possible errors of the court for review by a higher tribunal. 30

Under Art. X, Sec. 9 of the 1973 Constitution that contained a provision similar to Art. VIII, Sec. 14 of the present Constitution, the Court expresses in Bernabe v. Geraldez the following rationale as to the wide discretion enjoyed by a court in framing its decision:

. . . In the . . . case of Mendoza v. Court of First Instance of Quezon City, (L-5612, June 27, 1973, 51 SCRA 369) citing Jose v. Santos, (L-25510, October 30, 1970, 35 SCRA 538) it was pointed out that the standard "expected of the judiciary "is that the decision rendered makes clear why either party prevailed under the applicable law to the facts as established. Nor is there any rigid formula as to the language to be employed to satisfy the requirement of clarity and distinctness. The discretion of the particular judge in this respect, while not unlimited, is necessarily broad. There is no sacramental form or words which he must use upon pain of being considered as having failed to abide by what the Constitution directs."" (51 SCRA 369 at 375) 31

After careful reflection, this Court finds that the questioned decision of the court a quo explained the factual findings and legal justifications, at least in minimum essence, which led to the conviction of accused-appellant. Thus, the subject decision of Judge Baltazar Relativo Dizon, after quoting the information for "Illegal Recruitment" and stating accused's plea of not guilty, goes on to summarize the evidence for the prosecution and the defense as testified to by their respective witnesses. Before drawing a conclusion, it gives an "ANALYSIS OF EVIDENCE ON RECORD" as follows:

The testimony of the four complaining witnesses are found to be credible and reliable observing that they answered the questions propounded by the prosecutor and the defense counsel in a categorical, straightforward, spontaneous and frank manner and they remained consistent, calm and cool on cross-examination. That even with the rigid cross-examination conducted by the defense

counsel the more their testimonies became firmer and clearer that they were victims of false pretenses or fraudulent acts of the accused. The herein accused falsely pretended to have possessed power, influence and qualifications to secure employment as domestic helpers abroad. And because of her fraudulent acts accused was able to collect from the four victims the sum of P8,000.00 each [Exh. A, C, E, F (4)].

Verily, the accused admitted that she managed a consultancy firm under the business name of DCS Service Management and the nature of her work is to recruit domestic helpers for employment abroad. She further admitted having received the amount of P8,000.00 from each of the complainants as processing fee, although she is shifting responsibility to a certain Mrs. Ganura to whom she delivered the sum of P25,000.00 (Exh. 1, 1-A). She miserably failed to present this Mrs. Ganura to testify in this regard despite all efforts exerted by this court, hence, such assertion of the accused is disregarded, not being reliable. The fact remains that it was she who transacted with the complainants, and that accused is neither licensed nor authorized to recruit workers for overseas employment (Exhibit G). 32

While it may be true that the questioned decision failed to state the specific provisions of law violated by accused-appellant, it however clearly stated that the crime charged was "Illegal Recruitment." It discussed the facts comprising the elements of the offense of illegal recruitment in large scale that was charged in the information, and accordingly rendered a verdict and imposed the corresponding penalty. The dispositive portion of the decision quoted earlier, clearly states that appellant was found "guilty beyond reasonable doubt of the charge in the information." As earlier stated, the "charge in the information" referred to by the decision could mean only that of illegal recruitment in large scale and not to any other offense.

The situation would have been altogether different and in violation of the constitutional mandate if the penalty imposed was for illegal recruitment based on established facts constituting simple illegal recruitment only. As it is, the trial court's omission to specify the offense committed, or the specific provision of law violated, is not in derogation of the constitutional requirement that every decision must clearly and distinctly state the factual and legal bases for the conclusions reached by the trial court. The trial court's factual findings based on credible prosecution evidence supporting the allegations in the information and its imposition of the corresponding penalty imposed by the law on such given facts are therefore sufficient compliance with the constitutional requirement.

This Court agrees with the trial court that the prosecution evidence has shown beyond reasonable doubt that accused-appellant engaged in unlawful recruitment and placement activities. Accused-appellant promised the four complainants employment as domestic helpers in Kuwait. Article 13 (b) of the Labor Code defines recruitment and placement as referring to "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers, and includes referrals, contract services, promising or advertising for employment locally or abroad whether for profit or not; provided that any person or entity which in any manner offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment andplacement." 33 All the essential elements of the crime of illegal recruitment in large scale, which we have enumerated above, are present in this case.

The prosecution clearly established the fact that accused-appellant had no license to recruit from the POEA. Yet, the latter entertained the four complainants when they applied, promised them jobs as domestic helpers in Kuwait, and collected fees from them for processing travel documents only to renege on her promise and fail to return the money she collected from complainants despite several demands.

As with the trial court, this Court entertains serious doubts regarding accused-appellant's claim that she was only acting in behalf of a certain Mrs. Ganura. Accused-appellant failed to present evidence to corroborate her testimony. Neither did she present Mrs. Ganura despite several opportunities given her by the trial court. The undisputed fact is that appellant was positively identified as the person who transacted with the four complainants, promised them jobs and received money from them. On this score, the court a quo found the prosecution evidence "credible and reliable" and observed that the complaining witnesses testified and answered questions "in a categorical, straightforward, spontaneous and frank" manner. 34 As this Court has consistently held in a long line of cases, the trial court was concededly in the best position to test the credibility of appellant. Since the trial court did not give credence to accused-appellant's version, this Court is not persuaded by her arguments.

For engaging in recruitment of the four complainants without first obtaining the necessary license from the POEA, accused-appellant, therefore, is guilty of illegal recruitment in large scale, an offense involving economic sabotage. She should, accordingly, be punished with life imprisonment and a fine of P100,000 under Article 39 (a) of the Labor Code, as amended.

In light of the above disquisition, there is no more need to resolve the other assigned errors.

WHEREFORE, the appealed decision of the Regional Trial Court of Pasay City, Branch 113 finding appellant Delia Sadiosa y Cabenta GUILTY beyond reasonable doubt of the crime of illegal recruitment in large scale and imposing on her life imprisonment, the payment of the fine of P100,000.00 and the reimbursement of the amounts defrauded from complainants is hereby AFFIRMED. Costs against accused-appellant.

SO ORDERED.

Narvasa, C.J., Kapunan and Purisima, JJ., concur.

Republic of the Philippines

SUPREME COURT
Manila

SECOND DIVISION

G.R. Nos. 115338-39 September 16, 1997
PEOPLE OF THE PHILIPPINES, plaintiff-appellee,

vs.

LANIE ORTIZ-MIYAKE, accused-appellant.

REGALADO, J.:p

Accused-appellant Lanie Ortiz-Miyake was charged with illegal recruitment in large scale in the Regional Trial Court of Makati on a complaint initiated by Elenita Marasigan, Imelda Generillo and Rosamar del Rosario. In addition, she was indicted for estafa by means of false pretenses in the same court, the offended party being Elenita Marasigan alone.
The information in the charge of illegal recruitment in large scale in Criminal Case No. 92-6153 reads as follows:

That in or about the period comprised from June 1992 to August 1992, in the Municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, falsely representing herself to have the capacity and power to contract, enlist and recruit workers for employment abroad did then and there willfully, unlawfully, and feloniously collect for a fee, recruit and promise employment/job placement abroad to the following persons, to wit: 1) Rosamar del Rosario; 2) Elenita Marasigan; 3) Imelda Generillo, without first securing the required license or authority from the Department of Labor and Employment, thus amounting to illegal recruitment in large scale, in violation of the aforecited law. 1

The information in the charge for estafa in Criminal Case No. 92-6154 alleges:

That in or about or sometime in the month of August, 1992, in the Municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of false pretenses executed prior to or simultaneously with the commission of the fraud, falsely pretending to have the capacity and power to send complainant Elenita Marasigan to work abroad, succeeded in inducing the latter to give and deliver to her the total sum of P23,000.00, the accused knowing fully well that the said manifestations and representation are false and fraudulent and calculated only to deceive the said complainant to part with her money, and, once in possession thereof, the said accused did then and there willfully, unlawfully and feloniously appropriate, apply and convert the same to her own personal use and benefit, to the damage and prejudice of the said Elenita Marasigan, in the aforementioned amount of P23,000.00. 2

Upon arraignment, appellant pleaded not guilty to the charges and the cases were tried jointly in Branch 145 of the Regional Trial Court of Makati.
Of the three complainants in the case for illegal recruitment in large scale, Marasigan was the only one who testified at the trial. The two other complainants, Generillo and Del Rosario, were unable to testify as they were then abroad.
Marasigan testified that she was a 32 year-old unmarried sales representative in 1992 when she was introduced to appellant by her co-complainants. 3 Appellant promised Marasigan a job as a factory worker in Taiwan for a P5,000.00 fee. At that time, Marasigan had a pending application for overseas employment pending in a recruitment agency. Realizing that the fee charged by appellant was much lower than that of the agency, Marasigan withdrew her money from the agency and gave it to appellant. 4

Marasigan paid appellant P5,000.00, but she was later required to make additional payments. By the middle of the year, she had paid a total of P23,000.00 on installment basis. 5 Save for two receipts, 6 Marasigan was not issued receipts for the foregoing payments despite her persistence in requesting for the same.
Marasigan was assured by appellant that obtaining a Taiwanese visa would not be a problem. 7 She was also shown a plane ticket to Taiwan, allegedly issued in her name. 8 Appellant issued Marasigan a photocopy of her plane ticket, 9 the original of which was promised to be given to her before her departure. 10

Marasigan was never issued a visa. 11 Neither was she given the promised plane ticket. Unable to depart for Taiwan, she went to the travel agency which issued the ticket and was informed that not only was she not booked by appellant for the alleged flight, but that the staff in the agency did not even know appellant.
Later, Marasigan proceeded to the supposed residence of appellant and was informed that appellant did not live there. 12 Upon verification with the Philippine Overseas Employment Administration (POEA), it was revealed that appellant was not authorized to recruit workers for overseas employment. 13 Marasigan wanted to recover her money but, by then, appellant could no longer be located.

The prosecution sought to prove that Generillo and Del Rosario, the two other complainants in the illegal recruitment case, were also victimized by appellant. In lieu of their testimonies, the prosecution presented as witnesses Lilia Generillo, the mother of Imelda Generillo, and Victoria Amin, the sister of Del Rosario.
Lilia Generillo claimed that she gave her daughter P8,000.00 to cover her application for placement abroad which was made through appellant. 14 Twice, she accompanied her daughter to the residence of appellant so that she could meet her; however, she was not involved in the transactions between her daughter and appellant. 15 Neither was she around when payments were made to appellant. Imelda Generillo was unable to leave for abroad and Lilia Generillo concluded that she had become a victim of illegal recruitment.

The prosecution presented Victoria Amin, the sister of Rosamar Del Rosario, to show that the latter was also a victim of illegal recruitment. Victoria Amin testified that appellant was supposed to provide her sister a job abroad. She claimed that she gave her sister a total of P10,000.00 which was intended to cover the latter's processing fee. 16
Victoria Amin never met appellant and was not around when her sister made payments. She assumed that the money was paid to appellant based on receipts, allegedly issued by appellant, which her sister showed her. 17 Del Rosario was unable to leave for abroad despite the representations of appellant. Victoria Amin claimed that her sister, like Marasigan and Generillo, was a victim of illegal recruitment.

The final witness for the prosecution was Riza Balberte, 18 a representative of the POEA, who testified that appellant was neither licensed nor authorized to recruit workers for overseas employment, POEA certificate certification. 19
Upon the foregoing evidence, the prosecution sought to prove that although two of the three complainants in the illegal recruitment

case were unable to testify, appellant was guilty of committing the offense against all three complainants and, therefore, should be convicted as charged.

On the other hand, appellant, who was the sole witness for the defense, denied that she recruited the complainants for overseas employment and claimed that the payments made to her were solely for purchasing plane tickets at a discounted rate as she had connections with a travel agency. 20
She denied that she was paid by Marasigan the amount of P23,000.00, claiming that she was paid only P8,000.00, as shown by a receipt. She further insisted that, through the travel agency, 21 she was able to purchase discounted plane tickets for the complainants upon partial payment of the ticket prices, the balance of which she guaranteed. According to her, the complainants were supposed to pay her the balance but because they failed to do so, she was obliged to pay the entire cost of each ticket.

The evidence presented by the parties were thus contradictory but the trial court found the prosecution's evidence more credible. On December 17, 1993, judgment was rendered by said court convicting appellant of both crimes as charged. 22
In convicting appellant of illegal recruitment in large scale, the lower court adopted a previous decision of Branch 78 of the Metropolitan Trial Court of Parañaque as a basis for the judgment. Said previous decision was a conviction for estafa promulgated on July 26, 1993, 23 rendered in Criminal Cases Nos. 74852-53, involving the same circumstances in the instant case, wherein complainants Generillo and Del Rosario charged appellant with two counts of estafa. This decision was not appealed and had become final and executory.

In thus convicting appellant in the illegal recruitment case, the decision therein of the Regional Trial Court stated that the facts in the foregoing estafa cases were the same as those in the illegal recruitment case before it. It, therefore, adopted the facts and conclusions established in the earlier decision as its own findings of facts and as its retionale for the conviction in the case before it. 24
In Criminal Case No. 92-6153, the Makati court sentenced appellant to serve the penalty of life imprisonment for illegal recruitment in large scale, as well as to pay a fine of P100,000.00. Appellant was also ordered to reimburse the complainants the following payments made to her, viz.: (a) Marasigan, P23,000.00; (b) Generillo, P2,500.00; and (c) Del Rosario, P2,500.00.

In the same judgment and for the estafa charged in Criminal Case No. 92-6154, the Makati court sentenced appellant to suffer imprisonment of four (4) years and two (2) months of prision

correccional, as minimum, to eight (8) years of prision mayor, as maximum, and to pay the costs.
In the instant petition, appellant seeks the reversal of the foregoing judgment of the Regional Trial Court of Makati convicting her of illegal recruitment in large scale and estafa. Specifically, she insists that the trial court erred in convicting her of illegal recruitment in large scale as the evidence presented was insufficient.

Moreover, appellant claims that she is not guilty of acts constituting illegal recruitment, in large scale or otherwise, because contrary to the findings of the trial court, she did not recruit the complainants but merely purchased plane tickets for them. Finally, she contends that in convicting her of estafa, the lower court erred as she did not misappropriate the money paid to her by Marasigan, hence there was no damage to the complainants which would substantiate the conviction.

We uphold the finding that appellant is guilty but we are, compelled to modify the judgment for the offenses she should be convicted of and the corresponding penalties therefor.
Appellant maintains that her conviction for illegal recruitment in large scale is erroneous. It is her view that in the prosecution of a case for such offense, at least three complainants are required to appear as witnesses in the trial and, since Marasigan was the only complainant presented as a witness, the conviction was groundless.

The Solicitor General also advocates the conviction of appellant for simple illegal recruitment which provides a lower penalty. The Court finds the arguments of the Solicitor General meritorious and adopts his position.
The Labor Code defines recruitment and placement as ". . . any act of canvassing, enlisting, contracting transporting, utilizing, hiring or procuring workers and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not . . . ." 25

Illegal recruitment is likewise defined and made punishable under the Labor Code, thus:

Art. 38. Illegal Recruitment.

(a) Any recruitment activities, including the prohibited practices enumerated under Article 34 of this Code, to be undertaken by non-licensees or non-holders of authority shall be deemed illegal and punishable under Article 39 of this Code. . . .
(b) Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage and shall be penalized in accordance with Article 39 hereof.

. . . Illegal recruitment is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

Art. 39. Penalties.
(a) The penalty of life imprisonment and a fine of One Hundred Thousand Pesos (P100,000.00) shall be imposed if Illegal Recruitment constitutes economic sabotage as defined herein;

xxx xxx xxx

(c) Any person who is neither a licensee nor a holder of authority under this Title found violating any provision thereof or its implementing rules and regulations shall, upon conviction thereof, suffer the penalty of imprisonment of not less than four (4) years nor more than eight (8) years or a fine of not less than P20,000.00 nor more than P100,000.00, or both such imprisonment and fine, at the discretion of the court. . . . 26

During the pendency of this case, Republic Act No. 8042, otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995," was passed increasing the penalty for illegal recruitment. This new law, however, does not apply to the instant case because the offense charged herein was committed in 1992, before the effectivity of said Republic Act No. 8042. Hence, what are applicable are the aforecited Labor Code provisions.
It is evident that in illegal recruitment cases, the number of persons victimized is determinative. Where illegal recruitment is committed against a lone victim, the accused may be convicted of simple illegal recruitment which is punishable with a lower penalty under Article 39(c) of the Labor Code. Corollarily, where the offense is committed against three or more persons, it is qualified to illegal recruitment in large scale which provides a higher penalty under Article 39(a) of the same Code.

The position of the Solicitor General is that the conviction of appellant should be merely for the lesser offense of simple illegal recruitment. He submits that the Regional Trial Court of Makati erred in convicting appellant of illegal recruitment in large scale because the conviction was based on an earlier decision of the Metropolitan Trial Court of Parañaque where appellant was found guilty of estafa committed against Generillo and Del Rosario.
It is argued that the Makati court could not validly adopt the facts embodied in the decision of the Parañaque court to show that illegal recruitment was committed against Generillo and Del Rosario as well. Illegal recruitment was allegedly proven to have been committed against only one person, particularly, Elenita Marasigan.

Appellant, therefore, may only be held guilty of simple illegal recruitment and not of such offense in large scale.

He further submits that the adoption by the Makati court of the facts in the decision of the Parañaque court for estafa to constitute the basis of the subsequent conviction for illegal recruitment is erroneous as it is a violation of the right of appellant to confront the witnesses, that is, complainants Generillo and Del Rosario, during trial before it. He cites the pertinent provision of Rule 115 of the Rules of Court, to wit:

Sec. 1. Rights of accused at the trial. In all criminal prosecutions, the accused shall be entitled:

xxx xxx xxx

(f) To confront and cross-examine the witnesses against him at the trial. Either party may utilize as part of its evidence the testimony of a witness who is deceased, out of or cannot, with due diligence be found in the Philippines, unavailable or otherwise unable testify, given in another case or proceeding, judicial or administrative, involving the same parties and subject matter, the adverse party having had the opportunity to cross-examine him.

xxx xxx xxx

It will be noted that the principle embodied in the foregoing rule is likewise found in the following provision of Rule 130:

Sec. 47. Testimony or deposition at a former proceeding. The testimony or deposition of a witness deceased or unable to testify, given in a former case or proceeding, judicial or administrative, involving the same parties and subject matter, may be given in evidence against the adverse party who had the opportunity to cross-examine him.

Under the aforecited rules, the accused in a criminal case is guaranteed the right of confrontation. Such right has two purposes: first, to secure the opportunity of cross-examination; and, second, to allow the judge to observe the deportment and appearance of the witness while testifying. 27
This right, however, is not absolute as it is recognized that it is sometimes impossible to recall or produce a witness who has already testified in a previous proceeding, in which event his previous testimony is made admissible as a distinct piece of evidence, by way of exception to the hearsay rule. 28 The previous testimony is made admissible because it makes the administration of justice orderly and expeditious. 29

Under these rules, the adoption by the Makati trial court of the facts stated in the decision of the Parañaque trial court does not fall under the exception to the right of confrontation as the exception contemplated by law covers only the utilization of testimonies of absent witnesses made in previous proceedings, and does not include utilization of previous decisions or judgments.
In the instant case, the prosecution did not offer the testimonies made by complainants Generillo and Del Rosario in the previous estafa case. Instead, what was offered, admitted in evidence, and utilized as a basis for the conviction in the case for illegal recruitment in large scale was the previous decision in the estafa case.

A previous decision or judgment, while admissible in evidence, may only prove that an accused was previously convicted of a crime. 30 It may not be used to prove that the accused is guilty of a crime charged in a subsequent case, in lieu of the requisite evidence proving the commission of the crime, as said previous decision is hearsay. To sanction its being used as a basis for conviction in a subsequent case would constitute a violation of the right of the accused to confront the witnesses against him.

As earlier stated, the Makati court's utilization of and reliance on the previous decision of the Parañaque court must be rejected. Every conviction must be based on the findings of fact made by a trial court according to its appreciation of the evidence before it. A conviction may not be based merely on the findings of fact of another court, especially where what is presented is only its decision sans the transcript of the testimony of the witnesses who testified therein and upon which the decision is based.

Furthermore, this is not the only reason why appellant may not be held liable for illegal recruitment in large scale. An evaluation of the evidence presented before the trial court shows us that, apart from the adopted decision in the previous estafa case, there was no other basis for said trial court's conclusion that illegal recruitment in large scale was committed against all three complainants.
The distinction between simple illegal recruitment and illegal recruitment in large scale are emphasized by jurisprudence. Simple illegal recruitment is committed where a person: (a) undertakes any recruitment activity defined under Article 13(b) or any prohibited practice enumerated under Articles 34 and 38 of the Labor Code; and (b) does not have a license or authority to lawfully engage in the recruitment and placement of workers. 31 On the other hand, illegal recruitment in large scale further requires a third element, that is, the offense is committed against three or more persons, individually or as a group. 32

In illegal recruitment in large scale, while the law does not require that at least three victims testify at the trial, it is necessary that there is sufficient evidence proving that the offense was committed against three or more persons. This Court agrees with the trial court that the evidence presented sufficiently proves that illegal recruitment was committed by appellant against Marasigan, but the same conclusion cannot be made as regards Generillo and Del Rosario as well.

The testimonies of Generillo's mother, Lilia Generillo, and Del Rosario's sister, Victoria Amin, reveal that these witnesses had no personal knowledge of the actual circumstances surrounding the charges filed by Generillo and Del Rosario for illegal recruitment in large scale. Neither of these witnesses was privy to the transactions between appellant and each of the two complainants. The witnesses claimed that appellant illegally recruited Generillo and Del Rosario. Nonetheless, we find their averments to be unfounded as they were not even present when Generillo and Del Rosario negotiated with and made payments to appellant.

For insufficiency of evidence and in the absence of the third element of illegal recruitment in large scale, particularly, that "the offense is committed against three or more persons," we cannot affirm the conviction for illegal recruitment in large scale. Nonetheless, we agree with the finding of the trial court that appellant illegally recruited Marasigan, for which she must be held liable for the lesser offense of simple illegal recruitment.
Appellant's defense that she did not recruit Marasigan but merely purchased a plane ticket for her is belied by the evidence as it is undeniable that she represented to Marasigan that she had the ability to send people to work as factory workers in Taiwan. Her pretext that the fees paid to her were merely payments for a plane ticket is a desperate attempt to exonerate herself from the charges and cannot be sustained.

Furthermore, no improper motive may be attributed to Marasigan in charging appellant. The fact that Marasigan was poor does not make her so heartless as to contrive a criminal charge against appellant. She was a simple woman with big dreams and it was appellant's duplicity which reduced those dreams to naught. Marasigan had no motive to testify falsely against appellant except to tell the truth. 33
Besides, if there was anyone whose testimony needed corroboration, it was appellant as there was nothing in her testimony except the bare denial of the accusations. 34 If appellant really intended to purchase a plane ticket and not to recruit Marasigan, she should have presented evidence to support this claim. Also, in her

testimony, appellant named an employee in the travel agency who was allegedly her contact person for the purchase of the ticket. She could have presented that person, or some other employee of the agency, to show that the transaction was merely for buying a ticket. Her failure to do the foregoing acts belies her pretensions.

The Court likewise affirms the conviction of appellant for estafa which was committed against Marasigan. Conviction under the Labor Code for illegal recruitment does not preclude punishment under the Revised Penal Code for the felony of estafa. 35 This Court is convinced that the prosecution proved beyond reasonable doubt that appellant violated Article 315(2) (a) of the Revised Penal Code which provides that estafa is committed:

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:
(a) By using fictitious name or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

The evidence is clear that in falsely pretending to possess power to deploy persons for overseas placement, appellant deceived the complainant into believing that she would provide her a job in Taiwan. Her assurances made Marasigan exhaust whatever resources she had to pay the placement fee required in exchange for the promised job. The elements of deceit and damage for this form of estafa are indisputably present, hence the conviction for estafa in Criminal Case No. 92-6154 should be affirmed.

Under the Revised Penal Code, an accused found guilty of estafa shall be sentenced to:

. . . The penalty of prision correccional in its maximum period to prision mayor in its minimum period, if the amount of the fraud is over 12,000 but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos. . . . 36

The amount involved in the estafa case is P23,000.00. Applying the Indeterminate Sentence Law, the maximum penalty shall be taken from the maximum period of the foregoing basic penalty, specifically, within the range of imprisonment from six (6) years, eight (8) months and twenty-one (21) days to eight (8) years.
On the other hand, the minimum penalty of the indeterminate sentence shall be within the range of the penalty next lower in degree to that provided by law, without considering the

incremental penalty for the amount in excess of P22,000.00. 37 That penalty immediately lower in degree is prison correccional in its minimum and medium periods, with a duration of six (6) months and one (1) day to four (4) years and two (2) months. On these considerations, the trial court correctly fixed the minimum and maximum terms of the indeterminate sentence in the estafa case.

While we must be vigilant and should punish, to the fullest extent of the law, those who prey upon the desperate with empty promises of better lives, only to feed on their aspirations, we must not be heedless of the basic rule that a conviction may be sustained only where it is for the correct offense and the burden of proof of the guilt of the accused has been met by the prosecution.
WHEREFORE, the judgment of the court a quo finding accused-appellant Lanie Ortiz-Miyake guilty beyond reasonable doubt of the crimes of illegal recruitment in large scale (Criminal Case No. 92-6153) and estafa (Criminal Case No. 92-6154) is hereby MODIFIED, as follows.

1) Accused-appellant is declared guilty beyond reasonable doubt of simple illegal recruitment, as defined in Article 38(a) of the Labor Code, as amended. She is hereby ordered to serve an indeterminate sentence of four (4) years, as minimum, to eight (8) years, as maximum, and to pay a fine of P100,000.00.
2) In Criminal Case No. 92-6154 for estafa, herein accused-appellant is ordered to serve an indeterminate sentence of four (4) years and two (2) months of prision correccional, as minimum, to eight (8) years of prision mayor, as maximum, and to reimburse Elenita Marasigan the sum of P23,000.00.

In all other respects, the aforestated judgment is AFFIRMED, with costs against accused-appellant in both instances.
SO ORDERED.

Puno, Mendoza and Torres, Jr., JJ., concur.

ANTI-PLUNDER ACT
(RA. No. 7080, as amended)

AN ACT DEFINING AND PENALIZING THE CRIME OF PLUNDER

IV. I. FULL TEXT OF R.A. 7080

Section 1. *Definition of terms.* - As used in this Act, the term:

a. *"Public Officer"* means any person holding any public office in the Government of the Republic of the Philippines by virtue of an appointment, election or contract.

b. *"Government"* includes the National Government, and any of its subdivisions, agencies or instrumentalities, including government-owned or controlled corporations and their subsidiaries.

c. *"Person"* includes any natural or juridical person, unless the context indicates otherwise.

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/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.

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 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 Section 12, Republic Act No. 7659 (The Death Penalty Law)] (Click here for old provision of Section 2, of Republic Act No. 7080)

Sec. 3. *Competent Court.* - Until otherwise provided by law, all prosecutions under this Act shall be within the original jurisdiction of the Sandiganbayan.

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.

Sec. 5. *Suspension and Loss of Benefits.* - Any public officer against whom any criminal prosecution under a valid information under this Act in whatever stage of execution and mode of participation, is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted he shall be entitled to reinstated and to the salaries and other benefits which he failed to

receive during suspension, unless in the meantime, administrative proceedings have been filed against him.

Sec. 6. *Prescription of Crime.* - The crime punishable under this Act shall prescribe in twenty (20) years. However, the right of the State to recover properties unlawfully acquired by public officers from them or from their nominees or transferees shall not be barred by prescription, laches, or estoppel.

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

Sec. 8. *Scope.* - This Act shall not apply to or affect pending prosecutions or proceedings, or those which may be instituted under Executive Order No. 1 issued and promulgated on February 28, 1986.

Sec. 9. *Effectivity.* - This Act shall take effect after fifteen (15) days from its publication in the Official Gazette and in a newspaper of general circulation.

Approved: July 12, 1991

Old provision of Section 2, Republic Act No. 7080 prior to its amendment by Section 12, Republic Act No. 7659. otherwise known as the Death Penalty Law:

> 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 Seventy five million pesos (P75,000,000.00), shall be guilty of the crime of plunder and shall be punished by life imprisonment with perpetual absolute disqualification from holding any public office. Any person who participated with the said public officer in the commission of plunder shall likewise be punished. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating

circumstances shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State.

V.II. EXPLANATION

DEFINITION OF TERMS.

a) *"Public Officer"* means any person holding any public office in the Government of the Republic of the Philippines by virtue of an appointment, election or contract.

b) *"Government"* includes the National Goverment, and any of its subdivisions, agencies or instmentalities, including government-owned or controlled corporations and their subsidiaries.

c) *"Person"* includes any natural or juridical person, unless the context indicates otherwise.

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.

WHAT ARE THE MEANS WHEREIN ILL-GOTTEN WEALTH MAY BE OBTAINED?

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.

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: illgotten 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 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 snares of stocks derived from the deposit or investment theof forfeited in favor of the State. *(As amended by R.A. No. 7659.)*

VENUE.

Competent Court. — Until otherwise provided by law, all prosecutions under this Act shall be within the original jurisdiction of the Sandiganbayan.

EVIDENCE REQUIRED.

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 reason able doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy.

SUSPENSION AND LOSS OF BENEFITS.

Any public officer against whom any criminal prosecution under valid information under this Act in whatever stage of execution and mode of participation, is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and other benefits which he failed to receive during suspension, unless in the meantime, administrative proceedings have been filed against *him.*

PRESCRIPTION OF CRIMES.

The crime punishable under this Act shall prescribe in twenty (20) years. However, the right of the State to recover properties unlawfully acquired by public officers from them or from their nominees or transferees shall not be barred by prescription, laches, or estoppel.

III. JURISPRUDENCE

Republic of the Philippines

SUPREME COURT
Manila

FIRST DIVISION

G.R. No. 93661 September 4, 1991

SHARP INTERNATIONAL MARKETING, petitioner,

vs.

HON. COURT OF APPEALS (14th Division), LAND BANK OF THE PHILIPPINES and DEOGRACIAS VISTAN, respondents.

Brillantes, Nachura, Navarro & Arcilla Law Office and Yap, Apostol, Bandon & Gumaro for petitioner.
Miguel M. Gonzales and Norberto L. Martinez for private respondents.

CRUZ, J.:p

This case involves the aborted sale of the Garchitorena estate to the Government in connection with the Comprehensive Agrarian Reform Program. This opinion is not intended as a pre-judgment of the informations that have been filed with the Sandiganbayan for alleged irregularities in the negotiation of the said transaction. We are concerned here only with the demand of the petitioner that the private respondents sign the contract of sale and thus give effect thereto as a perfected agreement. For this purpose, we shall determine only if the challenged decision of the Court of Appeals denying that demand should be affirmed or reversed.

The subject-matter of the proposed sale is a vast estate consisting of eight parcels of land situated in the municipality of Garchitorena in Camarines Norte and with an area of 1,887.819 hectares. The record shows that on April 27, 1988, United Coconut Planters Bank (UCPB) entered into a Contract to Sell the property to Sharp International Marketing, the agreement to be converted into a Deed of Absolute Sale upon payment by the latter of the full purchase price of P3,183,333.33. On May 14, 1988, even before it had acquired the land, the petitioner, through its President Alex Lina, offered to sell it to the Government for P56,000,000.00, (later increased to P65,000,000.00). Although the land was still registered in the name of UCPB, the offer was processed by various government agencies during the months of June to November, 1988, resulting in the recommendation by the Bureau of Land Acquisition and Distribution in the Department of Agrarian Reform for the acquisition of the property at a price of P35,532.70 per hectare, or roughly P67,000,000.00. On December 1, 1988, a Deed of Absolute Sale was executed between UCPB and Sharp by virtue of which the former sold the estate to the latter for the stipulated consideration of P3,183,333.33. The property was registered in the name of the petitioner on December 6, 1988. On December 27, 1988, DAR and the Land Bank of the Philippines created a Compensation Clearing Committee (CCC) to expedite processing of the papers relating to the acquisition of the land and the preparation of the necessary deed of transfer for signature by the DAR Secretary and the LBP President.

The following day, the CCC held its first meeting and decided to recommend the acquisition of the property for P62,725,077.29. The next day, December 29, 1988, DAR Secretary Philip Ella Juico issued an order directing the acquisition of the estate for the recommended amount and requiring LBP to pay the same to Sharp, 30% in cash and the balance in government financial instruments negotiable within 30 days from issuance by Sharp of the corresponding muniments of title.

On January 9, 1989, Secretary Juico and petitioner Lina signed the Deed of Absolute Sale. On that same day, the LBP received a copy of the order issued by Secretary Juico on December 29, 1988. On January 17, 1989, LBP Executive Vice President Jesus Diaz signed the CCC evaluation worksheet but with indicated reservations. For his part, LBP President Deogracias Vistan, taking into account these reservations and the discovery that Sharp had acquired the property from UCPB for only P3.1 million, requested Secretary Juico to reconsider his December 29, 1988 order. Secretary Juico then sought the opinion of the Secretary of Justice as to whether the LBP could refuse to pay the seller the compensation fixed by the DAR Secretary. Meantime, on February 3, 1989, Vistan informed Juico that LBP would not pay the stipulated purchase price. The reply of the Justice Department on March 12, 1989, was that the decision of the DAR Secretary fixing the compensation was not final if seasonably questioned in court by any interested party (including the LBP); otherwise, it would become final after 15 days from notice and binding on all parties concerned, including the LBP, which then could not refuse to pay the compensation fixed. Reacting to Sharp's repeated demands for payment, Juico informed Lina on April 7,1989, that DAR and LBP had dispatched a team to inspect the land for reassessment. Sharp then filed on April 18, 1989, a petition for mandamus with this court to compel the DAR and LBP to comply with the contract, prompting Juico to issue the following order:

Since the whole property of 1,887 hectares was acquired by Claimant for a consideration of P3 M, the buying price per hectare then was only about P1,589.83. It is incomprehensible how the value-of land per hectare in this secluded Caramoan Peninsula can go so high after a short period of time. The increase is difficult to understand since the land is neither fully cultivated nor has it been determined to possess special and rich features or potentialities other than agricultural purposes.

We cannot fail to note that the value of land under CARP, particularly in the most highly developed sections of Camarines Sur, ranges from P18,000.00 to P27,000 per hectare.

In view of the above findings of fact, the value of P62,725,077.29 is definitely too high as a price for the property in question.
However, in order to be fair and just to the landowner, a reevaluation of the land in question by an impartial and competent third party shall be undertaken. For this purpose, a well known private licensed appraiser shall he commissioned by DAR.

WHEREFORE, premises considered, Order is hereby issued for the reappraisal and re-evaluation of the subject property. For that purpose, DAR shall avail of the services of Cuervo and Associates to undertake and complete the appraisal of the subject property within 60 days from date of this Order.

On April 26, 1989, this Court referred the petition to the Court of Appeals, which dismissed it on October 31, 1989. In an exhaustive and well-reasoned decision penned by Justice Josue M. Bellosillo, 1 it held that mandamus did not he because the LBP was not a mere rubber stamp of the DAR and its signing of the Deed of Absolute Sale was not a merely ministerial act. It especially noted the failure of the DAR to take into account the prescribed guidelines in ascertaining the just compensation that resulted in the assessment of the land for the unconscionable amount of P62 million notwithstanding its original acquisition cost of only P3 million. The decision also held that the opinion of the Secretary of Justice applied only to compulsory acquisition of lands, not to voluntary agreements as in the case before it. Moreover, the sale was null and void ab initio because it violated Section 6 of RA 6657, which was in force at the time the transaction was entered into.

The petitioners are now back with this Court, this time to question the decision of the Court of Appeals on the following grounds:

The Court of Appeals seriously erred in including in its Decision findings of facts which are not borne by competent evidence.
The Court of Appeals erred in holding that the valuation made on the Garchitorena estate has not yet become final.
The Court of Appeals erred in holding that the opinion of the Secretary of Justice is not applicable to the case at bar.
The Court of Appeals erred in holding that herein petitioner is not entitled to a writ of mandamus.
The Court of Appeals erred in holding that the sale of Garchitorena estate from UCPB in favor of the petitioner is void.

The Court of Appeals erred in holding that the P62 million is not a just compensation.

We need not go into each of these grounds as the basic question that need only to be resolved is whether or not the petitioners are entitled to a writ of mandamus to compel the LBP President Deogracias Vistan to sign the Deed of Absolute Sale dated January 9, 1989.
It is settled that mandamus is not available to control discretion. The writ may issue to compel the exercise of discretion but not the discretion itself. mandamus can require action only but not specific action where the act sought to be performed involves the exercise of discretion. 2

Section 18 of RA 6657 reads as follows:

Sec. 18. Valuation and mode of compensation. The LBP shall compensate the landowner in such amount as may be agreed upon by the landowner and the DAR and the LBP, in accordance with the criteria provided for in Secs. 16 and 17, and other pertinent provisions hereof, or as may be finally determined by the court, as the just compensation for the land. ... (Emphasis supplied).

We agree with the respondent court that the act required of the LBP President is not merely ministerial but involves a high degree of discretion. The compensation to be approved was not trifling but amounted to as much as P62 million of public funds, to be paid in exchange for property acquired by the seller only one month earlier for only P3 million. The respondent court was quite correct when it observed:

As may be gleaned very clearly from EO 229, the LBP is an essential part of the government sector with regard to the payment of compensation to the landowner. It is, after all, the instrumentality that is charged with the disbursement of public funds for purposes of agrarian reform. It is therefore part, an indispensable cog, in the governmental machinery that fixes and determines the amount compensable to the landowner. Were LBP to be excluded from that intricate, if not sensitive, function of establishing the compensable amount, there would be no amount "to be established by the government" as required in Sec. 6, EO 229. This is precisely why the law requires the DAS, even if already approved and signed by the DAR Secretary, to be transmitted still to the LBP for its review, evaluation and approval.

It needs no exceptional intelligence to understand the implications of this transmittal. It simply means that if LBP agrees on the amount stated in the DAS, after its review and evaluation, it becomes its duty to sign the deed. But not until then. For, it is only in that event that the amount to be compensated shall have been "established'

according to law. Inversely, if the LBP, after review and evaluation, refuses to sign, it is because as a party to the contract it does not give its consent thereto. This necessarily implies the exercise of judgment on the part of LBP, which is not supposed to be a mere rubber stamp in the exercise. Obviously, were it not so, LBP could not have been made a distinct member of PARC, the super body responsible for the successful implementation of the CARP. Neither would it have been given the power to review and evaluate the DAS already signed by the DAR Secretary. If the function of the LBP in this regard is merely to sign the DAS without the concomitant power of review and evaluation, its duty to "review/evaluate' mandated in Adm. Order No. 5 would have been a mere surplusage, meaningless, and a useless ceremony.

Thus, in the exercise of such power of review and evaluation, it results that the amount of P62,725,077.29 being claimed by petitioner is not the "amount to be established by the government." Consequently, it cannot be the amount that LBP is by law bound to compensate petitioner.
Under the facts, SHARP is not entitled to a writ of mandamus. For, it is essential for the writ to issue that the plaintiff has a legal right to the thing demanded and that it is the imperative duty of the defendant to perform the act required. The legal right of the plaintiff to the thing demanded must be well-defined, clear and certain. The corresponding duty of the defendant to perform the required act must also be clear and specific (Enriquez v. Bidin, L-29620, October 12, 1972, 47 SCRA 183; Orencia v. Enrile, L-28997, February 22, 1974, 55 SCRA 580; Dionisio v. Paterno, 103 SCRA 342; Lemi v. Valencia, 26 SCRA 203; Aquino v. Mariano, 129 SCRA 532).

Likewise, respondents cannot be compelled by a writ of mandamus to discharge a duty that involves the exercise of judgment and discretion, especially where disbursement of public funds is concerned. It is established doctrine that mandamus will not issue to control the performance of discretionary, non-ministerial, duties, that is, to compel a body discharging duties involving the exercise of discretion to act in a particular way or to approve or disapprove a specific application (B.P. Homes, Inc. v. National Water Resources Council, L-78529, Sept. 17, 1987; 154 SCRA 88). mandamus win not issue to control or review the exercise of discretion by a public officer where the law imposes upon him the right or duty to exercise judgment in reference to any matter in which he is required to act (Mata v. San Diego, L-30447, March 21, 1975; 63 SCRA 170).

Even more explicit is R.A. 6657 with respect to the indispensable role of LBP in the determination of the amount to be compensated to the

landowner. Under Sec. 18 thereof, "the LBP shall compensate the landowner in such amount as may be agreed upon by the landowner and the DAR and LBP, in accordance with the criteria provided in Secs. 16 and 17, and other pertinent provisions hereof, or as may be finally determined by the court, as the just compensation for the land."

Without the signature of the LBP President, there was simply no contract between Sharp and the Government. The Deed of Absolute Sale dated January 9, 1989, was incomplete and therefore had no binding effect at all. Consequently, Sharp cannot claim any legal right thereunder that it can validly assert in a petition for mandamus.
In National Marketing Corporation v. Cloribel, 3 this Court held:

... the action for mandamus had no leg to stand on because the writ was sought to enforce alleged contractual obligations under a disputed contract disputed not only on the ground that it had failed of perfection but on the further ground that it was illegal and against public interest and public policy ...

The petitioner argues that the LBP President was under obligation to sign the agreement because he had been required to do so by Secretary Juico, who was acting by authority of the President in the exercise of the latter's constitutional power of control. This argument may be dismissed with only a brief comment. If the law merely intended LBP's automatic acquiescence to the DAR Secretary's decision, it would not have required the separate approval of the sale by that body and the DAR. It must also be noted that the President herself, apparently disturbed by public suspicion of anomalies in the transaction, directed an inquiry into the matter by a committee headed by former Justice Jose Y. Feria of this Court. Whatever presumed authority was given by her to the DAR Secretary in connection with the sale was thereby impliedly withdrawn.

It is no argument either that the Government is bound by the official decisions of Secretary Juico and cannot now renege on his commitment. The Government is never estopped from questioning the acts of its officials, more so if they are erroneous, let alone irregular. 4
Given the circumstances attending the transaction which plainly show that it is not merely questionable but downright dishonest, the Court can only wonder at the temerity of the petitioner in insisting on its alleged right to be paid the questioned purchase price. The fact that criminal charges have been flied by the Ombudsman against the principal protagonists of the sale has, inexplicably, not deterred or discomfited it. It does not appear that the petitioner is affected by

the revelation that it offered the property to the Government even if it was not yet the owner at the time; acquired it for P3 million after it had been assured that the sale would materialize; and sold it a month later for the bloated sum of P62 million, to earn a gross profit of P59 million in confabulation with some suspect officials in the DAR. How the property appreciated that much during that brief period has not been explained. What is clear is the public condemnation of the transaction as articulated in the mass media and affirmed in the results of the investigations conducted by the Feria Fact-Finding Committee, the Senate House Joint Committee on Agrarian Matters, and the Office of the Ombudsman.

It would seem to the Court that the decent tiling for the petitioner to do, if only in deference to a revolted public opinion, was to voluntarily withdraw from the agreement. Instead, it is unabashedly demanding the exorbitant profit it would derive from an illegal and unenforceable transaction that ranks as one of the most cynical attempts to plunder the public treasury.

The above rulings render unnecessary discussion of the other points raised by the petitioner. The Court has given this petition more attention than it deserves. We shall waste no more time in listening to the petitioner's impertinent demands. LBP President Deogracias Vistan cannot be faulted for refusing to be a party to the shameful scheme to defraud the Government and undermine the Comprehensive Agrarian Reform Program for the petitioner's private profit. We see no reason at all to disturb his discretion. It merits in fact the nation's commendation.

WHEREFORE, the petition is DENIED, with costs against the petitioner. It is so ordered.

Narvasa (Chairman), Griño-Aquino and Medialdea, JJ., concur.

Republic of the Philippines

SUPREME COURT
Manila

EN BANC

G.R. No. 106527 April 6, 1993

CESAR E.A. VIRATA, petitioner,

vs.

THE HONORABLE SANDIGANBAYAN and THE PEOPLE OF THE PHILIPPINES, respondents.

Angara, Abello, Concepcion, Regala & Cruz for petitioner.
The Solicitor General for respondents.

DAVIDE, JR., J.:p

This petition is a sequel to Virata vs. Sandiganbayan 1 and Mapa vs. Sandiganbayan 2 which were jointly decided by this Court on 15 October1991. 3
Petitioner is among the forty-four (44) co-defendants of Benjamin (Kokoy) Romualdez in a complaint filed by the Republic of the Philippines with the respondent Sandiganbayan on 31 July 1987. 4 The complaint was amended thrice; the last amendment thereto is denominated as the Second Amended Complaint, as expanded per the Court-Approved Manifestation/Motion dated8 December 1987. 5

Petitioner moved to dismiss the said case, insofar as he is concerned, on various grounds including the failure of the expanded Second Amended Complaint to state a cause of action. The motion was denied and so was his bid to have such denial reconsidered. He then came to this Court via a special civil action for certiorari imputing upon the respondent Sandiganbayan the commission of grave abuse of discretion in, inter alia, finding that the complaint sufficiently states a cause of action against him. In Our aforementioned Decision of 15 October 1991, We overruled the said contention and upheld the ruling of the Sandiganbayan. However, We stated: 6

No doubt is left in Our minds that the questioned expanded Second Amended Complaint is crafted to conform to a well-planned outline that forthwith focuses one's attention to the asserted right of the State, expressly recognized and affirmed by the 1987 Constitution (Section 15, Art. XI), and its corresponding duty, (Bataan Shipyard & Engineering Co., Inc. vs. PCGG, 150 SCRA 181, 207) to recover ill-gotten wealth from the defendants named therein; the alleged schemes and devices used and the manipulations made by them to amass such ill-gotten wealth, which are averred first generally and then specifically; and the extent of the reliefs demanded and prayed for. However, as shown above, the maze of unnecessary literary embellishments may indeed raise some doubts on the sufficiency of the statement of material operative facts to flesh out the causes of action. Be that as it may, We are, nevertheless, convinced that the questioned pleading has sufficiently shown viable causes of action.

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If petitioners perceive some ambiguity or vagueness therein, the remedy is not a motion to dismiss. An action should not be dismissed upon a mere ambiguity, indefiniteness or uncertainty, for these are not grounds for a motion to dismiss, but rather for a bill of particulars . . . (Amaro vs. Sumanguit, 5 SCRA 707) . . .

Petitioner was thus compelled to go back to the Sandiganbayan. However, insisting that he "could not prepare an intelligent and adequate pleading in view of the general and sweeping allegations against him in the Second Amended Complaint as expanded," 7 while at the same time remaining "steadfast in his position maintaining his posture of innocence," 8 petitioner filed on 30 January 1992 a Motion For a Bill of Particulars. 9 He alleges therein that on the basis of the general and sweeping allegations in the Second Amended Complaint, to wit:

a. The wrongs committed by Defendants, acting singly or collectively and in unlawful concert with one another, include the misappropriation and theft of public funds, plunder of the nation's wealth, extortion, blackmail, bribery, embezzlement and other acts of corruption, betrayal of public "trust and brazen abuse of power, as more fully described below, all at the expense and to the grave and irreparable damage of Plaintiff and the Filipino people." (par. 2, at p. 3).

b. The following Defendants acted as dummies, nominees or agents, by allowing themselves tobe (sic) incorporators, directors, board members and/or stockholders of corporations beneficially held and/or controlled by Defendants Benjamin (Kokoy) Romualdez, Ferdinand E. Marcos and Imelda R. Marcos

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CESAR E. A. VIRATA

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(par. 7, at pp. 5-7)

c. From the early years of his presidency, Defendant Ferdinand E. Marcos took undue advantage of his powers as President. All throughout the period from September 21, 1972 to February 26, 1986, he gravely abused his powers under martial law and ruled as Dictator under the 1973 Marcos promulgated Constitution. Defendant

Ferdinand E. Marcos, together with other Defendants, acting singly or collectively, and/or in unlawful concert with one another, in flagrant breach of public trust and of their fiduciary obligation as public officers, with gross and scandalous abuse of right and power and in brazen violation of the Constitution and laws of the Philippines, embarked upon a systematic plan to accumulate ill-gotten wealth: (par. 9(a) in the section of the Complaint styled "General Averments of Defendants" Illegal Acts. at pp. 12-13).

d. Defendants, acting singly or collectively, and/or in unlawful concert with one another, for the purpose of preventing disclosure and avoiding discovery of their unmitigated plunder of the National Treasury and of their other illegal acts, and employing the services of prominent lawyers, accountants, financial experts, businessmen and other persons, deposited, kept and invested funds, securities and other assets estimated at billions of US dollars in various banks, financial institutions, trust or investment companies with persons here and abroad. (par. 12, in the same section "General Averments of Defendants" Illegal Acts, at p. 18). 10

which were attempted to be "fully describe[d]" in that "section of the complaint, styled "Specific Averments of the Defendant's Illegal Acts," 11 as follows:

a. Defendants Benjamin (Kokoy) Romualdez and Juliette Gomez Romualdez, acting by themselves and/or unlawful (sic) concert with Defendants Ferdinand E. Marcos and Imelda R. Marcos, and taking undue advantage of their relationship, influence and connection with the latter Defendant spouses, engaged in devices, schemes and strategies to unjustly enrich themselves at the expense of Plaintiff and the Filipino people, among others: (par. 14, at p. 19).

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(i) Gave MERALCO undue advantage . . . (ii) with the active collaboration of Defendant Cesar E.A. Virata be (sic) reducing the electric franchise tax from 5% to 2% of gross receipts and the tariff duty on fuel oil imports by public utilities from 20% to 10%, resulting in substantial savings for MERALCO but without any significant benefit to the consumers of electric power and loss of million (sic) of pesos in much needed revenues to the government; (par. 14(b), at pp. 22 and 23)

(ii) Secured, in a veiled attempt to justify MERALCO's anomalous acquisition of the electric cooperatives, with the active collaboration of Defendants Cesar E. A. Virata, . . . and the rest of the Defendants,

the approval by Defendant Ferdinand E. Marcos and his cabinet of the so-called "Three-Year Program for the Extension of MERALCO's Services of Areas within the 60 kilometer Radius of Manila," which required government capital investment amounting to millions of pesos; (par. 14(g), at p. 25)

(iii) Manipulated with the support, assistance and collaboration of Philguarantee officials led by Chairman Cesar E.A. Virata and the senior managers of EMMC/PNI Holdings, Inc. led by Jose S. Sandejas, J. Jose M. Mantecon and Kurt S. Bachmann, Jr., among others, the formation of Erectors Holdings, Inc., without infusing additional capital solely for the purpose of making it assume the obligation of Erectors, Inc. with Philguarantee in the amount of P527,387,440.71 with insufficient securities/collaterals just to enable Erectors, Inc to appear viable and to borrow more capitals (sic), so much so that its obligation with Philguarantee has reached a total of more than P2 Billion as of June 30, 1987. (par. 14(m) p. 29)

(iv) The following Defendants acted as dummies, nominees and/or agents by allowing themselves (i) to be used as instruments in accumulating ill-gotten wealth through government concessions, orders and/or policies prejudicial to Plaintiff, or (ii) to be incorporator, directors or members of corporations beneficially held and/or controlled by Defendants Ferdinand E. Marcos, Imelda R. Marcos, Benjamin (Kokoy) Romualdez and Juliette Gomez Romualdez in order to conceal and prevent recovery of assets illegally obtained: . . . Cesar E. A. Virata . . . (par. 17, at pp.36-37).

b. The acts of Defendants, singly or collectively, and/or in unlawful concert with one another, constitute gross abuse of official and fiduciary obligations, acquisition of unexplained wealth, brazen abuse of right and power, unjust enrichment, violation of the Constitution and laws of the Republic the (sic) Philippines, to the grave and irreparable damage of Plaintiff and the Filipino people (par. 18, at p. 40). 12

the plaintiff, Republic of the Philippines, asserts four (4) alleged "actionable wrongs" against the herein petitioner, to wit:

a. His alleged "active collaboration" in the reduction of the electric franchise tax from 5% to 2% of gross receipts and the tariff duty of fuel oil imports by all public utilities from 20% to 10%, which as this Honorable Court will take judicial notice of was effected through the enactment of Presidential Decree 551.
b. His alleged "active collaboration" in securing the approval by defendant Marcos and his Cabinet of the "Three-Year Program for the

Extension of MERALCO's Services to Areas Within the 60-Kilometer Radius of Manila" which as this Honorable Court will likewise take judicial notice of the present government continuously sanctions to date.

c. His alleged "support, assistance and collaboration" in the formation of Erectors Holdings, Inc.
d. His alleged acting as "dummy, nominee, and/or agent by allowing" himself "(i) to be used as instrument(s) (sic) in accumulating ill-gotten wealth through government concessions, orders and/or policies prejudicial to Plaintiff" or (ii) to be an incorporator, director, or member of corporations beneficially held and/or controlled by defendants Ferdinand Marcos, Imelda Marcos, Benjamin Romualdez and Juliette Romualdez" in order "to conceal and prevent recovery of assets illegally obtained." 13

Petitioner claims, however, that insofar as he is concerned, the "foregoing allegations . . . and the purported illegal acts imputed to them as well as the alleged causes of actions are vague and ambiguous. They are not averred with sufficient definiteness or particularity as would enable defendant Virata to properly prepare his answer or responsive pleading." 14 He therefore prays that "in accordance with Rule 12 of the Rules of Court, plaintiff be directed to submit a more definite statement or a bill of particulars on the matters mentioned above which are not averred with sufficient definiteness or particularity." 15

In its Comment, the plaintiff Republic of the Philippines opposed the motion. Replying to the opposition, petitioner cited Tantuico vs. Republic 16 which this Court decided on 2 December 1991.
In its Resolution promulgated on 4 August 1992, 17 the respondent Sandiganbayan (Second Division) partially granted the Motion for a Bill of Particulars. The dispositive portion thereof provides:

WHEREFORE, premises considered, the instant "Motion For Bill of Particulars", dated January 30, 1992, is hereby partially granted. Accordingly, plaintiff is hereby ordered to submit to the Court and furnish defendant-movant with a bill of particulars of the facts prayed for by the latter, pertaining to paragraph 17 (sic) and 18 of the Expanded Complaint, within fifteen (15) days from receipt hereof. Failure of plaintiff to do so would mean automatic deletion and/or exclusion of defendant-movant's name from the said paragraphs of the complaint, without prejudice to the standing valid effect of the other specific allegations against him. 18

In granting the motion with respect to paragraph 17 and 18 of the expanded Second Amended Complaint which it erroneously referred to as the Expanded Complaint the Sandiganbayan stated:

In deference to the pronouncement made by the Highest Tribunal in Tantuico, We rule and so hold that the foregoing allegations need further amplifications and specifications insofar as defendant-movant is concerned in order for him to be able to properly meet the issue therein 19

However, in denying amplification as to the rest of the allegations, the Sandiganbayan declared that:

Albeit We are fully cognizant of the import and effect of the Supreme Court ruling in Tantuico, Jr. vs. Republic, et al., supra, however, We are not prepared to rule that the said case applies squarely to the case at bar to warrant an absolute ruling in defendant-movant's favor. The thrust of the ruling in said case, although possessing a semblance of relevance to the factual setting of the instant incident, does not absolutely support defendant-movant's stance. As implicitly admitted by defendant-movant, there are certain specific charges against him in the Expanded Complaint which are conspicuously absent in Tantuico, to wit: (i) his alleged "active collaboration" in the reduction of the electric franchise tax from 5% to 2% of gross receipts and the tariff duty on fuel oil imports by all public utilities from 20% to 10%, which was effected through the enactment of Presidential Decree 551; (ii) his "alleged collaboration" in securing the approval by defendant Marcos and his Cabinet of the "Three-Year Program for the Extension of Meralco's Services to Areas Within the 60-Kilometer Radius of Manila"; and (iii) his alleged "support, assistance and collaboration" in the formation of Erectors Holdings, Inc. (EHI).

We are of the considered opinion that the foregoing charges in the Expanded Complaint are clear, definite and specific enough to allow defendant-movant to prepare an intelligent responsive pleading or to prepare for trial. Considering the tenor of the Supreme Court ruling in Tantuico, the nature and composition of the foregoing factual allegations are, to Us, more than enough to meet the standards set forth therein in determining the sufficiency or relevancy of a bill of particulars. Alleging the specific nature, character, time and extent of the phrase "active collaboration" would be a mere surplusage and would not serve any useful purpose, except to further delay the proceedings in the case. Corollarily, any questions as to the validity or legality of the transactions involved in the charges against defendant-movant is irrelevant and immaterial in the resolution of the

instant incident, inasmuch as the same is a matter of defense which shall have its proper place during the trial on the merits, and on the determination of the liability of defendant-movant after the trial proper. Furthermore, the matters which defendant-movant seeks are evidentiary in nature and, being within his intimate or personal knowledge, may be denied or admitted by him or if deemed necessary be the subject of other forms of discovery. 20

In short, of the four (4) actionable wrongs enumerated in the Motion for a Bill of Particulars, the Sandiganbayan favorably acted only with respect to the fourth. 21

Not satisfied with the partial grant of the motion petitioner filed the instant petition under Rule 65 of the Revised Rules of Court contending that the Sandiganbayan acted with grave abuse of its discretion amounting to lack or excess of jurisdiction in not totally granting his Motion for a Bill of Particulars.

After thorough deliberations on the issues raised, this Court finds the petition to be impressed with merit. We therefore rule for the petitioner.

The Sandiganbayan's favorable application of Tantuico vs. Republic of the Philippines 22 with respect to the fourth "actionable wrong," or more particularly to paragraphs 17 and 18 of the expanded Second Amended Complaint in Civil Case No. 0035, and its refusal to apply the same to the first three (3) "actionable wrongs" simply because it is "not prepared to rule that the said case (Tantuico) applies squarely to the case at bar to warrant an absolute ruling in defendant-movant's favor," is quite contrived; the ratiocination offered in support of the rejection defeats the very purpose of a bill of particulars.

It is to be observed that Tantuico vs. Republic of the Philippines also originated from Civil Case No. 0035. Tantuico, herein petitioner's co-defendant in the said civil case, filed a motion for a bill of particulars to seek the amplification of the averments in paragraphs 2, 7, 9(a), 15 and 17 of the Second Amended Complaint. The Sandiganbayan denied the motion on the ground that the particulars sought are evidentiary in nature. 23 This Court eventually overruled the Sandiganbayan and forthwith directed the respondents therein to prepare and file a Bill of Particulars embodying the facts prayed for by Tantuico; this was based on Our finding the questioned allegations in the complaint pertaining to Tantuico "are deficient because the averments therein are mere conclusions of law or presumptions, unsupported by factual premises." 24

As in the earlier case of Virata vs. Sandiganbayan, We have carefully scrutinized the paragraphs of the expanded Second Amended Complaint subject of the petitioner's motion for a bill of particulars and find the same to be couched in general terms and wanting in definiteness or particularity. It is precisely for this reason that We indirectly suggested in the said decision that the petitioner's remedy is to file a motion for a bill of particulars and not a motion to dismiss. Thus, the basis of the distinction made by the respondent Sandiganbayan between the allegations in support of the first three (3) "actionable wrongs" and those in support of the fourth is as imperceptible as it is insignificant in the light of its admission that the ruling in Tantuico possesses "a semblance of relevance to the factual setting of the instant incident." As We see it, there exists not only a semblance but a striking similarity in the crafting of the allegations between the causes of action against Tantuico and those against the petitioner. And, as already stated, such allegations are general and suffer from a lack of definiteness and particularity. A a mater of fact, paragraphs 2, 7, 9 and 17 four of the five paragraphs of the complaint in Civil Case No. 0035 which was resolved in Tantuico are likewise involved in the instant case. Tantuico's applicability to the instant case is thus ineluctable and the propriety of the motion for a bill of particulars under Section 1, Rule 12 of the Revised Rules of Court is beyond dispute. Said section reads:

Sec. 1. Motion for bill of particulars. Before responding to a pleading or, if no responsive pleading is permitted by these rules, within ten (10) days after service of the pleading upon him, a party may move for a more definite statement or for a bill of particulars of any mater which is not averred with sufficient definiteness or particularity to enable him properly to prepare his responsive pleading or to prepare for trial. Such motion shall point out the defects complained of and the details desired.

As this Court enunciated in Tan vs. Sandiganbayan: 25

It is the office or function, as well as the object or purpose, of a bill of particulars to amplify or limit a pleading, specify more minutely and particularly a claim or defense set up and pleaded in general terms, give information, not contained in the pleading, to the opposite party and the court as to the precise nature, character, scope, and extent of the cause of action or defense relied on by the pleader, and apprise the opposite party of the case which he has to meet, to the end that the proof at the trial may be limited to the matters specified, and in order that surprise at, and needless preparation for, the trial may be avoided, and that the opposite party may be aided in framing his answering pleading and preparing for

trial. It has also been stated that it is the function or purpose of a bill of particulars to define, clarify, particularize, and limit or circumscribe the issues in the case, to expedite the trial, and assist the court. A general function or purpose of a bill of particulars is to prevent injustice or do justice in the case when that cannot be accomplished without the aid of such a bill.

It is not the office of a bill of particulars to supply material allegations necessary to the validity of a pleading, or to change a cause of action or defense stated in the pleading, or to state a cause of action or defense other than the one stated. Also it is not the office or function, or a proper object, of a bill of particulars to set forth the pleader's theory of his cause of action or a rule of evidence on which he intends to rely, or to furnish evidential information whether such information consists of evidence which the pleader proposes to introduce or of facts which constitute a defense or offset for the other party or which will enable the opposite party to establish an affirmative defense not yet pleaded.

The phrase "to enable him properly to prepare his responsivepleading . . . " in Section 1 of Rule 12 implies not just the opportunity to properly prepare a responsive pleading but also, and more importantly, to prepare an intelligent answer. Thus, in Tan vs. Sandiganbayan, this Court also said:

The complaint for which a bill for a more definite statement is sought, need only inform the defendant of the essential (or ultimate) facts to enable him, the defendant, to prepare an intelligent answer . . . . 26 (Emphasis supplied)

The proper preparation of an intelligent answer requires information as to the precise nature, character, scope and extent of the cause of action in order that the pleader may be able to squarely meet the issues raised, thereby circumscribing them within determined confines and preventing surprises during the trial, and that in order that he may set forth his defenses which may not be so readily availed of if the allegations controverted are vague, indefinite, uncertain or are mere general conclusions. The latter task assumes added significance because defenses not pleaded (save those excepted in Section 2, Rule 9 ofthe Revised Rules of Court and, whenever appropriate, the defense of prescription) 27 in a motion to dismiss or in the answer are deemed waived. It was therefore, grave error for the Sandiganbayan to state that "[a]lleging the specific nature, character, time and extent of the phrase 'active collaboration' would be a mere surplusage and would not serve any useful purpose" 28 for precisely, without any amplification or

particularization thereof, the petitioner would be hard put in meeting the charges squarely and in pleading appropriate defenses. Nor can We accept the public respondent's postulation that "any question as to the validity or legality of the transactions involved in the charges against defendant-movant is irrelevant and immaterial in the resolution of the instant incident, inasmuch as the same is a matter of defense which shall have its proper place during the trial on the merits, and on the determination of the liability of defendant-movant after the trial proper. 29 This is absurd, for how may the petitioner set up a defense at the time of the trial if in his own answer he was not able to plead such a defense precisely because of the vagueness or indefiniteness of the allegations in the complaint? Unless he pleads the defense in his answer, he may be deprived of the right to present the same during the trial because of his waiver thereof; of course, he may still do so if the adverse party fails to object thereto or if he is permitted to amend his answer pursuant to Section 3, Rule 10 of the Revised Rules of Court, but that is another thing.

We also find the Sandiganbayan's conclusion that "the matters which defendant-movant seeks are evidentiary in nature and, being within his intimate or personal knowledge, may be denied or admitted by him or if deemed necessary, be the subject of other forms of discovery," 30 to be without basis as to the first aspect and gratuitous as to the second. The above disquisitions indubitably reveal that the matters sought to be averred with particularity are not evidentiary in nature. Since the issues have not as yet been joined and no evidence has so far been adduced by the parties, the Sandiganbayan was in no position to conclude that the matters which the petitioner seeks are within his intimate or personal knowledge.

WHEREFORE, the instant petition is GRANTED. The Resolution of respondent Sandiganbayan of 4 August 1992, to the extent that it denied the motion for a bill of particulars with respect to the so-called first three (3) "actionable wrongs," is SET ASIDE but affirmed as to the rest. Accordingly, in addition to the specific bill of particulars therein granted, respondent Republic of the Philippines, as plaintiff in Civil Case No. 0035 before the Sandiganbayan, is hereby ordered to submit to the defendant (herein petitioner) in the said case, within thirty (30) days from receipt of a copy of this Decision, a bill of particulars containing the facts prayed for by the latter insofar as the first three (3) "actionable wrongs" are concerned.

No pronouncements as to costs.
SO ORDERED.

Cruz, Padilla, Bidin, Griño-Aquino, Regalado, Nocon, Bellosillo, Melo, Campos, Jr. and Quiason, JJ., concur.
Feliciano, J., concurs in the result.
Narvasa, C.J. and Romero, J., took no part.

VI. FIRE TECHNOLOGY AND ARSON INVESTIGATION

VII.

VIII. Introduction:

The development of methods and tools for using and controlling fire was critical in human evolution and is believed to have allowed early humans to spread northward from the warm climate of either origin into the more severe environment of Europe and Asia. The evidence of early fire use is often ambiguous because of the difficulty in determining whether the archeological evidence is the result of accidental fire or its deliberate use. Such evidence include finds of occupation sites with fired or baked soils, bones or stones that have been changed through the application of heat, and areas containing thick layers of ash and charcoal that might have hearth structures.

The earliest finds, in Kenya and Ethiopia, date from about 1.5 million years ago. Less equivocal evidence exists for deliberate fire use in the Paleolithic period, beginning about 500,000 years ago. Neolithic sites have yielded objects that may have been used in fire, making drill for producing friction, heat in wood and flints for striking sparks from iron pyrites.

In legend and religion, fire is common thing. For example, in Persian literature fire was discovered during a fight of a hero with a dragon. A stone that the hero used as a weapon missed the monster and struck a rock. Light shone forth and human beings saw fire for the first time. In Greek mythology, Prometheus was bestowed with god like powers when he stole the god's fire to give it to humanity. Fire has also played a central role in religion. It has been used as a god and recognized as a symbol of home and family in many cultures. Fire has also been a symbol of purification and of immortality and renewal, hence the lighting of flames of remembrance. The Temple of Vesta in Rome was an outstanding example of the importance of fire to the Romans. Vesta was originally the goddess of the fire and her shrine was in every home.

We can only guess that pre-historic people may have gained knowledge of fire from observing things in nature. So the origin of fire before the dawn of civilization may be traced to an erupting volcano, or a forest fire, started by lighting. No one really knows where on the earth surface or at what stage of early history man learned how to start a fire and how to make use of it. Yet, today, man has had fire as:

- source of warmth and light
- protection against enemies
- cause chemical changes to foodstuffs to suit man's body structure
- provides processes for modifying chemicals into medicines
- provides heat to convert wood, metals, and bones into domestic tools or instruments for aggression

While the application of fire has served man's needs its careless and wanton use exact an enormous and dreadful toll from society in life and property. Hence, man's understanding of fire would enable him to develop the technology of prevention and control to a considerable advance state (Abis).

WHAT IS FIRE?

Fire **is the manifestation of rapid chemical reaction occurring between fuel and an oxidizer- typically the oxygen in the air. Such rapid chemical reaction releases energy in the form of heat and light.**

Fire **is** heat **and** light **resulting from the rapid combination of oxygen, or in some cases gaseous chlorine, with other materials. The light is in the form of a** flame**, which is**

composed of glowing particles of the burning material and certain gaseous products that are luminous at the temperature of the burning material.

THE START OF FIRE

All matters exist of one of the three states – solid, liquid and gas (vapor). The atoms or molecules of a solid are packed closely together, and that of a liquid is packed loosely, the molecules of a vapor are not packed together at all, they are free to move about. In order for a substance to oxidize, its molecules must be pretty well surrounded by oxygen molecules. The molecules of solids or liquids are too tightly packed to be surrounded. Thus, only vapors can burn.

However, when a solid or a liquid is heated, its molecules move about rapidly. If enough heat is applied, some molecules break away from the surface to form a vapor just above the substance. This vapor can now mixed with oxygen. If there is enough heat to raise the vapor to its *ignition temperature* (temperature needed to burn), and if there is enough oxygen present, the vapor will oxidize rapidly – it will start to burn.

The start of burning is the start of a *Chain Reaction* (the burning process). Vapor from heated fuel rises, mixes with air and burns. It produces enough heat to release more vapor and to draw in air to burn that vapor. As more vapor burns, flame production increases. More heat is produced, more vapor released, more air drawn into the flames and more vapor burns, the chain reaction keeps increasing – the size of the fire increases until fuel is consumed.

CHEMISTRY OF FIRE

Obviously, three things are required for combustion or fire: FUEL **(Combustible materials to vaporize and burn),** OXYGEN **(Oxygen in air is the common oxidizing agent, to combine with fuel vapor, air contains 28% O, 78 N, 1% inert gas), and** HEAT **(to raise the temperature of the fuel vapor to its ignition temperature). The combinations of these three elements form the so-called** Fire Triangle.

The Fire Triangle

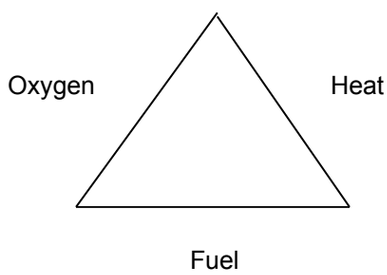


Figure 1

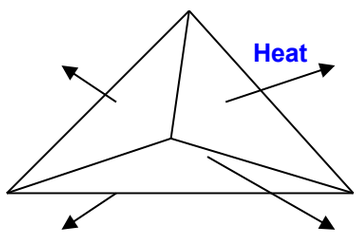
Figure 1 will show that if any side of the fire triangle is missing, a fire can not start or if any side of the fire triangle is removed, the fire will go off.

With the presence of the elements of fire, combustion may take place. Before a fuel will burn, it must be changed to its vapor state. In a fire situation, this change usually results from the initial application of heat. The process is known as PYROLYSIS. Pyrolysis **(also known as thermal decomposition) is defined as the "chemical decomposition of matter through the action of heat". In this case, the decomposition causes a change from a solid state to vapor state. If the vapor mixes sufficiently with air and heated to high temperature, combustion results.**

The combustion process is better represented by the fire tetrahedron.

The Fire Tetrahedron

Oxygen **Heat**



Fuel **Chain Reaction**

Figure 2

The fire tetrahedron is useful in illustrating and remembering the combustion process because it has room for the chain reaction and because each face touches the other three faces.

The basic difference between the fire triangle and the fire tetrahedron is that: The tetrahedron illustrates how flaming combustion is supported and sustained through the chain reaction. In this sense, the chain reaction face keeps the other three faces from falling apart.

The fire tetrahedron also explains the flaming mode of combustion. The modes of combustion are either Flaming mode or Surface mode (Glowing– represented by the fire triangle).

A condensed phased combustion is called *glowing combustion*

A gas-phased combustion is known as *flame*

If the process is confined with pressure it is called *explosion*

If combustion propagates at supersonic speed, it produced a *detonation*

PROPERTIES OF FIRE

A. The Physical properties

1. **Specific Gravity – the ratio of the weight of a solid or liquid substance to the weight of an equal volume of water.**
2. **Vapor density – the weight of a volume of pure gas composed to the volume of dry air at the same temperature and pressure.**
3. **Vapor Pressure – the force exerted by the molecules on the surface of a liquid.**
4. **Temperature – the measure of the degree of thermal agitation of molecules.**
5. **Boiling Point – the constant temperature at which the vapor pressure of the liquid is equal to the atmospheric pressure.**
6. **Ignition/Kindling temperature – the minimum temperature at which the substance must be heated in order to initiate combustion.**
7. **Fire point – the lowest temperature of a liquid in an open container at which vapors are evolved fast enough to support combustion.**
8. **Flash point – the temperature at which a flammable liquid forms a vapor-air mixture that ignites (mixture with in the explosive range).**

To burn a fuel (combustible material), its temperature **must be raised until** ignition point **is reached. Thus, before a fuel start to burn or before it can be ignited, it has to be exposed to a certain degree of temperature. When the temperature of a certain substance is very high, it releases highly combustible vapors known as** FREE RADICALS **(combustible vapors such as hydrogen gas, carbon monoxide, carbon dioxide, and nitrogen).**

During the process of pyrolysis**, the following are involved:**

- **the fuel is heated until its temperature reaches its** fire point,
- **decomposition takes place – moisture in the fuel is converted to vapor,**

- **decomposition produces combustible vapors that rise to the surface of the fuel (free radicals)**
- **free radicals undergo combustion.**

B. The Chemical Properties

1. **Endothermic Reactions – changes whereby energy (heat) is absorbed or is added before the reaction takes place.**
2. **Exothermic Reactions – those that release or give off energy (heat) thus they produce substances with less energy than the reactants.**
3. **Oxidation – a chemical change that is exothermic, a change in which combustible material (fuel) and an oxidizing agent (air), react. Example of oxidation is combustion which is the same as actual burning (rapid oxidation)**
4. **Flames – flames are incandescent (very bright/glowing with intense heat) gases. It is a combustion product and a manifestation of fire when it is in its gas-phased combustion.**

Types of Flames:

a. **Based on Color and Completeness of Combustibility of Fuel**

1. **Luminous Flame – is orange-red, deposit soot at the bottom of a vessel being heated due to incomplete combustion and has a low temperature.**
2. **Non-Luminous Flame – is blue, there is complete combustion of fuel and has relatively high temperature.**

b. **Based on Fuel and Air Mixture**

1. **Premixed Flame – is exemplified by a Bunsen-type laboratory burner where hydrocarbon (any substance containing primarily carbon and hydrogen) is thoroughly mixed with air before reaching the flame zone.**
2. **Diffusion Flame – is observed when gas (fuel) alone is forced through a nozzle into the atmosphere which diffuse in the surrounding atmosphere in order to form a flammable mixture. The candle flame is an example of diffusion flame governed purely by molecular diffusion, and the flame of the oxyacetylene torch. (diffused – dispersed, widely spread)**

c. **Based on Smoothness**

1. **Laminar Flame – when a particle follows a smooth path through a gaseous flame.**

2. **Turbulent Flame – are those having unsteady, irregular flows. As physical size, gas density or velocity is increased, all laminar gas flows tend to become turbulent.**

FIRE ELEMENTS

As mentioned in part one, fire has been described as having three components: fuel, heat, and oxygen**. This triad was illustrated by the fire triangle, which symbolized, in the most basic terms, a chemical relationship. The additional component needed to explain flaming combustion is a chemical chain reaction shown in the fire tetrahedron.**

THE FUELS

FUELS (Combustible Materials)**– fuel is matter and matter exist in three physical states: solid, liquid and gas. Solids melt to become liquids, and these may vaporize and become gases. The basic rule is that at high enough temperature all fuels can be converted to gases. And each of the physical states exhibits different physical and chemical properties that directly affect a fuel's combustibility. For example, gasoline as a liquid does not burn, it is the vapors rising from the liquid that burn. Likewise, wood, the most common solid fuel, is not flammable, but gives of flammable vapors (free radicals).**

FUEL is also a material that provides useful energy. Fuels are used to heat and cook food, power engines, and produce electricity. Some fuels occur naturally and others are artificially created. Such natural fuels are coals, petroleum, and natural gases obtained from underground deposits that were formed million years ago from the remains of plants and animals. They are called *fossil fuels,* which account for about 90% of the energy people use today.

Synthetic fuels can be made from fossil fuels, certain types of rock and sand, and biomass.

Most fuels release energy by burning with oxygen in the air. But some – especially chemical fuels used in rockets – need special oxidizers in order to burn. Nuclear fuels do not burn but release energy through the fission (splitting) of fusion (joining together) of atoms.

Classification of Combustible Materials

1. Class A Fuels **– they are ordinary combustible materials that are usually made of organic substances such as wood and wood-based products. It includes some synthetic or inorganic materials like rubber, leather, and plastic products.**

2. Class B Fuels **– materials that are in the form of flammable liquids such as alcohol, acidic solutions, oil, liquid petroleum products, etc.**

3. Class C Fuels **– they are normally fire resistant materials such as materials used on electrical wiring and other electrical appliances.**

4. Class D Fuels **– they are combustible metallic substances such as magnesium, titanium, zirconium, sodium and potassium.**

General Categories of Fuel

1. **Solid Combustible Materials – includes organic and inorganic, natural or synthetic, and metallic solid materials.**

2. **Liquid Combustible Materials – includes all flammable liquid fuels and chemicals.**

3. **Gaseous Substances – includes those toxic/hazardous gases that are capable of ignition.**

The Solid Fuels

The most obvious solid fuels are wood, paper and cloth. Its burning rate depends on its configuration. For example, solid fuels in the form of dust will burn faster than bulky materials.

Types of Flammable solids

a. Pyrolyzable solid fuels – include many of the ordinary accepted combustibles: wood, paper and so on. The vapors released by their chemical decomposition support flaming combustion. This exemplifies a gas-to-gas reaction: the vapors released mixed with oxygen in the air to produce a flame.

b. Non-pyrolyzable solid fuels – solid fuels that are difficult to ignite. A common example is charcoal. Chemical decomposition does not occur because there are no pyrolyzable elements present. No vapors are released. The glowing combustion that results is an example of a gas-to-solid reaction.

The following are group of solid fuels:

1. Biomass **– it is the name given to such replaceable organic matters like wood, garbage and animal manure that can be use to produce energy. For example, heat produced by burning nutshells, rice and oat hulls, and other by-products of food processing. They are often used to operate plant equipment.**

Factors affecting the combustibility of wood and wood-based products

a. **Physical form – the smaller the piece of wood, the easier it is to burn.**

b. **Moisture content (water content) – the freshly cut wood is more difficult to ignite and burn than dry wood.**

c. **Heat conductivity - a poor conductor of heat takes a longer time to ignite than those materials that are good conductors of heat.**

d. **Rate and period of heating – less flammable materials don't easily ignite and needs direct contact with flame than highly combustible materials.**

e. **Rate of combustion – with an unlimited supply of oxygen, the rate of burns increases, more heat is produced and fuel is consumed more completely.**

f. **Ignition temperature – the higher the temperature, the faster it reaches ignition point and it varies depending on the other factors above.**

2. Fabrics and Textiles **– almost all fibers and textiles are combustible. A fiber is a very fine thin strand or thread like object. Fabrics are twisted or woven fibers. And textiles are machine woven or knitted fabric.**

Classification of Fibers

a. **Natural Fibers – they come from plants (Coir – coconut fiber, Cotton – seed fiber, pulp – wood fiber) , from animals (wool, silk, protein fibers – leather), from minerals (asbestos)**

b. **Synthetic/Artificial Fibers – organic fibers, cellulose fibers, cellulose acetate, non-cellulose, and inorganic fibers like fiber glass, steel**

Factors affecting the combustibility of fibers

a. **Chemical composition – natural and synthetic organic fibers are generally highly combustible materials especially if they are dry. Mineral fibers and synthetic inorganic fibers are normally fire resistant materials.**

b. **Fiber finish or coating – fiber coating combined with organic fibers are supportive to continued burning of fabric.**

c. **Fabric weight – the heavier the fabric, the greater its resistance to ignition, thus delaying its ignition.**

d. **Tightness of weave – the closer the fiber are woven, the smaller the space it contains, thus it takes a longer period to ignite it.**

e. **Flame retardant treatment – fabric treated with flame retardant have higher resistance to ignition.**

Fabric Ignition

Limiting Oxygen Index **(LOI) is a numerical basis of measuring the tendency of a fabric to continuously burn once source of ignition is removed. If the LOI of a fabric is high, the probability that it will cease to burn once the flame is removed is also high. Fabrics with high LOI and high ignition temperature are safer for clothing and furnishing because they do not ignite easily. Also, they do not continue burning after the source of heat or flame is removed.**

3. Plastics **– plastics are included as ordinary fuels under class A except those materials of or containing cellulose nitrate. Cellulose Nitrate is a chemical powder used in bombs, they are also called** *pyroxylin.*

Plastics comprise a group of materials consisting mainly of organic substances or high molecular substances. They are solid in the finished state although at some stage of manufacture plastics can be made to flow into a desired shape, usually through the application of heat or pressure or both.

4. Coal **– a black, combustible, mineral solid resulting from the partial decomposition of matter under varying degrees of temperature. They are used as fuels in the production of coal gas, water gas, and many coal compounds. They are also used to heat buildings and to provide energy for industrial machinery.**

The forms of coal are lignite or brown coal, sub-bituminous coal, bituminous coal, anthracite. Bituminous coal is the most plentiful and important coal used by industry. It contains more carbon and produces more heat than either lignite or sub-bituminous coal. It is also the coal best suited for making coke. Antracite is the least plentiful and hardest coal. It contains more carbon and produces more heat than other coals. However, antracite is difficult to ignite and burns slowly.

5. Peat **– It is partially decayed plant matter found in swamps called bags and used as a fuel chiefly in areas where coal and oil are scarce. In Ireland and Scotland, for example, peat is cut formed in blocks, and dried; the dried bloks are then burned to heat homes.**

The Liquid Fuels

Liquid fuels are mainly made from Petroleum**, but some synthetic liquids are also produced. Petroleum is also called *crude oil*. They may be refined to produce gasoline, diesel oil, and kerosene.**

Other fuel oils obtained by refining petroleum to distillate oil and residual oils. Distillate oils are light oils, which are used chiefly to heat homes and small buildings. Residual oils are heavy, and used to provide energy to power utilities, factories and large ships.

Oil-based paint products are also highly flammable liquids.

In the process of vaporization, flammable liquids release vapor in much the same way as solid fuels. The rate of vapor is greater for liquids than solids, since liquids have less closely packed molecules. In addition, liquids can release vapor over a wide range, example, gasoline starts to give vapor at –40°C (-45 °F).

This makes gasoline a continuous fire hazard; it produces flammable vapor at normal temperature.

General Characteristics of Liquids

1. **They are matters with definite volume but no definite shape.**
2. **They assume the shape of their vessel because there is free movement of molecules.**
3. **They are slightly compressible. They are not capable of indefinite expansion, unlike gas.**

2 General Groups of Liquid Fuels

1. **Flammable liquids – they are liquids having a flash point of 37.8 °C (100°F) and a vapor pressure not exceeding 40 psia (2068.6 um) at 37.8 °C.**
2. **Combustible Liquids – these liquids have flash point at or above 37.8 ° C (100°F).**

Burning Characteristics of Liquids

Since it is the vapors from the flammable liquid which burn, the case of ignition as well as the rate of burning can be related to the physical properties such as vapor pressure, flash point, boiling point, and evaporation rate.

1. **Liquids having vapors in the flammable range above the liquid surface at the stored temperature have rapid rate of flame propagation.**
2. **Liquids having flash points above stored temperature have slower rate of flame propagation. The chemical explanation is, it is necessary for the fire to heat sufficiently the liquid surface to form flammable vapor-air moisture before the flame will spread through the vapor.**

Factors affecting the Rate of Flame Propagation

and Burning of Liquids

- **wind velocity - temperature - heat of combustion - latent heat of evaporation - atmospheric pressure**

Latent heat is the quantity of heat absorbed by a substance from a solid to a liquid and from a liquid to gas. Conversely, heat is released during conversion of a gas to liquid or liquid to a solid.

The Gas Fuels

Gaseous fuels **are those in which molecules are in rapid movement and random motion. They have no definite shape or volume, and assume the shape and volume of their container.**

There are both natural and manufactured flammable gases. Gas fuels flow easily through pipes and are used to provide energy for homes, businesses, and industries. Examples of gas fuels are acetylene, propane, and butanes.

Some properties of gas fuels are:

- **compressibility – expandability - permeability (open to passage or penetration) - diffusion (intermingling of molecules)**

Compressibility and expandability refer to the potential in changes in volume. Diffusion is the uniform distribution of molecules of one substance through those of another. Permeability means that other substances may pass through or permeate a gas.

Characteristics of Gas Fuels

1. **They are matters that have no definite shape.**
2. **They are composed of very tiny particles (molecules) at constant random motion in a straight line**
3. **Gas molecules collide against one another and against the wall of the container and are relatively far from one another.**

Classification of Gases:

1. Based on Source

   a. Natural Gas **– the gas used to heat buildings, cook food, and provides energy for industries. It consists chiefly of methane, a colorless and odorless gas. Natural gas is usually mixed with compounds of foul-smelling elements like sulfur so gas leaks can be detected.**

      Butane and propane, which make up a small proportion of natural gas, become liquids when placed under large amount of pressure. When pressure is released, they change back to gas. Such fuels, often called Liquefied Petroleum Gas (LPG) or liquefied Natural Gas (LNG), are easily stored and shipped as liquid.

   b. Manufactured Gas – **this gas like synthetic liquid fuels is used chiefly where certain fuels are abundant and others are scarce. Coal, petroleum, and biomass can all be converted to gas through heating and various chemical procedures.**

2. According to Physical Properties

   a. Compressed Gas **– gas in which at all normal temperature inside its container; exist solely in the gaseous state under pressure. The pressure depends on the pressure to which the container is originally charged and how much gas remains in the container. However, temperature affects the volume and pressure of the gas.**

   b. Liquefied Gas **– gas, which, at normal temperature inside its container, exist partly in the liquid state and partly in gaseous state and under pressure as long as any liquid remains in the container. The pressure basically depends on the temperature of the liquid although the amount of liquid also affects the pressure under some condition. A liquefied gas exhibits a more complicated behavior as the result of heating.**

   c. Cryogenic Gas **– a liquefied gas which exist in its container at temperature far below normal atmospheric temperature, usually slightly above its boiling point and correspondingly low to moderate pressure. Examples of this gas are *air, carbon monoxide, ethylene, fluorine, helium, hydrogen, methane, nitrogen, and oxygen.***

3. According to Usage

   a. Fuel Gases **– flammable gases usually used for burning with air to produce heat, utilize as power, light, comfort, and process. Most commonly used gases are natural gas and the LPG (butane and propane).**

b. Industrial Gases **- This group includes a large number of gases used for industrial processes as those in welding and cutting (oxygen, acetylene); refrigeration (freon, ammonia, sulfur dioxide); chemical processing (hydrogen, nitrogen, ammonia, chlorine); water treatment (chlorine, fluorine).**

c. Medical Gases **– those used for treatment such as anesthesia (chloroform, nitrous oxide); respiratory therapy (oxygen).**

Burning of Gaseous Fuels

Gaseous fuels are already in the required Vapor State. Only the proper intermixed with oxygen and sufficient heat is needed for ignition. Gases like flammable liquids, always produce a visible flame, they do not smolder.

Chemical Fuels

Chemical fuels, which are produced in solid and liquid form, create great amounts of heat and power. They are used chiefly in rocket engines. Chemical rocket propellants consist of both a fuel and an oxidizer. A common rocket fuel is the chemical *hydrazine*. The oxidizer is a substance, such as *nitrogen tetroxide*, that contains oxygen. When the propellant is ignited, the oxidizer provides the oxygen the fuel needs to burn. Chemical fuels are also used in some racing cars.

Nuclear Fuels

Nuclear fuels provide energy through the fission or fusion of their atoms. *Uranium* is the most commonly used nuclear fuel, though plutonium also provides nuclear energy. When the atoms of these elements undergo fission, they release tremendous amounts of heat. Nuclear fuels are used mainly to generate electricity. They also power some submarines and ships. Nuclear energy can also be produced through the fusion of hydrogen atoms.

- **Nuclear Fission – split of the nucleus of atoms**
- **Nuclear Fusion – combination of two light nuclei of atom**

THE HEAT ELEMENT

HEAT **– It is the energy possessed by a material or substance due to molecular activity.**

In physics, *heat* is the transfer of energy from one part of a substance to another or from one body to another by virtue of a difference in temperature. Heat is energy in transit; it always flows from substance at a higher temperature to the substance at a lower temperature, raising the temperature of the latter and lowering that of the former substance, provided the volume of the bodies remains constant. Heat does not flow from lower to a higher temperature unless another form of energy transfer work is always present.

The study of energy is rooted in the subject of *thermodynamics*, a very logical science that carefully defines energy, heat, temperature and other properties.

Heat is *thermal energy* in motion that travels from a hot to a cold region. Thermal energy is a property of matter directly associated with the concept of *temperature*.

Heat and Temperature

Heat should not be confused with temperature, which is the measurement of the relative amount of heat energy contained with in a given substance. Temperature is an *intensity* measurement, with units in degrees on the Celsius (centigrade), Fahrenheit, or Kelvin scales. Heat is the measurement of quantity and is given in British thermal units (Btu). One Btu is the amount of heat required to raise one pound of water one degree Fahrenheit:

1 Btu heats 1 lb of water 1 °F

1 gallon of water weighs 8.33 lb

8.33 Btu heat 1 gallon of water 1 °F

Temperature **is the measurement of the degree of thermal agitation of molecules; the hotness or coldness of something. Thermometer is the instrument used to measure temperature and commonly expressed in °C, °F, and °K.**

Although it is very easy to compare the relative temperatures of two substances by the sense of touch, it is impossible to evaluate the absolute magnitude of the temperature by subjective reactions. Adding heat to a substance, however, not only raises its temperature, causing it to impart a more acute sensation of warmth, but also produces alterations in several physical properties, which may be measured with precision.

Specific Heat

The heat capacity or the measure of the amount of heat required raising the temperature of a unit mass of a substance one-degree. If the heating process occurs while the substance is maintained at a constant volume or is subjected to a constant pressure the measure is referred to as a specific heat at constant volume.

Latent Heat

A number of physical changes are associated with the change of temperature of a substance. Almost all substances expand in volume when heated and contract when cooled. The behavior of water between 0° and 4°C (32° and 39° F) constitutes an important exemption to this rule. The phase of a substance refers to its occurrence as a solid, liquid, or gas, and phase changes in pure substances occur at definite temperatures and pressures. The process of changing from solid to gas is referred to as SUBLIMATION, **from solid to liquid as melting and from liquid to vapor as** VAPORIZATION. **If the pressure is constant, the process occurs at constant temperature. The amount of heat to produce a change of phase is called** LATENT HEAT, **and hence, latent heats of sublimation, melting and vaporization exist. If water is boiled in an open vessel at a pressure of 1 atm, the temperature does not rise above 100°C (212°F), no matter how much heat is added. For example, the heat that is absorbed without changing the temperature of the water is the latent heat, it is not lost but expended in changing the water to steam and is then stored as energy in the steam, it is again released when the steam is condensed to form water (Condensation). Similarly, if the mixture of water and ice in a glass is heated, its temperature will not change until all the ice is melted. The latent heat absorbed is used up in overcoming the forces holding the particles of ice together and is stored as energy in the water.**

Temperature Scales

Five different temperature scales are in use today, they are:

1. Celsius **– it has a freezing point of 0°C and a boiling point of 100°C. It is widely used through out the world, particularly for scientific works.**

2. Fahrenheit **– it is used mostly in English-speaking countries for purposes other than scientific works and based on the mercury thermometer. In this scale, the freezing point of water is 32°F and the boiling point is 212 °F.**

3. Kelvin or Absolute **– it is the most commonly used thermodynamic temperature scale. Zero is defined as absolute zero of temperature, that is, - 273.15 °c, or – 459.67 °F.**

4. Rankine **– is another temperature scale employing absolute zero as its lowest point in which each degree of temperature is equivalent to one degree on the Fahrenheit scale. The freezing point of water under this scale is 492 °R and the boiling point is 672 °R.**

5. International Temperature Scale **– In 1933, scientist of 31 nations adopted a new international temperature scale with additional fixed temperature points, based on the Kelvin scale and thermodynamic principles. The international scale is based on the property of electrical resistively, with platinum wire as the standard for temperature between –190 ° and 660°C.**

Heat Production

There are five ways to produce heat:

1. Chemical **– chemically produced heat is the result of *rapid oxidation*.**

2. Mechanical **– mechanical heat is the product of *friction*. The rubbing of two sticks together to generate enough heat is an example.**

3. Electrical **– electrical heat is the product of *arcing*, shorting or other electrical malfunction. Poor wire connections, too much resistance, a loose ground, and too much current flowing through an improperly sized wire are other sources of electrical heat.**

4. Compressed gas **– when a gas is compressed, its molecular activity is greatly increased producing heat.**

5. Nuclear **– Nuclear energy is the product of the splitting or fusing of atomic particles (Fission or fusion respectively). The tremendous heat energy in a nuclear power plant produces steam to turn steam turbines.**

Heat Transfer

The physical methods by which energy in the form of heat can be transferred between bodies are conduction and radiation. A third method, which also involves the motion of matter, is called convection.

Hence, there are three ways to transfer heat: Conduction, Convection, and Radiation.

Conduction **– it is the transfer of heats by molecular activity with in a material or medium, usually a solid. Direct contact is the underlying factor in conduction. Example, if you touch a hot stove, the pain you feel is a first result of conducted heat passing from the stove directly to your hand. In a structural fire, superheated pipes, steel girders, and other structural members such as walls and floors may conduct enough heat to initiate fires in other areas of the structure.**

Convection **– it is the transfer of heat through a circulating medium, usually air or liquid. Heat transfer by convection is chiefly responsible for the spread of fire in structures. The supper-heated gases evolved from a fire are lighter than air, and consequently rise, they can and do initiate additional damage. In large fires, the high fireball that accompanies the incident is referred to as a *firestorm* and is an example of convected heat.**

Radiation **– radiated heat moves in wave and rays much like sunlight. Radiated heat travels the speed, as does visible light: 186,000 miles per second. It is primarily responsible for the exposure hazards that develop and exist during a fire. Heat waves travel in a direct or straight line from their source until they strike an object. The heat that collects on the surface of the object or building in the path of the heat waves is subsequently absorbed into its mass through conduction.**

Conduction requires physical contact between bodies or portions of bodies exchanging heat, but radiation does not require contact or the presence of any matter between the

bodies. Convection occurs when a liquid or gas is in contact with a solid body at a different temperature and is always accompanied by the motion of the liquid or gas. The science dealing with the transfer of heat between bodies is called *heat transfer*.

Oxidizing Agent (Oxygen): The 3rd Element

Oxygen **as defined earlier is a colorless, odorless, tasteless, gaseous chemical element, the most abundant of all elements: it occurs free in the atmosphere, forming one fifth of its volume, and in combination in water, sandstone, limestone, etc.; it is very active, being able to combine with nearly all other elements, and is essential to life processes and to combustion.**

The common oxidizing agent is oxygen present in air. Air composes 21% oxygen, 78% nitrogen, and 1 % inert gas (principally Argon). 21% normal oxygen is needed to produce fire in the presence of fuel and heat. 12% oxygen is insufficient to produce fire, 14-15% oxygen can support flash point, and 16-21% oxygen can support fire point.

FIRE BEHAVIOR, CAUSES AND CLASSIFICATION

The behavior of fire maybe understood by considering the principle of thermal balance and thermal imbalance.

Thermal Balance **refers to the rising movement or the pattern of fire, the normal behavior when the pattern is undisturbed.** Thermal imbalance**, on the other hand is the abnormal movement of fire due to the interference of foreign matter. Thermal imbalance often confuses the fire investigator in determining the exact point where the fire originated.**

Dangerous Behavior of Fire

Fire is so fatal when the following conditions occurred:

1. Backdraft **– it is the sudden and rapid (violent) burning of heated gases in a confined area that occurs in the form of explosion. This may occur because of improper ventilation. If a room is not properly ventilated, highly flammable vapors maybe accumulated such that when a door or window is suddenly opened, the room violently sucks the oxygen from the outside and simultaneously, a sudden combustion occur, which may happen as an explosion (combustion explosion).**

2. Flashover **– it is the sudden ignition of accumulated radical gases produced when there is incomplete combustion of fuels. It is the sudden burning of free radicals, which is initiated by a spark or flash produced when temperature rises until flash point is reached.**

When accumulated volume of radical gases suddenly burns, there will be a very intense fire that is capable of causing flames to jump at a certain distance in the form of *fireball.* Fireballs can travel to a hundred yards with in a few seconds.

3. Biteback **- a fatal condition that takes place when the fire resists extinguishment operations and become stronger and bigger instead.**

4. Flash Fire **– better known as *dust explosion.* This may happen when the metal post that is completely covered with dust is going to be hit by lightning. The dust particles covering the metal burn simultaneously thus creating a violent chemical reaction that produces a very bright flash followed by an explosion.**

The Three Stages of Fire

1. **Incipient Phase (Initial Stage) – under this stage, the following characteristics are observed: normal room temperature, the temperature at the base of the fire is 400-800 °F, ceiling temperature is about 200 °F, the pyrolysis products are mostly water vapor and carbon dioxide, small quantities of carbon monoxide and sulfides maybe present.**

2. **Free Burning Phase – it has the following characteristics: accelerated pyrolysis process take place, development of convection current: formation of thermal columns as heat rises, temperature is 800-1000 °F at the base of fire, 1200-1600 °F at ceiling, pyrolytic decomposition moves upward on the walls(crawling of the flame) leaving burnt patterns (fire fingerprints), occurrence of flashover.**

3. **Smoldering Phase – this stage has the following characteristics: oxygen content drops to 13% or below causing the flame to vanish and heat to develop in layers, products of incomplete combustion increase in volume, particularly carbon monoxide with an ignition temperature of about 1125 ° F, ceiling temperature is 1000-1300 ° F, heat and pressure in the room builds up, building/room contains large quantities of superheated fuel under pressure but little oxygen, when sufficient supply of oxygen is introduced, backdraft occurs.**

Classification of Fires

Based on Cause

1. Natural causes **– such as**

- **Spontaneous heating – the automatic chemical reaction that results to spontaneous combustion due to auto-ignition of organic materials, the gradual rising of heat in a confined space until ignition temperature is reached.**

- **Lightning – a form of static electricity; a natural current with a great magnitude, producing tremendous amperage and voltage. Lightning usually strikes objects that are better electrical conductors than air. It can cause fire directly or indirectly. Indirectly when it strikes telephone and other transmission lines, causing an induced line surge. It can also cause flash fire or dust explosion. When lightning strikes steel or metal rod covered with dust, the dust will suddenly burn thus resulting to an explosion.**

A lightning may be in the form of:

Hot Bolt – longer in duration; capable only of igniting combustible materials

Cold Bolt – shorter in duration, capable of splintering a property or literally blowing apart an entire structure, produces electrical current with tremendous amperage and very high temperature.

- **Radiation of Sunlight – when sunlight hits a concave mirror, concentrating the light on a combustible material thereby igniting it.**

2. Accidental Causes **– such as**

- **Electrical accidents in the form of:**

Short Circuit **– unusual or accidental connections between two points at different potentials (charge) in an electrical circuit of relatively low resistance.**

Arcing **– the production of sustained luminous electrical discharge between separated electrodes; an electric hazard that results when electrical current crosses the gap between 2 electrical conductors.**

Sparking **– production of incandescent particles when two different potentials (charged conductors) come in contact; occurs during short circuits or welding operations.**

Induced Current **– induced line surge – increased electrical energy flow or power voltage; induced current; sudden increase of electrical**

current resulting to the burning of insulating materials, explosion of the fuse box, or burning of electrical appliances.

Over heating of electrical appliances **– the increase or rising of amperage while electric current is flowing in a transmission line resulting to the damage or destruction of insulating materials, maybe gradual or rapid, internal or external.**

- **Purely accidental causes**
- **Negligence and other forms of human error**

3. Intentional causes (Incendiary)

If in the burned property, there are preparations or traces of *accelerant, plants* and *trailers*, then the cause of fire is intentional.

Accelerant **– highly flammable chemicals that are used to facilitate flame propagation.**

Plant **– the preparation and or gathering of combustible materials needed to start a fire.**

Trailer **– the preparation of flammable substances in order to spread the fire.**

Based on Burning Fuel (the classes of fire)

1. Class A Fire **– Ordinary fires; they are the types of fire resulting from the burning wood, paper, textiles, rubber and other carbonaceous materials. In short, this is the type of fire caused by ordinary combustible materials.**
2. Class B Fire **– Liquid fires; they are caused by flammable and or combustible liquids such as kerosene, gasoline, benzene, oil products, alcohol and other hydrocarbon deviations.**
3. Class C Fire **– Electrical fires; they are fires that starts in live electrical wires, equipment, motors, electrical appliances and telephone switchboards.**
4. Class D Fire **– Metallic fires; fires that result from the combustion of certain metals in finely divided forms. These combustible metals include magnesium, potassium, powdered calcium, zinc, sodium, and titanium.**

IX. FIRE FIGTHING OPERATIONS AND EXTINGUISHMENT

Fire fighting is an activity intended to save lives and property. It is one of the most important emergency services in a community. Fire fighters battle fires that break out in homes, factories, office buildings, shops, and other places. Fire fighters risk their lives to save people and protect property from fires.

The people who work as fire fighters also help others who are involved in many kinds of emergencies besides fires. For example, fire fighters rescue people who may be trapped in cars or vehicles after an accident. They aid victims of such disasters as typhoons, floods, landslides, and earthquakes.

Before the advent of modern fire fighting techniques, fires often destroyed whole settlements. When a fire broke out, all the people in the community rushed to the scene to help. Today, fire fighting organizations in most industrialized nations have well-trained men and women and a variety of modern fire fighting equipment.

History of Fire Fighting

Most fire services around the world were formed after a major fire made people realize that lives and property would have been saved if they had had a proper body of people trained to fight fires. One of the first organized fire fighting forces was established in Rome, about 500 B.C. The first fire fighters were Roman slaves who, under the command of the city's magistrates, were stationed on the walls and the gates of Rome. These units were called Familia Publica. However, this system was not very effective, probably because the slaves had no choice in whether they fought fires or not. In A.D. 6, after an enormous fire devastated Rome, the Emperor Augustus created the vigiles, a fire fighting force of 7,000 men that was divided into seven regiments. Like many of today's fire services, the vigiles had the power to inspect buildings to check for fire risks, and could punish property owners whose negligence led to fires. The vigiles' fire fighting equipment included pumps, squirts, siphons, buckets, and ladders. Wicker mats and wet blankets were used for rescue and salvage work. The Romans developed advanced fire fighting equipment. But when the empire fell, much of this technology was lost for centuries.

After the collapse of the Roman Empire, European cities and towns became disorganized and nobody coordinated fire fighting. Some people even thought that prayer was the best way to control fires. Slowly, however, some fire laws evolved. In many cities people were required to put out their cooking and home fires at night. In some towns, thatched roofs were forbidden and night watchmen were employed to raise the alarm if they discovered a fire.

Organized fire services in Europe were usually only formed after hugely destructive fires. The Great Fire of London in 1666 led to the development of fire insurance industries in England. These companies marked their insured properties with metal badges called fire marks and formed private fire brigades to protect those properties. Each company's brigade attended only those premises bearing the company's own fire mark. There was much competition, and occasionally rival fire brigades even obstructed each other in their fire fighting efforts. It was not until the 1800's that London insurance companies began to cooperate and a single London Fire Engine Establishment was formed. The new service fought fires in any premises within the London area.

Serious blazes also caused death and destruction elsewhere in Europe, and rulers began to realize that it was necessary to have organized forces to deal with fires. In France, groups of citizens kept watch for outbreaks of fire, and regulations controlled rescue operations. In the 1600's, a number of serious fires spread terror throughout Paris. The king of France bought 12 pumps, and a private fire service was established. In 1750, the company of firemen was mostly taken over by the army, but fires continued to ravage the city and fire fighting efforts were not always effective. In 1810, the Emperor Napoleon attended a ball at the Austrian Embassy. A candle set the curtains ablaze, and the fire spread quickly, causing a dreadful panic. After this fire, Napoleon ordered the creation of the Battalion de Sapeurs Pompiers and the French Fire Brigade was born.

Better equipment for getting water to fires and for fighting fires was developed in the 1500's. Tools included syringes, which squirted water, but most people relied on bucket brigades, relays of men passing buckets of water. The problems with bucket brigades were that many men were needed, it was very tiring work, and it was not very efficient--buildings often burned to the ground. In 1672, an uncle and nephew in Amsterdam, both called Jan van der Heide, invented a flexible hose, which could be joined together to form a long pipe. Later, the same men invented a pump to deliver water through the hose, and fire fighting became much more efficient. In many places around the world, fire pumps were first drawn to fires by horses or even by people. Warning bells enabled people to get out of the way when the pumps were rushing to a fire. The German company Daimler invented the first petrol-driven pump in 1885, but the pump still had to be taken to fires by horses. Petrol-powered fire engines were introduced in the early

1900's, but many countries were slow to change from horse-drawn pumps. Although today's fire services have a range of modern equipment, fire can be just as dangerous now as it was thousands of years ago.

X.

XI. The Bureau of Fire Protection (BFP)

Republic Act # 6975, the DILG Act of 1990 (Chapter 4, Section 53-59) created the Bureau of Fire Protection (BFP) to be responsible for the prevention and suppression of all destructive fires and to enforce the laws on fire.

Fire Protection is the descriptive term referring to the various methods used by the bureau to stop, extinguish and control destructive fire for eventual prevention of loss of life and property. It has the following objectives: To prevent destructive fire from starting, To extinguish (stop or put out) on going destructive fire, To confine a destructive fire at the place where it began, To prevent loss of life and property when fire starts

Fire Prevention and Suppression refers to the various safety measures utilized to stop harmful or destructive fires from starting.

The laws related with the fire prevention and fire protection in the Philippine setting includes PD # 1185, Fire Code of the Philippine (26 August 1977), PD # 1096, Building Code of the Philippine (19 February 1977)

The Bureau of Fire Protection is composed of well-trained fire fighters. In fighting fires, they bring with them ladders and pumps. Additional specialist vehicles can provide turntable ladders, hydraulic platforms, extra water, foam, and specialist appliances for hazardous incidents.

In some countries, such as the United States, fire-fighting units are divided into engine companies and ladder companies. Engine companies operate trucks called engines, which carry a pump and hoses for spraying water on a fire. Ladder companies use ladder trucks, which carry ladders of various lengths. Ladder trucks also have a hydraulically extended ladder or elevating platform to rescue people through windows or to spray water from a raised position.

Fire fighters in the Philippines handle many types of fires. Each type requires a different plan of action to put it out. For example, the methods used to fight a building fire differ greatly from those used to fight a forest or grassland fire.

Factor Affecting Fire Protection and Control

Fire protection and control is affected by the accumulation of *fire hazards* in a building or area.

Fire Hazard is any condition or act that increases or may cause increase in the probability that fire will occur or which may obstruct, delay, hinder or interfere with fire fighting operations and the safeguarding of life and property

Conditions of Fire Hazards

1. Existence of dangerous or unlawful amount of combustible or explosives in the building not designed to store such materials.
2. Defective or improperly installed facilities/ equipment.
3. Lack of adequate exit facilities.
4. Obstruction at fire escapes or other designated opening for fire fighters.
5. Dangerous occumulation of rubbish waste and other highly combustible materials.
6. Accumulation of dust in ventilation system or of grease in the kitchen.
7. Building under repair
8. Very old building or building is primarily made of combustible materials

Fire Fighting Operations

Fire fighting operations refers to fire suppression activities. In general the following procedures should be observed:

1. PRE-FIRE PLANNING - this activity involves developing and defining systematic course of actions that maybe performed in order to realize the objectives of fire protection: involves the process of establishing the SOP in case fire breaks out.
2. EVALUATION – SIZE – UP (on-the-spot planning or sizing-up the situation) - this is the process knowing the emergency situation. It involves mental evaluation by the operation officer-in-charge to determine the appropriate course of action that provides the highest probability of success.

3. EVACUATION – This the activity of transferring people, livestock, and property away from the burning area to minimize damage or destruction that the fire might incur in case it propagates to other adjacent buildings.
4. ENTRY – This is the process of accessing the burning structure. Entry maybe done in a forcible manner.
5. RESCUE – This is the operation of removing (extricating), thus saving, people and other livestock from the burning building and other involved properties, conveying them to a secure place

6. EXPOSURE – also called cover exposure, this is the activity of securing other buildings near the burning structure in order to prevent the fire from the extending to another building.
7. CONFINEMENT – This is the activity of restricting the fire at the place (room) where it started : the process of preventing fire from extending from another section or form one section to another section of the involved building.
8. VENTILATION – This the operation purposely conducted to displace toxic gases. It includes the process of displacing the heated atmosphere within the involved building with normal air from outside atmosphere.
9. SALVAGE – The activity of protecting the properties from preventable damage other than the fire. The steps are a) remove the material outside the burning area, and b) protecting or cover the materials by using tarpaulins (cotton canvass treated with water proofing).
10. EXTINGUISHMENT – This is the process of putting out the main body of fire by using the 4 general methods of fire extinguishments.
11. OVERHAUL – This is the complete and detailed check of the structure and all materials therein to eliminate conditions that may cause re-flash; involves complete extinguishments of sparks or smouldering (glowing) substances (embers) to prevent possibilities of re-ignition or rekindling.
12. FIRE SCENE INVESTIGATION - This is the final stage of fire suppression activities. It is an inquiry conducted to know or determine the origin and cause of fire.

What is a Sprinkle System?

A sprinkler system consists of a network of pipes installed throughout a building. The pipes carry water to nozzles in the ceiling. The heat from a fire causes the nozzles directly above the fire to open and spray water.

The Fire Bureau personnel inspect public buildings to enforce the local code. The officials check the operating condition of the fire protection systems. They note the number and location of exits and fire extinguishers. The inspection also covers housekeeping practices and many other matters that affect fire safety. Fire inspectors may also review plans for a new building to make sure it meets the safety code.

What is a Smoke Detector?

Smoke detector is a device that sounds an alarm if a small amount of smoke enters their sensors. Smoke detectors are attached to the ceiling or wall in several areas of the home. Fire protection experts recommend at least one detector for each floor of a residence.

Fire fighters also recommend that people have portable fire extinguishers in their homes. A person must be sure, however, to call the fire fighting service before trying to extinguish a fire. It is also important to use the right kind of extinguisher for the type of fire involved.

The Fire Extinguishment Theory

The Fire Extinguishments Theory maintains that "to extinguish a fire, interrupt or eliminate the supply of any or all of the elements of fire." Fire can be extinguished by reducing/ lowering the temperature, eliminating the fuel supply, or by stopping the chemical chain reaction.

4 General Methods of Fire Extinguishment

1. Extinguishment by Temperature Reduction
   - Cooling the temperature of the fire environment: usually done by using water.
   - Lower down the temperature to cool the fuel to a point where it does not produce sufficient vapors that burn.

2. Extinguishment by Fuel Removal
   - Elimination of the fuel supply/ source which maybe done by stopping the flow of liquid fuel, preventing the production of flammable gas, removing the solid fuel at the fire path, allowing the fire to burn until the fuel is consumed

3. Extinguishment by Oxygen Dilution - reduction of oxygen concentration at the burning area, by introducing inert gases, by separating oxygen from the fuel

4. Extinguishment by Chemical Inhibition
   - Some extinguishments agents, like dry chemical and halon, interrupt the production of flame resulting to rapid extinguishment of the fire. This method is effective only on burning gas and liquid fuels as they cannot burn in smoldering mode of combustion.

What are the *methods of extinguishing the 4 Classes of Fire?*

1. CLASS A FIRES – by quenching and cooling: water is the best agent in cooling the burning solid materials; water has a quenching effect that can reduce the temperature of a burning material below its ignition temperature; (Fire extinguishers which have water, sand, acid, foam and special solution containing alkali methyl dust, as found in the loaded stream extinguisher, should be used for this type of fire.)
2. CLASS B FIRES – by smothering or blanketing (oxygen exclusion). This type of fire is put or controlled by foam, loaded stream, carbon dioxide, dry chemical and vaporizing liquid.
3. CLASS C FIRES – controlled by a non-conducting extinguishing agent: the safest procedure is to always de-energize the electrical circuit. Extinguishers that should be used to put out these type of fires are Carbon Dioxide Extinguishers, Dry Chemical, Vaporizing liquids.
4. CLASS D FIRES – by using special extinguishing agents marked specifically for metals. GE type, meth LX, Lith X, Meth L, Kyl, dry sand and dry talc can put out class D fires
5. CLASS E FIRES – only combination of the above methods.

Fire Extinguishers

A *Fire Extinguisher* is a mechanical device, usually made of metal, containing chemicals, fluids, or gasses for stopping fires, the means for application of its contents for the purpose of putting out fire (particularly small fire) before it propagates, and is capable of being readily moved from place to place.

It is also a portable device used to put out fires of limited size.

What are the types of Fire Extinguishers?

1. Water Fire Extinguisher – extinguisher filled with water use of fight Class A and Class B fires except class C fires.
2. Liquefied Fire Extinguisher – those extinguishers that contain Carbon Monoxide Gas use to fight class A, B, and C fires
3. Dry Chemical Extinguisher – those that contain chemical powder intended to fight all classes of fires.
4. Foam Extinguisher– contains sodium bicarbonate and a foam-stabilizing agent in a larger compartment and a solution of aluminum sulfate in an inner cylinder; reaction between the two solutions forms a stabilized foam of carbon dioxide bubbles.
5. Soda-acid Fire Extinguisher – filled with sodium bicarbonate mixed with water; a small bottle of sulfuric acid is suspended inside (near the top) in such a way that when the extinguisher is turned up-side-down, the acid mixes with sodium bicarbonate; carbon dioxide is formed by the reaction which results to the building of pressure inside the extinguisher; this pressure forces the water solution out from the container through a hose.
6. Vaporizing Liquid Fire Extinguisher – contains non-conducting liquid, generalization carbon tetrachloride or chlorobromethane; operation is by manual pumping or using a stored pressure; the stream of liquid that is expelled is vaporized by the heat of the fire and forms a smothering blanket. This type is usually used in fires involving flammable liquids or electrical equipment.
7. Carbon Dioxide Fire Extinguisher – effective against burning liquids and fires in live electrical equipment; used mainly to put out Class C fires.

What are examples of extinguishing agents?

1. MULTI-PURPOSE DRY CHEMICALS like the Mono-Ammonium Phosphate (NH H PO)
2. BCF-HALON 1211 or Bromochlorodifluoromethane
3. AFFF – (Aqueous Film Forming Foam), is a synthetic foam-forming liquid designed for use with fresh water.
4. CARBON DIOXIDE – a chemical that can deliver a quick smothering action to the flames, reducing the oxygen and suffocating the fire. Carbon dioxide dissipates without leaving any contamination or corrosive residue.

What are the markings required on Fire Extinguishers?

Under (Rule 37, Sec. 106 of PD 1185), all fire extinguishers manufactured or sold in the Philippines must be labelled or marked to show at least the following:

1. Date of original filling
2. Chemical Contents
3. Type of extinguisher
4. Operating Instruction and Safe Procedure in usage
5. Name and address of the manufacturer
6. Name and address of the dealer.

What are the prohibited types of fire extinguishers?

Rule 37, Sec. 104 of IRR of PD 1185 provides that the following types of fires extinguishers are prohibited for manufacture or sale:

1. All inverting types which make it necessary to invert the container before the extinguisher's operation
2. Soda-acid extinguishers
3. Stored pressure or cartridge operated foam solution, unless and air-aspiring nozzle is provided
4. Vaporizing liquid extinguishers using carbon tetrachloride or chlorobromomethane in any concentration of formulation
5. Vaporizing liquid extinguishers of less than one kilogram extinguishing agent
6. Glass bulb, " grenade" type, or "bomb" type of vaporizing liquid extinguishers which have to be thrown to the fire or are mounted on specific location and which operate upon the melting of a fusible link.
7. Thermatic special hazards single station extinguishers with extinguishing capability of less than four and a half (4.5) cubic meters
8. Other types which maybe hereinafter prohibited.

What are the prohibited acts involving the operation of fire extinguishers?

From the same legal basis above, the following are declared prohibited acts concerning the use of fire extinguishers:

1. Removal of inspection tags attached to fire extinguishers
2. Refilling a discharge extinguisher with a extinguishing agent other than what the unit was designed to contain
3. Selling fire extinguishers not appropriate to the hazard
4. Selling fire extinguishers prohibited by Rule 37, Section 104
5. Selling defective or substandard extinguishers
6. Using/installing two or more thermatic special hazard vaporizing liquid units in rooms with volume greater than the nominal capability of one unit.
7. Installing pressure gauges in fire extinguishers which do not indicate the actual pressure of the interior of vessel such as, but not limited to use of uncalibrated gauges, not providing or blocking the connection between the gauge and the interior, or fixing the indicator/needle to indicate a certain pressure.

What are the General Operating Procedures in Fire Extinguishment?

The general operating procedures in using a fire extinguisher may be modified by the acronym PASS.

P - Pull the pin at the top of the extinguisher that keeps the handle from being pressed. Press the plastic or thin wire inspection band.

A– Aim the nozzle or outlet towards the fire. Some hose assemblies are dipped to the extinguisher body. Released it and then point at the base of the fire.

S – Squeeze the handle above carrying handle to discharge the extinguishing agent inside. The handle can be released to stop the discharge at any time.

S – Sweep the nozzle sideways at the base of the flame to disperse the extinguishing agent.

After the fire is out, probe for remaining smouldering hot spots or possible re-flash of flammable liquids. Make sure the fire is out before leaving the burned area.

Fire Fighting Equipment

The most important equipment for fire fighters includes:

1. Communication Systems

They are necessary to alert fire fighters to the outbreak of a fire. Most fire alarms are telephoned to the fire department. Many countries have introduced a simple, 3-digit number as the telephone number to call in emergencies. This number can be dialed from almost any telephone and from most pay phones without a coin. Dialing this number is free. In the Philippines, the emergency line is 166.

2. Fire Vehicles

Fire fighters have several types of fire vehicles. The main types are (1) engines, (2) ladder appliances, and (3) rescue vehicles.

Engines, also called water tenders, have a large pump that takes water from a fire hydrant or other source. The pump boosts the pressure of the water and forces it through hoses. Engines carry several sizes of hoses and nozzles. Many also have a small-diameter hose called a booster line, which is wound on a reel. The booster line is used chiefly to put out small outdoor fires.

Ladder appliances - There are two kinds of ladder appliances--turntable ladders and hydraulic platforms.

A turntable ladder appliance has a metal extension ladder mounted on a turntable. The ladder can be raised as high as 30 meters, or about eight storeys.

A hydraulic platform truck has a cage-like platform that can hold several people. The platform is attached to a lifting device that is mounted on a turntable. The lifting device consists of either a hinged boom (long metal arm) or an extendable boom made of several sections that fit inside each other. The boom on the largest vehicles can extend 46 meters. A built-in hose runs the length of the boom and is used to direct water on a fire. In most cases, a pump in a nearby engine generates the pressure needed to spray the water.

Fire Fighting Vehicles - are equipped with portable ladders of various types and sizes. They also carry forcible entry tools, which fire fighters use to gain entry into a building and to ventilate it to let out smoke. Common forcible entry tools include axes, power saws, and sledge hammers.

Rescue Vehicles are enclosed vehicles equipped with many of the same kinds of forcible entry tools that ladder appliances carry. But rescue vehicles also carry additional equipment for unusual rescues. They have such tools as oxyacetylene torches, for cutting through metal, and hydraulic jacks, for lifting heavy objects. They may also carry other hydraulic tools. With a hydraulic rescue tool, fire fighters can apply a large amount of pressure to two objects to squeeze them together or prise them apart. The tool is often used to free people trapped in cars and other vehicles after an accident. Many rescue vehicles also carry small hand tools, such as crowbars and saws, and ropes and harnesses for rescuing people from water or high places. In addition, they carry medical supplies and equipment.

Special Fire Vehicles include airport crash tenders and hazardous materials units. Airport crash tenders are engines that spray foam or dry chemicals on burning aircraft. Water is ineffective against many aircraft fires, such as those that involve jet fuel or certain metals.

In addition to the above fire fighting equipment, fire fighters are also required to use protective clothing.

Protective Clothing - clothing for protection against flames, falling objects, and other hazards. They wear coats and trousers made of fire-resistant material. Other clothing includes special boots, gloves, and helmets. Fire fighters also use a breathing apparatus to avoid inhaling smoke and toxic gases.

Fire Prevention and Public Safety

As mentioned earlier, **Fire Prevention** is a term for the many safety measures used to keep harmful fires from starting. Fires not only cause extensive damage to valuable property, but also responsible for large numbers of deaths.

BASIC FIRE INVESTIGATION

In the Philippines, the Bureau of fire Protection is the main government agency responsible for the prevention and suppression of all destructive fires on buildings, houses and other structures, forest, land transportation vehicles and equipments, ships or vessels docked at piers or major seaports, petroleum industry installation, plane crashes and other similar incidents, as well as the enforcement of the Fire Code and other related laws. It has the major power to investigate all causes of fires and necessary, file the proper complaints with the proper authority that has jurisdiction over the case (R.A. no. 6975, sec. 54).

Why Fires should be investigated?

The very reason why fires should be investigated is to determine the cause of the fire in order to prevent similar occurrences. The determination of the origin and cause of fire is arrived at only after a thorough investigation. Since basic investigation is prelude to the discovery of the true cause of the fire, an understanding of the chemistry of fire and its attendant behavior should be a concern for successful investigation.

Who are qualified to investigate fires?

A fire investigator should have the following traits:

1. Possession of knowledge of investigational techniques.
2. He should have an insight of human behavior.
3. He should have a first hand knowledge of the chemistry of fire and its behavior
4. He should be resourceful.

Is Fire Investigation Complex and Unique?

Fire investigation is complex and unique because of the following reasons:

1. Fire destroys evidence
2. If it is Arson, it is planned, motivated and committed is discreet.
3. Rarely can there be an eyewitness in Arson.

What are the roles of the Firemen in Fire Investigation?

Firemen are usually at the crime scene ahead of the fire investigators. Hence, they are valuable sources of information. They are the so-called "Eyes and Ears" of the police before, during and after the fire has been placed under control. The information taken from them may be categorize as:

1. Information attainable or developed prior to the arrival at the scene
2. Information available to the firemen at the scene
3. Information available during overhaul and thereafter.

Legal Aspect of Fire Investigation

ARSON defined

Arson **is the intentional or malicious destruction of property by fire.**

It is the concern of fire investigation to prove malicious intent of the offender. Intent must be proved, otherwise, no crime exist. The law presumes that a fire is accidental, hence criminal designs must be shown. Fire cause by accident or criminal design must be shown. Fire cause by accident or negligence does not constitute arson.

What is Destructive Arson?

Under Article 320 of the Revised Penal Code, as amended, the penalty of Reclusion Perpetua to Death shall be imposed upon any person who shall burn:

1. One (1) or more buildings or edifices, consequent to one single act of burning, or as a result of simultaneous burnings, or committed on several or different occasions.

2. Any building of public or private ownership, devoted to the public in general or where people usually gather or congregate for a definite purpose such as, but not limited to official governmental function or business, private transaction, commerce, trade workshop, meetings and conferences, or merely incidental to a definite purpose such as but not limited to hotels, motels, transient dwellings, public conveyance or stops or terminals, regardless of whether the offender had knowledge that there are persons in said building or edifice at the time it is set on fire and regardless also of whether the building is actually inhabited or not.

3. Any train or locomotive, ship or vessel, airship or airplane devoted to transportation or conveyance, or for public use, entertainment or leisure.
4. Any building, factory, warehouse installation and any appurtenances thereto, which are devoted to the service to public utilities.
5. Any building the burning of which is for the purpose of concealing or destroying evidence of another violation of law, or for the purpose of concealing bankruptcy or defrauding creditors or to collect from insurance.

Irrespective of the application of the above enumerated qualifying circumstances, the penalty of reclusion to death shall likewise be imposed when the arson is perpetrated or committed by two or more persons or by group of persons, regardless of whether their purpose is merely to burn or destroy the building or the building merely constitutes an overt act in the commission or another violation of law.

The penalty of Reclusion Perpetua to Death shall also be imposed upon any person who shall burn:

1. any arsenal, shipyard, storehouse or military power or firework factory, ordinance, storehouse, archives or general museum of the government.
2. in an inhabited place, any storehouse or factory of inflammable or explosives materials.

If the consequence of the commission of any of the acts penalized under this Article, death results, the mandatory penalty of death shall be imposed (sec. 10, RA 7659).

What is the basis of criminal liability in arson?

1. Kind and character of the building burned
2. Location of the building
3. Extent or value of the damage
4. Whether inhabited or not.

What are other forms of arson?

Other forms of arson refers to those enumerated under Article 321 of the Revised Penal Code, as amended like the following:

1. Setting fires to any building, farmhouse, warehouse, hut, shelter, or vessel in port, knowing it to be occupied at the time by one or more person.
2. Building burned is a public building and value of damage exceeds six thousands pesos (P6000.00).
3. Building burned is a public building and purpose is to destroy evidence kept therein to be used in instituting prosecution for punishment of violators of law, irrespective of the amount of damage.
4. Building burned is a public building and purpose is to destroy evidence kept therein to be used in legislative, judicial or administrative proceeding, irrespective of the damage, if the evidence is to be used against defendant of any crime punishable under existing law.

Arson of Property of Small Value (Art. 323, RPC)

Burning of any uninhabited hut, storehouse, barn, shed, or any other property, under circumstances clearly excluding all danger of the fire spreading, value of the property not exceed 25.00 pesos.

Crimes Involving Destruction (Art 324, RPC)

The offender causes destruction by any of the following means:

1. explosion
2. discharge of electric current
3. inundation, sinking or stranding of a vessel
4. taking up the rails from a railway track
5. malicious changing of railway signals for the safety of moving trains
6. destroying telegraph wires and telegraph post or those any other communication system
7. by using any other agency or means of destruction as effective as the above

Burning one's own property as a means to commit arson (Read Case of U.S vs. Budiao, 4 Phil. 502) (Article 325, RPC)

Article 326, RPC – Setting Fire to Property Exclusively Owned By the Offender

This act is punished if the purpose of the offender is to:

1. Defraud or cause damage to another or
2. damaged is actually caused upon another's property even if such purpose is absent
3. thing burned is a building in an inhabited place.

Presidential Decree No. 1613 – Amending the Law on Arson

Special Aggravating Circumstance in Arson

1. If committed with intent to gain:
2. If committed with the benefit of another:
3. If the offender is motivated by spite or hatred towards the owner or occupant of the property burned:
4. If committed by a syndicate (3 or more persons).

Prima Facie Evidence of Arson

1. If the fire started simultaneously in more than one part of the building or establishment
2. If substantial amounts of flammable substance or materials are stored within the building not necessary in the business of the offender nor for house hold use.
3. If gasoline, kerosene, petroleum, or other flammable or combustible substances or materials soaked therewith or containers thereof, or any mechanical, electrical, chemical, or electronic contrivance designed to start a fire, a fire, or ashes or traces of any of the foregoing are found in the ruins or premises of the burned building or property.
4. If the building or property is insured for substantially more than its actual value at the time of the issuance of the policy.
5. If during the lifetime of the corresponding fire insurance policy more than two fires have occurred in the same or other premises owned or under the control of the offender and / or insured.
6. If shortly before the fire, a substantial portion of the effects insured and stored in a building or property had been withdrawn from the premises except in the ordinary course of business.
7. If a demand for money or other valuable consideration was made before the fire in exchange for the desistance of the offender or the safety of the person or property of the victim.

Arson Investigation

What Constitutes Arson?

1. Burning – to constitute burning, pyrolysis must takes place. In other words, there must be burning or changing, i.e. the fibber of the wood must be destroyed, its identity changed.
2. Wilfulness – means intentional, and implies that the act was done purposely and intentionally.
3. Malice – it denotes hatred or a desire for revenge.
4. Motive – is the moving cause that induces the commission of the crime.
5. Intent – is the purpose or design with which the act is done and involves the will.

Methods of Proof in Arson

Physical evidences in arson are often destroyed. To prove arson was committed, Corpus Delicti must be shown and identify of the arsonist must be established. Corpus Delicti (body of the crime) is the fact of that crime was committed. The following must show it:

1. Burning – that there was fire that may be shown by direct testimony of complaint, firemen responding to the crime, other eyewitnesses. Burned parts of the building may also indicate location.
2. Criminal Design – must show that it was wilfully and intentionally done. The presence of incendiary devices, flammables such as gasoline and kerosene may indicate that the fire is not accidental.
3. Evidence of Intent – When valuables were removed from the building before the fire, ill-feeling between the accused and the occupants of the building burned, absence of effort to put off fire and such other indications.

What are basic lines of inquiry in Arson Investigation?

The arson investigator must have to inquire on the following a) point of origin of fire b) motives of arsonist c) prime suspects d) the telltale signs of arson.

1. Point of origin of fire

Initially, the important point to be established is the point of origin of fire. In other words, at what particular place in the building the fire started? This may be established by an examination of the witness, by an inspection of the debris at the fire scene and by studying the fingerprint of fire. The fingerprint of fire occurs during the free burning stage of the fire when pyrolytic decomposition moves upward on the walls leaving a bunt pattern.

Witnesses must be questioned as to:

1. His identity
2. What attracted his attention
3. Time of observation
4. His position in relation to the fire at the time of observation
5. Exact location of the blaze
6. Size and intensity
7. Rapidity of spread
8. Color of flame and odor if he is in a position this
9. Any other person in the vicinity beside the witness

Note fire setting mechanism

1. matches
2. candles
3. electrical system
4. mechanical means
5. chemical methods

2. Motive of Arsonist

To understand the motives of arsonist, the arson investigator have to note the following that fires are set by:

Persons with Motives

a. Those with desire to defraud the Insurer
b. Employees or such other person who have a grievance (Fire revenge)
c. Those with desire to conceal evidence of a crime
d. Those who set fire for purposes of intimidation

People without motives

a. Those who are mentally ill
b. Pathological fire-setters
c. Pyros and the Psychos

Motives of Arsonist

1. Economic Gain
    a. Insurance fraud – benefiting
    b. Desire to dispose merchandise – lost of market value being out of season, lack of raw materials, over supply of merchandise can be a big reason for arson.
    c. Existing business transaction that the arsonist would like to avoid such as impending liquidation, settlement of estate, need for cash, prospective business failure, and increase rentals
    d. Profit by the Perpetrator other than the Assured like insurance agents wishing business with the assured, business competitors planning to drive others, person seeking job as personnel protection, salvagers and contractors wishing to contact another building
2. Concealment of Crime - When the purpose of hiding a crime or committing a crime, arson was used as means.
3. Punitive Measure - Committing arson to inflict injury to another due to hatred, jealousy and revenge.
4. Intimidation or Economic Disabling - Arsonist as saboteurs, strikers and racketeers to intimidate management or employer.
5. Pyromania

A pyromaniac having the uncontrollable impulse to burn anything without any motivation. They do not run away from the fire scene since they love watching fire burning.

Types of Pyromania

a. Abnormal Youth – epileptics, imbeciles and morons
b. Hero Type – a person set a building on fire and pretends to discover it, turn on the alarm or make some rescue works to appear as “hero”
c. Drug addicts and alcoholics
d. Sexual deviates and perverts.

3. Prime Suspects (and the Prima Facie Evidences)

The development of prime suspects - this involves identification results from the full development of leads, clues and traces, the testimony particularly eyewitnesses and the development of expert testimony, The following technique may serve the investigation:

1. Search of the fire scene for physical evidence:
    a. Protection of the scene
    b. Mechanics of search
    c. Collection and preservation of evidences
    d. Laboratory aids

2. Background study of policyholders, occupants of premises, owner of building or other person having major interest in the fire.
3. Interviews and interrogations of persons who discovered the fire, and the one who turned the first alarm, firemen, and eyewitnesses.
4. Surveillance

4. The Tell Tale Signs of Arson

These signs maybe obvious that the first fireman at the scene will suspects arson or they maybe so well concealed that moths of patient investigation to show that it is set off will be required.

1. Burned Building – the type of the building may indicate a set fire under certain circumstance. A fire of considerable size at the time the first apparatus arrive at the scene is suspicious if it is a modern concrete or semi-concrete building.
2. Separate fires – when two or more separate fire breaks out within a building. The fire is certainly suspicious.
3. Color of Smoke – some fire burn with little or no smoke but they are exception. The observation of the smoke must be made at the start of the fire since once the fire has assumed a major proportion, the value of the smoke is lost, because the smoke will not indicate the material used by the arsonist

    a.) When white smoke appears before the water from the fire hose comes in contact with the fire, it indicates humid material burning. Example – burning hay, vegetable materials, phosphorus (with garlic odor).

b.) Biting smoke, irritating the nose and throat and causing lacrymation and coughing indicates presence of chlorine.
c.) Black smoke indicates lack of air if accompanied by large flames it indicates petroleum products and rubber.
d.) Reddish-brown smoke indicates nitrocellulose, S1, H2, S04, HN03, or HCI.
e.) Meaning of color of Smoke and Fire:

- **Black smoke with deep red flame – petroleum products, tar, rubber, plastics, etc.**
- **Heavy brown with bright red flame – nitrogen products**
- **White smoke with bright flame – magnesium products**
- **Black smoke with red and blue green flame – asphalt**
- **Purple-violet flame – potassium products**
- **Greenish-yellow flame – Chloride or Manganese products**
- **Bright reddish yellow flame – Calcium products**

8. Color of flame – The color of the flame is a good indication of the intensity of the fire, an important factor in determining incendiarism.
9. Amount of Heat – A reddish glow indicates heat of 5000 degrees centigrade, a real bright read about 100 degrees centigrade. Red flames indicate of petroleum. Blue flame indicates use of alcohol as accelerant.
10. Smoke Marks – An experience investigation will determine the volume of smoke involved at a fire and the character as residue deposited on walls or elsewhere. Smoke in marks have often been of assistance in determining the possibility of a fire having more than one place of origin.
11. Size of Fire – This is important when correlated with the type of alarm, the time received and the time of arrival of the first fire apparatus. Fires make what might be termed a normal progress. Such progress can be estimated after an examination of the material burned the building and the normal ventilation offered of the fire. The time element and the degree of headway by the flames become important factors to determine factors to determine possible incendiarism.
12. Direction of Travel – While it is admitted that no two fires burn in identical fashion, yet it can be shown that fire makes normal progress through various types of building materials, combustibility of contents, channel of ventilation and circumstances surrounding the sending of alarm, an experienced investigator can determine whether a fire spread abnormally fast.
13. Intensity – The degree of heat given off by a fire and the color of its flame oftentimes indicate that some accelerant has been added to the material normally present in a building and the investigator must look for further evidence pointing to use of such accelerant. Difficulty in extinguishing the fire is often a lead to suspect presence of such fluid as gasoline and kerosene.
14. Odor – The odor of gasoline, alcohol, kerosene and other inflammable liquids which are often used as accelerant is characteristics and oftentimes arsonist are trapped because of this telltale sign. Most of fire – setters are inclined to use substance which will make the blaze certain and at the same time burn up any evidence of their crime.
15. Condition of Content – Persons tending to set their house on fire frequently remove objects of value either materially or sentimentally. Store and other business establishments oftentimes remove a major portion of their content or replace valuable merchandise without of style articles.

Review Notes in Drug Education
By: RKManwong

<u>DEFINITION OF TERMS</u>

DRUG ADDICTIONS – A state of periodic or chronic (continuous) intoxication (drunk) detrimental to individual and to the society produced by the repeated consumption of drugs (WHO)

CHEMICALS – Is any substance taken into the body, which alters the way, the mind and the bodywork.

CHEMICAL ABUSE – Is an instance when the use of a chemical has produced a negative or harmful consequence.

TREATMENT – Is a medical service rendered to a client for the effective management of hit total conditions related to drug abuse. It deals with the physiological without abusing drugs.

REHABILITATION – Is a dynamic process directed towards the changes on the health of the person to prepare him from his fullest life potentials and capabilities, and making him law-abiding and productive member of the community without abusing drugs.

ENABLING – Is any action taken by a concerned person that removes or softens the negative effect or harmful consequences of drug use upon the user. Enabling only makes thing worse. It is like fighting fire with gasoline.

POLYDRUG ABUSE – Many people who abuse on drug tend to take allsorts of drugs. Some play chemical “Russian roulettes” by taking everything including unidentified pills. This is called polydrug abuse.

DRUG EXPERIMENTER – One who illegally, wrongfully, or improperly uses any narcotics substances, marijuana or dangerous drugs as defined not more than a few times for reasons or curiosity, peer pressure or other similar reasons.

DRUG SYNDICATE – It is a network of evil. It is operated and manned by willful criminals who knowingly traffic in human lives for the money. Large sum of money, they can make in their illegal and nefarious trade. The set results of their commerce are physical and mental cripples, ruined lives, even agonizing death.

WITHDRAWAL PERIOD – From the point of habituation or drug dependence up to the time a drug dependent is totally or gradually deprived of the drug.

TOLERANCE – It is the increasing dosage of drugs to maintain the same effect. This is dependent is totally or amphetamines, barbiturates, opiates and solvents.

DRUG DEPENDENCE – A state of psychic or physical dependence, or both on dangerous drugs, arising in a person following administration or use of a drug on a periodic or continuous basis.

PHYSICALDEPENDENCE – An adaptive state caused by repeated drug use that reveals itself by development of intense physical symptoms when the drug is stopped (withdrawal syndrome).

PSYCHOLOGICALDEPENDENCE – An attachment to drug use which arises from a drug ability to satisfy some emotional or personality need of an individual. (Physical dependence not required but it does not seem to reinforce psychological dependence)

MARIJUANA – Obtained from an Indian hemp plant known as “Cannabis Sativa” a strong, handy ,annual shrub which grows wild in temperature and tropic regions.

TETRAHYDROCANNABINOL – (THC) It is the psychoactive agent of marijuana. The more THC present in marijuana, the more potent is the drug. It is also known as the “siniter element” in marijuana. This is what causes the “high lift” or “trip” in marijuana users.

HASHISH – It is the dark brown resin that is collected from the tops of potent Cannabis Sativa. It is at least five times stronger than crude marijuana. Since it is stronger, the effect on the user is more intense, and the possibility of side effects is greater. Placing the crude plant material in a solvent makes it. The plant material is then filtered out and the solvent is removed, yielding a gummy, resinous substance.

NARCOTICS – Is any drug that produces sleep or stupor and relieves pain due to its depressant effect on the central nervous system. A term narcotic comes from the Greek word for sleep “Narkotikos”

OPIUM – Obtained from a female poppy plant known as “Papayer Somniferum”. It comes from the Greek word which means “juice”. It is the original components of Morphine and Heroin.

MORPHINE – It is the second extraction from opium, six times stronger. It was named after Morpheus the Greek god of dreams stimulating effects.

HEROIN – It is the third derivative extracted and the most powerful. It has no medical use because of the high rate of medication. This is the most potent of opium derivatives, five times stronger than morphine.

SHABU – It is Japanese form of drug abuse. It is an amphetamine type of stimulant whose chemical use name in Methmphetamine. This stimulant was originally known as “Kakuseizal” is

the Japanese word for waking “Zai” the term for drugs. The stimulant started in Japan immediately after the end of the Pacific War and brought into the Philippines by Japanese tourist.

COCAINE – It is an alkaloid contained in the leaves of “Erythoxylon coca” a hardy plant cultivated in Bolivia. The first user of coca leaf were the Incas of Peru. It is a stimulant. A powerful natural stimulant known to man. Cocaine acts immediately. It is a quick acting drug. Its effects are rapid from the time of intake. It is indeed “super-speed”.

CODEINE – Is another opium alkaloid, the second to be developed after Morphine. It is used as a painkiller, but more as a cough reliever.

10 MOST ABUSED DRUGS

- Shabu
- Menthodes (cough/cold preparation)
- Marijuana
- Rugby (inhalant)
- Phydol (cough/cold preparation)
- Diazepam (minor tranquilizer)
- Pseudoflex (cough/cold preparation)
- Hycodia (cough preparation)
- Cotrex D (cough/cold preparation)
- Mercadol (cough/cold preparation)

XII. MOST COMMON REASONS FOR USING DRUGS

- Influence by friends and peers
- Personal reason such as family problems and pleasure
- Got hooked by the pusher
- Used drugs for medical reason and hooked later on
- Accessibility of sources such as drug stores, medicine cabinets and shops.

SUMMARY ON USUALLY KNOWN DRUG (SIGNS AND SYMPTOMS)

DRUGS	PHYSICAL SYMPTOMS	**SIGN OF ABUSE**	**DANGERS**
Marijuana (damo, grass, Indian hemp, weed joints, hashish, satay)	Altered perception, dilated pupils, lack of concentration, craving for sweets, increased appetite, laughter	Plastic baggies, rolling paper, roach clips, color of burnt hemp rope	Psychological dependence, increased heart rate, impaired short term memory, anxiety, lungs damage, possible psychosis w/ chronic use.
Amphetamines (pep pills, speed, dexies, ups, bunnies, drivers, crossroad, footballs, co-pilot, eye opener)	Loss of appetite, anxiety, irritability, rapid speech, tumors mood, elevation	Pills of varying, possible chain of smoking, long period w/out rest or sleep	Disorientation, severe depression, paranila, possible hallucinations, increased blood pressure, fatigue
Hallucinogens (LSD, MDA, PCR, peyote, psilocybin, acid cubes, micbrodots, mescaline)	Alternation of moods and perception, possible paranoia, panic anxiety	Capsule of varying longer periods of ras sleep, dizziness, cold and clumsy skin	Rigidity, painful muscle contraction, emotional instability, death frompossible overdose esp. when mixed with alcohol
SOLVENT/RUGBY (gasoline/ glue)	Euphoria headaches, nausea, fainting stupor, rapid heart beat	Odor of substance in clothing, intoxication, drowsiness, poor muscular control	Damage to lungs, liver, kidneys, bone marrow, suffocation, choking, anemia, possible stroke or sudden death.
HEROIN (fit fun) MORPHINE (M., Monkey dreamer,	Intensitivity to pain, euphoria, sedation, vomiting, itchiness, watery eyes, running nose	Glasineevelops needles and syringe capsule orspoons tourniquet, needle mark on hands	Allergy w/ loss hepatitis, slow and shallow breathing possible death when combined w/ barbiturates

morpho, tabcubes, opium) CODINE (little D) COCAINE (Coke, snow, leaf dust)	Short-lived euphoria changing to depression, nervousness, irritability, tightening of muscles	Glassine envelopes razor blades, small spoons, odorless bitter white crystalline powder	Shallow breathing, fever, anxiety, tremors, possible death from convulsions or respiratory arrest.

DANGEROUS DRUG EFFECTS AND IDENTITY

The Marijuana (Cannabis Sativa)

- ✓ Marijuana – usually called Pot, grass, weed reefer, dope, Mary Jane, sinsemilla, acapolco gold, Thai stick, ---They look like dried parsley mixed with stems that may include needs --- They are need as cigarette (smoke). Eaten.
- ✓ Tetrehydro Cannabinol – they called THC, they look like soft gelatin capsule and they are used by taken orally or smoked.
- ✓ Hashish – called locally has and look like brown or black cakes or balls, they can be eaten orally or can be smoked.
- ✓ Hashish Oil – Hash oil they appear like concentrated syrup liquid varying in color from clear to black, they used to smoked mixed with tobacco.

The Inhalants

Immediate negative effect of inhalants include nose, sneezing, coughing, nosebleed, fatigue, lack of coordination and loss of appetite. Solvents and aerosol sprays also decrease the heart and the respiratory rates and impair judgment. Amyl and Butyl nitrate cause rapid pulse, headache and involuntary or brain hemorrhage.

Deeply inhaling the vapor, or using large amount over a short period of time may result to disorientation, violent behavior, unconsciousness or death. High concentration of inhalants can cause suffocation by displacing the oxygen in the lungs or depressing the central nervous system in the point that breathing stops.

Long-term use can cause weight loss, fatigue, electrolyte imbalance and muscle fatigue. Repeat sniffing of concentrated vapors over time can permanently damage the nervous system.

The Depressants (Downers)

These are drugs which suppress vital body functions especially those of the brain or central nervous system with the resulting impairment of judgement, hearing, speech and muscular coordination.

1. Narcotics - are drugs, which relieve pain and produce profound sleep or stupor. Medically, they are potent painkillers.

2. Opium – derived from a poppy plant – Papaver somniferum popularly known as “gum”, “gamot”, “kalamay” or “panocha”.

3. Morphine - most commonly used and best used opiate. Effective as a painkiller six times potent than opium, with a high dependence – producing potential.

4. Heroin – is three to five times more powerful than morphine from which it is derived and the most addicting opium derivative.

5. Codeine – a derivative of morphine, commonly available in cough preparations.

6. Paregoric – a tincture of opium in combination with camphor. Commonly used as a household remedy for diarrhea and abdominal pain.

7. Demerol and Methadone – common synthetic drugs with morphine – like effects.

8. Barbiturates – are drugs used for inducing sleep in persons plagued with anxiety, mental stress, and insomnia.

9. Seconal – Sudden withdrawal from these drugs is even more dangerous than opiate withdrawal.

10. Tranquilizers – are drugs that calm and relax and diminish anxiety. They are used in the treatment of nervous states and some mental disorders without producing sleep.

11. Volatile Solvents – gaseous substances popularly known to abusers as “gas”, “teardrops”.

12. Alcohol – the king of all drugs with potential for abuse. Most widely used, socially accepted and most extensively legalized drug throughout the world.

The Stimulants (Uppers)

These produce effects opposite to that of depressants. Instead of bringing about relaxation and sleep, they produce increased mental alertness, wakefulness, reduce hunger, and provide a feeling of well being.

1. Amphetamines – used medically for weight reducing in obesity, relief of mild depression and treatment

2. Cocaine – taken orally, injected or sniffed as to achieve euphoria or an intense feeling of "highness".

3. Caffeine – it is present in coffee, tea, chocolate, cola drinks, and some wake-up pills.

4. Shabu/ "poor man's cocaine" – chemically known as methamphetamine. It is a central nervous system stimulant and sometimes called "upper" or "speed". It is white, colorless crystal or crystalline powder with a bitter numbing taste. It can be taken orally, inhaled (snorted), sniffed (chasing the dragon) or injected.

5. Nicotine – an active component in tobacco which acts as a powerful stimulant of the central nervous system. A drop of pure nicotine can easily kill a person.

The Hallucinogens (Psychedelic)

They consist of a variety of mind-altering drugs, which distort reality, thinking and perceptions of time, sound, space and sensation.

1. Marijuana – It is the most commonly abused hallucinogen in the Philippines.

2. Lysergic Acid Diethylamide (LSD) – This drug is the most powerful of the psychedelics obtained from ergot, a fungus that attacks rye kernels.

3. Peyote – Peyote is derived from the surface part of a small gray brown cactus.

4. Mescaline – It is the alkaloid hallucinogen extracted from the peyote cactus and can also be synthesized in the laboratory.

5. STP – It is a take-off on the motor oil additive. It is a chemical derivative of mescaline claimed to produce more violent and longer effects than mescaline dose.

6. Psilocybin – This hallucinogenic alkaloid from small Mexican mushrooms are used by Mexican Indians today.

7. Morning Glory Seeds – The black and brown seeds of the wild tropical morning glory that are used to produce hallucinations.

The New Law on Dangerous Drugs

R.A. 9165 – COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002
Approved on June 7, 2002 - Effective July 4, 2002

<u>What is Dangerous Drug under this law?</u>

Includes those listed in the schedules annexed to the 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, and the schedules annexed to the 1971 Single Convention on Psychotropic Substances (Art 1, Sec. 3).

Ex. MMDA – Methylenedioxymethamphetamine (Ecstacy)
Tetrahydrocannabinol (MJ); Mescaline (Peyote)

<u>What are the Controlled Precursors and Essential Chemicals?</u>

Include those listed in Tables I and II of the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotrophic Substances (Art 1, Sec 3)

Ex.	Table 1 –	Acetic Anhydride
		N- Acetyl Anthranilic Acid
		Epedrine, Ergometrine, Lysergic Acid, etc.
	Table 2 –	Acetone, Ethyl Ether, Hydrochloric Acid
		Sulfuric Acid, etc..

NOTE:

Under RA 6425 (Dangerous Drugs Act of 1972), Dangerous drugs refers to the Prohibited drugs, Regulated drugs and Volatile substances.

<u>Prohibited Drugs</u> – ex. Opium and its derivatives, Cocaine and its derivatives, Hallucinogen drugs like MJ, LSD, and Mescaline

<u>Regulated drugs</u> – ex. Barbiturates, Amphetamines, Tranquillizers

<u>Volatile Substances</u> – ex. rugby, paints, thinner, glue, gasoline

XIII.

XIV. What are the Unlawful Acts and Penalties?

Unlawful Acts	Penalty
Importation of Dangerous drugs and/or Controlled Precursors and Essential Chemicals (sec. 4)	Life Imprisonment to Death and a fine ranging from P500, 000 to P10 Million
Sale, Trading, Administration, Dispensation, Delivery, Distribution and transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals (sec. 5)	Life Imprisonment to Death and a fine ranging from P500, 000 to P10 Million
Maintenance of a Den, Dive or Resort where dangerous drugs are used or sold in any form (sec. 6)	Life Imprisonment to Death and a fine ranging from P500, 000 to P10 Million
Being an employee or visitor of a den, dive or resort (sec. 7)	Imprisonment ranging from 12 yrs and 1 day to 20 yrs and a fine ranging from P100, 000 to P500, 000.
Manufacture of dangerous Drugs and/or Controlled Precursors and Essential Chemicals (sec. 8)	Life Imprisonment to Death and a fine ranging from P500, 000 to P10 Million
Illegal Chemical Diversion of Controlled Precursors and Essential Chemicals (sec. 9)	Imprisonment ranging from 12 yrs and 1 day to 20 yrs and a fine ranging from P100, 000 to P500, 000.
Manufacture or Delivery of Equipment, Instrument, Apparatus and other Paraphernalia for Dangerous Drugs and/or Controlled Precursors and Essential Chemicals (sec. 10)	Imprisonment ranging from 12 yrs and 1 day to 20 yrs and a fine ranging from P100, 000 to P500, 000.
Possession of Dangerous Drugs (sec. 11)	Life Imprisonment to Death and a fine ranging from P500, 000 to P10 Million

Possession of Dangerous drugs in the following quantities, regardless of degree of purity:

10 grams or more of opium; morphine; heroin; cocaine; MJ resin;
10 grams or more of MMDA, LSD and similar dangerous drugs;
50 grams or more of “shabu”/ Methamphetamine Hydrochloride;
500 grams or more of Marijuana

NOTE:

If the quantity involved is less than the foregoing, the penalties shall be graduated as follows:

1. Life imprisonment and a fine ranging from P400, 000 to P500, 000 if “shabu” is 10 grams or more but less than 50 grams;

2. Imprisonment of 20 yrs and 1 day to Life imprisonment and a fine ranging from P400, 000 to P500, 000 if the quantities of dangerous drugs are 5 grams or more but less than 10 grams of opium, morphine, heroin, cocaine, mj resin, shabu, MMDA, and 300 grams or more but less than 500 grams of marijuana

3. Imprisonment of 12 yrs and 1 day to 20 yrs and a fine ranging from P300, 000 to P400, 000 if the quantities of dangerous drugs are less than 5 grams of opium, morphine, heroin, cocaine, mj resin, shabu, MMDA, and less than 300 grams of marijuana.

Possession of Equipment, Instrument, Apparatus and other Paraphernalia for Dangerous Drugs (sec. 12)	Imprisonment ranging from 6 mos and 1 day to 4 yrs and a fine ranging from P10, 000 to P50, 000
Possession of dangerous Drugs during Parties, Social Gatherings or Meetings (sec. 13), and Possession of Equipment, Instrument, Apparatus and other Paraphernalia for Dangerous Drugs during	The maximum penalties provided for Sec. 11.

Parties, Social Gatherings or Meetings (sec. 14)	
Use of Dangerous Drugs (sec. 15)	Minimum 6 mos rehabilitation (1st offense), Imprisonment ranging from 6 yrs and 1 day to 12 yrs and a fine ranging from P50,000 to P200, 000 (2nd Offense)

NOTE:

Section 15 shall not be applicable where the person tested is also found to have in his/her possession such quantity of any dangerous drug provided in sec.11, in which case the penalty provided in sec. 11 shall apply.

Cultivation of Plants classified as dangerous drugs or are sources thereof (sec. 16)	Life Imprisonment to Death and a fine ranging from P500, 000 to P10 Million
Failure to comply with the maintenance and keeping of the original records of transaction on any dangerous drugs and/or controlled precursors and Essential Chemicals on the part of practioners, manufacturers, wholesalers, importers, distributors, dealers, or retailers (sec. 17)	Imprisonment ranging from 1 yr and 1 day to 6 yrs and a fine ranging from P10, 000 to P50, 000 Plus revocation of license to practice profession.
Unnecessary Prescription of Dangerous Drugs (sec. 18)	Imprisonment ranging from 12 yrs and 1 day to 20 yrs and a fine ranging from P100, 000 to P500, 000. Plus revocation of license to practice profession
Unlawful Prescription of Dangerous Drugs (sec.19)	Life imprisonment to Death and a fine ranging from P500, 000 to 10 Million pesos

XV. The Unlawful Acts Punishable by Death Penalty

1. Importation or bringing into the Philippines of dangerous drugs using diplomatic passport or facilities or any means involving his/her official status to facilitate unlawful entry of the same (sec 4, Art II).
2. Upon any person who organizes, manages or acts as “financiers” of any of the activities involving dangerous drugs (sec 4, 5, 6, 8 Art II).
3. Sale, Trading, Administration, Dispensation, Delivery, Distribution and transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals with in 100 meters from the school (sec 5, Art II).
4. Drugs pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers or in any other capacity directly connected to the dangerous drug trade (sec 5, Art II).
5. If the victim of the offense is a minor or mentally incapacitated individual, or should a dangerous drug and/or controlled precursors and essential chemical involved in the offense be the proximate cause of death of the victim (sec 5, Art II).
6. When dangerous drug is administered, delivered or sold to a minor who is allowed to use the same in such a place (sec 6, Art II).
7. Upon any person who uses a minor or mentally incapacitated individual to deliver equipment, instrument, apparatus and other paraphernalia for dangerous drugs (sec. 10, Art II).
8. Possession of dangerous Drugs during Parties, Social Gatherings or Meetings (sec. 13), and Possession of Equipment, Instrument, Apparatus and other Paraphernalia for Dangerous Drugs during Parties, Social Gatherings or Meetings (sec. 14)

<u>What is the Dangerous Drugs Board (DDB)?</u>

The DDB is the policy-making body and strategy-making body in the planning and formulation of policies and programs on drug prevention and control. (under the Office of the President) (sec. 77, Art IX)

Composition: 17 members (3 as permanent, 12 as ex-officio, 2 regular members)(sec. 78, Art IX)

3 permanent members: to be appointed by the President, one to be the Chairman.

12 ex officio members:

Secretary of DOJ, DOH, DND, DOF, DOLE, DILG, DSWD, DFA, and DepEd, Chairman of CHED, NYC, and the Dir.Gen of PDEA.

2 regular members: President of the IBP, and the Pres/Chaiman of an NGO involved in a dangerous drug campaign to be appointed by the President.

The NBI Director the Chief of the PNP – permanent consultant of the Board.

What are the Powers and Duties of the DDB?
(sec. 81, Art IX)

- Formulation of Drug Prevention and Control Strategy,
- Promulgation of Rules and Regulation to carry out the purposes of this Act,
- Conduct policy studies and researches,
- Develop educational programs and info drive,
- Conduct continuing seminars and consultations,
- Design special training,
- Coordination with agencies for community service programs,
- Maintain international networking,

What is the PDEA?

PDEA means Philippine Drug Enforcement Agency.
It is the implementing arm of the DDB and responsible for the efficient and effective law enforcement of all the provisions on any dangerous drugs and/ or precursors and essential chemicals.

Head: Director General – appointed by the President
Assisted By: 2 Deputies Director General (one for Admin, another for Opns) – appointed by the President (sec. 82, Art IX).

PDEA Operating Units:

It absorbed the NDLE-PCC (created under E.O. 61), NARCOM of the PNP, Narcotics Division of the NBI, and the Customs Narcotics Interdiction Unit (sec. 86, Art IX).

What are the Powers and Functions of the PDEA?
(sec. 84, Art IX)

- Cause the effective and efficient implementation of the national drug control strategy,
- Enforcement of the provisions of Art II of this Act,
- Undertake investigation, make arrest and apprehension of violators and seizure and confiscation of dangerous drugs,
- Establish forensic laboratories,
- Filing of appropriate drug cases,
- Conduct eradication programs,
- Maintain a national drug intelligence system,
- Close coordination with local and international drug agencies.

XVI. Important Features of R.A 9165

- In the revised law, importation of any illegal drug, regardless of quantity and purity or any part therefrom even for floral, decorative and culinary purposes is punishable with life imprisonment to death and a fine ranging from P500, 000 to P10 million.

- The trading, administration, dispensation, delivery, distribution, and transportation of dangerous drugs is also punishable by life imprisonment to death and a fine ranging from P500, 000 to P10 million.

- Any person who shall sell, trade, administer, dispense, deliver, give away to another or distribute, dispatch in transit or transport any dangerous drugs regardless of quantity and purity shall be punished with life imprisonment to death and a fine ranging from P500, 000 to P10 million.

  But if the sale, administration, delivery, distribution or transportation of any of these illegal drugs transpires with in 100 meters from any school, the maximum penalty shall be imposed.

  Pushers who use minors or mentally incapacitated individuals as runners, couriers, and messengers or in dangerous drug transactions shall also be meted with the maximum penalty.

  A penalty of 12 yrs to 20 yrs imprisonment shall be imposed on financiers, coddlers, and managers of the illegal activity.

- The law also penalizes anybody found in possession of any item or paraphernalia used to administer, produce, cultivate, propagate, harvest, compound, convert, process, pack, store, contain or conceal illegal drugs with an imprisonment of 12 yrs to 20 yrs and a fine of P100, 000 to P500, 000.

- Owners of resorts, dives, establishments, and other places where illegal drugs are administered is deemed liable under this new law, the same shall be confiscated and escheated in favor of the government.

- Any person who shall be convicted of violation of this new law, regardless of the quantity of the drugs and the penalty imposed by the court shall not be allowed to avail the privilege provisions of the Probation Law (P.D. 968).

(sec.58, Art VIII) Filing of charges against a drug dependent for confinement and rehabilitation under voluntary submission program can be made:

- second commitment to the center
- upon recommendation of the DDB
- may be charge for violation of sec. 15
- if convicted – confinement and rehab

Parents, spouse or guardian who refuses to cooperate with the Board or any concerned agency in the treatment and rehabilitation of a drug dependent may be cited for Contempt of Court (sec. 73, Art VIII).

CORRECTION ADMINISTRATION

I. Basic Definition of Terms:

PENOLOGY defined:

- The study of punishment for crime or of criminal offenders. It includes the study of control and prevention of crime through punishment of criminal offenders.

- The term is derived from the Latin word “POENA” which means pain or suffering.

- Penology is otherwise known as Penal Science. It is actually a division of criminology that deals with prison management and the treatment of offenders, and concerned itself with the philosophy and practice of society in its effort to repress criminal activities.

- Penology has stood in the past and, for the most part, still stands for the policy of inflicting punishment on the offender as a consequence of his wrongdoing.

Penal Management:

- Refers to the manner or practice of managing or controlling places of confinement as in jails or prisons.

CORRECTION defined:

- A branch of the Criminal Justice System concerned with the custody, supervision and rehabilitation of criminal offenders.

- It is that field of criminal justice administration which utilizes the body of knowledge and practices of the government and the society in general involving the processes of handling individuals who have been convicted of offenses for purposes of crime prevention and control.

- It is the study of jail/prison management and administration as well as the rehabilitation and reformation of criminals.

- It is a generic term that includes all government agencies, facilities, programs, procedures, personnel, and techniques concerned with the investigation, intake, custody, confinement, supervision, or treatment of alleged offenders.

Correction as a Process:

- Refers to the reorientation of the criminal offender to prevent him or her from repeating his deviant or delinquent actions with out the necessity of taking punitive actions but rather the introduction of individual measures of reformation.

Correctional Administration:

- The study and practice of a systematic management of jails or prisons and other institutions concerned with the custody, treatment, and rehabilitation of criminal offenders.

II. Correction and the Criminal Justice System

The Criminal Justice System is the machinery of any government in the control and prevention of crimes and criminality. It is composed of the pillars of justice such as: the Law Enforcement Pillar (Police), the Prosecution Pillar, the Court Pillar, the Correction Pillar, and the Community Pillar.

Correction as one of the pillars of Criminal Justice System is considered as the weakest pillar. This is because of its failure to deter individuals in committing crimes as well as the reformation of inmates. This is evident in the increasing number of inmates in jails or prisons. Hence, the need of prison management is necessary to rehabilitate inmates and transform them to become law-abiding citizens after their release.

Correction is the fourth pillar of the criminal justice system. This pillar takes over once the accused, after having been found guilty, is meted out the penalty for the crime he committed. He can apply for probation or he could be turned over to a non-institutional or institutional agency or facility
for custodial treatment and rehabilitation. The offender could avail of the benefits of parole or executive clemency once he has served the minimum period of his sentence.

When the penalty is imprisonment, the sentence is carried out either in the municipal, provincial or national penitentiary depending on the length of the sentence meted out.

III. Historical Perspective on Corrections

Important Dates and Events in the History of Corrections:

13th Century – Securing Sanctuary

In the 13th C, a criminal could avoid punishment by claiming refugee in a church for a period of 40 days at the end of which time he has compelled to leave the realm by a road or path assigned to him.

1468 (England) – Torture as a form of punishment became prevalent.

16th Century – Transportation of criminals in England, was authorized. At the end of the 16th C, Russia and other European Countries followed this system. It partially relieved overcrowding of prisons. Transportation was abandoned in 1835.

17th C to late 18th C – Death Penalty became prevalent as a form of punishment.

Reasons why Death Penalty became the usual Punishment during this period and thereafter:

1. Death of outlaws became a "protection for the English people". It is because the people during this period did not totally believe yet in the ability to a strong police force to combat criminals.
2. People lack confidence in the transportation of criminals. Gaols and Galleys became center of corruption and ineffective instruments of punishment.
3. Doctrine of Crude Intimidation appeared or seemed to be a logical form of threat in order to deter or prevent the people from violating the law.
4. The assumption was that, the Ruling Class is tasked to protect property rights and maintain public peace and order. The system of maintaining public order had little consideration or it did not recognize the social and economic condition of the lower working class. The lawmakers and enforcers used death penalty to cover property loss or damage with out further contemplating the value of life of other people.

GAOLS - (Jails) – pretrial detention facilities operated by English Sheriff.

Galleys – long, low, narrow, single decked ships propelled by sails, usually rowed by criminals. A type of ship used for transportation of criminals in the 16th century.

Hulks – decrepit transport, former warships used to house prisoners in the 18th and 19th century. These were abandoned warships

converted into prisons as means of relieving congestion of prisoners. They were also called “floating hells”.

The Primary Schools of Penology

1. The Classical School – it maintains the “doctrine of psychological hedonism” or “free will”. That the individual calculates pleasures and pains in advance of action and regulates his conduct by the result of his calculations.

2. The Neo-classical School – it maintained that while the classical doctrine is correct in general, it should be modified in certain details. Since children and lunatics cannot calculate the differences of pleasures from pain, they should not be regarded as criminals, hence they should be free from punishment.

3. The Positivist/Italian School – the school that denied individual responsibility and reflected non-punitive reactions to crime and criminality. It adheres that crimes, as any other act, is a natural phenomenon. Criminals are considered as sick individuals who need to be treated by treatment programs rather than punitive actions against them.

The Primitive Society

In the beginning of civilization, acts are characterized by behavioral controls categorized as: forbidden acts, accepted acts, and those acts that are encouraged.

Crimes, violence, rebellious acts and other acts, which are expressly prohibited by the society, fall as forbidden acts. Accepted acts are those that can be beneficial to the welfare of the society such as early traditions and practices, folkways, norms, those that are controlled by social rules, and laws.

Encourage acts are anything approved by the majority which is believed to be beneficial to the common good. These things include marrying, having children, crop production, growing food, etc

Punishment is required when those who intend to violate the rules do not comply with these practices.

The complex society gradually evolved changing the social rules into a more structured sanctions to prevent the violations of those rules essential to group survival. These sanctions have been codified into written rules or laws. And the reward for obeying those laws is simply the ability to function as a respected and productive member of society.

Redress (Compensation) of a wrong act

Retaliation (Personal Vengeance) – the earliest remedy for a wrong act to any one (in the primitive society). The concept of personal revenge by the victim’s family or tribe against the family or

tribe of the offender, hence “blood feuds” was accepted in the early primitive societies.

Fines and Punishment – Customs has exerted effort and great force among primitive societies. The acceptance of vengeance in the form of payment (cattle, food, personal services, etc) became accepted as dictated by tribal traditions. As tribal leaders, elders and later kings came into power, they begun to exert their authority on the negotiations. Wrongdoers could choose to stay away from the proceedings (Trial by ordeal) but if they refuse to abide by the law imposed, they will be declared to be an outlaw.

Early Codes:

History has shown that there are three main legal systems in the world, which have been extended to and adopted by all countries aside from those that produced them. In their chronological order, they are the Roman, the Mohammedan or Arabic and the Anglo-American Laws. Among the three, it was Roman law that has the most lasting and most pervading influence. The Roman private law (Which include Criminal Law), especially has offered the most adequate basic concepts which sharply define, in concise and inconsistent terminology, mature rules and a complete system, logical and firm, tempered with a high sense of equity.
(Coquia, Principles of Roman Law, 1996)

1. Babylonian and Sumerian Codes

a. Code of King Hammurabi (Hammurabic Code) – Babylon, about 1990 BC, credited as the oldest code prescribing savage punishment, but in fact, Sumerian codes were nearly one hundred years older.

2. Roman and Greek Codes

a. **Justinian Code**– 6th C A.D. , Emperor Justinian of Rome wrote his code of law.

An effort to match a desirable amount of punishment to all possible crimes. However, the law did not survive due to the fall of the Roman Empire but left a foundation of Western legal codes.

* The Twelve Tables (XII Tabulae), (451-450 BC) – represented the earliest codification of Roman law incorporated into the Justinian Code. It is the foundation of all public and private law of the Romans until the time of Justinian. It is also a collection of legal principles engraved on metal tablets and set up on the forum.

b. Greek Code of Draco **– In Greece, the Code of Draco, a harsh code that provides the same punishment for both citizens and the slaves as it incorporates primitive concepts (Vengeance, Blood Feuds).**

* The Greeks were the first society to allow any citizen to prosecute the offender in the name of the injured party.

3. **The Burgundian Code (500 A.D)** – specified punishment according to the social class of offenders, dividing them into: nobles, middle class and lower class and specifying the value of the life of each person according to social status.

Early Codes (Philippine Setting)

The Philippines is one of the many countries that cane under the influence of the Roman Law. History has shown that the Roman Empire reached its greatest extent to most of continental Europe such as Spain, Portugal, French and all of Central Europe.

Eventually, the Spanish Civil Code became effective in the Philippines on December 7, 1889, the "Conquistadores" and the "Kodigo Penal"(The Revised Penal Code today, 1930) was introduced by the Spaniards promulgated by the King of Spain. Basically, these laws adopted the Roman Law principles (Coquia, Principles of Roman Law, 1996).

Mostly tribal traditions, customs and practices influenced laws during the Pre-Spanish Philippines. There were also laws that were written which includes:

a. The Code of Kalantiao (promulgated in 1433) – the most extensive and severe law that prescribes harsh punishment.
b. The Maragtas Code (by Datu Sumakwel)
c. Sikatuna Law

Early Prisons:

Mamertine Prison – the only early Roman place of confinement which is built under the main sewer of Rome in 64 B.C

Other places of confinement in the history of confinement include FORTRESSES, CASTLES, and TOWN GATES that were strongly built purposely against roving bands of raiders.

The most popular workhouse was the BRIDEWELL WORKHOUSE (1557) in London which was built for the employment and housing of English prisoners.

Wulnut Street Jail – originally constructed as a detention jail in Philadelphia. It was converted into a state prison and became the first American Penitentiary.

Early prisons in the Philippines:

During the Pre-Spanish period, prison system in the Philippines was tribal in nature. Village chieftains administered it. It was historically traced from the early written laws.

In 1847, the first Bilibid Prison was constructed and became the central place of confienment for Filipino Prisoners by virtue of the Royal decree of the Spanish crown.

In 1936, the City of Manila exchanges its Muntinlupa property with the Bureau of Prisons originally intended as a site for boys' training school. Today, the old Bilibid Prison is now being used as the Manila City Jail, famous as the " May Halique Estate".

IV. THE EMERGENCE OF SECULAR LAW

4th A.D. - Secular Laws were advocated by Christian philosophers who recognizes the need for justice. Some of the proponents these laws were St. Augustine and St. Thomas Aquinas.

Three Laws were distinguished:

1. External Law (Lex Externa)
2. Natural Law (Lex Naturalis)
3. Human Law (Lex Humana)

All these laws are intended for the common good, but the Human law only become valid if it does not conflict with the other two laws.

V. PUNISHMENT

Punishment:

- It is the redress that the state takes against an offending member of society that usually involve pain and suffering.
- It is also the penalty imposed on an offender for a crime or wrongdoing.

Ancient Forms of Punishment:

1. Death Penalty – affected by burning, beheading, hanging, breaking at the wheels, pillory and other forms of medieval executions.
2. Physical Torture – affected by maiming, mutilation, whipping and other inhumane or barbaric forms of inflicting pain.
3. Social Degradation – putting the offender into shame or humiliation.
4. Banishment or Exile – the sending or putting away of an offender which was carried out either by prohibition against coming into a specified territory such as an island to where the offender has been removed.

5. Other similar forms of punishment like transportation and slavery.

Early Forms of Prison Discipline:

1. Hard Labor - productive works.
2. Deprivation – deprivation of everything except the bare essentials of existence
3. Monotony – giving the same food that is “off” diet, or requiring the prisoners to perform drab or boring daily routine.
4. Uniformity – “ we treat the prisoners alike”. “ the fault of one is the fault of all”.
5. Mass Movement – mass living in cell blocks, mass eating, mass recreation, mass bathing.
6. Degradation – uttering insulting words or languages on the part of prison staff to the prisoners to degrade or break the confidence of prisoners.
7. Corporal Punishment – imposing brutal punishment or employing physical force to intimidate a delinquent inmate.
8. Isolation or Solitary Confinement – non-communication, limited news, “ the lone wolf”.

Contemporary Forms of Punishment:

1. Imprisonment – putting the offender in prison for the purpose of protecting the public against criminal activities and at the same time rehabilitating the prisoners by requiring them to undergo institutional treatment programs.
2. Parole - a conditional release of a prisoners after serving part of his/her sentence in prison for the purpose of gradually re-introducing him/her to free life under the guidance and supervision of a parole officer.
3. Probation – a disposition whereby a defendant after conviction of an offense, the penalty of which does not exceed six years imprisonment, is released subject to the conditions imposed by the releasing court and under the supervision of a probation officer.
4. Fine – an amount given as a compensation for a criminal act.
5. Destierro – the penalty of banishing a person from the place where he committed a crime, prohibiting him to get near or enter the 25-kilometer perimeter.

PURPOSES/JUSTIFICATIONS OF PUNISHMENT

1. Retribution – the punishment should be provided by the state whose sanction is violated, to afford the society or the individual the opportunity of imposing upon the

offender suitable punishment as might be enforced. Offenders should be punished because they deserve it.

2. Expiation or Atonement – it is punishment in the form of group vengeance where the purpose is to appease the offended public or group.

3. Deterrence – punishment gives lesson to the offender by showing to others what would happen to them if they violate the law. Punishment is imposed to warn potential offenders that they can not afford to do what the offender has done.

4. Incapacitation and Protection – the public will be protected if the offender has being held in conditions where he can not harm others especially the public. Punishment is effected by placing offenders in prison so that society will be ensured from further criminal depredations of criminals.

5. Reformation or Rehabilitation – it is the establishment of the usefulness and responsibility of the offender. Society's interest can be better served by helping the prisoner to become law abiding citizen and productive upon his return to the community by requiring him to undergo intensive program of rehabilitation in prison.

VI. THE AGE OF ENLIGHTENMENT

18th Century is a century of change. It is the period of recognizing human dignity. It is the movement of reformation, the period of introduction of certain reforms in the correctional field by certain person, gradually changing the old positive philosophy of punishment to a more humane treatment of prisoners with innovational programs.

The Pioneers:

1. William Penn (1614-1718)
   - He fought for religious freedom and individual rights.
   - He is the first leader to prescribe imprisonment as correctional treatment for major offenders.
   - He is also responsible for the abolition of death penalty and torture as a form of punishment.

2. Charles Montesiquieu (Charles Louis Secondat, Baron de la Brede et de Montesiquieu)
   - (1689- 1755) A French historian and philosopher who analyzed law as an expression of justice. He believe that harsh punishment would undermine morality and that appealing to moral sentiments as a better means of preventing crime.

3. VOLTAIRE (Francois Marie Arouet)
   - (1694- 1778) He was the most versatile of all philosophers during this period. He believes that fear of shame was a deterrent to crime. He fought the legality-sanctioned practice of torture.

4. Cesare Bonesa, Marchese de Beccaria (1738-1794)

- He wrote an essay entitled “An Essay on Crimes and Punishment”, the most exiting essay on law during this century. It presented the humanistic goal of law.

5. Jeremy Bentham (1748-1832) – the greatest leader in the reform of English Criminal law. He believes that whatever punishment designed to negate whatever pleasure or gain the criminal derives from crime, the crime rate would go down.

- Bentham was the one who devise the ultimate PANOPTICAN PRISON – a prison that consists of a large circular building containing multi cells around the periphery. It was never built.

6. John Howard (1726 – 1790) – the sheriff of Bedsfordshire in 1773 who devoted his life and fortune to prison reform. After his findings on English Prisons, he recommended the following: single cells for sleeping - segregation of women - segregation of youth - provision of sanitation facilities - abolition of fee system by which jailers obtained money from prisoners.

The Reformatory Movement:

1. Alexander Mocanochie – He is the Superintendent of the penal colony at Norfolk Island in Australia (1840) who introduced the “Mark System”. A system in which a prisoner is required to earn a number of marks based on proper department, labor and study in order to entitle him for a ticket for leave or conditional release which is similar to parole.
2. Manuel Montesimos – The Director of Prisons in Valencia Spain (1835) who devided the number of prisoners into companies and appointed certain prisoners as petty officers in charge, which allowed good behavior to prepare the convict for gradual release.
3. Domets of France – established an agricultural colony for delinquent boys in 1839 providing housefathers as in charge of these boys.
4. Sir Evelyn Ruggles Brise – The Director of the English Prison who opened the Borstal Institution for young offenders. The ***Borstal Institution*** is considered as the best reform institution for young offenders today.
5. Walter Crofton – He is the Director of the Irish Prison in 1854 who introduced the Irish system that was modified from the Mocanochie’s mark system.
6. Zebulon Brockway – The Director of the Elmira Reformatory in New York (1876) who introduced certain innovational programs like the following: training school type - compulsory education of prisoners - casework methods - extensive use of parole - indeterminate sentence

* The ***Elmira Reformatory*** is considered forerunner of modern penology because it had all the elements of a modern system.

The Two Rival Prison System in the History of Correction

A. The Auburn Prison System – the prison system called the "Congregate System".

- The prisoners are confined in their own cells during the night and congregate work in shops during the day. Complete silence was enforced.

B. The Pennsylvania Prison System – the prisons system called "Solitary System".

- Prisoners are confined in single cells day and night where they lived, they slept, they ate and receive religious instructions. Complete Silence was also enforced. They are required to read the Bible.

VII. PENALTY and THE MODERN PERIOD OF CORRECTION

PENALTY is defined as the suffering inflicted by the state against an offending member for the transgression of law.

Juridical Conditions of Penalty

Punishment must be:

1. Productive of suffering – without however affecting the integrity of the human personality.
2. Commensurate with the offense – different crimes must be punished with different penalties (Art. 25, RPC).
3. Personal – the guilty one must be the one to be punished, no proxy.
4. Legal – the consequence must be in accordance with the law.
5. Equal – equal for all persons.
6. Certain – no one must escape its effects.
7. Correctional – changes the attitude of offenders and become law-abiding citizens.

Duration of Penalties

1. Death Penalty – Capital punishment
2. Reclusion Perpetua – life imprisonment, a term of 20-40 yrs imprisonment
3. Reclusion Temporal – 12 yrs and 1 day to 20 years imprisonment
4. Prision Mayor – 6 yrs and 1 day to 12 years
5. Prision Correctional – 6 months and 1 day to 6 years
6. Arresto Mayor – 1 month and 1 day to 6 months
7. Arresto Menor – 1 day to 30 days

8. Bond to Keep the Peace – discretionary on the part of the court.

The modern Period of Correction

Modern Penal Management incorporates general principles of treating offenders that are based on humane practices such as the following:

1. Jail or Prison rules shall be applied impartially without discrimination on ground of race, color, language, religion or other opinion, national or social origin, property, birth or other status.
2. The religious beliefs and moral precepts not contrary to law, which a prisoner holds, must be respected.

3. Prison or Jail rules and regulations shall be applied with firmness but tempered with understanding.

4. Custodial force shall, at all times, conduct themselves as good examples.

5. Abusive or indecent language to prisoners shall not be used.

6. Special care towards inmates shall be practiced preventing humiliation or degradation.

7. No use of force must be made by any of the custodial force, except in self-defense or attempt to escape or in case of passive physical resistance to a lawful order.

8. Custodial force shall bear in mind that prisoners are sick people who need treatment.

THE PHILIPPINE PRISON SYSTEM

I. Bureau of Corrections

Bureau of Prisons was renamed Bureau of Corrections under Executive Order 292 passed during the Aquino Administration. It states that the head of the Bureau of Corrections is the Director of Prisons who is appointed by the President of the Philippines with the confirmation of the Commission of Appointments.

The Bureau of Corrections has general supervision and control of all national prisons or penitentiaries. It is charged with the

safekeeping of all Insular Prisoners confined therein or committed to the custody of the Bureau.

Coverage of the Bureau of Corrections

a. National Bilibid Prisons (Muntinlupa, Rizal)

- New Bilibid Prisons (Main Building)
- Camp Sampaguita
- Camp Bukang Liwayway

b. Reception and Diagnostic Center (RDC)
c. Correctional Institution for Women (Mandaluyong)
d. The Penal Colonies:

- Sablayan Penal Colony and Farm (Occ. Mindoro)
- Iwahig Penal Colony and Farm (Palawan)
- Davao Penal Colony and Farm (Central Davao)
- San Ramon Penal Colony and Farm (Zamboanga)
- Ilo-Ilo Penal Colony and Farm (Ilo-Ilo Province)
- Leyte Regional Prison (Abuyog Leyte)

PRISON Defined:

- A penitentiary, an institution for the imprisonment (incarceration) of persons convicted of major/ serious crimes.

- A building, usually with cells, or other places established for the purpose of taking safe custody or confinement of criminals.

- A place of confinement for those for those charged with or convicted of offenses against the laws of the land.

WHO IS A PRISONER?

- A prisoner is a person who is under the custody of lawful authority. A person, who by reason of his criminal sentence or by a decision issued by a court, may be deprived of his liberty or freedom.

- A prisoner is any person detained/confined in jail or prison for the commission of a criminal offense or convicted and serving in a penal institution.

- A person committed to jail or prison by a competent authority for any of the following reasons: To serve a sentence after conviction – Trial – Investigation –

General Classification of Prisoners

1. Detention Prisoners – those detained for investigation, preliminary hearing, or awaiting trial. A detainee in a lock up jail. They are prisoners under the jurisdiction of Courts.

2. Sentenced Prisoners – offenders who are committed to the jail or prison in order to serve their sentence after final conviction by a competent court. They are prisoners under the jurisdiction of penal institutions.

3. Prisoners who are on Safekeeping – includes non-criminal offenders who are detained in order to protect the community against their harmful behavior. Ex. Mentally deranged individuals, insane person.

Classification of Sentenced Prisoners:

1. Insular or National Prisoners

- Those sentenced to suffer a term of sentence of 3 years and 1 day to life imprisonment.
- Those sentenced to suffer a term of imprisonment cited above but appealed the judgement and unable to file a bond for their temporary liberty.

2. Provincial Prisoners

- Those persons sentenced to suffer a term of imprisonment from 6 months and 1 day to 3 years or a fine not more than 1,000 pesos, or both; or
- ***Those detained therein waiting for preliminay investigation of their cases cognizable by the RTC.***

3. City Prisoners

- Those sentenced to suffer a term of imprisonment from 1 day to 3 years or a fine of not more than 1,000 pesos or both.
- Those detained therein whose cases are filed with the MTC.
- Those detained therein whose cases are cognizable by the RTC and under Preliminary Investigation.

4. Municipal Prisoners

- Those confined in Municipal jails to serve an imprisonment from 1 day to 6 months.
- Those detained therein whose trials of their cases are pending with the MTC.

Classification of Prisoners According to Degree of Security:

1. Super Maximum Security Prisoners

- A special group of prisoners composed of incorrigible, intractable, and highly dangerous persons who are the source of constant disturbances even in a maximum security prison.
- They wear orange color of uniform.

2. Maximum Security Prisoners
- The group of prisoners whose escape could be dangerous to the public or to the security of the state.
- It consist of constant troublemakers but not as dangerous as the super maximum-security prisoners. Their movements are restricted and they are not allowed to work outside the institution but rather assigned to industrial shops with in the prison compound.
- They are confined at the Maximum Security Prison (NBP Main Building), they wear orange color of uniform.
- Prisoners includes those sentenced to serve sentence 20 years or more, or those whose sentenced are under the review of the Supreme Court, and offenders who are criminally insane having severe personality or emotional disorders that make them dangerous to fellow offenders or staff members.

3. Medium Security Prisoners

- Those who can not be trusted in open conditions and pose lesser danger than maximum-security prisoners in case they escape.
- It consist of groups of prisoners who maybe allowed to work outside the fence or walls of the penal institution under guards or with escorts.
- They occupy the Medium Security Prison (Camp Sampaguita) and they wear blue color of uniforms. Generally, they are employed as agricultural workers.
- It includes prisoners whose minimum sentence is less than 20 years and life-sentenced prisoners who served at least 10 years inside a maximum security prison.

4. Minimum Security Prisoners

- A group of prisoners who can be reasonably trusted to serve sentence under “open conditions”.
- This group includes prisoners who can be trusted to report to their work assignments without the presence of guards.
- They occupy the Minimum Security Prison (Camp Bukang Liwayway) and wear brown color uniforms.

WHAT IS A JAIL?

JAIL – is a place for locking-up of persons who are convicted of minor offenses or felonies who are to serve a short sentences

imposed upon them by a competent court, or for confinement of persons who are awaiting trial or investigation of their cases.

Types of Jails:

1. Lock-up Jails – is a security facility, common to police stations, used for temporary confinement of an individual held for investigation.
2. Ordinary Jails – is the type of jail commonly used to detain a convicted criminal offender to serve sentence less than three years.
3. Workhouses, Jail Farms or Camp – a facility that houses minimum custody offenders who are serving short sentences or those who are undergoing constructive work programs. It provides full employment of prisoners, remedial services and constructive leisure time activities.

II. Provincial Jails

Provincial Jails in the Philippines are not under the jurisdiction of the Bureau of Corrections. They are managed and controlled by the provincial government.

III. Bureau of Jail Management and Penology (BJMP)

The BJMP exercises supervision and control over all cities and municipal jails throughout the country. The enactment of Republic Act no. 6975 created the BJMP. It operates as a line bureau under the Department of the Interior and Local Government (DILG).

Mission of the BJMP: The Jail Bureau shall direct, supervise and control the administration and operation of all district, city and municipal jails to effect a better system of jail Management nationwide.

Objectives of the BJMP:

1. To improve the living conditions of the offenders in accordance with the accepted standards set by the United Nations.
2. To enhance rehabilitation and reformation of offenders in preparation for their eventual reintegration into the mainstream of society upon their release.
3. To professionalize jail services.

Principles of the BJMP:

1. It is the obligation of jail authorities to confine offenders safely and provide rehabilitative programs that will negate criminal tendencies and restore their positive values to make them productive and law abiding citizens.

2. No procedure or system of correction shall deprive any offender of hope for his ultimate return to the fold of the law and full membership in society.

3. Unless provided otherwise, any person accused of a criminal offense shall be presumed innocent and his rights, as a free citizen shall be respected, except for such indispensable restraints during his confinement in the interest of justice and public safety.

4. Offenders are human beings entitled to the same basic rights and privileges enjoyed by citizens in a free society, except that the exercise of these rights are limited or controlled for security reasons.

5. Health preservation and prompt treatment of illness or injury is a basic right of every person confined in jail and it is the duty of jail facilities to arrange for their treatment subject to security measures.

6. Members of the custodial force shall set themselves as examples by performing their duties in accordance with the rules and respect the laws duly constituted by authorities.

7. No jail personnel shall be abusive, insulting, indecent languages on the offenders.

8. No jail personnel shall use unnecessary force on offenders except for legitimate self-defense or in cases of attempted active and passive physical resistance to a lawful order.

9. No penalty shall be imposed upon any offender for violation of rules/regulations unless in accordance with duly approved disciplinary procedures.

10. Penalties to be imposed shall not be cruel, inhuman, or degrading, and no physical punishment shall be employed as a correctional measure.

11. Members of the custodial force must understand that offenders need treatment and counseling and the primary purpose of confinement is for safekeeping and rehabilitation.

12. When conducting routinary custodial guarding, the ratio of 1:7, or one guard for every 7 offenders shall be observed.

13. When the offender is in transit, the ratio of 1:1+1 for every offender shall be observed. In case of high-risk offender that demands extra precaution additional guards shall be employed. This manning level shall be national in scope for effective jail administration.

Powers, Functions and Organization of the BJMP

A. Powers:

The Bureau shall exercise supervision and control over all districts, city and municipal jails to ensure a secured, clean, sanitary and adequately equipped jail for the custody and safekeeping of city

and municipal prisoners, any fugitive from justice or persons detained awaiting investigation or trial and/or transfer to the National Penitentiary, and any violent, mentally ill person who endangers himself or the safety of others.

B. Functions:

Inline with its mission, the Bureau endeavors to perform the following:

1. Formulate policies and guidelines on the administration of all districts, city and municipal jails nationwide;
2. Formulate and implement policies for the programs of correction, rehabilitation and treatment of offenders;
3. Plan the program funds for the subsistence allowance of offenders;
4. Conduct researches, develop and implement plans and programs for the improvement of jail services throughout the country.

C. Organization and Key Positions in the BJMP:

The BJMP, also referred to as the Jail Bureau, was created pursuant to Section 60, R.A. no. 6975, and initially consisting of uniformed officers and members of the Jail management and Penology service as constituted under P.D. no. 765.

The Bureau shall be headed by a chief with the rank of Director, and assisted by a Deputy Chief with the Rank of Chief Superintendent.

The Central Office is the Command and Staff HQ of the Jail Bureau composed of 3 Command Groups, 6 Coordinating Staff Divisions, 6 Special Staff Groups and 6 Personal Staff Groups namely:

1. Command Group
    - Chief, BJMP
    - Deputy C/BJMP
    - Chief of Staff
2. Coordinating Staff Groups
    - Administrative Division
    - Operations Division
    - Logistics Division
    - Finance Management Division
    - Research Plans and Programs Division
    - Inspection and Investigation Division
3. Special Staff Groups
    - General Services Unit

- Health Services Unit
- Chaplain Services Unit
- Community Services Unit
- Finance Services Unit
- Hearing Office

4. Personal Staff Groups
   - Aide-de-Camp
   - Intelligence Office
   - Public Information Office
   - Legal Office
   - Adjudication Office
   - Internal Audit

Regional Office:

At the Regional Level, each Region shall have a designated Assistant regional Director for Jail management and Penology.

Provincial Level:

In the Provincial Level, there shall be designated a Provincial Jail Administrator to perform the same functions as the ARDs province wide.

District Office:

In the District Level, where there are large cities and municipalities, a district jail with subordinate jails, headed by a District warden may be established as necessary.

City and Municipal Office:

In the City and Municipal level, a city or municipal Warden shall head each jail.

Rank Classification of the BJMP:

RANK	POSITION/TITLE	APPOINTING AUTHORITY
Director	Chief of the BJMP	Secretary of DILG
C/ Supt.	Deputy C/BJMP	same
Sn. Supt.	Asst. Regional Dir.	same

Supt.	Asst. Regional Dir.	same
Chief Insp.	Warden	Under Secretary
Sn. Insp.	Warden	same
Inspector	Warden	same
SJO 4 to JO1	Jail Guards	Chief of the BJMP

Duties and Responsibilities:

A. WARDEN

- Direction, Coordination, and Control of the Jail
- Responsible for the:
  * Security, safety, discipline and well being of inmates

- The office of the warden may organize the following units:

1. Intelligence and Investigation Team
   – It gathers, collates and submits intelligence information to the office of the warden on matter regarding the jail condition.
2. Jail Inspectorate Section
   - Inspect jail facilities, personnel, prisoners and submit reports to the warden.
3. Public Relation Office
   - Maintain public relation to obtain the necessary and adequate public support.

B. ASSISTANCE WARDEN

- The office of the Assistant Warden undertakes the development of a systematic process of treatment.
- Chairman of the Classification Board and Disciplinary Board.

C. ADMINISTRATIVE GROUPS

The administrative groups take charge of all administrative functions of the jail bureau.

1. Personnel Management Branch
   - Assignment of personnel
   - Procedures of selection
   - Preparation of personnel reports
   - Individual record file
2. Records and Statistics Branch

- Keep and maintain booking sheets and arrest reports
- Keep an orderly record of fingerprints and photographs
- Present/ Prepare statistical data of inmates

3. Property and Supply Branch
   - Take charge of the safekeeping of equipments and supplies and materials needed for the operation of the jail.
4. Budget and Finance Branch
   - Take charge of all financial matters such as budgeting, financing, accounting, and auditing.
5. Mess Service Branch
   - Take charge of the preparation of the daily menu, prepares and cook the food and serve it to inmates.
6. General Service Branch
   - Responsible for the maintenance and repair of jail facilities and equipments. It is also task with the cleanliness and beautification of the jail compound.
7. Mittimus Computing Branch
   - Tasked to receive court decisions and compute the date of the full completion of the service of sentence of inmates.

Mittimus – is a warrant issued by a court directing the jail or prison authorities to receive the convicted offender for the service of sentence imposed therein or for detention.

D. SECURITY GROUPS:

- The security groups provides a system of sound custody, security and control of inmates and their movements and also responsible to enforce prison or jail discipline.

1. Escort Platoon
   a) Escort Section – to escort inmate upon order of any judicial body; upon summon of a court; or transfer to other penal institutions.
   b) Subpoena Section – receives and distribute court summons, notices, subpoenas, etc.

2. Security Platoon – a three (3) working platoon shifts responsible for over all security of the jail compound including gates, guard posts and towers. They are also responsible for the admitting and releasing unit.

E. REHABILITATION PURPOSES GROUPS:

- This group provides services and assistance to prisoners and their families to enable them to solve their individual needs and problems arising from the prisoners' confinement.

1. Medical and Health Services Branch
   - Provides medical and physical examinations of inmates upon confinement, treatment of sick inmates and conduct medical and physical examinations and provide medicines or recommends for the hospitalization of seriously ill prisoners or inmates. It also conducts psychiatric and psychological examinations.
2. Work and Education Therapy Services
   - It take charge of the job and educational programs needed for rehabilitation of inmates by providing them job incentives so they can earn and provide support for their families while in jail.
3. Socio- Cultural Services
   - It takes care of the social case work study of the individual prisoners by making interviews, home visits, referral to community resources, free legal services, and liaison works for the inmates.
4. Chaplaincy Services
   - It takes charge of the religious and moral upliftment of the inmates through religious services. This branch caters to all religious sects.
5. Guidance and Counseling Services
   - Responsible for the individual and group counseling activities to help inmates solve their individual problems and to help them lead a wholesome and constructive life.

THE RECEPTION AND DIAGNOSTIC CENTER (RDC)

This is a special unit of prison (Camp Sampaguita) where new prisoners undergo diagnostic examination, study and observation for the purpose of determining the programs of treatment and training best suited to their needs and the institution to which they should be transferred.

It is composed of the following staff members:

1. The Psychiatrist – responsible in the examination of the prisoner's mental and emotional make-up.
2. The Psychologist – responsible to conduct study on the character and behavior of the prisoners.
3. The Sociologist – study the social case situation of the individual prisoner.
4. The Educational Counselor – conducts orientation classes in order to change inmates' attitude towards education and recommends educational program for the prisoner.

5. The Vocational Counselor – to test the prisoner's special abilities, interest and skills and recommends for the vocational course best suited to the prisoner.
6. The Chaplain – encourage the prisoner to participate in religious activities.
7. The Medical Officer – conducts physical examination and recommends medical treatment of prisoners.
8. Custodial-Correctional Officer – recommends the transfer and type of custody of inmates.

THE QUARANTINE CELL OR UNIT

This may be a unit of the prison or a section of the RDC where the prisoner is given thorough physical examination including blood test, x-rays, vaccinations and immunity. This is for the purpose of insuring that the prisoner is not suffering from any contagious disease, which might be transferred to the prison population.

ADMISSION PROCEDURES IN PRISON

1. RECEIVING – the new prisoner is received at the RDC. The new prisoner usually comes from a provincial or city jail where he was immediately committed upon conviction by the court, and escorted by the escort platoon during his transfer to the National Prison.

2. CHECKING OF COMMITMENT PAPERS – the receiving officer checks the commitment papers if they are in order. That is, if they contain the signature of the judge or the signature of the clerk of court, and the seal of the court.

3. IDENTIFICATION – the prisoner's identity is established through the picture and fingerprint appearing in the commitment order. This is to insure that the person being committed is the same as the person being named in the commitment order.

4. SEARCHING – this step involves the frisking of the prisoner and searching his personal things. Weapons and other items classified as contraband are confiscated and deposited to the property custodian. Other properties are deposited with the trust fund officer under recording and receipts.

5. BRIEFING AND ORIENTATION – the prisoner will be brief and oriented on the rules and regulations of the prison before he will be assigned to the RDC or the quarantine unit.

THE TREATMNENT PROGRAMS

A. The Institutionalized Treatment Programs

1. Prison Education – the cornerstone of rehabilitation. It is the process or result of formal training in school or classrooms intended to shape the mind and attitude of prisoners towards good living upon their release.

2. Work Programs – these are programs conducive to change behavior in morale by training prisoners for a useful occupation. It is purposely to eliminate idleness on the part of prisoners, which may contribute to "Prison stupor", and it affects the incidence of Prison riot.

3. Religious Services in Prison - The purpose of this program is to change the attitudes of inmates by inculcating religious values or belief.

4. Recreational Programs - The only program that is conducted during free time schedule.

5. **Medical and Health Services -** Medical and health services includes: Mental and physical examination - Diagnosis and treatment – Immunization – Sanitary - inspections - Participation in training

6. Counseling and Casework

B. Community-Based Treatment Programs

<u>Forms of Community-Based Programs</u>

1. PROBATION – It is a disposition whereby a defendant, after conviction of an offense, the penalty of which does not exceed 6 years of imprisonment, is released subject to the conditions imposed by the releasing court and under the supervision of a probation officer.

Probation is a substitute for imprisonment, the probationer is compared to an out-patient, a sick person who does not need to be hospitalized because his illness is considered less serious.

Presidential Decree 968 otherwise known as the "Philippine Probation Law" approved and took effect on July 24, 1976. Section 18, PD 968 as amended states the creation of Probation Administration under the DOJ, which shall exercises general supervision over all probationers.

2. PAROLE

Parole is the process of suspending the sentence of a convict after having served the minimum of his sentence without granting him pardon, and prescribing the terms upon which the sentence shall be suspended. (Cirilo Tradio).

It is a decision by an authority constituted accordingly by statute to determine the portion of the sentence, which the inmate can complete outside of the institution. It is the status of serving the remainder of the sentence of a convict in the community in accordance with the rules and regulations set-up by the Board of Parole. (Correctional and Parole Administration).
* Parole is not a reward per se for good behavior but rather, it is a follow-up of his institutional program.
* Parole is not claimed as a right but it is granted by the Board as a privilege to a qualified prisoner.

The Board of Pardons and Parole (BPP)

A quasi-judicial body which was created under Act no. 4103 otherwise known as the Indeterminate Sentence Law or the Parole Law, the agency that grants parole to any prisoner who is qualified to enjoy its benefit.

It employs the service of Parole Officers in providing supervision and guidance to parolees.

Who are disqualified for Parole?

1. Those prisoners who are sentenced with capital punishment or life imprisonment,
2. Those who are convicted of treason, conspiracy or proposal to commit treason, misprision of treason, rebellion, sedition or piracy,
3. Habitual Offenders,
4. Those who escaped from confinement or evaded sentence,
5. Those who have been granted with conditional pardon but violated the terms and conditions thereof, and
6. Those prisoners who are serving a maximum term of imprisonment not exceeding one year.

3. CONDITIONAL PARDON

Conditional pardon serves the purpose of releasing, through executive clemency, a prisoner who is already reformed or rehabilitated but who can not be paroled because the parole law does not apply to him.

Distinction of Parole from Probation

Parole:	**Probation:**
1. An administrative function exercised by the executive branch of government	1. It is a judicial function

2. Granted to a prisoner only after he has served minimum of his sentenced.	2. Granted to an offender Immediately after conviction in prison
3. It is an extension of institutional treatment program.	3. It is a substitute for imprisonment.
4. It is granted by the BPP	4. It is granted by the court
5. Parolee is supervised by a Parole Officer	5. Probationer is supervised by a Probation Officer.

Forms of Executive Clemencies

Commutation – an act of the president changing/ reducing a heavier sentence to a lighter one or a longer term into a shorter term. It may alter death sentence to life sentence or life sentence to a term of years. It does not forgive the offender but merely to reduce the penalty pronounced by the court.

Reprieve – a temporary stay of the execution of sentence especially the execution of the Death Sentence. Generally, reprieve is extended to prisoners sentenced to death. The date of execution of sentenced is set back several days to enable the Chief to study the petition of the condemned man for commutation of sentenced or pardon.

Pardon – an act of grace extended to prisoners as a matter of right, vested to the Chief Executive (The President) as a matter of power.

Two Kinds of Pardon

a. Conditional Pardon – a pardon given with requirements attached.
b. Absolute Pardon – a pardon given without any condition attached.

Can the Offended Party grant Pardon?
- Yes, the offended party can grants pardon.

Distinction of the pardon by the Offended Party And Pardon Granted by the President

1. Pardon granted by the Chief Executive extinguishes the criminal liability of the offender, but not in the pardon granted by the offended party.

2. Pardon granted by the Chief Executive does not include civil liability, which the offender must pay, while pardon granted by the

offended party can waive the civil liability, which the offender must pay.

3. Pardon granted by the offended party should be given before the prosecution of the criminal action, whereas pardon by the Chief Executive may be extended to any of the offenders after conviction.

Distinction between Amnesty and Pardon

Pardon – includes any crime and is exercised individually by the President. It is exercised when the person is already convicted. It looks forward and forgives the offender from the consequences of an offense of which he has been convicted, that is it abolishes or forgives the punishment.

Amnesty – a general pardon extended to a class of persons or community who may be guilty of political offenses. It may be exercised even before trial or investigation. It looks backward and puts into oblivion the crime that has been committed. It is proclamated by the President with the concurrence of congress.

INSTITUTIONAL CUSTODY, SECURITY AND CONTROL

I. Diversification: Concept and Importance

Diversification is an administrative device of correctional institutions of providing varied and flexible types of physical plants for the more effective custody, security and control of the treatment programs of its diversified population.

II. The Classification Process

Classification ***is a method by which diagnosis, treatment planning and execution of the treatment programs are coordinated in the individual case study. It is a process of determining the needs and requirement of prisoners for assigning them to programs according to their needs and existing resources.***

III. PRISON Security, Custody and Control

Security – It involves safety measures to maintain the orderliness and discipline with in the jail or prison.

Prison Discipline – is the state of good order and behavior. It includes maintenance of good standards of works, sanitation, safety, education, health and recreation. It aims at self-reliance, self control, self respect and self discipline.

Preventive Discipline – is the prompt correction of minor deviations committed by prisoners before they become serious violations.

Control – It involves supervision of prisoners to ensure punctual and orderly movement from one place work program or assignment to another.

Custody – is the guarding or penal safekeeping, it involves security measures to insure security and control with in the prison. The Prison Custodial Division carries it out.

PENAL PROVISIONS ON CORRECTION

I. Philippine Correctional Philosophies and their Legal Basis

A. The Philippine Constitution of 1997

1. The state values the dignity of every human person and guarantees full respect for human rights. (Sec 11, Art. II)

2. No person shall be detained solely by reason of his political beliefs and aspirations. (Sec 18 (1), Art. III)

3. No involuntary servitude in any form shall exist except as a punishment for a crime whereof the party shall have been fully convicted. (Sec. 18 (2), Ibid.)

4. Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. x x x (Sec. 19 (2). Ibid.)

5. The employment of physical, psychological, or degrading punishment against any prisoner or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt by law.
(Sec.19 (2), Ibid.)

B. The Revised Penal Code

"No felony shall be punishable by any penalty not prescribed by law prior to its commission". (Art. 21, RPC)

C. The Philippine Probation Law (P.D. No. 968)

x x x one of the major goals of the government is to established a more enlightened and humane correctional system that will promote the reformation of offenders and thereby reduce the incidence of recidivism.

x x x the confinement of all offenders in prisons and other institutions with rehabilitation programs constitutes an onerous drain on the financial resources of the country.

x x x there is a need to provide a less costly alternative to the imprisonment of the offenders who are likely to respond to individualized, community-based treatment programs.

D. Rules for the Treatment of Prisoners (DOJ, Jan 7, 1959)

1. The purpose of committing a prisoner to prison is two-fold:
a. To segregate from society a person who by his acts has proven himself a danger to the free community;
b. To strive at the correction or rehabilitation of the prisoner with the hope that upon his return to society he shall be able to lead a normal well adjusted and self supporting life as a good and law abiding citizen.

2. There is no man who is all bad and there is something good in all men. (Art. I)

II. Penal Provisions

Delay in the Delivery of Detained Persons to the Proper Judicial Authorities.

(Art 125, RPC), A felony committed by a public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities with in the period of:

12 hours – for crimes or offenses punishable by light penalties,
18 hours – for crimes or offenses punishable by correctional penalties,
36 hours – for crimes or offenses punishable by afflictive or capital penalties.

The crime of Arbitrary Detention is committed when the detention of a person is without legal ground.

The legal ground of detention are : a) commission of a crime and b) violent insanity or other ailment requiring compulsory requirement.

Delaying Release

This is committed by a public officer or employee who delays for the period of time specified in Art 125, the performance of any judicial or executive order for the release of a prisoner or unduly delays the services of the notice of such order to said prisoner.

Delivery of Prisoners from Jail (Art. 156, RPC)

Elements:
a) The offender is a private individual,
b) He removes a person confined in jail or a penal institution or helps in the escape of such person,

c) The means employed are violence, intimidation, bribery or any other means.

The prisoner maybe a detention or sentenced prisoner and the offender is an outsider to the jail. If the offender is a public officer or a private person who has the custody of the prisoner and who helps a prisoner under his custody to escape, the felony is Conniving with or Consenting to Evasion (Art. 223) and Escape of a Prisoner under the custody of a person not a public officer (Art. 225) respectively.

This offense like other offenses of similar nature may be committed through imprudence or negligence.

Evasion of Service of Sentence (Art 157-159, RPC)

1. Evasion of Service under Art 157, RPC

Elements:

a) Offender is a prisoner serving sentence involving deprivation of liberty by reason of final judgement.

b) He evades the service of his sentence during the term of his imprisonment.

This felony is qualified when the evasion takes place by breaking doors, windows, gates, roofs or floors; using picklocks, false keys, disguise, deceit, violence, intimidation or; connivance with other convicts or employees of the penal institution. (Jail breaking is synonymous with evasion of sentence).

2. Evasion of Service of Sentence on the Occasion of Disorders due to Conflagrations, Earthquakes, or Other Calamities (Art. 158, RPC)

Elements:

a) Offender is a prisoner serving sentence and is confined in a penal institution.

b) He evades his sentence by leaving the institution.

c) He escapes on the occasion of a disorder due to conflagration, earthquake, explosion, or similar catastrophe or mutiny in which he has not participated, and

d) He fails to give himself up to the authorities with in 48 hours following the issuance of a proclamation by the Chief Executive regarding the passing away of the calamity.

A special time allowance for loyalty shall be granted. A deduction of one-fifth of the period of the sentence of any prisoner who evaded the service of sentence under the circumstances mentioned above. The purpose of the law in granting a deduction of one-fifth (1/5) of the period of sentence is to reward the convict’s

manifest intent of paying his debts to society by returning to prison after the passing away of the calamity.

Whenever lawfully justified, the Director of Prisons (Bureau of Corrections) shall grant allowance for good conduct and such allowances once granted shall not be revoked.

3. Other cases of Evasion of Service of Sentence (Art. 159, RPC)

The violation of any conditions imposed to a Conditional Pardon is a case of evasion of service of sentence.

The effect of this is, the convict may suffer the unexpired portion of his original sentence

Infidelity of Public Officers

1. Infidelity in the Custody of Prisoners Through Connivance (Art.223, RPC)

A felony committed by any public officer who shall consent to the escape of a prisoner in his custody or charge.

2. Infidelity in the Custody of Prisoners through Negligence (Art. 224, RPC)

A felony committed by a public officer when the prisoner under his custody or charge escaped through negligence on his part.

3. Escape of a Prisoner under the Custody of a Person not a Public Officer. (Art 225, RPC)

Other Offenses or Irregularities by Public Officers

1. Maltreatment of Prisoner (Art. 235, RPC)

Elements:

a) Offender is a public officer or employee,

b) He overdoes himself in the correction or handling of such prisoner by imposition of punishment not authorized by regulation or by inflicting such punishment in a cruel and humiliating manner.

The felony of Physical Injuries if committed if the accused does not have the charge of a detained prisoner and he maltreats him. And if the purpose is to extort a confession, Grave Coercion will be committed.

III. Good Conduct Time Allowance (GCTA)

Good conduct time allowance is a privilege granted to a prisoner that shall entitle him to a deduction of his term of imprisonment.

Under Art.97, RPC, the good conduct of any prisoner in any penal institution shall entitle him to the following deduction from the period of his sentence:

1. During the first two years of his imprisonment, he shall be allowed a deduction of 5 days for each month of good behavior.
2. During the third to the fifth years of his imprisonment, he shall be allowed a deduction of 8 days each month of good behavior.
3. During the following years until the tenth years of his imprisonment, he shall be allowed a deduction of 10 days each month of good behavior.
4. During the eleventh and the successive years of his imprisonment, he shall be allowed a deduction of 15 days each month of good behavior.

REPUBLIC ACT NO. 7877 February 15, 1995

AN ACT DECLARING SEXUAL HARASSMENT UNLAWFUL IN THE EMPLOYMENT, EDUCATION OR TRAINING ENVIRONMENT, AND FOR OTHER PURPOSES

I. FULL TEXT

Sec. 1. Title. This Act shall be known as the "Anti-Sexual Harassment Act of 1995."

Sec. 2. Declaration of Policy. The State shall value the dignity of every individual, enhance the development of its human resources, guarantee full respect for human rights, and uphold the dignity of workers, employees, applicants for employment, students or those undergoing training, instruction or education. Towards this end, all forms of sexual harassment in the employment, education or training environment are hereby declared unlawful.

Sec. 3. Work Education or Training-related Sexual Harassment Defined. Work, education of training-related sexual harassment is committed by an employer, employee, manager, supervisor, agent

of the employer, teacher, instructor, professor, coach, trainor, or any other person who, having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said Act.

(a) In a work-related or employment environment, sexual harassment is committed when:
(1) The sexual favor is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual, or in granting said individual favorable compensation, terms, conditions, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee;

(2) The above acts would impair the employee's rights or privileges under existing labor laws; or
(3) The above acts would result in an intimidating, hostile, or offensive environment for the employee.
(b) In an education or training environment, sexual harassment is committed:
(1) Against one who is under the care, custody or supervision of the offender;
(2) Against one whose education, training, apprenticeship or tutorship is entrusted to the offender;
(3) When the sexual favor is made a condition to the giving of a passing grade, or the granting of honors and scholarships, or the payment of a stipend, allowance or other benefits, privileges or considerations; or

(4) When the sexual advances result in an intimidating, hostile or offensive environment for the student, training or apprentice.
Any person who directs or induces another to commit any act of sexual harassment as herein defined, or who cooperates in the commission thereof by another without which it would not have been committed, shall also be held liable under this Act.
Sec. 4. Duty of the Employer or Head of Office in a Work-related, Education or Training Environment. It shall be the duty of the employer or the head of the work-related, educational or training environment or institution, to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment . Towards this end, the employer or head of office shall:

(a) Promulgate appropriate rules and regulations in consultation with an jointly approved by the employees or students or trainees, through their duly designated representatives, prescribing the procedure for the investigation of sexual harassment cases and the administrative sanctions therefor.
Administrative sanctions shall not be a bar to prosecution in the proper courts for unlawful acts of sexual harassment.
The said rules and regulations issued pursuant to this sub-section (a) shall include, among others, guidelines on proper decorum in the workplace and educational or training institutions.

(b) Create a committee on decorum and investigation of cases on sexual harassment. The committee shall conduct meetings, as the case may be, with officers and employees, teachers, instructors, professors, coaches, trainors and students or trainees to increase understanding and prevent incidents of sexual harassment. It shall also conduct the investigation of alleged cases constituting sexual harassment.
In the case of a work-related environment, the committee shall be composed of at least one (1) representative each from the management, the union, if any, the employees form the supervisory rank, and from the rank and file employees.

In the case of the educational or training institution, the committee shall be composed of at least one (1) representative from the administration, the trainors, teachers, instructors, professors or coaches and students or trainees, as the case may be.
The employer or head of office, educational or training institution shall disseminate or post a copy of this Act for the information of all concerned.
Sec. 5. Liability of the Employer, Head of Office, Educational or Training Institution. The employer or head of office, educational or training institution shall be solidarity liable for damages arising from the acts of sexual harassment committed in the employment, education or training environment if the employer or head of office, educational or training institution is informed of such acts by the offended party and no immediate action is taken thereon.

Sec. 6. Independent Action for Damages. Nothing in this Act shall preclude the victim of work, education or training-related sexual harassment from instituting a separate and independent action for damages and other affirmative relief.
Sec. 7. Penalties. Any person who violates the provisions of this Act shall, upon conviction, be penalized by imprisonment of not less than one (1) month nor more than six (6) months, or a fine of not less than Ten thousand pesos (P10,000) nor more than Twenty thousand pesos (P20,000) or both such fine and imprisonment at the discretion of the court.

Any action arising from the violation of the provisions of this Act shall prescribe in three (3) years.

Sec. 8. Separability Clause. If any portion or provision of this Act is declared void or unconstitutional the remaining portions of provisions hereof shall not be affected by such declaration.

Sec. 9. Repealing Clause. All laws, decrees, orders, rules and regulations, other issuances, or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

Sec. 10. Effectivity. This Act shall take effect fifteen (15) days after its complete publication in at least two (2) national newspapers of general circulation.

Approved,

EDGARDO J. ANGARA JOSE DE VENECIA, JR.

President of the Senate Speaker of the House

of Representatives

This Act which is a consolidation of House Bill No. 9425 and Senate Bill No. 1632 was finally passed by the House of Representatives and the Senate on February 8, 1995.

EDGARDO E. TUMANGAN CAMILO L. SABIO

Secretary of the Senate Secretary General

House of Representatives

Approved: Feb. 15, 1995

FIDEL V. RAMOS

President of the Philippines

II. EXPLANATION

I. Work Education or Training-related Sexual Harassment Defined.

Work, education of training-related sexual harassment is committed by an employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainor, or any other person who, having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said Act.

(a) In a work-related or employment environment, sexual harassment is committed when:

(1) The sexual favor is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual, or in granting said individual favorable compensation, terms, conditions, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee;

(2) The above acts would impair the employee's rights or privileges under existing labor laws; or

(3) The above acts would result in an intimidating, hostile, or offensive environment for the employee.

(b) In an education or training environment, sexual harassment is committed:

(1) Against one who is under the care, custody or supervision of the offender;

(2) Against one whose education, training, apprenticeship or tutorship is entrusted to the offender;

(3) When the sexual favor is made a condition to the giving of a passing grade, or the granting of honors and scholarships, or the payment of a stipend, allowance or other benefits, privileges or considerations; or

(4) When the sexual advances result in an intimidating, hostile or offensive environment for the student, training or apprentice.

Any person who directs or induces another to commit any act of sexual harassment as herein defined, or who cooperates in the commission thereof by another without which it would not have been committed, shall also be held liable under this Act.

II. Duty of the Employer or Head of Office in a Work-related, Education or Training Environment.

It shall be the duty of the employer or the head of the work-related, educational or training environment or institution, to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment . Towards this end, the employer or head of office shall:

(a) Promulgate appropriate rules and regulations in consultation with an jointly approved by the employees or students or trainees, through their duly designated representatives, prescribing the procedure for the investigation of sexual harassment cases and the administrative sanctions therefor.

Administrative sanctions shall not be a bar to prosecution in the proper courts for unlawful acts of sexual harassment.

The said rules and regulations issued pursuant to this sub-section (a) shall include, among others, guidelines on proper decorum in the workplace and educational or training institutions.

(b) Create a committee on decorum and investigation of cases on sexual harassment. The committee shall conduct meetings, as the case may be, with officers and employees, teachers, instructors, professors, coaches, trainors and students or trainees to increase understanding and prevent incidents of sexual harassment. It shall also conduct the investigation of alleged cases constituting sexual harassment.
In the case of a work-related environment, the committee shall be composed of at least one (1) representative each from the management, the union, if any, the employees form the supervisory rank, and from the rank and file employees.

In the case of the educational or training institution, the committee shall be composed of at least one (1) representative from the administration, the trainors, teachers, instructors, professors or coaches and students or trainees, as the case may be.
The employer or head of office, educational or training institution shall disseminate or post a copy of this Act for the information of all concerned.

III. Liability of the Employer, Head of Office, Educational or Training Institution.

The employer or head of office, educational or training institution shall be solidarity liable for damages arising from the acts of sexual harassment committed in the employment, education or training environment if the employer or head of office, educational or training institution is informed of such acts by the offended party and no immediate action is taken thereon.

IV. Independent Action for Damages. Nothing in this Act shall preclude the victim of work, education or training-related sexual harassment from instituting a separate and independent action for damages and other affirmative relief.

V. Penalties.

Any person who violates the provisions of this Act shall, upon conviction, be penalized by imprisonment of not less than one (1) month nor more than six (6) months, or a fine of not less than Ten thousand pesos (P10,000) nor more than Twenty thousand pesos (P20,000) or both such fine and imprisonment at the discretion of the court.

VI. Prescription.

Any action arising from the violation of the provisions of this Act shall prescribe in three (3) years.

III JURISPRUDENCE

SARAH B. VEDAÑA, complainant,

vs.

JUDGE EUDARLIO B. VALENCIA, respondent.

DAVIDE, JR., J.:p

Respondent Judge Eudarlio B. Valencia, Presiding Judge of Branch 222 (Quezon City) of the Regional Trial Court, National Capital Judicial Region, was charged with gross misconduct and immoral acts by complainant Sarah B. Vedaña in a sworn letter dated 15 May

1996 addressed to the Chief Justice through then Deputy Court Administrator Bernardo P. Abesamis.
Complainant serves as the court interpreter in respondent's court, and at the same time, is distantly related to respondent as their maternal grandmothers are first cousins.

Complainant narrated the factual basis of her charge thus:

On May 8, 1996 on or about 2:00 p.m. before the start of the scheduled hearing of cases, the undersigned complainant in her capacity as a court employee, being a Court Interpreter knocked at the door of the chamber of the respondent, opened the door to inform the respondent that the cases scheduled for hearing are ready. At this juncture, respondent directed the undersigned to come in said chamber. Being a subordinate and thinking that instructions will be given, I did [sic] complied and went inside the chamber. When I was standing beside his table awaiting for instructions, respondent held my hands. Bearing in mind that the respondent is a relative and the holding of my hand was without malice, I did not make any reaction. It was only when my hand was held for quite sometime and sensing ulterior motive, I pulled my hand. Respondent stood up from his chair, hugged me and tried to kiss me on the lips which I was able to evade and his lips landed on my cheek.

Feeling totally shocked by the actuation of the respondent and considering that he is a relative, I ran out from the chamber and went to my office table to have a relief [sic]. With the dastardly acts committed in the person of the herein complainant that caused mental anguish, a request was made on my co-employee, Mr. Eduard Lorenzo to take my place in the court hearing.

In the resolution of 15 July 1996, we required respondent to comment on the complaint and, upon recommendation of the Office of the Court Administrator, placed him under preventive suspension and referred the case to Associate Justice Delilah V. Magtolis of the Court of Appeals for investigation, report and recommendation.
On 13 August 1996, respondent filed an Urgent Motion for Reconsideration of his preventive suspension and asked to have it lifted as he was entitled to: (a) the "presumption of innocence against a false and fabricated administrative complaint;" and (b) "due process of law." Moreover, "the lifting of [the] suspension order will not affect the impartial investigation of [the] case;" and the suspension order "will create a false impression of guilt."

On 15 August 1996, respondent filed his Comment (cum Motion to Dismiss) wherein, as his defense, he alleged that: (a) the commission of the alleged misconduct "is inherently and highly

improbable;" and (b) the complaint "is motivated by [a] personal grudge." He then prayed once more that the suspension order be lifted.
In the resolution of 2 September 1996, we noted the motion for reconsideration and referred the comment to the designated investigating Justice, Mme. Justice Magtolis, who was directed to conduct the investigation and submit her report and recommendation within ninety (90) days.

On 19 September 1996, complainant filed her reply to respondent's comment. She asserted that the denial of respondent could not prevail over her clear and positive assertion and that she could have never been motivated by a personal grudge; if, indeed, respondent had not committed the imputed acts, he would not have requested immediate common relatives, such as the Mayor of Masbate, together with Fiscal Narciso Resero, Jr., to mediate and seek her forgiveness.
On 7 October 1996, respondent filed an Urgent Second Motion to Lift Indefinite Preventive Suspension.

On 14 October 1996, we granted the inhibition of Mme. Justice Magtolis because her daughter and respondent's son were batchmates in law school and re-assigned the case to Mme. Justice Portia A. Hormachuelos for investigation, report and recommendation. However, the latter requested that she be allowed to inhibit herself to avoid being "misinterpreted" in view of her recommendation in another case involving sexual harassment by a judge which resulted in the latter's dismissal from the service. On 22 January 1997, we granted the request and designated Mr. Justice Romeo A. Brawner of the Court of Appeals the investigating Justice.

On 7 March 1997, we required Mr. Justice Brawner to furnish a report and recommendation on respondent's Urgent Second Motion to Lift Preventive Suspension; and in his Report and Recommendation filed on 2 April 1997, Justice Brawner recommended that the motion be granted.
On 28 April 1997, we approved Justice Brawner's recommendation and lifted respondent's preventive suspension.
Justice Brawner conducted hearings and received the evidence for the parties. Thereafter, on 13 May 1998, he submitted his Report and Recommendation, wherein he disclosed that the "tedious hearing[s] starting on March 5, 1997 and ending on December 10, 1997 piled up 2,432 pages of transcripts of stenographic notes taken during the eleven (11) trial dates" when complainant and her witnesses Marife Opulencia, Joselito Bacolod and Vife Legaspi, and respondent and his witnesses Bernardo Mortel and Neri G. Loi testified; and made the following findings of fact and conclusions:

The complainant is the Court Interpreter while the respondent is the Presiding Judge, of the Regional Trial Court (RTC), Branch 222 at Quezon City.
On May 8, 1996 at around 2:00 o'clock in the afternoon, as was her want to do, the complainant went to the respondent Judge's chamber to inform him that the cases were ready for trial. She knocked on the door and upon being told to enter, she poked her head inside the room and told the respondent that the parties were all present. The respondent however, called her inside the chamber and bidding to the request, she went in and stood beside his table. The respondent then held her right hand and tried to kiss her on the lips. However, she evaded the kiss and it landed on her cheek. The respondent then held her left breast. In her struggle to beak free of the respondent's hold, the pen she held in her hand fell to the floor. She was able to free herself, hence she picked up the pen and left the room in a hurry. No one was in the staff room when she went out and she went straight to the courtroom to perform her duties as Court Interpreter. The rest of the staff were already at their respective stations awaiting the Judge's entrance. Feeling shocked at what happened, the complainant approached Eduardo Lorenzo who was then on apprenticeship training in the court and asked him to help her do the interpreting just in case the need would arise. Eduardo Lorenzo acceded to her request. The complainant, however, remained in the courtroom during the entire session except for a few minutes when she went out to the staff room to get a needed record.

During the whole time that she was inside the courtroom, the complainant never revealed what happened. When the court session was over however at around 4:30 o'clock in the afternoon, she approached the court stenographer, Vife Legaspi, and asked her if she was going somewhere. Receiving a negative answer, the complainant requested her to accompany her (complainant) to Shoemart Shopping Mall (SM). They took a cab and while inside and on their way to SM, the complainant could not hold it any longer and the dam broke. The complainant was hysterical, trembling and crying at the same time when she told Vife Legaspi that something terrible happened. She narrated what the respondent Judge did to her inside the chamber. Upon reaching SM, the two ladies stayed at a fast food restaurant where they sat conversing for around 3 hours on what the complainant should do about the incident.

While at SM, the complainant called her best friend and classmate at the Manuel Luis Quezon University College of Law, Marife Opulencia.
Marife Opulencia recalls receiving a call from the complainant at around 6:00 o'clock in the evening of May 8, 1996. She was then in her office working overtime when a distraught complainant who

could hardly speak called her up. She then told the complainant to calm down, take a deep breath and relate what happened. Crying over the phone, the complainant narrated what the respondent Judge did to her. Marife Opulencia advised the complainant to go home to her parents and tell them what happened as it was a family matter, the respondent Judge being a distant relative of the complainant.

The complainant then went home to Dagupan City and informed her parents who were both shocked at what happened considering that the respondent Judge was a distant relative on complainant's maternal side and a colleague, complainant's father being a Judge in Dagupan City.
The following day, May 9, 1996, the complainant's mother went with her back to Manila as the former wanted to talk to the respondent Judge about what happened. However, that day was the sports festival of the RTCs in Quezon City and thus it was not a working day. The respondent Judge was not around and hence there was no occasion for complainant's mother to talk to him.

Because of the incident, the complainant could not face going back to work at Branch 222 and hence she went on leave from May 10, to June 10, 1996. She subsequently requested that she be detailed elsewhere, which letter-request, although citing a different cause for the detail, was approved and thus she was detailed in the office of Judge Amelia R. Andrade of the RTC, Branch 5 in Manila.
Wanting the respondent Judge to face sanction[s] for his unbecoming behavior, the complainant instituted the present charges for "Gross Misconduct and Immoral Acts".

In her complaint, complainant stated that the respondent Judge made attempts to try to dissuade her from continuing with her charges. She presented a common relative, Joselito Bacolod, to prove this.
Joselito Bacolod testified that respondent Judge is a grandson of his mother while complainant is his niece, complainant's mother being his older sister. Sometime during the last week of June, 1996, the respondent Judge paid a visit to Joselito Bacolod's mother. His mother then called for him and his elder brother. The respondent Judge then requested all of them to go to Dagupan City and try to persuade the complainant and her parents to drop the case against him as he was retiring from the service in two years time. When asked why he, would do such a thing to a relative, the respondent Judge stated that it was only a fatherly kiss and besides, it was complainant's hair that he kissed as her perfume smelled good. The respondent Judge gave Joselito Bacolod P1,000.00 for the use of his taxi to go to Dagupan City.

Respondent Judge absolutely denied all charges against him. He categorically asserted that on that day at 2:00 o'clock in the afternoon, he was inside his chamber waiting to be called if the cases were ready. The complainant then came and knocked on his door and entered informing him that the cases were ready for trial. He then prepared himself and stood up and got his robe which was hanging on the wall and as soon as the complainant went out of his chamber, he followed, entered the courtroom and heard the cases that day.

He recalls that the complainant applied and was appointed as Court Stenographer in 1995 but she never did any courtroom duty as such causing him to believe that she was not proficient at stenography. She then transferred to the position of Court Interpreter sometime in October, 1995.
The respondent admits that indeed he and the complainant are distant relatives as their maternal grandmothers are first cousins and that they visit each other's families.
The respondent further declares that the complainant came to him and requested that she be detailed somewhere near Manuel Luis Quezon University where she is a law student as she has difficulty commuting from the office to school. However, the respondent did not agree to a detail as the position would not be vacant and his court would be without an Interpreter. He did agree to a transfer so he could fill in the vacancy and not unduly paralyze the operations of his office.

As he denied the request for detail, he surmised that this might have prompted the complainant to file this false and malicious charges [sic] against him.
The complainant did not report for work after May 8, 1996 and he was informed by the Clerk of Court that she was on leave until June 10, 1996. However, after the said date, the complainant did not yet put in an appearance so he recommended that she be declared absent without official leave (AWOL).
He only found out about the case against him on August 9, 1996 when he was required by the Supreme Court to comment on the complaint at the same time putting him on preventive suspension.

Coming to his defense are two of his staff, Bernardo Mortel, the Process Server and Neri G. Loi, the Sheriff IV. Both executive an affidavit stating that "because the Chamber's door remained open, we saw Ms. Sarah Vedaña and the Judge conversing and we did not see any untoward incident happening inside the chamber, much less the Judge allegedly hugging and kissing Ms. Sarah Vedaña" (Joint Affidavit, Exhibit "23"). Further, both claimed that they voluntarily executed the affidavit without any prodding nor pressure from the respondent.

With these facts presented, the Investigating Justice has thoroughly sifted through the voluminous transcript of records to separate the material from the immaterial facts, the true [sic] from the fiction. Amidst all the complainant's assertions and the respondent's counter-statements, one thing stands out: that the incident did happen the way the complainant said it be [sic].
First, the complainant narrated her story complete with details. She narrated basically the same story without any change to her best friend and to the stenographer as soon as she was able to. Although the respondent questions the time lapse between the actual happening of the incident to the time the complainant narrated her story to the stenographer, this cannot be taken against her. She was aware that she had duties to attend to considering the absence of the Clerk of Court and the Legal Researcher. She could not have left right after the incident nor go blurting it out as there were cases ready for trial. Thus, as soon as it was possible, she revealed it to the stenographer, Vife Legaspi, who claimed that the complainant was hysterical, crying and angry at the time that she relayed the incident. She did not even wait for them to reach their destination as she vent [sic] it out during their taxi ride to SM.

Again when she called her friend Marife Opulencia, the latter manifested that she was crying and was not able to talk such that she (Marife) advised her to take a deep breath and calm down. If it is true that she was just making up the story, then she must have been the consummate actress as she could even fake her emotions and her hysteria.
Second, the respondent claims that the reason for the filing of the charges against him is his refusal to grant complainant's request that she be detailed in some other office nearer her school. There is something wrong with this reasoning. The complainant lodged her complaint against the respondent on May 15, 1996 with the Office of the Court Administrator of the Supreme Court. Subsequently because of what happened, she could no longer report back to her workplace and hence she made the letter-request asking that she be detailed elsewhere using the difficulty of commuting as her excuse. The respondent Judge recommended the denial of the request in his 2nd Indorsement dated July 18, 1996, which is more than 2 months after the incident on May 8, 1996.

If we follow the reasoning of the respondent that the charges were an offshoot of the denial of complainant's request, how come the denial came long after the incident happened and long after the charges were already filed? It would appear that the complainant is psychic as she knew her request would be denied and so to get even, she filed the complaint way ahead of the yet-to-come denial. The respondent Judge's reasoning defies logic.

Third, both complainant and respondent agree that they are distant relatives who maintain friendly and close relations and who exchange favors with each other. Filipino families are close-knit and would rather keep skeletons in the closet than air dirty linen in public. However, in this instance, complainant disregarded the close family ties, disregarded the relationship and went on to denounce the respondent for his act. Why would she go to the extent of breaking up friendly relations between relatives for no apparent reason? Unless, of course, that her charges against the respondent are true that she feels she has to right a wrong against her committed by the very person who she should look up to as her protector.

Her act of revealing what happened to her despite the tension it may create between their families, despite the break-up of family relations, bespeaks the truth that indeed the respondent Judge committed such a dastardly act upon her person.
Amidst this unfazed accusation hurdled against the respondent, he denies it all. But his denial is a feeble attempt to exculpate him from the wrongdoing he is accused of. The clear assertion of the complainant and that of her witnesses prevails over the denial of the respondent.

What must have possessed the respondent Judge to commit such an act against his very own relative is difficult to comprehend. Was his lust too great that he would take it out on his helpless female relative in the hope that being a relative, it would not leak out as some things are better kept within the family? He did not reckon that the complainant would defy family relations and bare all if only to put a stop to respondent's shenanigan [sic], isolated though it may be.

Being a person cloaked with authority to uphold the law, the respondent Judge should be the first to be circumspect in his behavior. As held in Dy Teban Hardware and Auto Supply Co. V [sic] Tapucar, 102 SCRA 494:

The personal and official actuations of every member of the Bench must be beyond reproach and above suspicion. The faith and confidence of the public in the administration of justice cannot be maintained if a Judge who dispenses it is not equipped with the cardinal judicial virtue of moral integrity, and if he obtusely continues to commit an affront to public decency. In fact, moral integrity is more than a virtue; it is a necessity in the Judiciary. . . .

This Investigation [sic] Justice believes that based on the facts and the law, the respondent Judge should be meted out a punishment.

Justice Brawner then recommended:

WHEREFORE, finding the respondent GUILTY of the complaint [sic] filed against him, the undersigned respectfully recommends that respondent Judge EUDARLIO B. VALENCIA be suspended from office for sixty (60) days without pay.

The main issue in this case is factual and depends on the assessment of the credibility of the witnesses, a function which is primarily lodged in the investigating Justice. The rule which concedes due respect, and even finality, to the assessment of credibility of witnesses by trial judges in civil and criminal cases where preponderance of evidence 1 and proof beyond reasonable doubt, 2 respectively, are required, applies, a fortiori, in administrative cases where the quantum of proof required is only substantial evidence. 3 The trial judge is in a better position to determine whether the witnesses are telling the truth or lying considering that the latter are in his immediate presence and can thus hear the witnesses themselves and observe their deportment and manner of testifying. Unless it be shown that the judge has plainly overlooked, misunderstood or misapplied certain facts or circumstances of weight and substance which, if otherwise taken into account, would alter the result, or it be clearly shown to be arbitrary, his evaluation of the credibility of a witness should be upheld. 4 We find no room to accommodate the exception to the rule in the case of Justice Brawner's assessment, which we find to be a meticulous and dispassionate analysis of the testimonies of the complainant, the respondent and their respective witnesses.

While we concur, without reservation, with Justice Brawner's factual findings, we are, however, unable to adopt his recommendation as to the penalty to be imposed, which we find too light in view of the gravity, nature and import of the offense as to complainant and the Judiciary.
It is truly beyond us what possessed respondent Judge to commit acts which may be deemed deplorable, to say the least, against complainant, who, although a distant relative in legal contemplation, was from a family with whom respondent admittedly maintained friendly and close relations. If this were a criminal prosecution and assuming that the procedural and evidentiary requirements had been complied with, respondent would be found guilty of, at least, unjust vexation, as defined by and penalized in Article 287 of the Revised Penal Code.

As it stands, respondent's violation of complainant's personhood, coupled with his being a public official, holding a position in the Judiciary and specifically entrusted with the sacred duty of administering justice, breached Canon 2 of the Code of Judicial

Conduct and Canon 3 of the Canons of Judicial Ethics which mandate, respectively, that "a judge should avoid impropriety and appearance of impropriety in all activities," and that "a judge's official conduct should be free from the appearance of impropriety, and his personal behavior, not only upon the bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach." These most exacting standards of decorum are demanded from magistrates if only, in the language of Rule 2.01 of Canon 2 of the Code of Judicial Conduct, to "promote public confidence in the integrity and impartiality of the judiciary."

The spirit and philosophy underlying these Canons is best expressed in Castillo v. Calanog 5 thus:

The Code of Judicial Ethics mandates that the conduct of a judge must be free of a whiff of impropriety not only with respect to his performance of his judicial duties, but also to his behavior outside his sala and as a private individual. There is no dichotomy of morality: a public official is also judged by his private morals. The Code dictates that a judge, in order to promote public confidence in the integrity and impartiality of the judiciary, must behave with propriety at all times. As we have very recently explained, a judge's official life can not simply be detached or separated from his personal existence: Thus:

Being the subject of constant public scrutiny, a judge should freely and willingly accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen.
A judge should personify judicial integrity and exemplify honest public service. The personal behavior of a judge, both in the performance of official duties and in private life should be above suspicion. 6

Verily, no position is more demanding as regards moral righteousness and uprightness of any individual than a seat on the Bench. Within the hierarchy of courts, trial courts stand as an important and visible symbol of government, especially considering that as opposed to appellate courts, trial court judges are those directly in contact with the parties, their counsel and the communities which the Judiciary is bound to serve. Occupying as he does an exalted position in the administration of justice, a judge must pay a high price for the honor bestowed upon him. Thus, the judge must comport himself at all times in such a manner that his conduct, official or otherwise, can bear the most searching scrutiny of the public that looks up to him as the epitome of integrity and justice. 7 In insulating the Bench from unwarranted criticism, thus preserving our democratic way of life, it is essential that judges, like Caesar's wife, should be above suspicion.

That the acts complained of were committed within respondent's sanctum in his court and without any third party to witness the commission likewise compounded the reprehensible nature of respondent's malfeasance. By daring to violate complainant within the sanctity and secrecy of his chambers, respondent did the utmost violence to complainant within a place which, properly viewed, is an integral part of a temple of justice in his court. Respondent judge likewise violated Canon 22 of the Code of Judicial Ethics which exhorts a judge to be "studiously careful himself to avoid even the slightest infraction of the law, lest it be a demoralizing example to others." In De la Paz v. Inutan, 8 we held that the judge is the visible representation of the law and, more importantly, of justice. From him, people draw their will and awareness to obey the law. They see in him an intermediary of justice between two conflicting interests. Thus, for the judge to earn and reciprocate the respect, he must be the first to abide by the law and weave an example for others to follow. As such, he should be studiously careful to avoid even the slightest infraction of the law.

Indeed, when a judge himself becomes a transgressor of any law which he is sworn to apply in appropriate cases before him, or before any court for that matter, as where he commits any crime punished by the Revised Penal Code or special laws, he places his office in disrepute, encourages disrespect for the law and impairs public confidence in the integrity of the Judiciary itself, as well as the legal system.
Before closing, it is apropos to discuss the implications of the enactment of R.A. No. 7877 9 or the Anti-Sexual Harassment Law to the Judiciary. Under our system of governance, the very tenets of our republican democracy presuppose that the will of the people is expressed, in large part, through the statutes passed by the Legislature. Thus, the Court, in instances such as these, may take judicial notice of the heightened sensitivity of the people to gender-related issues as manifested through legislative issuances. It would not be remiss to point out that no less than the Constitution itself has expressly recognized the invaluable contributions of the women's sector to national development, 10 thus the need to provide women with a working environment conducive to productivity and befitting their dignity. 11

In the community of nations, there was a time when discrimination was institutionalized through the legalization of now prohibited practices. Indeed, even within this century, persons were discriminated against merely because of gender, creed or the color of their skin, to the extent that the validity of human beings treated as mere chattel was judicially upheld in other jurisdictions.

But in humanity's march towards a more refined sense of civilization, the law has stepped in and seen it fit to condemn this type of conduct for, at bottom, history reveals that the moving force of civilization has been to realize and secure a more humane existence. Ultimately, this is what humanity as a whole seeks to attain as we strive for a better quality of life or higher standard of living. Thus, in our nation's very recent history, the people have spoken, through Congress, to deem conduct constitutive of sexual harassment or hazing, 12 acts previously considered harmless by custom, as criminal. In disciplining erring judges and personnel of the Judiciary then, this Court can do no less.

Plainly, respondent's conduct against complainant, a woman young enough to be his daughter or niece, violated numerous Canons of judicial decorum. Respondent's indiscretions may be deemed, for the lack of more forceful and emphatic words, grave misconduct, conduct unbecoming of an officer of the Judiciary and conduct prejudicial to the best interests of the service. The penalty of suspension from office, without pay, for one (1) year is in order, this being his first offense.

If only to underscore respondent's temerity, he even attempted to insult the intelligence of this Court and its Members by claiming ill motive on the part of complainant in filing this suit, but the folly of his charge was so readily exposed by Justice Brawner.
WHEREFORE, for violations of Canon 2 of the Code of Judicial Conduct and Canons 3 and 22 of the Code of Judicial Ethics which amount to grave misconduct, conduct becoming an officer of the Judiciary and conduct prejudicial to the best interests of the service, respondent Judge EUDARLIO B. VALENCIA, Presiding Judge, Branch 222 (Quezon City), National Capital Judicial Region, is SUSPENDED from office, without pay, for ONE (1) YEAR, with the period of preventive suspension he has thus served so far being credited to him in the service of said penalty.

SO ORDERED.

Bellosillo, Vitug and Panganiban, JJ., concur.
Quisumbing, J., took no part.

RULE 1

COVERAGE

SECTION 1. *Scope*. – Unless otherwise provided herein, these Rules shall apply whenever an electronic document or electronic data message, as defined in Rule 2 hereof, is offered or used in evidence.

SEC. 2. *Cases covered*. – These Rules shall apply to all civil actions and proceedings, as well as quasi-judicial and administrative cases.

SEC. 3. A*pplication of other rules on evidence*. – In all matters not specifically covered by these Rules, the Rules of Court and pertinent provisions of statutes containing rules on evidence shall apply.

RULE 2

DEFINITION OF TERMS AND CONSTRUCTION

SECTION 1. *Definition of Terms*. - For purposes of these Rules, the following terms are defined, as follows:

(a) "Asymmetric or public cryptosystem" means a system capable of generating a secure key pair, consisting of a private key for creating a digital signature, and a public key for verifying the digital signature.

(b) "Business records" include records of any business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit, or for legitimate or illegitimate purposes.

(c) "Certificate" means an electronic document issued to support a digital signature which purports to confirm the identity or other significant characteristics of the person who holds a particular key pair.

(d) “Computer” refers to any single or interconnected device or apparatus, which, by electronic, electro-mechanical or magnetic impulse, or by other means with the same function, can receive, record, transmit, store, process, correlate, analyze, project, retrieve and/or produce information, data, text, graphics, figures, voice, video, symbols or other modes of expression or perform any one or more of these functions.

(e) “Digital Signature” refers to an electronic signature consisting of a transformation of an electronic document or an electronic data message using an asymmetric or public cryptosystem such that a person having the initial untransformed electronic document and the signer’s public key can accurately determine:

(i) whether the transformation was created using the private key that corresponds to the signer’s public key; and,

(ii) whether the initial electronic document had been altered after the transformation was made.

(f) “Digitally signed” refers to an electronic document or electronic data message bearing a digital signature verified by the public key listed in a certificate.

(g) “Electronic data message” refers to information generated, sent, received or stored by electronic, optical or similar means.

(h) “Electronic document” refers to information or the representation of information, data, figures, symbols or other modes of written expression, described or however represented, by which a right is established or an obligation extinguished, or by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically. It includes digitally signed documents and any print-out or output, readable by sight or other means, which accurately reflects the electronic data message or electronic document. For purposes of these Rules, the term “electronic document” may be used interchangeably with “electronic data message”.

(i) “Electronic key” refers to a secret code which secures and defends sensitive information that crosses over public

channels into a form decipherable only with a matching electronic key.

(j) “Electronic signature” refers to any distinctive mark, characteristic and/or sound in electronic form, representing the identity of a person and attached to or logically associated with the electronic data message or electronic document or any methodology or procedure employed or adopted by a person and executed or adopted by such person with the intention of authenticating, signing or approving an electronic data message or electronic document. For purposes of these Rules, an electronic signature includes digital signatures.

(k) “Ephemeral electronic communication” refers to telephone conversations, text messages, chatroom sessions, streaming audio, streaming video, and other electronic forms of communication the evidence of which is not recorded or retained.

(l) “Information and Communication System” refers to a system for generating, sending, receiving, storing or otherwise processing electronic data messages or electronic documents and includes the computer system or other similar devices by or in which data are recorded or stored and any procedure related to the recording or storage of electronic data messages or electronic documents.

(m) “Key Pair” in an asymmetric cryptosystem refers to the private key and its mathematically related public key such that the latter can verify the digital signature that the former creates.

(n) “Private Key” refers to the key of a key pair used to create a digital signature.

(o) “Public Key” refers to the key of a key pair used to verify a digital signature.

SEC. 2. *Construction*. – These Rules shall be liberally construed to assist the parties in obtaining a just, expeditious, and inexpensive determination of cases.

The interpretation of these Rules shall also take into consideration the international origin of Republic Act No. 8792, otherwise known as the Electronic Commerce Act.

RULE 3

ELECTRONIC DOCUMENTS

SECTION 1. *Electronic Documents as functional equivalent of paper-based documents*. – Whenever a rule of evidence refers to the term writing, document, record, instrument, memorandum or any other form of writing, such term shall be deemed to include an electronic document as defined in these Rules.

SEC. 2. *Admissibility*. – An electronic document is admissible in evidence if it complies with the rules on admissibility prescribed by the Rules of Court and related laws and is authenticated in the manner prescribed by these Rules.

SEC. 3. *Privileged communication*. – The confidential character of a privileged communication is not lost solely on the ground that it is in the form of an electronic document.

RULE 4

BEST EVIDENCE RULE

SECTION 1. *Original of an Electronic Document.*- An electronic document shall be regarded as the equivalent of an original document under the Best Evidence Rule if it is a printout or output readable by sight or other means, shown to reflect the data accurately.

SEC. 2. *Copies as equivalent of the originals*. - When a document is in two or more copies executed at or about the same time with identical contents, or is a counterpart produced by the same impression as the original, or from the same matrix, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original, such copies or duplicates shall be regarded as the equivalent of the original.

Notwithstanding the foregoing, copies or duplicates shall not be admissible to the same extent as the original if:

(a) a genuine question is raised as to the authenticity of the original; or

(b) in the circumstances it would be unjust or inequitable to admit the copy in lieu of the original.

RULE 5

AUTHENTICATION OF ELECTRONIC DOCUMENTS

SECTION 1. *Burden of proving authenticity*. - The person seeking to introduce an electronic document in any legal proceeding has the burden of proving its authenticity in the manner provided in this Rule.

SEC. 2. *Manner of authentication*. - Before any private electronic document offered as authentic is received in evidence, its authenticity must be proved by any of the following means:

(a) by evidence that it had been digitally signed by the person purported to have signed the same;

(b) by evidence that other appropriate security procedures or devices as may be authorized by the Supreme Court or by law for authentication of electronic documents were applied to the document; or

(c) by other evidence showing its integrity and reliability to the satisfaction of the judge.

SEC. 3. *Proof of electronically notarized document.* - A document electronically notarized in accordance with the rules promulgated by the Supreme Court shall be considered as a public document and proved as a notarial document under the Rules of Court.

RULE 6

ELECTRONIC SIGNATURES

SECTION 1. *Electronic signature.* - An electronic signature or a digital signature authenticated in the manner prescribed hereunder is admissible in evidence as the functional equivalent of the signature of a person on a written document.

SEC. 2. *Authentication of electronic signatures.* - An electronic signature may be authenticated in any of the following manner:

(a) By evidence that a method or process was utilized to establish a digital signature and verify the same;

(b) By any other means provided by law; or

(c) By any other means satisfactory to the judge as establishing the genuineness of the electronic signature.

SEC. 3. *Disputable presumptions relating to electronic signatures*. - Upon the authentication of an electronic signature, it shall be presumed that:

(a) The electronic signature is that of the person to whom it correlates;

(b) The electronic signature was affixed by that person with the intention of authenticating or approving the electronic document to which it is related or to indicate such person's consent to the transaction embodied therein; and

(c) The methods or processes utilized to affix or verify the electronic signature operated without error or fault.

SEC. 4. *Disputable presumptions relating to digital signatures*. - Upon the authentication of a digital signature, it shall be presumed, in addition to those mentioned in the immediately preceding section, that:

(a) The information contained in a certificate is correct;

(b) The digital signature was created during the operational period of a certificate;

(c) No cause exists to render a certificate invalid or revocable;

(d) The message associated with a digital signature has not been altered from the time it was signed; and,

(e) A certificate had been issued by the certification authority indicated therein.

RULE 7

EVIDENTIARY WEIGHT OF ELECTRONIC DOCUMENTS

SECTION 1. *Factors for assessing evidentiary weight.* - In assessing the evidentiary weight of an electronic document, the following factors may be considered:

(a) The reliability of the manner or method in which it was generated, stored or communicated, including but not limited to input and output procedures, controls, tests and checks for accuracy and reliability of the electronic data message or document, in the light of all the circumstances as well as any relevant agreement;

(b) The reliability of the manner in which its originator was identified;

(c) The integrity of the information and communication system in which it is recorded or stored, including but not limited to the hardware and computer programs or software used as well as programming errors;

(d) The familiarity of the witness or the person who made the entry with the communication and information system;

(e) The nature and quality of the information which went into the communication and information system upon which the electronic data message or electronic document was based; or

(f) Other factors which the court may consider as affecting the accuracy or integrity of the electronic document or electronic data message.

SEC. 2. *Integrity of an information and communication system.* - In any dispute involving the integrity of the information and communication system in which an electronic document or electronic data message is recorded or stored, the court may consider, among others, the following factors:

(a) Whether the information and communication system or other similar device was operated in a manner that did not affect the integrity of the electronic document, and there are no other reasonable grounds to doubt the integrity of the information and communication system;

(b) Whether the electronic document was recorded or stored by a party to the proceedings with interest adverse to that of the party using it; or

(c) Whether the electronic document was recorded or stored in the usual and ordinary course of business by a person who is not a party to the proceedings and who did not act under the control of the party using it.

RULE 8

BUSINESS RECORDS AS EXCEPTION

TO THE HEARSAY RULE

SECTION 1. *Inapplicability of the hearsay rule.* – A memorandum, report, record or data compilation of acts, events, conditions, opinions, or diagnoses, made by electronic, optical or other similar means at or near the time of or from transmission or supply of information by a person with knowledge thereof, and kept in the regular course or conduct of a business activity, and such was the regular practice to make the memorandum, report, record, or data compilation by electronic, optical or similar means, all of which are shown by the testimony of the custodian or other qualified witnesses, is excepted from the rule on hearsay evidence.

SEC. 2. *Overcoming the presumption.* – The presumption provided for in Section 1 of this Rule may be overcome by evidence of the untrustworthiness of the source of information or the method or circumstances of the preparation, transmission or storage thereof.

RULE 9

METHOD OF PROOF

SECTION 1. *Affidavit evidence*. – All matters relating to the admissibility and evidentiary weight of an electronic document may be established by an affidavit stating facts of direct personal knowledge of the affiant or based on authentic records. The affidavit must affirmatively show the competence of the affiant to testify on the matters contained therein.

SEC. 2. *Cross-examination of deponent.* – The affiant shall be made to affirm the contents of the affidavit in open court and may be cross-examined as a matter of right by the adverse party.

RULE 10

EXAMINATION OF WITNESSES

SECTION 1. *Electronic testimony*. – After summarily hearing the parties pursuant to Rule 9 of these Rules, the court may authorize the presentation of testimonial evidence by electronic means. Before so authorizing, the court shall determine the necessity for such presentation and prescribe terms and conditions as may be necessary under the circumstances, including the protection of the rights of the parties and witnesses concerned.

SEC. 2. *Transcript of electronic testimony*. – When examination of a witness is done electronically, the entire proceedings, including the questions and answers, shall be transcribed by a stenographer, stenotypist or other recorder authorized for the purpose, who shall certify as correct the transcript done by him. The transcript should reflect the fact that the proceedings, either in whole or in part, had been electronically recorded.

SEC. 3. *Storage of electronic evidence*. – The electronic evidence and recording thereof as well as the stenographic notes shall form part of the record of the case. Such transcript and recording shall be deemed *prima facie* evidence of such proceedings.

RULE 11

AUDIO, PHOTOGRAPHIC, VIDEO, AND EPHEMERAL EVIDENCE

SECTION 1. *Audio, video and similar evidence*. – Audio, photographic and video evidence of events, acts or transactions shall be admissible provided it shall be shown, presented or displayed to the court and shall be identified, explained or authenticated by the person who made the recording or by some other person competent to testify on the accuracy thereof .

SEC. 2. *Ephemeral electronic communications.* – Ephemeral electronic communications shall be proven by the testimony of a person who was a party to the same or has personal knowledge thereof. In the absence or unavailability of such witnesses, other competent evidence may be admitted.

A recording of the telephone conversation or ephemeral electronic communication shall be covered by the immediately preceding section.

If the foregoing communications are recorded or embodied in an electronic document, then the provisions of Rule 5 shall apply.

RULE 12

EFFECTIVITY

SECTION 1. *Applicability to pending cases*. – These Rules shall apply to cases pending after their effectivity.

SEC. 2. *Effectivity*. – These Rules shall take effect on the first day of August 2001 following their publication before the 20th of July 2001 in two newspapers of general circulation in the Philippines.

Outline On:

THE LAW ON EVIDENCE
Rules 128 to 134, Revised Rules of Court

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I. PRELIMINARY CONSIDERATION:

A. Importance of the study of Evidence in Law Enforcement:

As an element of our Criminal Justice System, it is the duty of every law enforcement agencies to provide the prosecution with the materials and information (Evidence) necessary in order to support conviction.

Every person is entitled to be presumed innocent of a crime or wrong, unless proven otherwise. This is a *prima facie* presumption which must be overcome by proof beyond reasonable doubt.

B. Connecting the chain of events through Evidence during Trial:

Trial refers to "the examination before a competent tribunal, according to the laws of the land, of the facts in issue in a cause, for the purposes of determining such issue" (U.S. v. Raymundo, 14 Phil 416).

Evidence helps in the determination of Questions of Facts by helping the judge reconstruct the chain of events from the conception up to the consummation of a criminal design.

C. *Factum Probandum* and *Factum Probans*

Factum Probandum – The ultimate facts to be proven. These are the propositions of law.

Examples:
- murder was committed thru treachery
- robbery was made through force upon things

Factum Probans – The evidentiary Facts. These addresses questions of fact.

Examples:
- exit wounds were in front indicating that victim was shot at the back
- destroyed locks indicative of force upon things

Thus, the outcome of every trial is determined by:

- Propositions of law, and
- Questions of fact.

D. *Proof* and *Evidence*

Evidence – the means to arrive at a conclusion. Under the Revised Rules of Court, evidence is defined as "the means, sanctioned by the rules, for ascertainment in a judicial proceeding, the truth, respecting a matter of fact".
Proof – the result of introducing evidence. The establishment of a requisite degree of belief in the mind of the judge as to the facts in issue. It refers to the accumulation of evidence sufficient to persuade the trial court.
Quantum of evidence – the totality of evidence presented for consideration
Quantum of proof – refers to the degree of proof required in order to arrive at a conclusion.
Burden of evidence – the duty of a party of going forward with evidence.
Burden of proof – the duty of the affirmative to prove that which it alleges.

Variations on degrees of proof based on <u>type of action</u>:

1. *Criminal Action* – proof beyond reasonable doubt [that degree of proof which produces conviction in an unprejudiced mind]
2. *Civil Action* – preponderance of evidence [evidence of greater weight or more convincing than that which is offered to refute it]
3. *Administrative Action* – sufficiency of evidence [that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion]

E. Exclusionary Rule. (Fruit of the poisonous tree doctrine)

Evidence ILLEGALY OBTAINED are inadmissible for reasons of public policy. This is so because of the constitutional requirement of due process. Due process has been defined as "the law that hears

before it condemns, which proceeds upon inquiry, and renders judgment only after fair trial".

As a result, jurisprudence has evolved a rule that renders inadmissible any evidence obtained in an illegal search from being introduced in trial.

F. Principle of Chain of Custody of Evidence

If the evidence is of a type which cannot be easily recognized or can readily be confused or tampered with, the proponent of the object must present evidence of its chain of custody. The proponent need not negate all possibilities of substitution or tampering in the chain of custody, but must show that:

1. The evidence is identified as the same object which was taken from the scene;
2. It was not tampered with, or that any alteration can be sufficiently explained (i.e. discoloration due to the application of ninhydrine solution, etc.); and
3. The persons who have handled the evidence are known and may be examined in court with regard to the object.

II. GENERAL PROVISIONS:

A. Concepts of evidence:

1. *It is a means of ascertainment* – used to arrive at a legal conclusion
2. *It is sanctioned by the rules of court* – meaning, not excluded by the rules on relevancy and admissibility
3. *It is used in a judicial proceeding* – there is a jural conflict involving different rights asserted by different parties
4. *It pertains to the truth respecting a matter of fact* – evidence represents a "claim" either for the prosecution or for the defense where *issues* (clashes of view) are present.

Admissibility of Evidence:

For evidence to be admissible, it must be:

1) relevant to the issue [relevancy test], and
2) not excluded by the law or rules of court [competency test].

Note: To determine the relevancy of any item of proof, the purpose for which it is sought to be introduced must first be known (There must be a formal offer).

Test of relevancy of evidence:

Whether or not the factual information tendered for evaluation of the trial court would be helpful in the determination of the factual issue that is disputed.

When is evidence relevant?

When it has a relation to the fact in issue as to induce belief in it's:

1) existence, or
2) non-existence

In other words, evidence is relevant when it is:

1) material, and
2) has probative value

What is meant by "probative value"?

It is the tendency of the evidence to establish the proposition that it is offered to prove.

"Collateral Matters" not admissible except when it tend in any reasonable degree to establish probability or improbability of the fact in issue.

Collateral matters – matters other than the fact in issue and which are offered as a basis for inference as to the existence or non-existence of the facts in issue.

Collateral matters are classified into:

1. *Antecedent circumstances* – facts existing before the commission of the crime [i.e. hatred, bad moral character of the offender, previous plan, conspiracy, etc.]
2. *Concomitant circumstances* – facts existing during the commission of the crime [i.e. opportunity, presence of the accused at the scene of the crime, etc.]
3. *Subsequent circumstances* – facts existing after the commission of the crime [i.e. flight, extrajudicial admission to third party, attempt to conceal effects of the crime, possession of stolen property, etc.]

Query: Is modus operandi an antecedent, concomitant or subsequent circumstance?

B. Judicial Notice, basis of:

Judicial notice is based on necessity and expediency. This is so because what is known need not be proved.

Different kinds of judicial notices:

1. mandatory
2. discretionary
3. hearing required

C. Confession and Admission, distinguished:
Confession – an acknowledgement of guilt.
Admission – an acknowledgment of facts.

Different kinds of confession/admission:
1. Judicial
2. Extrajudicial
3. Oral
4. Written
5. Voluntary
6. Forced

Different kinds of evidence:
1. *Relevant evidence* – evidence having any value in reason as tending to prove any matter provable in an action.
2. *Material evidence* – evidence is material when it is directed to prove a fact in issue as determined by the rules of substantive law and pleadings.
3. *Competent evidence* – not excluded by law.
4. *Direct evidence* – proves the fact in issue without aid of inference or presumptions.

5. *Circumstantial evidence* - the proof of fact or facts from which, taken either singly or collectively, the existence of a particular fact in dispute may be inferred as necessary or probable consequence.
6. *Positive evidence* – evidence which affirms a fact in issue.
7. *Negative evidence* - evidence which denies the existence of a fact in issue.
8. *Rebutting evidence* – given to repel, counter act or disprove facts given in evidence by the other party.
9. *Primary/Best evidence* – that which the law regards as affording the greatest certainty.
10. *Secondary evidence* – that which indicates the existence of a more original source of information.
11. *Expert evidence* – the testimony of one possessing knowledge not usually acquired by other persons.
12. *Prima facie evidence* – evidence which can stand alone to support a conviction unless rebutted.
13. *Conclusive evidence* – incontrovertible evidence
14. *Cumulative evidence* – additional evidence of the same kind bearing on the same point.
15. *Corroborative evidence* – additional evidence of a different kind and character tending to prove the same point as that of previously offered evidence.
16. *Character evidence* – evidence of a person's moral standing or personality traits in a community based on reputation or opinion.
17. *Demeanor evidence* – the behavior of a witness on the witness stand during trial to be considered by the judge on the issue of credibility.
18. *Demonstrative evidence* – evidence that has tangible and exemplifying purpose.
19. *Hearsay evidence* – oral testimony or documentary evidence which does not derive its value solely from the credit to be attached to the witness himself.
20. *Testimonial evidence* – oral averments given in open court by the witness.
21. *Object/Auotoptic proferrence/Real evidence* – those addressed to the senses of the court (sight, hearing, smell, touch, taste).
22. *Documentary evidence* – those consisting of writing or any material containing letters, words, numbers, figures, symbols or other modes of written expression offered as proof of its contents.

Best Evidence Rule:
When the subject of the inquiry is the contents of a document, no evidence shall be admissible other than the original of the document.

For exceptions, see Sec. 3, Rule 130, Revised Rules of Court.

A document is legally considered "Original" when:
1. It is the subject of an inquiry
2. When in two or more copies executed at or about the same time, with identical contents.
3. When an entry is repeated in ordinary course of business, one being copied from another at or near the time of the transaction.

Question: May a "fake" document be considered as "original" or "authentic"?

Yes. A forged or spurious document when presented in court for examination is considered as the original fake/forged document. Thus, a mere photocopy of the allegedly forged or spurious document is only secondary to the original questioned document.

Secondary Evidence
When the original document has been:
1. lost,
2. destroyed, or
3. cannot be produced in court.

The offeror without bad faith must:
1. prove its execution or existence, and
2. prove the cause of its unavailability.

Secondary evidence may consist of:
1. a copy,
2. recital of its contents in some authentic document, or
3. by testimony of witnesses.

When original document is in the custody of:
1. *adverse party* – adverse party must have reasonable notice to produce it. After such notice and satisfactory proof of its existence, he fails to produce it, secondary evidence may be presented.
2. *public officer* – contents may be proved by certified copy issued by the public officer in custody thereof.

III. TESTIMONIAL EVIDENCE:

Qualifications of witnesses:
1. can perceive
2. can make known their perception to others
3. not disqualified by reason of mental incapacity, immaturity, marriage, privileged communications, or "dead man's statute".

"Res Inter Alios Acta" Rule
General Rule: The rights of a party cannot be prejudiced by an act, declaration, or omission of another.

Exception:
1. admission by a co-partner or agent
2. admission by a conspirator
3. admission by privies
4. admission by silence

In the above cases, the admission of one person is admissible as evidence against another.

Testimonial Knowledge:
General Rule: A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception. Any statement which derives its strength from another's personal knowledge is hearsay, and is therefore inadmissible.

Exceptions:
1. Dying declarations (ante-mortem statements)
2. Declaration against interest
3. Act or declaration about pedigree
4. Family reputation or tradition regarding pedigree
5. Common reputation

6. Part of the *res gestae*
7. Entries in the course of business
8. Entries in official records
9. Commercial lists and the like
10. Learned treatises
11. Testimony or deposition at a former proceeding
12. Examination of child victim/witness in cases of child abuse

IV. BURDEN OF PROOF AND PRESUMPTIONS:

Burden of proof – the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.

Presumption – an inference as to the existence of a fact not actually known, arising from its usual connection with another which is known or a conjecture based on past experience as to what course human affairs ordinarily take.

2 kinds of presumptions:
1. *Conclusive presumptions* [jure et de jure] – based on rules of substantive law which cannot be overcome by evidence to the contrary.
2. *Disputable presumptions* [*prima facie* presumptions, rebuttable presumptions] – based on procedural rules and may be overcome by evidence to the contrary.

Kinds of Conclusive Presumptions:
1. *Estoppel by record or judgment* – the preclusion to deny the truth of matters set forth in a record, whether judicial or legislative, and also deny the facts adjudicated by a court of competent jurisdiction (Salud v. CA, 233 SCRA 387).
2. *Estoppel by deed* – a bar which precludes a party to a deed and his privies from asserting as against the other and his privies any right or title in derogation of the deed or denying the truth of any material fact asserted in it (Iriola v. Felices, 30 SCRA 202).
3. *Estoppel in pais* – based upon express representation or statements or upon positive acts or conduct. A party cannot, in the course of litigation or in dealings in pais, be permitted to repudiate his representation or occupy inconsistent positions.
4. *Estoppel against Tenant* – the tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation of landlord and tenant between them.

Note: For Kinds of disputable presumptions, see Sec. 3, Rule 131 of the Revised Rules of Court.

Presentation of Evidence:
The examination of witnesses presented in a trial or hearing shall be done is open court, and under oath or affirmation. Unless the witness is incapacitated to speak, or the question calls for a different mode of answer, the answer of the witness shall be given orally.

Rights and Obligations of witnesses:
1. To be protected from irrelevant, improper, or insulting questions, and from harsh or insulting demeanor.
2. Not to be detained longer than the interest of justice requires.
3. Not to be examined except only as to matters pertinent to the issue.

4. Not to give an answer which will tend to subject him to a penalty for an offense unless otherwise provided by law.
5. Not to give an answer which will tend to degrade his reputation, unless it be to the very fact at issue or to the fact from which the fact in issue would be presumed, but a witness must answer to the facts of his previous final conviction for an offense.

Order of Examination of individual witnesses:

1. Direct examination by the proponent
2. Cross examination by the opponent
3. Re-direct examination by the proponent
4. Re-cross examination by the opponent

Direct examination – the examination in chief of a witness by the party presenting him on the facts relevant to the issue.
Cross examination – the examination by the adverse party of the witness as to any matter stated in the direct examination, or connected therewith, with sufficient fullness and freedom from interest or bias, or the reverse, and to elicit all important facts bearing upon the issue.
Re-direct examination – second questioning by the proponent to explain or supplement answers given in the cross examination.
Re-cross examination – second questioning by the adverse party on matters stated on the re-direct and also on such matters as may be allowed by court.

Different Types of Questions:

1. *Leading questions* –It is one where the answer is already supplied by the examiner into the mouth of the witness. [Ex. You saw Jose killed Juan because you were present when it happened, didn't you?]
2. *Misleading question* – a question which cannot be answered without making an unintended admission. [Ex. Do you still beat your wife?]
3. *Compound question* – a question which calls for a single answer to more than one question. [Ex. Have you seen and heard him?]
4. *Argumentative question* – a type of leading question which reflects the examiners interpretation of the facts. [Ex. Why were you driving carelessly?]
5. *Speculative question* – a question which assumes a disputed fact not stated by the witness as true. [Ex. The victim cried in pain, didn't he?]
6. *Conclusionary question* – a question which asks for an opinion which the witness is not qualified or permitted to answer. [Ex. Asking a high school drop-out whether the gun used is a Cal. 45 pistol or 9mm pistol]
7. *Cumulative question* – a question which has already been asked and answered.
8. *Harassing/Embarrassing question* – [Ex. Are you a homosexual?]

Classes of Documents:
Documents are either public or private.

Public documents are:

1. The written official acts, or records of the official acts of sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or a foreign country.
2. Documents acknowledged before a notary public except last wills and testaments.

3. Public records (1) kept in the Philippines, or private documents (2) required by law to be entered therein.

All other writings are private.

SOME USEFUL LATIN TERMS AND LEGAL MAXIMS:

- *Verba legis non est decendendum* – from the words of the law there can be no departure.
- *Dura lex sed lex* – the law may be harsh but so the law speaketh.
- *Ignorantia legis neminem excusat* – ignorance of the law excuses no one.
- *Ignorantia facti excusat* – mistake of fact excuses.
- *Praeter intentionem* – different from that which was intended.
- *Error in personae* – mistake in identity.
- *Abberatio Ictus* – mistake in the blow
- *Nulum crimen, nulla poena sine lege* – there is no crime when there is no law punishing the same.
- *Actus non facit reum, nisi mens sit rea* – the act cannot be criminal where the mind is not criminal.
- *Actus mi invictu reus, nisi mens facit reum* – an act done by me against my will is not my act.
- *Mens rea* – guilty mind.
- *Actus reus* – guilty act.
- *Res ipsa loquitor* – the thing speaks for itself.
- *Causa Proxima* – proximate cause which produced the immediate effect.
- *Prima facie* – at first glance.
- *Locus Criminis* – scene of the crime or crime scene.
- *Pro Reo* – principle in Criminal Law which states that where the statute admits of several interpretations, the one most favorable to the accused shall be adopted.
- *Res Gestae* – the thing itself.
- *Falsus in unum, falsus in omnibus* – false in one part of the statement would render the entire statement false (note: this maxim is not recognized in our jurisdiction).

Knowledge is a thing that multiplies when shared…
Cited in: Legal Arsenal, by A. Oposa, Jr.

XVII.

NOTES ON COMPARATIVE POLICE SYSTEMS

(A Reviewer for Law Enforcement Administration)

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COMPARATIVE POLICE SYSTEM

Course Description under CHED Memo 21 S 2005

This study covers the different transnational crimes, it nature and effects as well as the organization of the law enforcement set-up in the Philippines and its comparison of selected police

models and their relation with Interpol and UN bodies in the campaign against transnational crimes and in the promotion of world peace.

Comparative

Denotes the degree or grade by which a person, thing, or other entity has a property or quality greater or less in extent than that of another.

Police

Police typically are responsible for maintaining public order and safety, enforcing the law, and preventing, detecting, and investigating criminal activities. These functions are known as policing. **Police** are often also entrusted with various licensing and regulatory activities. The word comes via French word *Policier*, from Latin *politia* ("civil administration"), from ancient Greek *polis* ("city").

Characteristics common to most police forces include a quasi-military organization, a uniformed patrol and traffic-control force, plainclothes divisions for criminal investigations, and a set of enforcement priorities that reflects the community's way of life. Administration may be centralized at the national level downward, or decentralized, with local police forces largely autonomous.

Recruits usually receive specialized training and take an exam. The modern metropolitan police force began with **Sir Robert Peel i**n Britain *c.* 1829. **Secret police** are often separate, covert organizations established by national governments to maintain political and social orthodoxy, which typically operate with little or no control.

The study of comparative police system, criminal justice and law is a fairly new field and has corresponded with rising interest in a more established field, comparative ***criminology***. However, in this chapter, we will present some issues which will bring you to discover ideas useful in the conceptualization of successful crime control policies.

System

Combination of parts in a whole; orderly arrangement according to some common law; collection of rules and principles in science or art; method of transacting business (Webster)

Comparative POLICE System

Process of outlining the similarities and differences of one police system to another in order to discover insights in the field of international policing.

THE NEED FOR INNOVATIVE POLICING

Theories and practices in law enforcement have been compared in several studies under various circumstances, the goal is to test whether the theory and practice in policing needs modernization to meet the demands of the present trends in crime fighting. Comparative research is usually carried out by the "**safari"** method (a researcher visits another country) or "**collaborative**" method (the researcher communicates with a foreign researcher).

Globalization

Is the system of interaction among the countries of the world in order to develop the global economy. Globalization refers to the integration of economics and societies all over the world. Globalization involves technological, economic, political, and cultural exchanges made possible largely by advances in communication, transportation, and infrastructure.

Effects of Globalization
(http://socyberty.com/society/effects-of-globalization/)

If you visit several countries, you can easily feel the effect globalization has on our daily lives. The

following are some of the most significant effects of globalization.

Industry: The world has become a huge market where you can buy and sell things produced in any part of the world. There are a lot of international brands operating worldwide. These include

Culture: Globalization means a decrease in the cultural diversity that used to exist in the world earlier. You can find people in several countries dressing up like Westerners. Food is another good example. Young people especially are eating more of American or Chinese foods then their own cultural dishes. The way people speak is also changing. For example teenagers in the Middle East are much influenced by the way the black Americans speak. They think its “cool”.

Legislation: There has been an increase in the establishment of International courts of justice where someone accused could be dealt with in any part of the world. Interpol is another example of International law enforcement agency.

Language: With increased globalization, people tend to forget their mother tongue and use English instead as there is an idea that it makes them superior in some way. This might also help them in job searches etc.

Information: With the wide use of Internet and other kinds of information technology, it has become much easier and faster to share information worldwide. Live TV channels are another good example of quick information sharing.

Finance: Globalization has made it easier to raise finance through individuals and firms outside the country. The International Monetary Fund is a good example of an International Institute which lends money to countries in need for finance.

Politics: Powerful countries and individuals nowadays have political control over the whole world, not only their country. The United States is an example of a country that influences the whole of the world politics.

It is believed that globalization is a positive development generating more trade and hence

welfare of the whole world. Nevertheless it also has some significant disadvantages which should not be forgotten.

These include:

- Increasing trends in migration of labor to developing countries as large firms shift their production to developing countries.
- Some powerful people and countries control the whole world
- Loss of jobs in countries that cannot compete with larger firms
- Increased dependency on each other. The recent financial crisis is a good example of that.

The negative effects of globalization

http://www.buzzle.com/articles/negative-effects-of-globalization.html

Opponents of globalization point out to its negative effects. Some of them are listed below.

- Developed nations have outsourced manufacturing and white collar jobs. That means less-jobs for their people. This has happened because manufacturing work is outsourced to developing nations like China where the cost of manufacturing goods and wages are lower. Programmers, editors, scientists and accountants have lost their jobs due to outsourcing to cheaper locations like India.
- Globalization has led to exploitation of labor. Prisoners and child workers are used to work in inhumane conditions. Safety standards are ignored to produce cheap goods.
- Job insecurity. Earlier people had stable, permanent jobs. Now people live in constant dread of losing their jobs to competition. Increased job competition has led to reduction in wages and consequently lower standards of living.
- Terrorists have access to sophisticated weapons enhancing their ability to inflict damage. Terrorists use the Internet for communicating among themselves.
- Companies have set up industries causing pollution in countries with poor regulation of pollution.

- Fast food chains like McDonalds and KFC are spreading in the developing world. People are consuming more junk food from these joints which has an adverse impact on their health.
- The benefits of globalization are not universal. The rich are getting richer and the poor are becoming poorer.
- Bad aspects of foreign cultures are affecting the local cultures through TV and the Internet.
- Enemy nations can spread propaganda through the Internet.
- Deadly diseases like HIV/AIDS are being spread by travelers to the remotest corners of the globe.
- Local industries are being taken over by foreign multinationals.
- The increase in prices has reduced the government's ability to sustain social welfare schemes in developed countries.
- There is increase in human trafficking.
- Multi-National Companies and corporations which were previously restricted to commercial activities are increasingly influencing political decisions.

The positive aspect of globalization

Globalization has a positive side as well. Supporters of globalization argue that it is good and beneficial. Some of their arguments are listed below.

1. Globalization has created the concept of outsourcing. Work such as software development, customer support, marketing, accounting and insurance is outsourced to developing countries like India. The company that outsourced the work enjoys the benefit of lower costs because the wages in developing countries is far lower than that of developed countries. The workers in the developing countries get employment. Developing countries get access to the latest technology.
2. Increased competition forces companies to lower prices. This benefits the end consumers.
3. Increased media coverage draws the attention of the world to human right violations. This leads to improvement in human rights.

The Future

Globalization is a tool that should benefit all sections of mankind. One cannot ignore its negative effects. These must be addressed for the world's peace and prosperity.

Impact of globalization and new technologies on drug-related crime and Criminal organizations
(http://www.incb.org/pdf/e/ar/2001/incb_report_2001_1.pdf)

Cyber Crime

The term "cyber crime" covers many types of activities but essentially can be used to describe violations of law that are committed and/or facilitated through the use of electronic media.

In comparison with ordinary crime, cyber crime requires few resources relative to the damage that can be caused, it can be committed in a jurisdiction without the offender being physically present in it and, in many countries, offences are inadequately defined or not defined at all; hence, personal risk and the likelihood of detection are low.

Impact on Drug-Related Organized Crime

Organized crime has its own operative code, which flouts the rule of law and depends upon violence for its enforcement. It has, however, adopted some of the business practices that characterize the legitimate economy. Organized criminality has become more transnational and has been restructured and decentralized; in other words, it too has globalized.

The pyramid-shaped structure of the single organized criminal group has tended to make way for fluid networks of cell-type structures in which national identity is subordinate to function or skill, although nationality itself can be a function if it opens the door to a new market or permits the penetration or corruption of a particular institution.

Transnational criminals do not respect borders in that, in carrying out their activities, they trail their activities across several jurisdictions to minimize law enforcement risks and maximize profit;

thus, no single State can presume that a particular criminal activity falls entirely under its jurisdiction. The network is the organizational form that characterizes globalization in both the licit and illicit sphere.

For a drug trafficking organization, the network structure has distinct advantages over the traditional hierarchy: it has a well-protected, dense core of organizations or people connected to a looser border by a multiplicity of links, which makes it more capable of evading law enforcement efforts.

Drug trafficking groups utilize new technologies in two distinct ways: *to improve the efficiency of product delivery and distribution through the medium of secure, instant communications; and to protect themselves and their illicit operations from investigation by drug law enforcement agencies, sometimes using techniques of counter-attack.*

New technologies enable drug trafficking groups to commit traditional crimes with new methods—for example, to conceal information about the shipment of illicit drug consignments by means of encrypted messages or to launder drug-related funds by electronic transfer—and to commit new offences with new means, for example, by using information warfare or digital attack against intelligence activities of drug law enforcement agencies.

Drug traffickers use computers and electronic pocket organizers for storing information (such as bank account numbers, contact details of associates, databases of assets and financial activity, sales and other business records, grid coordinates of clandestine landing strips and recipes for synthetic drug manufacture) and for electronic mail (e-mail) and other correspondence.

Surrogates receive instructions by telephone, fax, pager or computer on where to deliver warehouse loads, whom to contact for transportation services and where to send the profits. Greater protection derives from the use of prepaid telephone cards, broadband radio frequencies, restricted-access Internet chat rooms, encryption, satellite

telephony and “cloned” cellular telephones (so called when the identity codes assigned to legitimate customers are intercepted and programmed into cellular telephones used by criminals).

Members of drug trafficking organizations can program their computers to detect attempted intrusion and to use “back-hacking” techniques in order to damage the investigating source. Such techniques are of particular value to the organizers of drug trafficking activities, who rarely need to leave the protection of their home base in order to organize or supervise their operations.

Narcotics police in the Hong Kong Special Administrative Region of China report that detecting the laundering of drug-related funds has become more difficult with the advance of electronic commerce and Internet banking facilities.

Drug traffickers communicate with each other mainly by using mobile telephones with prepaid cards that can be bought anonymously. China has also reported a case in which criminals tried to avoid detection by penetrating the customs database to alter the details and status of a commercial freight consignment, a case that undoubtedly has implications for drug trafficking.

In Australia, drug traffickers use a facility offered to all clients by worldwide courier services to track their shipments on the company’s web site. A delay may indicate to the traffickers that a controlled delivery operation has been set in motion. Drug law enforcement authorities involved in such operations must therefore act within an extremely narrow time limit in order to avoid suspicion.

The **Inter-American Drug Abuse Control Commission** (CICAD) of the **Organization of American States** (OAS) noted in its *Hemispheric Report 1999-20*10 that *the Internet had become the most widely used medium for expanding the production of synthetic drugs in some countries and that globalization, instant communication and electronic fund transfers had been utilized by organized criminal groups to improve the efficiency of drug trafficking activities*.

Drug law enforcement authorities in the Czech Republic report that *nowadays illicit drug sales and purchases are agreed online at Internet cafes or through the use of cellular telephones*. Because illicit drug deals are arranged instantaneously and over short distances, interception by drug law enforcement authorities is much more difficult.

Since 1996, companies based in the Netherlands have been using the Internet to sell cannabis seeds and derivatives. According to the **International Criminal Police Organization** (Interpol), at the beginning of the year 2000 authorities in the United Kingdom of Great Britain and Northern Ireland identified over 1,000 websites worldwide offering to sell illicit drugs, mostly cannabis but also ***methylene dioxymethamphetamine*** (MDMA, **commonly known as Ecstasy**), cocaine and heroin, in direct violation of the international drug control treaties.

The Netherlands and Switzerland had the highest number of such web sites. Law enforcement agencies in the United States of America attribute the rapid increase in seizures of laboratories used for the illicit manufacture of methamphetamine to the evolution of technology and the increased use of the Internet.

In the past, drug recipes were closely guarded secrets but, with modern computer technology and chemists' increasing willingness to share their knowledge, this information is now available to anyone with computer access. It does not require a college-educated chemist to produce amphetamine. Less than 10% of suspects arrested for illicitly manufacturing methamphetamine are trained chemists, a fact that explains the many fires, explosions and injuries in clandestine laboratories.

A drug investigation carried out jointly by Colombian and United States authorities led to the arrest of 31 drug traffickers in October 1999. It was found that the traffickers had kept in touch with each other by using Internet chat rooms protected by firewalls to make them impenetrable.

The details of each day's trafficking activities had been fed into a computer located on a ship off the coast of Mexico, ensuring that even if other computers had been penetrated it would have been impossible to bring down the whole network. The same group had used encryption that law enforcement authorities had been unable to break in time to act on the information. Those methods, in addition to "cloned" cellular telephones, had enabled the traffickers to move hundreds of tons of cocaine during a period of several years before being detected.

Colombian and Mexican drug association have used sophisticated equipment for the surveillance of investigating officers and interception of their communications, collecting photographs of the officers and other personal information.

This has also occurred in Europe. In 1995, a drug trafficking group in the Netherlands hired computer specialists to carry out hacking operations and to encrypt their communications. Encryption software installed on palmtop computers enabled the traffickers to create a secure database on unmarked police and intelligence vehicles. A laptop computer and disks belonging to the investigating authorities were stolen and the resultant information was used to intercept communications between police officers, who were subsequently observed and threatened.

XVIII. The Effects of Globalization on Human Rights
http://www.ehow.com/info_8491128_effects-human-rights-globalization.html

Human rights and globalization are profoundly, though not always positively, linked. When countries export labor or increase international co-operation, human rights are sometimes trampled. Subsequently, many of the effects of human rights on globalization are reactions to the exploitation of people.

Would globalization enhance the implementation of human rights as stated in the Universal Declaration of Human Rights, particularly the covenant on civil and political rights and the covenant on economic, social and cultural rights?

Attempting an answer to this question is not an easy task, mainly because of the different and contradictory connotations of the term globalization.

If globalization is conceived as turning the whole world into one global village in which all peoples are increasingly interconnected and all the fences or barriers are removed, so that the world witnesses a new state of fast and free flow of people , capital , goods and ideas then the world would be witnessing unprecedented enjoyment of human rights every where because globalization is bringing prosperity to all the corners of the globe together with the spread of the highly cherished values of democracy , freedom and justice .

On the other hand if globalization is conceived as turning the world into a global market for goods and services dominated and steered by the powerful gigantic transnational corporations and governed by the rule of profit then all the human rights of the people in the world, particularly in the south would be seriously threatened.

Literature on globalization, in general, by both the so called advocates and opponents of globalization is abundant. However the critics of globalization lay much more emphasis on its impact on human rights, particularly of the poor people and of the developing countries. Their analysis and conclusions are usually supported by facts and figures drawn from international reports and statistics to prove that human rights have been adversely affected by globalization.

They usually relate one or the other aspect of human rights to one or the other aspect of globalization, such as relating poverty in developing countries to debt or relating unemployment to privatization, or relating health deterioration to the monopoly of medicine patents, or they enumerate the aspects of deteriorations in human rights, such as impoverishment and lowering standards of living, increasing inequality discrimination , deprivation of satisfaction of basic needs such as food clean water and housing , illiteracy, etc and explain these facts by globalization in general through making comparisons between the state before globalization

(usually before the 1990s) and after it , such as stating that " progress in reducing infant mortality was considerably slower during the period of globalization (1990-1998) than over the previous two decades.

The advocates of globalization do not deny the fact that in some regions basic human rights are not respected during the past decade but they explain this by the resistance of some countries and peoples to globalization and they claim that globalization must have winners and losers. The loser's resistance to globalization is attributed to their state of stagnation and rigidity or to their traditional culture or even to the nature of their religions which is anti democratic and anti modernization.

So both advocates and critics of globalization agree on the fact that human rights are in some way or the other adversely affected by globalization particularly in the south , but they differ in their explanation of this fact and hence in their prescription for the remedies . While the advocates prescribe more absorption of peoples and countries in the global system, the critics of globalization prescribe opposition and resistance of the hegemony of the transnational corporations and the injustice inherent in the globalization process.

THE INTERNATIONAL POLICE ORGANIZATION (INTERPOL)
http://www.interpol.int/Public/ICPO/default.asp

INTERPOL is the world's largest international police organization, with 188 member countries. Created in 1923, it facilitates cross-border police co-operation, and supports and assists all organizations, authorities and services whose mission is to prevent or combat international crime.

INTERPOL aims to facilitate international police co-operation even where diplomatic relations do not exist between particular countries. Action is taken within the limits of existing laws in different countries and in the spirit of the Universal Declaration of Human Rights. Interpol's constitution prohibits 'any intervention or activities of a political, military, religious or racial character.'

Interpol's Four Core Functions
http://www.interpol.int/Public/icpo/about.asp

Interpol's activities are guided by the following four core functions:

Secure global police communication services

Interpol's global police communications system, known as I-24/7, enables police in all member countries to request, submit and access vital data instantly in a secure environment.

Operational data services and databases for police

Member countries have direct and immediate access to a wide range of databases including information on known criminals, fingerprints, DNA profiles and stolen or lost travel documents. INTERPOL also disseminates critical crime-related data through a system of international notices.

Operational police support services

INTERPOL provides law enforcement officials in the field with emergency support and operational activities, especially in its priority crime areas. A Command and Co-ordination Centre operates 24 hours a day, seven days a week and can deploy an Incident Response Team to the scene of a serious crime or disaster

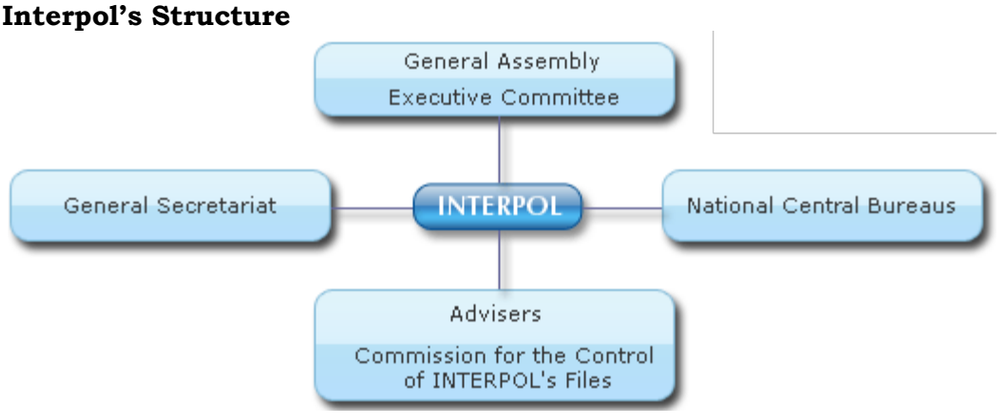
Police training and development

INTERPOL provides focused police training initiatives with the aim of enhancing the capacity of member countries to effectively combat transnational crime and terrorism. This includes sharing knowledge, skills and best practices in policing and establishing global standards.

Interpol's Leadership and Governance

The President of INTERPOL and the Secretary General work closely together in providing strong leadership and direction to the Organization.

Interpol's Structure



As defined in Article 5 of its Constitution, INTERPOL (whose correct full name is 'The International Criminal Police Organization – INTERPOL') comprises the following:

- General Assembly
- Executive Committee
- General Secretariat
- National Central Bureaus
- Advisers
- The Commission for the Control of Interpol's Files

The General Assembly and the Executive Committee form the organization's Governance.

General Assembly

Compose of delegates appointed by the governments of Member Countries. As Interpol's supreme governing body, it meets once a year and takes all the major decisions affecting general policy, the resources needed for international co-operation, working methods, finances and program of activities. It also elects the Organization's Executive Committee. Generally speaking, the Assembly takes decisions by a simple majority in the form of resolutions. Each Member State represented has one vote.

Executive Committee

The Executive Committee is Interpol's select deliberative organ which meets three times a year, usually in March, July and immediately before the General Assembly.

Its role, in accordance with Article 22 of the Constitution, is to:

- supervise the execution of the decisions of the General Assembly
- prepare the agenda for sessions of the General Assembly
- submit to the General Assembly any program of work or project which it considers useful
- Supervise the administration and work of the Secretary General.

In accordance with Article 15 of the Constitution, the Executive Committee has 13 members comprising the president of the organization, 3 vice-presidents and 9 delegates. These members are elected by the General Assembly and should belong to different countries; in addition, the president and the 3 vice-presidents must come from different regions.

The president is elected for 4 years, and vice-presidents for 3. They are not immediately eligible for re-election either to the same posts, or as delegates to the Executive Committee.

Voting is by secret ballot. A two-thirds majority is required for the election of the president. If this majority is not obtained after the second ballot, a simple majority is then sufficient. Vice-Presidents and delegates are elected on a simple majority. Each member state has one vote; those member states attending the General Assembly are eligible to take part in the election, providing

they are not prevented from doing so under Article 52 of the General Regulations.

Composition of the Executive Committee

- President
- Vice Presidents
- Delegates

The former Filipino President of INTERPOL in 1980 – 1984 - **Jolly R. Bugarin** (Philippines)

General Secretariat

Located in Lyon, France, the General Secretariat operates 24 hours a day, 365 days a year and is run by the Secretary General. Officials from more than 80 countries work side-by-side in any of the Organization's four official languages: Arabic, English, French and Spanish. The Secretariat has seven regional offices across the world; in Argentina, Cameroon, Côte d'Ivoire, El Salvador, Kenya, Thailand and Zimbabwe, along with Special Representatives at the United Nations in New York and at the European Union in Brussels.

Secretary General

The Secretary General of the Organization is appointed by the General Assembly for a period of 5 years. He may be re-elected.

The Secretary General is effectively the Organization's chief full-time official. He is responsible for seeing that the day-to-day work of international police co-operation is carried out, and the implementation of the decisions of the General Assembly and Executive Committee.

National Central Bureaus (NCB) - Each INTERPOL member country maintains a National Central Bureau staffed by national law enforcement officers. The NCB is the designated contact point for the General Secretariat, regional offices and other member countries requiring assistance with overseas investigations and the location and apprehension of fugitives.

Advisers – these are experts in a purely advisory capacity, who may be appointed by the Executive Committee and confirmed by the General Assembly.

Commission for the Control of Interpol's Files (CCF) – this is an independent body whose mandate is threefold:

- to ensure that the processing of personal information by INTERPOL complies with the Organization's regulations,

- to advise INTERPOL on any project, operation, set of rules or other matter involving the processing of personal information and
- To process requests concerning the information contained in Interpol's files.

INTERPOL 188 Member Countries

Afghanistan | Albania | Algeria | Andorra | Angola | Antigua &
Argentina | Armenia | Aruba | Australia | Austria | Azerbaijan
Bahrain | Bangladesh | Barbados | Belarus | Belgium | Beliz
Bhutan | Bolivia | Bosnia and Herzegovina | Botswana | Brazil
Bulgaria | Burkina - Faso | BurundiCambodia | Cameroon | Car
Verde | Central African Republic | Chad | Chile | China |
Comoros | Congo | Congo (Democratic Rep.) | Costa Rica | Cô
Croatia | Cuba | Cyprus | Czech Republic Denmark | Djibouti |
Dominican Republic Ecuador | Egypt | El Salvador | Equatori
Eritrea | Estonia | Ethiopia Fiji | Finland | Former Yugoslau
Macedonia Gabon | Gambia | Georgia | Germany | Ghana
Grenada | Guatemala | Guinea | Guinea Bissau | Guyana | Fr
Honduras | Hungary Iceland | India | Indonesia | Iran | Iraq
Israel | Italy Jamaica | Japan | Jordan Kazakhstan | Kenya |
of) |Kuwait | Kyrgyzstan Laos | Latvia | Lebanon | Lesotho | Liber
Liechtenstein | Lithuania | Luxembourg Madagascar | Malawi |
Maldives | Mali | Malta | Marshall Islands | Mauritania | Mauritiu
Moldova | Monaco | Mongolia | Montenegro | Morocco | Mozambiqu
Namibia | Nauru | Nepal | Netherlands | Netherlands Antilles | Ne
Nicaragua | Niger | Nigeria | Norway Oman Pakistan | Panama
Guinea |Paraguay | Peru | Philippines | Poland | Portugal Qata
Russia | Rwanda St Kitts & Nevis | St Lucia | St Vincent & the G
Samoa | San Marino | Sao Tome & Principe | Saudi Arabia | Senega
Seychelles | Sierra Leone | Singapore | Slovakia | Slovenia | Som
Africa | Spain | Sri Lanka | Sudan | Suriname | Swaziland
Switzerland | Syria Tajikistan | Tanzania | Thailand | Timor - Les
Tonga | Trinidad & Tobago | Tunisia | Turkey | Turkmenistan
Ukraine | United Arab Emirates | United Kingdom | United States
Uzbekistan Vatican City State | Venezuela | Vietnam Yemen Zambia |

Sub Bureaus

United Kingdom:	Bermuda | Gibraltar | Cayman Islands | Anguilla | Montserrat | British Virgin Islands | Turks and Caicos
United States:	Puerto Rico | American Samoa
China:	Hong Kong, Macao

Interpol's distinctive signs
(http://www.interpol.int/Public/icpo/LegalMaterials/emblem/default.asp#1)

The official abbreviations

- O.I.P.C - Stands for *Organization internationale de police criminelle'*
- ICPO - Stands for *International Criminal Police Organization'*.

The official name is 'ICPO-INTERPOL'

The word 'INTERPOL' is a contraction of 'international police', and was chosen in 1946 as the telegraphic address. In 1956, the International Criminal Police Commission changed its name to become the International Criminal Police Organization - INTERPOL.

The Emblem

The emblem, in use since 1950, comprises the following elements:

- The GLOBE represents the worldwide activities of the INTERPOL
- The olive branches in either sides of the globe symbolize PEACE
- the name 'INTERPOL' below the globe in the center of the olive branches
- The Vertical Sword behind the globe, representing police action
- The Scales below the olive branches symbolize JUSTICE

The flag

The flag has been in use since 1950, it has a light-blue background the emblem is in the center the four lightning flashes arranged symmetrically around the emblem represent telecommunications and speed in police action.

Background to the organization's distinctive signs

- At the 1947 General Assembly session in Paris, it was recommended that all member states adopt the name 'INTERPOL' as the telegraphic address (Resolution AGN/16/RES/12)
- At the 1949 General Assembly session in Berne, the organization (then known as the International Criminal Police Commission) adopted the INTERPOL emblem and flag
- At the 1956 General Assembly session in Vienna, the name 'International Criminal Police Organization' was adopted
- At the 1958 General Assembly session in London, member states were asked to take measures to protect the word 'INTERPOL' (AGN/27/RES/1)
- At its 1961 session in Copenhagen, the General Assembly recommended that members take further measures to protect the name 'ICPO-INTERPOL' from unauthorized use (AGN/30/RES/6)
- At the 1972 General Assembly session in Frankfurt, Indonesia proposed that Interpol's emblem be modified so that all regions would be represented.
- At the 1973 General Assembly session in Vienna, the emblem was modified, and now depicts all the regions of the world.

Protection of the distinctive signs

As an international organization, Interpol's distinctive signs are protected by the 1883 Paris Convention.

Under the terms of Article 6 of this Convention, which has been ratified by the majority of Interpol's member states, the signatory countries have agreed to refuse to register as trademarks and ban the use of coats of arms, flags, emblems, initials and names of states and intergovernmental organizations.

The organization's emblem and the name 'INTERPOL' have, in addition, been registered as European Community and US trademarks.

Authorization to use Interpol's distinctive signs

In exceptional cases, the organization may authorize a third party to use its distinctive signs. Authorization can only be given by Interpol's Secretary General.

In any event, authorization to use the organization's distinctive signs is limited:

- authorization is given for a specific, identified project
- the duration of the authorization is specified
- authorization does not confer any exclusive rights
- The authorization specifies that the organization's signs may not be modified or adapted.

Where appropriate, the media (documents, films, etc.) must be submitted to the organization for approval before publication.

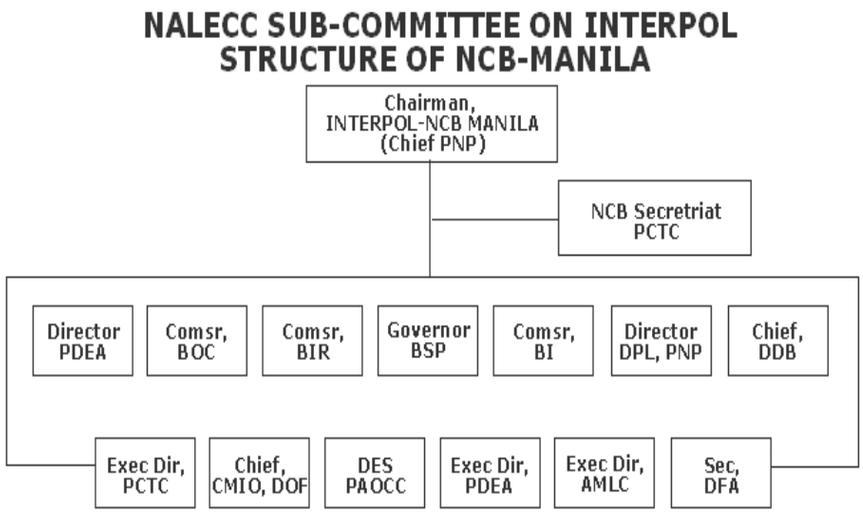
The organization may automatically revoke the entitlement to use its distinctive signs if it transpires that the project for which the organization has given its agreement is likely to prejudice its reputation or image.

The Interpol National Central Bureau – Manila

Director General Philippine National Police ---------
Chairman
Director, National Bureau of Investigation ----------
Member
Commissioner, Bureau of Customs ----------
--Member
Commissioner, Bureau of Internal Revenue ---------
Member
Commissioner, Bureau of Immigration ----------
-Member
Governor, Bangko Sentral ng Pilipinas ----------
-Member
Executive Director, Dangerous Drug Board ----------
Member
Commissioner, EIIB ----------
-------Member

The first four were designated by the President, and the last four were unanimously chosen by members of the **NATIONAL Law Enforcement**

Coordinating Committee (NALECC) as authorized by the President thru NALECC Resolution 93-10 dated 21 July 1993.



What is Transnational Organized Crime?

Transnational organized crime is a crime perpetuated by organized criminal groups with the aim of committing one or more serious crimes or offenses in order to obtain, directly or indirectly, a financial or other material benefit. In order to be

considered as transnational, a crime must involve the crossing of borders or jurisdictions.

Criminal Organizations

http://www.interpol.int/Public/OrganisedCrime/default.asp

Definitions of what constitutes organized crime vary widely from country to country. Organized groups are typically involved in many different types of criminal activity spanning several countries. These activities may include trafficking in humans, weapons and drugs, armed robbery, counterfeiting and money laundering.

Interpol acts as a central repository for professional and technical expertise on transnational organized crime and as a clearinghouse for the collection, collation, analysis and dissemination of information relating to organized crime and criminal organizations. It also monitors the organized crime situation on a global basis and co-ordinates international investigations.

Interpol's mission in this regard is to enhance co-operation among member countries and stimulate the exchange of information between all national and international enforcement bodies concerned with countering organized crime groups and related corruption.

What are the examples of Transnational Crimes?

- Pharmaceutical crime
- Trafficking in Persons
- Environmental Crime
- Economic Crime
- Cyber Crimes
- Piracy and Armed Robbery against Ships
- Intellectual Property Theft
- Cultural Property Theft
- Illegal Trafficking of Small Arms
- Money Laundering
- Terrorism
- Drug trafficking

Pharmaceutical Crimes

http://www.interpol.int/Public/PharmaceuticalCrime/Default.asp

Counterfeit medical products and illicit medicines represent a global public health crisis. They range from inactive, useless preparations to harmful, toxic substances, and are often indistinguishable from the genuine product. They pose a major risk to public health and are becoming increasingly prevalent in all parts of the world.

High costs of legitimate drugs and inadequate controls mean that patients turn increasingly (knowingly or otherwise) to counterfeit drugs. At best, these substandard drugs are likely to be less effective, but they can also be harmful, even life-threatening. Fake anti-malarial drugs are believed to be a contributory factor in a significant number of tragedies in Sub-Saharan Africa. Also increasingly available are counterfeited treatments for life threatening diseases such as tuberculosis and HIV/AIDS.

The dangers of counterfeit medical products
http://www.interpol.int/Public/PharmaceuticalCrime/Dangers.asp

Counterfeit products are harmful and can even be fatal. Fake medicines range from useless to highly dangerous. They often contain the wrong level of active ingredient – too little, too much or none at all – or an active ingredient intended for a different purpose. In some cases, fake medicines have been found to contain highly toxic substances such as rat poison. In all these scenarios, the person taking the counterfeit medicine is putting their health, even their life, at risk.

One can easily be deceived by counterfeit medicines: they are often packaged to a high standard with fake pills that look identical to the genuine ones. Sometimes a laboratory test is the only way to identify the difference.

The Extent of the Problem

Counterfeit medicine is now a truly global phenomenon, and all countries of the world are affected as source, transit or destination points.

The World Health Organization (WHO) estimates that up to 1% of medicines available in the

developed world are likely to be counterfeit. This figure rises to 10% globally, but in some areas of Asia, Africa and Latin America counterfeit goods can form up to 30% of the market.

Counterfeiting applies not only to 'lifestyle' medicines, including erectile dysfunction and weight loss medicines, but also to 'lifesaving medicines' including those used to treat cancer, heart disease and other serious illnesses.

And it's not just medicines. Fake medical devices also pose a risk. The term 'medical device' covers a wide range of healthcare products from contact lenses to condoms; syringes to surgical instruments; and wheelchairs to radiotherapy machines.

Risks of buying medicines over the Internet

More and more people are buying medicines and medical devices over the Internet, through online pharmacies and auction sites. Unfortunately, a large number of these Internet sites are unauthorized, unregulated and trade in illicit or sub-standard products. If an online supplier conceals its physical address, this is a warning sign that their products could be dangerous – the WHO estimates that 50% of medicines available from such websites are counterfeit. In particular, buying prescription-only medicines from unauthorized or dubious sources significantly increases the risk of getting substandard or fake products. It is important to consult a healthcare professional for prescription-only medicines and to obtain the medicines from a regulated source. Buying medicines online may seem cheaper, quicker and more convenient than going through your doctor and high street pharmacy, but the dangers outweigh the benefits by far. Don't take the risk.

The Response

At INTERPOL, the Medical Product Counterfeiting and Pharmaceutical Crime (MPCPC) Unit works to bring together different players – from police, customs, health regulatory authorities, scientists, and the private sector – to tackle these

crimes. Our network of 188 member countries allows us to connect stakeholders across the world, and carry out effective training and operations in specific regions.

We have also developed targeted enforcement activities against counterfeit medical products through our membership of the International Medical Products Anti-Counterfeiting Taskforce (IMPACT), led by the World Health Organization.

XIX. SELECTED POLICE SYSTEMS

XX. CANADIAN POLICE

The Royal Canadian Mounted Police is the Canadian national police service and an agency of the Ministry of Public Safety Canada. The RCMP is unique in the world since it is a national, federal, provincial and municipal policing body. We provide a total federal policing service to all Canadians and policing services under contract to the three territories, eight provinces (except Ontario and Quebec), more than 190 municipalities, 184 Aboriginal communities and three international airports.

JAPANESE POLICE - please check this website www.npa.go.jp/english/index.htm

CHINESE POLICE

Rank	**Insignia**
Police Rank 4 警佐四階	One Star on One Horizont Bar
Police Rank 3 警佐三階	Two Stars on One Horizont Bar
Police Rank 2 警佐二階	Three Stars on On Horizontal Bar
Police Rank 1 警佐一階	Four Stars on On Horizontal Bar
Police Officer Rank 4 警正四階 (Inspector)(Sub-Lieutenant)	One Star on Two Horizont Bars
Police Officer Rank 3 警正三階 (Senior inspector)(Captain)	Two Stars on Two Horizont Bars
Police Officer Rank 2 警正二階 (Superintendent)	Three Stars on Tw Horizontal Bars
Police Officer Rank 1 警正一階 (Senior Superintendent)	Four Stars on Tw Horizontal Bars
Police Supervisor Rank 4 警監四階 (Superintendent General)	One Star on Thre Horizontal Bars
Police Supervisor Rank 3 警監三階	Two Stars on Thre Horizontal Bars

Police Supervisor Rank 2 警監二階	Three Stars on Thre Horizontal Bars
Police Supervisor Rank 1 警監一階	Four Stars on Thre Horizontal Bars
Police Supervisor Rank Supreme (Police General) 警監特階	

MALAYSIAN POLICE

The Royal Malaysian Police (Abbreviation: *RMP*; Malay: *Polis Diraja Malaysia, PDRM*;) is a part of the security forces structure in Malaysia. The force is a centralized organization with responsibilities ranging from traffic control to intelligence gathering. Its headquarters is located at Bukit Aman, Kuala Lumpur. The police force is led by an Inspector-General of Police (IGP). The post is held by Tan Sri Ismail Omar.

In carrying out its responsibilities, the regular RMP is also assisted by a support group comprising of Extra Police Constables, Police Volunteer Reserves, Auxiliary Police, Police Cadets and a civilian service element.
Rakan Cop is a community outreach programme launched in 9 August 2005.
The RMP constantly co-operates closely with police forces worldwide, which include those from the four neighbouring countries Malaysia shares border with: Indonesian National Police, Royal Brunei Police Force, Royal Thai Police and Singapore Police Force.

Police rank

Senior Officers		
Gazetted Officers	Commissioners	Inspector-General of Police (IGP)
		Deputy Inspector-General of Police (DIGP)
		Commissioner of Police (CP)
		Deputy Commissioner of Police (DCP)
		Senior Assistant Commissioner of Police I (SAC I)
		Senior Assistant Commissioner of Police II (SAC II)
		Assistant Commissioner of Police (ACP)
	Superintendents	Superintendent of Police (SP)
		Deputy Superintendent of Police (DSP)
		Assistant Superintendent of Police (ASP)
Non-gazetted Officers	Inspectors	Chief Inspector (C/Insp)
		Inspector (Insp)
		Probationary Inspector (P/Insp)

Rank In File Officers	
Subordinate Officers	Sub-Inspector (SI)
	Sergeant Major (SM)
	Sergeant (Sgt)
	Corporal (Cpl)
	Lance Corporal (L/Cpl)
	Constable (PC)

Low rank of police officers apart from sub-inspectors wear their rank insignia on the right sleeve of their uniforms. Sub-inspectors and higher ranks wear their rank insignia on epaulettes on both shoulders.

INDONESIAN POLICE

The Indonesian National Police (Indonesian: *Kepolisian Negara Republik Indonesia*) is the official police force for Indonesia. It had formerly been a part of the Tentara Nasional Indonesia since its independence from the Dutch. The police were formally separated from the military in April 1999, a process which was formally completed in July 2000.[1] With 150,000 personnel, the police form a much smaller portion of the population than in most nations. The total number of national and local police in 2006 was approximately 470,000.
The strength of the Indonesian National Police stood at approximately 285,000 in 2004. The national police force was formally separated as a branch of the armed forces and placed under the Office of the President in 1999. It also includes 12,000 marine police and an estimated 40,000 People's Security (Kamra) trainees who serve as a police auxiliary and report for three weeks of basic training each year.
The Headquarter, known as *Markas Besar/Mabes* in Indonesian, is located in Kebayoran Baru, South Jakarta, Indonesia.

RANKS

In the early years, the Polri used European police style ranks like inspector and commissioner. When the police were included into the military structure during the 1960s, the ranks changed to a military style such as Captain, Major and Colonel. In the year 2000, when the Polri conducted the transition to a fully independent force out of the armed forces 2000, they use British style police ranks like Inspector and Superintendent. The Polri have returned to Dutch style ranks just like in the early years.

- High ranking officers
  - Police General / *Jenderal Polisi (Jend. Pol.)* - equivalent General in the army
  - Police Commissioner General / *Komisaris Jenderal Polisi (Komjen Pol.)* - equivalent Lieutenant General
  - Police Inspector General / *Inspektur Jenderal Polisi (Irjen Pol.)* - equivalent Major General
  - Police Brigadier General / *Brigadir Jenderal Polisi (Brigjen Pol.)* - equivalent Brigadier General
- Mid rank officers
  - Police Grand Commissioner / *Komisaris Besar Polisi (Kombespol)* - equivalent Colonel
  - Police Grand Commissioner Adjutant / *Ajun Komisaris Besar Polisi (AKBP)* - equivalent Lieutenant Colonel
  - Police Commissioner / *Komisaris Polisi (Kompol)* - equivalent Major
- Low rank officers
  - Police Commissioner Adjutant / *Ajun Komisaris Polisi (AKP)* - equivalent Captain

    - First Police Inspector / *Inspektur Polisi Satu (Iptu)* - equivalent First Lieutenant
    - Second Police Inspector / *Inspektur Polisi Dua (Ipda)* - equivalent Second Lieutenant
- Warrant officers
    - First Police Inspector Adjutant / *Ajun Inspektur Polisi Satu (Aiptu)* - equivalent Chief Warrant Officer
    - Second Police Inspector Adjutant / *Ajun Inspektur Polisi Dua (Aipda)* - equivalent Warrant Officer
- Non-commissioned officers
    - Chief Police Brigadier / *Brigadir Polisi Kepala (Bripka)* - equivalent Sergeant Major
    - Police Brigadier / *Brigadir Polisi (Brigadir)* - equivalent Chief Sergeant
    - First Police Brigadier / *Brigadir Polisi Satu (Briptu)* - equivalent First Sergeant
    - Second Police Brigadier / *Brigadir Polisi Dua (Bripda)* - equivalent Second Sergeant
- Enlisted
    - Police Brigadier Adjutant / *Ajun Brigadir Polisi (Abrip)* - equivalent Chief Corporal
    - First Police Brigadier Adjutant / *Ajun Brigadir Polisi Satu (Abriptu)* - equivalent First Corporal
    - Second Police Brigadier Adjutant / *Ajun Brigadir Polisi Dua (Abripda)* - equivalent Second Corporal
    - Chief Bhayangkara / *Bhayangkara Kepala (Bharaka)* - equivalent Chief Private
    - First Bhayangkara / *Bhayangkara Satu (Bharatu)* - equivalent Private First Class
    - Second Bhayangkara / *Bhayangkara Dua (Bharada)* - equivalent Private

POLICE IN BRUNEI

The Royal Brunei Police Force (Malay: *Polis Diraja Brunei* (PDRB)) was founded in 1921 with the passing of the Brunei Police Force Enactment. The police force is in charge of prisons, fire services, the issuing of licenses, immigration, and keeping law and order in the streets. The RBP has been a member of INTERPOL since 1984

SINGAPOREAN POLICE

The Singapore Police Force (Abbreviation: SPF; Chinese: 新加坡警察部队; Malay: *Pasukan Polis Singapura*; Tamil: சிங்கப்பூர் காவல் துறை) is the main agency tasked with maintaining law and order in the city-state[1]. Formerly known as the Republic of Singapore Police (Abbreviation: RSP; Malay: *Polis Republik Singapura*), it has grown from an 11-man organization to a 38,587 strong force. It enjoys a relatively positive public image,[2] and is credited for helping to arrest Singapore's civic unrests and lawlessness in its early years, and maintaining the low crime rate today despite having a smaller police-citizen ratio compared to other major cities. Singapore has been ranked consistently in the top five positions in the Global Competitiveness Report in terms of its reliability of police services.

The organization structure of the SPF is split between the staff and line functions, roughly modeled after the military.[6] There are currently 15 staff departments and 13 line units. The headquarters is located in a block at New Phoenix Park in Novena, adjacent to a twin block occupied by the Ministry of Home Affairs.

RANK

A standard rank structure is used throughout the police force, although some ranks may be unique to specific organisations. These ranks are denoted where applicable in the following list, which lists them in ascending seniority:

Police officers

The rank of Corporal was abolished in 1972, but reinstated in 1976. In 1997, all ranks were shifted from the sleeves to the epaulettes, except for the Gurkha Contingent. Also in the same year, the Station Inspector rank was changed from collar pips to epaulettes with a new design similar to that of the SAF Warrant Officers, and the rank of Senior Station Inspector was introduced. In 1998, the Senior Station Inspector (2) rank was introduced, and changes were made to the SI, SSI, and SSI(2) rank designs. The rank of Lance Corporal was abolished in 2002[23]. The 2006, the Gurkha Contingent adopted embroidered ranks as part of an overhaul of its combat dress, but are worn on the right front pocket.

Rank	Abbreviation	Trainee	Regular	NSF	NSmen	VSC
Constable	PC	T/PC	NA	NA	PC	PC
Special Constable	SC	T/SC	NA	SC	NA	NA
Corporal	CPL	T/CPL	CPL	SC/CPL	CPL (NS)	CPL (V
Sergeant	SGT	T/SGT	SGT	SC/SGT	SGT (NS)	SGT (V
Staff Sergeant	SSGT	NA	SSGT	SC/SSGT	SSGT (NS)	SSGT (V)
Senior Staff Sergeant	SSSGT	NA	SSSGT	NA	SSSGT (NS)	SSSGT (V)
Station Inspector	SI	NA	SI	NA	SI (NS)	SI (V)
Senior Station Inspector	SSI	NA	SSI	NA	SSI (NS)	SSI (V)
Senior Station	SSI (2)	NA	SSI	NA	SSI(2)	SSI(2)(

Inspector (2)			(2)		(NS)	)

Senior police officers

Rank	Abbreviation	Trainee	Regular	NSF	NSmen	VS
Inspector	INSP	OCT(NSF) P/INSP	INSP	NSPI NSI	INSP (NS)	INS (V)
Chief Inspector	NA	NA	NA	NA	NA	NA
Assistant Superintendent	ASP	P/ASP	ASP	ASP (NS)	ASP (NS)	AS (V)
Deputy Superintendent	DSP	NA	DSP	NA	DSP (NS)	DS (V)
Superintendent	SUPT	NA	SUPT	NA	SUPT (NS)	SU V)
Deputy Assistant Commissioner	DAC	NA	DAC	NA	NA	DA (V)
Assistant Commissioner	AC	NA	AC	NA	NA	AC
Senior Assistant Commissioner	SAC	NA	SAC	NA	NA	NA
Deputy Commissioner of Police	DCP/DC	NA	DCP	NA	NA	NA
Commissioner of Police	CP	NA	CP	NA	NA	NA

INDIAN POLICE

Ranks of Gazetted Officers

- Director Intelligence Bureau (post held by senior most Indian Police Service officer; not a rank)
- Commissioner of Police (State) or Director General of Police
- Special Commissioner of Police or Additional Director General of Police
- Joint Commissioner of Police or Inspector General of Police
- Additional Commissioner of Police or Deputy Inspector General of Police
- Deputy Commissioner of Police or Senior Superintendent of Police

- Deputy Commissioner of Police or Superintendent of Police
- Additional Deputy Commissioner of Police or Additional Superintendent of Police
- Assistant Commissioner of Police or Deputy Superintendent of Police
- Assistant Superintendent of Police (IPS Probationary Rank: 2 years of service)
- Assistant Superintendent of Police (IPS Probationary Rank: 1 year of service)

Ranks of Non-Gazetted Officers

- Inspector of Police
- Sub-Inspector of Police
- Assistant Sub-Inspector of Police
- Police Head Constable
- Senior Police Constable
- Police Constable

HONG KONG POLICE

The Hong Kong Police Force (香港警務處, HKPF, alias Hong Kong Police, HKP) is the largest disciplined service under the Security Bureau of Hong Kong. It is the World's second and Asia's first police agency to operate with a modern policing system. It was formed on 1 May 1844, with strength of 32 officers. Queen Elizabeth II granted the Royal Charter to the Hong Kong Police Force in 1969 for their handling of the Hong Kong 1967 riots, renaming the Hong Kong Police Force as the Royal Hong Kong Police Force. Following the Transfer of sovereignty over Hong Kong, the Police Force now uses the current name. The Hong Kong Police Force has been recognized for its professionalism, organisation, attitude on law enforcement and prompt response and efficiency, leading journalist Kevin Sinclair, Federal Bureau of Investigation and INTERPOL have acknowledged that the Hong Kong Police Force as "Asia's Finest". And in having set up the foundation for the social stability of Hong Kong, and has won a good reputation as one of the safest cities in the World.

In 2008, a rating investigation of Asian police departments voted by the Political and Economic Risk Consultancy Agency, result in the Hong Kong Police Force have been rated the excellence of Asian police departments. The rating awarders commented that the Hong Kong Police Force are respectable and outstanding in their performance of upholding the law and maintaining public orders, keeping the Hong Kong people living and working in peace and contentment. Furthermore, a quantitative research derived from the United States of America and United Kingdom with its statistical outcome, aims for the World's police forces' overall quality, including local public security, case cracking rate, incorruptibility, professionalism and language proficiency, etc. The result is the Hong Kong Police Force has been rated in the top of Asia, also as one of the best of the World.

The current Commissioner of Police is Tang King Shing, including the Hong Kong Auxiliary Police Force and civil servants, leading a force of about 40,000 personnel, which makes Hong Kong the second greatest citizen-officer ratio society in the world. In addition, the Marine Region with about 3,000 officers, and a fleet of 143 is the largest of any civil police force.

RANKS

The HKPF continues to use similar ranks and insignia to those used in British police forces. Until 1997, the St Edward's Crown was used in the insignia, when it was replaced with the Bauhinia flower crest of the Hong Kong government. The crest of the force was modified in 1997:

- Commissioner of Police (CP)
- Deputy Commissioner of Police (DCP)
- Senior Assistant Commissioner of Police (SACP)
- Assistant Commissioner of Police (ACP)
- Chief Superintendent of Police (CSP)
- Senior Superintendent of Police (SSP)
- Superintendent of Police (SP)
- Chief Inspector of Police (CIP) (insignia of a Captain)
- Senior Inspector of Police (SIP)
- Inspector of Police (IP)
- Probationary Inspector of Police (PI)
- Station Sergeant (SSGT)
- Sergeant (SGT)
- Senior Constable (SPC)
- Police Constable (PC)

ENGLISH POLICE (UNITED KINGDOM)

The Metropolitan Police Service (MPS) is the territorial police force responsible for policing Greater London, excluding the "square mile" of the City of London which is the responsibility of the City of London Police.[10] The MPS also has significant national responsibilities such as co-ordinating and leading on counter-terrorism matters and protection of the Royal Family of the United Kingdom and senior figures of HM Government.

At the end of February 2010, the MPS employed 52,111 personnel. This includes sworn 33,258 police officers and 4,226 Special Constables, 14,332 civilian police staff, and 4,520 non-sworn Police Community Support Officers.[6] This makes it the largest police force within the United Kingdom by a significant margin.[12] The Commissioner of Police of the Metropolis, known commonly as Commissioner, is the overall operational leader of the force, responsible and accountable to the Metropolitan Police Authority. The post of Commissioner was first held jointly by Sir Charles Rowan and Sir Richard Mayne. The Commissioner since 27 January 2009 is Sir Paul Stephenson, QPM who had previously been the Acting Commissioner since 1 December 2008.

A number of informal names and abbreviations exists for the Metropolitan Police Service, such as "the Met", "Met Pol", "MP" and "the MPS". In statutes it is referred to in the lower case as the "metropolitan police force" or the "metropolitan police", without the appendage "service". The MPS is also referred to as Scotland Yard after the location of its original headquarters buildings in and around Great Scotland Yard, Whitehall. The current headquarters of the MPS is New Scotland Yard

RANKS

The Metropolitan Police uses the standard UK police ranks, indicated by shoulder boards, up to Chief Superintendent, but it has five ranks above that level instead of the standard three.

The Metropolian Police approved the use of name badges in October 2003, with new recruits wearing the Velcro badges from September 2004. The badge consists of the wearer's rank, followed by their surname.

Following controversy over alleged assaults by uniformed officers with concealed shoulder identification numbers during the G20 summit, Metropolitan Police Commissioner Sir Paul Stephenson stated that "The public has a right to be able to identify any uniformed officer whilst performing their duty" by their shoulder identification numbers.

- Police Constable (PC) (Divisional call sign and shoulder number)
- Sergeant (Sgt or PS) (three point down chevrons above divisional call sign and Shoulder Number) – an "acting" Sergeant, i.e. a substantive constable being paid an allowance to undertake the duties of a sergeant for a short period of time, displays two point down chevrons above divisional call sign, and Shoulder Number. *The use of the three chevrons by an acting Sergeant is technically incorrect, and should only be used during a period of temporary promotion.*
- Inspector (Insp) (two Order of the Bath stars, informally known as "pips")
- Chief Inspector (C/Insp) (three Order of the Bath stars)
- Superintendent (Supt) (single crown)
- Chief Superintendent (Ch Supt) (crown over one pip)
- Commander (Cmdr) (crossed tipstaves in a bayleaf wreath); the first ACPO rank.
- Deputy Assistant Commissioner (DAC) (one pip over Commander's badge)
- Assistant Commissioner (AC) (crown over Commander's badge);
- Deputy Commissioner (crown above two side-by-side small pips, above Commander's badge)
- Commissioner (crown above one pip above Commander's badge)

POLICE MODEL COMPARISON

PARTICULAR	PHILIPPINES	COLUMBIA	MYANMAR	JAPA
Organizational Name	Philippine National Police(PNP)	National Police of Columbia Policia National	People's Police force	Law Enforcem Japa
Agency	Department of the Interior and local Government (DILG)	Ministry on National Defense	Ministry of Home Affairs	National Agency o
Entrance Age	21 years old	21 years old	18 years old	21 years
Retirement age	56 years old	50 years old	60 years old	60 years
Minimum Rank	Police Officer one (PO1)	Patroller	Constables	Police Of (Juns
Highest Rank	Police Director General	Commissioner of Columbia/National Police	Police Director General	Chie Superinte (Keish
Minimum Qualification	Baccalaureate Degree Holder	High school Graduate/College Graduate	Baccalaureate Degree Holder	Upper seconda school gra and univ Gradua

PARTICULAR	AUSTRALIA	AFGHANISTAN	SRI LANKA	SPA
Organizational Name	Australia Federal Police (AFP)	Afghanistan National Police	Sri Lanka Police	Cuerpo N Police (
Agency	Federal Bureau of Narcotic Australia	North Atlantic Treaty Organization(NATO)	Ministry of defense, Public Security, Law and order	Cuerpo S De Polici
Entrance Age	21 years old	18 years old	22 years old	18 yea
Retirement age	57 years old	58 years old	58 years old	67 yea
Minimum Rank	Probation Constable	Sergeant	Police Constable Rank4	Priva
Highest Rank	Commissioner	Master General Chief	Inspector General of Police	Lieute

Minimum Qualification	Bachelor's Degree	Baccalaureate	High School Graduate	Secon Educa

PARTICULAR	**MALAYSIA**	**HONGKONG**	**THAILAND**	**CHELI**
Organizational Name	Royal Malaysia Police (RMP)	Hongkong Police Force (HKPF)	Royal Thai Police	Carabeneros d Cheli
Agency	Malayan Union Police Force (MUPF)	Security Bureau of Hongkong	Thailand National Police Department (TNPD)	Ministerio de Defensa Nacio
Entrance Age	20 years old	18 years old	20 years old	15 years old
Retirement age	58 years old	60 years old	50 years old	49 years old
Minimum Rank	Constable	Police constable (PC)	Constable/Police	Aspiranti a Offi (Officer Aspira
Highest Rank	Inspector General Police (IGP)	Commissioner of Police	Police General	Director Gener (General Direc
Minimum Qualification	Have a High School Diploma	Five Subjects including Chinese language and English language	High School Graduate	Baccalaureat Degree

PARTICULAR	**ARGENTINA**	**INDONESIA**	**BRUNEI**	**LAOS**
Organizational Name	Police Federal of argentine (PFA)	Indonesia National Police	Royal Brunei Police Force	Laos Nationa Police
Agency	Policia de Buenos aires	Under Secretary for Public Diplomacy and Public Affairs	Polis Diraja Brunei (PDRB)	Ministry Defens
Entrance Age	21years old	18 years old	18 years old	21 years
Retirement age	55 years old	45 years old	60 years old	60 years
Minimum Rank	Candidate or Cadet	Second Bhayangkara/ bhayangkara Dua (Bharada)	Corporal	Private

Highest Rank	Superintendent General or Commissioner General	Police General/Jenderal Polisi (Jend.Pol.)	Inspector General	Genera
Minimum Qualification	University Degree	voluntary military service; 2years conscript service obligation to age 45;Indonesia citizens only	required to posses atleast the Brunei Junior Certificate of Education(BJCE)	Bachelo Degree

PARTICULAR	**URUGUAY**	**GERMANY**	**ABU DHABI**	**UNITED KINGI**
Organizational Name	National Police of Uruguay	Federal Police of Germany	Abu Dhabi Police (ADP)	Metropolitan Po Service
Agency	Ministry of the Interior of Uruguay	Federal Ministry of Interior	Ministry of Interior	Ministry of defe
Entrance Age	21 years old	16 years old	18 years old	18 years old
Retirement age	54 years old	60 years old	60 years old	62 years old
Minimum Rank	Republican Guard Metropolitan Guard	Senior Constable	Policeman	Policemen/ Constable
Highest Rank	Ministry of the Interior	Inspector Police	Commander General	National Commis
Minimum Qualification	High school /College Graduate	High School Degree	Complete college Education	Bachelor's Deg

PARTICULAR	**SUDAN**	**SINGAPORE**	**ISRAEL**	**BRAZIL**
Organizational Name	Sudan Police Force	Singapore Police	Israel Police	Policia Militar (PM)
Agency	Ministry Interior	Singapore Agency	Minister of Internal Affairs	National Public Security And Social Defense System
Entrance Age	18 years	18 years old	21 years old	18 years old
Retirement age	55 years	45 years old	55 years old	49 years old

Minimum Rank	Lance Corporal	Volunteer Special Constable	Constable	Private (Soldado)	
Highest Rank	Inspector General	Commissioner of Police	Inspector General	Colonel (Coronel)	
Minimum Qualification	Secondary School Certificate Examination	• Must be proficient in English • Minimum 3 GCE'O' level credited	Bachelor's Degree	High School Graduate	

PARTICULAR	**MEXICO**
Organizational Name	Federal Police Of Mexico
Agency	• Secretariat of Public Security • Mexican Army's3rd Brigade of the Military Police (Terecera Brigada E Policia Federal De Caminos) • Fiscal Police (Policia Fiscal Federal) • Interior Ministry's Investigation And National Security Center(Center E Investigacion Y Seguridad Nacional)
Entrance Age	18 years old
Retirement age	60 years old
Minimum Rank	Seargent /Private
Highest Rank	General/Colonel
Minimum Qualification	High School Graduate

XXI. POLICE PERSONNEL AND RECORDS MANAGEMENT

Police Personnel Management (Human Resources Management) may be defined as that area of management concerned with human relations in the police organization. As an overview, Police Personnel Management uses planning, organizing, directing and controlling of day-to-day activities involved in procuring, developing and motivating them and in coordinating their activities to achieve the aims of the police.

Efficient management of human resources in any organization can spell the difference between its success and failure to attain its objectives or goals.

The need for a more efficient management of human resources is very demanding today. The success of every organi▼zation is for the organization to overcome the demands in human response brought about by several factors.

Purpose of Police Personnel Administration

The prime objective of an effective police personnel administration is the establishment and maintenance for the public service of a competent and well-trained police force, under such conditions of work that this force may be completely loyal to the interests of the government of all times.

Objectives of Personnel Management

XXII.

XXIII. The management of human resources is delegated to the unit of organization, known as Human Resource Department (HRD). This is to provide services and assistance needed by the organizations' human resource in their employment relationship with the organization. An important task of the Human Resource Department is winning employee's acceptance of organization's objectives.

XXIV.

XXV. The objectives are:

XXVI.

1. To assist top and line management achieves the organization's objective of fostering harmonious relationship with its human resource.
2. To acquire capable people and provide them with oppor▼tunities for advancement in self- development.
3. To assist top management in formulating policies and programs that will serve the requirements of the police organization and administer the same fairly to all members.
4. To provide technical services and assistance to the operating management in relation to their personnel functions in promoting satisfactory work environment.
5. To assist management in training and developing the human resources of the organization if it does not have a separate training department to perform its functions.
6. To see that all police members are treated equally and in the application of policies, rules and regulations and in rendering services to them.
7. To help effect organization development and institution building effort.

Operative Functions of Police Personnel

The primary function of Personnel Department is commonly Personnel Operative Functions. These are the following:

1. **Police Personnel Planning** – is a study of the labor supply of jobs, which are composed with the demands for employees in an organization to determine future personnel requirements, which either increase or decrease. If there is an expected shortage of personnel the organization may decide to train and develop present employees and/or recruit from outside sources.

2. **Police Recruitment -** is the process of encouraging police applicant from outside an organization to seek employment in an organization. The process of recruitment consists of developing a recruitment plan, recruitment strategy formulation job applicants search, screening of qualified applicants, and maintaining a waiting list of qualified applicants.
3. **Police Selections (screening) -** is the process of determining the most qualified police applicant for a given position in the police organization.
4. **Police Placement**- is the process of making police officers adjusted and knowledgeable in a new job and or working environment.
5. **Police Training and Development** – refers to any method used to improve the attitude, knowledge, and skill or behavior pattern of an employee for adequate performance of a given job. It is a day-to-day, year round task. All police officers on a new position undergo a learning process given a formal training or not. Learning

is made easier for officers when the organization provides formal training and development. It reduces unnecessary waste of time, materials, man-hours and equipment.

6. **Police Appraisal or Performance Rating** - performance rating is the evaluation of the traits, behavior and effectiveness of a police officer on the job as determined by work standards. It is judgmental if it is made a tool in decision-making for promotion, transfer, pay increase, termination or disciplinary actions against police officers. It is developmental in purpose when the evaluation is used to facilitate officer's improvement in performance or used to improve recruitment, selection, training and development of personnel.
7. **Police Compensation** - Financial compensation in the form of wages of salaries constitutes the largest single expenditure for most organizations. In Metropolitan Manila and other urban centers, wages of salaries represent the sole source to meet the basic needs of food, clothing and shelter. It also provides the means to attain that standard of living and economic security that vary in degrees upon a person's expectations.

POLICE PERSONNEL PROGRAMS AND POLICIES

Nature of Personnel Programs

Personnel Programs refers to the activities programmed to implement the organization philosophy or creed and the personnel philosophy of central managers in relation to people so as to accomplish organizational objectives. It serves as a fundamental guide for personnel practices and personnel policies used in an organization for maintaining harmony between management and employees. A good personnel program covers all the operative functions of personnel.

XXVII. Factor to Considered in Personnel Program

The following factors should be taken into consideration in the preparation of a personnel program.

- objectives of the organization
- organizational philosophy of central management in relation to personnel,
- financial conditions and physical facilities of the organization
- cultural background and tradition of the people
- community and employees
- governmental factors.

Police Personnel Policies

1. **Acquiring competent personnel** - includes human resources planning, job description and job specification, police recruitment, selection, placement, transfer, layoffs, and separation.
2. **Holding and retaining competent police personnel** - gives depth and meaning to good management philosophy, and involves the granting of fair wages, reasonable working hours, and other employee benefits and services. These activities include the determination of an equitable wage and maintenance of an incentive system. This area also concerned with securing greater officer participation in activities and with strengthening officer morals and effectiveness. All these help make the organization a "good place to work in."
3. **Developing and motivating personnel** - deals with the education of the police officers, the appraisal of work performance, their promotion, and the suggestion system, which enables them to develop so they can rise to the police organization's desired standards of performance.
4. **Labor and human relations** - involves the development of harmonious relations between management on one hand and individual police officer the on the other hand. It also concerns the observance and application of laws and court decisions affecting human relations, and relationships with other government law enforcement agencies.
5. **Efficient administration of the program with adequate budget** – this is to achieve a favorable climate for police officers. Good human relations should be the attitude in the applications, implementation and interpretation of the organization's policies, rules and regulations. The important tools in this area are records and reports, personnel research and statistics, and evaluation of the effects of current policies, activities, and programs.

POLICE POLICIES AND PROCEDURES

Nature of Police Policies

Policies are tools of police management, which give life and direction to the police program of activities and set limits within which action is to be pursued by the personnel concerned. Policies define the authority and the responsibility of subordinates. They help the personnel understand their mutual relationships. They are ahead to guide the men on the operational level, authority, and responsibility and to enable them to arrive at sound decisions.

POLICY refers to a general plan of action that serves as a guide in the operation of the organization. It makes up the basic framework of management decisions that set the course what the organization should follow. It defines the authority and responsibility of supervisors in their job of directing group efforts and implementing personnel programs.

Policies form a code of procedure in that they broadly indicate the best method of conducting any portion of the work at hand. They assist police officers in problem solving and decision-making. While policies must be consistent, they must be flexible enough to permit adjustments when the need for change arises.

Types of Police Policies

According to origin, policies are classified as:

1. **Originated Policy** - This type of policy comes from top management level and is intended to set up guidelines in the operation of the police organization.
2. **Appealed Policy** - This type of policy is born when problems arise at the lower levels of the organization and the man in charge does not know how to meet the problem. He then appeals to his superiors for guidelines and for guidance.
3. **Imposed Policy** - This type of policy comes from the government in the forms of laws, administrative orders, and rules and procedures or contract specifications.

According to their subject matter, policies may be classified into:

1. **General Statement of Principles** - policies stated in broad terms, such as statement of objectives, philosophy and creed. Others stress in general terms management traits, such as fairness in dealing with officers, understanding and humane treatment of the work force.
2. **Specific Rules** - cover specific situations. They are more direct and are less flexible. They are more rigid in nature.

XXVIII.
XXIX. Dissemination of Policies
XXX.

XXXI. To be effective, personnel policies must be understood by all concerned including the managers and supervisors who are to interpret and implement them to the employees who will be affected by the policies. Various means are used by communicate personnel policies to employees. The most common are police handbooks, manuals, publications, memoranda, and circulars, bulletin boards, meetings and conferences.

Police Handbooks - These handbooks are distributed to all personnel, and contain among other things, information about the benefits and services that the organization grants to its officers, the organization's history, its organizational structure, its officers, and other information useful to the officers in understanding their relationship with the organization.

Police Manual - A policy manual covering all police personnel policies and procedures, if made available to managers and supervisors, will be a great help in their decision-making and employees relationship.

Memoranda and Circulars - Memoranda and circulars are another common means of communicating police policies to all officers. They can be issued fast and they provide the greatest assurance of reaching every employee. They are built in means by which every member of the organization is reached.

Bulletin Boards - Organizational policies, rules and regulations, and activities may be typed out of mimeographed and the posted on bulletin boards. If strategically located and well managed, bulletin boards are an effective medium for transmitting newly issued policies, rules and regulations to police officers.

Meetings or Conferences - Meeting or conferences are often held to inform officers about new policies, their objectives and implementation. One advantage of this type of policy dissemination is that it gives the officers the opportunity to ask questions and request clarification on vague and doubtful points. It is effective to smaller departments, as they accommodate small groups and allow the scheduling of meeting at very convenient hours.

Police Publications - Communication has gained such importance to and attention by management in recent years. To meet the needs of communicating with officers, police organizations have been spending amount of money on publications, internal or external.

XXXII. POLICE JOB DESCRIPTION

After a job is analyzed, the facts about it are gathered, summed up, and recorded in the job description and job specifications.

Job description may be defined as an abstract of information derived from the job analysis report, describing the duties performed, the skills, the training, and experience required the responsibilities involved, the condition under which the job is done, and relation of the job to the other job in the organization.

POLICE RECRUITMENT, SELECTION, AND PLACEMENT

On Police Recruitment

The first step in the recruiting procedure, and the one that should receive greatest emphasis, is that of attracting well-qualified applicants. The best selection devices available are of little value if the recruiting effort has failed to attract candidates of high caliber. Widespread publicity directed at the particular element of the population which it is hoped will be attracted to the examination is the best method of seeking outstanding applicants.

Recruitment in the police service is dependent on the availability of national or regional quota of the PNP, which is determined by the NAPOLCOM.

Standard Policy on Selection and Appointment

There shall be a standard policy for the selection of policy personnel throughout the Philippines in order to strengthen the police service and lay the groundwork for police professionalization.

The general qualification for initial appointment to the police service shall be based on the provisions of Republic Act No. 8551, which states:

No person shall be appointed as uniformed member of the PNP unless he or she possesses the following minimum qualifications:

1. *A citizen of the Philippines;*
2. *A person of good moral conduct;*
3. *Must have passed the psychiatric or psychological, drug and physical tests to be administered by the PNP or by any government hospital accredited by the Commission for the purpose of determining physical and mental health;*
4. *Must possess a formal baccalaureate degree from a recognized institution of learning;*
5. *Must be eligible in accordance with the standards set by the Commission;*
6. *Must not have been dishonorably discharged from military employment or dismissed for cause from any civilian position in the Government;*
7. *Must not have been convicted by final judgment of an offense or crime involving moral turpitude;*
8. *Must be at least one meter and sixty-two centimeters (1.62m) in height for male and one meter and fifty-seven centimeters (1.57m) for female;*
9. *Must weigh not more or less than five kilograms (5kgs) from the standard weight corresponding to his or her height, age, and sex; and*
10. *For a new applicant, must not be less than twenty-one (21) not more than thirty (30) years of age. Except for the last qualification, the above-enumerated qualifications shall be continuing in character and an absence of any of them at any given time shall be a ground for separation or retirement from the service: Provided, that PNP members who are already in the service upon the effectivity of these Implementing Rules and Regulations shall be given five (5) years to obtain the minimum educational qualification and one (1) year to satisfy the weight requirement.*

For the purpose of determining compliance with the requirements on physical and mental health, as well as the non-use of prohibited or regulated drugs, the PNP by itself or through a government hospital accredited by the Commission shall conduct regular psychiatric, psychological, drug and physical tests randomly and without notice.

After the lapse of the reglamentary period for the satisfaction of a specific requirement, current members of the PNP who shall fail to satisfy any of the requirements enumerated under this Section shall be separated from the service if they are below fifty (50) years of age and have served in Government for less than twenty (20) years or retired if they are from the age of fifty (50) and above and have served the Government for at least twenty (20) years

without prejudice in either case to the payment of benefits they may be entitled to under existing laws. (Section 14, RA 8551 – IRR)

On Selection Procedures

The purpose of the selection process is to secure these candidates who have the highest potential for developing into good policemen. The process involves two basic functions. The first function is to measure each candidate's qualifications against whose ideal qualification that are established chiefly through job analysis. The second function, because of the comparative nature of the merit system, is to rank the candidates relatively on the basis of their qualifications.

The Screening Procedures

Preliminary Interview **- the applicant shall be interviewed personally by the personnel officer. If the applicant qualifies with respect to the requirements of citizenship, education and age, he shall be required to present the following:**

- **Letter of application if none has been submitted**
- An information sheet
- A copy of his picture (passport size)
- Birth Certificate
- Transcript of scholastic records and/ or diploma
- Fingerprint card, properly accomplished.
- Clearance papers from the local police department PNP provincial headquarters, city or municipal court and city or provincial prosecutor's office and his hometown police department, NBI, and others that may be required.

Physical and Medical Examination - in order to determine whether or not the applicant is in good health, free from any contagious diseases and physically fit for police service, he shall undergo a thorough physical and medical examination to be conducted by the police health officer after he qualifies in the preliminary interview.

Physical Agility Test - the Screening Committee shall require the applicant to undergo a physical agility test designed to determine whether or not he possess the required coordination strength, and speed of movement necessary for police service. The applicant shall pass the tests like Pull-ups-6 Push-ups-27, Two minutes sit-ups-45, Squat jumps-32, and Squat thrusts-20

The Police Screening Committee may prescribe additional requirements if facilities are available.

Medical Standards for Police Candidates

1. General Appearance **– the applicant must be free from any marked deformity, from all parasite or systematic skin disease, and from evidence of intemperance in the use of stimulants or drugs. The body must be well proportioned, of good muscular development, and show careful attention to personal cleanliness: Obesity, muscular weakness or poor physique must be rejected. Girth of abdomen should not be more than the measurement of chest at rest.**

2. Nose, Mouth and Teeth **– Obstruction to free breathing, chronic cataract, or very offensive breath must be rejected. The mouth must be free from deformities in conditions that interfere with distinct speech or that pre-dispose to disease of the car, nose or throat. There shall be no disease or hypertrophy of tonsil or thyroid enlargement. Teeth must be clean, well cared for and free from multiple cavities. Missing teeth may be supplied by crown or bridge work, where site of teeth makes this impossible, rubber denture will be accepted. At least twenty natural teeth must be present.**

3. Genitals **– must be free from deformities and from varicole, hyrocole, and enlargement of the testicles, stricture of urine, and retained testicles. Any acute and all venereal diseases of these organs must be rejected.**

4. Varicose Veins **- a marked tendency to their formation must be rejected.**

5. Arms, Legs, Hands and Feet **– must be free from infection of the joints, sprains, stiffness or other conditions, such as flat foot, long nails or hammer toes which would prevent the proper and easy performance of duty. First (index) second (middle), and third (ring) fingers and thumb must be present in their entirely. The toe must be the same.**

6. Eyes **– the applicant must be free from color blindness, and be able to read with each eye separately from standard test type at a distance of twenty feet. Loss of either eye, chronic inflammation of the lids, or permanent abnormalities of either eye must be rejected, 20/20 or 20/30 in one eye, with binocular vision of 20/30.**

7. Respiration **– must be full, easy, regular, the respiratory murmur must be clear and distinct over the lungs and no disease of the respiratory organ is present.**

8. Circulation **– The action of the heart must be uniform, free and steady, it's rhythm and the heart from organ changes. Blood Pressure – systolic maximum 135; diastolic 90; pulse pressure 15 to 50. Brain and nervous system must be free from defects.**

9. Kidneys **– must be healthy and urine normal.**

Character and Background Investigation - **the Screening Committee shall cause a confidential investigation of the character and from among various sources.**

Psychological and/or Neuro-Psychiatric Test **- in order to exclude applicants who are emotionally or temperamentally unstable, psychotic, or suffering from any mental disorder, the applicant shall take a psychological and/or neuro-psychiatric test to be administered by the NBI, the PNP, or other duly recognized institution offering such test after he has qualified and met all the requirements above.**

The Oral Interview **- the Screening Committee shall interview the qualified applicants for suitability for police work. The interview shall aid in determining appearance, likeableness, and affability, attitude toward work, outside interest, forcefulness, conversational ability, and disagreeable mannerism.**

POLICE APPOINTMENT

Any applicant who meets the general qualifications for appointment to police service and who passes the tests required in the screening procedures shall be recommended for initial appointment and shall be classified as follows:

1. **Temporary** – if the applicant passes through the waiver program as provided in under R.A 8551.

2. **Probationary** – if the applicant passes through the regular screening procedures.
3. **Permanent** – if the applicant able to finish the required field training program for permanency.

Appointment in the PNP shall be affected in the following manner:

A. PO1 to SPO4 **– appointed by the PNP Regional Director for regional personnel or by the Chief of the PNP for National Head Quarter's personnel and attested by the Civil Service Commission (CSC)**

B. Inspector to Superintendent **– appointed by the Chief PNP as recommended by their immediate superiors and attested by the Civil Service Commission (CSC).**

C. Sr. Supt to Dep. Dir. Gen. **– Appointed by the President upon the recommendation of the Chief PNP with the endorsement of the Civil Service Commission (CSC) and with confirmation by the Commission on Appointment (CA).**

D. Director General **– appointed by the President from among the most senior officers down to the rank of Chief Superintendent in the service subject to the confirmation of the Commission on Appointment (CA). Provided, that the C/PNP shall serve a tour of duty not exceeding four (4) years. Provided further, that in times of war or other national emergency declared by congress, the President may extend such tour of duty.**

Waiver for Appointment - **Waivers for initial appointment to the police service shall be governed by Section 15 of Republic Act 8551, IRR.**

Appointment by Lateral Entry -**In general, all original appointments of Commissioned Officers (CO) in the PNP shall commenced with the rank of inspector to include those with highly technical qualifications applying for the PNP technical services, such as dentist, optometrist, nurses, engineers, and graduates of forensic sciences. Doctors of Medicine, members of the Bar and Chaplains shall be appointed to the rank of Senior Inspector in their particular technical services. Graduates of the PNPA shall be automatically appointed to the initial rank of Inspector. Licensed Criminologist may be appointed to the rank of Inspector to fill up any vacancy.**

POLICE TRAINING

The Need for Police Training

Organized training is the means by which officers are provided with the knowledge and the skills required in the performance of their multiple, complex duties. In order that the recruit officer may commence his career with a sound foundation of police knowledge and techniques, it is most important that the entrance level training he soundly conceived, carefully organized and well-presented.

Training and the Changes in Police Works

During the past decades tremendous changes in police work have occurred. Advances in technology of communications and equipment, public relations and employee relations as well as total evolution in the whole social structure have made a law enforcement work more complex and difficult to pursue. The ordinary officer must be briefed and oriented on new changes and developments that affect his job and the recruit must be given a new solid foundation contemporary with the needs of the time. Policemen do not stay trained. If they do not forget what they have learned, it is continually made absolute by improved technology and social changes, and requires frequent renewal to keep it current and useful.

Standards for Police Training

All training programs operated by law enforcement agencies should limit their enrolment to law enforcement officers. Training courses should be set-up, prescribed units of instruction, and arranged a time schedule. Practical recruit training subsequent to employment should be provided.

Pre-and-post employment university training.

Responsibility of Training

The training of police officers shall be the responsibility of the PNP in coordination with the Philippine Public Safety College (PPSC) which shall be the premier educational institution for the training of human resources in the field of law enforcement (PNP, BFP, BJMP), subject to the supervision of the NAPOLCOM.

Types of Police Training Programs

The following are the training programs in the police service:

- Basic Recruit Training
- Field Training
- In-Service Training programs
- Department In-service training programs
- National and International Conventions on Policing

The Basic Recruit Training – the most basic of all police training. It is a prerequisite for permanency of appointment.

The Basic Recruit Training shall be in accordance with the programs of instructions prescribed by the PPSC and the NAPOLCOM subject to modifications to suit local conditions. This course is conducted within not less than six (6) months. A training week shall normally consist of 40 hours of scheduled instructions.

Full time attendance in the Basic Recruit Training **– Attendance to this type of training is full time basis. However, in cases of emergency, recruits maybe required to render service upon certification of the Regional Director or the City or Municipal Chief of Police the necessity of such service.**

Completion and Certification of Training **– After the Basic Recruit Training, the Regional Director shall certify that the police recruits have completed the training and has satisfied all the requirements for police service.**

The PNP Field Training **– is the process by which an individual police officer who is recruited into the service receives formal instruction on the job for special and defined purposes and performs actual job functions with periodic appraisal on his performance and progress.**

Under R.A 8551, all uniformed members of the PNP shall undergo a field training program involving actual experience and assignment in patrol, traffic and investigation as a requirement for permanency of their appointment. The program shall be for twelve (12) months inclusive of the Basic Recruit Training Course for non-officers and the Officer Orientation Course or Officer Basic Course for officers. (Section 20, RA 8551 – IRR)

The In-Service Training Programs

- **Junior Leadership Training – for PO1 to PO3**
- **Senior Leadership Training – for SPO1 to SPO4**
- **Police Basic Course (PBC) – preparatory for OBC – for senior police officers**
- **Officers Basic Course (OBC) – for Inspectors to Chief Inspectors**
- **Officers Advance Course (OAC) – for Chief Inspectors to Sn Superintendent**
- **Officer Senior Education Course (OSEC) – Superintendent and above**
- **Directorial Staff Course (DSC) – for directors and above.**

POLICE APPRAISAL

Appraisal refers to the process of measuring the performance of people in achieving goals and objectives. It is also known as "performance evaluation system".

Purposes of Police Appraisal

1. **It serves as guide for promotion, salary increase, retirement, and disciplinary actions.**
2. **It increases productivity and efficiency of police works.**
3. **It assimilate supervision**
4. **It informs the officer of the quality of his work for improvements**

Uses of Police Appraisal

Police appraisal can be useful for personal decision-making in the following areas:

1. **Eligibility to be hired**
2. **Salary adjustments**
3. **Determining potential for promotion**
4. **Evaluation of probationary officers**
5. **Identification of training needs**
6. **Isolating supervisory weaknesses**
7. **Validating selection techniques**
8. **Reduction in ranks (demotion)**
9. **Dismissal from service and other disciplinary actions.**

PNP Appraisal System

The Performance Evaluation in the police service is the responsibility of the NAPOLCOM, which shall issue the necessary rules and regulation for the orderly administration of the appraisal process. Such performance evaluation shall be administered in a manner as to foster the improvement of every individual police efficiency and behavioral discipline as well as the promotion of the organization's effectiveness.

The rating system shall be based on the standards set by the NAPOLCOM and shall consider results of annual physical, psychological and neuro-psychiatric examinations.

POLICE PROMOTION

Promotion is a system of increasing the rank of a member of the police service. It has the following objectives:

1. **To invest a member of the police force with the degree of authority necessary for the effective execution of police duties.**

2. **To place the police officer in a position of increased responsibility where he can make full use of his capabilities.**

3. **To provide and promote incentives, thus motivating greater efforts of all members of the police force, which will gradually improve efficiency in police works.**

Under the law, the NAPOLCOM shall establish a system of promotion for uniformed and non-uniformed members of the PNP, which shall be based on:

1. **Merit – includes length of service in the present rank, and qualification.**

2. **Seniority**

3. **Availability of vacant position.**

The promotion shall be gender fair which means women in the PNP shall enjoy equal opportunity for promotion as that of men.

Preferences for Promotion

1. **Appropriate Eligibility - Whenever two or more persons who are next in rank, preference shall be given to the person who is the most competent and qualified and who has the appropriate eligibility.**

2. **Competency and Vacancy - When competency, qualification, and eligibility are equal, preference shall be given to the qualified member in the organizational unit where the vacancy occurs.**

3. **Seniority - When all the foregoing conditions have been taken into account, and still the members in the next rank have the same merit and qualification, preference shall be given to the most senior officer.**

Factors in Selection for Promotion

1. **Efficiency of Performance** – as an aid to fair appraisal of the candidates' proficiency, the performance-rating period shall be considered. Provided, that in no instance shall a candidate be considered for promotion unless he had obtained a rating of at least "satisfactory".
2. **Education and Training** – educational background which includes completion of in-service training courses, academic studies, training grants and the like.
3. **Experience and Outstanding Accomplishment** – this includes occupational history, work experience and other accomplishment worthy of commendation.
4. **Physical Character and Personality** – the factors of physical fitness and capacity as well as attitude and personality traits in so far as they bear on the nature of the rank and/or position to be filled. This means that the candidate should have no derogatory records which might affect integrity, morality and conduct.
5. **Leadership Potential** – the capacity and ability to perform the duties required in the new or higher position and good qualities for leadership.

Kinds of Police Promotion

1. **Regular Promotion** - Regular promotion shall be based on the following requirements:

    a. He or she has successfully passed the corresponding promotional examination given by the NAPOLCOM;
    b. Passed the Bar or corresponding Board examination for technical services and other professions;
    c. Satisfactory completion of the appropriate accredited course in the PPSC or equivalent training institutions;

    d. Passed the Psychiatric, Psychological, and Drug test; and
    e. Cleared by the People's Law Enforcement Board (PLEB) and the Office of the Ombudsman for any complaints against him/her.

2. **Promotion by Virtue of Exhibited Acts** (Special Promotion)

Any uniformed member of the PNP who has exhibited acts of conspicuous courage and gallantry at the risk of his or her life above and beyond the call of duty, shall be promoted to the next higher rank. Provided, that such act shall be validated by the NAPOLCOM based on established criteria.

3. **Promotion by Virtue of Position**

Any PNP member designated to any key position whose rank is lower than that which is required for such position shall, after six (6) months of occupying the same, be entitled to a promotion, subject to the availability of vacant positions. Provided, that the member shall not be reassigned to a position calling for a higher rank until after two (2) years from the date of such promotion. Provided, further, that any member designated to the position who does not possess the established minimum qualifications thereof shall occupy the same for not more than six (6) months without extension. (Section 34, RA 8551 – IRR)

POLICE ASSIGNMENT

Police assignment is the process of designating a police officer at a particular function, duty or responsibility.

Purpose of Police Assignment

The purpose of police assignment is to ensure systematic and effective utilization of all the members of the force.

Power to make designation or assignment

The Chief of PNP (CPNP), Regional Director (RD), Provincial Director (PD), and the City or Municipal Chief of Police (COP) can make designation or assignment of the police force with in their respective levels. They shall have the power to make designations or assignments as to who among the police officers shall head and constitute various offices and units of the police organization. The assignment of the members of the local police agency shall be in conformity with the career development program especially during the probationary period. Thereafter, shall be guided by the principle of placing the right man in the right job after proper classification has been made.

Criteria in Police Assignment

1. Those possessing the general qualifications for police duties without technical skills may be assigned to positions where any personnel can acquire proficiency within considerably short period of time.
2. Those possessing skills acquired by previous related experiences should be assigned to the corresponding positions.
3. Those possessing highly technical skills with adequate experience and duly supported by authoritative basis shall be given preferential assignment to the corresponding positions, which call for highly technical trained police officers. (Misassignment of personnel falling under this criteria constitute a serious neglect of duty of the C/PNP, RD, or the COP, in the exercise of his administrative function)
4. Those selected to undergo further studies in specialized courses shall be chosen solely on the basis of ability, professional preparation and aptitude.
5. Qualifications of the police officers shall be examined annually to ascertain newly acquired skills, specialties, and proficiencies.
6. Those with physical limitation incurred while in the performance of duties should be assigned where they can be best used in accordance with the requirements of the force.
7. Assignments and reassignments of the police officers from one unit to another shall be the prerogative of the authority.
8. To give well rounded training and experience to police recruits, tour of duties in various assignments during the probationary period shall be in accordance with Republic Act 8551.

POLICE SALARIES, BENEFITS, AND PRIVILEGES

On Salary

The uniformed members of the PNP are considered employees of the National Government and draw their salaries therefrom. They have the same salary grade that of a public school teacher. Police Officers assigned in Metropolitan Manila, chartered cities, and first class municipalities may be paid with financial incentives by the local government unit concerned subject to the availability of funds.

On Benefits and Privileges

1. Incentives and Awards

The NAPOLCOM shall promulgate standards on incentives and award system in the PNP administered by the Board of Incentives and Awards. Awards may be in the forms of decorations, service medals and citation badges or in monetary considerations. The following are examples of authorized Decorations/medals/citation:

- Police Medal of Valor
- Police Medal of Merit
- Wounded Police Medal
- Police Efficiency Medal
- Police Service Medal
- Police Unit Citation Badge

Posthumous Award – in case a police officer dies.

2. Health and Welfare

The NAPOLCOM is mandated to provide assistance in developing health and welfare programs for police personnel. All heads of the PNP in their respective levels are responsible to initiate proper steps to create a good atmosphere to a superior-subordinate relationship and improvement of personnel morale through appropriate welfare programs.

3. Longevity Pay and Allowances

Under Republic Act 6975, PNP personnel are entitled to a longevity pay of 10% of their basic monthly salaries for every five years of service. However, the totality of such longevity pay does not exceed 50% of the basic pay. They shall also enjoy the following allowances: Subsistence allowance, Quarter's allowance, Clothing allowance, Cost of living allowance, Hazard pay and others

4. Retirement Benefit

Monthly retirement pay shall be fifty percent (50%) of the base pay and longevity pay of the retired grade in case of twenty (20) years of active service, increasing by two and one-half percent (2.5%) for every year of active service rendered beyond twenty (20) yeas to a maximum of ninety percent (90%) for thirty-six (36) years of service and over: Provided, that the uniformed member shall have the option to receive in advance and in lump sum his or her retirement pay for the first five (5) years. Provided, further, that payment of the retirement benefits in lump sum shall be made within six (6) months from effectivity date of retirement and/or completion. Provided, finally, that the retirement pay of PNP members shall be subject to adjustments based on the prevailing scale of base pay of police personnel in the active service. (Section 36, RA 8551 – IRR)

5. Permanent Physical Disability Pay

A PNP member who is permanently and totally disabled as a result of injuries suffered or sickness contracted in the performance of duty as certified by the NAPOLCOM, upon finding and certification by the appropriate medical officer, that the extent of the disability or sickness renders such member unfit or unable to further perform the duties of his or her position, shall be entitled to a gratuity equivalent to one year salary and to a lifetime pension equivalent to eighty percent (80%) of his or her last salary, in addition to other benefits as provided under existing laws.

Should such member who has been retired under permanent total disability under this Section die within five (5) years from his retirement, his surviving legal spouse or, if there be none, the surviving dependent legitimate children shall be entitled to the pension for the remainder of the five (5) year guaranteed period. (Section 37, RA 8551 – IRR)

6. Early Retirement Benefit

A PNP member of his or her own request and with the approval of the NAPOLCOM, retire from the service shall be paid separation benefits corresponding to a position two ranks higher than his present rank provided that the officer or non-officer has accumulated at least 20 years of service.

POLICE INSPECTION

The purpose of police inspection is to ascertain the standard policies and procedures, review and analyze the performance, activities and facilities affecting operations and to look into the morale, needs and general efficiency of the police organization in maintaining law and order.

Types of Police Inspection

1. Authoritative Inspection – those conducted by the head of subordinate units in a regular basis.
2. Staff Inspection – those conducted by the staff for and in behalf of the Chief PNP or superior officers in command of various units or departments.

Nature of Police Inspection

1. Internal Affairs – inspection on internal affairs embraces administration, training, operation, intelligence, investigation, morale and discipline as well as the financial condition of the police organization.
2. External Affairs – it embraces the community relationship of the organization, the crime and vice situation of the locality, and the prevailing public opinion concerning the integrity and reputation of the personnel.

Authority to Inspect

In the PNP, the following are the authority to conduct inspection:

1. NAPOLCOM or its representative
2. PNP Chief or his designated representative
3. PNP Director for Personnel or his representative
4. PNP Regional Director or his representative
5. City/Municipal Chief of Police or his representative
6. Internal Affairs Service (IAS under RA 8551)

The inspecting officer/s shall examine, audit, inspect police agencies in accordance with existing standards and with the following objectives:

1. To take note or discover defects and irregularities
2. To effect corrections on minor defects being discovered
3. To bring to the attention of and recommend to the concerned officers for appropriate actions on defects noted.

Where the irregularity noted during inspection is serious as to warrant administrative charges against a police officer, the inspecting officer shall immediately file the necessary charge or charges before the appropriate disciplinary action offices.

POLICE DISCIPLINARY MECHANISM

Aside from higher police management levels that can impose disciplinary actions against subordinates, the following also serves as disciplinary mechanisms in the police service:

Administrative Disciplinary Powers of the Local Chief Executive (LCE) - The City and Municipal Mayors shall have the power to impose, after due notice and summary hearings, disciplinary penalties for minor offenses committed by members of the PNP assigned to their respective jurisdictions as provided in Section 41 of Republic Act No. 6975, as amended by Section 52 of Republic Act No. 8551.

PLEB - the PLEB (People's Law Enforcement Board) is the central receiving entity for any citizen's complaint against PNP members. As such, every citizen's complaint, regardless of the imposable penalty for the offense alleged, shall be filed with the PLEB of the city or municipality where the offense was allegedly committed. Upon receipt and docketing of the complaint, the PLEB shall immediately determine whether the offense alleged therein is grave, less grave or minor.

Should the PLEB find that the offense alleged is grave or less grave, the Board shall assume jurisdiction to hear and decide the complaint by serving summons upon the respondent within three (3) days from receipt of the complaint. If the PLEB finds that the offense alleged is minor, it shall refer the complaint to the Mayor or Chief of Police, as the case may be, of the city or municipality where the PNP member is assigned within three (3) days upon the filing thereof.

If the city or municipality where the offense was committed has no PLEB, the citizen's complaint shall be filed with the regional or provincial office of the Commission (NAPOLCOM) nearest the residence of the complainant.

Administrative Offenses that may be imposed against a PNP Member

The following are the offense for which a member of the PNP may be charged administratively:

1. **Neglect of duty or nonfeasance** – it is the omission or refusal, without sufficient excuse, to perform an act or duty, which it was the peace officer's legal obligation to perform; it implies a duty as well as its breach and the fast can never be found in the absence of a duty.
2. **Irregularities in the performance of duty** – it is the improper performance of some act which might lawfully be done.
3. **Misconduct or Malfeasance** – it is the doing, either through ignorance, inattention or malice, of that which the officer had no legal right to do at all, as where he acts without any authority whatsoever, or exceeds, ignores or abuses his powers.
4. **Incompetency** – it is the manifest lack of adequate ability and fitness for the satisfactory performance of police duties. This has reference to any physical, moral or intellectual quality the lack of which substantially incapacitates one to perform the duties of a peace officer.

5. **Oppression** – it imports an act of cruelty, severity, unlawful exaction, domination, or excessive use of authority. The exercise of the unlawful powers or other means, in depriving an individual of his liberty or property against his will, is generally an act of oppression.
6. **Dishonesty** – it is the concealment or distortion of truth in a matter of fact relevant to one's office, or connected with the performance of his duties.
7. **Disloyalty to the Government** – it consist of abandonment or renunciation of one's loyalty to the Government of the Philippines, or advocating the overthrow of the government.
8. **Violation of Law** – this presupposes conviction in court of any crime or offense penalized under the Revised Penal Code or any special law or ordinance.

REFERENCE:

DYNAMICS OF LAW ENFORCEMENT AND PUBLIC SAFETY ADMINISTRATION
BY: DR. ROMMEL MANWONG & DR. GILBERT SAN DIEGO
2010 EDITION

POLICE RECORDS MANAGEMENT

The Need for Police Records

A police department is only as good as its records keeping abilities. The effectiveness of the police department is directly related to the quality of its records. They are the primary means of communications among the members of the police department and have as their purpose the integration of the various department units into an integrated organization for accomplishing the police task. Records are essential in the efficient performance of routine duties, in the wise direction of the police effort, in supervision and control of personnel, and in the determination of departmental policies.

Brief History of Filing and Records Storage

Records and management of them have existed in one form or another since written history began. Many original tablets, parchment, and manuscripts of great historical value have come down through the ages and how are carefully guarded in museums all over the worlds. Without some methods of preservations, most of these valuable documents would have remained unknown. Possession of many of them, however, is the result of chance, as record-bearing stones and tablets have been found buried in the loose earth and many places, with no attempt of preservation.

One of the most common methods used by the ancients for the filing of their papers was that of keeping them in a stone or earth ware pot. Many bits of historical evidence have been preserved on wax, stones parchment or in the urn. A modern day application of this custom is the widespread practice of sealing letters, pictures, newspapers, and other memorabilia of the current day on the cornerstone of a new building.

Many items used in offices today have a long history. These items are discussed below:

1. Spindle File **– The Spindle, on with papers nay be impaled, appeared 15th century.**

2. Pigeonhole File **– Persons who disliked spindle folded or rolled their papers, wrote names or subjects of the outside and place the roll in holes in rolltop desks or in a series of separate boxlike openings in a cabinet.**

3. Bellow File **– The bellow files are used as sorters. It appeared at about 1860. Each lettered compartment, the alphabetic bellows files is sometimes used as sorters.**

4. Box-File **– in 1875, the box file shaped-like a book and opening from the side was invented. Each box contained a set of sheets having extended labels bearing the letters of the alphabet. The**

box file is still popular for a limited account of correspondence and especially for home use.

5. Shannon File **– Named after its inventor. The Shannon file originated in 1880 in response to a need of greater security of papers. The Shannon file consisted of a double side-opening arch, mounted on a board with a drawer front on the end. Papers to be filed were perforated along the upper edge and then placed on the arches according to the system or arrangement being used. The Shannon file was suitable only for small amounts of correspondence. The present day Shannon arch-board filed operate on the same principle, but they are designed for temporary storage.**

6. Vertical File **– Vertical filing of papers was in all probability first suggested by Dr. Nathaniel S. Reosenay, secretary of the Charity Organization Society of Buffalo, New York. His long experience with card filing made him believed the same principle might be applied to filing papers (placing them on edge behind guides). He advanced the idea in 1892. The following year, several firms demonstrated vertical files at the World's Fair in Chicago. Large crowds gathered before the exhibits; but the general opinion was, "It will never work; you cannot stand papers on edge; and if you leave them loose. They will lose." Today, vertical filing is generally recognized as the best method of the majority of business records. The first files were built of wood in horizontal sections, but about 1900, the first steel files appeared in vertical sections.** _____

Records management varies greatly from organization. In some, records are handled very informally because their volume is small. At the opposite extreme is the careful control of all key records under the direction of a record manager. This is a position of great responsibility because it includes working with records from their creation to their final disposition.\

XXXIII. Classification of Records

The classification of records is important from the management view because the classification frequently determines the kinds of filing system used, the type of equipment require, and the arrangement of the records in the system. Records can be classified in several ways. Some managers classify records into two basic types: ***Transportation documents*** and ***reference documents***. Other managers classify records into two other basic types: external communications and internal communications.

XXXIV. ***External Communications*** - Written communications between organizations, between customers/ client and the organization, between buyer and supplier and between the organization and various branches of the government are the most notable examples of external communications. Further examples are public service or public relation message, (the reply received after writing to a business of information) and telephone massages (received orally, but written on a message from for a record and after confirmed in writing by a letter).

XXXV. **Internal Communications -** Examples of internal communications are communications between an organization and employees

(such as payroll, records, bulletins and regulations) and communications among an organizations department (such as inventory control records, interoffice memoranda, and reports. Also in the internal communications categories are plans for future productions or services and records of equipment and assists owned).

With the Industrial Revolution, the rapid movements in production technology, the introduction of the factory system, and the changes in forms of business ownership, firms grow in size and scope of operations. Competition become keener; finance production, marketing, and other functions vied for management attention. An awareness of the responsibilities workers spend a great deal of time reading, analyzing, writing and summarizing business letters and interoffice memoranda. Reference documents also include reports and studies (formal and informal). Telegrams, printed matters (catalog, pamphlets, and brochures) and technical pieces (engineering specification, advertising copy, and galley proofs) are also classified as reference documents.

XXXVI.

XXXVII. The Record Cycle

Record may differ from each other in construction or contents, but each follows a common cycle (or path) through its life. The life span of a record from creation to final disposition is called the record cycle. Whether you are considering a simple one-copy payroll check, a complex ten-copy report, or a recorded cassette tape – the record cycle is after referred to as the "birth-through-death" cycle.

1. Creation
2. Classification
3. Storage
4. Retrieval
5. Purging or retention
6. Transfer
7. Archival Storage or Disposition

If an organization has no plan for seeing that all records flow smoothly through the record cycle, it will be faced with more of the following problems, any one which can severely drain of profits.

- An unmanageable tangle of papers within the office
- Wasted clerical effort searching for information.
- Loss of important operating information
- Extravagant use of operating information.
- Possible loss of key information in defending the company against legal actions or governmental inquiries.

Poor records management also creates chaos and wastes a tremendous amount of time and money. Such mismanagement is characterized by:

- Improper control of records creation.
- Free access by anyone at any time to the files.
- No control over records taken from the files.
- No plans for disposition of absolute records.
- Retention of unnecessary records.
- No plans for retention of needed records.

Proper records management provides information, instantaneously and streamlines the operation of any organization. The information contained in the filed records is the lifeblood of any office. The person who is responsible for the orderly arrangement and control of those records has one of the most responsible positions in any offices.

XXXVIII.

XXXIX. Records Storage

Although filing and records management are sometimes used interchangeable, storage is only one phase in the management of a record. Material is placed in the files because it may be useful in the future-to help information too complicated to be trusted to memory, to assist departments in communicating with each other, to substantiate claims, and to provide a record of the past, to provide information useful fro legal purposes. The filler, therefore, must be able to find quickly any information contained in the stored records.

When a record is created and is ready for filing, unnecessary working papers or rough drafts used in its creation should be destroyed. Excessive duplicate copies should be avoided and papers of temporary value should be prominently marked for destruction before they are put into files so that the files do not jumped with duplicates and records of little or no value. This is a process of control that is continued as papers are dated and time stamped upon receipt, started through the work flow from office to office, and stored for retrieval when needed.

Efficient records control includes:

1. Standardizing the purchase of equipment and supplies to allow their usage anywhere in the organizations.
2. Training personnel
3. Following standard procedures of storage and control.

XL. Terminology of Storage

Filing terminology may be confusing to someone who is not familiar with it. Understanding the naming of records control and being able to analyze the various systems of

storage available require knowledge of the terms used. The definition given in the following paragraphs will help in understanding.

1. **Filing** – Filing is the actual placement of materials in a storage container, generally a folder, according to a plan. It includes the process of classifying, coding, arranging, and storage systematically so that they may be located quietly when needed.

2. **Filing Manual** – A filing manual is an instructional book containing detailed information about various phases of filing and records management including rules for the procedures used. Illustrations of those procedures and examples of clerical details, such as folder labeling, typing style, and material used, are usually included in the manual.

3. **Procedures** – Procedures are series of steps for the orderly arrangement or records which include: alphabet, geographic, numeric, subject of chronologic.

4. **System** – The word system as used in records storage means any plan of filing devised by a filing equipment manufacturer. System has a broader meaning in management circles.

5. **Classifying** – Mentally determining the name of subject or number of which a specific record is to be filed is called classifying.

6. **Indexing** – Another method of classifying.

7. **Coding** – Making an identifying mark on the item to be stored to indicate what classifications it is to be filed is called coding. Coding may be done by underlining, checking, circling, or marking the record in some other way. When a record does not need to classify or re-index to determine where it should be refilled because the original code mark remains on it.

8. **Unit** – The names, initials, or words used in determining the alphabetic order of field materials are called units. The name Joan C. Brown, for example has three units. Brown is the first, Joan is the second, and C is the third.

9. **Cross Reference** – A cross reference is a notation put into a file to indicate that a record to not store in that file but in the file specified on the cross-reference. A cross-

reference is somewhat like a directional sign. It tells the filer or searcher where to find the needed material.

10. **Guide** – Dividers in filing equipment are called guides because in formation on them serves as guide to the eye of filing and locating stored items. A primary guide introduces a special section that falls within the alphabetic range of the primary guide it fallows (such as A section devoted to a special subject applications, or a special name group such as names beginning with the word General). An OUT guide is a heavy divider that replaced a folder in the file when the folder is temporarily removed.

11. **Folder** – The container in which papers or materials are kept in a filing cabinet is called a folder. Popular materials used in making folders, are manila, Kraft, plastic and pressboard. A miscellaneous folder is a folder that contains has not accumulated is sufficient volume being removed to its won specially labeled folder known as an individual.

Organization of a Centralized Record System

Depending upon the size and needs of the police force, the Chief of police shall maintain an adequate and centralized records system by organizing in his force an efficient records and communication units. The centralization of records in the police organization brings together at one point all information concerning police activities, and it is trough centralization that the various line functions of the police organization are coordinated.

Functions and Uses of Records

1. It measure police efficiency,
2. It present the community's crime picture,
3. It assist in assigning and promoting personnel,
4. It identify individuals,
5. It provide a basis for property accountability,
6. It control Investigation,
7. It can make information available to the public,
8. It increase efficiency in traffic control,
9. It assist the courts and prosecutors,
10. It assist in evaluating control services,
11. It coordinate custodial services,
12. It integrate the department,
13. It furnish data for the budget,
14. It establish responsibility,
15. It reveal unusual problems,
16. It aid in the apprehension of criminals.
17. It assist other police agencies,
18. It provide the basis for compilation of police statistics,
19. Effective employment of personnel and equipment,
20. Future references and basis of action.

Incidents to be Recorded

1. Violations of laws and ordinances,
2. All calls in which any member of the police force dispatched or takes official action,
3. All legal papers handled such as warrant of arrest, subpoenas, summonses, citations and the like,
4. Cases of missing and found persons, animals and property,
5. Accidents which require police actions,
6. All personal injuries, bodies found and suicides,
7. Any damage to property
8. All cases in which a police officer is involved,
9. All arrests made,
10. Miscellaneous cases, general and special orders and all other incidents that need to be recorded.

Mechanics of Good Report

1. It should present a chronological sequence of events.
2. It should be typed written or computerized.
3. It should provide complete data of victim or suspect.
4. Abbreviations should be avoided except those that are commonly known.
5. It should be brief but clear.
6. Every incident should be written in separate report.
7. It should be accurate and state facts and not opinions.
8. It should answer the 5W's and 1H.

Types of Police Records

Police Records are classified into the following:

1. Case Records
2. Arrest and Booking Records
3. Identification Records
4. Administrative Records
5. Miscellaneous Records

The Case Records

A case of records is composed of two categories:

1. Complainant/Assignment Sheet which reflects all information regarding complains and reports received by the police from the citizens and other agencies, or actions initiated by the police.

2. Investigation Report, which contains the findings of an action taken by the investigating officer based on inquiries made and by obtaining the available facts of the incidents.

The Arrest and Booking Records

This record maintains the arrest and jail booking report, which is required for all persons arrested. It shall bear an arrest number for each arrest made.

The Identification Record

Identification record is the third major division of police records. Fingerprint records are the heart identification system. It provides positive identification and the police must supplement it with

a record of physical characteristics and in some cases a photograph of the criminal. Identification records have their own number series: an identification number is assigned to each criminal to identify records relating to him.

The Administrative Record

These are records required in the management of the department personnel and designed to aid in assignment, promotion, and disciplinary actions. Such records are so essentials in administering personnel matters that they must be maintained in a police department.

The Miscellaneous Records

These are records, which do not relate to recorded complaint and investigation reports but are informational in character.

Recording and Filing System

The nature of police work justifies emphasis on criminal records. To be fully effective, a police record system must:

1. Be comprehensive and include every incident coming to the attention of the police.
2. Be adequately indexed to permit ready reference;
3. Be centralized to prove adequate control and maximum utilization of clerical personnel.
4. Be as a simple as possible, consistent with adequacy, and;
5. Lend itself into summarization and analysis to permit continuing appraisal of the police services.

Such a system will permit a police records, report and analysis to be used as significant tools of management, supervision, control, policy making, and operations. A police department, large or small, shall maintain a centralized record file under a unified control. The case file is the master record and is supplemented by the arrest and the identification records. Each of these records is numbered serially; thus there are case numbers, arrest numbers, and identification numbers.

Filing the Case Record

The case record is the heart of any police record system. It is the basis for an analysis of offences and the methods by which they are committed. The following are the different types of reports included under the case records, which shall be accomplished by all concerned;

1. Complaint/assignment sheet

This is the foundation record of the police department. The desk officer, or clerk, or telephone operator receiving a call for police assistance accomplishes it. All incidents mentioned above and reported to the police shall have a complaint/assignment sheet. Each complaint/assignment sheet shall be assigned a different number.

There are therefore, two numbering system: complaint/assignment sheets becomes the primary document for the analysis of crime occurrences

while the investigative report becomes the prime document for the continuation of the investigative process two copies of the complaint/assignment sheet shall be made for each complaint requiring a sheet report.

A separate complaint/assignment sheet is required for each crime or incident reported to the police. It makes no difference whether the complaint is reported by telephone, by letter, in person at the police desk, to an officer on duty otherwise. The complaint/assignment sheet is registered by stamping a serial on each. When registered the complaint/assignment sheet becomes a part of the records system. There shall be a consecutive series of complaint numbers assigned by the desk officer. The complaint number must not be confused with the case number.

All incidents, which require for a police investigation, shall receive a complain number. The case number identifies each case and all other papers and reports relating to it and as a basis for filing. The desk officer receiving the call need not be obtain detailed information from the complainant but secure the basic information needed to prepare the complaint/assignment sheet. If the complaint is lodge in the precinct, the desk officer of the precinct shall prepare the complaint/assignment sheet in two copies indicating thereon the complaint number assigned by the Central Record Unit. The original copy shall be forwarded to the Central Records Unit.

2. Investigative Report

This type of report is prepared as a written report on the findings of the investigator. The following are the different types of the investigative reports.

a) Case Report – This report shall be accomplished by the investigator or member making preliminary investigation of crime reported to the police. The investigating officer shall submit this report at the end of his tour of duty. This report shall be prepared in the number of copies required by the department for distribution. For uniformity of crime reporting this shall follow the prescribed classification of offences, while the duplicate copy shall remain in the precinct concerned for the corresponding action. The officer assigned to the case shall make his report at the end of his tour of duty.

b) Supplemented / progress – final Report – Progress report shall accomplished by the investigator continuing the investigation if the case is left by pending status.

It shall be submitted within three (3) days after the submission of the initial report and monthly thereafter until the case is closed or cleared.

Closing a case shall not be confused with clearing a case. A case is "Closed", for administrative purposes, when it is no longer being investigated and is not assigned to an investigator. A closed case can be either solved or unsolved. A case is "Cleared" when one or more person is arrested, charge with the commission of the offense and turned over to the fiscal or court for prosecution. Based on the final report a complaint maybe filed by the Police Station Commander before the Municipal Criminal Circuit Trial Court, if it is the municipality.

c) Continuation Report – This report shall be used as the second as the succeeding pages of all kinds or reports.

d) Technical Report – This report shall be accomplished by the investigator to cover other angles of the case or the technical staff whose assistance has been requested to conduct laboratory examination of evidence specimen gathered, to supplement the findings and report of the investigating officer.

f) Wanted Person Report – Information of persons who are wanted by the police shall be flashed by means of "Notice" wanted person, accomplished in six copies, one copy to be sent to the PNP Provincial Director, one (1) copy to the PNP Regional Director, one copy to be sent to PNP Director General, Camp Crame, Quezon City, one copy to be sent to the NBI Central office, Taft avenue, Manila, the original copy to be placed in the "Persons Wanted File" of the police station concerned, and the six (6) copies to be displayed in the Rogues Gallery. Strict compliance with the instructions at the back of the form is required.

g) Daily Record of Events – A daily record of event is needed to keep all members of the force informed concerning police operations, assignments, and administrative instructions. It shall carry a brief resume of each complaint/assignment sheet, a description of missing persons, and persons wanted, and other information of interest to the police force. The officer who prepares the complaint/assignment sheet may reproduce the daily record of events becomes a chronological cross-reference to the complaint file. A number of copies may be made for dissemination to the different divisions and units of the department. In large police stations, the daily record of events may be duplicated by mimeograph. In all police forces, a log book or police blotter shall be used, provided that it contains all the information in the daily record of events and that each incident shall be assigned a serial number. All investigation report and other documents dealing with a case are assembled in a folder. The accumulation of the record is called the "Case File" and is one of the principal features of the satisfactory record system. Case files are always filed according to the case number.

Filing the Arrest and Booking Records

These reports are required for all persons arrested. They shall be made out in full on each person arrested.

1. Arrest Report – An arrest report shall be out in full on each person arrested and should be prepared at the time is prisoner is booked. Information regarding the offender, the charges and circumstances of arrest is recorded before the prisoner is locked in jail or released on bond. The arresting officer is responsible for the arrest report and its completion. One or more criminal charge may be placed on one arrest report. However, if the arrest is in obedience to a warrant or warrants, separate arrest report will be made for each warrant. In preparing for the arrest record, it is important the full name first, middle and last, another personal circumstances of the prisoner are entered and all questions on the form are answered. It shall bear on arrest number for each arrest made. The number series for arrest shall start from no. 1 on the first day of each year which will known as Calendar Year Numbering System. For example, the first arrest in 1991 shall be 91-1 this means that it is the first case of the calendar year 1991. This report shall be used in controlling prisoners during the period of investigation. The arrest report shall be filed by the arrest number and cross-indexed by name and all aliases of the prisoner. It shall carry the serial number of the complaint/assignment sheet and case report, as the case may be. In an arrest where there has been no previous complaint/assignment sheet prepared, the desk officer shall make out one and assign a serial number at the time of the time of the booking. Immediately after accomplishing the arrest report, three things are done.

First – Send to the complaint clerk for the preparation of the complaint/assignment sheet.

Second – Send to the complaint clerk for name search against the alphabetical index file in order to determine if the prisoner is wanted on some other cases.

Third – Two sets of the fingerprints of the prisoner shall be taken. One set shall be forwarded to the NBI headquarters, Manila, and the other shall be searched by fingerprint classification in the fingerprint file, only one set shall be taken and forwarded to the NBI headquarters in Manila.

Finding shall be noted on the arrest report shall be prepared in triplicate together with one booking sheet as its fourth copy. The original is filed with the arrest record file be the number in the Central Record Unit, The duplicate and triplicate copies shall be sent to the fiscal or to the clerk of court, as the case may be, together with the criminal complaint of information and its other supporting papers. The lower portion of the arrest report will be later on detached and returned to the police department by the fiscal or the clerk of court concerned after the termination of the case, to be filed with the case record after the disposition of the case has been annotated on the fingerprint of the accused.

2. Booking Report – The police station needs a current list of the prisoners in custody which will indicate the status and disposition of each. It provides information to each division as to the inmate or inmates in jail. It facilitates accounting for the prisoners at the end of each shift and their control and all times and on which restrictions or privileges are noted. The booking sheet shall be jail file for arrest, arranged alphabetically, and serves as the jail resister. Information regarding any prisoners in custody is thus immediately available. The file shall be kept at the booking counter or location convenient in examination when inquiries are made. After the release of the prisoner, either the police or the court, the jail-booking sheet is forwarded to the records division where it is filed according to the arrest number.

3. Prisoner's Property Receipt – All police stations shall give receipts to prisoners' property that is taken from them. This receipt is prepared in duplicate. Everything taken from his is still the prisoners' property until shown to be otherwise. The officer who makes the search and remove the property shall itemize it completely in the presence of another officer and the prisoner and give prisoner the original receipt. The officer must also see that the property is sealed in an envelope, which bears the prisoners name, the property receipt number and the date. The department property clerk will not be concerned with the care of prisoner's property except when it is too bulky for storage in the prisoner's property cabinet or safe.

The prisoners property receipt blank form should be in book form, with the original perforated for easy removal and with a serial number printed on each pair. The duplicate should be removed from the book. This is to eliminate danger of loss and to have an easy reference by property receipt number or date.

On the time of release, the prisoner shall be required to produce the original receipt. Where he sign to acknowledge return of his property. The receipt is then filed with the case file. In the event the receipt has been lost, stolen or destroyed before the return of the property, certification listing as the property as described on the duplicate prisoners property receipt shall be signed by the prisoner. This certification shall indicate that the original prisoners property receipt was lost, stolen or destroyed.

Prisoner's property that is clearly identifiable by a number or inscription shall be checked against the stolen property files. If an identification is made,

an investigation report stating the facts is written in duplicate; the original is sent to the Commanding Officer who shall cause the property so identified to be held as evidence, the duplicate shall be sent to the detective division for appropriate action.

Filing the Identification Record

The various identification records for the identification of the criminals and other individuals now extensively used in police stations shall include the following:

Fingerprint Record – Of the various method of criminal identification, the fingerprint system is the most reliable. Identifying criminals by name is unsatisfactory because of the frequent use by criminal or aliases. Fingerprint record shall be prepared in at least two copies, the original remain in the Central Record of the police station concerned and a copy to be sent to the NBI headquarters in Manila.

a. Criminal Fingerprint – All persons arrested for an offense shall be fingerprinted and an identification number shall be assigned to each prisoner to identify records relating to him. A prisoner shall be fingerprinted each time he is arrested, even though his prints have already on the file, in order that a copy may be sent to the National Bureau of Investigation. This procedure brings the criminal history file up to date after each arrest. The same ID number shall be used for each subject, regardless of the numbers of time he may be arrested or fingerprinted. This is the fourth series of number used, the other three being the compliant sheet, case report and arrest report. The identification number shall appear on the fingerprint card; the description and the photograph. The identification numbers are recorded chronologically in a ledger the entries on which include the name, identification number, case number, the fingerprint classification and the date fingerprinted.

b. Civilian Fingerprint – All persons requesting clearance certificate or other personal identification purposes shall be fingerprinted using the prescribed form.

c. Alien Fingerprint – All aliens requesting clearance certificate for purposes of petition for naturalization, charge of name, oath taking for other personal identification, purposes shall be fingerprinted, using also the prescribed form.

The fingerprint card is searched in the alphabetical index file. If the search is negative, search is then made in the fingerprint file by fingerprint formula. The fingerprint card are then indexed and filed. This means that it is mandatory principle of taking the fingerprint of all people mentioned above in the three categories: criminal civilians, and aliens.

Secondly, although the police station wishes to maintain its fingerprint card will be sent to the NBI in Manila. In order for fingerprints to serve their maximum usefulness to the local police stations and to all other law enforcement agencies, it is imperative that copies be sent to the NBI, Manila wherein a history sheet will be prepared and furnished the contributing agency. Other police stations may have arrested the subject in the past are thus inform of his present whereabouts. The history sheet sent to the NBI by fingerprints. It is most important, however, that the fingerprint shall be taken accurately.

The Henry FBI extension classification system of fingerprints shall be used by the police stations. The criminal history sheet shall be filed in the individual criminal file. Each person arrested by a local police station shall have an individual file folder.

Criminal Specialty or Modus Operandi File – This consists of photographic records and modus operandi of known criminals. This shall describe the method of operation of a criminals, Classified and filed in such a way as to aid in identifying the crime as one committed by a known criminal.

This is commonly known as M. O. (Modus Operandi) file. The use of the classification index file is the simplest form of modus operandi. This is a sort of Rogues Gallery and is helpful in controlling crime and in apprehending criminals. This shall be filed accordingly to certain M. O. characteristics, according to major classes of crimes, and according to identification number. Group photographs of criminals working together are aid to identification and they shall be filed of Criminal Specialty of group involved.

Filing the Administrative Records

A number of different records are required in the management of the departments' personnel. Some of these are of an informational character designed to aid in assignments, promotions and disciplinary actions; others are of control character such as correspondence files, department memoranda, daily summary of daily attendance record, follow up and call sheet and monthly report. In police stations of over 100 men, the use of such file is essential in administering personal matters.

1. Personal Records – A file showing the history of each police officer, both prior and subsequent to joining the force, is indispensable.

2. Correspondence File – This shall consist of set or records of communications classified, arranged and filed alphabetically by the subject to which they pertain.

3. Memoranda, Orders, Policy files, etc. – These shall be filed accordingly as they are made available.

4. Assignment Record – The detective assignment record is desirable for the effective function of the detective division. Other division in the force may devise a system of assigning personnel.

5. Other files – Police stations shall maintain other administrative records responsive to their needs.

Filing the Miscellaneous Records

Police stations perform a variety of services that do not relate to recorded complaints. In addition to the general classes or records, there is miscellaneous group which do not feel under categories of records that a police stations maintains and which on occasions create filing problems within a department.

The average small police stations may simply maintain one file folder for each category. Each piece of correspondence, together with the copy of the reply, should be filed in chronological order in an appropriate location file. As a refinement, the names of the authors of the correspondence received may be indexed – the index care referring to the folder in which the correspondence may be located. If correspondence with a particular office is frequent, a separate folder for the office may be maintained. However, another method used is to filed miscellaneous correspondence by a subject matter such as firearms, speaking engagements, and the like.

Another system utilized occasionally is to assign a correspondence number to each piece of incoming correspondence, which then is filed by the name of the author. In any event, some types of control records should be maintained in order to ensure a prompt reply. Every police form shall keep and maintain the following miscellaneous record.

- Register of the aliens within the city or municipality obtain from the Immigration Commission and/or other sources;

- List of firearm holders from the Philippine National Police;
- List incumbent city or municipal and barangay officials and their address;
- Lists of the labor unions, cooperative associations, civic, professionals, social and religious organizations, in industrial plants, movie houses, etc.
- List and description and all army camps and mobilization centers.
- Facts about the locality indicating district, barangays, sitios, roads, bridge, centers of population, voters and the like;
- Copies of ordinances and penal laws.
- Roster of AFP reservists, (obtainable from military sources) showing current addresses.
- List of private security agencies.
- List of parolees, pardoned and released criminals and their addresses.
- Property and equipment records – complete inventory shall be keep by the police station and property as well as the cause of maintenance and operations, and
- Such other reports that may be required by proper authorities and those that are necessary and the police force. This shall include the list of police numbers assigned to individual police personnel for identification purposes, which shall be varied and standard identification card for all members of the police force.

Indexing

Police stations shall prepare and maintain index card appearing in the case report and index card for serial number and description of recovered lost or stolen property that has been brought to their attention. The following are different types of index file.

Master Name Index File

Every police station shall maintain a master name index for the operation. It shall be in 3/5 inches index card stock. Index cards shall be arranged in general alphabetical order by the last name. Index cards shall be made of all names appearing in the case report, including aliases, name of complainants, victims, suspect and wanted persons, index card shall be prepared when outside fingerprint cards are received and placed in a local fingerprint collection whether the subject is wanted or not. The department shall also index all names of persons wanted by other police agencies as listed in circulars or by other notice, persons placed on probation or parole. On the index card, the following shall be reflected.

1. Complaint, case and/or ID number as the case may be.
2. Name, aliases, addresses, sex, race, height, weight, color of the eyes and hair, date and place of birth.
3. Fingerprints classification (if available).
4. Brief statement of each incident base on the source document with the following date.

- Date fingerprint taken, court case warrant of arrest issued or date alleged information.
- Contributor of fingerprint or information and local number.
- Nature of offense and or purpose, and;
- Result of disposition, it known

5. If the subject has used to or more names, he will be known by the name first used and so far as the particular police station is concerned. however, both shall be reflected on the index card underlying the first or the original name used.

6. A cross-index card shall be prepared for each additional name use without the brief information. The one in charge of the master name index file shall go through indexes, card by card, in search of misfile card. The sizes and conditions of the files will influence the frequency of searching.

Stolen Property Index File

One principal objective of the investigation conducted by the line-operating units is the identification of the recovery of lost or stolen property. The stolen property index is an investigative aid of inestimable value in achieving this objective. There are two means of identifying property. One by serial number placed on the property and the other is the type of property (unnumbered) this shall be indexed and 3/5 inches index card stock, describing the articles that are reported lost or stolen locally or by circulars from other police station. Prior to filing a card, a search shall be made to determine whether the same piece of property has been previously recorded.

Numbered Property Index

1. Police stations with less than 200 police force may number guide cards from 00 through 99. Numbered property shall be indexed by the last two digits of the serial numbers. When more than one index card filed behind one guide card, they may be placed a numerical order according to the third digit from the end as follows:

Example: **Guide card 66**
Revolver 952066
Motor number 123066
Watch 51-266
Electric drill 752566
Radio AMD 3866

2. Radio stations with more than 200 members shall number the guide cards from 000 through 999. Numbered property shall be indexed according to the last three digits of the number without regard to the type of article. The indexed card is fixed behind the guide cards corresponding to the last three digits of the number.

Unnumbered property index

Property not identifiable by manufacturers serial number is indexed in the unnumbered property index, by description of the article, such as clothing, furniture, footwear, and etc., should be indicative of the general character of the article indexed. Index card shall be removed from the files when the property is recovered and file should be overhauled periodically and certain cards removed. For example, cards over six months old describing perishable goods; those over

two years old describing non-perishable foodstuff, tobacco, and liquor; and those over five years old describing wearing apparel, linens and bed cloths, etc., serve no useful purpose after such a period of time, cards describing articles of greater value, of articles not likely to be worn, consumed, are destroyed should be kept indefinitely. The complete description should be described on the index card to eliminate the need for a search to check the investigative report to obtain the complete description.

Charging Out Files

Responsibility for filing each class of records should be definitely assigned to one or more designated clerks. Access to records, cabinets shall be restricted to record's division members only. When any record is removed from the file, an appropriate borrower's slip is used and a charged-cut card is accomplished. This ensures the proper used of the files; prevent the misplacement of records that have been used and keep the files personnel informed at all times of the whereabouts of the records instead out at any given time.

Borrower's Slip

This is used when asking for files, and is used as a receipt for a case or any number of items from a file. It is in 4x6 inches sheet. A supply of such slip shall be kept in each division or unit. This form is accomplished by the borrower who needs a file and maybe brought to the file room either through the regular messenger service or by any person authorized by the borrower. It is presented to the record's official. It is kept in a file control box when the file stands or remains charged-out. On the return of the record, the borrower's slip is cancelled in the presence of the borrower and same is attached to the record and remains in the file as a permanent record of the transaction.

Charge-out Card

Each time any file is issued, a record should be made on a color charge-out which is often called a "Substitution Card" or an "Out Card" which takes the place of a file that has been removed from the cabinet. This cards maybe cut to fit the file drawer and shall stand out prominently among the files. When a file or folder is withdrawn, one of the cards is filed out and inserted in place of the file. It remains there until the borrowed file is returned. When the record is returned, the entry of the record is crossed out and the card is put back in its place in front of the file drawer.

Follow-up Procedure

It is essential that each Station Commander have an administrative device, which will ensure that all case brought to the attention of the force shall receive appropriate attention. The mechanics of the follow-up system consists in making use of one smooth copy of the complaint/assignment sheet for every complaint, arrest, or other matter which is not completely disposed of at the time of the original report. These sheets are placed in a "Tickler" or "Follow-up File" according to the date as determined by the manual on which the investigating officer shall submit a progress or final report. The file has dividers for each day of smooth and is separated in to 12 months. If a report is due on a designated date, the follow-up slip shall be filed on the day following the target for submission of the report. A reminder slip shall be made and sent to the superior of the officer concerned if the report is not submitted on the date due.

Spot Map

Spot maps are useful to indicate the traffic accidents and crime location. The location of crime hazards aid in the direction of enforcement effort. It

provides supervising officer with evidence of weakness in police service and shows the individual officer where his attention is specially needed. Spot maps should be placed where they will be readily available for consultation. They shall be placed in the office of the head of the division or in the office housing the specialized activity involved. Spot maps should be kept up to the date by the record staff. Each map should be limited not over four different factors if this factors have about equal frequency. In place of the crime index and the location index, spot maps shall be maintained by the police station for its use as follows:

Traffic spot maps – Accident spot map for the posting for motor vehicle and pedestrian accident, which occur in the area.

Crime spot map – A general crime spot map on which are posted the location of murders, rapes, robberies, holdup, carnapping and other major crimes of the locality.

Uniform Crime Reporting (UCR)

A uniform crime reporting shall be established in every police station for monthly and annual reports on case handled and persons arrested by the police station to include cases reported. These reports shall follow the prescribed classification of offenses. The monthly statistical reports shall include the following:

- Monthly report of cases handled by the police station
- Supplement on monthly report on cases handled by the police station
- Report of male persons arrested
- Report of female persons arrested

The four reports above described shall be submitted to the National Police Commission in three copies not later than the 15th of each month. The National Police Commission in return shall each furnish the NBI and the Chief/Director General of the PNP. Accuracy and promptness in the submission of these reports shall be the responsibility of the Station Commander.

The annual crime statistical report shall follow the prescribed form of monthly reports.

REFERENCE:

DYNAMICS OF LAW ENFORCEMENT AND PUBLIC SAFETY ADMINISTRATION
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