From *Bibiano Borja* to *Romy Lim*: A Century of Struggle Against Illegal Drugs

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I. INTRODUCTION

Dangerous drugs are a scourge to every society.[1] It is one of the worst enemies of the State. The threat that illegal drugs pose "against human dignity and the integrity of society is malevolent and incessant."[2]

Drug-related offenses are vicious crimes which "often breed[ ] other crimes."[3] "Court and police records show that a significant number of murders, rapes, and similar offenses have been committed by persons under the influence of dangerous drugs[.]"[4] Worse, illegal drugs erode and disrupt family life, increase transmission of sexually related diseases, result in permanent and fatal damage to physical and mental health, and waste dreams and opportunities for a better future.[5]

According to the latest figures published by the Supreme Court, as of 31 December 2017, 722 drug-related cases are pending before it; 2,207 drug-related cases are pending before the Court of Appeals; and 254,633 drug-related cases are pending before the first and second level courts.[6]

Although the high number of cases filed before the courts might indicate that all drug-related offenses are prosecuted, the Supreme Court has often

1. *See* People v. Cogaed, 731 SCRA 427, 455 (2014); People v. Requiz, 318 SCRA 635, 648 (1999); & People v. Pampillona, 622 SCRA 404, 405 (2010).

2. People v. Bay, 222 SCRA 723, 728 (1993) (citing People v. Ale, 145 SCRA 50, 58 (1986)).

3. People v. Encila, 578 SCRA 341, 366 (2009) (citing Office of the Court Administrator v. Librado, 260 SCRA 624, 628 (1996)).

4. *Id.*

5. People v. Noque, 610 SCRA 195, 198 (2010).

6. The Judiciary Annual Report 2017 (An Report Published by the Supreme Court) at 30-32, *available at* http://sc.judiciary.gov.ph/files/annual-reports/SC_Annual_17.pdf (last accessed July 25, 2019). The Report was submitted to the President and Congress pursuant to Article VIII, Section 16 of the 1987 Constitution. *Id.* at ⋆9.

lamented that these cases "[involve] small-time drug users and retailers," and that prosecutions involving the proverbial "big fish" are short.[7]

Indeed, courts are swamped with cases involving small fry who have been arrested for miniscule amounts of dangerous drugs.[8] Although the Supreme Court recognizes them as a "bane to our society, small retailers are but low-lying fruits in an exceedingly vast network of drug cartels."[9] Law enforcers and prosecutors have often been made to "realize that the more effective and efficient strategy is to focus [the] resources [of the State more] on the source and the true leadership of these nefarious organizations."[10] Otherwise, all efforts expended by the State "will hardly make a dent in the overall picture."[11] Instead, it might be "distracting our law enforcers from their more challenging task: to uproot the cause[ ] of [the] drug menace."[12]

This Article traces the history of the country's laws against dangerous drugs and analyzes the important decisions of the Supreme Court interpreting these statutes.

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7. People v. Alvarado, G.R. No. 234048, Apr. 23, 2018, at *18, *available at* http://elibrary.judiciary.gov.ph/thebookshelf/showdocsfriendly/1/64114 (downloaded .pdf version of the decision from the Supreme Court E-Library) (last accessed July 25, 2019) (citing People v. Holgado, 732 SCRA 554, 577 (2014)).

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

II. THE COUNTRY'S FIRST LAW AGAINST DANGEROUS DRUGS: ACT NO. 1461

Act No. 1461[13] was enacted by the Philippine Commission on 8 March 1906.[14] It was the first law in the Philippines to deal with dangerous drugs. Although it did not entirely prohibit the use of opium, morphine, or any alkaloid of opium, Act No. 1461 regulated and restricted their use and sale to suppress any evil that might result from them.

Under this law, opium, morphine, or any alkaloid of opium, may be used for medicinal purposes when prescribed by a duly-licensed and practicing physician.[15] Also, it may be used by any Chinese person, provided that a permit has been issued unto him by the Municipal Treasurer or the Collector of Internal Revenue upon showing that he "habitually smokes, chews, ... injects ... , or is otherwise addicted to the use of opium or any of its [forms.]"[16]

On 8 October 1907, the Supreme Court decided *United States v. Borja*,[17] the very first case involving Act No. 1461 to reach the Supreme Court. In this case, the Supreme Court affirmed the conviction of defendant Bibiano Borja for violating the Internal Revenue Law of 1904 in relation to Act 1461.[18] Borja, who was then the Municipal Treasurer of the town of Pitogo in the Province of Tayabas, required three Chinese Nationals who went to him to secure a license to smoke opium to pay a license fee in the amount of ₱6.20 each instead of ₱5.00, as imposed by the law.[19] He was sentenced by the

13. An Act for the Purpose of Restricting the Sale and Suppressing the Evil Resulting from the Sale and Use of Opium Until March First, Nineteen Hundred and Eight, When Its Importation or Use For Any But Medicinal Purposes is Forbidden by Act of Congress, Act No. 1461 (1906) (repealed).

14. *Id.*

15. *Id.* § 4 (a).

16. *Id.* § 2.

17. United States v. Borja, 9 Phil. 8 (1907).

18. *Id.* at 10.

19. *Id.* at 8.

Supreme Court to pay a fine of ₱500 and to suffer imprisonment for eight months.[20]

III. THE OPIUM ACT: ACT NO. 1761

On 10 October 1907, the Philippine Commission repealed Act No. 1461 by enacting Act No. 1761, otherwise known as the Opium Act.[21] This law provided that beginning 1 March 1908, the use of opium, except for medicinal purposes, shall be prohibited.[22]

Aside from prohibiting the use of opium, Act No. 1761 likewise proscribed the use of other dangerous drugs such as cocaine, alpha or beta eucaine, or any derivative of such drugs or substances, "except upon the prescription of a duly[-]licensed ... physician[.]"[23] In a similar manner, the law also provided that "[t]he possession of any opium pipe[, or any paraphernalia] for using or smoking opium or any hypodermic syringe for using cocaine, alpha or beta eucaine, or any derivative ... of such drug[,] ... shall be deemed *prima facie* evidence that the person in possession of such ... paraphernalia ... has used [the dangerous drug.]"[24]

In *United States v. Sy Maco*,[25] the Supreme Court explained that during the period from 17 October 1907, when Act No. 1761 went into effect, to

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20. *Id.*

21. An Act Gradually to Restrict and Regulate the Sale and Use of Opium Pending the Ultimate Prohibition of the Importation of Opium into the Philippine Islands in Whatever Form Except for Medicinal Purposes as Provided by the Act of Congress Approved March Third, Nineteen Hundred and Five, and Prohibiting Any Person From Having the Possession of Opium, Cocaine, or Alpha or Beta Eucaine in Any of Their Several Forms, or any Derivative Preparation of any of such Drugs or Substances, Except for Medicinal Purposes, and to Repeal Act Numbered Fourteen Hundred and Sixty-One, and for Other Purposes, Act No. 1761 (1907) (repealed).

22. *Id.* §§ 7 (a) & 30.

23. *Id.* § 28.

24. *Id.* § 29.

25. United States v. Sy Maco, 17 Phil. 565 (1910).

the day before 1 March 1908, the Legislature intended gradually to restrict and regulate the sale and use of opium.[26]

In *United States v. Gaboya*,[27] the Supreme Court held that the mere fact of being in possession of opium and of the apparatus and instruments for smoking, injecting, or using it in any manner whatsoever, is sufficient to create criminal liability, unless it be shown that a license or a lawful permit was obtained.[28]

On 19 May 1910, the Philippine Legislature amended Act No. 1761 by enacting Act No. 1910.[29] Among the amendments which were introduced by Act No. 1910 was the increase in the penalty imposed on those who were caught using or in possession of opium and other dangerous drugs.[30]

In *United States v. Castañeda and Edralin*,[31] the Supreme Court observed that because of the amendment made by Act No. 1910 to Act No. 1761, "a seller of opium is much less severely punished than a smoker of opium."[32] According to the Supreme Court, the "Legislature must[ ] have been of the opinion that the crime of smoking opium is far greater evil than that of selling opium."[33]

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26. *Id.* at 570.

27. United States v. Gaboya, 11 Phil. 489 (1908).

28. *Id.* at 490-91 (citing Act No. 1761, § 7).

29. An Act Amending Sections Twenty-Two, Twenty-Six, Thirty-One, and Thirty-Two of Act Numbered Seventeen Hundred and Sixty-One, Referred to as "The Opium Act," by Providing for the Disposition of All Taxes, Fines, and All Other Moneys Collected Under This Act, Increasing the Penalties for the Violations of Sections Thirty-One and Thirty-Two, Repealing Section Twenty-Seven, And For Other Purposes, Act No. 1910 (1909) (repealed).

30. *Id.* § 3.

31. United States v. Castañeda and Edralin, 18 Phil. 58 (1910).

32. *Id.* at 61.

33. *Id.* A comparison of Sections 15 and 32, which penalizes the selling and the smoking of opium, respectively, shows that although the minimum penalty imposed upon a seller of opium is slightly heavier than the minimum penalty imposed upon a smoker of opium, nevertheless, while a seller of opium may not

IV. RESTRICTING THE USE OF OPIUM: ACT NO. 2381

On 28 February 1914, the Philippine Legislature enacted Act No. 2381,[34] which repealed Act No. 1761.[35] Among the acts punished by the said Act were the preparation, the administration, the use, or the transportation of dangerous drugs.[36] The possession of any paraphernalia designed for smoking, injecting, or administering prohibited drugs was likewise prohibited and punished.[37]

The maintenance of any dive or resort where dangerous drugs are used were also proscribed by the Act.[38] Likewise prohibited was the importation[39] and the sale[40] of dangerous drugs.

According to Section 9 of the Act, the license of a physician who was found prescribing a prohibited drug to a patient "whose [medical] condition does not require its use," shall be also be revoked.[41]

In *United States v. Delgado*,[42] the Supreme Court explained that the enactment by the Philippine Commission, and, later, the Philippine Legislature of Acts Nos. 1461, 1761, and 2381, was "for the purpose of

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be fined more than ₱2,000.00 or imprisoned for more than one year, or both such fine and imprisonment, a smoker of opium may be punished by imprisonment for five years or fined ₱10,000.00 or may suffer both such penalties. Likewise, no matter how many times one may commit the crime of selling opium, he cannot be deported, while a smoker of opium may be deported on the commission of a second offense. Act No. 1761, §§ 15 (b) & 32.

34. An Act Restricting the Use of Opium and Repealing Act Numbered Seventeen Hundred and Sixty-One, Act No. 2381 (1914) (repealed).

35. *Id.* § 12.

36. *Id.* § 2.

37. *Id.* § 6.

38. *Id.* § 2.

39. *Id.* § 4.

40. Act No. 2381, § 5.

41. *Id.* § 9.

42. United States v. Delgado, 41 Phil. 372 (1921).

restricting the use of opium and other prohibited drugs and eventually of eradicating their use."[43] "The primary object of such legislation was the protection of society from the evils believed to be incident to the widespread use of poisonous drugs other than as medicine or for scientific purposes."[44]

According to the Supreme Court, the legislators,

> [i]n the legitimate exercise of [ ] police power, and in the discharge of their duty as guardians of the public welfare ... [enacted the aforementioned] laws to regulate the disposition and the use of dangerous drugs, which the weak and the unwary, unless prevented, may use to their physical and mental ruin.[45]

In the same case, the Supreme Court characterized opium and other prohibited drugs as "loathsome, disgusting, [a] degrading habit [which] generates disease ... and crime[,]"[46] and an active poison with no legitimate use except for medicinal purposes."[47]

V. ARTICLES 190 TO 194 OF THE REVISED PENAL CODE: CRIMES RELATIVE TO OPIUM AND OTHER PROHIBITED DRUGS

When Act No. 3815 or the Revised Penal Code was enacted on 8 December 1930, [48] the Code included provisions prohibiting the possession, the preparation, and use of prohibited drugs and the maintenance of opium dens.[49] The Code also penalized keepers, watchmen, and even visitors of opium dens.[50]

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43. *Id.* at 376.

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815 (1930) (as amended).

49. *Id.* art. 190.

50. *Id.* art. 191.

Like the laws that came before it, the Revised Penal Code prohibited and penalized the importation and sale of illegal drugs,[51] the possession of drug paraphernalia,[52] and the prescription of a prohibited drug to a patient whose medical condition does not require the use of the same.[53]

VI. THE DANGEROUS DRUGS ACT OF 1972: REPUBLIC ACT NO. 6425

In 1972, with already 20,000 drug users in the country, [54] Congress enacted Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972,[55] repealing Article 190 to 194 of the Revised Penal Code.[56] For the first time, *marijuana* or *indian hemp* was deemed a dangerous drug, and, thus, prohibited in the Philippines.[57]

Republic Act No. 6425 also created the Dangerous Drugs Board[58] which was

> mandated to be the policy-making and coordinating agency as well as the national clearing house on all matters pertaining to law enforcement and control of dangerous drugs; treatment and rehabilitation of drug dependents; drug abuse prevention, training and information; research and statistics on the drug problem[;] and the training of personnel engaged in these activities.[59]

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51. *Id.* art. 192.

52. *Id.* art. 193.

53. *Id.* art. 194.

54. Dangerous Drugs Board, History, *available at* http://www.ddb.gov.ph/about-ddb/history (last accessed July 25, 2019).

55. The Dangerous Drugs Act of 1972 [The Dangerous Drugs Act of 1972], Republic Act No. 6425 (1972).

56. *Id.* § 42.

57. *Id.* §§ 2 (i); 3-4; & 7-13.

58. *Id.* § 35.

59. Dangerous Drugs Board, *supra* note 54.

VII. The Comprehensive Dangerous Drugs Act of 2002: Republic Act No. 9165, as Amended by Republic Act No. 10640

On 7 June 2002, Congress enacted Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.[60] This law, which consists of 13 Articles and 102 Sections, repealed Republic Act No. 6425.[61] As compared to Republic Act No. 6425, Republic Act No. 9165 generally increased the penalties of all the offenses that it prohibited and punished.[62]

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60. An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act No. 6425, Otherwise Known as The Dangerous Drugs Act of 1972, As Amended, Providing Funds Therefor, and for Other Purposes [Comprehensive Dangerous Drugs Act of 2002], Republic Act No. 9165 (2002). This was amended by Republic Act No. 10640. An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of Republic Act No. 9165, Otherwise Known as the "Comprehensive Dangerous Drugs Act of 2002", Republic Act No. 10640, § 1 (2014).

61. Comprehensive Dangerous Drugs Act of 2002, art. XIII, § 100.

62. *See, e.g.*, Comprehensive Dangerous Drugs Act of 2002, art. II, § 15. The law provides —

> Section 15. *Use of Dangerous Drugs*. – A person apprehended or arrested, who is found to be positive for use of any dangerous drug, after a confirmatory test, shall be imposed a penalty of a minimum of six (6) months rehabilitation in a government center for the first offense, subject to the provisions of Article VIII of this Act. If apprehended using any dangerous drug for the second time, he/she shall suffer the penalty of imprisonment ranging from six (6) years and one (1) day to twelve (12) years and a fine ranging from Fifty thousand pesos (₱50,000.00) to Two hundred thousand pesos (₱200,000.00); *Provided*, that this Section shall not be applicable where the person tested is also found to have in his/her possession such quantity of dangerous drug provided for under Section 11 of this Act, in which case the provisions stated therein shall apply.

Comprehensive Dangerous Drugs Act of 2002, art. II, § 15.

The case of *Cupcupin v. People*[63] was the first drug-related case decided by the Supreme Court under Republic Act No. 9165. Here, petitioner Pedro Cupcupin was charged with illegal possession of dangerous drugs under Republic Act No. 6425, the Dangerous Drugs Act of 1972, as amended.[64]

Finding that petitioner failed to present any evidence to rebut the existence of *animus possidendi* over the packs of *shabu* found in his residence, the Supreme Court sustained Cupcupin's conviction and adopted the sentence imposed by the trial court.[65]

However, instead of applying Republic Act No. 9165, the law in force at the time, the Court decided the instant case, the old law, Republic Act No. 6425 was applied —

> Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act 2002, increased the penalty for illegal possession of 10 grams or more but less than 50 grams of methamphetamine hydrochloride or '*shabu*' to life imprisonment and a fine ranging from four hundred thousand pesos (₱400,000.00) to five hundred thousand pesos (₱500,000.00). However, said law not being favorable to the accused, cannot be given retroactive application in the instant case.[66]

The Court's ruling in *Cupcupin* confirmed that Republic Act No. 9165 should not be applied retroactively for such an interpretation would have run contrary to the constitutional prohibition on *ex post facto* laws.[67]

In *People v. Villanueva*,[68] the Court sustained the conviction of appellant for violation of Section 5, Article II of Republic Act No. 9165.[69] However, it scrutinized the dispositive portion of the trial court's decision, which reads —

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63. Cupcupin v. People, 392 SCRA 203 (2002).

64. *Id.* at 206-07.

65. *Id.* at 218-21.

66. *Id.* at 219.

67. *Id.*

68. People v. Villaneuva, 506 SCRA 280 (2006).

69. *Id.* at 289-90.

> 'WHEREFORE, premises considered, judgment is hereby rendered finding accused Roger Villanueva y Huelva guilty beyond reasonable doubt for drug pushing, penalized under Section 5, [Article] II, [Republic Act No.] 9165 and he is hereby sentenced in view of the small quantity of shabu involved, to Life Imprisonment and to pay a fine of ₱500,000.00, and to pay the costs.
>
> The decks of shabu subjects of this case are forfeited in favor of the government to be disposed of under the rules governing the same. OIC-Branch Clerk of Court Enriqueta A. Marquez is hereby enjoined to immediately turn over the deck of *shabu* to the proper authority for final disposition.
>
> Costs de oficio.
>
> SO ORDERED.'[70]

The Supreme Court pointed to a stark difference between the penalties imposed under Republic Act No. 6425 and Republic Act No. 9165.[71] Under the repealed Republic Act No. 6425, the imposable penalty depended on the quantity of the regulated drug involved; however, under Republic Act No. 9165, a "penalty of life imprisonment to death and a fine ranging from [f]ive hundred thousand pesos (₱500,000.00) to [t]en million pesos (₱10,000,000.00) [is imposed] for the sale, trade, administration, dispensation, delivery, distribution[,] and transportation of *shabu*, a dangerous drug, regardless of the quantity involved."[72]

Contrary to the laws that were enacted before it, Republic Act No. 9165 treats a mere user of a prohibited drug as a victim, and aims toward the user's reformation and reintegration into the society instead of immediately imposing upon him a corresponding punishment.[73] On the other hand, the law provides for stiffer penalties for drug traffickers, organized syndicates, and public officials who are involved in dangerous drugs.[74]

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70. *Id.* at 285 (emphasis omitted).

71. *Id.* at 289.

72. *Id.* (citing Mabutas v. Perello, 459 SCRA 368, 393 (2005)).

73. *See* Comprehensive Dangerous Drugs Act of 2002, § 2.

74. *Compare* Comprehensive Dangerous Drugs Act of 2002, art. II, §§ 4, 5, 24, & 27, *with* Comprehensive Dangerous Drugs Act of 2002, art. II, § 15.

A. Constitutional Challenges Against Republic Act No. 9165

In *Social Justice Society (SJS) v. Dangerous Drugs Board*,[75] the Supreme Court ruled on a challenge against the constitutional validity of several provisions of Republic Act No. 9165.[76]

The petitioners in the consolidated petitions therein assailed the constitutionality of Republic Act No. 9165 insofar as it required mandatory drug testing of candidates for public office, students of secondary and tertiary schools, officers and employees of public and private officers, and persons charged before the prosecutor's office with certain offenses.[77] Section 36 of Republic Act No. 9165 reads —

> Section 36. Authorized Drug Testing. [—] Authorized drug testing shall be done by any government forensic laboratories or by any of the drug testing laboratories accredited and monitored by the DOH to safeguard the quality of the test results. ... The drug testing shall employ, among others, two (2) testing methods, the screening test which will determine the positive results as well as the type of drug used and the confirmatory test which will confirm a positive screening test. ... The following shall be subjected to undergo drug testing:
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> ...
>
> (c) Students of secondary and tertiary schools. — Students of secondary and tertiary schools shall, pursuant to the related rules and regulations as contained in the school's student handbook and with notice to the parents, undergo a random drug testing ... ;
>
> (d) Officers and employees of public and private offices. — Officers and employees of public and private offices, whether domestic or overseas, shall be subjected to undergo a random drug test as contained in the company's work rules and regulations, ... for purposes of reducing the risk in the workplace. Any officer or employee found positive for use of dangerous drugs shall be dealt with administratively which shall be a ground for suspension or termination, subject to the provisions of

75. Social Justice Society (SJS) v. Dangerous Drugs Board, 570 SCRA 410 (2008) (citing Comprehensive Dangerous Drugs Act of 2002, art. III, § 36 (c); (d); (f); & (g)).

76. *Id.* at 416-17.

77. *Id.* at 416-20 & 422.

> Article 282 of the Labor Code and pertinent provisions of the Civil Service Law;
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> ...
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> (f) All persons charged before the prosecutor's office with a nominal criminal offense having an imposable penalty of imprisonment of not less than six (6) years and one (1) day shall undergo a mandatory drug test;
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> (g) All candidates for public office whether appointed or elected both in the national or local government shall undergo a mandatory drug test.[78]

In sustaining the validity of Section 36 (c) and (d), which required a mandatory drug testing for secondary and tertiary students, and public and private employees, the Supreme Court held that while mandatory, it was a random and suspicionless arrangement.[79]

Quoting the Decision of the United States Supreme Court in *Vernonia School District 47J v. Acton*,[80] the Supreme Court explained that "school children ... are most vulnerable to the physical, psychological, and addictive effects of drugs."[81] The Supreme Court held that it is "within the prerogative of educational institutions to require, as a condition for admission, compliance with reasonable school rules and regulations and policies."[82]

The Supreme Court then adopted the ruling of the United States Supreme Court in *Vernonia* that:

> (1) schools and [ ] administrators stand *in loco parentis* with respect to their students;
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> (2) minor students have contextually fewer rights than an adult, and are subject to the custody and supervision of their parents, guardians, and schools;

78. *Id*. at 416-17 (citing Comprehensive Dangerous Drugs Act of 2002, art. III, § 36 (c); (d); (f); & (g)).

79. *Id*. at 425 & 429-31.

80. Vernonia School District 47J v. Acton, 515 U.S. 646, 661 (1995).

81. *Social Justice Society (SJS)*, 570 SCRA at 426.

82. *Id*. at 429.

> (3) schools, acting *in loco parentis*, have [the] duty to safeguard the health and well-being of their students and may adopt such measures as may reasonably be necessary to discharge such duty; and
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> (4) schools have the right to impose conditions on applicants for admission that are fair, just, and non-discriminatory.[83]

In likewise ruling for the validity of mandatory drug testing on public and private employees, the Supreme Court ruled that "the need for drug testing to at least minimize illegal drug use is substantial enough to override the individual's privacy interest under the premises."[84] The validity "of the mandatory, random, and suspicionless drug testing [for public and private employees,]"[85] according to the Supreme Court, "proceeds from the reasonableness of the drug test policy and requirement."[86]

On the contrary, in ruling that Section 36 (g) of Republic Act No. 9165 is unconstitutional, the Supreme Court explained that the provision effectively "enlarges the qualification requirements enumerated in Section 3, [Article] VI of the 1987 Constitution."[87]

> As couched, [the] said [provision] unmistakably requires a candidate for senator to be a certified illegal-drug clean, obviously as a pre-condition to the validity of a certificate of candidacy for senator or, with like effect, a condition sine qua non to be voted upon and, if proper, to be proclaimed as senator-elect.[88]

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83. *Id.*

84. *Id.* at 434.

85. *Id.* at 437.

86. *Id.*

87. *Social Justice Society (SJS)*, 570 SCRA at 424. The Constitution provides —

> SECTION 3. No person shall be Senator unless he [or she] is a natural-born citizen of the Philippines, and, on the day of the election, is at least thirty-five years of age, able to read and write, a registered voter, and a resident of the Philippines for not less than two years immediately preceding the day of the election.
>
> PHIL. CONST. art. VI, § 3.

88. *Social Justice Society (SJS)*, 570 SCRA at 424.

Although it may be argued that "the provision does not expressly state that non-compliance with the drug test imposition is a disqualifying factor or would work to nullify a certificate of candidacy[,]"[89] the Supreme Court explained that

> [t]his argument may be [plausible] if the drug test requirement is optional. But the particular [S]ection of the law, without exception, made drug-testing on those covered mandatory, necessarily suggesting that [those who do not comply with the provision will] suffer the adverse consequences for not adhering to the statutory command.[90]

In ruling against the constitutionality of Section 36 (f), the Supreme Court held that there can be "no valid justification for the mandatory drug testing for persons accused of crimes."[91] The Supreme Court held that unlike the random and suspicionless drug testing for students and employees, the mandatory drug testing for persons accused of committing criminal offenses can never be considered as "random or suspicionless."[92] The concepts of "randomness and being suspicionless"[93] are, according to the Supreme Court, "antithetical to their being made defendants in a criminal complaint."[94] "They are not randomly picked; neither are they beyond suspicion."[95] "To [then] impose mandatory drug testing on the accused is a blatant attempt to harness a medical test as a tool for criminal prosecution, [which is] contrary to the [ ] objectives of [Republic Act No.] 9165."[96] A mandatory drug testing then for those persons charged before the public prosecutor's office with criminal offenses punishable with six years and one day imprisonment would be violative of that person's right.

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89. *Id.*

90. *Id.* at 424-25.

91. *Id.* at 437.

92. *Id.*

93. *Id.*

94. *Social Justice Society (SJS)*, 570 SCRA at 437.

95. *Id.*

96. *Id.*

In *Estipona, Jr. v. Lobrigo*,[97] the Supreme Court ruled that Section 23 of Republic Act No. 9165, which prohibits an accused charged under any provision of Republic Act No. 9165 from availing the benefit of plea-bargaining, is unconstitutional.[98] Section 23 reads —

> SECTION 23. *Plea-Bargaining Provision*. — Any person charged under the provision of this Act regardless of the imposable penalty shall not be allowed to avail of the provision on plea-bargaining.[99]

In this case, petitioner Salvador A. Estipona, Jr. was charged for violation of illegal possession of dangerous drug under Section 11 of Republic Act No. 9165.[100] Subsequently, Estipona filed a motion to be allowed to enter into a plea-bargaining agreement, "praying [that he be allowed] to withdraw his not guilty plea [for illegal possession of dangerous drugs,] and, instead, [be allowed] to enter a guilty plea for [illegal possession of drug paraphernalia under] Section 12 ... of [Republic Act No.] 9165."[101] In his motion, Estipona posited that Section 23, which prohibits plea-bargaining, encroaches on the exclusive constitutional power of the Supreme Court to promulgate rules of procedure.[102]

In denying Estipona's motion, the trial court ruled that while it is "not precluded from resolving constitutional questions ... [it] is not unaware of the admonition of the Supreme Court that lower courts must observe a becoming modesty in examining constitutional questions."[103]

Estipona, then, assailed the denial of the trial court of his motion on *certiorari* before the Supreme Court.[104]

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97. Estipona, Jr. v. Lobrigo, 837 SCRA 160 (2017).

98. *Id.* at 194.

99. Comprehensive Dangerous Drugs Act of 2002, art. II, § 23.

100. *Estipona, Jr.*, 837 SCRA at 167.

101. *Id.* at 168.

102. *Id.*

103. *Id.* at 168-69.

104. *Id.* at 170.

The Supreme Court held that by virtue of Article VIII, Section 5 of the 1987 Constitution, [105] the power to promulgate, amend, and repeal rules of procedure exclusively belongs to the Supreme Court.[106]

Considering that plea-bargaining does not create a right but merely operates as a means of implementing an existing one, the Supreme Court ruled that "[p]lea[-]bargaining is a rule of procedure." [107] Thus, it is the sole prerogative of the Supreme Court, to the exclusion of the other branches of government, to promulgate the same.[108]

B. Prohibited Acts

Republic Act No. 9165 punishes the following acts:

(1) Importation of dangerous drugs[;]"[109]

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105. The Constitution provides —

> Sec. 5. The Supreme Court shall have the following powers:
>
> ...
>
> (5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

Id. at 173-74 (citing PHIL. CONST. art. VIII, § 5 (5)).

106. *Estipona, Jr.*, 837 SCRA at 174 (citing Echegaray v. Secretary of Justice, 301 SCRA 96, 112 (1999)).

107. *Estipona, Jr.*, 837 SCRA at 184 (emphasis omitted).

108. *Id.* at 179 & 184 (citing Re: Petition for Recognition of the Exemption of the Government Service Insurance System from Payment of Legal Fee, 612 SCRA 193, 208-09 (2010)).

109. Comprehensive Dangerous Drugs Act of 2002, art. II, § 4.

(2) "Sale, [trading, administration, dispensation, delivery, distribution, and transportation of dangerous drugs;]"[110]

(3) "Maintenance of a [dangerous drug den, dive, or resort;]"[111]

(4) Being "[employees or visitors of dangerous drug dens, dives, or resorts;]"[112]

(5) "Manufacture of [dangerous [drugs;]"[113]

(6) "Illegal [chemical diversion of controlled precursors and essential chemicals;]"[114]

(7) "Manufacture or [delivery of equipment, instrument, apparatus, and other paraphernalia for dangerous drugs;]"[115]

(8) "Possession of [dangerous drugs;]"[116]

(9) "Possession of [equipment, instrument, apparatus, and other paraphernalia for dangerous drugs;]"[117]

(10) "Possession of [dangerous drugs during parties, social gatherings, or meetings;]"[118]

(11) "Possession of [equipment;]"[119]

(12) "Use of [dangerous drugs;]"[120]

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110. *Id.* § 5 (emphasis omitted).

111. *Id.* § 6 (emphasis omitted).

112. *Id.* § 7 (emphasis omitted).

113. *Id.* § 8 (emphasis omitted).

114. *Id.* § 9 (emphasis omitted).

115. Comprehensive Dangerous Drugs Act of 2002, art. II, § 10 (emphasis omitted).

116. *Id.* § 11 (emphasis omitted).

117. *Id.* § 12 (emphasis omitted).

118. *Id.* § 13 (emphasis omitted).

119. *Id.* § 14 (emphasis omitted).

120. *Id.* § 15 (emphasis omitted).

(13) "Cultivation or [culture of plants classified as dangerous drugs or are sources thereof;]"[121]

(14) Failure to maintain and keep original records "of [transactions on dangerous drugs and/or controlled precursors and essential chemicals;]"[122]

(15) "Unnecessary [prescription of dangerous drugs; and,]"[123]

(16) "Unlawful [prescription of dangerous drugs.]"[124]

C. The Chain of Custody Rule

In most prosecutions involving dangerous drugs, "it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime."[125] The prosecution, in these cases,

> has to show an unbroken chain of custody over the dangerous drugs [ ] to obviate any unnecessary doubts on their identity on account of switching, 'planting,' or contamination of evidence. Accordingly, the prosecution must be able to account for each link of the chain from the moment that the drugs are seized up to their presentation in court[.][126]

Section 1 (b) of Dangerous Drugs Board Regulation No. 1, Series of 2002,[127] which implements Republic Act No. 9165, defines chain of custody as follows —

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121. Comprehensive Dangerous Drugs Act of 2002, art. II, § 16 (emphasis omitted).

122. *Id.* § 17 (emphasis omitted).

123. *Id.* § 18(emphasis omitted).

124. *Id.* § 19 (emphasis omitted).

125. People v. Feriol, G.R. No. 232154, Aug. 20, 2018, at *4, *available at* http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64487 (downloaded .pdf version of the decision from the Supreme Court E-Library) (last accessed July 25, 2019).

126. *Id.*

127. Dangerous Drugs Board, Guidelines for the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and

> 'Chain of custody' means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.][128]

In *Malilin v. People*,[129] the Supreme Court explained the importance of the chain of custody in this wise —

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. *It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received*[,] *and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.*
>
> While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination[,] and even substitution and exchange. In other words, the exhibit's level of susceptibility to fungibility, alteration[,] or tampering [—] without regard to whether the same is advertent or otherwise not [—] dictates the level of strictness in the application of the chain of custody rule.

Laboratory Equipment, Board Regulation No. 1, Series of 2002, § 1 (b) (Oct. 18, 2002).

128. *Id.*

129. Malilin v. People, 553 SCRA 619 (2008).

> Indeed, the likelihood of tampering, loss[,] or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives. *Graham v. State* positively acknowledged this danger. In that case where a substance later analyzed as heroin [—] was handled by two police officers prior to examination who[,] however[,] did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession [—] was excluded from the prosecution evidence, the court pointing out that the white powder seized could have been indeed heroin[,] or it could have been sugar or baking powder. It ruled that unless the [S]tate can show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into the possession of police officers until it was tested in the laboratory to determine its composition, testimony of the [S]tate as to the laboratory's findings is inadmissible.[130]

In *People v. Fojas*,[131] the Supreme Court reiterated that the following links must be established in the chain of custody:

> (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;
>
> (2) the turnover of the illegal drug seized by the apprehending officer to the investigating officer;
>
> (3) the turnover of the illegal drug by the investigating officer to the forensic chemist for laboratory examination; and
>
> (4) the turnover and submission of the marked illegal drug from the forensic chemist to the court.[132]

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130. *Id.* at 632–34 (citing United States v. Howard-Arias, 679 F.2d 363, 366 (4th Cir. 1982) (U.S.); United States v. Ricco, 52 F.3d 58, 61 (4th Cir. 1995) (U.S.); ROGER C. PARK, ET. AL., EVIDENCE LAW: A STUDENT'S GUIDE TO THE LAW OF EVIDENCE AS APPLIED TO AMERICAN TRIALS 507 & 610 (1998 ed.); 29A AM. JUR. 2D *Evidence* § 946 (1998); & Graham v. State, 255 N.E.2d 652, 652 & 655–56 (1970) (U.S.)) (emphasis supplied).

131. People v. Balles, G.R. No. 226143, Nov. 21, 2018, *available at* http://sc.judiciary.gov.ph/3120 (last accessed July 25, 2019).

132. *Id.* at 10.

While "non[-]compliance with the prescribed procedural requirements [will] not automatically render the seizure and custody of the [items void and] invalid, [this] is true only when[:] [(1)] there is a justifiable ground for such non[-]compliance, and [(2)] the integrity and evidentiary value of the seized items are properly preserved."[133]

> Thus, any divergence from the prescribed procedure must be justified and should not affect the integrity and evidentiary value of the confiscated contraband. Absent any of the said conditions, the non-compliance is an irregularity, a red flag, that casts reasonable doubt on the identity of the *corpus delicti*.[134]

1. The First Link

The first link in the chain of custody is the "marking of the dangerous drugs or related items" by the apprehending officer.[135]

> Marking, which is the affixing on the dangerous drugs or related items by the apprehending officer or the poseur-buyer of his [or her] initials or signature or other identifying signs, should be made in the presence of the apprehended violator immediately upon arrest. The importance of the prompt marking cannot be denied because succeeding handlers of the dangerous drugs or related items will use the marking as reference. Also, the marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting, or contamination of evidence. In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.[136]

Section 21, Article II of Republic Act No. 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value. Under the said section, prior

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133. People v. Barte, 819 SCRA 10, 22 (2017).

134. People v. Enriquez, 706 SCRA 337, 354 (2013).

135. People v. Calvelo, 848 SCRA 225, 247 (2017) (citing People v. Villar, 808 SCRA 407, 418 (2016)).

136. *Id.* (emphases omitted).

to its amendment by Republic Act No. 10640,[137] the apprehending team shall, among others,

> *immediately after seizure and confiscation, physically inventory and photograph the* [*seized items*] *in the presence of the accused or the person*[ ] *from whom such items were … seized, or his*[*or*]*her representative or counsel, a representative from the media and the Department of Justice (D.O.J.), and any elected public official* who shall be required to sign the copies of the inventory and be given a copy of [the same.][138]

The seized drugs must be turned over to the Philippine National Police Crime Laboratory within 24 hours from confiscation for examination.[139]

> The Supreme Court, however, clarified in *People v. Baptista*[140] that
>
> under varied field conditions, strict compliance with the requirements of Section 21, Article II of [Republic Act No.] 9165 may not always be possible. In fact, the Implementing Rules and Regulations (I.R.R.) of [Republic Act No] 9165 ... provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that non-compliance with the requirements of Section 21, Article II of [Republic Act No.] 9165 [—] under justifiable grounds [—] will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.[141]

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137. An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of Republic Act No. 9165, Otherwise Known as the "Comprehensive Dangerous Drugs Act of 2002", Republic Act No. 10640 (2014).

138. Comprehensive Dangerous Drugs Act of 2002, art. II, § 21 (1) (emphasis supplied).

139. *Id.* art. II, § 21 (2).

140. People v. Baptista, G.R. No. 225783, Aug. 20, 2018, *available at* http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64496 (downloaded .pdf version of the decision from the Supreme Court E-Library) (last accessed July 25, 2019).

141. *Id.* at *9 (emphases omitted).

2. The Second Link

The second link is "the turnover of the ... seized [drugs] by the apprehending officer to the investigating officer."[142]

> Usually, the police officer who seizes the suspected substance turns it over to a supervising officer, who will then send it by courier to the police crime laboratory for testing. This is a necessary step in the chain of custody because it will be the investigating officer who shall conduct the proper investigation and prepare the necessary documents for the developing criminal case. Certainly, the investigating officer must have possession of the illegal drugs to properly prepare the required documents.[143]

3. The Third Link

The third link is "the turnover [of the seized drugs] by the investigating officer ... to the forensic chemist for [ ] examination[.]"[144]

4. The Fourth Link

"The last link involves the submission of the seized drugs by the forensic chemist to the court when presented as evidence in the criminal case."[145] It "seeks to establish that the specimen submitted for laboratory examination is the one presented in court."[146]

On 15 July 2014, Congress enacted Republic Act No. 10640, amending Section 21 of Republic Act No. 9165. The original provision of Section 21 (1) of Republic Act No. 9165 reads —

> SECTION 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. — The [Philippine Drug Enforcement

142. *Calvelo*, 48 SCRA at 247.

143. People v. Hementiza, 821 SCRA 470, 490 (2017) (citing People v. Dahil, 745 SCRA 221, 244 (2015)).

144. *Calvelo*, 848 SCRA at 247.

145. *Hementiza*, 821 SCRA at 494 (citing *Dahil*, 745 SCRA at 247).

146. People v. Alejandro, 721 SCRA 102, 124 (2014).

> Agency (PDEA)] shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the [D.O.J.], and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.][147]

Supplementing this provision is Section 21 (a) of the I.R.R. of Republic Act No. 9165, which provides —

> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the [D.O.J.], and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided*, *further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.][148]

Among the other modifications introduced by Republic Act No. 10640 is the incorporation of the saving clause contained in the I.R.R. —

> (1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall,

147. Comprehensive Dangerous Drugs Act of 2002, art. II, § 21.

148. Rules and Regulations Implementing the Comprehensive Dangerous Drugs Act of 2002, Republic Act No. 9165, art. II, § 21 (a) (2002) (emphasis supplied).

> immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the [person/s] from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof[;] *Provided*, [t]hat the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures[;] *Provided*, *finally*, [t]hat noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.[149]

Under the original provision of Section 21 of Republic Act. No. 9165, after seizure and confiscation of the drugs, the apprehending team is required to immediately conduct a "[physical] inventory and photograph the same in the presence of: [(1)] the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel; [(2)] a representative from the media and [(3)] from the ... [ ]D.O.J.[;] and [(4)] any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]"[150] "It is assumed that the presence of these persons will guarantee 'against planting of evidence and frame up[.]'"[151]

In the amendment introduced by Republic Act No. 10640, the amended provision mandates that the conducting of physical inventory and photographing of the seized items must be

> in the presence of [(1)] the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel[; (2)] an elected public official[;] and [(3)] a representative of the National Prosecution

149. Republic Act No. 10640, § 1.

150. Comprehensive Dangerous Drugs Act of 2002, art. II, § 21 (1)

151. People v. Señeres, Jr., G.R. No. 231008, Nov. 5, 2018, at *9, *available at* http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64752 (downloaded .pdf version of the decision from the Supreme Court E-Library) (last accessed July 25, 2019) (citing People v. Sagana, 834 SCRA 225, 246-47 (2017)).

> Service or the media who shall ... sign the copies of the inventory and be given a copy thereof[.][152]

Moreover,

> [i]n her Sponsorship Speech on Senate Bill No. 2273, which eventually became [Republic Act] No. 10640, Senator Grace Poe admitted that 'while Section 21 was enshrined in the Comprehensive Dangerous Drugs Act to safeguard the integrity of the evidence acquired and prevent planting of evidence, the application of said section resulted in the ineffectiveness of the government's campaign to stop increasing drug addiction and also[ ] in the conflicting decisions of the courts.' Specifically, she cited that 'compliance with the rule on witnesses during the physical inventory is difficult. For one, media representatives are not always available in all corners of the Philippines, especially in more remote areas. For another, there were instances where elected barangay officials themselves were involved in the punishable acts apprehended.' In addition, '[t]he requirement that inventory is required to be done in police station is also very limiting. Most police stations appeared to be far from locations where accused persons were apprehended.'
>
> Similarly, Senator Vicente C. Sotto III manifested that[,] in view of the substantial number of acquittals in drug-related cases due to the varying interpretations of the prosecutors and the judges on Section 21 of [Republic Act] No. 9165, there is a need for 'certain adjustments so that we can plug the loopholes in our existing law' and 'ensure [its] standard implementation.'
>
> In [Senator Sotto's] Co-Sponsorship speech, he noted [—]
>
> > Numerous drug trafficking activities can be traced to operations of highly organized and powerful local and international syndicates. The presence of such syndicates that have the resources and the capability to mount a counter-assault to apprehending law enforcers make[ ] the requirement of Section 21 (a) impracticable for law enforcers to comply with. It makes the place of seizure extremely unsafe for the proper inventory and photograph of seized illegal drugs.
> >
> > ...
> >
> > Section 21 (a) of [Republic Act No.] 9165 needs to be amended to address the foregoing situation. We did not realize this in 2002 where the safety of the law enforcers and other persons required to

152. Republic Act No. 10640, § 1.

> be present in the inventory and photography of seized illegal drugs and the preservation of the very existence of seized illegal drugs itself are threatened by an immediate retaliatory action of drug syndicates at the place of seizure. The place where the seized drugs may be inventoried and photographed has to include a location where the seized drugs as well as the persons who are required to be present during the inventory and photograph are safe and secure from extreme danger.
>
> It is proposed that the physical inventory and taking of photographs of seized illegal drugs be allowed to be conducted either in the place of seizure or at the nearest police station or office of the apprehending law enforcers. The proposal will provide effective measures to ensure the integrity of seized illegal drugs since a safe location makes it more probable for an inventory and photograph of seized illegal drugs to be properly conducted, thereby reducing the incidents of dismissal of drug cases due to technicalities.
>
> Non-observance of the prescribed procedures should not automatically mean that the seizure or confiscation is invalid or illegal, as long as the law enforcement officers could justify the same and could prove that the integrity and the evidentiary value of the seized items are not tainted. This is the effect of the inclusion in the proposal to amend the phrase 'justifiable grounds.' There are instances wherein there are no media people or representatives from the [D.O.J.] available and the absence of these witnesses should not automatically invalidate the drug operation conducted. Even the presence of a public local elected official also is sometimes impossible especially if the elected official is afraid or scared.[153]

In *People v. Romy Lim*,[154] the Court took "judicial notice ... that arrests and seizures related to illegal drugs are typically made without a warrant[, and, thus, are] subject to inquest proceedings."[155] In relation to this, the Supreme Court pointed out that

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153. *Señeres*, G.R. No. 231008, at *8-9 (citing S. JOURNAL No. 80, at 348-50, 16th Cong. 1st Reg. Sess. (June 4, 2014)).

154. People v. Romy Lim, G.R. No. 231989, Sep. 4, 2018, *available at* http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64400 (A Downloaded .pdf Version of the Decision From the Supreme Court E-Library) (last accessed July 25, 2019).

155. *Id.* at *13.

> Section 1 (A.1.10) of the Chain of Custody Implementing Rules and Regulations directs [—] ['a]ny justification or explanation in cases of noncompliance with the requirements of Section 21 (1) of [Republic Act] No. 9165, as amended, shall be clearly stated in the sworn statements/affidavits of the apprehending/seizing officers, as well as the steps taken to preserve the integrity and evidentiary value of the seized/confiscated items. Certification or record of coordination for operating units other than the PDEA pursuant to Section 86 (a) and (b), Article IX of the I.R.R. of [Republic Act] No. 9165 shall be presented.['][156]

While this provision has always been the rule, the Supreme Court noted that "it has not been practiced in most cases elevated before [it]. Thus, in order to weed out early on from the courts' already congested docket any orchestrated or poorly built up drug-related cases, [the Supreme Court] ... enforced as a mandatory policy"[157] the following:

> (1) In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21 (1) of [Republic Act] No. 9165, as amended, and its I.R.R.
>
> (2) In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items.
>
> (3) If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause.
>
> (4) If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, 40 Rule 112, Rules of Court.[158]

Indeed, with the mandatory implementation of these guidelines, the Supreme Court has once again called upon the authorities to exert greater

156. *Id.* at *14.

157. *Id.*

158. *Id.*

efforts in combating the drug menace using the safeguards that the Legislature has deemed necessary for the greater benefit of our society. Genuinely, "[t]he need to employ a more stringent approach [in] scrutinizing the evidence [presented before the courts] ... redounds to the benefit of the criminal justice system by protecting civil liberties and at the same time instilling rigorous discipline on prosecutors [and law enforcers]."[159]

VIII. CONCLUSION

All the battles that Filipinos face as a nation and as a people must be waged and fought in accordance with the Constitution and the country's laws. The government's long and unrelenting fight against illegal drugs is not an exception.

"Obedience to the rule of law forms the bedrock of [the Nation's] system of justice."[160] "Under the rule of law, ordinary people can reasonably assume that another person's future conduct will be in observance of the laws and can conceivably expect that any deviation therefrom will be punished accordingly by responsible authorities."[161] Thus, the Constitution and our laws allow citizens a minimum confidence in a world of uncertainty —

> Through constitutionalism we placed limits on both our political institutions and ourselves, hoping that democracies, historically always turbulent, chaotic, and even despotic, might now become restrained, principled, thoughtful and just. So we bound ourselves over to a law that we made and promised to keep. And though a government of laws did not displace governance by men, it did mean that now men, democratic men, would try to live by their word.[162]

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159. People v. Lazaro, G.R. No. 229219, Nov. 21, 2018, at *9, *available at* http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64871 (downloaded .pdf version of the decision from the Supreme Court E-Library) (last accessed July 25, 2019) (citing People v. Umipang, 671 SCRA 324, 356 (2012)).

160. People v. Veneracion, 249 SCRA 244, 251 (1995).

161. League of Cities of the Philippines v. Commission on Elections, 652 SCRA 798, 821–22 (2011) (J. Sereno, dissenting opinion) (citing Stephen R. Munzer, *A Theory of Retroactive Legislation*, 61 TEX. L. REV. 425, 438 (1982)).

162. *League of Cities of the Philippines*, 652 SCRA at 822 (citing Estrada v. Desierto, 353 SCRA 452, 562 (J. Kapunan, separate opinion)).

It cannot be overstressed, that more than the regulation of private conduct, the Constitution is a limitation to what the Government can do and the acts that it may carry out.[163] Hence, when the Legislature enacts a law, the Executive Department is mandated to enforce the same by observing its policy and attaining its objectives, through the means provided by the law, and only within the limits provided by the Constitution. There is no other way if our government still to be considered as "a government of laws[ ] and not men."[164]

163. *See* Vanhorne's Lessee v. Dorrance, 2 U.S. 304, 308 (1795).

164. 4 JOHN ADAMS, THE WORKS OF JOHN ADAMS, at 75 (Charles Francis Adams ed., 1856).