

Sandiganbayan Jurisdiction — Revisited

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I. INTRODUCTION

Among the more significant innovations in the Philippine criminal justice system, the establishment of the special anti-graft and corruption court known as the Sandiganbayan¹ and the special anti-graft and corruption investigation body known as the Ombudsman² would appear to be at the top of the list.

Now, the question is, have they been effective?

The answer depends on whether they have used or misused their jurisdiction. This Article seeks to address that query in the light of recent legislative and jurisprudential developments.

II. SANDIGANBAYAN LAW

A. *Is the Sandiganbayan Law Constitutional?*

It is respectfully submitted that the proper answer is no. The law violates the equal protection clause under the 1987³ and 1973⁴ Philippine Constitutions.

The Sandiganbayan Law refers principally to Presidential Decree (P.D.) No. 1486 and P.D. No. 1606.⁵

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1. Creating A Special Court to be Known as "Sandiganbayan" and for Other Purposes, Presidential Decree No. 1486, as Amended (1978).
 2. PHIL. CONST. art. XI, § 5.
 3. PHIL. CONST. art. III, § 1.
 4. 1973 PHIL. CONST. art. IV, § 1 (superseded 1987).
 5. Revising Presidential Decree No. 1486 Creating a Special Court to be Known as "Sandiganbayan" and for Other Purposes, Presidential Decree No. 1606, as Amended (1979).

B. What is the Purpose of the Law?

The whereas clauses of P.D. No. 1606 provide the answer, as follows —

WHEREAS, the new Constitution declares that a public office is a public trust and ordains that public officers and employees shall serve with the highest degree of responsibility, integrity, loyalty[,] and efficiency and shall remain at all times accountable to the people;

WHEREAS, to attain the highest norms of official conduct required of public officers and employees, Section 5, Article XIII of the New Constitution provides for the creation of a special court to be known as Sandiganbayan[.]⁶

The 1973 Constitution, which took effect on 17 January 1973, defines the jurisdiction of the Sandiganbayan, as follows —

The Batasang Pambansa shall create a special court, to be known as Sandiganbayan, which shall have jurisdiction over criminal and civil cases involving graft and corrupt practices and such other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office as may be determined by law.⁷

The 1987 Constitution, which took effect on 11 February 1987, and immediately following the 1973 Constitution, defines the jurisdiction of the Sandiganbayan as “the present anti-graft court ... [which] shall continue to function and exercise its jurisdiction as now or hereafter may be provided by law.”⁸

It should be noted that under former President Corazon C. Aquino’s Provisional Constitution, dated 25 March 1986, or the so-called “Freedom Constitution,” the aforementioned Provision of the 1973 Constitution was “adopted as part of this Provisional Constitution, insofar as they are not inconsistent with the provisions of this Proclamation.”⁹ Since no such inconsistency has been shown to exist, the Provision appears to have been carried over *in toto* from the 1973 Constitution, to the Provisional Constitution, and up to the 1987 Constitution.

In other words, the constitutional jurisdiction of the Sandiganbayan covers criminal and civil cases involving graft and corrupt practices and such other offenses committed by public officers and employees in relation to their office as may be determined by law.¹⁰

6. *Id.* whereas cl.

7. 1973 PHIL. CONST. art. XIII, § 5 (superseded 1987).

8. PHIL. CONST. art. XI, § 4.

9. 1986 PROVISIONAL “FREEDOM” CONST. art. I, § 2 (superseded 1987).

10. P.D. No. 1486.

C. *Under Section 5, Article XIII of the 1973 Constitution, what “May be Determined by Law?”*

According to the 1973 Constitution, what may be determined by law are the offenses, other than those involving graft and corrupt practices, committed by public officers and employees in relation to their office.¹¹

D. *Can the Legislature Vest Jurisdiction over Those “Other Offenses,” which are Committed by Public Officers and Employees in Relation to Their Office, in Favor of the Regional Trial Court?*

It is submitted that the Legislature may not validly vest jurisdiction for those “other offenses” committed by public officers and employees in relation to their office in favor of the Regional Trial Court (RTC).¹² It has no authority to amend the constitutional jurisdiction of the Sandiganbayan.¹³ The exercise of ordinary legislative authority¹⁴ is not a valid mode of amending the Constitution.¹⁵ The enumeration of the three modes of amending the Constitution, namely by: (1) constitutional convention;¹⁶ (2) constituent assembly;¹⁷ and (3) people’s initiative,¹⁸ is exclusive. *Inclusio unius est exclusio alterius* — what is not included is excluded.¹⁹

E. *Why is the Sandiganbayan Law Unconstitutional?*

The constitutional jurisdiction²⁰ of the Sandiganbayan is clear. It covers only two classes of crimes, as laid down in P.D. No. 1486,²¹ as amended by the following laws, respectively: P.D. No. 1606, on 10 December 1978; P.D. No. 1861,²² on 23 March 1983; Republic Act (R.A.) No. 7975,²³ on 10 March 1995; and R.A. No. 8249,²⁴ on 5 February 1997.

11. 1973 PHIL. CONST. art. XIII, § 5 (superseded 1987).

12. See *Sanidad v. Commission on Elections*, 73 SCRA 333, 383 (1976).

13. *Id.*

14. *Id.*

15. See PHIL. CONST. art. XVII, §§ 1 & 2.

16. PHIL. CONST. art. XVII, § 1, ¶ 2.

17. PHIL. CONST. art. XVII, § 1, ¶ 1.

18. PHIL. CONST. art. XVII, § 2.

19. See *Annotation: Interpretation of Contracts*, 90 SCRA 448, 456 (1979).

20. PHIL CONST. art. XI, § 4.

21. P.D. No. 1486, § 4.

22. Amending the Pertinent Provisions of Presidential Decree No. 1606 and Batas Pambansa Blg. 129 Relative to the Jurisdiction of the Sandiganbayan and for Other Purposes, Presidential Decree No. 1861 (1983).

This is without any qualification. P.D. No. 1486²⁵ and P.D. No. 1606²⁶ provide for qualifications where the Constitution provides none.²⁷ Neither does the Constitution authorize the legislature to make any qualifications.²⁸ Thus, the statutory qualifications outside of the plain and unambiguous language of the Constitution appears to be absolutely without basis in the fundamental law.²⁹ To add to or subtract from the jurisdictional language of the Constitution is, obviously, to amend the same.³⁰ The legislature added qualifications, such as those accused classified as Salary Grade 27 and higher of the Compensation and Position Classification Act of 1989³¹ who are placed within the exclusive original jurisdiction of the Sandiganbayan³² in all cases involving graft and corruption, while those below such salary grade are placed within the jurisdiction of the RTC, Metropolitan Trial Court, Municipal Trial Court (MTC), and Municipal Circuit Trial Court (MCTC), as the case may be,³³ pursuant to their respective jurisdictions as provided in Batas Pambansa (B.P.) Blg. 129, as amended, otherwise known as the Judiciary Reorganization Act of 1980.³⁴

As has been pointed out, the exercise of ordinary,³⁵ as distinguished from the constituent,³⁶ power of the Legislature is not among the modes of

23. An Act to Strengthen the Functional and Structural Organization of the Sandiganbayan, Amending for that Purpose Presidential Decree No. 1606, as Amended, Republic Act No. 7975 (1995).

24. An Act Further Defining the Jurisdiction of the Sandiganbayan, Amending for the Purpose Presidential Decree No. 1606, as Amended, Providing Funds Therefor, and for Other Purposes, Republic Act No. 8249 (1997).

25. P.D. No. 1486, § 4.

26. P.D. No. 1606, § 4.

27. See generally MAURO R. MUÑOZ & DELILAH GONZALEZ-MUÑOZ, PHILIPPINE GOVERNANCE AND CONSTITUTION 22 (2002 ed.).

28. See *Social Justice Society (SJS) v. Dangerous Drugs Board*, 570 SCRA 410, 423 (2008).

29. *Id.*

30. *Id.*

31. An Act Prescribing a Revised Compensation and Position Classification System in the Government and for Other Purposes [Compensation and Position Classification Act of 1989], Republic Act No. 6758 (1989).

32. R.A. No. 8249, § 4 (a) (1) (a).

33. *Id.* § 4 (c).

34. An Act Reorganizing the Judiciary, Appropriating Funds Therefor, and for Other Purposes [The Judiciary Reorganization Act of 1980], Batas Pambansa Blg. 129 (1981).

35. See *Sanidad*, 73 SCRA at 383.

36. *Id.*

amending the basic law of the land.³⁷ Those accused, who are treated equally under the 1973 and 1987 Constitutions, are treated unequally under the statutes. There is, therefore, a deprivation of the equal protection guaranteed by the fundamental law.³⁸

In the case at bar, the Legislature could have done well had it faithfully abided by the consistent *dictum* of the Supreme Court (SC) since 1901 as to how the clear provisions of law, statutory or constitutional, ought to be administered — “we must administer the law not as we think it ought to be, but as we find it, and without regard to the consequences.”³⁹

F. What would it Take to Rectify the Error?

First, it would take an extremely painful and embarrassing degree of honesty on the part of all lawyers who have full faith in the Rule of Law⁴⁰ to confess

37. See PHIL. CONST. art. XVII, §§ 1 & 2.

38. PHIL. CONST. art. III, § 1.

39. *Velasco v. Lopez*, 1 Phil. 720, 723-24 (1903).

40. The United Nations Rule of Law Website and Document Repository provides that

[t]he notion of the [Rule of Law] stems from many traditions and continents and is intertwined with the evolution of the history of law itself.

...

The principle of the [Rule of Law] applies at the national and international levels. At the national level, the [United Nations] supports a [Rule of Law] framework that includes a [c]onstitution or its equivalent, as the highest law of the land; a clear and consistent legal framework, and implementation thereof; strong institutions of justice, governance, security[,] and human rights that are well[-]structured, financed, trained[,] and equipped; transitional justice processes and mechanisms; and a public and civil society that contributes to strengthening the [Rule of Law] and holding public officials and institutions accountable. These are the norms, policies, institutions[,] and processes that form the core of a society where individuals feel safe and secure, where legal protection is provided for rights and entitlements, [where] disputes are settled peacefully and effective redress is available for harm suffered, and where all who violate the law, including the State itself, are held to account.

At the international level, the principle of the [Rule of Law] embedded in the Charter of the United Nations encompasses elements relevant to the conduct of State to State relations.

United Nations Rule of Law, What is the rule of law?, *available at* http://www.unrol.org/article.aspx?article_id=3 (last accessed Sep. 12, 2013).

to the sovereign Filipino people that the constitutional jurisdiction of the Sandiganbayan has been the subject of systemic violation all these years.

Second, there is a need for a collective effort and grim determination to follow the Rule of Law⁴¹ without regard to the consequences, political or otherwise.

Consequently, it would appear that there is a serious dysfunction in our judicial system. Those prosecuted or being prosecuted, or have been convicted or acquitted outside the constitutional jurisdiction of the Sandiganbayan, are necessarily prosecuted or are being prosecuted, or have been convicted or acquitted, without jurisdiction. Therefore, such proceedings, conviction, and acquittal are void from the beginning.⁴²

III. INVALID PLEA BARGAINING

May plea bargaining be used to downgrade the grave charge of Plunder⁴³ to the lesser offenses of Bribery⁴⁴ and violation of the Anti-Money Laundering Act?⁴⁵ It is respectfully submitted that the proper answer is no.

A. Background

Retired Major General Carlos P. Garcia, who was charged with the capital offense of Plunder⁴⁶ involving the sum of more than ₱300 million in unexplained wealth when he was comptroller of the Armed Forces of the Philippines (AFP) in 2004,⁴⁷ walked out of detention on 18 December 2010

41. *Id.*

42. The Supreme Court stated that “a decision that is null and void ... for want of jurisdiction is not a decision in contemplation of law and, hence, [] can never become executory.” *Planas v. Collector of Internal Revenue*, 3 SCRA 395, 400 (1961).

43. An Act Penalizing and Defining the Crime of Plunder, Republic Act No. 7080 (1991).

44. An Act Revising the Penal Code and Other Laws [REVISED PENAL CODE], Act No. 3815, arts. 210-12 (1932).

45. An Act Defining the Crime of Money Laundering, Providing Penalties Therefor and for Other Purposes [Anti-Money Laundering Act of 2001], Republic Act No. 9160 (2001).

46. Official Gazette, Briefer: The Maj. Gen. Carlos Garcia plunder case, *available at* <http://www.gov.ph/2011/01/05/briefer-the-maj-gen-carlos-garcia-plunder-case/> (last accessed Sep. 12, 2013).

47. *Id.*

after the prosecution had rested its case following years of trial.⁴⁸ He had been detained for six years.⁴⁹

The Sandiganbayan allowed him to post ₱60,000.00 as bail⁵⁰ in a plea bargaining agreement with former Ombudsman Merceditas N. Gutierrez, in which he pleaded guilty to the lesser offenses of Direct Bribery⁵¹ and violation of the Anti-Money Laundering Act.⁵² Under the agreement, Garcia will return about ₱135 million to the government.⁵³ The accused's wife and three adult children who were included in the case had all fled to the United States (U.S.).⁵⁴

B. What is the Legal Basis of Plea Bargaining?

Plea bargaining is authorized under Section 2, Rule 116 of the Revised Rules of Criminal Procedure, as follows —

SEC. 2. *Plea of guilty to a lesser offense.* — At arraignment, the accused, with the consent of the offended party and the prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged. After arraignment but before trial, the accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty. No amendment of the complaint or information is necessary.⁵⁵

C. May the Plea of Guilty to a Lesser Offense be Considered a Valid Part of Bargaining or Compromise?

48. Kimberly Jane Tan, De Lima: Deal between Gen. Garcia, Ombudsman illegal, *available at* <http://www.gmanetwork.com/news/story/208733/news/nation/de-lima-deal-between-gen-garcia-ombudsman-illegal> (last accessed Sep. 12, 2013).

49. Garcia v. Executive Secretary, 677 SCRA 750, 759 (2012) (citing Sandiganbayan Second Division, Order of Discharge (Dec. 16, 2010)).

50. Christine O. Avendano, *SC stops plea bargain deal*, PHIL. DAILY INQ., July 4, 2013, *available at* <http://newsinfo.inquirer.net/437647/sc-stops-garcia-plea-bargain-deal> (last accessed Sep. 12, 2013).

51. REVISED PENAL CODE, art. 210.

52. Anti-Money Laundering Act of 2001.

53. Avendano, *supra* note 50.

54. Veronica Uy, *US provisional arrest for Garcia kin valid*, PHIL. DAILY INQ., Mar. 11, 2009, *available at* <http://globalnation.inquirer.net/news/breakingnews/view/20090311-193497/US-provisional-arrest-for-Garcia-kin-valid> (last accessed Sep. 12, 2013).

55. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 116, § 2.

A plea of guilty to a lesser offense should *not* be considered a valid part of bargaining or compromise. The plea is not supposed to be allowed as a matter of bargaining or compromise for the convenience of the accused.⁵⁶

D. Does the Ombudsman have Sufficient Evidence to Hold Retired Major General Garcia, et al., Guilty of Plunder?

If the answer is “yes,” the plea to a lesser offense cannot be allowed.⁵⁷ If the answer is “no,” the plea may be allowed.⁵⁸ The Sandiganbayan has no discretion because it is bound by the quantum of evidence on record.⁵⁹ Hence, if there is sufficient evidence to convict the accused, it would be completely unreasonable to allow the accused to “bargain” for a lesser penalty.⁶⁰

According to the SC, Section 2 of Rule 116 — the rule allowing a plea to a lesser offense — is not intended as a procedure for compromise, much less bargaining.⁶¹ Therefore, it is wrong to cite the Provision as basis for plea bargaining. But, it may be honestly argued that the SC itself has cited the Proviso as basis for plea bargaining.⁶² Is there inconsistency of pronouncements? Yes. This is the problem. On one hand, compromise or bargaining is not allowed, but upon the other, it is allowed.

Essentially, plea bargaining is compromise.⁶³ Under the New Civil Code of the Philippines (NCC),⁶⁴ “[a] compromise is a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced.”⁶⁵ Does this Provision apply to a criminal case? No.⁶⁶ According to Article 2034 of the NCC, “[t]here may be a compromise upon the civil liability arising from an offense; but such compromise shall not extinguish the public action for the imposition of the

56. *Daan v. Sandiganbayan* (Fourth Division), 550 SCRA 233, 242-43 (2008) (citing *People v. Kayanan*, 83 SCRA 437, 438 (1978)).

57. *Kayanan*, 83 SCRA at 450.

58. *Id.* at 437.

59. *See Daan*, 550 SCRA at 243 (citing *People v. Villarama, Jr.*, 210 SCRA 246, 252 (1992)).

60. *Kayanan*, 83 SCRA at 450.

61. *Daan*, 550 SCRA at 243 (citing *Villarama, Jr.*, 210 SCRA at 252-53 (1993)).

62. *See Daan*, 550 SCRA at 242.

63. *See generally* Frank H. Easterbrook, *Plea Bargaining as Compromise*, 101 YALE L.J. 1969-76 (1992).

64. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386 (1950).

65. *Id.* art. 2028.

66. *See Trinidad v. Office of the Ombudsman*, 539 SCRA 415, 426 (2007).

legal penalty.”⁶⁷ Since the principle of separation of powers⁶⁸ forbids the SC from amending these provisions of law, it follows that the SC, in the case at bar, cannot allow plea bargaining or compromise that would extinguish the criminal action for the imposition of the legal penalty for plunder. Such act would have the effect of amending the NCC. The SC cannot amend the law because it has no legislative power.⁶⁹ Furthermore, the substantive rights of the offended party stand to be adversely affected by such a rule.⁷⁰ Under the Constitution, the SC is prohibited from promulgating rules of procedure that would diminish or modify substantive rights.⁷¹ Thus, the Constitution limits the rule-making power of the SC as follows —

Section 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.⁷²

In the Case at bar, the contemplated rule of plea bargaining,⁷³ which does not appear to be based on the sufficiency or insufficiency of the evidence on record, will diminish, increase, or modify the substantive rights of the parties. Hence, the rule on plea bargaining appears unconstitutional, and is therefor, void *ab initio*. Void means having no legal existence.⁷⁴

It would follow that the repeal or amendment of judicial rules on criminal procedure sought to be put into effect by R.A. No. 8493⁷⁵ is unconstitutional. This state of the law and jurisprudence is within the mandatory judicial notice of all courts and is likewise within the mandatory

67. CIVIL CODE, art. 2034.

68. *Macalintal v. COMELEC*, 405 SCRA 614, 695 (2003) (J. Puno, concurring and dissenting opinion).

69. See PHIL. CONST. art. VI, § 1 & PHIL. CONST. art. VIII, § 1.

70. See PHIL. CONST. art. VIII, § 5 (5).

71. PHIL. CONST. art. VIII, § 5 (5).

72. PHIL. CONST. art. VIII, § 5 (5).

73. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 116, § 2.

74. See CIVIL CODE, art. 1409.

75. An Act to Ensure a Speedy Trial of All Criminal Cases Before the Sandiganbayan, Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court, and Municipal Circuit Trial Court, Appropriating Funds Therefor, And for Other Purposes [Speedy Trial Act of 1998], Republic Act No. 8493 (1998).

quasi-judicial notice of the Ombudsman.⁷⁶ If ignorance of the law is not an excuse,⁷⁷ there would appear greater reason to hold that ignorance of the Constitution is not an excuse from compliance therewith.

E. When Does Such Nullity Attach to the Law?

The said nullity attaches from the beginning.⁷⁸ Such is the necessary implication of having no legal existence.⁷⁹ In the eyes of the law, the unconstitutional statute never happened.⁸⁰

F. Should the Practical Consequences Arising from the Enforcement of the Unconstitutional Statute Be Considered Legal?

It is submitted that the practical consequences arising from the enforcement of the contemplated unconstitutional statute should not be considered legal. The doctrine of operative fact,⁸¹ which used to validate such practical consequences, is dead.⁸² The SC explained that an unconstitutional act is null and void.⁸³ According to *Navarro v. Executive Secretary*,⁸⁴ “the [SC] cannot tolerate such nullity to be in existence. Where the acts of other branches of the government go beyond the limit imposed by the Constitution, it is the sacred duty of the judiciary to nullify the same.”⁸⁵ According to the SC, to abandon this duty only because such practical consequences have begun their existence is to consent to the passage of a law that is violative of the provisions of the Constitution, rendering the law and

76. The doctrine of judicial notice is the power of the courts to take notice of things of common knowledge. They may be

matters coming to the knowledge of men generally in the course of the ordinary experiences of life, or they may be matters which are generally accepted by mankind as true and are capable of ready and unquestioned demonstration. Thus, facts which are universally known, and which may be found in encyclopedias, dictionaries[,] or other publications, are judicially noticed, provided they are of such universal notoriety and so generally understood that they may be regarded as forming part of the common knowledge of every person.

State Prosecutors v. Muro, 236 SCRA 505, 522 (1994).

77. CIVIL CODE, art. 3.

78. *See* CIVIL CODE, art. 1409.

79. *Id.*

80. *Id.*

81. *See* *Rieta v. People*, 436 SCRA 273, 292 (2004).

82. *Navarro v. Ermita*, 620 SCRA 529, 545-46 (2010).

83. *See* *Republic v. Court of Appeals*, 227 SCRA 509, 511 (1993).

84. *Navarro*, 620 SCRA at 529.

85. *Id.* at 546.

its practical consequences null and void.⁸⁶ The issuance and enforcement of the unconstitutional statute should not provide the very excuse for perpetration of such wrong. For the SC to yield to the argument that there has been *fait accompli* and that it passively accepts and accedes to the prevailing situation, is an unacceptable suggestion. A situation where the SC declines to perform its duty of determining, in proper cases, what the law is and should be, “might tempt [] those who strut about in the corridors of power to recklessly and with ulterior motives[,]”⁸⁷ pass unconstitutional statutes “either brazenly or stealthily, confident that [the SC] will abstain from entertaining future challenges to their acts if they manage to bring about a *fait accompli*.”⁸⁸

G. Can the Void Provisions of Republic Act No. 8493 be Ratified?

The void provisions, as submitted, of R.A. No. 8493 *cannot* be ratified. Under the law, void contracts cannot be ratified.⁸⁹ They have no legal existence.⁹⁰ Hence, there is really nothing to ratify.

Consequently, real plea bargaining has no legal existence in Philippine Criminal Law, except for purposes of academic discussion.⁹¹ The words are there, but the meaning is not.

IV. OFFICE OF THE OMBUDSMAN

A. What is the Ombudsman’s Constitutional Term of Office?

The Constitution provides that “[t]he Ombudsman and his Deputies shall serve for a term of seven years without reappointment[,]”⁹² and that “[a]ll vacancies shall be filled within three months after they occur.”⁹³

Where the law is clear, there is no room for interpretation.⁹⁴ The law must be applied not as how one thinks it ought to be but how one finds it,

86. *Id.* at 545-46.

87. *Id.* at 546 (citing *Tan v. Comelec*, 142 SCRA 727, 741-42 (1986)).

88. *Id.*

89. CIVIL CODE, art. 1409.

90. *Id.*

91. Neal Cruz, *Law Prof: Gutierrez no longer ombudsman*, PHIL. DAILY INQ., Jan. 10, 2011, available at <http://opinion.inquirer.net/inquireropinion/columns/view/20110110-313607/Law-prof-Gutierrez-no-longer-Ombudsman> (last accessed Sep. 12, 2013).

92. PHIL. CONST. art. XI, § 11.

93. PHIL. CONST. art. XI, § 9.

94. See *Fetalino v. Commission on Elections*, 686 SCRA 813, 836 (2012).

and without regard to consequences.⁹⁵ According to *Velasco v. Lopez*,⁹⁶ void means “no legal existence.”⁹⁷

In the case of former Ombudsman Aniano A. Desierto, his seven-year term began when former President Fidel V. Ramos appointed him effective 4 August 1995, which expired at midnight of 3 August 2002.⁹⁸ He continued to serve in a hold-over capacity until 9 October 2002, after which his successor, former Ombudsman Simeon V. Marcelo, was appointed by former President Gloria M. Macapagal-Arroyo on 10 October 2002.⁹⁹

Former Ombudsman Marcelo’s seven-year term began on 4 August 2002 and expired at midnight of 3 August 2009.¹⁰⁰ His tenure in office began on 10 October 2002 and ended on 30 November 2005.¹⁰¹ When he resigned, thereby leaving his term of office with a balance of three years and nine months, he was succeeded by former Ombudsman Gutierrez who was appointed on 1 December 2005.¹⁰²

Former Ombudsman Gutierrez’s appointment was, therefore, a mere continuation of former Ombudsman Marcelo’s seven-year term.¹⁰³ Hence, her term expired at midnight of 3 August 2009.¹⁰⁴ While former President

95. *Velasco*, 1 Phil at 723–24.

96. *Id.* at 720.

97. *Id.* at 722.

98. Edmer F. Panesa, *Desierto Honored on Last Day in office*, MANILA BULL., Aug. 2, 2002, available at <http://www.highbeam.com/doc/1G1-90045076.html> (last accessed Sep. 12, 2013).

99. Office of the Ombudsman, Previous Ombudsmen: Simeon V. Marcelo, available at <http://www.ombudsman.gov.ph/index.php?home=1&navId=MQ==&subNavId=ODM=&id=Mw==> (last accessed Sep. 12, 2013).

100. The Philippine Center for Investigative Journalism (PCIJ), Marcelo quits as Ombudsman, available at <http://pcij.org/blog/2005/09/30/marcelo-quits-as-ombudsman> (last accessed Sep. 12, 2013).

101. *Id.*

102. PCIJ, First female Ombudsman named, available at <http://pcij.org/blog/2005/11/30/first-female-ombudsman-named> (last accessed Sep. 12, 2013).

103. The Supreme Court stated that

[a]ppointments to vacancies resulting from certain causes (death, resignation, disability[,] or impeachment) shall only be for the unexpired portion of the term of the predecessor, but such appointments cannot be less than the unexpired portion as this will likewise disrupt the staggering of terms laid down under Sec. 1(2), Art. IX (D) [of the 1987 Constitution].

Funa v. Villar, 670 SCRA 579, 618 (2012).

104. Former Ombudsman Marcelo’s term began in 2002, thus, following the seven-year term mandated by the Constitution and the fact that former Ombudsman

Arroyo had three months therefrom, or until 4 November 2009, within which to fill up the vacancy, she did not comply with the constitutional mandate.¹⁰⁵ That created a legal problem.

Can it be properly said that former Ombudsman Gutierrez enjoyed a continuing appointment beyond the said three-month period? The answer is no. After the expiration of the constitutional term¹⁰⁶ and the three-month hold-over period,¹⁰⁷ the only way the incumbent can continue to validly serve is to be reappointed to the office.¹⁰⁸ However, this cannot happen. The Constitution expressly provides that the Ombudsman and his Deputies shall serve for a term of seven years without reappointment.¹⁰⁹

Ombudsman Conchita C. Carpio-Morales was appointed on 26 July 2011.¹¹⁰ This was the beginning of her tenure. But the term corresponding to her appointment will begin within the first hour of 4 August 2009.¹¹¹ Why? To rule otherwise would be unconstitutional as it would break the chain of seven-year terms provided under the fundamental law.¹¹²

In Constitutional Law, a substantial distinction is made between term and tenure.¹¹³ The first is fixed by law; the second is not.¹¹⁴ Tenure refers to the actual time an officer holds office.¹¹⁵ It may be less than the term or up to the expiration of the term. In other words, tenure depends, more or less,

Gutierrez was just serving the unexpired term of former Ombudsman Marcelo, her term should have ended in 2009. Michael Lim Ubac & Edson C. Tandoc, Jr., *Ombudsman's days numbered*, PHIL. DAILY INQ., Mar. 12, 2009, available at <http://globalnation.inquirer.net/cebudailynews/news/view/20090312-193676/Ombudsmans-days-numbered> (last accessed Sep. 12, 2013)).

105. See PHIL. CONST. art. XI, § 9.

106. PHIL. CONST. art. XI, § 11.

107. PHIL. CONST. art. XI, § 9.

108. See generally *Funa*, 670 SCRA at 603-19.

109. PHIL. CONST. art. XI, § 11.

110. Christian V. Esguerra, *It's official: Morales new Ombudsman*, PHIL. DAILY INQ., July 26, 2013, available at <http://newsinfo.inquirer.net/30007/it%E2%80%99s-official-morales-new-ombudsman> (last accessed Sep. 12, 2013).

111. *Funa*, 670 SCRA at 618-19.

112. PHIL. CONST. art. XI, § 11.

113. *Dimaporo v. Mitra, Jr.*, 202 SCRA 779, 790 (1991).

114. *Id.*

115. *Id.*

on the will of the officer.¹¹⁶ Thus, while term is attached to the office, tenure is attached to the officer.¹¹⁷

The Constitution fixes the term of office of the Ombudsman to a period of seven successive years.¹¹⁸ Therefore, when former Ombudsman Gutierrez succeeded former Ombudsman Marcelo, her tenure was limited by the latter's constitutional term.¹¹⁹

Stated simply, their respective constitutional terms appear to be as follows:

Desierto:

- (1) Term – 1995 to 2002; and
- (2) Tenure – 1995 to 2002.

His term and tenure both began on 4 August 1995 and ended mainly on 3 August 2002, and on 9 October 2002 in a hold-over capacity.

Marcelo:

- (1) Term – 2002 to 2009; and
- (2) Tenure – 2002 to 2005.

His term began on 4 August 2002 and ended on 3 August 2009, while his tenure began on 4 August 2002 and ended on 30 November 2005. His term was divided into two tenures. He served the first three years and three months while Gutierrez served the rest.

Gutierrez:

- (1) Term – 2002 to 2009; and
- (2) Tenure – 2005 to 2009.

Her term began on 4 August 2002 and ended on 3 August 2009, while her tenure began on 1 December 2005 and legally ended on 3 August 2009. Her three-month hold-over tenure ended on 4 November 2009.

Morales:

- (1) Term – 2009 to 2016; and
- (2) Tenure – 2011 to 2016.

116. See *Dimaporo*, 202 SCRA at 790.

117. *Id.*

118. PHIL. CONST. art. XI, § 11.

119. See *Funa*, 670 SCRA at 618-19.

Her term began on 4 August 2009 and will legally end on 3 August 2016, while her tenure began on 26 July 2011 and will end on 3 August 2016.

The next Ombudsman's term would then begin on 4 August 2016 and end on 3 August 2023.

Consequently, after midnight of 4 November 2009, former Ombudsman Gutierrez had completely lost jurisdiction to perform the duties of the office.¹²⁰ From that moment on, every performance of duty on her part would appear void *ab initio* since the act — recommending prosecution, or actual dismissal of cases — would have been performed without jurisdiction.¹²¹

What is the legal status of such official actions? They are deemed never to have happened.¹²²

On 6 May 2011, former Ombudsman Gutierrez finally stepped down from the office following the tender of her letter of resignation, dated 29 April 2011, to President Benigno Simeon C. Aquino III who accepted the same.¹²³

Was her resignation valid? No. It was, similar to her aborted impeachment (for graft and corruption and betrayal of public trust),¹²⁴ void *ab initio*. She could not have relinquished an office she no longer held. Her term and hold-over tenure had expired on 2009.¹²⁵ Her resignation, like her impeachment, would thus appear to be a cover-up for about thousands of illegal indictments and acquittals she had signed without jurisdiction — from 5 November 2009 to 6 May 2011 — after the automatic expiration of her inherited constitutional term.

In other words, despite her dubious resignation, she and President Aquino, who accepted the same contrary to Section 12 of the Anti-Graft and Corrupt Practices Act,¹²⁶ would still have to account for such acts of

120. *Id.*

121. *See Planas*, 3 SCRA at 400.

122. *See* CIVIL CODE, art. 1409.

123. Mark Joseph Ubalde, et al., Ombudsman Merceditas Gutierrez resigns, *available at* <http://verafiles.org/ombudsman-merceditas-gutierrez-resigns/> (last accessed Sep. 12, 2013).

124. *See* Gutierrez v. House of Representatives Committee on Justice, 644 SCRA 804, 815 (2011).

125. *See* PHIL. CONST. art. XI, § 11.

126. Anti-Graft and Corrupt Practices Act, Republic Act No. 3019, § 12 (1960). Section 12 provides that “[n]o public officer shall be allowed to resign or retire pending an investigation, criminal or administrative, or pending a prosecution

apparent bad faith, not only to the sovereign Filipino people but also to the individual victims of her sham indictments and acquittals.

Under the 1987 Constitution, the Chief Executive has the duty to ensure that the laws are faithfully executed.¹²⁷ Did President Aquino do that when he accepted the resignation of former Ombudsman Gutierrez? No. He acted against the legal prohibition. There appears a culpable violation of the basic law. Consequently, he seems to have unwittingly created a ground for his own impeachment.¹²⁸

B. What Remedial Action Should be Considered by Those Who were Adversely Affected by Former Ombudsman Gutierrez's Official Actions from 5 November 2009 to 6 May 2011?

Those who were illegally indicted or convicted would do well to move to dismiss their cases.¹²⁹ Those who were illegally acquitted should be re-investigated for possible indictment.¹³⁰ The common ground for such courses of action would be lack of jurisdiction on the part of former Ombudsman Gutierrez.¹³¹ *Dura lex sed lex* — the law may be harsh, but it is the law.¹³²

V. ELECTORAL SABOTAGE LAW

On 23 January 2007, the law defining electoral sabotage as a crime, R.A. No. 9369,¹³³ was approved by former President Arroyo, who is now charged

against him, for any offense under this Act or under the provisions of the Revised Penal Code on bribery." *Id.*

127. PHIL. CONST. art. VII, § 17.

128. *See* PHIL. CONST. art. XI, § 2.

129. A Motion to Dismiss is a proper remedy in cases wherein the court hearing the case has no jurisdiction to hear the same. 1997 RULES OF CIVIL PROCEDURE, rule 16, § 1.

130. A Motion for New Trial or Reconsideration is a proper remedy in cases when the following instances are present:

- (a) Fraud, accident, mistake[,] or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or
- (b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.

1997 RULES OF CIVIL PROCEDURE, rule 37, § 1.

131. *See Planas*, 3 SCRA at 400.

132. *See Pascual v. Pascual-Bautista*, 207 SCRA 561, 568 (1992).

133. An Act Amending Republic Act No. 8436, Entitled "An Act Authorizing the Commission On Elections to Use an Automated Election System in the May

with violation of the same before the RTC of Pasay City.¹³⁴ On 18 November 2011, the RTC issued a warrant and she was accordingly arrested on the same day while undergoing medical treatment at St. Luke's Hospital in Taguig City.¹³⁵ The law imposes the penalty of life imprisonment.¹³⁶

A. Who Are Liable?

Section 268 of the Omnibus Election Code¹³⁷ materially provides that “the [RTC] shall have the exclusive original jurisdiction to try and decide any criminal action[s] or proceedings for violation of this Code.”¹³⁸ Any member of the Board of Election Inspectors (BEI) or Board of Canvassers (BOC), and those who conspire or connive with them, may be held liable for electoral sabotage.¹³⁹

B. Prohibited Acts

What specific acts constitute electoral sabotage? They are the following:

- (1) Tampering, increasing, or decreasing the votes received by a candidate in any election, and such acts are perpetrated on a large scale or in substantial numbers;¹⁴⁰
- (2) Refusal by any member of the BEI or BOC, after proper verification and hearing, to credit the correct votes or deduct such tampered votes, and such acts are perpetrated on a large scale or in substantial numbers;¹⁴¹

11, 1998 National or Local Elections and in Subsequent National and Local Electoral Exercises, to Encourage Transparency, Credibility, Fairness and Accuracy of Elections, Amending for the Purpose Batas Pambansa Blg. 881, as Amended, Republic Act No. 7166, and Other Related Elections Laws, Providing Funds Therefor and for Other Purposes,” Republic Act No. 9369 (2007).

134. Andreo Calanzo, Gloria Arroyo pleads not guilty to poll sabotage charge, *available at* <http://www.gmanetwork.com/news/story/249076/news/nation/gloria-arroyo-pleads-not-guilty-to-poll-sabotage-charge> (last accessed Sep. 12, 2013).

135. Carmela Fonbuena, Pasay RTC Judge issues arrest warrant vs Arroyo, *available at* <http://www.rappler.com/nation/233-pasay-rtc-judge-issues-arrest-warrant-vs-arroyo> (last accessed Sep. 12, 2013).

136. R.A. No. 9369, § 42.

137. Omnibus Election Code of the Philippines, Batas Pambansa Blg. 881 (1985).

138. *Id.* § 268.

139. R.A. No. 9369, § 42.

140. *Id.*

141. *Id.*

- (3) Tampering, increasing, and/or decreasing of votes is committed in the election of a national elective office which is voted upon nationwide, and the tampering, increase, and/or decrease shall adversely affect the results of the election to the said national office to the extent that losing candidate/s is/are made to appear the winner/s;¹⁴²
- (4) Refusal to credit the correct votes or to deduct tampered votes is committed in the election of a national elective office which is voted upon nationwide, and the refusal shall adversely affect the results of the election to the said national office to the extent that the losing candidate/s is/are made to appear the winner/s;¹⁴³
- (5) Tampering, increasing, and/or decreasing of votes committed, regardless of the elective office involved, is accomplished in a single election document, and the number of votes involved exceed 5,000 votes, and the same adversely affects the true results of the election;¹⁴⁴
- (6) Refusal to credit the correct votes or to deduct tampered votes perpetrated, is accomplished in a single election document, and the number of votes involved exceed 5,000 votes, and the same adversely affects the true results of the election;¹⁴⁵
- (7) Refusal to credit the correct votes or to deduct tampered votes perpetrated, is accomplished in the transposition of the figures/results from one election document to another and the number of votes involved exceed 5,000 votes, and the same adversely affects the true results of the election;¹⁴⁶
- (8) Tampering, increasing, and/or decreasing of votes perpetrated, where the total votes involved exceed 10,000 votes;¹⁴⁷ and
- (9) Refusal to credit the correct votes or to deduct the tampered votes where the total votes involved 10,000 votes.¹⁴⁸

Following the enumeration, are the first and second acts constitutive of electoral sabotage?¹⁴⁹ It is submitted that they are not. They do not fall under

142. *Id.*

143. *Id.*

144. *Id.*

145. R.A. No. 9369, § 42.

146. *Id.*

147. *Id.*

148. *Id.* See also B.P. Blg. 881, § 261.

any of the instances under acts three to nine. The law expressly provides that ordinary election offenses shall constitute electoral sabotage only under the latter instances.¹⁵⁰

Under acts three and four, even if all the elements are present, there is no electoral sabotage where the act is committed in connection with a local election, regardless of any adverse effect on the results of the latter.¹⁵¹ This is significant especially in cases of synchronized or simultaneous national and local elections.¹⁵² Moreover, the law appears tainted with an inconsistent juxtaposition of “winner/s” with “losing candidate/s.”¹⁵³ The accurate comparison would appear to be “winners” with “loser candidates.” The significance lies in the definition of a losing candidate, which is not provided in R.A. No. 9369. A winner may have been a losing candidate in the middle of a canvassing period. Hence, this element of ambiguity lends itself to creating a reasonable doubt which dilutes the People’s chances of securing a conviction.¹⁵⁴

Under acts five, six, and seven, there is no electoral sabotage if the number of votes involved is 5,000 or less; or even if the number involves 5,001 or more votes, there is no electoral sabotage if it does not adversely affect the true results of the election.¹⁵⁵ Under R.A. No. 9369, so much value is placed on one vote after the first 5,000 tampered votes. It is made to spell the difference between prosecution for: (1) ordinary election offense which carries a penalty of not more than six years of imprisonment; and (2) electoral sabotage, which carries a straight penalty of life imprisonment.

R.A. No. 9369 does not explain why, and common sense is simply stumped. Thus, the law appears tainted with unreasonable classification.¹⁵⁶

Under acts eight and nine, the law again appears to have adopted an unreasonable classification, where so much value is given to one vote after

149. R.A. No. 9369, § 42.

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. REVISED RULES ON EVIDENCE, rule 133, § 2.

155. R.A. No. 9369, § 42.

156. Fr. Joaquin G. Bernas, S.J., provides that “[t]he equal protection clause is a specific constitutional guarantee of the [e]quality of the [p]erson. ... Under it, each individual is dealt with as an equal person in the law, which does not treat the person differently because of who [one] is, what [one] is[,] or what [one] possesses. JOAQUIN G. BERNAS, S.J., THE 1987 PHILIPPINE CONSTITUTION: A COMPREHENSIVE REVIEWER 35 (2011 ed.).

the first 10,000 tampered votes.¹⁵⁷ The law does not explain why, and common sense is, again, stumped. Curiously, the law eliminates the requirement of adverse effects on the results of the election. While in acts five, six, and seven, there is no electoral sabotage where the tampered votes are 5,000 or less, even if the results of the election are adversely affected,¹⁵⁸ here, even if the results of the elections are not adversely affected, as long as the tampered votes exceed 10,000, there is electoral sabotage.¹⁵⁹

Outside of the forms of tampering or refusal under acts three to seven, are other forms of such prohibited acts punishable as electoral sabotage? No. The law does not provide for it. While there appears an apparent legislative intent to cover any and all other forms of the prohibited act, the actual language used reads “any and all other forms or tampering.”¹⁶⁰ The correct word should have been “of” instead of “or.” Hence, the clause “any and all other forms”¹⁶¹ is rendered meaningless, or vague at best. The defect is legislative. Therefore, the cure must also be legislative.¹⁶² It cannot be cured by judicial construction because the *verba* of the law is clear.¹⁶³ It says “or,” not “of.” The courts are barred by the principle of separation of powers¹⁶⁴ from substituting their word for that actually used or written by the legislature. The courts cannot amend the law.¹⁶⁵

C. Which Court has Jurisdiction over Electoral Sabotage?

Under the 1973 Constitution, the *Batasang Pambansa* was mandated to create the Sandiganbayan, which the same Constitution vested with “jurisdiction over criminal and civil cases involving graft and corrupt practices and such other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office as may be determined by law.”¹⁶⁶ Under the 1987 Constitution, “the

157. R.A. No. 9369, § 42.

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

162. Legislative power is vested in the Congress of the Philippines. Legislative power is the power to make laws and to alter or repeal them. PHIL. CONST. art VI, § 1. See also BERNAS, *supra* note 156, at 210.

163. See PHIL. CONST. art VI, § 1.

164. *Macalintal*, SCRA at 695 (J. Puno, concurring and dissenting opinion).

165. See PHIL. CONST. art VI, § 1.

166. 1973 PHIL. CONST. art. XIII, § 5 (superseded 1987).

Sandiganbayan shall continue to function and exercise its jurisdiction as now or hereafter may be provided by law.”¹⁶⁷

Under the 1973 Constitution, what “may be determined by law?” According to the 1973 Constitution, these are the offenses, other than those involving graft and corrupt practices, committed by public officers and employees in relation to their office.¹⁶⁸

Can the Legislature vest jurisdiction over electoral sabotage in favor of the RTC? As previously discussed, the Legislature cannot do this because it has no authority to amend the constitutional jurisdiction of the Sandiganbayan.¹⁶⁹ The exercise of ordinary legislative authority which resulted in the passage of the electoral sabotage law is not a valid mode of amending the Constitution.¹⁷⁰

Does the 1987 Constitution authorize the Legislature to unilaterally amend the constitutional jurisdiction of the Sandiganbayan? No, it does not. The enumeration of the modes of amending the Constitution — namely, by (1) constitutional convention;¹⁷¹ (2) constituent assembly;¹⁷² and (3) people’s initiative¹⁷³ — is exclusive. *Inclusio unius est exclusio alterius*.¹⁷⁴ What is not included is excluded.¹⁷⁵

Was the arrest of former President Arroyo on the basis of the warrant issued by the RTC in the electoral sabotage case valid? It is submitted that such arrest was invalid. It was based on a void warrant which was issued without jurisdiction.¹⁷⁶

VI. PESTAÑO MURDER CASE

On 23 October 2012, the Sandiganbayan dismissed, for alleged lack of jurisdiction, the Phillip Pestaño murder case filed by the Ombudsman against 10 Navy officers.¹⁷⁷

167. PHIL. CONST. art. XI, § 4.

168. 1973 PHIL. CONST. art. XIII, § 5 (superseded 1987).

169. See PHIL. CONST. art. XVII, §§ 1 & 2.

170. See PHIL. CONST. art. XVII, §§ 1 & 2.

171. PHIL. CONST. art. XVII, § 1, ¶ 2.

172. PHIL. CONST. art. XVII, § 1, ¶ 1.

173. PHIL. CONST. art. XVII, § 2.

174. *Interpretation of Contracts*, 90 SCRA at 456.

175. *Id.*

176. See Fonbuena, *supra* note 135.

177. Cynthia Balana & Nikko Dizon, *Sandiganbayan junks Pestaño slay case for lack of jurisdiction*, PHIL. DAILY INQ., Oct. 24, 2012, available at <http://newsinfo>.

A. Background

Phillip Andrew Pestaño was a young graduate of the Philippine Military Academy (PMA) who chose to serve the Filipino people by joining the Philippine Navy.¹⁷⁸ He was assigned as an ensign to the Navy supply ship *BRP Bacolod City*.¹⁷⁹

According to reports, Pestaño family members said that the young ensign threatened to expose illegal activities in the Navy, including an allegation that the ship was transporting weapons, illegally cut logs, and drugs.¹⁸⁰ There had allegedly been a source of tension earlier in the voyage, and that had to do with the lumber that the retiring Navy Chief had asked to be delivered on board for his personal purposes.¹⁸¹ The ship's captain, now retired Captain Ricardo Ordoñez, said it was Commander Reynaldo Lopez who got into a tiff with him about allowing such things to take place; but seeing that it had the order stamped by the Navy Chief himself, Lopez had to relent.¹⁸² Pestaño, according to the officers, supposedly took the side of Lopez, who was beginning to train the young ensign in running a ship.¹⁸³

During the same voyage, on the morning of 27 September 1995, Pestaño was reportedly found shot dead in his cabin by Joselito Colico — the mess officer whom Lopez had ordered to search the boat for Pestaño after the latter failed to respond to a “Special Sea Detail.”¹⁸⁴

inquirer.net/294534/sandiganbayan-junks-pestano-slay-case-for-lack-of-jurisdiction (last accessed Sep. 12, 2013).

178. Criselda Yabes, The Pestaño case: His death haunts them still, *available at* <http://www.gmanetwork.com/news/story/254552/news/specialreports/the-pestano-case-his-death-haunts-them-still> (last accessed Sep. 12, 2013); Criselda Yabes, The Pestaño case: A love affair gone sour, *available at* <http://www.gmanetwork.com/news/story/254705/news/specialreports/the-pestano-case-a-love-affair-gone-sour> (last accessed Sep. 12, 2013); & Criselda Yabes, The Pestaño case: Re-enacting his last voyage, *available at* <http://www.gmanetwork.com/news/story/254813/news/specialreports/the-pestano-case-re-enacting-his-last-voyage> (last accessed Sep. 12, 2013) [hereinafter Yabes, Last Voyage].

179. Yabes, Last Voyage, *supra* note 178.

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.* A Special Sea Detail is a required routine when a ship is about to leave or dock. The ship's bells ring and the microphone blares out the names of men in their proper positions. *See generally* DAVID O. DODGE & STEPHEN E. KYRISS, SEAMANSHIP: FUNDAMENTALS FOR THE DECK OFFICER 391 (1986 ed.).

It was reported that Pestaño was slouched on his bed, wearing his khaki uniform trousers and a white shirt.¹⁸⁵ According to Colico, he saw a .45 Colt pistol on the floor.¹⁸⁶ He said that he held the weapon and removed its chamber.¹⁸⁷ He also said that he took precautionary steps, based on what he had been taught in the PMA.¹⁸⁸

In 1997, the Senate Committee on Justice and Human Rights heard the evidence presented by the Pestaño family, and after one year, concluded that Ensign Pestaño did not shoot himself.¹⁸⁹ But the Committee did not identify or name any suspect.¹⁹⁰ In 2000, the Ombudsman ruled that the evidence had been tampered with and investigation was no longer warranted.¹⁹¹ In 2005, the Pestaño family moved for reconsideration.¹⁹² In 2009, the Ombudsman dismissed the case upon the ground that the evidence presented was circumstantial and not substantial to conclude that the ensign was murdered.¹⁹³ On 10 January 2012, Ombudsman Morales reversed the earlier decision and ordered the filing of the murder charges against Captain Ordoñez, Commander Lopez, Lieutenant Commanders Luidegar Casis, Alfrederick Alba, Colico, and Ruben Roque, Hospital Man 2 Welmenio Aquino, Machinery Repairman 2 Sandy Miranda, Petty Officer First Class Carlito Amoroso, and Petty Officer Second Class Mil Leonor Igcasan.¹⁹⁴

According to Ombudsman Morales, “after taking a hard look at the case,”¹⁹⁵ including “the additional evidence unearthed in the [AFP] investigation ... made available to the complainants 10 years [after the killing],”¹⁹⁶ there is a “*prima facie* case of conspiracy to commit murder”¹⁹⁷ and “[t]he totality of circumstances before, during[,] and after the ‘discovery’

185. Yabes, *Last Voyage*, *supra* note 178.

186. *Id.*

187. *Id.*

188. *Id.*

189. Rodel E. Rodis, *Justice Delayed, Still Better than None*, *available at* <http://thepinoyweekly.com/?p=2045> (last accessed Sep. 12, 2013).

190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.*

195. Jaime Sinapit, *Ombudsman reverses Pestaño case dismissal; sees murder, not suicide*, *available at* <http://interaksyon.com/article/21650/ombudsman-reverses-pestano-case-dismissal-sees-murder-not-suicide> (last accessed Sep. 12, 2013).

196. *Id.*

197. *Id.*

of the death of Pestaño *prima facie* points that respondents conspired to kill him.”¹⁹⁸

The Sandiganbayan disagreed with the Ombudsman.¹⁹⁹ It dismissed the case²⁰⁰ upon the ground that its jurisdiction is limited to those involving officers starting from the rank of colonel in the Philippine Army and Air Force, and from the rank of captain in the Navy.²⁰¹ The highest ranking officer among the accused was Lieutenant Commander Ordoñez.²⁰² But at the time of the incident, the position he occupied was two levels below that of naval captain.²⁰³

B. Issue

Does the Sandiganbayan have jurisdiction over public officers with salaries lower than Salary Grade 27?²⁰⁴ It is respectfully submitted the answer is yes. The jurisdiction of the Sandiganbayan are of two kinds: constitutional²⁰⁵ and statutory.²⁰⁶ Obviously, in case of conflict, the Constitution prevails.²⁰⁷

The 1973 Constitution, which took effect on 17 January 1973, defines the jurisdiction of the Sandiganbayan as follows —

The National Assembly shall create a special court, to be known as Sandiganbayan, which shall have jurisdiction over criminal and civil cases involving graft and corrupt practices and such other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office as may be determined by law.²⁰⁸

Under former President Aquino’s Provisional Constitution, dated 25 March 1986, or the so-called “Freedom Constitution,” the aforementioned provision of the 1973 Constitution was “adopted as part of this Provisional

198. David Dizon, 10 Navy men face murder raps for Pestaño slay, *available at* <http://newsinfo.inquirer.net/126393/ombudsman-files-murder-raps-vs-10-navy-officials-for-pestano-murder> (last accessed Sep. 12, 2013).

199. Balana & Dizon, *supra* note 177.

200. *Id.*

201. *See* R.A. No. 8249, § 4 (a) (1) (d).

202. Balana & Dizon, *supra* note 177.

203. *Id.*

204. R.A. No. 8249, § 4.

205. PHIL. CONST. art. XI, § 4.

206. P.D. No. 1486, § 4.

207. *See* Abakada Guro Party List v. Ermita, 469 SCRA 14, 160 (2005).

208. 1973 PHIL. CONST. art. XIII, § 5 (superseded 1987).

Constitution, insofar as they are not inconsistent with the provisions of this Proclamation.”²⁰⁹

No such inconsistency has been shown to exist. Hence, the Provision appears to have been carried over *in toto* from the 1973 to the 1986 Provisional Constitution.

The 1987 Constitution, which took effect on 11 February 1987, and immediately following the 1973 Constitution, defines the jurisdiction of the Sandiganbayan: “[t]he present anti-graft court known as the Sandiganbayan shall continue to function and exercise its jurisdiction as now or hereafter may be provided by law.”²¹⁰ In other words, the constitutional jurisdiction of the Sandiganbayan covers criminal and civil cases involving graft and corrupt practices, and such other offenses committed by public officers and employees in relation to their office as may be determined by law.²¹¹

Under Section 5, Article XIII of the 1973 Constitution, what “may be determined by law?” According to the 1973 Constitution, these are the offenses, other than those involving graft and corrupt practices, committed by public officers and employees in relation to their office.²¹²

Can the legislature vest jurisdiction over those “other offenses” which are committed by public officers and employees in relation to their office, in favor of the RTC? No. The legislature has no authority to amend the constitutional jurisdiction²¹³ of the Sandiganbayan.

The constitutional jurisdiction²¹⁴ of the Sandiganbayan is clear. It covers only two classes of crime without any qualifications.²¹⁵ What P.D. No. 1486²¹⁶ does is provide for qualifications where the Constitution provides for none. Thus, the statutory qualifications outside of the plain and unambiguous language of the Constitution appears to be absolutely without basis in the fundamental law. To add to or subtract from the jurisdictional language of the Constitution is, obviously, to amend the same.²¹⁷ The Legislature added qualifications such as between those accused classified as Salary Grade 27 and higher, of the Compensation and Position Classification

209. 1986 PROVISIONAL “FREEDOM” CONST. art. I, § 2 (superseded 1987).

210. PHIL. CONST. art. XI, § 4.

211. R.A. No. 8249, § 4.

212. 1973 PHIL. CONST. art. XIII, § 5 (superseded 1987).

213. PHIL. CONST. art. XI, § 4.

214. PHIL. CONST. art. XI, § 4.

215. PHIL. CONST. art. XI, § 4.

216. P.D. No. 1486.

217. See *Social Justice Society (SJS)*, 570 SCRA at 423.

Act of 1989,²¹⁸ who are placed within the exclusive original jurisdiction of the Sandiganbayan in all cases involving graft and corruption, while those below the grade are placed within the jurisdiction of the RTC and other lower courts.²¹⁹

The exercise of ordinary,²²⁰ as distinguished from the constituent,²²¹ power of legislation is not among the modes of amending the basic law of the land. Those accused who are treated equally under the 1973 and 1987 Constitutions are treated unequally under the Sandiganbayan Law.²²² The first are subjected to the jurisdiction of the Sandiganbayan, while the second are not. There is, therefore, a deprivation of the equal protection of the fundamental law.²²³

VII. CONCLUSION

Either we follow the Rule of Law or we do not. If we do, we must administer it regardless of consequences. If we do not, we must face the revolutionary consequences of the Rule of Tyranny.

218. R.A. No. 6758.

219. P.D. No. 1861.

220. *See Sanidad*, 73 SCRA at 383.

221. *Id.*

222. P.D. No. 1486.

223. PHIL. CONST. art. III, § 1.