admitted that "[t]he danger was simply overwhelming. The [extraordinariness] of the reality called for an extraordinary solution. The Court has chosen to prevent rather than cure an enigma incapable of being recoiled."[154] Critics of *Estrada* may be right, but there are always rough stages in any emerging body of law.

The educational function of the Court in *Estrada* is most apparent in the classification of EDSA II as opposed to EDSA I. The checking function was manifested in the subtle use of the political question doctrine against the petitioner. The legitimating function is the product of the latter two.

When faced again with the unlimited phenomenon of direct state actions, courts of law must be now more conscious of the three functions of judicial review. The duty to reconcile extra-constitutionality with the twin principles of supremacy and permanence of the constitution is now even more pronounced. Direct state actions are slowly becoming institutionalized. Use of the political question doctrine must be more clinical and more refined. Pressing questions such as, 'What are the tests and standards in gauging whether popular action amounted to mob rule?' 'What are the house rules of the "parliament in the streets"'?

It is not anymore enough to say that these are left to the fields of politics and war. For in refusing to integrate the doctrine of direct state actions, courts will have no choice but to keep expanding the words and phrases of constitutions to accommodate an otherwise unlimited phenomenon.

> Great cases like hard cases make bad law. For great cases are called great . . . because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment. These immediate interests exercise a kind of hydraulic pressure which makes what previously was clear seem doubtful, and before which even well settled principles of law will bend.
>
> Northern Securities Company v. United States, 193 U.S. 197, 400-01 (1904), *quoted in* Bernas, *One-Man Rule*, *supra* note 26, at 65.

154. *Estrada*, G.R. No. 146738 (Vitug, J., concurring).

The Jotting of *Obiter Dicta* in *Estrada v. Sandiganbayan*: Did the Supreme Court Blunder in its Decision on the Constitutionality of the Law on Plunder?

Aris L. Gulapa *

INTRODUCTION

Nothing is more objectionable than erroneous *obiter dicta*.[1]

* The author would like to thank Nina Araneta for her assistance in the research of this article.

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1. Kuenzle & Streiff v. Villanueva, 41 Phil. 611, 624 (1921) (Moreland, J., concurring and dissenting). The context of Justice Moreland's statement can be gleaned from his adroit opinion:

> I want, first of all, to point out what the court holds in this case and the train of argument by which it arrives at its conclusion. As I have said, I find no fault with the bare finding that the attachment must be upheld. With that I agree. That was a resolution of the question, and the sole question, before the court. But the court decides much more than that; and this, together with the style and character of the argument found in the opinion, is what I object to. Near

With an almost illimitable power to pronounce anything, even other than the issues raised in the pleadings,[2] the Supreme Court has had the occasion in the past to jot down *dicta* that were clearly unnecessary in disposing of the main questions brought up in a case before them.[3] The Court's use of *obiter dictum* cannot be ignored, and must be handled with caution, for what may be *obiter* today may set a precedent based on how such *dictum* is interpreted by members of the Court.[4]

Unfortunately, and again, the Court has jot down *obiter dicta* in its decision in *Estrada v. Sandiganbayan*[5] (hereinafter *Estrada*) which, in all probability, might be influential in disposing similar questions in the future. For purposes of this review, the author shall analyze *Estrada* within the context of the Court's *obiter dicta*, and attempt to dissuade the Court from using the said pronouncements in the future.

I. *Obiter Dictum* AND THE SUPREME COURT

An *obiter dictum* has been defined as an opinion expressed by a court upon some question of law which is not necessary to the decision of the case before it.[6] An opinion uttered "by the way,"[7] an *obiter dictum* lacks the force

the end of the opinion the court holds that an attachment lien is 'subject to all . . . statutory preferences by which such property is affected at the time of the levy . . .' This was clearly unnecessary to a decision of the question presented. The judgment in this case was subsequent to the levy of the attachment and, therefore, the situation which would have arisen if it had been prior to the levy was not presented. But I would not object so seriously to the obiter dictum if it contained a correct statement of the law with which it deals. When, however, it is not only obiter but wrong also, I not only feel constrained to dissent but to register that dissent as well. Nothing is more objectionable than erroneous obiter dicta.

See also Militante v. Edrosolano, 39 SCRA 473 (1971).

2. Lina v. Purisima, 82 SCRA 344 (1978). For a more thorough discussion on similar expressions, *see* Northern Nat. Bank v. Porter Township, 110 U.S. 608 (1884); Weyerhaeuser v. Hoyt, 219 U.S. 380 (1911); Okasa Shosen Kaisha Line v. United States, 300 U.S. 98 (1937).

3. Summers v. Ozaeta, 81 Phil. 754 (1948); Estate of Howard J. Edmands, 87 Phil. 405 (1950). *See* Aytona v. Castillo, 4 SCRA 1 (1962). *See also* Barredo v. C.A., 6 SCRA 620 (1962).

4. Hian v. Court of Tax Appeals, 59 SCRA 110 (1974); People v. Nazareno, 70 SCRA 521 (1976); Dario v. Mison, 176 SCRA 84 (1989).

5. Estrada v. Sandiganbayan, G.R. No. 148560 (Nov. 19, 2001).

6. Uy Po v. Collector of Customs, 34 Phil. 153 (1916); Morales v. Paredes, 55 Phil. 565 (1930); Abad v. Carganillo Vda. de Yance, 95 Phil. 51 (1954). *See also* 1 BOUVIER'S LAW DICTIONARY 863 (3rd ed.).

of an adjudication;[8] hence, not constituting *stare decisis*. It generally cannot control the resolution of the specific question that confronts the Court, but instead is only a remark by way of pure embellishment.[9]

Mr. Justice Concepcion has succinctly discussed the legal value of an *obiter dictum* in his dissenting opinion in the case of *Visarra v. Miraflor*,[10] where the Court was faced with the question of whether or not the decision in a prior case bound the Court in deciding a question subsequently presented to them:

> Precisely, for these reasons, our decision in the Imperial case cannot justify the application of the principle of stare decisis on the question of the validity of De Vera's aforementioned appointment and on the consequences thereof. Whatever we said in connection therewith, in the Imperial case, was — considering the explicitly hypothetical nature of its predicate — merely an aside, and, ***hence, an obiter dictum***, or an utterance made only to avoid giving the erroneous impression that the Court had overlooked De Vera's appointment as Chairman of the Commission and that of Rovira as member thereof, in determining the beginning and the end of the term of respondents Imperial and Perez.[11]

However, while an *obiter dictum* is generally not binding as authority or precedent within the *stare decisis* rule, it may be followed if sufficiently persuasive.[12] As observed by Chief Justice Marshall,[13] it is a maxim, not to be

7. People v. Macadaeg, 91 Phil. 410 (1952).

8. Morales v. Paredes, 55 Phil. 565 (1930).

9. Reagan v. C.I.R., 30 SCRA 968 (1969). Answering the question of whether or not a civilian employee of an American corporation providing technical assistance to the United States Air Force in the Philippines is liable to pay taes, Justice Fernando stated,

"Nor did the fact that such utterance of Justice Tuason was cited in Co Po v. Collector of Internal Revenue, 20 a 1962 decision relied upon by petitioner, put a different complexion on the matter. Again, it was by way of pure embellishment, there being no need to repeat it, to reach the conclusion that it was the purchaser of army goods, this time from military bases, that must respond for the advance sales taxes as importer. Again, the purpose that animated the reiteration of such a view was clearly to emphasize that through the employment of such a fiction, tax evasion is precluded. What is more, how far divorced from the truth was such statement was emphasized by Justice Barrera, who penned the Co Po opinion, thus: "It is true that the areas covered by the United States Military Bases are not foreign territories both in the political and geographical sense."

10. 8 SCRA 1 (1963).

11. *Id.* at 28 (Concepcion, J., dissenting) (emphasis supplied).

12. Lee v. Court of Appeals, 68 SCRA 196, 204 (1975); Nashville C. St. Louis Ry v. Browning, 310 U.S. 362 (1940).

disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision.[14]

With this in mind, the Court has had the opportunity to view certain *obiter dicta* as doctrinal or persuasive.

In *Hian v. Court of Tax Appeals,*[15] the Court treated the pronouncement in the *Arca*[16] case as not a mere *obiter dictum* because the precise question of deprivation of due process was extensively and explicitly discussed with a view to settle the legality of certain seizure proceedings. The Court's vulnerability to falling into this trap of using *obiter dictum* in deciding important questions was likewise evident in its decision in *People v. Nazareno,*[17] where the Court used an *obiter dictum* in the *Esparat* decision to interpret concurrent jurisdiction of lower courts.

In *Dario v. Mison,*[18] the members of the Court disagreed whether a pronouncement in a previous case (*Arroyo*) was *obiter* or not. While the majority opinion expressed that the pronouncement, "[b]y virtue of said provision the reorganization of the Bureau of Customs under Executive Order No. 127 may continue even after the ratification of this constitution and career civil service employees may be separated from the service without cause as a result of such reorganization,"[19] was in the nature of an *obiter dictum*, Mme. Justice Melencio-Herrerra viewed the same in the opposite. She opined that the ruling of the Court on the Constitutional issues presented, particularly, the lapse of the period mandated by Proclamation No. 3, and the validity of E.O. No. 127, cannot be said to be mere *obiter* as they were ultimate issues directly before the Court, expressly decided in the course of the consideration of the case, so that any resolution thereon must be considered as authoritative precedent, and not a mere *dictum*. Such resolution would not lose its value as a precedent just because the disposition of the case was also made on some other ground.[20]

13. Cohens v. Virginia, 19 U.S. (6 Wheat.) 264, 399 (1821).

14. Myers v. United States, 272 U.S. 52, (1926). *See* Wright v. United States, 302 U.S. 583 (1938); Green v. United States, 355 U.S. 184 (1957).

15. 59 SCRA 110 (1974).

16. 11 SCRA 529, 534-35 (1964).

17. 70 SCRA 531 (1976).

18. 176 SCRA 84 (1989).

19. *Id.* at 125.

20. *See, e.g.,* Weedin v. Tayokichi Yamada 4 F. 2d 455 (1925).

In fact, members of the Court would painstakingly address a particular issue, albeit they themselves admit its *obiter* character, as what happened in the case of *People v. Pineda.*[21]

It would thus sometimes seem incongruous that the Court would delve into a matter that the *ponentes*, themselves, never intended to be a doctrinal pronouncement. As could be readily gleaned from the abovementioned decisions, the members of the Court may use a *dictum*, seemingly *obiter* in the past, to decide or opine on the main issue presented before it. The decision of the Court in *Estrada v. Sandiganbayan*, possessing arguable *obiter dicta*, may therefore bring forth conflicting views amongst the justices in the future.

II. The Plunder Law

The main issue in *Estrada* essentially dealt with the constitutionality of Republic Act 7080,[22] otherwise known as "An Act Defining and Penalizing the Crime of Plunder," as amended by RA 7659.

RA 7080 traces its origin to Senate Bill 733, authored by Senator Jovito Salonga, co-authored by five senators, and sponsored by Senator Wigberto Tanada as Chairman of the Committee on Revision of Codes and Laws.[23] With the intent to criminalize widespread and wholesale stealing, such as that committed by the Marcos government, the bill was unanimously passed by the Senate, with then Senator Joseph Ejercito Estrada as one of the signatories.[24]

The passing of the Plunder Law was impelled by the fact that plunder or wholesale larceny was not punished in our statute books.[25] The crimes of malversation of public funds, falsification, theft, extortion, and bribery were clearly inadequate to cope with the magnitude of corruption and thievery during the Marcos years that the Presidential Commission on Good Government (PCGG) uncovered.[26] In this regard, the government would have to file around 80 separate complaints against the Marcoses and their co-conspirators, for various offenses.[27] For that reason, the over-all conspiracy

21. 219 SCRA 1 (1993).

22. An Act Defining and Penalizing the Crime of Plunder, Republic Act No. 7080 (1991), *amended by* An Act Imposing the Death Penalty to Certain Heinous Crimes, Republic Act No. 7659, § 12 (1993).

23. Leon Asa, *The Crime of Plunder*, 3 LAW. REV., May 31, 2001, at 3.

24. *Id.*

25. JOVITO SALONGA, PRESIDENTIAL PLUNDER: THE QUEST FOR THE MARCOS ILL-GOTTEN WEALTH 29-30 (2000) [hereinafter SALONGA, PRESIDENTIAL PLUNDER].

26. *Id.*

27. Asa, *supra* note 23.

had to be cut up into simple criminal charges as required under the law then.[28]

With the passing of RA 7080, the need to file a separate complaint for each act of plunder has been changed.

Section 1 of the same Act defines "ill-gotten wealth" as any asset, property, business, enterprise or material possession of any person within the purview of Section Two (2) thereof, acquired by him directly or indirectly through dummies, nominees, agents, subordinates, and/or business associates by any combination or series of the certain means or similar schemes.[29]

Section 2 thereof defines the crime of plunder as that committed by any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates, or other persons, amasses, accumulates, or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1 (d) hereof, in the aggregate amount or total value of at least seventy-five million pesos (P75,000,000.00).[30] RA 7659 subsequently reduced the amount to at least fifty million pesos (P50,000,000.00).[31]

28. SALONGA, PRESIDENTIAL PLUNDER, *supra* note 25.

29. R.A. 7080, Section 1 enumerates these schemes:

a. Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;

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

c. By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities, or government owned or controlled corporations and their subsidiaries;

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

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

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

30. R.A. 7080, § 2. The full text of Section 2 states:

Further, for purposes of establishing the crime of plunder, it shall not be necessary to prove each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth, it being sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy.[32]

Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a **combination or series of overt or criminal acts** as described in Section 1 (d) hereof, in the aggregate amount or total value of at least seventy-five million pesos (P75,000,000.00) shall be guilty of the crime of plunder and shall be punished by reclusion perpetua to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances as provided by the Revised Penal Code shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State. (emphasis added)

31. R.A. 7659, § 12. Section 12 provides:
Section 2 of Republic Act No. 7080 (An Act Defining and Penalizing the Crime of Plunder) is hereby amended to read as follows:
"Sec. 2. Definition of the Crime of Plunder; Penalties. - Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt criminal acts as described in Section 1 (d) hereof in the aggregate amount or total value of at least Fifty million pesos (P50,000,000.00) shall be guilty of the crime of plunder and shall be punished by reclusion perpetua to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State."

32. R.A. 7080, § 4. This section mandates:
For purposes of establishing the crime of plunder, it shall not be necessary to prove each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth, it being sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy.

III. The Case

From its inception, the case of *Estrada* has received a great deal of attention.[33] Even in the Sandiganbayan, petitioner's lawyers have been publicly criticized as bent on invoking every rule in the book.[34] They have brought out the all-encompassing argument of constitutionality of the law itself as the very first line of defense — the ultimate spanner in the works.[35] Many commentators opine that although the Motion before the Sandiganbayan is technically not a Motion to Quash,[36] the invocation of the constitutionality argument apparently changed the complexion of the motion since it would be hard for any court to disregard a constitutional argument, particularly if the constitutional argument relates to the very law that forms the basis of the charges.[37] The criticism that Estrada's lawyers were simply wrestling with the Court and delaying the process was carried over up to the Court's decision in and its resolution on petitioner's Motion for Reconsideration.[38]

A. Facts of the Case

On 4 April 2001, the Office of the Ombudsman filed before the Sandiganbayan eight (8) separate Informations, including Criminal Case No. 26558, for violation of RA 7080, as amended by RA 7659 against petitioner Joseph Estrada, Jinggoy Estrada, and others.[39]

Subsequently, petitioner filed an *Omnibus Motion* to remand the case to the Ombudsman for preliminary investigation with respect to the charges in the Information in Criminal Case No. 26558; and, for reconsideration/reinvestigation of the other offenses to give the accused an opportunity to file counter-affidavits and other documents necessary to prove lack of probable cause. Noticeably, the grounds raised were only lack of preliminary investigation, reconsideration/ reinvestigation of offenses, and opportunity to prove lack of probable cause.[40]

On 25 April 2001, the Sandiganbayan Third Division, issued a Resolution in Crim. Case No. 26558 finding that "a probable cause for the offense of plunder exists to justify the issuance *of* warrants for the arrest of the accused."[41]

On 14 June 2001, petitioner moved to quash the Information in Criminal Case No. 26558 on the ground that the facts alleged therein did not constitute an indictable offense since the law on which it was based was unconstitutional for vagueness, and that the Amended Information for Plunder charged more than one (1) offense. On 21 June 2001, the Government filed its *Opposition to the Motion to Quash,* and five (5) days later or on 26 June 2001, petitioner submitted his *Reply to the Opposition.* On 9 July 2001, the Sandiganhayan denied petitioner's *Motion to Quash.*[42]

Having failed to secure their desired objective, petitioner went to the Supreme Court to declare RA 7080, as amended, unconstitutional.

B. Issues of the Case

The issues for resolution in the petition for certiorari were:

a. The Plunder Law is unconstitutional for being vague;

b. The Plunder Law requires less evidence for proving the predicate crimes of plunder and therefore violates the rights of the accused to due process; and,

c. Whether Plunder as defined in RA 7080 is a *malum prohibitum,* and if so, whether it is within the power of Congress to so classify it.

33. Jovito Salonga, *Facts and Fantasies About Estrada's Cases,* KILOSBAYAN, Apr. 2002, at 6; Emigdio Dakanay, *A Pathetic Spectacle,* KILOSBAYAN, March 2002, at 38.

34. Theodore Te, *Putting a spanner in the works, available at* http://www.inq7.net/specials/erap_trial/2001/legal/te/article_01.htm (last visited May 8, 2002.) [hereinafter Te, *Putting a spanner in the works*].

35. *Id.*

36. Rule 117, Rules of Court (2000). *See Id.* According to Atty. Te, "It is important to underscore that Jinggoy's motion is technically not a motion to quash under the Rules of Criminal Procedure because it does not allege a ground recognized by the Rules to quash an Information. If the Sandiganbayan decides to treat it as a motion to quash, the closest ground in Rule 117 that may be considered is that "the facts charged do not constitute an offense" under section 3 (a). This ground, however, will arise only if the Sandiganbayan declares the plunder law unconstitutional. Only then will there be a basis to say that the acts alleged to have been performed by accused are not criminal, as the law punishing them is void. Until the Sandiganbayan declares the plunder law to be unconstitutional, therefore, there is yet no basis to quash the Information."

37. Theodore Te, *Putting a Spanner in the Works, supra* note 34.

38. Resolution on the Motion for Reconsideration, G.R. No. 148560 (Jan. 29, 2002), *reprinted in* KILOSBAYAN, March 2002, at 42.

39. *Estrada,* G.R. No. 148560 at 4-5.

40. *Id.* at 5.

41. *Id.*

42. *Id.* at 5-6.

C. Decision

The Court stated, at the outset, that in construing therefore the provisions of a statute, courts must first ascertain whether an interpretation is fairly possible to sidestep the question of constitutionality. "Verily, the onerous task of rebutting the presumption weighs heavily on the party challenging the validity of the statute. He must demonstrate beyond any tinge of doubt that there is indeed an infringement of the constitution, for absent such a showing, there can be no finding of unconstitutionality."[43] From the perspective of the Court, petitioner has miserably failed in the instant case to discharge his burden and overcome the presumption of constitutionality of the Plunder Law.

1. Regarding Vagueness

The Court stated that the Plunder Law contains ascertainable standards and well-defined parameters which would enable the accused to determine the nature of his violation. Section 2 is sufficiently explicit in its description of the acts, conduct and conditions required or forbidden, and prescribes the elements of the crime with reasonable certainty and particularity.[44]

43. *Id.* at 7-8.

44. The elements of the offense, according to the Court are clear: 1.) That the offender is a public officer who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons; 2.) That he amassed, accumulated or acquired ill-gotten wealth through a combination or series of the following overt or criminal acts: (a) through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury; (b) by receiving, directly or indirectly, any commission, gift, share, percentage, kickback or any other form of pecuniary benefits from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer; (c) by the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities of Government owned or controlled corporations or their subsidiaries; (d) by obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking; (e) by establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or (j) by taking advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to file damage and prejudice of the Filipino people and the Republic of the Philippines; and, 3.) That the aggregate amount or total value of the ill-gotten wealth, amassed, accumulated or acquired is at least P50,000,000.00. (*Estrada*, G.R. No. 148560, at 8.)

According to the Court, "as long as the law affords some comprehensible guide or rule that would inform those who are subject to it what conduct would render liable to its penalties, its validity will be sustained. It must sufficiently guide the judge in its application; the counsel, in defending one charged with its violation; and more importantly, the accused, in identifying the realm of the proscribed conduct. Indeed, it can be understood with little difficulty that what the assailed statute punishes is the act of a public officer in amassing or accumulating ill-gotten wealth of at least P50,000,000.00 through a series or combination of acts enumerated in Sec. 1, par. (d), of the Plunder Law."[45]

With respect to petitioner's allegation regarding the failure of the law to provide for the statutory definition of the terms *combination* and *series*, and the word *pattern*, the Court stated that a statute is not rendered uncertain and void merely because general terms are used therein, or because of the employment of terms without defining them; much less do we have to define every word we use.[46]

The Court stated that when the Plunder Law speaks of "combination," it is referring to at least two (2) acts falling under different categories of enumeration provided in Sec. 1, par. (d), e.g., raids on the public treasury in Sec. 1, par. (d), subpar. (1), and fraudulent conveyance of assets belonging to the National Government under Sec. 1, par. (d), subpar. (3).[47] On the other hand, to constitute a "series" there must be two (2) or more overt or criminal acts falling under the same category of enumeration found in Sec. 1, par. (d), say, misappropriation, malversation and raids on the public treasury, all of which fall under Sec, 1, par. (d), subpar. (1). Verily, had the legislature intended a technical or distinctive meaning for "combination" and "series," it would have taken greater pains in specifically providing for it in the law.[48]

As for "pattern," the Court stated that this term is sufficiently defined in Sec. 4, in relation to Sec. 1, par. (d), and Sec. 2 thus,

> x x x x under Sec. 1 (d) of the law, a 'pattern' *consists of at least a combination or series of overt or criminal acts enumerated in subsections (1) to (6) of Sec. 1 (d).* Secondly, pursuant to Sec. 2 of the law, the pattern of overt or criminal acts is *directed towards a common purpose or goal which is to enable the public officer to amass, accumulate or acquire ill-gotten wealth.* And thirdly, there must either be an *'overall unlawful scheme' or 'conspiracy'* to achieve said common goal. As commonly understood, the term 'overall unlawful scheme' indicates a 'general plan of action or method' which the principal accused and public

45. *Id.* at 9.

46. *Id.* at 11-12.

47. *Id.* at 15.

48. *Id.*

> officer and others conniving with him follow to achieve the aforesaid common goal. In the alternative, if there is no such overall scheme or where the schemes or methods used by multiple accused vary, the overt or criminal acts must form part of a conspiracy to attain a common goal.[49]

Hence, according to the Court, "it cannot plausibly be contended that the law does not give a fair warning and sufficient notice of what it seeks to penalize."[50] Hence, petitioner's reliance on the "void-for-vagueness" doctrine is manifestly misplaced.[51] Furthermore, "a statute or act may be said to be vague when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ in its application."[52]

2. On Due Process

On the second issue, the Court stated that "in a criminal prosecution for plunder, as in all other crimes, the accused always has in his favor the presumption of innocence which is guaranteed by the Bill of Rights, and unless the State succeeds in demonstrating by proof beyond reasonable doubt that culpability lies, the accused is entitled to an acquittal."[53]

According to the Court, the legislature did not in any manner refashion the standard quantum of proof in the crime of plunder.[54] The burden still remains with the prosecution to prove beyond any iota of doubt every fact or element necessary to constitute the crime.[55] The thesis that Sec. 4 does away with proof of each and every component of the crime suffers from a dismal misconception of the import of that provision.[56] What the prosecution needs to prove beyond reasonable doubt is only a number of acts sufficient to form a combination or series which would constitute a pattern. There is no need to prove each and every other act alleged in the Information to have been committed by the accused in furtherance of the overall unlawful scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth.[57]

49. *Id.* at 15-16 (emphasis supplied).
50. *Id.* at 16.
51. *Id.*
52. *Id.*
53. *Id.* at 23 (*citing* People v. Ganguso, 250 SCRA 268, 274-75 (1995)).
54. *Id.* at 24.
55. *Id.*
56. *Id.* at 25.
57. *Id.*

A reading of Sec. 2 in conjunction with Sec. 4, brought the Court to the logical conclusion that a "pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy" inheres in the very acts of accumulating, acquiring or amassing hidden wealth. Stated otherwise, such pattern arises where the prosecution is able to prove beyond reasonable doubt the predicate acts as defined in Sec. 1, par. (d). Pattern is merely a by-product of the proof of the predicate acts. This conclusion is consistent with reason and common sense. There would be no other explanation for a combination or series of overt acts or criminal acts to stash P50, 000,000.00 or more, than a scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth.[58]

3. With Respect to *Mala In se*

As regards the third issue, the Court quoted Mr. Justice Mendoza's Concurring Opinion that precisely because the constitutive crimes are *mala in se* the element of *mens rea* must be proven in a prosecution for plunder. It is noteworthy that the amended information alleges that the crime of plunder was committed "willfully, unlawfully and criminally." The information thus alleges guilty knowledge on the part of petitioner.[59]

D. Motion for Reconsideration

The Court in an *En banc* Resolution,[60] by a vote of 10 to 4, denied petitioner's Motion for Reconsideration. The Court found nothing therein that in anyway compelled a modification for the decision rendered on November 19, 2001. Chief Justice Davide, and Justices Bellosillo, Melo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Buena, and De Leon reiterated their votes, with Justices Kapunan, Pardo, Ynares-Santiago, and Sandoval Guttierez maintaining their dissent. Mr. Justice Carpio took no part by reason that prior to his appointment to the Court, he was one of the complainants.

IV. ANALYZING THE *Obiter Dicta* OF THE COURT

The majority could have stopped at directly addressing the issues raised by the parties, or those necessarily relevant to its resolution. However, the Court seemed to have wanted to jot down pronouncements that were unnecessary to the resolution of the case. While an *obiter dictum* would not be objectionable if it contained a correct statement of the law with which it

58. *Id.* at 25-26.
59. *Id.* at 28-30.
60. *Resolution*, G.R. No. 148560.

deals,[61] many of the *dicta* of the majority opinion seemed erroneous, aside from being unnecessary.

Although, in general, the majority opinion was more persuasive than the dissenting opinions of Justices Kapunan, Pardo, Ynares-Santiago, and Sandoval-Gutierrez, it was the dissents to these *obiter dicta* that were more judiciously sound, in conformity with the questions presented, the facts involved, and law and jurisprudence. The majority could have very well dispensed with their pronouncements on these issues in order to come up with the same decision but, unexplainably, they fell prey to the lure of the use of *obiter dicta*.

A. Estoppel

The Court's reasoning on vagueness was ultimately correct. Its well-researched rationale only elucidated the meaning of vagueness when applied to criminal statutes.

In the United States, from *Connally v. General Construction Co.*[62] to *Adderley v. Florida*,[63] the principle[64] has been consistently upheld[65] that what makes a statute susceptible to such a charge of vagueness is an enactment either forbidding or requiring the doing of an act that men of common intelligence must necessarily guess at its meaning and differ as to its application.[66] The Philippine Supreme Court maintains the same view.[67]

61. Militante v. Edrosolano, 39 SCRA 473 (1971).

62. 269 U.S. 385 (1926).

63. 385 U.S. 39 (1966).

64. Anthony Amsterdam, *The Void for Vagueness Doctrine*, 109 U. PA. L. REV. 67, 68 (1960) (*citing* Champlin Ref. Co. v. Corporation Comm'n, 286 U.S. 210 (1932). The void for vagueness doctrine was born in the reign of substantive due process and throughout that epoch was successfully urged exclusively in cases involving regulatory or economic-control legislation. *Id. See* U.S. v. Harris, 347 U.S. 612 (1954); Stromberg v. California, 283 U.S. 359 (1931); International Harvester Co. v. Kentucky, 234 U.S. 589 (1914).

65. Collings, *Unconstitutional Uncertauinty – An Appraisal*, 40 CORNELL L.Q. 195, 195 (1955); *Constitutional Law, Void for Vagueness: An Escape from Statutory Interpretation*, 23 IND. L.J. 272, 272 (1948); *Due Process Requirements of Definiteness in Statutes*, 62 HARV. L. REV. 77, 77 (1948); *Legislation – Requirment of Definiteness in Statutory Standards*, 53 MICH. L. REV. 264, 269 91954). *But see* GELLHORN, ADMINISTRATIVE LAW 160 (2D. ED. 1947).

66. Amsterdam, *The Void for Vagueness Doctrine*, *supra* note 64, at 68. *See* People v. Belcastro, 356 Ill. 144, 190 N.E. 301 (1934). *See also Vagueness as Invalidating Statutes or Ordinances Dealing With Disorderly Persons or Conduct*, 12 A.L.R. 3d 1448, 1449 (1967). *See generally* Winters v. New York, 333 U.S. 507 (1948); Bandini Petroleum Co. v. Superior Court, 248 U.S. 8 (1931); Cline v. Frink Dairy Co., 274 U.S. 445 (1927); U.S. v. L. Cohen grocery Co., 255 U.S. 81 (1921); A.B. Small Co. v. American sugar Ref. Co., 267 U.S. 233 (1925); Roth v. United States, 354 U.S. 476 (1957); U.S. Petrillo, 322 U.S. 1 (1947); U.S. v. Reese, 92 U.S. 214 (1875); Lanzetta v. New Jersey, 306 U.S. 451 (1939); Poulos v. New Hampshire, 345 U.S. 395 (1953); Malone v. Kentucky, 234 U.S. 639 (1914); Beauharnais v. Illinois, 343 U.S. 250 (1952); Cole v. Arkansas, 338 U.S. 345 (1949); Cox v. New Hampshire, 312 U.S. 569 (1941).

When applied to criminal laws, as Mr. Justice Holmes said: "We agree to all the generalities about not supplying criminal laws with what they omit, but there is no canon against using common sense in constructing laws as saying what they obviously mean."[68] The Court's reliance on *Gallego v. Sandiganbayan*[69] was perfectly clear, as the present case resembles the circumstances therein. With respect to the defect in the information, the Court simply reiterated its long standing rule that an information is not bad for duplicity when the acts charged are merely different means of committing the same offense, notwithstanding the fact that they are prohibited by separate sections of the statute.[70]

The Court, however, has included a statement that seemingly borders on the nature of being unnecessary and erroneous, hence *obiter*. As the Court stated,

> In light of the foregoing disquisition, it is evident that the purported ambiguity of the Plunder Law, so tenaciously claimed and argued at length by petitioner, is more imagined than real. Ambiguity, where none exists, cannot be created by dissecting parts and words in the statute to furnish support to critics who cavil at the want of scientific precision in the law. Every provision of the law should be construed in relation and with reference to every other part. To be sure, it will take more than nitpicking to overturn the well-entrenched presumption of constitutionality and validity of the Plunder Law. A fortiori, petitioner cannot feign ignorance of what the Plunder Law is all about. *Being one of the Senators who voted for its passage, petitioner must be aware that the law was extensively deliberated upon by the Senate and its appropriate committees by reason of which he even registered his affirmative vote with full knowledge of its legal implications and sound constitutional anchorage.*[71]

67. Ermita Malate Hotel v. Manila, 20 SCRA 849 (1967); Alba v. Evangelista, 100 PHIL. 683 (1957); Peralta v. COMELEC, 82 SCRA 30, 55 (1978).

68. Roschen v. Ward, 279 U.S. 337, 339 (1929). In the U.S., vagueness as invalidating statutes or ordinances dealing with disorderly persons or conduct rest on seemingly similar standard. *See* State v. Avnayim, 24 185 A2d 295 (1962); People v. Harvey, 123 N.E. 2d 81 (1954).

69. 115 SCRA 793 (1982).

70. People vs. Buenviaje, 47 Phil. 536 (1925).

71. *Estrada*, G.R. No. 148560, at 20 (emphasis supplied).

The statement that because petitioner Estrada was one of the Senators who voted for its passage, he "must be aware that the law was extensively deliberated upon by the Senate and its appropriate committees by reason of which he even registered his affirmative vote with full knowledge of its legal implications and sound constitutional anchorage" seemed to refer to the principle of *estoppel*.[72] In effect, the majority opinion, in this case, has expressly used estoppel to bar any legislator, who has voted for a law in the past, to question the constitutionality or validity of the same.

The insertion of that short, but poignant, statement is misplaced.

It appears in this case, that respondent did not actually raise the issue of estoppel.[73] In deciding a case concerning the validity of a statute, estoppel has been connected with the issue of *locus standi* in passing upon such issue.[74] Had respondent's lawyers *expressly* raised estoppel, or at the very least, questioned the *locus standi* of Estrada, the *dictum* on the preclusion of Estrada's action would have been necessary.

Surprisingly, the Court had already been situated in similar, although not exact, circumstances in the past. In *Tanada v. Angara*,[75] petitioner raised the question of estoppel as barring the senators from impugning the validity of the WTO treaty and the concurrence of the Senate because they (the senators) participated in the deliberations and voting leading to the concurrence of the Senate. On the contrary, the Solicitor General did not expressly raise such question in his own synthesis of the issues. Consequently, the Court in *Tanada* refused to take up the matter of estoppel because the respondents did not question the *locus standi* of petitioner.[76]

Beyond the question of the necessity, the *dictum* seems erroneous. In fact, such statement has led Mr. Justice Kapunan to dissent in a very persuasive manner against Estrada's estoppel. He said:

> The case at bar has been subject to controversy principally due to the personalities involved herein. The fact that one of petitioner's counsels was a co-sponsor of the Plunder Law and petitioner himself voted for its passage when he was still a Senator would not in any put him in estoppel to question its constitutionality. The rule on estoppel applies to questions of fact, not of law. Moreover, estoppel should be resorted to only as a means of preventing injustice. To hold that petitioner as estopped from questioning the validity of R.A. No. 7080 because he had earlier voted for its passage would result in injustice not only to him, but to all others who may be held liable under this statute.[77]

Interestingly, aside from the refusal of the Court to take it up in *Tanada,* the Court has never pronounced any doctrine relating to the prohibition on the members of Congress voting for a law from questioning a its validity. If at all, what the Court has done in the past was to allow legislators, as members of Congress, the standing to question a law where a constitutional issue is raised,[78] provided that their legislative prerogatives are infringed.[79] Although the Court has never also categorically given a lawmaker, who voted for a law, standing to question a its validity, the Court has been more liberal in allowing *locus standi*.[80] Thus, the Court's conclusion on estoppel in *Estrada* cannot, by no stretch, be jurisprudentially and legally reasonable.

And even if respondent's lawyers in this case did insert in their pleadings their objection to Estrada's standing, it would not change the dispensable nature of the statement. The reasoning could only have flown if Estrada sued in his capacity as a Senator. In this case, he did not. He, apparently, sued as one who has personally suffered some actual or threatened injury as a result of the allegedly illegal conduct of the government, which injury is fairly traceable to the challenged action and is likely to be redressed by a favorable action.[81] This opinion conforms to the pronouncement of the Court in *Morano v. Vivo*,[82] where a person who has filed a bond provided for by the law was precluded from attacking the validity of the very bond he filed for a person cannot jettison a thing when he has reaped its benefits. However, in this case, it is precisely the acts defined under the Plunder law that Estrada has been denying he committed.[83] Clearly, the pronouncement as to the

72. *See* Tijam v. Sibonghanoy, 23 SCRA 29 (1968); Philippine National Bank v. IAC, 143 SCRA 299 (1986); Montana vs. United States, 440 U.S. 147, 162 (1979).

73. Oral Arguments (Sept. 18, 2001).

74. Tanada v. Angara, 272 SCRA 18, 46 (1997).

75. *Id.*

76. *Id.* The Court stated that:

> The matter of estoppel will not be taken up because this defense is waivable and the respondents have effectively waived it by not pursuing it in any of their pleadings...During its deliberations on the case, the Court noted that the respondents did not question the *locus standi* of petitioners. Hence they are also deemed to have waived the benefit of such issue....

77. *Estrada*, G.R. No. 148560, at 57 (Kapunan, J., dissenting) (citations omitted).

78. Tolentino v. Comelec, 41 SCRA 702 (1971).

79. Tatad v. Garcia, 243 SCRA 436, 474 (1995); Philconsa v. Enriquez, 235 SCRA 506 (1994); Gonzales v. Macaraig, 191 SCRA 506 (1996).

80. Oposa v. Factoran, 224 SCRA 792, 802-05 (1993).

81. Valley Forge College v. American United, 454 U.S. 464 (1982). *See* Lawyers League v. Aquino, G.R. Nos. 73748, 73972 & 73990 (May 22, 1986); *In re* Bermudez, 145 SCRA 160 (1986).

82. 20 SCRA 562 (1967).

83. *See* De Borja vda. de Torres vs. Encarnacion, 89 Phil. 678, 681 (1951).

estoppel of Estrada as one who is precluded from questioning the validity of the Plunder Law was unnecessary to the resolution of the issues, and moreover, legally erroneous.

B. Interpretation on the word "Pattern"

The Court's rationale for answering the question on due process negatively was, all things considered, appropriate. However, the Court moved on to pronounce that the prosecution is not required to make a deliberate and conscious effort to prove pattern as it necessarily follows with the establishment of a series or combination of the predicate acts. For the author, this is a dangerous *obiter dictum*, not only in the sense of being unnecessary but because it is an utterance made only to avoid giving the erroneous impression that the Court had overlooked such matter.[84]

The pronouncement seems to beg the question.

In fact, it does not answer it at all.

What Petitioner Estrada wanted the Court to resolve was whether or not the Plunder Law violates the due process clause and the constitutional presumption of innocence by lowering the quantum of evidence necessary for proving the component elements of plunder because Section 4 does not require that each and every criminal act done by the accused in furtherance of the scheme or conspiracy be proved, "it being sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy."[85] The Court answers this question by saying that, in effect, the prosecution need not prove pattern because they will prove the acts that would constitute the pattern anyway. For the Court, all the essential elements of plunder can be culled and understood from its definition in Sec. 2, in relation to Sec. 1, par. (d), and "pattern" is not one of them.

However, it appears that pattern is indeed an essential element of the crime of plunder as this is evident from a reading of the assailed law in its entirety. For if the prosecution proves a pattern through proof of the acts constituting it, then necessarily pattern is an indispensable element to convict a person charged under the Plunder law. Pattern distinguishes plunder from isolated criminal acts punishable under the Revised Penal Code and other laws, "for without the existence a 'pattern of overt or criminal acts indicative of the overall scheme or conspiracy' to acquire ill-gotten wealth, a person

84. Vissara v. Miraflor, 8 SCRA 1 (1963).

85. Petitioner's Amended Petition, G.R. No. 148560 (on file with petitioner's lawyers). *See also* Memorandum for Petitioner, G.R. No. 148560 (on file with petitioner's lawyers).

committing several or even all of the acts enumerated in Section 1(d) cannot be convicted for plunder, but may be convicted only for the specific crimes committed under the pertinent provisions of the Revised Penal Code or other laws."[86] In effect, the law seeks to penalize the accused only on the basis of a proven scheme or conspiracy, and does away with the rights of the accused insofar as the component crimes are concerned.[87] Without the element of "pattern," the acts would simply constitute isolated or disconnected criminal offenses punishable by the Revised Penal Code or other special laws.

C. Proof of Conspiracy to Commit Plunder

In answering whether plunder is a *malum in se* which requires proof of criminal intent, the majority opinion quotes Senator Tanada's remarks during the deliberation on Senate Bill 733. The Court then enunciated that Senator Tañada was only saying that where the charge is *conspiracy* to commit plunder, the "prosecution need *not* prove each and every criminal act done to further the scheme or conspiracy, it being enough if it proves beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy."[88] Amusingly, this was petitioner's contention regarding due process.

The Court seems to have forgotten that, precisely, Estrada was accused of conspiracy as can be gleaned from the information filed by the Ombudsman, to wit:

> ...That during the period from June, 1998 to January 2001, in the Philippines, and within the jurisdiction of this Honorable Court, accused Joseph Ejercito Estrada, THEN A PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES by himself AND/OR in CONNIVANCE/CONSPIRACY WITH HIS CO-ACCUSED....[89]

86. *Estrada*, G.R. No. 148560, at 38. (Kapunan, J., dissenting).

87. *Id.* at 8. (Ynares-Santiago, J., dissenting).

88. *Id.* at 28.

89. Emphasis supplied. The complete Information reads:

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

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

(a) by receiving OR collecting, directly or indirectly, on SEVERAL INSTANCES, MONEY IN THE AGGREGATE AMOUNT OF FIVE HUNDRED FORTY-FIVE MILLION PESOS (₱545,000,000.00), MORE OR LESS, FROM ILLEGAL GAMBLING IN THE FORM OF GIFT, SHARE, PERCENTAGE, KICKBACK OR ANY FORM OF PECUNIARY BENEFIT, BY HIMSELF AND/OR in connection with co-accused CHARLIE 'ATONG' ANG, *Jose 'Jinggoy' Estrada*, Yolanda T. Ricaforte, Edward Serapio, AND JOHN DOES AND JANE DOES, in consideration OF TOLERATION OR PROTECTION OF ILLEGAL GAMBLING;

(b) by DIVERTING, RECEIVING, misappropriating, converting OR misusing DIRECTLY OR INDIRECTLY, for HIS OR THEIR PERSONAL gain and benefit, public funds in the amount of ONE HUNDRED THIRTY MILLION PESOS (₱130,000,000.00), more or less, representing a portion of the TWO HUNDRED MILLION PESOS (₱200,000,000.00) tobacco excise tax share allocated for the province of Ilocos Sur under R.A. No. 7171, by himself and/or in connivance with co-accused Charlie 'Atong' Ang, Alma Alfaro, JOHN DOE a.k.a. Eleuterio Ramos Tan or Mr. Uy, Jane Doe a.k.a. Delia Rajas, AND OTHER JOHN DOES & JANE DOES;

(c) by directing, ordering and compelling, FOR HIS PERSONAL GAIN AND BENEFIT, the Government Service Insurance System (GSIS) TO PURCHASE 351,878,000 SHARES OF STOCKS, MORE OR LESS, and the Social Security System (SSS), 329,855,000 SHARES OF STOCK, MORE OR LESS, OF THE BELLE CORPORATION IN THE AMOUNT OF MORE OR LESS ONE BILLION ONE HUNDRED TWO MILLION NINE HUNDRED SIXTY FIVE THOUSAND SIX HUNDRED SEVEN PESOS AND FIFTY CENTAVOS (₱1,102,965,607.50) AND MORE OR LESS SEVEN HUNDRED FORTY FOUR MILLION SIX HUNDRED TWELVE THOUSAND AND FOUR HUNDRED FIFTY PESOS (₱744,612,450.00), RESPECTIVELY, OR A TOTAL OF MORE OR LESS ONE BILLION EIGHT HUNDRED FORTY SEVEN MILLION FIVE HUNDRED SEVENTY EIGHT THOUSAND FIFTY SEVEN PESOS AND FIFTY CENTAVOS (₱1,847,578,057.50); AND BY COLLECTING OR RECEIVING, DIRECTLY OR INDIRECTLY, BY HIMSELF AND/OR IN CONNIVANCE WITH JOHN DOES AND JANE DOES, COMMISSIONS OR PERCENTAGES BY REASON OF SAID PURCHASES OF SHARES OF STOCK IN THE AMOUNT OF ONE HUNDRED EIGHTY NINE MILLION SEVEN HUNDRED THOUSAND PESOS (₱189,700,000.00) MORE OR LESS, FROM THE BELLE CORPORATION WHICH BECAME PART OF THE DEPOSIT IN THE EQUITABLE-PCI BANK UNDER THE ACCOUNT NAME 'JOSE VELARDE;'

(d) by unjustly enriching himself FROM COMMISSIONS, GIFTS, SHARES, PERCENTAGES, KICKBACKS, OR ANY FORM OF PECUNIARY BENEFITS, IN CONNIVANCE WITH JOHN DOES AND JANE DOES, in the amount of MORE OR LESS THREE BILLION TWO HUNDRED THIRTY THREE MILLION ONE HUNDRED FOUR THOUSAND ONE HUNDRED SEVENTY THREE PESOS AND SEVENTEEN CENTAVOS (₱3,233,104,173.17) AND DEPOSITING THE SAME UNDER HIS ACCOUNT NAME 'JOSE VELARDE' AT THE EQUITABLE-PCI BANK."

It appears therefore that the Court, unfortunately, answered the question on *mens rea* through a *dictum* not called for by the pertinent facts in the case. If at all, the *dictum* should have favored the arguments of petitioner's lawyers since the quoted deliberations referred to the crime of conspiracy for which Estrada is charged.

V. Conclusion

Certainly, the Court's upholding of the Plunder Law in *Estrada* seems right when it comes to the Court's invocation of long-standing rules such as the void-for-vagueness doctrines and statutory construction in connection with criminal laws. This cannot be denied as the majority opinion heavily relied on its previous decisions — clearly and seamlessly. For if there is one thing the Court has proved, it is not influenced by the passions of the madding crowd, but is always brave and determined to rule on novel issues.

Regrettably, however, the majority opinion unknowingly chose to dip its foot into the surging waves of using *obiter dicta*. Their *dicta* on Estrada's estoppel, the element of pattern in plunder, and proof of pattern illustrated the Court's vulnerability to justifying their conclusion on unnecessary, and sometimes, erroneous *dicta*. Blame it on the complexity and novelty of the case, but the Court should be cautious in writing down these pronouncements if they do not intend to lay them down as rules. Even assuming they do intend to set precedents, this does not take them out of

their judicial responsibility to write decisions faithful to the law, and to their own pronouncements in the past unless a reversal is warranted by the circumstances. For if in the future, for instance, another legislator who has voted for a law comes to the Court to invalidate an allegedly unconstitutional statute, their *dictum* in *Estrada* regarding estoppel may just put them in a precarious situation of identifying whether such pronouncement is controlling or not.

Nothing, really, is more objectionable than erroneous *obiter dicta*.

Judicial Policy in the Law on Public Officers

*Allan Verman Y. Ong**

I. INTRODUCTION

The relation of law to the three separate bodies of government is a settled principle. It has been held that, "the Constitution has blocked but with deft strokes and in bold lines, allotment of power to the executive, the legislative

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