

**THE VOID-FOR-VAGUENESS DOCTRINE IN THE
PHILIPPINE SUPREME COURT:
A Dissection of a Vague Pronouncement of a Confused Court on the
Vagueness Doctrine**

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“It is now the settled doctrine of this Court that the Due Process Clause embodies a system of rights based on moral principles so deeply imbedded in the traditions and feelings of our people as to be deemed fundamental to a civilized society as conceived by our whole history. Due Process is that which comports with the deepest notions of what is fair and right and just.”

-Justice Frankfurter, dissenting in Solesbee v. Balkcom, 399 U.S. 16 (1950)

INTRODUCTION

A father asked his thirteen-year-old son to buy paint to be used for the renovation of their house, without specifying the color and the amount he needed. He merely said he wanted a paint color that would “brighten up” the rooms for which it is intended and as to the amount, he merely said it should be “just enough” to paint four big bedrooms. When the son arrived at the hardware store, he looked at the different paint colors available, keeping in mind his father’s instructions—that it should “brighten up” the rooms. He saw a red-orange paint which he thought looked “bright”. Believing that the color would tally with his father’s description of what he wanted, he purchased it in two buckets. When he arrived home, he showed his father what he had bought. To his surprise, his father got very upset. His father complained that a red-orange color was not suitable for a residential house and that two buckets were not sufficient to paint four spacious bedrooms.

He further castigated his son for not obeying his instructions and told him he was grounded for a week. In this situation, who is to be blamed for the mishap? Should it be the father, who should have made his instructions clearer and more specific? Or the son, who should have known better? If the son is to be made responsible for the mishap, is it fair or can he reasonably be expected to know exactly what his father wanted based on the terms or language the latter used in relaying his instructions?

This seemingly simplistic situation is illustrative of and analogous to the legal problems that the void-for-vagueness doctrine has been forged to solve. Hailed as “one of the most important guarantees of liberty under the law,”¹ the vagueness doctrine is an American constitutional concept and a judicial tool, crafted out of the due process clause, and has been generally used therein in invalidating criminal laws which employ such ambiguous terms in defining the proscribed or criminalized act that it divests the persons who come within its coverage fair notice as to what conduct is prohibited. It has also been utilized in the striking down of statutes regulating free expression.²

In the Philippine jurisdiction, however, the Philippine Supreme Court has given a distinct “Filipino twist” or “flavor”, so to speak, to the vagueness doctrine by delimiting its application in free speech cases and declaring it inappropriate for voiding ambiguous penal legislation. This was first announced in *Estrada v. Sandiganbayan*.³ To this date, the Court has refused to

¹ A. E. Goldsmith, *The Void-for-Vagueness Doctrine in the Supreme Court, Revisited*, 30 *Am. J. Crim. L.* 279 (2003), at 1.

² K. Werhan, *Freedom of Speech: A Reference Guide to the United States Constitution* (Greenwood Publishing Group, 2004), at 146.

³ 369 SCRA 515 (2001).

turn abandon this stance, despite strong criticism from legal scholars of the country.⁴

This article is primarily an analysis of the view and position which the Court has acquiesced to respecting the vagueness doctrine, that is, it is powerless to render void ambiguous criminal legislation in light of the accepted legal principles concerning the doctrine. In order to achieve such purpose, the historical backdrop and the legal basis of the doctrine is presented so as to understand the doctrine as a concept in its own right. An exhaustive presentation of significant American jurisprudence regarding the doctrine is also adduced in order to illustrate how the Supreme Court of the United States⁵ has utilized it in the realm of criminal law and for the purpose of comparing it with how the Philippine Supreme Court has dealt with the doctrine in those cases in which it was confronted with prayers for it to invalidate penal laws on the ground of vagueness.

TRACING THE ROOTS AND THE LEGAL WELLSPRING OF THE VOID-FOR-VAGUNESS DOCTRINE

The void-for-vagueness doctrine, which posits that “a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, is void as violative of the first essential of due process of law”⁶ was first animated to life in the legal field by American constitutional jurisprudence.⁷

⁴ G. Balderama, Denouement of the Human Security Act: Tremors in the Turbulent Odyssey of Civil Liberties, U.S.T. L. Rev. at 16.

⁵ For purposes of brevity, it shall be referred to herein as U.S. Supreme Court.

⁶ These are the oft-quoted words of Justice Sutherland in the landmark case of *Connally v. General Construction Company*, 269 U.S. 385 (1926) at 391.

⁷ As early as 1914, the U.S. Supreme Court nullified a state statute for fatal uncertainty in *International Harvester Co. v. Kentucky*, 234 U.S. 216 (1914).

There have been several views asserted as to the legal bases of the doctrine. In the United States, commentators on the subject matter have put forward the thesis that the evolution of the doctrine in the U.S. federal law has non-constitutional roots in the common-law practice of the judiciary to refuse application of statutes the provisions of which are deemed too ambiguous to be applied.⁸ Others, after having surveyed U.S. Supreme Court decisions applying the doctrine to nullify statutes as unconstitutionally uncertain, have provided as an alternative constitutional foundation the principle of separation of powers,⁹ i.e., if a statute is so uncertain that it could not be enforced by the courts without rewriting it or interpreting it in a manner which would give it an entirely new meaning not covered by the statute, a court could justify its refusal to enforce such law on the ground that it could not usurp legislative function or that such refusal was in deference to the legislative will. In *United States v. Evans*,¹⁰ the U.S. Supreme Court founded its holding, i.e., denying enforcement of the penal clause of the subject statute on the requirement of separation of powers. In that case, the act criminalized, which was “to bring into or land in the United States, . . . or . . . conceal or harbor unauthorized alien” was deemed clear enough, but not so as to the punishment which was a fine and imprisonment “for each and every alien so landed or brought in.”¹¹ The U.S. Supreme Court held that the ambiguity concerning the penalty and in addition, the existence of some doubts as to the meaning of the terms “conceal” and “harbor”, made it too

⁸ Aigler, *Legislation in Vague or General Terms*, 21 Mich. L. Rev. 831 (1923); Note, *Constitutional Law, Void-for-Vagueness: An Escape from Statutory Interpretation*, 23 Ind. L.J. 272 (1948). However, another commentator is of the view that, after an examination of US Supreme Court decisions applying the doctrine in cases involving state criminal administrations, the doctrine cannot be supported on principles directly deriving from *jus gentium* or natural law and that whatever its initial origin, the doctrine must in these cases find its present foundation in the Fourteenth Amendment of the US Constitution. (A.G. Amsterdam, *The Void-for-Vagueness Doctrine in the Supreme Court*, 109 Pa. L. Rev. 67-116 [1960] at 67, note 2.)

⁹ R.A. Collings, Jr., *Unconstitutional Uncertainty—An Appraisal*, 40 Cornell L.Q. 195 (1954-1955) at 204.

¹⁰ 333 US 483 (1948). See also *James v. Bowman*, 190 US 127 (1903); *Trade-Mark Cases*, 100 U.S. 82 (1879); *United States v. Reese*, 92 U.S. 214 (1875).

¹¹ *Supra* note 9, at 205.

difficult to ascertain what penalty was intended for concealing and harboring. It refused to make a judicial determination on the penalty as it believed that the establishment of the same is well within the confines of the powers of the legislature.¹²

The more widely accepted and, perhaps, the strongest and most persuasive underlying legal principle and bulwark of the doctrine is the right of every individual to be accorded due process of law before he could be deprived of his property, liberty and life—the due process clause. In the United States, it has been noted that the doctrine must necessarily find its present foundation on the Fourteenth Amendment of the U.S. Constitution¹³ and whatever its initial origin may be, it cannot primarily find support on principles directly derived from natural law.¹⁴ In expounding on this, an American commentator stated “Under the due process clause of the Fourteenth Amendment a similar rationale would justify holding a state statute unconstitutionally uncertain. In *Cline v. Frank Dairy Co.*,¹⁵ the Court noted that where state statutes were concerned, *the Fourteenth Amendment “requires that there should be due process of law, and this certainly imposes upon a State an obligation to frame its criminal statutes so that those to whom they are addressed may know what standard of conduct is intended to be required.”*¹⁶ (*Emphasis supplied*) Moreover, in the same jurisdiction, it has been asserted¹⁷ that, based on the decisions of the U.S. Supreme Court involving the application of the

¹² *Id.*

¹³ It provides:

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”, http://www.usconstitution.net/xconst_Am14.html (last accessed 24 December 2008).

¹⁴ A.G. Amsterdam, *The Void-for-Vagueness Doctrine in the Supreme Court*, 109 Pa. L. Rev. 67 [1960] at 67, note 2.

¹⁵ 274 U.S. 445 (1927).

¹⁶ *Supra* note 9, at 204.

¹⁷ *Id.*

doctrine,¹⁸ the doctrine is, in addition to the Fourteenth Amendment, founded on the Fifth Amendment,¹⁹ which also covers the due process clause, as well as on the Sixth Amendment of the US Constitution, which mandates that “in all criminal prosecutions, the accused x x x be informed of the nature and cause of the accusation.”²⁰ In reaching this conclusion by the same commentator, he wrote:

“The Framers’ concern in drafting the Sixth Amendment was not with the definition of statutory crimes; *rather it was with the certainty of the common law indictment, with giving fair notice to one accused of a common law crime.* With the growth of statutory crimes, statutory notice came to be as important as indictment notice; *without statutory certainty the Sixth Amendment would have provided empty protection.* What could be more natural than to construe the due process clause of the Fifth Amendment together with the information clause of the Sixth Amendment to require that a statute fix an ascertainable standard of guilt? This is exactly what the Court did in the *Cohen Grocery* case.”²¹ (*Emphasis supplied*)

Because of this position that the doctrine is crafted out of the due process clause, a stance not only found in legal articles concerning the subject matter but cemented in U.S. jurisprudential rule, it has been averred that it is a species of “unconstitutional uncertainty,”²² which may be categorized into two types—“procedural due process uncertainty cases” and “substantive due process uncertainty cases.”²³ The former involves cases where the statutory language was so obscure that it failed to give adequate warning to those

¹⁸ *United States v. Cohen Grocery Co.*, 255 U.S. 81 (1921).

¹⁹ “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”, http://www.usconstitution.net/xconst_Am14.html (last accessed 24 December 2008).

²⁰ In full, it provides:

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.”, http://www.usconstitution.net/xconst_Am14.html (last accessed 24 December 2008).

²¹ *Supra* note 9, at 204.

²² Tiñga, J. Dissenting Opinion in *Romualdez v. COMELEC* at 463.

²³ *Supra* note 9, at 196.

subject to its prohibitions as well as to provide proper standards for adjudication,²⁴ which encompasses the doctrine.²⁵ “Substantive due process uncertainty cases”, on the other hand, “are those where the Court was concerned with statutory language so broad and sweeping that it prohibited conduct protected by the Constitution, usually by the principles of the First Amendment.”²⁶ The most coherent modern formation of the doctrine as a mandate of due process emphasizes two aspects: first, fair warning to the potential criminal offender, and to guide the court, prosecutors or the proper authorities if a crime has been committed.²⁷ Stated otherwise, the doctrine serves two functions, i.e., guidance to the individual in planning his future conduct, and guidance to those adjudicating his rights and duties.²⁸

In the Philippine jurisdiction, although the doctrine has not been actually applied to any case in which the doctrine has been invoked to invalidate as unconstitutional a statute alleged to be ambiguous,²⁹ those who hold the stance that the Philippine Supreme Court’s doctrinal declaration in *Estrada v. Sandiganbayan*³⁰ that the doctrine is limitedly applicable to free speech cases needs to be re-evaluated and advocate its operation in the nullification of ambiguous penal laws, have accepted the third view as the underlying legal rationale of the doctrine.

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²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 197.

²⁷ *Supra* note 14, note 3.

²⁸ *Supra* note 9, at 203-204.

²⁹ *Romualdez v. Sandiganbayan*, 435 SCRA 371 (2004) at 383.

³⁰ *Supra* note 3.

As earlier stated, the void-for-vagueness doctrine has been forged and its shape determined by American jurisprudence and its application in that jurisdiction has been mainly on vague criminal statutes. In fact, it has been remarked that the most significant sphere of operation of the void-for-vagueness doctrine is the U.S. Supreme Court review of state criminal administration.³¹ To illustrate this point, an overview of significant and noteworthy U.S. decisions concerning the application of the doctrine on penal statutes is in order.

*International Harvester Co. v. Kentucky*³² can be said to be the pioneer of U.S. vagueness cases, decided in 1914. In that case, a corporate defendant was convicted under the said state law for entering into an agreement to control the price of harvesters and thereafter selling them at higher than their “real value.” The “real value” was construed by state courts to be the “market value under fair competition, and under normal market conditions.” The U.S. Supreme Court, however, reversed the conviction and said, through Justice Holmes, that to determine “real value” as defined was a “problem that no human ingenuity could solve.”³³

The next case where the U.S. Supreme Court found a law to be unconstitutionally uncertain was *United States v. Cohen Grocery Co.*,³⁴ involving the fourth section of the Lever Act, a federal World War I profiteering statute. It imposed a penalty for hoarding, restricting the supply or distribution, or reducing the production of necessities. It also punished the

³¹ *Supra* note 14.

³² *Supra* note 7.

³³ Justice Holmes wrote: x x x if business is to go on, men must unite to do it and must sell their wares. To compel them to guess on peril of indictment what the community would have given for them if the continually changing conditions were other than they are, to an uncertain extent; to divine prophetically what the reaction of only partially determinate facts would be upon the imaginations and desires of purchasers, is to exact gifts that mankind does not possess. (*Supra* note 9, at 223-224.)

³⁴ *Supra* note 18.

exacting of excessive prices for necessities. The specific provision of the Act that was challenged before the U.S. Supreme Court made it unlawful willfully to “make any unjust or unreasonable rate or charge in handling or dealing in or with any necessities.”³⁵ The defendant in that case was indicted for violating the Act by selling sugar at an unjust and unreasonable rate. The U.S. Supreme Court, affirming the sustaining of defendant’s demurrer to the indictment by the state court, ruled that the statute did not fix an ascertainable standard of guilt. The differing results reached by several lower courts in applying the statute, said the U.S. Supreme Court, evidenced its lack of certainty.

Five years after the *Coben* case came *Connally v. General Construction Company*,³⁶ considered the landmark and leading decision in the vagueness arena.³⁷ The case involved a statute creating an eight-hour workday in Oklahoma³⁸ and penalizing the payment of a contractor performing a government contract to pay laborers, workmen and mechanics “*less than the current rate of per diem wages in the locality where the work is performed*” with a fine.³⁹ (*Emphasis supplied*) The contractor-plaintiff in that case sought to enjoin the enforcement of the statute by certain state and county officers of Oklahoma on the ground that it would deprive the plaintiff and its agents of liberty and property without due process of law because of the uncertainty in

³⁵ In full, the penal clause reads:

“That it is hereby made unlawful for any person willfully . . . to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessities; to conspire, combine, agree, or arrange with any other person, . . . to exact excessive prices for any necessities. . . . Any person violating any of the provisions of this Section upon conviction thereof shall be fined not exceeding \$5,000 or be imprisoned for not more than two years, or both.”

³⁶ *Supra* note 6.

³⁷ *Supra* note 9, at 200.

³⁸ § 7255 of the Compiled Oklahoma Statutes 1921.

³⁹ *Id.* § 7257.

In full, the provision reads:

“That not less than the current rate of per diem wages in the locality where the work is performed shall be paid to laborers, workmen, mechanics, prison guards, janitors in public institutions, or other persons so employed by or on behalf of the state . . . and laborers, workmen, mechanics, or other persons employed by contractors or subcontractors in the execution of any contract with the state, . . . shall be deemed to be employed by or on behalf of the state. . . .” (*Supra*, note 1 at 388.)

the statute, thus violative of the Fourteenth Amendment; that they contain no ascertainable standard of guilt; that it cannot be determined with any degree of certainty what sum constitute a current wage in any locality; and that the term “locality” itself is fatally vague and uncertain. The U.S. Supreme Court found merit in these arguments and held the statute impossible to apply in any situation.⁴⁰ The relevant portions of the decision read:

That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties is a well recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law, and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law.⁴¹

The dividing line between what is lawful and unlawful cannot be left to conjecture. The citizen cannot be held to answer charges based upon penal statutes whose mandates are so uncertain that they will reasonably admit of different constructions. A criminal statute cannot rest upon an uncertain foundation. The crime, and the elements constituting it, must be so clearly expressed that the ordinary person can intelligently choose, in advance, what course it is lawful for him to pursue. Penal statutes prohibiting the doing of certain things, and providing a punishment for their violation, should not admit of such a double meaning that the citizen may act upon the one conception of its requirements and the courts upon another.⁴²

We are of opinion that this provision presents a double uncertainty, fatal to its validity as a criminal statute. In the first place, the words “current rate of wages” do not denote a specific or definite sum, but minimum, maximum, and intermediate amounts, indeterminately, varying from time to time and dependent upon the class and kind of work done, the efficiency of the workmen, etc., as the bill alleges is the case in respect of the territory surrounding the bridges under construction. The statutory phrase reasonably cannot be confined to any of these amounts, since it imports each and all of them. The “current rate of wages” is not simple, but progressive -- from so much (the minimum) to so much (the maximum), including all between; and to direct the payment of an amount which shall not be less than one of several different amounts, without saying which, is to leave the question of what is meant incapable of any definite answer.⁴³

⁴⁰ *Supra* note 9, at 201.

⁴¹ *Supra* note 36, at 391.

⁴² *Id.* at 393.

⁴³ *Id.* at 393-394.

Nor can the question be solved by resort to the established canons of construction that enable a court to look through awkward or clumsy expression, or language wanting in precision, to the intent of the Legislature. For the vice of the statute here lies in the impossibility of ascertaining, by any reasonable test, that the legislature meant one thing, rather than another, and in the futility of an attempt to apply a requirement which assumes the existence of a rate of wages single in amount to a rate in fact composed of a multitude of gradations. To construe the phrase "current rate of wages" as meaning either the lowest rate or the highest rate, or any intermediate rate, or, if it were possible to determine the various factors to be considered, an average of all rates, would be as likely to defeat the purpose of the legislature as to promote it.⁴⁴

In the second place, additional obscurity is imparted to the statute by the use of the qualifying word "locality." Who can say with any degree of accuracy what areas constitute the locality where a given piece of work is being done? Two men, moving in any direction from the place of operations, would not be at all likely to agree upon the point where they had passed the boundary which separated the locality of that work from the next locality. It is said that this question is settled for us by the decision of the state Supreme Court on rehearing in *State v. Tibbets*, 205 P. 776, 779. But all the court did there was to define the word "locality" as meaning "place," "near the place," "vicinity," or "neighborhood." Accepting this as correct, as of course we do, the result is not to remove the obscurity, but rather to offer a choice of uncertainties. The word "neighborhood" is quite as susceptible of variation as the word "locality." Both terms are elastic and, dependent upon circumstances, may be equally satisfied by areas measured by rods or by miles. See *Schmidt v. Kansas City Distilling Co.*, 90 Mo. 284, 296; *Woods v. Cochrane and Smith*, 38 Iowa 484, 485; *State ex rel. Christie v. Meek*, 26 Wash. 405, 407-408; *Milville Imp. Co. v. Pitman, etc., Gas Co.*, 75 N.J.Law, 410, 412; *Thomas v. Marshfield*, 10 Pick. 364, 367. The case last cited held that a grant of common to the inhabitants of a certain neighborhood was void because the term "neighborhood" was not sufficiently certain to identify the grantees. In other connections or under other conditions, the term "locality" might be definite enough, but not so in a statute, such as that under review, imposing criminal penalties. Certainly, the expression "near the place" leaves much to be desired in the way of a delimitation of boundaries, for it at once provokes the inquiry, "how near?" And this element of uncertainty cannot here be put aside as of no consequence, for, as the rate of wages may vary -- as, in the present case, it is alleged it does vary -- among different employers and according to the relative efficiency of the workmen, so it may vary in different sections. The result is that the application of the law depends not upon a word of fixed meaning in itself, or one made definite by statutory or judicial definition, or by the context or other legitimate aid to its construction, but upon the probably varying impressions of juries as to whether given areas are or are not to be

⁴⁴ *Id.* at 394.

included within particular localities. The constitutional guaranty of due process cannot be allowed to rest upon a support so equivocal.⁴⁵

Next emerged the case of *Cline v. Frink Dairy Co.*⁴⁶ This case involved the Colorado Anti-Trust Act, outlawing specified conspiracies and combination of trade except where the object and purposes were “to conduct operations at a reasonable profit”.⁴⁷ A unanimous U.S. Supreme Court struck down the law as unconstitutional and ratiocinated that the exception rendered the whole statute without a fixed standard of guilt. What makes up “a reasonable profit” was “an utterly impracticable standard for a jury’s decision.”⁴⁸ The real issue which the exception or proviso would submit to the jury would be whether or not in their judgment the combination was necessary to enable those engaged in it to operate at a reasonable profit⁴⁹ and this issue was a legislative rather than a judicial.⁵⁰ The submission of such a inquiry to a jury would violate the Fourteenth

⁴⁵ *Id.* at 304-395.

⁴⁶ *Supra* note 15.

⁴⁷ The Colorado antitrust law denounces conspiracies and combinations of persons and corporation first, to create and carry out restrictions in trade or commerce preventing the full and free pursuit of any lawful business in the state; second, to increase or reduce the price of merchandise, products, or commodities; third, to prevent competition in the making, transportation, sale, or purchase of commodities or merchandise; fourth, to fix any standard of figures whereby the price shall be controlled or established; fifth, to make or execute any contract or agreement to bind the participants not to sell below a common standard, or to keep the price of the article at a fixed or graded figure, or establish or settle the price between themselves so as to preclude a free and unrestricted competition among themselves, or to pool, combine, or untie any interest they may have in such business of making, selling, or transporting that the price of the article may be affected. The foregoing language sufficiently describes, for purposes of a criminal statute, the acts which it intends to punish, but the Colorado law does not stop with that. It is accompanied by two provisos which materially affect its purport and effect. They are as follows:

“And all such combinations are hereby declared to be against public policy, unlawful and void; provided, that no agreement or association shall be deemed to be unlawful or within the provisions of this act, the object and purposes of which are to conduct operations at a reasonable profit or to market at a reasonable profit those products which cannot otherwise be so marketed; provided further that it shall not be deemed to be unlawful, or within the provisions of this act for persons, firms, or corporations engaged in the business of selling or manufacturing commodities of a similar or like character to employ, form, organize, or own any interest in any association, firm, or corporation having as its object or purpose the transportation, marketing or delivering of such commodities. . . .” (*Id.* at 455-456.)

⁴⁸ *Id.* at 465.

⁴⁹ *Id.*, at 457.

⁵⁰ *Id.*

Amendment.⁵¹ In sum, the Court found that the portion of the statute outlawing conspiracies and combinations was adequately certain. It was the exception that rendered the law void. This case is not only significant because it affirmed the applicability of the void-for-vagueness doctrine to criminal laws but more importantly, it enunciated a significant principle in the vagueness domain, i.e., “*the Due Process Clause of the Fourteenth Amendment imposes upon the states the obligation of so framing their criminal statutes that those to whom they are addressed may know what standard of conduct is intended to be required*”.⁵² This is an imperative pronouncement because it provided a jurisprudential link between the requirements of certainty in the language of penal statutes, requirement of fair notice to those who come within the coverage of such laws, and the due process clause. This correlation is, in turn, vital especially with regard to the certainty requirement⁵³ as there is no provision in the U.S. Federal Constitution that requires penal laws to be unambiguous.⁵⁴

In *Champlin Refining Co. v. Commission of Oklahoma*,⁵⁵ a state law was invalidated for employing ambiguous terms. Section 1 prohibits “production of crude oil . . . in such manner and under such conditions as to constitute *waste*.” Section 3 declares that, “in addition to its ordinary meaning,” “waste” shall include “economic waste, underground waste, surface waste, and waste incident to the production of crude oil or petroleum in excess of

⁵¹ *Id.*, at 458.

⁵² *Id.*

⁵³ The fair notice requirement can be implied from the Sixth Amendment of the U.S. Federal Constitution.

⁵⁴ The same holds true in the Philippine jurisdiction. There is no constitutional provision which requires that the terms of a law must be certain and unequivocal. In this connection, J. Tiña wrote in his Dissenting Opinion in *Romualdez v. COMELEC* “This perspective rightly integrates the vagueness doctrine with the due process clause, a necessary interrelation since there is no constitutional provision that explicitly bars statutes that are ‘void-for-vagueness’.”

⁵⁵ 286 U.S. 210 (1932).

transportation or marketing facilities or reasonable market demands.”⁵⁶ In affirming the invalidation by the lower court, the U.S. Supreme Court held:

The validity of its provisions must be tested on the basis of the terms employed. In *Connally v. General Construction Co.*, this Court has laid down the rule that governs here:

“That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties is a well recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law, and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law.”

The general expressions employed here are not known to the common law or shown to have any meaning in the oil industry sufficiently definite to enable those familiar with the operation of oil wells to apply them with any reasonable degree of certainty. The meaning of the word “waste” necessarily depends upon many factors subject to frequent changes. No act or definite course of conduct is specified as controlling, and, upon the trial of one charged with committing waste in violation of the Act, the court could not foresee or prescribe the scope of the inquiry that reasonably might have a bearing or be necessary in determining whether, in fact there had been waste. It is no more definite than would be a mere command that wells shall not be operated in any way that is detrimental to the public interest in respect of the production of crude oil. And the ascertainment of the facts necessary for the application of the rule of proportionate production laid down in Section 4 would require regular gauging of all producing wells in each field -- a work far beyond anything that reasonably may be required of a producer in order to determine whether, in the operation of his wells, he is committing an offense against the Act.⁵⁷

The Court finally noted that “it is not the penalty itself that is invalid, but the exaction of obedience to a rule or standard that is so vague and indefinite as to be really no rule or standard at all.”⁵⁸

⁵⁶ *Id.* at 242.

⁵⁷ *Id.* at 242-243.

⁵⁸ *Id.* at 243.

Another significant void-for-vagueness U.S. decision is *Lanzetta v. State of New Jersey*.⁵⁹ The case involved a state law that made it a crime for a person to be a “gangster” and that “Every violation is punishable by fine not exceeding \$10,000 or imprisonment not exceeding 20 years, or both.” The term “gangster” was defined as “Any person not engaged in any lawful occupation, known to be a member of a gang consisting of two or more persons, who has been convicted of any crime.”⁶⁰ The U.S. Supreme Court unanimously held the statute void and repugnant to the due process clause of the Fourteenth Amendment in view of its vagueness and uncertainty. Justice Butler, who delivered the Opinion of the Court stated:

*No one may be required, at peril of life, liberty or property, to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids.*⁶¹ (Emphasis supplied)

The lack of certainty of the challenged provision is not limited to the word “gang” or to its dependent, “gangster”. Without resolving the serious doubts arising from the generality of the language, we assume that the clause “any person not engaged in any lawful occupation” is sufficient to identify a class to which must belong all capable of becoming gangsters within the terms of the provision. The enactment employs the expression, “known to be a member”. It is ambiguous. There immediately arises the doubt whether actual or putative association is meant. If actual membership is required, that status must be established as a fact, and the word “known” would be without significance. If reputed membership is enough, there is uncertainty whether that reputation must be general or extend only to some persons. And the statute fails to indicate what constitutes membership, or how one may join a “gang.”⁶²

The challenged provision condemns no act or omission; the terms it employs to indicate what it purports to denounce are so vague, indefinite and uncertain that it must be condemned as repugnant to the due process clause of the Fourteenth Amendment.⁶³

It is well to note that the U.S. Supreme Court stated in this case that the vagueness in the statute could not be cured despite of the fact that the

⁵⁹ 306 U.S. 452 (1939).

⁶⁰ *Id.* at 453.

⁶¹ *Id.*

⁶² *Id.* at 458.

⁶³ *Id.*

information against the accused described the offense charged with particularity. Through Justice Butler, the U.S. Supreme Court said:

If, on its face, the challenged provision is repugnant to the due process clause, specification of details of the offense intended to be charged would not serve to validate it. *Cf. United States v. Reese*, 92 U. S. 214, 92 U. S. 221; *Czarra v. Board of Medical Supervisors*, 25 App.D.C. 443, 453. *It is the statute, not the accusation under it, that prescribes the rule to govern conduct and warns against transgression. See Stromberg v. California*, 283 U. S. 359, 283 U. S. 368; *Lovell v. Griffin*, 303 U. S. 444. No one may be required, at peril of life, liberty or property, to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids. The applicable rule is stated in *Connally v. General Construction Co.*⁶⁴

More than a decade after the *Lanzetta* decision, the U.S. Supreme Court had the occasion again to nullify a badly crafted statute—the Federal Food, Drug and Cosmetic Act⁶⁵—in the case of *United States v. Cardiff*.⁶⁶ The particular provision questioned was Section 301 (f), which prohibited “refusal to permit entry or inspection as authorized by Section 704. Section 704 authorized the federal officers or employees “after first making request and obtaining permission of the owner, operator, or custodian” of the plant or factory “to enter” and “to inspect” the establishment, equipment, materials and the like “at reasonable times.”⁶⁷ The respondent in this case is president of a corporation which processes apples at Yakima, Washington, for shipment in interstate commerce. Authorized agents applied to respondent for permission to enter and inspect his factory at reasonable hours. He refused permission, and it was that refusal which was the basis of the information filed against him and under which he was convicted and fined.⁶⁸ The U.S. Supreme Court reversed the conviction and declared the provision a nullity for not constituting a fair warning to its would-be offenders. It held:

⁶⁴ *Supra* note 6, at 453.

⁶⁵ 52 Stat. 1040 (1938).

⁶⁶ 344 U.S. 174 (1952).

⁶⁷ *Id.* at 174-175.

⁶⁸ *Id.* at 175.

However we read § 301(f), we think it is not fair warning, to the factory manager that, if he fails to give consent, he is a criminal. *The vice of vagueness in criminal statutes is the treachery they conceal, either in determining what persons are included or what acts are prohibited. Words which are vague and fluid, may be as much of a trap for the innocent as the ancient laws of Caligula.* We cannot sanction taking a man by the heels for refusing to grant the permission which this Act, on its face, apparently gave him the right to withhold. *That would be making an act criminal without fair and effective notice.*⁶⁹

Section 16-386 of the South Carolina Code of 1952, a criminal trespass law, was the subject of constitutional inquiry in the case of *Bonnie v. City of Columbia*.⁷⁰ The said statute defined the proscribed conduct as “entry upon the lands of another . . . after notice from the owner or tenant prohibiting such entry. . . .” The factual background of the case reveals that it arose out of a “sit-in” demonstration at Eckerd’s Drug Store in Columbia, South Carolina. A group of civil rights protesters, composed of both blacks and whites, were invited to purchase items from the store and were served alike in all the departments the store maintained with the exception of the restaurant department, which was reserved for whites. The petitioners, two black college students, entered the restaurant department and waited to be served. No one approached them to take their orders for food. Later on, a store employee put up a “no trespassing” sign. As they did not leave despite the posting of such sign, the store manager called the police. They were asked to leave by the police but they refused. Thus, they were charged, among others, with violation of the law. Their convictions were affirmed by the State Supreme Court, which construed the statute as applicable to the act of remaining on the premises of another after receiving notice to leave. The U.S. Supreme Court reversed, applying the vagueness doctrine. Said Court admitted:

It is true that, in the *Connally* and *Lanzetta* cases and in other typical applications of the principle, the uncertainty as to the statute’s

⁶⁹ *Id.* at 176-177.

⁷⁰ 378 U.S. 347 (1964).

prohibition resulted from vague or overbroad language in the statute itself
x x x⁷¹

And it further noted:

There can be no doubt that a deprivation of the right of fair warning can result not only from vague statutory language, but also from an unforeseeable and retroactive judicial expansion of narrow and precise statutory language. As the Court recognized in *Pierce v. United States* (314 U. S. 306, 314 U. S. 311) “judicial enlargement of a criminal act by interpretation is at war with a fundamental concept of the common law that crimes must be defined with appropriate definiteness.”

Even where vague statutes are concerned, it has been pointed out that the vice in such an enactment cannot “be cured in a given case by a construction in that very case placing valid limits on the statute,” for “the objection of vagueness is two-fold: inadequate guidance to the individual whose conduct is regulated, and inadequate guidance to the triers of fact. The former objection could not be cured retrospectively by a ruling either of the trial court or the appellate court, though it might be cured for the future by an authoritative judicial gloss. . . .”⁷²

The case of *Papachristou v. City of Jacksonville*⁷³ provides yet another illustration that the well-established rule in American jurisprudence that the vagueness doctrine is appropriate in avoiding ambiguous penal laws. The case at hand involves a Jacksonville, Florida vagrancy ordinance, Section 257 of which provides “Rogues and vagabonds, or dissolute persons who go about begging; common gamblers, persons who use juggling or unlawful games or plays, common drunkards, common night walkers, thieves, pilferers or pickpockets, traders in stolen property, lewd, wanton and lascivious persons, keepers of gambling places, common railers and brawlers, persons wandering or strolling around from place to place without any lawful purpose or object, habitual loafers, disorderly persons, persons neglecting all lawful business and habitually spending their time by frequenting houses of ill fame, gaming houses, or places where alcoholic beverages are sold or served, persons able to work but habitually living upon the earnings of their

⁷¹ *Id.* at 351.

⁷² *Id.* at 352-353.

⁷³ 405 U.S. 156 (1972).

wives or minor children shall be deemed vagrants and, upon conviction in the Municipal Court shall be punished as provided for Class D offenses.” Class D offenses at the time that the accused were arrested and convicted were punishable by 90 days’ imprisonment, \$500 fine, or both. The maximum punishment has since been reduced to 75 days or \$450.

The U.S. Supreme Court, in nullifying the law for being vague, stated:

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

Living under a rule of law entails various suppositions, one of which is that “[all persons] are entitled to be informed as to what the State commands or forbids.” *Lanzetta v. New Jersey*, 306 U. S. 451, 306 U. S. 453.”⁷⁴

Eleven years after *Papachristou*, the U.S. Supreme Court was confronted with a question on the constitutionality of Section 647(e) (West 1970) of the California Penal Code Ann., which requires a loiterer to provide a credible and reliable identification when requested by a peace officer, in *Kolender v. Lawson*.⁷⁵ There, the Court said:

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

⁷⁴ *Id.* at 161.

⁷⁵ 461 U.S. 352 (1983).

Section 647(e), as presently drafted and as construed by the state courts, contains no standard for determining what a suspect has to do in order to satisfy the requirement to provide a “credible and reliable” identification. As such, the statute vests virtually complete discretion in the hands of the police to determine whether the suspect has satisfied the statute and must be permitted to go on his way in the absence of probable cause to arrest. An individual who police may think as suspicious but do not have probable cause to believe has committed a crime is entitled to continue to walk the public streets “only at the whim of any police officer” who happens to stop that individual under § 647(e). Our concern here is based upon the “potential for arbitrarily suppressing First Amendment liberties. . . .”⁷⁶

In *Chicago v. Morales*,⁷⁷ the U.S. Supreme Court upheld a lower court decision invalidating as void for being vague Chicago’s Gang Congregation Ordinance prohibiting “criminal gang members” from loitering in public places, as well as the conviction on the invalidated ordinances. In so affirming, the Court held:

For it is clear that the vagueness of this enactment makes a facial challenge appropriate. This is not an ordinance that “simply regulates business behavior and contains a scienter requirement.” See *Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U. S. 489, 499 (1982). It is a criminal law that contains no *mens rea* requirement, see *Colautti v. Franklin*, 439 U. S. 379, 395 (1979), and infringes on constitutionally protected rights, see *id.*, at 391. When vagueness permeates the text of such a law, it is subject to facial attack.⁷⁸

Vagueness may invalidate a criminal law for either of two independent reasons. First, it may fail to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits; second, it may authorize and even encourage arbitrary and discriminatory enforcement.⁷⁹

In applying this principle, the Court, through Justice Stevens, stated:

⁷⁶ *Id.* at 357-358.

⁷⁷ 527 U.S. 41 (1999).

⁷⁸ *Id.* at 55.

⁷⁹ *Id.* at 56.

Any citizen of the city of Chicago standing in a public place with a group of people would know if he or she had an “apparent purpose.” If she were talking to another person, would she have an apparent purpose? If she were frequently checking her watch and looking expectantly down the street, would she have an apparent purpose?

Since the city cannot conceivably have meant to criminalize each instance a citizen stands in public with a gang member, the vagueness that dooms this ordinance is not the product of uncertainty about the normal meaning of “loitering,” but rather about what loitering is covered by the ordinance and what is not.⁸⁰

An interesting decision that is worth noting is the case of *Edgar A. Levy Leasing Co. v. Siegel*⁸¹ for the U.S. Supreme Court seemed to have intimated that the vagueness doctrine is not applicable to non-criminal proceedings or civil cases. The case involved a World War I state rent control legislation which allowed as a defense to a landlord’s action his tenant’s showing that “such rent is unjust and unreasonable and that the agreement under which the same is sought to be recovered is oppressive.”⁸² It was argued by one of the parties that the standard was too indefinite and thus repugnant to the due process clause. The U.S. Supreme Court disposed of this contention and said:

The standard of the statute is as definite as the “just compensation” standard adopted in the Fifth Amendment to the Constitution, and therefore ought to be sufficiently definite to satisfy the Constitution. *United States v. L. Coben Grocery Co.*, 255 U.S. 81, dealing with definitions of crime, is not applicable.

Three years thereafter, the U.S. Supreme Court, in *AB Small Co. v. American Sugar Refining Co.*,⁸³ however did not follow its ruling in the *Levy Leasing* case. The case concerned an action to recover for the breach of two

⁸⁰ *Id.* at 57.

⁸¹ 258 U.S. 242 (1922).

⁸² *Id.* at 248.

⁸³ 267 U.S. 233 (1925).

contracts for the sale by a sugar refiner to a wholesale dealer of 35,000 pounds of refined sugar, the breach consisting in the buyer's refusal to accept the sugar when delivered. The Lever Act, which was earlier held unconstitutional by the U.S. Supreme Court in the *Cohen Grocery* case, was urged as a defense. The Court followed the earlier Lever Act cases and disallowed the defense. It ruled:

The defendant attempts to distinguish those cases (earlier Lever Act cases) because they were criminal prosecutions. But that is not an adequate distinction. *The ground or principle of the decisions was not such as to be applicable only to criminal prosecutions. It was not the criminal penalty that was held invalid, but the exaction of obedience to a rule or standard which was so vague and indefinite as really to be no rule or standard at all.* Any other means of exaction, such as declaring the transaction unlawful or stripping a participant of his rights under it, was equally within the principle of those cases. They have been so construed and applied by other courts in civil proceedings. *Standard Chemicals, etc., Corp. v. Waugh Chemical Corporation*, 231 N.Y. 51, 54; *Dunman v. South Texas Lumber Co.*, 252 S.W. 274, 275. In the first of these citations, the Court of Appeals of New York, referring to this Court's ruling in the *Cohen Grocery Co.* case, well said:

"The ground on which it placed its judgment applies, and with like consequences, to civil suits as well. The prohibition was declared a nullity, because too vague to be intelligible. No standard of duty had been established. . . . The variant views of judges of the district courts were quoted as evidence of the absence of a standard. If this is the rationale of the decision, its consequences are not limited to criminal prosecutions. A prohibition so indefinite as to be unintelligible is not a prohibition by which conduct can be governed. It is not a rule at all; it is merely exhortation and entreaty."

In *Ley Leasing Co. v. Siegel*, a civil case arising out of the wartime rent law of the State of New York, this Court referred to the *Cohen Grocery Co.* case as "dealing with definitions of crime," and declared it "not applicable." This brief reference is now pressed on our attention, special emphasis being laid on the words "dealing with definitions of crime." We appreciate their import, but must recognize that they do not adequately reflect the matter dealt with. As already shown, it was broader than they indicate, and, of course, they were not intended to qualify or limit the decision. The important part of the reference was the declaration that the decision was not applicable to the case then under consideration. The inapplicability resulted from a material difference between the cases. One dealt with a federal statute prohibiting the sale of sugar at unjust, unreasonable, and excessive prices, and the other with a state statute

directed against reserving unjust, unreasonable, and oppressive rent in the leasing of real property in a city for dwelling purposes.⁸⁴

In effect therefore, the U.S. Supreme re-decided or re-rationalized its previous holding in the *Lery Leasing* case that the vagueness doctrine finds no application in civil cases.⁸⁵

It must be stressed that the insinuation uttered by the U.S. Supreme Court in the *Lery Leasing* decision does not weaken the well-entrenched rule that the vagueness doctrine is an appropriate tool for nullifying vague penal laws. In fact, this pronouncement, although overturned in the *Small* case, rather serves to strengthen such rule.

A scrutiny of this catena of U.S. decisions presented unveils not only the propriety but also the logic and legal rationale behind the employment of the vagueness doctrine in avoiding laws with penal sanctions. It can readily be seen in these decisions that the U.S. Supreme Court has applied the doctrine mostly in cases where penal sanctions are involved.⁸⁶ In fact, it has been observed that the said court seldom uses it in areas of the law other than in those instances where criminal statutes are involved and that such domain of the law has been the most significant avenue of operation of the doctrine.⁸⁷ Finally, in a recent case decided by the U.S. Court of Appeals for the Second District entitled *Arriaga v. Musakey*, said judicial body remarked in

⁸⁴ *Id.* at 239-240.

⁸⁵ On this point, Collings asseverated: “There seems to be no reason why application of the doctrine should be limited to criminal statutes. The scope of the due process clauses goes beyond *penal* deprivations of life, liberty or property.” (*Supra* note 9, at 208.)

⁸⁶ *Supra* note 9, at 207.

⁸⁷ *Id.* at 208; *Supra* note 14, note 2.

clear terms: The void-for-vagueness doctrine is chiefly applied to criminal legislation.⁸⁸

**THE METAMORPHOSIS OF THE VOID-FOR-VAGUENESS
DOCTRINE IN PHILIPPINE JURISPRUDENTIAL SHORES:
Stripped of the Power to Nullify Penal Laws and Declared Befitting
Only in Free Speech Cases**

Before a discussion on the Philippine cases pertinent to the vagueness doctrine is undertaken, it is imperative to point out that said doctrine has not actually and directly been employed by the Philippine Supreme Court in any of its decisions or has not declared a law unconstitutional on the ground that it suffers uncertainty or ambiguity.⁸⁹

This section of the article will trace the jurisprudential history of this stance adopted by majority of the justices of the Court and, in the process, put on view the reasoning embraced by the Court in support of its position that the penal laws do not fall within the ambit of the vagueness doctrine.

In earlier decisions, the Court seemed to have recognized the viability of the vagueness doctrine in the Philippine jurisdiction, particularly in utilizing it as a tool for penal laws with terms which are fatally uncertain.

⁸⁸ 521 F. 3d 219 (2d Cir 2008), citing the statement of the U.S. Supreme Court in the case of *Village of Hoffman Estates v. Flipside* (455 U.S. 489 [1082]), that there is “greater tolerance of enactments with civil rather than criminal penalties because the consequences of imprecision are qualitatively less severe.”

⁸⁹ *Supra* note 27.

One of such decision is *People v. Nazario*.⁹⁰ The case involved municipal ordinances which provided:

Section 1. Any owner or manager of fishponds in places within the territorial limits of Pagbilao, Quezon, shall pay a municipal tax in the amount of P3.00 per hectare of fishpond on part thereof per annum.

xxx xxx xxx

Sec. 1 (a). For the convenience of those who have or owners or managers of fishponds within the territorial limits of this municipality, the date of payment of municipal tax relative thereto, shall begin after the lapse of three (3) years starting from the date said fishpond is approved by the Bureau of Fisheries.

xxx xxx xxx

Section 1. Any owner or manager of fishponds in places within the territorial limits of Pagbilao shall pay a municipal tax in the amount of P3.00 per hectare or any fraction thereof per annum beginning and taking effect from the year 1964, if the fishpond started operating before the year 1964.

The defendant therein, an owner of a fishpond, was charged with violation of the ordinance for refusing to pay the tax imposed. In his defense, he questioned the constitutionality of the ordinance on the ground that it is vague. Specifically, he maintained that the reckoning of the date of payment is ambiguous because whereas Ordinance No. 4 provides that parties shall commence payment “after the lapse of three (3) years starting from the date said fishpond is approved by the Bureau of Fisheries,” Ordinance No. 12 states that liability for the tax accrues “beginning and taking effect from the year 1964 if the fishpond started operating before the year 1964.” Although the Court gave short shrift to this argument and held that the ordinances were sufficiently clear as to the date of payment of the tax imposed, the Court, citing *Connally v. General Construction Company*, nevertheless said:

⁹⁰ 165 SCRA 186 (1988).

“As a rule, 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 as to its application. It is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle.

But the act must be utterly vague on its face, that is to say, it cannot be clarified by either a saving clause or by construction. Thus, in *Coates v. City of Cincinnati*, the U.S. Supreme Court struck down an ordinance that had made it illegal for “three or more persons to assemble on any sidewalk and there conduct themselves in a manner annoying to persons passing by.” Clearly, the ordinance imposed no standard at all “because one may never know in advance what ‘annoys some people but does not annoy others.’”

Coates highlights what has been referred to as a “perfectly vague” act whose obscurity is evident on its face. It is to be distinguished, however, from legislation couched in imprecise language but which nonetheless specifies a standard though defectively phrased in which case, it may be “saved” by proper construction.”⁹¹

In *People v. Dela Piedra*,⁹² the Court not only reiterated the principles enunciated in *Nazario* but also acknowledged the principle that the due process clause mandates that criminal laws must be clearly and certainly worded as to give fair notice and guide those who come within its coverage in planning their conduct so as to avoid its penalties, a principle that functions as one of the legal rationale of the vagueness doctrine.

The defendant in the said case was charged with illegal recruitment as punished under Articles 38 and 39 of the Labor Code. In an attempt to save herself from conviction, the defendant questioned the constitutionality of Article 13 (b)⁹³ which defines “recruitment and placement” of the same Code

⁹¹ *Id.* at 195-196.

⁹² 350 SCRA 163.

⁹³ In full, the article provides:
ART. 13. Definitions.—

on the ground that it is void for vagueness and thus violates the due process clause.⁹⁴ Although the Court affirmed the application of the vagueness doctrine to criminal laws, the Court did not invalidate the subject provision on the ground of vagueness because it is not a “perfectly vague act,” referring to its earlier pronouncement in *Nazario*. It held:

Due process requires that the terms of a penal statute must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties. *A criminal statute that “fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute,” or is so indefinite that “it encourages arbitrary and erratic arrests and convictions,” is void for vagueness.* The constitutional vice in a vague or indefinite statute is the injustice to the accused in placing him on trial for an offense, the nature of which he is given no fair warning.⁹⁵

Ten months after *Dela Piedra*, however, the Court took a complete turnabout and declared that the vagueness doctrine is inapplicable to penal laws and that it is only appropriate in free speech cases. As mentioned at the outset, this standpoint was first announced in *Estrada v. Sandiganbayan*.⁹⁶

The factual antecedents of the case unveils that shortly after the petitioner resigned as President of the Philippines in January 2001, he was charged, in eight cases filed with the Sandiganbayan, with several offenses committed while in office, among them plunder, for allegedly having accumulated ill-gotten wealth in the amount of Php4.1 billion, more or less. He moved to quash the information for plunder for the reason that R.A.

(a) x x x.

(b) “Recruitment and placement” refers to any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not: Provided, That any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement.

⁹⁴ *Supra* note 92, at 165.

⁹⁵ *Id.* at 175-176.

⁹⁶ *Supra* note 3.

7080, otherwise known as the Anti-Plunder Law, is unconstitutional for being allegedly vague and overbroad, particularly Section 1, par. (d), 2 and 4.⁹⁷

The Court declined to give any credit to this contention and held that the Plunder Law, as it is written, “contains ascertainable standards and well-defined parameters which would enable the accused to determine the nature of his violation.” It, through Justice Bellosillo, further said:

As long as the law affords some comprehensible guide or rule that would inform those who are subject to it what conduct would render them liable to its penalties, its validity will be sustained. It must

⁹⁷ Section 1. x x x (d) “Ill-gotten wealth” means any asset, property, business, enterprise or material possession of any person within the purview of Section Two (2) hereof, acquired by him directly or indirectly through dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes:

- (1) Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;
- (2) By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any 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;
- (3) By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities, or government owned or controlled corporations and their subsidiaries;
- (4) By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;
- (5) By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or
- (6) By taking 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.

Section 2. Definition of the Crime of Plunder, Penalties. - Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1 (d) hereof, in the aggregate amount or total value of at least 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.

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

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.⁹⁸

Petitioner Estrada's claim that the law is faulty for its failure to define the words "combination", "series" and "pattern", which are found in Sections 2 and 4 of the Anti-plunder Law, was likewise snubbed by the Court. In so doing, the Court stated:

Petitioner, however, bewails the failure of the law to provide for the statutory definition of the terms "combination" and "series" in the key phrase "a combination or series of overt or criminal acts" found in Sec. 1, par. (d), and Sec. 2, and the word "pattern" in Sec. 4. These omissions, according to petitioner, render the Plunder Law unconstitutional for being impermissibly vague and overbroad and deny him the right to be informed of the nature and cause of the accusation against him, hence, violative of his fundamental right to due process.

The rationalization seems to us to be pure sophistry. 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. Besides, there is no positive constitutional or statutory command requiring the legislature to define each and every word in an enactment. Congress is not restricted in the form of expression of its will, and its inability to so define the words employed in a statute will not necessarily result in the vagueness or ambiguity of the law so long as the legislative will is clear, or at least, can be gathered from the whole act, which is distinctly expressed in the Plunder Law.

Moreover, it is a well-settled principle of legal hermeneutics that words of a statute will be interpreted in their natural, plain and ordinary acceptance and signification, unless it is evident that the legislature intended a technical or special legal meaning to those words. The intention of the lawmakers - who are, ordinarily, untrained philologists and lexicographers - to use statutory phraseology in such a manner is always presumed. Thus, Webster's New Collegiate Dictionary contains the following commonly accepted definition of the words "combination" and "series:"

Combination - the result or product of combining; the act or process of combining. To *combine* is to bring into such close relationship as to obscure individual characters.

⁹⁸ *Supra* note 3, at 431.

Series - a number of things or events of the same class coming one after another in spatial and temporal succession.

That Congress intended the words "combination" and "series" to be understood in their popular meanings is pristinely evident from the legislative deliberations on the bill which eventually became RA 7080 or the Plunder Law:

.....

Thus 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).

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.

As for "pattern," we agree with the observations of the Sandiganbayan that this term is sufficiently defined in Sec. 4, in relation to Sec. 1, par. (d), and Sec. 2 -

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 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.

Hence, it cannot plausibly be contended that the law does not give a fair warning and sufficient notice of what it seeks to penalize. Under the circumstances, petitioner's reliance on the "void-for-vagueness" doctrine is manifestly misplaced.⁹⁹

⁹⁹ *Id.* at 432.

As earlier stated, the Court in this case, undertook an extensive discussion on the vagueness doctrine, the relevant portion of which reads as follows:

The doctrine has been formulated in various ways, but is most commonly stated to the effect that a statute establishing a criminal offense must define the offense with sufficient definiteness that persons of ordinary intelligence can understand what conduct is prohibited by the statute. It can only be invoked against that species of legislation that is utterly vague on its face, i.e., that which cannot be clarified either by a saving clause or by construction.

A statute or act may be said to be vague when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ in its application. In such instance, the statute is repugnant to the Constitution in two (2) respects - it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of what conduct to avoid; and, it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle. But the doctrine does not apply as against legislation that are merely couched in imprecise language but which nonetheless specify a standard though defectively phrased; or to those that are apparently ambiguous yet fairly applicable to certain types of activities. The first may be "saved" by proper construction, while no challenge may be mounted as against the second whenever directed against such activities. With more reason, the doctrine cannot be invoked where the assailed statute is clear and free from ambiguity, as in this case.

The test in determining whether a criminal statute is void for uncertainty is whether the language conveys a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practice. It must be stressed, however, that the "vagueness" doctrine merely requires a reasonable degree of certainty for the statute to be upheld - not absolute precision or mathematical exactitude, as petitioner seems to suggest. Flexibility, rather than meticulous specificity, is permissible as long as the metes and bounds of the statute are clearly delineated. An act will not be held invalid merely because it might have been more explicit in its wordings or detailed in its provisions, especially where, because of the nature of the act, it would be impossible to provide all the details in advance as in all other statutes.

Moreover, we agree with, hence we adopt, the observations of Mr. Justice Vicente V. Mendoza during the deliberations of the Court that the allegations that the Plunder Law is vague and overbroad do not justify a facial review of its validity -

The void-for-vagueness doctrine states that "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." The

overbreadth doctrine, on the other hand, decrees that “a governmental purpose may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.”

A facial challenge is allowed to be made to a vague statute and to one which is overbroad because of possible “chilling effect” upon protected speech. The theory is that “[w]hen statutes regulate or proscribe speech and no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, the transcendent value to all society of constitutionally protected expression is deemed to justify allowing attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with narrow specificity.” The possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that the protected speech of others may be deterred and perceived grievances left to fester because of possible inhibitory effects of overly broad statutes.

This rationale does not apply to penal statutes. Criminal statutes have general in terrorem effect resulting from their very existence, and, if facial challenge is allowed for this reason alone, the State may well be prevented from enacting laws against socially harmful conduct. In the area of criminal law, the law cannot take chances as in the area of free speech.

*The overbreadth and vagueness doctrines then have special application only to free speech cases. They are inapt for testing the validity of penal statutes. As the U.S. Supreme Court put it, in an opinion by Chief Justice Rehnquist, “we have not recognized an ‘overbreadth’ doctrine outside the limited context of the First Amendment.” In *Broadrick v. Oklahoma*, the Court ruled that “claims of facial overbreadth have been entertained in cases involving statutes which, by their terms, seek to regulate only spoken words” and, again, that “overbreadth claims, if entertained at all, have been curtailed when invoked against ordinary criminal laws that are sought to be applied to protected conduct.” For this reason, it has been held that “a facial challenge to a legislative act is the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid.” As for the vagueness doctrine, it is said that a litigant may challenge a statute on its face only if it is vague in all its possible applications. “A plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others.”*

In sum, the doctrines of strict scrutiny, overbreadth, and vagueness are analytical tools developed for testing “on their faces” statutes in free speech cases or, as they are called in American law, First Amendment cases. They cannot be made to do service when what is involved is a criminal statute. With respect to such statute, the established rule is that “one to whom application of a statute is constitutional will not be heard to attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations in which its application might be unconstitutional.” As has been pointed out, “vagueness challenges in the First Amendment context, like overbreadth challenges typically produce facial invalidation, while statutes found vague as a matter of due process typically are invalidated [only] ‘as applied’ to a particular defendant.”

Consequently, there is no basis for petitioner's claim that this Court review the Anti-Plunder Law on its face and in its entirety.

Indeed, "on its face" invalidation of statutes results in striking them down entirely on the ground that they might be applied to parties not before the Court whose activities are constitutionally protected. It constitutes a departure from the case and controversy requirement of the Constitution and permits decisions to be made without concrete factual settings and in sterile abstract contexts. But, as the U.S. Supreme Court pointed out in *Younger v. Harris*:

[T]he task of analyzing a proposed statute, pinpointing its deficiencies, and requiring correction of these deficiencies before the statute is put into effect, is rarely if ever an appropriate task for the judiciary. The combination of the relative remoteness of the controversy, the impact on the legislative process of the relief sought, and above all the speculative and amorphous nature of the required line-by-line analysis of detailed statutes, . . . ordinarily results in a kind of case that is wholly unsatisfactory for deciding constitutional questions, whichever way they might be decided.

For these reasons, "on its face" invalidation of statutes has been described as "manifestly strong medicine," to be employed "sparingly and only as a last resort," and is generally disfavored. In determining the constitutionality of a statute, therefore, its provisions which are alleged to have been violated in a case must be examined in the light of the conduct with which the defendant is charged.¹⁰⁰

*Romualdez v. Sandiganbayan*¹⁰¹ provided an opportunity for the Court to reiterate and carve out a permanent niche for the so-called *Estrada* doctrine in Philippine jurisprudence.

The petitioner in this case was charged with violation of R.A. 3019, also known as the Anti-Graft and Corruption Law, specifically Section 5 thereof. The petitioner challenged the constitutionality of the said provision on the ground that it is "impermissibly broad". The questioned provision reads as follows:

¹⁰⁰ *Supra* note 29.

¹⁰¹ 435 SCRA 371 (2004).

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

In denying merit to this contention, the Court, speaking through then Chief Justice Panganiban, invoked its previous declaration in *Estrada* and said:

“To this date, the Court has not declared any penal law unconstitutional on the ground of ambiguity. While mentioned in passing in some cases, the void-for-vagueness concept has yet to find direct application in our jurisdiction...

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

”[T]he task of analyzing a proposed statute, pinpointing its deficiencies, and requiring correction of these deficiencies before the statute is put into effect, is rarely if ever an appropriate task for the judiciary. The combination of the relative remoteness of the controversy, the impact on the legislative process of the relief sought, and above all the speculative and amorphous nature of the required line-by-line analysis of detailed statutes, x x x ordinarily results in a kind of case that is wholly unsatisfactory for deciding constitutional questions, whichever way they might be decided.”

For this reason, generally disfavored is an on-its-face invalidation of statutes, described as a “manifestly strong medicine” to be employed “sparingly and only as a last resort.” In determining the constitutionality of a statute, therefore, its provisions that have allegedly been violated

must be examined in the light of the conduct with which the defendant has been charged.

*As conduct -- not speech -- is its object, the challenged provision must be examined only "as applied" to the defendant, herein petitioner, and should not be declared unconstitutional for overbreadth or vagueness.*¹⁰²

Petitioner also argued that the phrase "to intervene directly or indirectly, in any business, transaction, contract or application with the Government" is vague and violates his right to be informed of the cause and nature of the accusation against him. He further complained that the provision does not specify what acts are punishable under the term *intervene*, and thus transgresses his right to be presumed innocent.

The Court likewise was unimpressed with and wrote off this claim. It ruled:

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

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

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

¹⁰² *Id.* at 383-384.

“x x x [A] statute establishing a criminal offense must define the offense with sufficient definiteness that persons of ordinary intelligence can understand what conduct is prohibited by the statute. It can only be invoked against that species of legislation that is utterly vague on its face, *i.e.*, that which cannot be clarified either by a saving clause or by construction.

“A statute or act may be said to be vague when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ in its application. In such instance, the statute is repugnant to the Constitution in two (2) respects - it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of what conduct to avoid; and, it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle. But the doctrine does not apply as against legislation that are merely couched in imprecise language but which nonetheless specify a standard though defectively phrased; or to those that are apparently ambiguous yet fairly applicable to certain types of activities. The first may be ‘saved’ by proper construction, while no challenge may be mounted as against the second whenever directed against such activities. With more reason, the doctrine cannot be invoked where the assailed statute is clear and free from ambiguity, as in this case.

“The test in determining whether a criminal statute is void for uncertainty is whether the language conveys a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practice. It must be stressed, however, that the ‘vagueness’ doctrine merely requires a reasonable degree of certainty for the statute to be upheld - not absolute precision or mathematical exactitude, as petitioner seems to suggest. Flexibility, rather than meticulous specificity, is permissible as long as the metes and bounds of the statute are clearly delineated. An act will not be held invalid merely because it might have been more explicit in its wordings or detailed in its provisions, especially where, because of the nature of the act, it would be impossible to provide all the details in advance as in all other statutes.”

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

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

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

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

"x x x. A statute is not rendered uncertain and void merely because general terms are used therein, or because of the employment of terms without defining them; much less do we have to define every word we use. Besides, there is no positive constitutional or statutory command requiring the legislature to define each and every word in an enactment. Congress is not restricted in the form of expression of its will, and its inability to so define the words employed in a statute will not necessarily result in the vagueness or ambiguity of the law so long as the legislative will is clear, or at least, can be gathered from the whole act x x x.

"x x x [I]t is a well-settled principle of legal hermeneutics that words of a statute will be interpreted in their natural, plain and ordinary acceptation and signification, unless it is evident that the legislature intended a technical or special legal meaning to those words. The intention of the lawmakers - who are, ordinarily, untrained philologists and lexicographers - to use statutory phraseology in such a manner is always presumed."

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

*In sum, the Court holds that the challenged provision is not vague, and that in any event, the "overbreadth" and "void for vagueness" doctrines are not applicable to this case.*¹⁰³

The celebrated case of *David v. Arroyo*,¹⁰⁴ which concerned the validity of Presidential Proclamation No. 1017 (PP 1017), declaring a state of national emergency, and the subsequent issuance of General Order No. 5, implementing said presidential proclamation and directing the AFP and the

¹⁰³ *Supra* note 29, at 385-388.

¹⁰⁴ 489 SCRA 160 (2006).

PNP to immediately carry out the necessary and appropriate actions and measures to suppress and prevent *acts of terrorism* and lawless violence, provided another avenue for the Court to tenaciously assert that the void-for-vagueness doctrine is limitedly applicable to free speech cases and is powerless to annul for unconstitutionality ambiguous penal laws.

The vagueness doctrine came into the picture in this decision when the petitioners contended that PP 1017 is void on its face because of its “overbreadth.” They claimed that its enforcement encroached on both unprotected and protected rights under Section 4, Article III of the Constitution¹⁰⁵ and sent a “chilling effect” to the citizens.

The Court restated the rule that the “overbreadth” and “vagueness” doctrines have special application to free speech cases, and since PP 1017 was not primarily directed to speech or even speech-related conduct but was actually a call upon the AFP to prevent or suppress all forms of *lawless violence*, the invocation of the petitioners of the doctrines is misplaced. It elucidated:

A facial review of PP 1017, using the overbreadth doctrine, is uncalled for.

First and foremost, the overbreadth doctrine is an analytical tool developed for testing “on their faces” statutes in *free speech cases*, also known under the American Law as First Amendment cases.

A plain reading of PP 1017 shows that it is not primarily directed to speech or even speech-related conduct. It is actually a call upon the AFP to prevent or suppress all forms of *lawless violence*. In *United States v. Salerno*, the US Supreme Court held that “*we have not recognized an ‘overbreadth’ doctrine outside the limited context of the First Amendment (freedom of speech)*.”

¹⁰⁵ The full text of the provision reads:

“Section 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.”

Moreover, the overbreadth doctrine is not intended for testing the validity of a law that “reflects legitimate state interest in maintaining comprehensive control over harmful, constitutionally unprotected conduct.” Undoubtedly, lawless violence, insurrection and rebellion are considered “harmful” and “constitutionally unprotected conduct.” In *Broadrick v. Oklahoma*, it was held:

It remains a ‘matter of no little difficulty’ to determine when a law may properly be held void on its face and when ‘such summary action’ is inappropriate. *But the plain import of our cases is, at the very least, that facial overbreadth adjudication is an exception to our traditional rules of practice and that its function, a limited one at the outset, attenuates as the otherwise unprotected behavior that it forbids the State to sanction moves from ‘pure speech’ toward conduct and that conduct—even if expressive—falls within the scope of otherwise valid criminal laws that reflect legitimate state interests in maintaining comprehensive controls over harmful, constitutionally unprotected conduct.*

Thus, claims of facial overbreadth are entertained in cases involving statutes which, *by their terms*, seek to regulate only “spoken words” and again, that “overbreadth claims, if entertained at all, have been curtailed when invoked against ordinary criminal laws that are sought to be applied to protected conduct.” Here, the incontrovertible fact remains that PP 1017 pertains to a spectrum of *conduct*, not free speech, which is manifestly subject to state regulation.

Second, facial invalidation of laws is considered as “manifestly strong medicine,” to be used “sparingly and only as a last resort,” and is “generally disfavored;” The reason for this is obvious. Embedded in the traditional rules governing constitutional adjudication is the principle that a person to whom a law may be applied will not be heard to challenge a law on the ground that it may conceivably be applied unconstitutionally to others, i.e., in *other situations not before the Court*. A writer and scholar in Constitutional Law explains further:

The most distinctive feature of the overbreadth technique is that it marks an exception to some of the usual rules of constitutional litigation. Ordinarily, a particular litigant claims that a statute is unconstitutional as applied to him or her; if the litigant prevails, the courts carve away the unconstitutional aspects of the law by invalidating its improper applications on a case to case basis. Moreover, challengers to a law are not permitted to raise the rights of third parties and can only assert their own interests. In overbreadth analysis, those rules give way; challenges are permitted to raise the rights of third parties; and the court invalidates the entire statute “on its face,” not merely “as applied for” so that the overbroad law becomes unenforceable until a properly authorized court construes it more narrowly. The factor that motivates courts to depart from the normal adjudicatory rules is the concern with the “chilling;” deterrent effect of the overbroad statute on third parties not courageous enough to bring suit. The Court assumes that an overbroad law’s “very existence may cause others not before the court to refrain from constitutionally protected speech or expression.” An overbreadth ruling is designed to remove that deterrent effect on the speech of those third parties.

In other words, a facial challenge using the overbreadth doctrine will require the Court to examine PP 1017 and pinpoint its flaws and defects, not on the basis of its actual operation to petitioners, but on the assumption or prediction that its very existence may cause *others not before the Court* to refrain from constitutionally protected speech or expression. In *Younger v. Harris*, it was held that:

[T]he task of analyzing a proposed statute, pinpointing its deficiencies, and requiring correction of these deficiencies before the statute is put into effect, is rarely if ever an appropriate task for the judiciary. The combination of the *relative remoteness of the controversy, the impact on the legislative process of the relief sought, and above all the speculative and amorphous nature of the required line-by-line analysis of detailed statutes*,...ordinarily results in a kind of case that is *wholly unsatisfactory* for deciding constitutional questions, whichever way they might be decided.

And *third*, a facial challenge on the ground of overbreadth is the most difficult challenge to mount successfully, since the challenger must establish that *there can be no instance when the assailed law may be valid*. Here, petitioners did not even attempt to show whether this situation exists.

Petitioners likewise seek a facial review of PP 1017 on the ground of vagueness. This, too, is unwarranted.

Related to the “overbreadth” doctrine is the “void for vagueness doctrine” which holds that “*a law is facially invalid if men of common intelligence must necessarily guess at its meaning and differ as to its application.*” It is subject to the same principles governing overbreadth doctrine. For one, it is also an analytical tool for testing “on their faces” *statutes in free speech cases*. And like overbreadth, it is said that a litigant may challenge a statute on its face only if it is *vague in all its possible applications*. *Again, petitioners did not even attempt to show that PP 1017 is vague in all its application*. They also failed to establish that men of common intelligence cannot understand the meaning and application of PP 1017.¹⁰⁶

Quite interestingly, or rather ironically, the Court, while averring that the “overbreadth” and “vagueness” doctrines are not applicable to penal statutes, it partially nullified General Order No. 5 on the premise that the term “terrorism” has no statutory definition.¹⁰⁷

¹⁰⁶ *Id.* at 236-240.

¹⁰⁷ Tiña, J., in his Dissenting Opinion in the *David* case, pointed out that the majority, in so invalidating G.O. No. 5 because of absence of a statute defining terrorism, seems to have tacitly applied the “overbreadth” or “vagueness” doctrines, which it they have rejected and declared to be applicable only in the free speech context. (*Id.*, at 316.)

“Since there is no law defining “acts of terrorism,” it is President Arroyo alone, under G.O. No. 5 who has the discretion to determine what acts constitute terrorism. Her judgment on this aspect is absolute, without restrictions. Consequently, there can be indiscriminate arrest without warrants, breaking into offices and residences, taking over the media enterprises, prohibition, and dispersal of all assemblies and gatherings unfriendly to the administration... Certainly, they violate the due process clause of the Constitution.”¹⁰⁸

Very recently, the Court was urged again to invalidate a criminal statute on the ground of ambiguity in the case of *Romualdez v. COMELEC*.¹⁰⁹ The Court, however, obdurately stood by its earlier holding that a penal statute is not a sphere within which the vagueness doctrine can appropriately operate.

The petitioners in the aforementioned case, the Spouses Romualdez, were charged with violation of Section 10 (g) and (j) in relation to Section 45 (j) of R.A. 8189, otherwise known as the Voter’s Registration Act. The cited provisions read:

The SEC. 10 – *Registration of Voters*. - A qualified voter shall be registered in the permanent list of voters in a precinct of the city or municipality wherein he resides to be able to vote in any election. To register as a voter, he shall personally accomplish an application form for registration as prescribed by the Commission in three (3) copies before the Election Officer on any date during office hours after having acquired the qualifications of a voter.

The application shall contain the following data:

x x x x

(g) Periods of residence in the Philippines and in the place of registration;

x x x x

(j) A statement that the application is not a registered voter of any precinct;

¹⁰⁸ *Supra* note 104, at 263.

¹⁰⁹ 553 SCRA 370.

Section 45, on the other hand, lists what are considered as election offenses. Paragraph (j) thereof recites:

SEC. 45. *Election Offense.* – The following shall be considered election offenses under this Act:

x x x x

(j) *Violation of any of the provisions of this Act.*

In the Informations filed against them, the spouses allegedly violated the law by making false and untruthful representations when they stated in their sworn applications for registration as new voters with the Office of the Election Officer of Burauen, Leyte, that they were residents of 935 San Jose Street, Burauen, Leyte, when in truth and in fact, they were and still are residents of 113 Mariposa Loop, Mariposa Street, Bagong Lipunan ng Crame, Quezon City, and registered voters of Barangay Bagong Lipunan ng Crame, District IV, Quezon City, Precinct No. 4419-A. It was also alleged that they, knowing fully well said truth, intentionally and willfully did not fill the blank spaces in said applications corresponding to the length of time which they have resided in Burauen, Leyte.

The spouses sought recourse with the Court, and prayed, *inter alia*, for the latter to declare Section 45 (j) as unconstitutional for being vague. In more precise language, the petitioners sought the nullification of the provision on the ground that *it contravenes the fair notice requirement* of the 1987 Constitution, in particular, Section 14(1) and Section 14(2), Article III¹¹⁰

¹¹⁰ In full, it reads:

Sec. 14. (1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed

thereof. Petitioners submitted that Section 45(j) of Republic Act No. 8189 makes no reference to a definite provision of the law, the violation of which would constitute an election offense.

Unfortunately for petitioners, and perhaps for those legal scholars who have expressed strong disagreement with the *Estrada* doctrine, majority of the Court deemed it was not time yet to change its standpoint on the vagueness doctrine and refused to resign from the rule that it has previously established in the cases presented above. As expected, it justified its decision not to avoid Section 45(j) for vagueness by citing the previous cases—from *Estrada* to *David*—where it discussed the void-for-vagueness doctrine and reiterated the ratiocination thereof. It held:

“At the outset, we declare that under these terms, the opinions of the dissent¹¹¹ which seek to bring to the fore the purported ambiguities of a long list of provisions in Republic Act No. 8189 can be deemed as a facial challenge. An appropriate ‘as applied’ challenge in the instant Petition should be limited only to Section 45 (j) in relation to Sections 10 (g) and (j) of Republic Act No. 8189—the provisions upon which petitioners are charged. An expanded examination of the law covering provisions which are alien to petitioners’ case would be antagonistic to the rudiment that for judicial review to be exercised, there must be an existing case or controversy that is appropriate or ripe for determination, and not conjectural or anticipatory.”¹¹²

The Court, in ruling that the assailed statute is not tainted with ambiguity in the language employed, stated:

“As structured, Section 45 of Republic Act No. 8189 makes a recital of election offenses under the same Act. Section 45(j) is, without doubt, crystal in its specification that a violation of any of the provisions of Republic Act No. 8189 is an election offense. The language of Section 45(j) is precise. The challenged provision renders itself to no other

notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear unjustifiable.

¹¹¹ Referring to the Dissenting Opinions of Tiña, J. and Carpio, J. in the same case.

¹¹² *Supra* note 109, at 420.

interpretation. A reading of the challenged provision involves no guesswork. We do not see herein an uncertainty that makes the same vague.

Notably, herein petitioners do not cite a word in the challenged provision, the import or meaning of which they do not understand. This is in stark contrast to the case of *Estrada v. Sandiganbayan* where therein petitioner sought for statutory definition of particular words in the challenged statute.”¹¹³

In providing for further support of its rebuff to put into operation the vagueness doctrine on criminal legislation, the Court said:

It also does not escape the mind of this Court that the phraseology in Section 45(j) is employed by Congress in a number of our laws. These provisions have not been declared unconstitutional.

Moreover, every statute has in its favor the presumption of validity. To justify its nullification, there must be a clear and unequivocal breach of the Constitution, and not one that is doubtful, speculative or argumentative. We hold that petitioners failed to overcome the heavy presumption in favor of the law. Its constitutionality must be upheld in the absence of substantial grounds for overthrowing the same.

Still not having lost hope they could still persuade the Court into acceding to their contention that the subject law is void for uncertainty with respect to the terms it used in defining the penalized act, the spouses Romualdez filed a Motion for Reconsideration. On 11 December 2008, whatever flicker of hope the spouses had must have evanesced into nothingness as the Court, in its Resolution,¹¹⁴ denied said motion as, according to the Court, the petitioners were not able to show any reason why a reconsideration of its previous decision should be undertaken and that their arguments were a mere rehash of the contentions they put before the Court earlier.

¹¹³ *Id.* at 423-424.

¹¹⁴ <http://sc.judiciary.gov.ph/jurisprudence/2008/december2008/167011.htm> (last accessed 24 December 2008).

In resolving the motion, the Court, through Justice Chico-Nazario, stated:

“We find that petitioner has not raised substantially new grounds to justify the reconsideration sought. Instead, petitioner presents averments that are mere rehashes of arguments already considered by the Court. There is, thus, no cogent reason to warrant a reconsideration of this Court’s Decision.

Similarly, we reject the contentions put forth by esteemed colleagues Mr. Justice Dante O. Tiña in his Dissent, dated 2 September 2008, which are also mere reiterations of his earlier dissent against the majority opinion. Mr. Justice Tiña’s incessant assertions proceed from the wrong premise. *To be clear, this Court did not intimate that penal statutes are beyond scrutiny.* In our Decision, dated 30 April 2008, this Court emphasized the critical limitations by which a criminal statute may be challenged. We drew a lucid boundary between an “on-its-face” invalidation and an “as applied” challenge. Unfortunately, this is a distinction which Mr. Justice Tiña has refused to understand. Let it be underscored that “on-its-face” invalidation of penal statutes, as is sought to be done by petitioners in this case, may not be allowed.

.....

In conclusion, I reiterate that the doctrine embodied in Romualdez and Estrada remains good law. The rule established in our jurisdiction is, only statutes on free speech, religious freedom, and other fundamental rights may be facially challenged. Under no case may ordinary penal statutes be subjected to a facial challenge. The rationale is obvious. If a facial challenge to a penal statute is permitted, the prosecution of crimes may be hampered. No prosecution would be possible. A strong criticism against employing a facial challenge in the case of penal statutes, if the same is allowed, would effectively go against the grain of the doctrinal requirement of an existing and concrete controversy before judicial power may be appropriately exercised. A facial challenge against a penal statute is, at best, amorphous and speculative. It would, essentially, force the court to consider third parties who are not before it. As I have said in my opposition to the allowance of a facial challenge to attack penal statutes, such a test will impair the State’s ability to deal with crime. If warranted, there would be nothing that can hinder an accused from defeating the State’s power to prosecute on a mere showing that, as applied to third parties, the penal statute is vague or overbroad, notwithstanding that the law is clear as applied to him. (Emphasis supplied)

.....

In *People v. Gatchalian*, the Court had the occasion to rule on the validity of the provision of the Minimum Wage Law, which in like manner speaks of a willful violation of “any of the provisions of this Act.” This Court upheld the assailed law, and in no uncertain terms declared that the provision is all-embracing, and the same must include what is enjoined in the Act which embodies the very fundamental purpose for which the law has been adopted.

.....

The phraseology in Section 45(j) has been employed by Congress in a number of laws which have not been declared unconstitutional:

1) The Cooperative Code

Section 124(4) of Republic Act No. 6938 reads:

“Any violation of any provision of this Code for which no penalty is imposed shall be punished by imprisonment of not less than six (6) months nor more than one (1) year and a fine of not less than One Thousand Pesos (₱1,000.00) or both at the discretion of the Court.”

2) The Indigenous Peoples Rights Act

Section 72 of Republic Act No. 8371 reads in part:

“Any person who commits violation of any of the provisions of this Act, such as, but not limited to ...”

3) The Retail Trade Liberalization Act

Section 12, Republic Act No. 8762, reads:

“Any person who would be found guilty of violation of any provisions of this Act shall be punished by imprisonment of not less than six (6) years and one (1) day but not more than eight (8) years, and a fine of at least One Million (₱1,000,000.00) but not more than Twenty Million (₱20,000,000.00).”¹¹⁵

ANALYSIS

“There is an ever-increasing clamor among legal scholars in the Philippines pushing for a re-visit of the *status quo* of the ‘void for vagueness’ doctrine being applied limitedly to cases involving freedom of speech,”

¹¹⁵ The author respectfully submits that the reasoning used by the Court in justifying its refusal to apply the vagueness doctrine against criminal laws, that is, there are other existing laws employing the same general terms as found in Sec. 45 (j) of R.A. 8189 which have not been declared unconstitutional, rather *fallacious*. The fact that there are such provisions not having been declared as unconstitutional previously does not justify upholding the constitutionality of Sec. 45 (j) of R.A. 8189.

Moreover, a reading of the Dissenting Opinions of Tiña, J., from *Romualdez v. Sandiganbayan, David v. Arroyo* to the recent case of *Romualdez v. COMELEC* in which he fervently asserted that the Court should permit the application of the vagueness doctrine upon penal laws, would readily show that he was not criticizing the *Estrada* doctrine on the ground that it absolutely bars challenges against penal laws. Clearly, what he asserted was that the Court allowed the vagueness doctrine to invalidate criminal laws.

observed one commentator on the present jurisprudential rule on the void-for-vagueness doctrine.¹¹⁶

In the same vein, one professor wrote “*Indeed, there appears to be no cogent reason why the doctrine should be so restricted in application to free-speech cases only. The very philosophy behind the doctrine indicates no particular affinity or circumstance peculiar to speech.*” It instead revolves around the question as to what is fair notice to the people such that they may properly be penalized, pursuant to the due process of law, if they violate a legal proscription.” (*Emphasis supplied*)

“*Such stance is tantamount to saying that no criminal law can be challenged however repugnant it is to the constitutional right to due process,*” remarked Justice Kapunan in expressing discordance with the majority’s view in *Estrada*.¹¹⁷ (*Emphasis supplied*)

“Given the wealth of [American] jurisprudence invalidating penal statutes for suffering from vagueness, it is mystifying why the notion that the doctrine applies only to ‘free-speech’ cases has gained a foothold in this Court,” a dissenting Justice Tiñga wrote in *Romualdez v. Sandiganbayan*.¹¹⁸ In *Romualdez v. COMELEC*, the same justice, in an effort to persuade the majority to depart from what he labeled as “doctrinal error” which if “left unabated, the doctrine will be reflexively parroted by judges, lawyers and law students memorizing for their bar exams until it is accepted as the entrenched rule, even though it simply makes no sense”, he persistently

¹¹⁶ G. D. Balderama, *supra* note 4, cited in the Dissenting Opinion of Tiñga, J. in *Romualdez v. COMELEC supra*.

¹¹⁷ Kapunan, J., Dissenting Opinion in *Estrada v. Sandiganbayan*, at 530.

¹¹⁸ Tiñga, J. Dissenting Opinion in *Romualdez v. Sandiganbayan*, at 401.

asseverated “*The time has come to reconsider that statement. Rooted in unyielding formalism and deprived of guidance from basic constitutional tenets, that dicta disenchant the rights of free people, diminishing as it does, the basic right to due process.*” (Emphasis supplied)

Indeed, there is no plausible ground upon which the *Estrada* pronouncement can firmly stand on. It not only finds no support on established legal rules pertinent to the doctrine but upon such well-ingrained principles of humanity—justice, logic, reasonableness and fairness.

The “Estrada Doctrine”: Confusing the Vagueness Doctrine with the Distinct Doctrines of Overbreadth and Facial Challenge

The Court’s adamant refusal to utilize the vagueness doctrine in the nullification of penal laws and placing it within the perimeters of free speech area stems from equating—or rather, confusing—it with the overbreadth doctrine, a judicial tool used in scrutinizing laws which regulate speech or speech-related conduct. While these two standards of judicial review are related, they are, however, distinct concepts.¹¹⁹

This confusion is manifested in the following pronouncement of the Court in *Estrada* as quoted earlier:

“The overbreadth and vagueness doctrines then have special application only to free speech cases. They are inapt for testing the validity of penal statutes. *As the U.S. Supreme Court put it, in an opinion by*

¹¹⁹ K. Werhan, *Freedom of Speech: A Reference Guide to the United States Constitution* (Greenwood Publishing Group, 2004), at 146.

Chief Justice Rehnquist, 'we have not recognized an 'overbreadth' doctrine outside the limited context of the First Amendment.' In *Broadrick v. Oklahoma*, the Court ruled that 'claims of facial overbreadth have been entertained in cases involving statutes which, by their terms, seek to regulate only spoken words' and, again, that 'overbreadth claims, if entertained at all, have been curtailed when invoked against ordinary criminal laws that are sought to be applied to protected conduct.' For this reason, it has been held that 'a facial challenge to a legislative act is the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid.' As for the vagueness doctrine, it is said that a litigant may challenge a statute on its face only if it is vague in all its possible applications. "A plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others."

In sum, the doctrines of strict scrutiny, overbreadth, and vagueness are analytical tools developed for testing "on their faces" statutes in free speech cases or, as they are called in American law, First Amendment cases. They cannot be made to do service when what is involved is a criminal statute. With respect to such statute, the established rule is that "one to whom application of a statute is constitutional will not be heard to attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations in which its application might be unconstitutional." As has been pointed out, "vagueness challenges in the First Amendment context, like overbreadth challenges typically produce facial invalidation, while statutes found vague as a matter of due process typically are invalidated [only] 'as applied' to a particular defendant."

The overbreadth doctrine posits that "a law is void on its face and violates freedom of speech if its prohibitory sweep is so broad that it encompasses a substantial amount of expressive activity that is protected by the First Amendment."¹²⁰ The doctrine thus generally relates to free speech cases and is a product of the First Amendment or the free speech clause of the U.S. Constitution.¹²¹ On the other hand, the vagueness doctrine generally applies to criminal legislation, although it has also been applied in areas respecting expression. It is not a product of the First Amendment, but rather,

¹²⁰ *Id.*, at 144, citing *Ashcroft v. The Free Speech Coalition*, 535 U.S. 234, which defines the overbreadth doctrine as follows: "The overbreadth doctrine prohibits the Government from banning unprotected speech if a substantial amount of protected speech is prohibited or chilled in the process" at 237.

¹²¹ In full, it reads:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

it arises from the constitutional guarantee of due process of the Fifth and Fourteenth Amendment, which requires that the federal and state governments, respectively, provide individuals with fair and reasonable notice of the boundaries between lawful and unlawful conduct.¹²² In addition to securing the due process value of fundamental fairness, the vagueness doctrine also serves a vital First Amendment function when speech is at issue. Vague statutes, like those which are overbroad, create constitutionally unacceptable risk of censorship because they invite arbitrary and discriminatory enforcement.¹²³ The U.S. Supreme Court has recognized that the vagueness doctrine assumes a special urgency with respect to laws that prohibit expressive activity.¹²⁴ It has been used for voiding such laws, such as in the fields of loyalty oaths,¹²⁵ obscenity,¹²⁶ and restrictions on public demonstrations.¹²⁷ The fact, however, that it has been used in the area of free speech does not necessarily mean that it is only applicable and appropriate in the free speech area, as in the case of the overbreadth doctrine, which, as earlier stated, was carved out of the First Amendment (free speech) of the U.S. Constitution, and neither does that render the two doctrines one and the same. While it resembles the overbreadth doctrine in the sense that it too is focused on the means by which governments limit or prohibit expressive activity and identifies the nature of the speech restriction itself as a cause of special free speech concern when used in the free expression field and is sometimes used in combination with the overbreadth doctrine,¹²⁸ the

¹²² K. Werhan, *supra* at 146.

¹²³ *Id.*

¹²⁴ K. Werhan, *supra* at 146.

¹²⁵ See *Crimp v. Board of Pub. Instruction*, 368 U.S. 278 (1961); *Baggett v. Bullitt*, 377 U.S. 360 (1964); *Keyishian v. Board of Regents*, 385 U.S. 589 (1967). See also *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991)

¹²⁶ *Winters v. New York*, 333 U.S. 507 (1948) ; *Burstyn v. Wilson*, 343 U.S. 495 (1952) ; *Interstate Circuit v. City of Dallas*, 390 U.S. 676 (1968).

¹²⁷ *Cantwell v. Connecticut*, 310 U.S. 296 (1940); *Gregory v. City of Chicago*, 394 U.S. 111 (1969) ; *Coates v. City of Cincinnati*, 402 U.S. 611 (1971) . See also *Smith v. Goguen*, 415 U.S. 566 (1974) (flag desecration law); *Lewis v. City of New Orleans*, 415 U.S. 130 (1974) (punishment of opprobrious words); *Hynes v. Mayor of Oradell*, 425 U.S. 610 (1976) (door-to-door canvassing).

¹²⁸ *NAACP v. Button*, 371 U.S. 415, 432–33 (1963).

vagueness doctrine is a wholly distinct concept from the overbreadth doctrine.¹²⁹

Justice Kapunan made the same observation that the Court has mixed-up the distinct doctrines of overbreadth and vagueness. In his Dissenting Opinion in Estrada, he offered a clarificatory remark in the following words:

“A view has been proffered that ‘vagueness and overbreadth doctrines are not applicable to penal laws.’ *These two concepts, while related, are distinct from each other. On one hand, the doctrine of overbreadth applies generally to statutes that infringe upon freedom of speech. On the other hand, the ‘void-for-vagueness’ doctrine applies to criminal laws, not merely those that regulate speech or other fundamental constitutional rights.* The fact that a particular criminal statute does not infringe upon free speech does not mean that a facial challenge to the statute on vagueness grounds cannot succeed.

x x x

It has been incorrectly suggested that petitioner cannot mount a ‘facial challenge’ to the Plunder Law, and that ‘facial’ or ‘on its face’ challenges seek the total invalidation of a statute. Citing *Broadrick v. Oklahoma*, it is also opined that ‘claims of facial overbreadth have been entertained in cases involving statutes which, by their terms, seek to regulate only spoken words’ and that ‘overbreadth claims, if entertained at all, have been curtailed when invoked against ordinary criminal laws that are sought to be applied to protected conduct.’ For this reason, it is argued further that “on its face invalidation of statutes has been described as ‘manifestly strong medicine,’ to be employed ‘sparingly and only as a last resort.’ A reading of *Broadrick*, however, shows that the doctrine involved therein was the doctrine of overbreadth. Its application to the present case is thus doubtful considering that the thrust at hand is to determine whether the Plunder Law can survive the vagueness challenge mounted by petitioner. A noted authority on constitutional law, Professor Lockhart, explained that ‘the Court will resolve them (vagueness challenges) in ways different from the approaches it has fashioned in the law of overbreadth.’ Thus, in at least two cases, the U.S. courts allowed the facial challenges to vague criminal statutes even if these did not implicate free speech.

In *Kolender v. Lawson*, petitioners assailed the constitutionality of a California criminal statute which required persons who loiter or wander on the streets to provide a credible and reasonable identification and to

¹²⁹ K. Werhan, *supra* at 146.

account for their presence when requested by a peace officer under circumstances that would justify a valid stop. The U.S. Supreme Court held that said statute was unconstitutionally vague on its face within the meaning of the due process clause of the Fourteenth Amendment because it encourages arbitrary enforcement by failing to clarify what is contemplated by the requirement that a suspect provide a “credible and reasonable identification.” *Springfield vs. Oklahoma* on the other hand involved a challenge to a Columbus city ordinance banning certain assault weapons. The court therein stated that a criminal statute may be facially invalid even if it has some conceivable application. It went on to rule that the assailed ordinance’s definition of ‘assault weapon’ was unconstitutionally vague, because it was ‘fundamentally irrational and impossible to apply consistently by the buying public, the sportsman, the law enforcement officer, the prosecutor or the judge.’¹³⁰ (*Emphasis supplied*)

Another doctrine with which the Court has discombobulated the vagueness doctrine is the so-called doctrine of facial invalidation and/or facial challenge. This is evident from the Court’s ruling in *Estrada*, to wit:

“x x x As for the vagueness doctrine, it is said that a litigant may challenge a statute on its face only if it is vague in all its possible applications. “A plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others.”

x x x

Indeed, “on its face” invalidation of statutes results in striking them down entirely on the ground that they might be applied to parties not before the Court whose activities are constitutionally protected. It constitutes a departure from the case and controversy requirement of the Constitution and permits decisions to be made without concrete factual settings and in sterile abstract contexts.

x x x

For these reasons, “on its face” invalidation of statutes has been described as “manifestly strong medicine,” to be employed “sparingly and only as a last resort,” and is generally disfavored. In determining the constitutionality of a statute, therefore, its provisions which are alleged to have been violated in a case must be examined in the light of the conduct with which the defendant is charged.”¹³¹

¹³⁰ *Supra* note3, at 529-531.

¹³¹ *Id.* at 439-443.

It bears noting that the Court’s holding that “‘on its face’ invalidation of statutes has been described as ‘manifestly strong medicine,’ to be employed ‘sparingly and only as a last resort,’ and is

Justice Tña in his Dissenting Opinion in *Romualdez v. COMELEC*, stressed that, in American jurisprudence, there is a difference between the concepts of facial invalidation and facial challenge, thus:

“I have no dispute with the characterization of the present suit as an ‘as-applied’ challenge, as well as the statement that third-party standing to assail the constitutionality of statutes is impermissible as a general rule. Said positions can be accommodated following our traditional rules of standing in constitutional cases, even if these rules hardly employ the terms ‘facial challenge’ or ‘as-applied challenge.’ The difficulty with the submission’s preferred terms is that in United States jurisprudence, a ‘facial challenge’ pertains not only to third-party standing in constitutional cases, but also the ‘facial invalidation’ of statutes. This matter is problematic if we are to consider the holding of the U.S. Supreme Court in *U.S. v. Salerno*, penned by the conservative Chief Justice Rehnquist.

In 1987, a divided U.S. Supreme Court ruled that the ‘facial challenge’ is ‘the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid.’ This characterization differs greatly from Justice Carpio’s analysis that ‘facial challenge’ only pertains to standing. *Salerno* has given rise to another implication to the ‘facial challenge’ under American jurisprudence – that the nullification of a statute will be justified only if it is established that under no set of circumstances would the law remain valid. Interestingly, the Separate Opinion of Justice Mendoza in *Estrada* also favorably cites *Salerno* and the above-quoted declaration therein, a citation that adds to the confusion. Yet by simply distinguishing ‘facial challenge’ (standing) from ‘facial invalidation’ (adjudication on the merits), we can easily divorce this holding in *Salerno* from the aspect of standing, since there is no material relationship between the question of standing and the quoted-pronouncement in *Salerno*.” (*Emphasis in the original*)

Evidently, if we are to accept the *Salerno* proposition, and declare that the ‘facial invalidation’ is warranted only upon demonstration that under no set of circumstances will the challenged provision be constitutional, such a doctrine would stand as the Everest of judicial review.”¹³²

generally disfavored” was lifted from the American case of *Broadrick v. Oklahoma* (413 U.S. 601 [1973]). In that case, however, what the U.S. Supreme Court characterized as such was the overbreadth doctrine and not facial invalidation. Specifically, the U.S. Supreme Court said: “Application of the *overbreadth doctrine* in this manner is, manifestly, strong medicine. It has been employed by the Court sparingly, and only as a last resort. *Facial overbreadth* has not been invoked when a limiting construction has been or could be placed on the challenged statute.” (*Id.* at 612.)

¹³² *Supra* note 22, at 485-486.

In order to diffuse this confusion on the terms facial challenge vis-à-vis as-applied-challenge on one hand and facial invalidation vis-à-vis as-applied invalidation, it is apropos to quote the suggestion made by Justice Tiña as to the definitions for each term, to wit:

“As to standing

The ability of a petitioner to bring forth a suit challenging the constitutionality of an enactment or provisions thereof, even if the petitioner has yet not been directly injured by the application of the law in question, is referred to as a **“facial challenge.”**

The ability of a petitioner to judicially challenge a law or provision of law that has been specifically applied against the petitioner is referred to as an **“as-applied challenge.”**

As to adjudication on the merits

The nullification on constitutional grounds by the courts of a provision of law, or even of the entire statute altogether, is referred to as **“facial invalidation.”**

The invalidation of the application of a provision of law or a statute only insofar as it applies to the petitioner and others similarly situated, without need to nullify the law or provision thereof, is referred to as **“as-applied invalidation.”**¹³³ (*Emphasis in the original*)

The Concerns of the Court Addressed

An examination of the Philippine jurisprudence—from *Estrada* to the recent case of *Romualdez v. COMELEC*—discussing the functions and relevance of the vagueness doctrine readily reveals that the reason it proffers for denying the doctrine to operate within the area of penal laws is that to allow the same would result to facial invalidation.¹³⁴ Such facial invalidation, according to the Court, premising its conclusion on the strength of *U.S. v. Salerno*, which held the view that facial challenge is “the most difficult challenge to mount successfully, since the challenger must establish that no

¹³³ *Id.* at 489.

¹³⁴ *Supra* note 3.

set of circumstances exists under which the Act would be valid”¹³⁵ would require the petitioner to show that the statute is invalid in all cases, that is, he must show that it is not only invalid as applied to him but also as applied to their persons not before the courts. This cannot be allowed, according to the Court, when what is involved is a criminal law because the established rule with regard to such statute is that “one to whom application of a statute is constitutional will not be heard to attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations in which its application might be unconstitutional.”¹³⁶ In turn, to permit facial invalidation of penal statutes would result to unfavorably adverse effects namely: *first*, the state will be prevented from enacting laws against socially harmful conduct;¹³⁷ *second*, it shall constitute a departure from the case and controversy requirement of the Constitution and will allow decisions to be made without concrete factual settings and in sterile abstract contexts;¹³⁸ *finally*, it will result to mass acquittal of those persons whose cases may not have even reached the courts.¹³⁹

These concerns, however, do not seem to be valid not only because they arose out of confusing the vagueness doctrine with facial invalidation, but also for the reason that the *Salerno* decision, from which such mix-up is founded, does not possess much legal significance, both in the U.S. and in the Philippines. In this regard, Justice Tiña wrote:

But should we accept the *Salerno* proposition? Tellingly, the declaration has not been met with unanimity in the American legal community. In a subsequent case, *Washington v. Glucksberg*, Justice John Paul Stevens noted in his concurring opinion that:

¹³⁵ 481 U.S. 739 (1987) at 745.

¹³⁶ *Supra* note 3.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Supra* note 104.

Upholding the validity of the federal Bail Reform Act of 1984, the Court stated in United States v. Salerno, 481 U.S. 739 (1987), that a "facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." Id., at 745. I do not believe the Court has ever actually applied such a strict standard, even in Salerno itself, and the Court does not appear to apply Salerno here. Nevertheless, the Court does conceive of respondents' claim as a facial challenge--addressing not the application of the statute to a particular set of plaintiffs before it, but the constitutionality of the statute's categorical prohibition against 'aid[ing] another person to attempt suicide.'

Further, in *City of Chicago v. Morales*, the U.S. Supreme Court refused to work within the parameters ostensibly set forth in *Salerno*. Held the U.S. Supreme Court through Justice Stevens: "There is no need, however, to decide whether the impact of the Chicago ordinance on constitutionally protected liberty alone would suffice to support a facial challenge under the overbreadth doctrine. For it is clear that the vagueness of this enactment makes a facial challenge appropriate. This is not an ordinance that 'simply regulates business behavior and contains a scienter requirement.' It is a criminal law that contains no *mens rea* requirement, and infringes on constitutionally protected rights. When vagueness permeates the text of such a law, it is subject to facial attack.

Moreover, the *Salerno* proposition is simply alien to the Philippine experience. Our jurisprudence has traditionally deigned to nullify or facially invalidate statutes or provisions thereof without need of considering whether 'no set of circumstances exists under which the [law or provision] would be valid.' Among recent examples of laws or legal provisions nullified as unconstitutional by this Court are B.P. Blg. 885, the Marcos-issued Executive Order No. 626-A, Section 46 of Rep. Act No. 4670, Rep. Act No. 7056, provisions of the 2000 General Appropriations Act passed by Congress, and most recently, Section 47 of P.D. 198. Indeed, in a similar vein to the observations of Justice Stevens as to the American experience, the impossibly high standard set forth in *Salerno* has never been applied squarely in this jurisdiction.

If the auto-limiting philosophy set forth *Salerno* should have influence in this jurisdiction, it should only be to the effect that the remedy of constitutional nullification should be resorted to by the courts if there is no other means by which the unconstitutional defect of the law or legal provision can be treated. Then again, such a principle is already laid down by our accepted rules of statutory construction, such as that 'a statute should be construed whenever possible in a manner that will avoid conflict with the Constitution,' or that 'where a statute is reasonably susceptible of two constructions, one constitutional and the other unconstitutional, that construction in favor of its constitutionality shall be adopted, and the construction that will render it invalid rejected.'"

Our own jurisprudence must expressly reject *Salerno*, if only because that case has fostered the impression that a ‘facial challenge,’ or a ‘facial invalidation’ necessitates a demonstration that the law involved is unconstitutional in whatever application. Even though such impression is not universally accepted, our acceptance of the viability of either the ‘facial challenge’ or ‘facial invalidation’ in this jurisdiction without accompanying comment on *Salerno* might imply that the extremely high bar for judicial review set therein prevails in the Philippines.”¹⁴⁰ (*Emphasis in the original*)

Therefore, since there is a modest acquiescence to the *Salerno* ruling and the same has not actually been applied both in the Philippine and in the American jurisprudence, thus manifesting that it has not much legal significance, there is no reason for the Court to conclude that in cases where the nullification of a criminal law is sought on the ground of ambiguity, the same could not be permitted as it would result to violation of the settled rule with respect to invalidation of criminal laws, that is, that the person cannot assert the rights of third persons in so assailing a penal statute.

It is worth noting that, ironically, while the Court, in coming up with the “*Estrada doctrine*,” invokes positively the *Salerno* ruling which the U.S. Supreme Court has itself admitted not have acquired a strong foothold in American jurisprudence, it tenaciously refuses to accept the American jurisprudential rule on the vagueness doctrine that it is appropriate for nullifying criminal laws, a rule which has been applied by the U.S. Supreme Court for several decades now, as shown in Part III of this article and has, in a plethora of subsequent cases, upheld it time and again.

Addressing now the concerns of the Court regarding the consequences that would arise if the vagueness doctrine would be permitted

¹⁴⁰ *Supra* note 22, at 486-489.

in this jurisdiction to invalidate penal laws as enumerated earlier, the author respectfully submits that these apprehensions are merely speculative and hypothetical and they should therefore not be allowed to obstruct the path through which the vagueness doctrine can be fully developed as a puissant judicial tool in invalidating ambiguous criminal laws and upholding the right to due process of law.

Before an individual discussion is taken up on each concern, it is important to note that the operation of the vagueness doctrine in the realm of criminal statutes has long been established in the U.S. and yet it has not been confronted with any of the “problems” that the Court fears.

First, the Court asserts that to allow the application of the vagueness doctrine on penal statutes would prevent the State from passing laws against socially harmful conduct. As earlier maintained, this is purely suppositional and is wanting of any factual basis. How could the Court conclude that permitting the vagueness doctrine would give rise to such situation when it has not actually applied the said doctrine yet?¹⁴¹ Indeed, permitting the nullification of criminal laws on the ground of ambiguity would not bar the State from enacting laws penalizing socially wrongful acts; on the contrary, it would even result to the passage of better crafted and clearer penal laws which are not offensive to the due process clause of the Constitution as it would send a message to the Congress that its criminal legislation could be declared unconstitutional if it employs ambiguous terms or language in defining the criminalized act.

¹⁴¹ *Estrada v. Sandiganbayan*, *supra* at _____. (COPY FROM BODY; The Court has not applied the VVD in the RP)

Second, the Court states that to permit the vagueness doctrine to deprive penal laws of legal force or efficacy would deviate from the constitutional pre-requisite on the exercise of judicial power, that is, there must be an actual case and controversy ripe for adjudication,¹⁴² on the premise that a vagueness challenge against a criminal law would allow the petitioner to assert the rights of third persons whose cases might not have even reached the courts. This does not seem to have a strong legal basis in view of the weak precedential value of the *Salerno* decision.

Moreover, the U.S. also has the actual case and controversy rule in the exercise of judicial power as provided in its Constitution¹⁴³ and enunciated in the leading case of *Muskrat v. United States*¹⁴⁴ but such rule has

¹⁴² Article VIII, Section 1 of the Constitution provides:

“Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.” (*Emphasis supplied*)

¹⁴³ Sections 1 and 2, Article III of the U.S. Constitution read:

“Section 1. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.”

“Section 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.”

¹⁴⁴ 219 U.S. 346 (1911).

There, the U.S. Supreme Court held:

“[F]rom its earliest history, this Court has consistently declined to exercise any powers other than those which are strictly judicial in their nature.

never been cited by it as a reason for refusing the application of the void-for-vagueness doctrine in the invalidation of criminal laws in some cases.

Finally, the Court is apprehensive that nullifying criminal laws on the ground of vagueness would result to mass acquittal of persons whose cases may not have even been brought before the courts. This the author does not find to be a valid point that should impede the application of the vagueness doctrine against penal laws. Indeed, it is even a declaration that defies the mandate of the Constitution.

Section 14, par. (1) of the Bill of Rights mandates:

“No person shall be held to answer for a criminal offense without due process of law.” (Emphasis supplied)

It therefore becomes necessary to inquire what is meant by the judicial power thus conferred by the Constitution upon this Court, and, with the aid of appropriate legislation, upon the inferior courts of the United States. ‘Judicial power,’ says Mr. Justice Miller, in his work on the Constitution, ‘is the power of a court to decide and pronounce a judgment and carry it into effect between persons and parties who bring a case before it for decision.’

As we have already seen, by the express terms of the Constitution, the exercise of the judicial power is limited to “cases” and “controversies.” Beyond this it does not extend, and unless it is asserted in a case or controversy within the meaning of the Constitution, the power to exercise it is nowhere conferred.

What, then, does the Constitution mean in conferring this judicial power with the right to determine ‘cases’ and ‘controversies.’ A ‘case’ was defined by Mr. Chief Justice Marshall as early as the leading case of *Marbury v. Madison*, 1 Cranch 137, to be a suit instituted according to the regular course of judicial procedure. And what more, if anything, is meant in the use of the term ‘controversy?’ That question was dealt with by Mr. Justice Field, at the circuit, in the case of *In re Pacific Railway Commission*, 32 Fed. 241, 255. Of these terms, that learned justice said:

‘The judicial article of the Constitution mentions cases and controversies. The term ‘controversies,’ if distinguishable at all from ‘cases,’ is so in that it is less comprehensive than the latter, and includes only suits of a civil nature. By cases and controversies are intended the claims of litigants brought before the courts for determination by such regular proceedings as are established by law or custom for the protection or enforcement of rights, or the prevention, redress, or punishment of wrongs. Whenever the claim of a party under the Constitution, laws, or treaties of the United States takes such a form that the judicial power is capable of acting upon it, then it has become a case. The term implies the existence of present or possible adverse parties, whose contentions are submitted to the court for adjudication.’

As has been adverted to earlier and as shall be expounded on in the next subsection, a criminal legislation that defines the proscribed act in such an ambiguous language that the person who comes within its coverage must necessarily guess at its meaning is violative of the due process clause for the reason that it deprives such person fair notice as to what really the penalized act is, such notice being an integral part of due process. Thus, since a vague penal statute is repugnant to the due process clause, no person must be held criminally liable under such ambiguous, due process offensive law in view of the clear mandate of the aforequoted provision of the Constitution. Hence, the “mass acquittal” consequence feared by the Court is not only more in keeping with the constitutional fiat but is consonant with the principle that the Court has vowed to uphold at all times—justice. Indeed, how can there be any sense of fairness in penalizing a person under a law that delineates the criminalized act in such vague terms as to deprive him of fair notice as to what conduct is lawful and what is not?

“Estrada Doctrine” Not in Conformity with the American Consuetude on the Vagueness Doctrine

The assertion that the void-for-vagueness doctrine is inapplicable to criminal legislation and is only befitted for free speech cases is certainly not in accordance with how the doctrine has been utilized in American jurisprudence, from which the doctrine owes its life in the first place. As shown in the Part III of this article, the U.S. Supreme Court has used the doctrine chiefly in the invalidation of criminal laws the terms of which are tinged with ambiguity and uncertainty. In this connection, Professor Collings noted:

“The uncertainty doctrine has seldom been utilized by the [U.S.] Court except where *penal sanctions* were involved.”¹⁴⁵ (*Emphasis supplied*)

Professor Amsterdam echoed the same reflection and wrote:

“Supreme Court review of state criminal administration has been the *most significant sphere of operation of the void-for-vagueness doctrine*.”¹⁴⁶ (*Emphasis supplied*)

One may argue that this point is devoid of legal basis or even logical strength because those cited cases are foreign decisions which do not possess any binding effect upon the rulings of the Philippine Supreme Court or in the Philippine jurisdiction. It must be stressed, however, that it is urged that the Philippine treatment of the void-for-vagueness doctrine be in consonance with how it is being utilized in U.S. jurisprudence not only because it is from the latter that the doctrine stemmed from. This is advocated—and this is the stronger reason for it to be so—on the ground that it is in perfect harmony with our own notions of fair play and due process. It is hoped that this point be embraced despite the Court having once said that

“...American jurisprudence and authorities, much less the American Constitution, are of dubious application for these are no longer controlling within our jurisdiction and have only limited persuasive merit insofar as Philippine constitutional law is concerned... ‘[i]n resolving constitutional disputes, [this Court] should not be beguiled by foreign jurisprudence some of which are hardly applicable because they have been dictated by different constitutional settings and needs.’ Indeed, although the Philippine Constitution can trace its origins to that of the United States, their paths of development have long since diverged. In the colorful words of Father Bernas, ‘*[w]e have cut the umbilical cord*.’”¹⁴⁷ (*Emphasis supplied*)

¹⁴⁵ *Supra* note 9, at 207.

¹⁴⁶ *Supra* note 14, at 67.

¹⁴⁷ *Francisco Jr. v. The House of Representatives et al.*, 415 SCRA 44 (2003) at 130.

This may be true, but the Court should not close its eyes to the integration of foreign jurisprudential rules in our own especially when they tend to further strengthen the fundamental rights of the citizenry, which the same Court has avowed to enliven and protect at all times.

A Doctrine of Questionable Doctrinal Value

The doctrinal strength and efficacy of the *Estrada* statement is rather questionable.¹⁴⁸

It is evident from the *ponencia* that it incorporated Justice Mendoza's statement in his Separate Opinion, i.e. that "the doctrines of strict scrutiny, overbreadth, and vagueness are analytical tools developed for testing "on their faces" statutes in free speech cases".¹⁴⁹ However, in a Resolution (on Motion for Reconsideration in the *Estrada* case), Justice Mendoza made a clarification on his prior sweeping statement. He said:

[L]et it be clearly stated that, when we said that 'the doctrines of strict scrutiny, overbreadth and vagueness are analytical tools for testing 'on their faces' statutes in free speech cases or, as they are called in American law, First Amendment cases [and therefore] cannot be made to do service when what is involved is a criminal statute,' *we did not mean to suggest that the doctrines do not apply to criminal statutes at all. They do although they do not justify a facial challenge, but only an as-applied challenge, to those statutes... Neither did we mean to suggest that the doctrines justify facial challenges only in free speech or First Amendment cases. To be sure, they also justify facial challenges in cases under the Due Process and Equal Protection Clauses of the Constitution with respect to so-called 'fundamental rights'...*¹⁵⁰

In this regard, Justice Tiña stated:

In light of Justice Mendoza's subsequent clarification, it is a disputable matter whether *Estrada* established a doctrine that "void-for-

¹⁴⁸ *Supra* note 22, at 467-468.

¹⁴⁹ *Supra* note 100.

¹⁵⁰ <http://www.supremecourt.gov.ph/resolutions/toc2002/..%5Cenbanc%5C2002%5CEjan%5C148560.htm> (last accessed 24 December 2008.)

vagueness or overbreadth challenges do not apply to penal statutes,” the reference thereto in *Romualdez* notwithstanding. However, there is no doubt that *Romualdez* itself, which did not admit to a similar qualification or clarification, set forth a “doctrine” that “the overbreadth and the vagueness doctrines have special application only to free-speech cases [and] are not appropriate for testing the validity of penal statutes.”¹⁵¹

A Peculiar Case of an Obiter Dictum Invoked as a Doctrinal Rule

Another weakness which the *Estrada* doctrine suffers from is that it is a mere *obiter* and not part of the *ratio decidendi* of the case. In his Dissenting Opinion in *Romualdez v. Sandiganbayan*, Justice Tiña wrote:

“The *ratio*, in the words of Justice Bellosillo, was: “*as it is written, the Plunder Law contains ascertainable standards and well-defined parameters which would enable the accused to determine the nature of his violation,*” and thus the law does not suffer from unconstitutionality. The discussion on the vagueness aspect was not decisive of the main issue and, therefore, clearly *obiter dictum*.”¹⁵² (*Emphasis supplied*)

He re-stressed this point in his Dissenting Opinion in the case of *Romualdez v. COMELEC* in these words:

“The *ponente* has also cited in tandem with the *Romualdez [v. Sandiganbayan]* precedent this Separate Opinion of Justice Mendoza for the purpose of denominating the key issue as whether the vagueness doctrine can be utilized as an analytical tool to challenge the statute “on-its-face” or “as applied.” Unfortunately, we can only engage that question if we acknowledge in the first place that the doctrine of vagueness can be applied to criminal statutes, because if not (as pronounced in *Romualdez*), there is no point in distinguishing between on-its-face and as-applied challenges. Moreover, this subsequent Separate Opinion, especially as it may distinguish from Justice Mendoza’s earlier and more sweeping Separate Opinion, cannot be asserted as reflective of a doctrine announced by this Court. What works towards such effect is *Romualdez*, which again does not offer such clarificatory distinction, and which certainly does not concede, as Justice Mendoza eventually did, that “we did not mean to suggest that the doctrines [of void-for-vagueness] do not apply to criminal statutes at all” and that “neither did we mean that that doctrines do not justify facial challenges “in cases under the Due Process and Equal Protection Clauses of the Constitution with respect to the so-called ‘fundamental rights.’”

¹⁵¹ *Supra* note 22, at 468.

¹⁵² *Supra* note 22, at 395-396.

What we have thus seen is the queer instance of obiter in a latter case, Romualdez v. Sandiganbayan, making a doctrine of an obiter in an earlier case, Estrada v. Desierto.”¹⁵³ (Emphasis supplied)

Obiter dictum is defined as “an incidental and collateral opinion uttered by a judge and therefore not material to his decision or judgment and *not binding*.”¹⁵⁴ In the case of *Tecson v. COMELEC*,¹⁵⁵ the Court itself held that “a pronouncement of the Court irrelevant to the *lis mota* of a case would be mere *obiter dictum* which does not establish doctrine.” More tellingly, the Court itself declared in *Ledesma v. Court of Appeals* that “an *obiter dictum* cannot be cited as a doctrinal declaration of this Court nor is it safe from judicial examination.”¹⁵⁶

In view of the foregoing rules laid down by no less than the Court itself on *obiter dictum*, it is therefore erroneous for it in *Romualdez v. Sandiganbayan* to create a doctrine out of an unbinding judicial declaration in *Estrada*—an *obiter dictum*.

Estrada Doctrine: A Defiance of the Constitutionally Guaranteed Right of Due Process of Law

A stronger argument against, and perhaps the most important reason why the Court should re-evaluate and eventually vacate the limited-to-free-speech-cases application it has accepted is that the same is repugnant to the due process clause of the Constitution for it, in effect, allows the imposition of criminal liability upon persons without due process of law, a sacrosanct

¹⁵³ *Supra* note 22, at 468-469.

The author observes that what Tiñga J. meant to refer to is the case of *Estrada v. Sandiganbayan* and not *Estrada v. Desierto*, as what appears in the text of his Dissenting Opinion.

¹⁵⁴ Webster's Third International Dictionary Of the English Language Unabridged

¹⁵⁵ 424 SCRA 277 (2004).

¹⁵⁶ 465 SCRA 437 (2005) at 449.

fundamental right accorded to every individual in a free, civilized and democratic country.

The void-for-vagueness doctrine arises from the basic principle in criminal law that an act may not be considered a crime, no matter how socially or morally wrongful, unless it has been so defined as a crime by a law. Such principle thus requires penal laws to be definite and clear or “meaningfully precise”.¹⁵⁷

As to whether a criminal law is “meaningfully precise” or not, two standards must be satisfied: First, that the law must give fair notice to those who would be law-abiding or to advise them of the nature of the offense with which they are charged; Second, the law must not invite arbitrary enforcement by the authorities who would prosecute the accused and must give sufficient guide to the courts in trying the case of the accused.¹⁵⁸ If a law fails to meet these standards, then it is void for vagueness.¹⁵⁹

The requirement of certainty is essentially an element of the due process of law. It cannot be gainsaid that a penal law should be definite enough to give notice as to the nature of the act prohibited, and to guide law enforcement authorities in implementing the law and the courts in trying the case.¹⁶⁰ Indeed, an ambiguous and unclear penal law invites arbitrary prosecution of persons and capricious implementation of such statute,

¹⁵⁷ J.C. Jeffries, *Legality, Vagueness and the Construction of Penal Statutes*, 71 Va. L.Rev. 189 (1985), at 196 (1985).

¹⁵⁸ *Supra* note 22, at 464.

¹⁵⁹ *Id.*

¹⁶⁰ *Supra* note 9, at 196.

governmental acts which the Constitution had been laid down to safeguard the people from.

In the Philippine jurisdiction, it is accepted that one of the essential components of due process in the area of criminal law is the fair notice requirement, as has been set by jurisprudential refinements, that is, fair notice as to the act or omission which the law penalizes.¹⁶¹ Under the Constitution, it is explicitly provided therein that an accused has the right “to be informed of the nature and cause of the accusation against him.”¹⁶² Respected Philippine constitutionalists agree that such right of a person to be informed of the nature and cause of accusation against him does not only pertain to the criminal information in which he is charged but also extends to the language of the law under which he is being prosecuted.¹⁶³ And in *People v. Nazario*, the Court itself declared that a law is violative of the due process, and thus repugnant to the Constitution, if it fails “to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid.”¹⁶⁴

In view of the aforesaid legal principles, the *Estrada* doctrine, which limits the operation of the vagueness doctrine to free speech cases and bars its application in penal laws, incites violation of the due process clause for it, in effect, consents to the passage and enforcement of criminal laws suffering

¹⁶¹ *Supra* note 22, at 466.

¹⁶² §14, (1), Article III. In full, it reads:

“Section 14. (1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused: *Provided*, that he has been duly notified and his failure to appear is unjustifiable.”

¹⁶³ *Supra* note 22, at 462.

¹⁶⁴ *Supra* note 90, at 195.

from uncertainty despite the latter's adverse consequences on the right of due process of persons and their being offensive to the due process clause.

It is rather mystifying that the Court opted to apply the vagueness doctrine only on free speech cases, where the only concern involved is the "chilling effect" that it may have upon protected speech. Apropos to quote here is Justice Kapunan's statement in his Dissenting Opinion in *Estrada*:

"For if a statute infringing upon freedom of speech may be challenged for being vague because such right is considered as fundamental, *with more reason* should a vagueness challenge with respect to a penal statute be allowed since the latter involve *deprivation of liberty, and even of life which, inarguably, are rights as important as, if not more than, free speech* (*Emphasis in the original*)

CONCLUSION

The due process clause has been the most powerful constitutional safeguard that protects the people's rights of life, liberty and property from arbitrary deprivation and encroachment by the State. It animates and breathes life into the numerous rights that we enjoy as human beings. In the poetic words of Justice Tiña, "[t]he due process clause makes legally operative our democratic rights, as it establishes freedom and free will as the normative human conditions which the State is bound to respect. Any legislated restrictions imposed by the State on life, liberty or property must be in accordance with due process of law."¹⁶⁵ Indeed, it has what mostly separated us from the bygone days when tyranny and arbitrary government authority prevailed amidst us, when men were deprived of their lives and

¹⁶⁵ *Supra* note 22, at 460-461.

freedom for unverified charges and their property confiscated capriciously at the pleasure of the tyrant.

The Philippines, being a republican and democratic state, has upheld the right to due process of its people by not only making it an integral component of all its constitutions—the 1935, 1973 and 1987 Constitutions¹⁶⁶—but also through its judicial arm. Our Supreme Court, in a myriad of cases, have nullified governmental acts for being offensive to the due process clause, be they in the area of political, criminal, civil or labor laws. And now that it is being urged to invalidate vague penal laws, which are effectively clashes with the due process clause, it should not deviate from its vow to protect the fundamental right of the people to due process.

The operation of the void-for-vagueness doctrine in the sphere of criminal law is not a newly crafted innovation that has not been tested yet. It has been tried and tested in the U.S. jurisdiction and as its jurisprudential experience demonstrates and proves, the vagueness doctrine's use in the nullification of penal statutes has been a powerful tool in upholding the right to due process of law and it has not shown any occurrence of the “apprehensions” of the Court in applying the doctrine to criminal legislation.

¹⁶⁶ Section 1 of the 1935 Constitution provides:

“Section 1. (1) No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.”

Section 1, Article IV of the 1973 Constitution also reads:

“Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.”

While it is true that our Court is independent and can freely decide cases in the fashion it deems most judicious, it should not refuse to adopt foreign legal principles enunciated by the jurisprudential rules of a foreign court merely on that ground, most especially if such legal principles would be in furtherance of the protection of the rights of the Filipino people, whose rights it has pledged to shield from unwarranted governmental encroachments.

Truly, for as long as democracy abounds in our midst and the due process clause remains a pervading component not only of the Constitution but of our lives as civilized citizens, the Court, being the vanguard of our rights, should defend such rights from unjustified infringement by all means legal, logical and reasonable including utilizing the vagueness doctrine, which has been carved out from the due process clause, in the invalidation of ambiguous penal laws that could result to the undue deprivation of life, liberty and property.