THE ANTI-GRAFT LAW, PREVENTIVE SUSPENSION, ELECTIVE LOCAL OFFICIALS, AND A PERPLEXED SUPREME COURT

Julius A. Cervantes

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ABSTRACT:

THE ANTI-GRAFT LAW, PREVENTIVE SUSPENSION, ELECTIVE LOCAL OFFICIALS, AND A PERPLEXED SUPREME COURT

Mr. Julius Cervantes attempts to clarify the state of the law as regards preventive suspension for elective local officials under Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act. In particular, he seeks to formulate a clear statement of the rule regarding the applicable duration of preventive suspension under the Anti-Graft Law. He postulates that the confusion regarding the duration of preventive suspension began with the Supreme Court ruling in *Rios v. Sandiganbayan*.

In this paper, he also discusses the constitutionality of preventive suspension, its mandatory nature, and other issues raised in relation thereto. He concludes his study with a commentary on the current state of jurisprudence and the manner through which extant doctrines regarding the duration of preventive suspension under the Anti-Graft Law for elective local officials were formulated.

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*Julius A. Cervantes**

I. INTRODUCTION

> Poverty, poor health, low life expectancy, and an unequal distribution of income and wealth are endemic throughout the world. Many countries have very low or negative growth rates. Even some countries that are well endowed with natural resources have poor growth records and low *per capita* incomes. Others, especially in the former Soviet bloc, have weak economic records in spite of a well-educated labor force.
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> Yet a paradox exists. International lending organizations, such as the World Bank, often have difficulty locating acceptable projects. How can this be when the need is obviously so great? One root of the problem is dysfunctional public and private institutions. Poorly functioning governments mean that outside assistance will not be used effectively.
>
> *-Susan Rose-Ackerman*
> Corruption and Government

A. BUREAUCRATIC TUMOR

One need not be well versed in the social sciences to know and admit that the problem of corruption in government is an issue crying to be addressed. Indeed, its prevalence among almost all nations is enough to shoot down any notion that it is a cultural or localized phenomenon. Whether a country is of the first world, third world, or anywhere in between, it is bound to have its share of corruption-related incidents.

One need only take a cursory view of the general economic status of the Philippines to understand the prevalence of public office-related corruption. It had been posited, and to this there appears to be hardly any objection, that "economics is a powerful tool for the analysis of corruption. Cultural differences and morality

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provide nuance and subtlety, but an economic approach is fundamental to understanding where corrupt incentives are greatest and have the greatest impact."[1] To the mind of this author, however, the recognition of "economics" as an incentive for engaging in corrupt acts should not be narrowly construed as to allow its application only to instances where there arises a question of poverty or of financial necessity. It is almost common-sensical to assert that even those already possessed of affluence nevertheless engage in corrupt practices. Viewed on a national scale, it is likewise taken for granted that there is bureaucratic corruption even in developed states.

The preoccupation with corruption, whether the study thereof or engagement therein, has presumably spawned efforts to trace patterns characterizing its incidence. In one study of corruption in Asia, the following emerging patterns have been noted:

> *First*, as to form, bribery appears to be the most prevalent type of bureaucratic corruption. The purposes or the reasons for the bribery, however, tend to differ depending on the function of the agency.
>
> *Second*, public officials who are in regular contact with clients and who have the discretion to resolve certain issues about the delivery of goods or services are most likely to be actively involved in corruption.
>
> *Third*, there is no clear pattern discerned so far as to who takes the first step in initiating the corruption transaction.
>
> *Fourth*, amounts of money involved in corruption appear to be influenced by the extent to which the act involved is prohibited and whether the activity comprises a major part of the business of the client.
>
> *Fifth*, the risk involved in a corrupt act is largely a function of the extent to which corrupt individuals are apprehended, prosecuted, and penalized.[2]

It is quite surprising, however, that there are some who are still of the opinion that, in some jurisdictions, the problem of corruption has not been receiving the amount of attention it ought to be given. Bayley, for one, posited that:

> Given its prevalence, whether as proven or assumed fact, it is surprising that so little attention has been given to its role and effects within the developing political situation. Western, as well as local, observers have generally been content with deploring its existence. This frequently involves taking rather perverse pleasure in dwelling upon the amount of corruption to be discovered and then asserting that elimination of corruption is a "must" for successful

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[1] SUSAN ROSE-ACKERMAN, *preface* to CORRUPTION AND GOVERNMENT: CAUSES, CONSEQUENCES, AND REFORM, at xi (1999).

[2] Ma. Concepcion P. Alfiler, *The Process of Bureaucratic Corruption in Asia: Emerging Patterns*, *in* Bureaucratic CORRUPTION IN ASIA 63-64 (Ledivina V. Cariño ed., 1986).

> development. While most Western observers have manfully striven to avoid a moralistic posture, they have rather uncritically assumed that the presence of corruption is a hindrance to economic growth and progressive social change. There has been a significant absence of analysis about the effects which corruption has in fact upon economic development, nascent political institutions, and social attitudes. Unless it has been determined that a social practice, such as corruption, contributes no positive benefits, condemnation of it is really a practice at rote and is no improvement upon moralism. [3]

This, however, is something the Philippines can never be accused, much less be held guilty, of. Lest it be opined that this is a hollow boast, it is offered that a concrete proof of the veracity of such a contention is the plethora of laws extant in our statute books enacted purposely to combat, if not totally eradicate, corruption. One such law, in fact, has been in force for decades already, as far back as 1960. This law, Republic Act No. 3019, the Anti-Graft and Corrupt Practices Act, is one of the most concrete manifestations of the Philippine government's continuing efforts to utilize deterrence in the hope of minimizing corruption occasioned by public officers. The instant study is an effort at viewing this law with a critical eye.

B. PURPOSE AND SCOPE OF THE STUDY

Having initially rendered, by way of introduction, a brief exposition on the concept of bureaucratic corruption, the current study will hereinafter discuss the provisions of the Anti-Graft Law before proceeding to focus on sec. 13 thereof which provides for the preventive suspension of public officers prosecuted under the auspices of said law. Thereafter, a thorough review of prevailing jurisprudence regarding the constitutionality of preventive suspension under sec. 13, its mandatory nature, and the issues raised in relation thereto will be conducted. A great portion of the study, however, will delve into issues regarding the applicable duration of preventive suspension under sec. 13 of elective local officials prosecuted criminally under the law. A survey of the history and development of prevailing case law regarding this matter shall likewise be presented, with the end goal of formulating a clear statement of the rules regarding the applicable duration of preventive suspension under sec. 13. In order to substantiate the assertion that the matter of duration is rather confusing, focus will be given to the deviant ruling laid down by the Supreme Court in *Rios v. Sandiganbayan*,[4] in juxtaposition with rulings in decided cases that comprise the mass of controlling jurisprudence.

Finally, the study will be concluded with a brief commentary on the current state of prevailing jurisprudence, and the manner through which extant doctrines

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[3] David H. Bayley, *The Effects of Corruption in a Developing Nation*, *in* POLITICAL CORRUPTION 521 (1964).
[4] G.R. No. 129913, 279 SCRA 581 (1997).

regarding the duration of preventive suspension under sec. 13 of the Anti-Graft Law for elective local officials were formulated.

II. FIGHTING FIRE WITH FIRE: THE ANTI-GRAFT LAW

> The good of the service and the degree of morality which every official and employee in the public service must observe, if respect and confidence are to be maintained by the Government in the enforcement of the law, demand that no untoward conduct on his part, affecting morality, integrity, and efficiency while holding office should be left without proper and commensurate sanction, all attendant circumstances taken into account.[5]

A. THE OTHER SIDE OF THE COIN

More than four decades have passed since it was first enacted into law, yet to this very day, the Anti-Graft and Corrupt Practices Act[6] (Anti-Graft Law) remains to be one of the most prolific sources of legal action and litigation in the Philippines. At first blush, this can be construed as a positive bit of trivia. For one, it may be regarded as an indication that efforts to rein in, if not totally eradicate, graft and corruption are continuously being exerted. It would seem that violators of the law, once apprehended, are prosecuted under the auspices a legislative enactment specifically designed for such contingencies. After all, sec. 1 of the aforementioned law declares quite succinctly that "it is the policy of the Philippine Government, in line with the principle that a public office is a public trust, to repress certain acts of public officers and private persons alike which constitute graft or corrupt practices or which may lead thereto." Although enacted decades before the inception of the 1987 Constitution, the policy behind the law nevertheless remains consistent with art. XI, sec. 1 thereof: "Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives."[7]

If the number of cases involving violations of the Anti-Graft Law were to be used as a yardstick for rating the government's determination to be true to the daunting task imposed by the law's stated policy, it is beyond doubt that accolades are in order. But then again, there are two sides to every coin. This very same barometer that tests the accomplishment of the policy declared in the very first provision of the law may likewise be viewed as a badge of failure. If the law's objectives are being met, why is there a continuous stream of cases? Pick out at random a volume of any Supreme Court case reporter and chances are, that single

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[5] Lim-Arce v. Arce, A.M. No. P-89-312, 205 SCRA 21, 32 (1992).
[6] Rep. Act No. 3019 (1960).
[7] CONST. art. XI, sec. 1.

volume will hold a number of corruption-related cases. Could it be possible that the Anti-Graft Law does not successfully deter corrupt practices of unscrupulous individuals? Realities such as these make one wonder whether or not the law is really as efficacious as it appears to be. Although the volume and frequency of cases litigated pursuant to the law may give some account of the law's efficacy, such information may nevertheless be used as a launching point for an inquiry. Notwithstanding the absence of well-defined standards[8] for ascertaining whether or not the law gets the job done, this statistic cannot be ignored.

B. NOT A PAPER TIGER

During its inception in 1960, the Anti-Graft Law was said to be the broadest and most comprehensive one of its kind ever legislated.[9] This fact is manifested by the rather vast expanse of sec. 3 of the law. This specific provision enumerates acts constituting corrupt practices that are proscribed under the law. The following acts are declared to be constitutive of corrupt practices and consequently held unlawful:

> (a) Persuading, inducing, or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offenses.
>
> (b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other part,

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[8] *See e.g.*, Michael A. Lawrence, *The Proposed Michigan Government Ethics Act of 1999: Providing Guidance to Michigan Public Officials and Employees*, 76 U. DET. MERCY L. REV 411 (1999). Three bases were considered for the purpose of evaluating the adequacy of the Michigan Government Ethics Act. It was concluded that said Act was inadequate because "[f]irst, current ethics laws do not elucidate a clearly defined, comprehensive set of conflict-of-interest and revolving-door standards. Second, current ethics laws require more than minimal transactional disclosure of potential conflicts. Third, current ethics laws do not provide for a strong and independent Ethics Board to enforce the statutes." To the mind of this author, if the Anti-Graft Law and other Philippine laws pertaining to ethics in government were tested against similar standards, they will most likely appear to be adequate. As an alternative basis of inquiry, therefore, the sheer number of litigated cases may be used as a valid gauge to determine the efficacy of the law. *See also* Robert C. Newman, *New York's Ethics Law: Turning the Tide on Corruption*, 16 HOFSTRA L. REV. 319 (1988). In this article, the existing New York Ethics Law was evaluated. At the time the article was written, several amendments to the said law were then being proposed in order to make the law more effective and comprehensive. Some of the amendments were provisions on disclosure of assets and liabilities, specific prohibitions regarding practice of profession by public officers, and statutory provisions for determining what acts would constitute bribery or corrupt practices. Noticeably, these provisions were already, at that time, incorporated in our very own 1987 Constitution and implemented through specific laws. Despite the comparative adequacy of our anti-graft laws, this author finds it surprising that they still seem ineffective in light of the continuous litigation of corruption cases.

[9] Luis A. Paredes, Benjamin S. Tabios, Jr., & Juan Pablo A. Paredes, *Graft, Corruption, and Conflicts of Interest: Problems in Prescribing Official Norms of Conduct*, 57 PHIL. L.J. 371, 393 (1982).

wherein the public officer in his official capacity has to intervene under the law.

(c) Directly or indirectly requesting or receiving any gift, present, or other pecuniary or material benefit, for himself or for another, from any person for whom the public officer, in any manner or capacity, has secured or obtained, or will secure or obtain, any Government permit or license, in consideration for the help given or to be given, without prejudice to Section thirteen of this Act.

(d) Accepting or having any member of his family accept employment in a private enterprise which has pending official business with him during the pendency thereof or within one year after its termination.

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

(f) Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

(h) Directly or indirectly having financing or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

(i) Directly or indirectly becoming interested, for personal gain, or having a material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which exercises discretion in such approval, even if he votes against the same or does not participate in the action of the board, committee, panel or group.

Interest for personal gain shall be presumed against those public officers responsible for the approval of manifestly unlawful, inequitable, or irregular transaction or acts by the board, panel or group to which they belong.

> (j) Knowingly approving or granting any license, permit, privilege or benefit in favor of any person not qualified for or not legally entitled to such license, permit, privilege or advantage, or of a mere representative or dummy of one who is not so qualified or entitled.
>
> (k) Divulging valuable information of a confidential character, acquired by his office or by him on account of his official position to unauthorized persons, or releasing such information in advance of its authorized release date.
>
> The person giving the gift, present, share, percentage or benefit referred to in subparagraphs (b) and (c); or offering or giving to the public officer the employment mentioned in subparagraph (d); or urging the divulging or untimely release of the confidential information referred to in subparagraph (k) of this section shall, together with the offending public officer, be punished under Section nine of this Act and shall be permanently or temporarily disqualified in the discretion of the Court, from transacting business in any form with the Government. [10]

Under the law, these acts are criminalized and those found guilty of commission thereof are subjected to the penal provisions of sec. 9. Also penalized are violations of specific prohibitions on certain relatives[11] of public officers, on private individuals,[12] and on members of Congress.[13] Moreover, it applies to offenses falling under Title 7, Book II of the Revised Penal Code.[14]

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[10] Rep. Act No. 3019 (1960), sec. 3.

[11] Rep. Act No. 3019 (1960), sec. 4. The provision reads:

Section 4. *Prohibition on private individuals.* (a) It shall be unlawful for any person having family or close personal relation with any public official to capitalize or exploit or take advantage of such family or close personal relation by directly or indirectly requesting or receiving any present, gift or material or pecuniary advantage from any other person having some business, transaction, application, request or contract with the government, in which such public official has to intervene. Family relation shall include the spouse or relatives by consanguinity or affinity in the third civil degree. The word "close personal relation" shall include close personal friendship, social and fraternal connections, and professional employment all giving rise to intimacy which assures free access to such public officer.

(b) It shall be unlawful for any person knowingly to induce or cause any public official to commit any of the offenses defined in Section 3 hereof.

[12] Rep. Act No. 3019 (1960), sec. 5. The provision reads:

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.

[13] Rep. Act No. 3019 (1960), sec. 6. The provision reads:

Section 6. *Prohibition on Members of Congress.* It shall be unlawful hereafter for any Member of the Congress during the term for which he has been elected, to acquire or receive any personal pecuniary interest in

Congress obviously did not intend for the law to be an animal that is "all bark and no bite." It had previously been observed that the law is clearly "penal in nature, both procedurally and substantively, hence the constitutional and statutory rights granted to the accused in a criminal prosecution are available to the defendant in a prosecution under the said law."[15] The penal provisions embedded in sec. 9 give the Anti-Graft Law its teeth. This section reads in full:

> Section 9. *Penalties for violations.* (a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3,4,5 and 6 of this Act shall be punished with imprisonment for not less than one year nor more than ten years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.
>
> Any complaining party at whose complaint the criminal action was initiated shall, in case of conviction of the accused, be entitled to recover in the criminal action with priorit over the forfeiture in favor of the Government, the amount of money or the thing he may have given to the accused, or the value of such thing.
>
> (b) Any public officer violating any of the provisions of Section 7 of this Act shall be punished of not less than one hundred pesos nor more than one hundred thousand pesos, or by imprisonment not exceeding one year, or by both such fine and imprisonment, at the discretion of the Court.
>
> The violation of said section proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public officer, even if no criminal prosecution is instituted against him.

The severity of the penalties imposed by sec. 9 is quite noticeable. The imposable penalties are fines, imprisonment, perpetual disqualification from public office, forfeiture in favor of the Government of the property subject of the offense, or a combination of any or all of the foregoing. Moreover, the complaining party at whose initiative the criminal action was commenced shall be entitled to recover in the criminal action the amount of money or the thing he may have given to the

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any specific business enterprise which will be directly and particularly favored or benefited by any law or resolution authored by him previously approved or adopted by the Congress during the same term.

The provision of this section shall apply to any other public officer who recommended the initiation in Congress of the enactment or adoption of any law or resolution, and acquires or receives any such interest during his incumbency.

It shall likewise be unlawful for such member of Congress or other public officer, who, having such interest prior to the approval of such law or resolution authored or recommended by him, continues for thirty days after such approval to retain such interest.

[14] Act No. 3815 (1930).

[15] Paredes et al., *supra* note 9, at 395.

accused, or the value of such thing, in case of conviction of the accused. This claim shall have priority over the forfeiture in favor of the Government.

Interestingly, it has been noted that the decidedly penal nature of the Anti-Graft Law was a stark contrast to the provisions of Republic Act No. 1379,[16] which has been described as partaking of a "penal nature but civil in procedural and technical matters."[17]

Given the seeming severity and broad scope of the Anti-Graft Law, one cannot help but wonder why, to the consternation of the citizenry and the courts, cases involving violations of the law continue to flow with impunity into the stream of litigation.[18]

C. *HOC QUIDEN PERGUAN DURUM EST, SED ITA LEX SCRIPTO EST*

It is exceedingly hard, but so the law is written.

One of the more controversial provisions of the Anti-Graft Law is that which provides for the preventive suspension of public officers who are criminally prosecuted for violations of the Anti-Graft Law and other specific statutes. The section, as amended by B.P. Blg. 195,[19] reads in full:

> Sec. 13. *Suspension and Loss of Benefits.* Any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property whether as a simple or as

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[16] Rep. Act. No. 1379 (1955). An Act Declaring Forfeiture in Favor of the State of Any Property Found to Have Been Unlawfully Acquired by Any Public Officer or Employee and Providing for the Procedure Therefor.

[17] Paredes et al., *supra* note 9, at 395.

[18] A possible explanation is that corruption is essentially an economic phenomenon that cannot be addressed by the mere expedient of enacting penal statutes. It had been suggested that "[e]conomics is a powerful tool for the analysis of corruption. Cultural differences and morality provide nuance and subtlety, but an economic approach is fundamental to understanding where corrupt incentives are greatest and have the greatest impact." *See* ROSE-ACKERMAN, *supra* note 1.

[19] Batas Pambansa Blg. 195 (1982). An Act Amending Sections Eight, Nine, Ten, Eleven, and Thirteen of Republic Act Numbered Thirty Hundred and Nineteen, Otherwise Known as the Anti-Graft and Corrupt Practices Act. Prior to its amendment by B.P. 195, Section 13 simply covered violations of the prohibitions and commissions of the acts specifically provided by the Anti-Graft Law and violations of the Revised Penal Code (RPC) provisions on bribery. B.P. 195, however, greatly broadened the scope of the section by providing that it shall already cover commissions of the offenses under Book II, Title of the Revised Penal Code. This portion of the RPC is entitled "Crimes Committed by Public Officers" and is comprised of six chapters dealing with (a) malfeasance and misfeasance in office, (b) frauds and illegal exactions and transactions, (c) malversation of public funds or property, (d) infidelity of public officers, and (e) other offenses or irregularities by public officers. In addition, B.P. 195 provided that Section 13 shall likewise cover "any offense involving fraud upon government or public funds or property whether as a simple or as a complex offense and in whatever stage of execution and mode of participation.

> a complex offense in whatever stage of execution and mode of participation, is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him.
>
> In the event that such convicted officer, who may have already been separated from the service, has already received such benefits he shall be liable to restitute the same to the Government.[20]

All throughout the decades that the Anti-Graft law has been in force, this single provision has been the bane of the courts, so to speak. More often than not, as will be demonstrated by a survey of jurisprudence later on in this paper, public officers who are preventively suspended under sec. 13 of the Anti-Graft Law end up testing the validity of their suspension. Extant jurisprudence reveals that the validity of preventive suspensions of public officers under sec. 13 is tested on several fronts. In some instances, the constitutionality of the preventive suspension itself is attacked. In others, it is the mandatory nature, under the law, of the preventive suspension that is questioned. Still, there are cases where, although the legality of the imposition of preventive suspension is conceded, the duration of the suspension is put in issue.

With regard to the first two contests, prevailing case law is clear and unwavering, so much so that often times the Supreme Court ends up dismissing the challenge simply by reciting doctrines in mantra-like fashion. In certain instances, the Court simply brushes aside the issue, content with just supplying a perfunctory paragraph to justify its posture.

Issues regarding the duration of preventive suspension, however, are of a different breed. Questions pertaining to the duration of preventive suspension for certain public officers are, for lack of a better legal term, trickier. While jurisprudence regarding the matter is intact and controlling, the Supreme Court, in at least one case, failed to observe the doctrine of *stare decisis* and did not adhere to prevailing case law. While it may appear that a single stray ruling may be dismissed in the light of the overwhelming number of Supreme Court ruling of contrary tenor, such a lapse can lead to confusion within the ranks of law students,[21] potential

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[20] Rep. Act. No. 3019 (1960), sec. 13, as amended by Batas Pambansa Blg. 195 (1982).

[21] During the author's classes in Local Government during his junior year in law school, the issue regarding the applicable duration of preventive suspension for elective local officials prosecuted under the Anti-Graft Law became the subject of great discussion. While jurisprudence holds that the applicable period shall be 90 days pursuant to the Civil Service Law, the case of *Rios v. Sandiganbayan* G.R. No. 129913, 279 SCRA 581 (1997), held that the applicable period is 60 days, this time applying the Local Government Code. This seeming confusion will be discussed in depth and resolved in later portions of this study.

litigants, and perhaps even among members of the bench and bar. The oversight assumes concrete jurisprudential form in the case of *Rios v. Sandiganbayan*.[22]

III. TESTING ESTABLISHED DOCTRINES: A USELESS PASSION

> The Constitution is the basic and paramount law to which all other laws must conform and to which all persons, including the highest officials of the land, must defer. No acts shall be valid, however noble its intentions, if it conflicts with the Constitution. The Constitution must ever remain supreme. All must bow to the mandate of this law. Expediency must not be allowed to sap its strength nor greed for power debase its rectitude. Right or wrong, the Constitution must be upheld as long as it has not been changed by the sovereign people lest its disregard results in the usurpation of the majesty of law by the pretenders to illegitimate power.
>
> *Justice Isagani A. Cruz*[23]
> Constitutional Law

A. CHALLENGES TO THE CONSTITUTIONALITY OF PREVENTIVE SUSPENSION UNDER SECTION 13

Time and again, the constitutionality of preventive suspension under sec. 13 of the Anti-Graft Law had been challenged by erring public officials. An ironic note to such challenges, however, is that these challenges end up affording the Supreme Court opportunities to reaffirm the constitutionality of the provision. Due process questions had been raised and the constitutional presumption of innocence had been invoked, but these efforts had been in vain and turned out to be exercises in futility.

As early as 1960, issues regarding possible violations of the due process clause and the constitutional presumption of innocence perpetrated by preventively suspending a public officer had been raised. In *Nera v. Garcia*,[24] the Court resolved the issue head-on. Petitioner Bienvenido Nera, a civil service eligible who was a clerk in a government hospital, was placed under preventive suspension after having been charged criminally and administratively with malversation of public funds in his custody. The Court of First Instance, however, held that the suspension suffered a constitutional infirmity. The trial court ruled that inasmuch as the suspension was meted out before Nera was able to file his answer to the administrative complaint, he was deprived of his right to a fair hearing and the opportunity to present his defense. The trial court then nullified the preventive suspension on the ground that it was violative of the due process clause.[25] The case was appealed to the Supreme Court

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[22] G.R. No. 129913, 279 SCRA 581 (1997).

[23] ISAGANI A. CRUZ, PHILIPPINE POLITICAL LAW 12-13 (1998).

[24] 106 Phil. 1031 (1960).

[25] *Nera* was promulgated while the 1935 Constitution was still in force. The due process clause was then located in art. III, sec. 1, par. (1) of the Constitution. It provided that "[n]o person shall be deprived of life,

where the ruling was subsequently reversed. The Supreme Court upheld the constitutionality of the preventive suspension in this wise:

> In connection with the suspension of petitioner before he could file his answer to the administrative complaint, suffice it to say that the suspension was not a punishment or a penalty for the acts of honesty and misconduct in office, but only as a preventive measure. Suspension is a preliminary step in an administrative investigation. If after such investigation, the charges are established and the person investigated is found guilty of acts warranting his removal, then he is removed or dismissed. This is the penalty. There is, therefore, nothing improper in suspending an officer pending his investigation and before the charges against him are heard and be given an opportunity to prove his innocence.[26]

Six years after *Nera* was promulgated, the Court again seized an opportunity to expound further on the true nature of preventive suspension. In *Bautista v. Peralta*,[27] the Court treaded the path taken by *Nera* and explained that "preventive suspension in administrative cases is not a penalty in itself. It is designed merely as a measure of precaution so that the employee who is charged may be separated, for obvious reasons, from the scene of his alleged misfeasance while the same is being investigated."[28] *Bautista* involved an employee of the National Water and Sewerage Authority (NWSA) who was charged administratively with dishonesty and violation of office regulations. The Court, without expressly citing *Nera* as precedent, nevertheless obviously adopted the doctrine enunciated therein.

It was only in 1992 when *Nera* was specifically cited as precedent, and this happened in the case of *Espiritu v. Melgar*[29] where a municipal mayor was placed under preventive suspension on charges of grave misconduct, oppression, abuse of authority, culpable violation of the Constitution, and conduct prejudicial to the best interest of the public service. Delivering the opinion of the Court, Mme. Justice Carolina Griño-Aquino reiterated *Nera*:

> There is nothing improper in suspending an officer before the charges against him are heard and before he is given an opportunity to prove his innocence. Preventive suspension is allowed so that the respondent may not hamper the normal course of the investigation through the use of his influence and authority over possible witnesses.[30]

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life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." This provision is reproduced *in toto* in art. III, sec. 1 of the 1987 Constitution.

[26] Nera v. Garcia, 106 Phil. 1031, 1034 (1960).

[27] G.R. No. L-21967, 18 SCRA 223 (1966).

[28] *Id.* at 225-226.

[29] G.R. No. 100874, 206 SCRA 256 (1992).

[30] Espiritu v. Melgar, G.R. No. 100874, 206 SCRA 256, 263 (1992) (citations omitted).

Much later still, the *Nera* doctrine was reiterated in the cases of *Buenaseda v. Flavier*,[31] *Alonzo v. Capulong*,[32] *Lastimosa v. Vasquez*,[33] and *Castillo-Co v. Barbers*.[34]

Although the pronouncements in *Nera* and *Bautista* pertained to preventive suspension in administrative proceedings and not preventive suspension for criminal prosecution under the Anti-Graft Law, the doctrine enunciated therein regarding the nature and purpose of preventive suspension has nevertheless been applied to cases involving preventive suspension under sec. 13 of the Anti-Graft Law. In the 1992 case of *Gonzaga v. Sandiganbayan*,[35] for instance, the Court categorically stated, albeit without citing *Nera*, that "preventive suspension is definitely not violative of the Constitution as it is not a penalty."[36] *Gonzaga* involved a public school principal who was charged with malversation under article 217 of the Revised Penal Code[37] and subsequently suspended preventively pursuant to sec. 13 of the Anti-Graft Law. The Court carried an extremely assertive tone and held that:

> Petitioner at the outset contends that Section 13 of Rep. Act 3019, as amended, is unconstitutional as the suspension provided thereunder partake of a penalty even before a judgment of conviction is reached, and is thus violative of her constitutional right to be presumed innocent.
>
> We do not accept the contention because: *firstly*, under Section 13, Rep. Act 3019, suspension of a public officer upon the filing of a valid information is mandatory. What the Constitution rejects is a *preventive suspension of indefinite duration* as it raises, at the very least, questions of denial of due process and equal protection of the laws; in other words, preventive suspension is justifiable for as long as its continuance is for a reasonable length of time; *secondly*, preventive suspension is not a penalty; a person under preventive suspension, especially in a criminal action, remains entitled to the constitutional presumption of innocence as his culpability must still be established; *thirdly*, the rule is that every law has in its favor the presumption of validity, and that to declare a law unconstitutional, the basis for such a declaration must be clearly established.[38]

A year later, the Court, in *Bunye v. Escareal*,[39] once again laid down a ruling to the same effect. This case revolved around the preventive suspension under sec. 13 of the Anti-Graft Law of a municipal mayor, vice mayor, and members of the

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[31] G.R. No. 106719, 226 SCRA 645 (1993)
[32] G.R. No. 110590, 244 SCRA 80 (1995).
[33] G.R. No. 116801, 243 SCRA 497 (1995).
[34] G.R. No. 129952, 290 SCRA 717 (1998).
[35] G.R. No. 96131, 201 SCRA 417 (1991).
[36] *Id* at. 422-23.
[37] Act No. 3815 (1930) as amended.
[38] Gonzaga v. Sandiganbayan, G.R. No. 96131, 201 SCRA 417, 422-23 (1991).
[39] G.R. No. 110216, 226 SCRA 332 (1993).

Sangguniang Bayan. Likewise cited therein was the case of *People v. Court of Appeals*[40] where the Court declared categorically that preventive suspension is not violative of the Constitution as it is not a penalty.

Segovia v. Sandiganbayan,[41] a 1998 case, is one of the most recent and authoritative rulings regarding the constitutionality of preventive suspension under sec. 13 of the Anti-Graft Law. Involved in *Segovia* were executives of the National Power Corporation (NAPOCOR) who were prosecuted under the Anti-Graft Law due to their involvement in irregularities pertaining to the bidding-out of certain NAPOCOR contracts. The executives were subsequently placed under preventive suspension pursuant to sec. 13 of the Anti-Graft Law. In finding for the constitutionality of their preventive suspension, the Court, speaking through then Chief Justice Andres Narvasa, pointedly declared:

> The validity of Section 13, R.A. 3019, as amended — treating of the suspension *pendente lite* of an accused public officer — may no longer be put at issue, having been repeatedly upheld by this Court. As early as 1984, in *Bayot v. Sandiganbayan*, the Court held that such suspension was not penal in character but merely a preventive measure before final judgment; hence, the suspension of a public officer charged with one of the crimes listed in the amending law, committed before said amendment, does not violate the constitutional provision against an *ex post facto* law. The purpose of suspension is to prevent the accused public officer from frustrating or hampering his prosecution by intimidating or influencing witnesses or tampering with documentary evidence, or from committing further acts of malfeasance while in office. Substantially to the same effect was the Court's holding, in 1991, in *Gonzaga v. Sandiganbayan*, that preventive suspension is not violative of the Constitution as it is not a penalty; and a person under preventive suspension remains entitled to the constitutional presumption of innocence since his culpability must still be established.[42]

Clearly, therefore, the jurisprudential basis for the constitutionality of preventive suspension pursuant to sec. 13 of the Anti-Graft Law is decidedly firm.

Synthesizing the aforecited Supreme Court rulings, therefore, the following rules are established:

Firstly, preventive suspension is not violative of the due process clause. Whether it is due to criminal indictment under the Anti-Graft Law or by reason of an administrative charge, preventive suspension does not comprise the penalty itself. Its purpose is basically "to prevent the officer or employee from using his position

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[40] G.R. Nos. 57425-27, 135 SCRA 372 (1985).
[41] G.R. No. 124067, 288 SCRA 328 (1998).
[42] Segovia v. Sandiganbayan, G.R. No. 124067, 288 SCRA 328, 336-37 (1998).

and the powers and prerogatives appurtenant thereto to intimidate or in any way influence potential witnesses or to destroy or tamper with records which may be vital in the prosecution of the case against him."[43] Moreover, "it is immaterial that no evidence has been adduced to prove that a respondent public officer may influence possible witnesses or may tamper with public records. It is sufficient that there exists such a possibility."[44]

Secondly, preventive suspension is not the penalty itself but merely a precautionary measure, and the suspended officer is still entitled to the constitutional presumption of innocence since his culpability must still be established.[45]

Thirdly, preventive suspension may be imposed after charges are brought and even before such charges are heard, again, since it does not partake of the nature of a penalty.[46]

With the bedrock of jurisprudence being established as early as 1960 and solidly upholding the constitutionality of preventive suspension under section 13 of the Anti-Graft Law, it seems almost absurd that even in recent cases, such issue still continues to be thoughtlessly raised by litigants. This, considering that jurisprudence has been proving them wrong for decades already.

B. NO IFS AND BUTS ABOUT IT

Another peculiar feature of section 13 that has generated much legal controversy throughout the years is the mandatory nature of preventive suspension thereunder. However, just like the constitutionality of said provision, its mandatory character has been upheld by the Court on numerous occasions. Jurisprudence is replete with cases wherein the Supreme Court held that section 13 of the Anti-Graft Law unequivocally provides that the accused public official shall be suspended from office while the criminal prosecution is pending in court.[47]

The Court had its very first opportunity to make a pronouncement on the issue of whether or not suspension under section 13 of the Anti-Graft Law is mandatory in the case of *Luciano v. Provincial Governor*.[48] The case had its inception in 1969 when the mayor, vice-mayor, and four councilors of the then municipality of

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[43] HECTOR S. DE LEON & HECTOR M. DE LEON, JR., THE LAW ON PUBLIC OFFICERS AND ELECTION LAW 444 (4th ed. 2000).

[44] *Id.*, citing Castillo-Co v. Barbers, G.R. No. 129952, 290 SCRA 717 (1998).

[45] *Id.* at 445.

[46] *Id.* at 445. *See also* Hagad v. Gozo-Dadole, G.R. No. 108072, 251 SCRA 242, 254 (1995). *Hagad* likewise expressly relied on *Nera*.

[47] DE LEON, *supra* note 43, at 447.

[48] G.R. No. L-30306, 28 SCRA 517 (1969).

Makati were charged with violations of the Anti-Graft Law. The criminal information alleged that the officials had entered into contracts for the delivery and installation of traffic reflectors, and that such contracts were manifestly and grossly disadvantageous to the municipal government of Makati. The Provincial Governor thereafter sought the legal opinion of the Provincial Fiscal as to whether or not he should place the respondent municipal officials under preventive suspension. The Provincial Fiscal, relying in turn upon an opinion rendered by the Secretary of Justice, informed the Provincial Governor that under section 13 of the law, suspension was mandatory. Petitioner Luciano, who was likewise a councilor of the municipality, thereafter commenced *mandamus* proceedings before the Supreme Court to compel the provincial governor and/or the provincial board to suspend the respondent officials under section 13 of the Anti-Graft Law.

After Luciano's commencement of the *mandamus* proceedings, an exchange of legal actions ensued. The Court of First Instance (CFI) found the respondent officials guilty of the charges and thus ordered their suspension *still* pursuant to section 13. It should be noted that the CFI decision stated that under section 13, the accused *shall* be suspended. The respondent officials, however, were able to obtain an order from the Court of Appeals restraining the enforcement of the CFI's decision. Eventually though, the controversy reached the Supreme Court. By that time, however, the issue that confronted the Court had already been transformed to whether or not preventive suspension under section 13 was *automatic*. The Court, speaking through Mr. Justice Sanchez, resolved the question in this wise:

> We next consider the question: Is the suspension mentioned in Section 13 of Republic Act 3019 automatic? A view suggested is that said suspension *ipso jure* results upon the filing of the criminal information without the need of an act of suspension by any superior authority. Said Section 13 provides:
>
> > SEC. 13. Suspension and loss of benefits. Any public officer against whom any criminal prosecution under a valid information under this Act or under the provisions of the Revised Penal Code on bribery is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him.
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> *The language of the law can be no clearer. It provides that any public officer charged under a valid information "shall be suspended from office."* It does not say "is suspended" or "is deemed suspended." It uses the word "shall". We think it evident upon the terms of the statute that there must be someone who shall exercise the act of suspension.

> Adding strength to this view is that in line with the statutory text of Section 13, the suspension spoken of follows the *pendency* in court of a criminal prosecution under a "*valid* information." Adherence to this rigoristic requirement funnels us down to no other conclusion than that there must, first of all, be a determination that the information filed is *valid* before suspension can be effected. This circumstance militates strongly against the notion that suspension is automatic.
>
> *Suspension is, however, mandatory. The word "shall" used in Section 13 is an express index of this conclusion.*
>
> *We, therefore, hold that the suspension envisioned in Section 13 of Republic Act 3019 is mandatory but is not self-operative.*[49] [Emphasis supplied.]

The categorical assertion made by the Court that preventive suspension under section 13 of the Anti-Graft Law is mandatory became the basis for the doctrine that prevails to this very day. It spawned a long line of cases upholding the preventive suspension's mandatory character.

The 1988 case of *People v. Albano*[50] descended directly from such line. In this particular case, the mayor of General Santos City was placed under preventive suspension during the investigation of certain violations of the Anti-Graft Law imputable to said mayor. In this case, the Court curtly stated that under section 13, Republic Act. No. 3019, suspension of a public officer is mandatory, citing *Luciano*.

Next came the case of *Gonzaga v. Sandiganbayan*[51] in 1991. This particular case in turn cited *Albano* as jurisprudential basis for the Court's ruling.

Then, in 1993, in the case of *Bunye v. Escareal*,[52] a seemingly exasperated Court declared in authoritative fashion that preventive suspension under section 13 is mandatory. The Court, as if trying to settle the confusion once and for all, abandoned its usually tempered demeanor and, referring to preventive suspension under section 13, declared in a rather annoyed tone that "there are no ifs and buts about it."[53]

The doctrine was somewhat expanded in scope a year later in *Bolastig v. Sandiganbayan*.[54] In previous occasions, the Court remained content with simply proclaiming that preventive suspension under section 13 is mandatory. The reason

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[49] Luciano v. Provincial Governor, G.R. No. L-30306, 28 SCRA 517, 528-29 (1969).
[50] G.R. Nos. L-45376-77, 163 SCRA 511 (1988).
[51] G.R. No. 96131, 201 SCRA 417 (1991).
[52] G.R. No. 110216, 226 SCRA 332 (1993).
[53] *Id.* at. 336.
[54] G.R. No. 110503, 235 SCRA 103 (1994).

for such an interpretation was that the law used the word "shall", and that such a word can only be construed as imbibing the provision with a mandatory character. In *Bolastig*, the Court went one step further and ruled that, in the case of the accused officer, there is a *presumption* that unless suspended, he may either frustrate his prosecution or commit further malfeasance.[55] To prevent these from happening, therefore, preventive suspension is made mandatory. The exact words of the Court are quoted hereunder:

> It is now settled that section 13 of Republic Act No. 3019 makes it mandatory for the *Sandiganbayan* to suspend any public officer against whom a valid information charging violation of that law, Book II, Title 7 of the Revised Penal Code, or any offense involving fraud upon government or public funds or property is filed. The court trying a case has neither discretion nor duty to determine whether preventive suspension is required to prevent the accused from using his office to intimidate witnesses or frustrate his prosecution or continue committing malfeasance in office. The presumption is that unless the accused is suspended he may frustrate his prosecution or commit further acts of malfeasance or do both, in the same way that upon a finding that there is probable cause to believe that a crime has been committed and that the accused is probably guilty thereof, the law requires the judge to issue a warrant for the arrest of the accused. The law does not require the court to determine whether the accused is likely to escape or evade the jurisdiction of the court.[56]

It should be noted, however, that although the Court has been unfaltering in its posture that preventive suspension under section 13 of the Anti-Graft Law is mandatory, it nevertheless circumscribes the power to suspend granted by the law by requiring a *pre-suspension hearing* during which the validity of the criminal information is to be determined. It is only after the information is found to be valid that it becomes mandatory for the accused to be preventively suspended. This much was the holding of the Court in the case of *Socrates v. Sandiganbayan*.[57]

C. THE SPORTING IDEA OF FAIR PLAY AMIDST LEGAL RIGIDITY

In *Socrates*, the petitioner Salvador P. Socrates, who was then the governor of the province of Palawan, was sought to be placed under preventive suspension after having been charged criminally for violations of the Anti-Graft Law. Socrates opposed the motion to have him preventively suspended on the ground that the validity of the informations filed against him is still pending review with the Supreme Court. Petitioner's opposition notwithstanding, the Sandiganbayan nevertheless granted the motion to suspend Socrates *pendente lite* for a period of 90 days. It is this resolution that was, *inter alia*, challenged before the Supreme Court.

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[55] Bolastig v. Sandiganbayan, G.R. No. 110503, 235 SCRA 103, 108 (1994).

[56] *Id.*

[57] G.R. Nos. 116259-60 and 118897-97, 253 SCRA 773 (1996).

Resolving the controversy presented before it, the Court held that the Sandiganbayan did not act with grave abuse of discretion and that it acted lawfully when it ordered the preventive suspension of Socrates. The Court pointed out that the records of the case revealed no signs of irregularities attendant to the filing of the informations against Socrates. Moreover, it was noted that the allegations in the informations sufficiently established the elements of the offenses charged. In light of such findings, the Court agreed with the Sandiganbayan that Socrates had to be suspended preventively pursuant to section 13 of the Anti-Graft Law.

The Supreme Court in *Socrates* rendered a thorough discussion of the necessity for a pre-suspension hearing as a condition *sine qua non* for preventive suspension under section 13. The *ponencia*, penned by Mr. Justice Florenz Regalado, declared concisely:

> This Court has ruled that under Section 13 of the Anti-Graft Law, the suspension of a public officer is mandatory *after the validity of the information has been upheld in a pre-suspension hearing conducted for that purpose. This pre-suspension hearing is conducted to determine basically the validity of the information, from which the court can have a basis to either suspend the accused and proceed with the trial on the merits of the case, or correct any part of the proceeding which impairs its validity.* The hearing may be treated in the same -manner as a challenge to the validity of the information by way of a motion to quash.[58] (Emphasis supplied.)

Thereafter, the Court, quoting extensively from its ruling in the case of *Luciano v. Mariano*,[59] laid down certain "guidelines for the guidance of lower courts in the exercise of the power of suspension under section 13 of the law."[60] The essence of the prescribed guidelines was that "[w]hat is indispensable is that the trial court duly hear the parties at a hearing held for determining the validity of the information, and thereafter hand down its ruling, issuing the corresponding order or suspension should it uphold the validity of the information or withhold such suspension in the contrary case."[61] It was likewise ruled that procedural strictures need not be observed during a pre-suspension hearing. All that was necessary was that the accused be given a "fair and adequate opportunity to challenge the validity of the criminal proceedings against him."[62] The following is a quotation of the Court's terms:

> (c) By way of broad guidelines for the lower courts in the exercise of the power of suspension from office of public officers charged under a valid

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[58] *Id.* at 794.
[59] G.R. No. L-32950, 40 SCRA 187 (1971).
[60] Socrates v. Sandiganbayan, G.R. Nos. 116259-60 and 118897-97, 253 SCRA 773, 795 (1996).
[61] *Id.*
[62] *Id.*

> information under the provisions of Republic Act No. 3019 or under the provisions of the Revised Penal Code on bribery, pursuant to Section 13 of said Act, it may be briefly stated that upon the filing of such information, the trial court should issue an order with proper notice requiring the accused officer to show cause at a specific date of hearing why he should not be ordered suspended from office pursuant to the cited mandatory provisions of the Act. Where either the prosecution seasonably files a motion for an order of suspension or the accused in turn files a motion to quash the information or challenges the validity thereof, such show-cause order of the trial court would no longer be necessary. *What is indispensable is that the trial court duly hear the parties at a hearing held for determining the validity of the information, and thereafter hand down its ruling,* issuing the corresponding order or suspension should it uphold the validity of the information or withhold such suspension in the contrary case.
>
> (d) *No specific rules need be laid down for such pre-suspension hearing. Suffice it to state that the accused should be given a fair and adequate opportunity to challenge the validity of the criminal proceedings against him, e.g.*, that he has not been afforded the right of due preliminary investigation; that the acts for which he stands charged do not constitute a violation of the provisions of Republic Act No. 3019 or of the bribery provisions of the Revised Penal Code which would warrant his mandatory suspension from office under Section 13 of the Act; or he may present a motion to quash the information on any of the grounds provided in Rule 117 of the Rules of Court. The mandatory suspension decreed by the Act upon determination of the pendency in court of a criminal prosecution for violation of the Anti-Graft Act or for bribery under a valid information requires at the same time that the hearing be expeditious, and not unduly protracted such as to thwart the prompt suspension envisioned by the Act. Hence, if the trial court, say, finds the ground alleged in the quashal motion not to be indubitable, then it shall be called upon to issue the suspension order upon its upholding the validity of the information and setting the same for trial on the merits.[63] [Emphasis supplied.]

Finally, on the basis of the aforestated pronouncements, the Court then provided specific parameters for the exercise of discretion by lower courts in cases involving preventive suspension under section 13. It was held that the exercise of discretion by lower courts is allowed only during the pre-suspension hearing where it must determine whether or not:

(a) the accused had been afforded due preliminary investigation prior to the filing of the information against him; or
(b) the acts for which he was charged constitute a violation of the provisions of Republic Act No. 3019 or of the provisions of Title 7, Book II of the Revised Penal Code; or

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[63] Socrates v. Sandiganbayan, G.R. Nos. 116259-60 and 118897-97, 253 SCRA 773, 795-796 (1996), *citing* Luciano v. Mariano, G.R. No. L-32950, 40 SCRA 187 (1971).

(c) the informations against him can be quashed, under any of the grounds provided in the Rules of Court.[64]

Once the information is found to be sufficient in form and substance, the court must then issue the order of suspension as a matter of course.[65]

The later case of *Segovia v. Sandiganbayan*[66] synthesized the rulings in *Luciano v. Mariano*[67] and in *Socrates* by declaring that the imposition of suspension is "not automatic or self-operative" and that "a pre-condition therefor is the existence of a valid information, determined at a pre-suspension hearing."[68] It was likewise in *Segovia* where the Court, obviously irate due to the continuous flow of cases questioning the mandatory character of preventive suspension under section 13, rendered the following admonition:

> Petitioners would now have this Court strike down these resolutions because supposedly rendered in excess of jurisdiction or with grave abuse of discretion. The Court will not do so. In no sense may the challenged resolutions be stigmatized as so clearly capricious, whimsical, oppressive, egregiously erroneous or wanting in logic as to call for invalidation by the extraordinary writ of *certiorari*. On the contrary, in promulgating those resolutions, the Sandiganbayan did but adhere to the clear command of the law and what it calls a "mass of jurisprudence" emanating from this Court, sustaining its authority to decree suspension of public officials and employees indicted before it. Indeed, that the theory of "discretionary suspension" should still be advocated at this late date, despite the "mass of jurisprudence" relevant to the issue, is little short of amazing, bordering on contumacious disregard of the solemn magisterial pronouncements of the Highest Court of the land.[69]

In *Segovia*, the Court relied heavily on the cases of *Bolastig v. Sandiganbayan*,[70] *Luciano v. Mariano*,[71] *Socrates v. Sandiganbayan*,[72] *People v. Albano*,[73] *Gonzaga v. Sandiganbayan*,[74] *Libanan v. Sandiganbayan*,[75] and *Bayot v. Sandiganbayan*.[76]

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[64] Socrates v. Sandiganbayan, G.R. Nos. 116259-60 and 118897-97, 253 SCRA 773, 796 (1996).
[65] *Id.* at 797.
[66] G.R. No. 124067, 288 SCRA 328 (1998).
[67] G.R. No. L-32950, 40 SCRA 187 (1971).
[68] Segovia v. Sandiganbayan, G.R. No. 124067, 288 SCRA 328, 338 (1998).
[69] *Id.* at 336.
[70] G.R. No. 110503, 235 SCRA 103 (1994).
[71] G.R. No. L-32950, 40 SCRA 187 (1971).
[72] G.R. Nos. 116259-60 and 118897-97, 253 SCRA 773 (1996).
[73] G.R. Nos. L-45379-77, 168 SCRA 571 (1988).
[74] G.R. No. 96131, 201 SCRA 417 (1991).
[75] G.R. No. 112386, 233 SCRA 163 (1994).
[76] G.R. Nos. L-61776 to 61861, 128 SCRA 383 (1984).

Finally, in the very recent case of Juan v. People,[77] the well-settled doctrines whose genealogy had just been traced were once again reaffirmed. In this particular case, elective barangay officials questioned the validity of their preventive suspension after having been charged with unlawful use of barangay property for partisan political activities. As expected, the Court rejected the challenge, citing cases already discussed in this study.

IV. THE BIRTH OF A DOCTRINE

> I consider it a tragedy of no minor magnitude that the majority of the Court has so lightly dismissed a splendid and timely opportunity to locate answers of far-reaching import to grave and transcendental questions.
>
> For the present, I am content that I have put down my thoughts, my misgivings, and my doubts in writing – this in the hope that they will, at some future proper occasion, be accorded the serious attention that they do seriously deserve.
>
> - *Former Chief Justice Fred Ruiz Castro*[78]

A. DURATION OF SUSPENSION: AN ISSUE OLDER THAN THE LAW ITSELF

The issue regarding the lawful duration of preventive suspension of a public officer had already been confronting the judiciary even prior to the inception of the Anti-Graft Law. The problem is literally older than the law itself. This much is demonstrated by the 1956 case of *Suelto v. Muñoz-Palma.*[79]

Suelto involved the petitioner Jose Suelto, a justice of the peace who was placed under preventive suspension on charges of electioneering, abuse of position, and immorality. The petitioner later on sought his reinstatement, claiming that the purpose of the preventive suspension had already been served by virtue of the fact that formal charges against him had already been filed with the proper judicial authority. The Supreme Court paid no heed to such contention and sustained the continued suspension of the petitioner. The Court through Mr. Justice Alejo Labrador ratiocinated thus:

> *It is also to be noted that unlike officials holding office by virtue of popular mandate, petitioner herein must have been appointed on the basis of his reputation for honesty and impartiality and sense of justice.* The fact that respondent judge did not dismiss the administrative case against him upon the submission of the evidence for the complainant proves the existence *prima facie* of the acts imputed to him. Under such circumstances, it is hardly proper to allow the petitioner to be

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[77] G.R. No. 132378, 322 SCRA 125 (2000).
[78] Separate Opinion in Oliveros v. Villaluz, G.R. No. L-34636, 57 SCRA 163, 198 (1974).
[79] 98 Phil. 810 (1956).

> placed back in office, delicate as the position of justice of the peace is. *There is no law that limits the period of preventive suspension such as that which exists in case of elective officials. The absence of such limitation or of a procedure in administrative cases against justices of the peace implies legislative intent to deny the right to a limited preventive suspension and the grant of full and ample discretion in administrative investigations.* There is, therefore, no clear legal right on the part of the petitioner herein to be returned to his position after a certain period of preventive suspension and neither is there a corresponding legal duty on the part of judicial official suspending him to return him now to the position from which he was suspended. The petitioner furthermore, cannot claim abuse of discretion on the part of the respondent judge in denying his reinstatement as the case is still pending and the complainant in the administrative case has evidently proved a *prima facie* case.[80] [Emphasis supplied.]

Quite visible in the foregoing pronouncement is what the Court identified to be the reason for the distinction between the duration of preventive suspension between elective officials and other officers such as, in this case, a justice of the peace. The Court pointed out that, "unlike officials holding office by virtue of popular mandate, petitioner herein must have been appointed on the basis of his reputation for honesty and impartiality and sense of justice."[81] The fact that elective officials indeed hold office by virtue of popular mandate remains, to this very day, as the primary reason why there is a need to place limitations upon the duration of preventive suspension for such class of public officers.

B. THE LENGTH DOES MATTER: GARCIA V. EXECUTIVE SECRETARY

The Supreme Court delivered its first authoritative pronouncement revealing its abhorrence of *indefinite* preventive suspension in the landmark case of *Garcia v. Executive Secretary*.[82] The Court therein emphatically noted that indefinite preventive suspension was actually worse than the penalty of removal.[83]

Put in issue in *Garcia* was the indefinite preventive suspension of the chairperson of the then National Science Development Board. The chairperson, petitioner Paulino Garcia, was appointed to a six-year term by the President of the Philippines. Prior to the expiration of Garcia's term however, a change of administration took place after general elections were held. Garcia thereafter refused to vacate his post inasmuch as his appointment by the previous president was for a fixed term of six years. At the time of the change of administration, he was only serving on his fourth year. Garcia was subsequently placed under preventive

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[80] *Id.* at 814.
[81] *Id.*
[82] G.R. No. L-19748, 6 SCRA 1 (1962).
[83] *Id.* at 6.

suspension following allegations of electioneering hurled against him. The suspension was to be for an indefinite period.

By way of *quo warranto* and prohibition proceedings instituted before the Supreme Court, Garcia sought his reinstatement to his office on the ground that his preventive suspension had already exceeded the 60-day limit prescribed by the civil service law in force at that time. The Court subsequently ordered the petitioner's immediate reinstatement. The *ponencia*, penned by Mr. Justice Barrera and concurred in by a unanimous court and with a separate concurrence by Mr. Justice Jose B.L. Reyes, contained the following discourse against the pernicious effects of indefinite preventive suspension:

> This insertion for the first time in our Civil Service Law of an express provision limiting the duration of preventive suspension is significant and timely. It indicates realization by Congress of *the evils of indefinite suspension during investigation, where the respondent employee is deprived in the meantime of his means of livelihood, without an opportunity to find work elsewhere, lest he be considered to have abandoned his office. It is for this reason that it has been truly said that prolonged suspension is worse than removal.* And this is equally true whether the suspended officer or employee is in the classified or unclassified service, or whether he is a presidential appointee or not.[84] [Emphasis supplied.]

However, while obviously wary of the injustice committed upon the suspended officer, some members of the Court likewise noted the evils wrought upon the public interest by indefinite preventive suspension. It was thus pointed out that:

> Preventive suspension of a public officer is not lightly to be resorted to, but only after a previous serious and thorough scrutiny of the charges and that the prompt and continued hearing thereof should not be hampered, both in justice to the suspended officer who is without salary during suspension, and *in the interest of public service to avoid as much as possible the interruption of the efficient functioning of the office that the suspended official holds.*[85] [Emphasis supplied.]

The significance and correctness, both in point of law and fact, of such ruling comes to fore as the *Garcia* case has in the meantime sprung a progeny of cases that either affirm, expound on, or even expand the doctrine hatched in the mother case.

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[84] *Id.*

[85] *Id.* at 9-10.

C. SOME ARE MORE EQUAL THAN OTHERS

The ruling in *Garcia* against indefinite preventive suspensions finds greater and necessary application in the case of elective officials. The distinction is neither novel nor one of first impression. It had, as was pointed out in a previous section of this study, already been noted even in the early case of *Suelto v. Muñoz--Palma*[86] and since then, the Supreme Court has minced no words harping on this point. Case reporters are replete with cases where the Court points out the necessity of limiting the duration of the preventive suspension of elective officials, as will be demonstrated in succeeding portions of this study.

The issue of circumscribing the duration of preventive suspension of elective local officials had already been a cause for concern even as early as 1974, in the case of *Oliveros v. Villaluz*.[87] Although decided under the auspices of the now repealed Decentralization Act of 1967,[88] the case remains significant to this day due largely to the almost prophetic separate opinion rendered therein by then Justice, later on Chief Justice, Fred Ruiz Castro.

The *Oliveros* case involved a municipal mayor who had been placed under preventive suspension for violations of the Anti-Graft Law, particularly sections 3(a) and (e) thereof. In his separate opinion, then Justice Castro had already expressed trepidation over the possible effects of allowing the indefinite preventive suspension of a local elective official charged with violations of the Anti-Graft Law:

> In the deliberations of the Court on this Case, I suggested that we examine the possible delimiting effects of the provisions of the first sentence of section 5 of the Decentralization Act on the provisions of the Anti-Graft and Corrupt Practices Act insofar as the suspension from office of an elective local official is concerned. In no uncertain words did I focus the attention of the Court on the serious ever-present possibility of harassment of an elective local official taking the form of the filing of a valid information against him under the provisions of the Anti-Graft and Corrupt Practices Act after his exoneration in an administrative case involving the same offense.
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> I also pointedly brought out the matter of the notorious delay in the courts of justice that could effectively frustrate an elected or re-elected local official from discharging the duties of his office for the entire term of his office, and thus nullify the will of the people who elected him. I likewise asked the Court to consider the situation where an elective local official runs for the National Assembly and is elected despite the fact that he is under suspension under the

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[86] 98 Phil. 810, 814 (1956).

[87] G.R. No. L-34636, 57 SCRA 163 (1974).

[88] Rep. Act No. 5185 (1967). An Act Granting Further Autonomous Powers to Local Governments. This law is one of the progenitors of Rep. Act No. 7160, The Local Government Code of 1991.

> authority of the provisions of the Anti-Graft and Corrupt Practices Act, and sought a definitive answer to the question. "What then would happen to the suspension meted out to him since it is the National Assembly that determines whether he should assume and continue in office?"
>
> All these and other germane questions were brushed aside by the majority of the Court with the sweeping statement that the provisions of the Decentralization Act apply only to administrative cases. It is this *ex cathedra* attitude, this kind of slothful thinking, that I find abhorrent and therefore deplore.[89]

The former Chief Justice concluded his separate opinion by stating that he was putting down in writing his thoughts, doubts, and misgivings "in the hope that they will, at some future proper occasion, be accorded the serious attention that they do seriously deserve."[90] The attention that which he desired for his concerns would come some two decades later in the case of *Layno v. Sandiganbayan*.[91]

D. LAYNO V. SANDIGANBAYAN

Involved in *Layno* was a municipal mayor who had been criminally charged with violating section 3, paragraph (e) of the Anti-Graft Law and was thus placed under preventive suspension pursuant to section 13 of the same law. The Sandiganbayan placed the mayor, petitioner Layno, under preventive suspension on 26 October 1983. As of the date of the promulgation of the decision of the Supreme Court on 24 May 1985, Layno had remained suspended. This fact did not sit well with the Court.

Mr. Chief Justice Enrique Fernando, speaking for the Court, invoked the doctrine of unconstitutional application[92] and restated its terms according to the case of *Pintacasi v. Court of Agrarian Relations*:[93] "A law may be valid and yet susceptible to the charge of its being unconstitutionally applied."

The immediate lifting of Layno's preventive suspension was ordered and the Court likewise explained why placing an elective local official under preventive suspension for an unreasonable amount of time will be detrimental to the public welfare:

> Petitioner is a duly elected municipal mayor of Lianga, Surigao del Sur. His term of office does not expire until 1986. Were it not for this information and

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[89] Oliveros v. Villaluz, G.R. No. L-34636, 57 SCRA 163, 198 (1974).
[90] *Id.* at 199.
[91] G.R. No. L-65848, 136 SCRA 536 (1985).
[92] *Id.* at 540.
[93] G.R. No. L-23704, 46 SCRA 20 (1972).

> the suspension decreed by the Sandiganbayan according to the Anti-Graft and Corrupt Practices Act, he would have been all this while in the full discharge of his functions as such municipal mayor. He was elected precisely to do so. As of October 26, 1983, he has been unable to. *It is a basic assumption of the electoral process implicit in the right of suffrage that the people are entitled to the services of elective officials of their choice.* For misfeasance or malfeasance, any of them could, of course, be proceeded against administratively or, as in this instance, criminally. In either case, his culpability must be established. Moreover, if there be a criminal action, he is entitled to the constitutional presumption of innocence. *A preventive suspension may be justified. Its continuance, however, for an unreasonable length of time raises a due process question. For even if thereafter he was acquitted, in the meanwhile his right to hold office had been nullified. Clearly, there would be in such a case an injustice suffered by him. Nor is he the only victim. There is injustice inflicted likewise on the people of Lianga. They were deprived of the services of the man they had elected to serve as mayor.* In that sense, to paraphrase Justice Cardozo, the protracted continuance of this preventive suspension had outrun the bounds of reason and resulted in sheer oppression. A *denial of due process is thus quite manifest.* It is to avoid such an unconstitutional application that the order of suspension should be lifted.[94] [Emphasis supplied.]

The Court thus explained that although preventive suspension under the Anti-Graft Law is, *per se*, constitutional, its persistence for an unreasonable length of time will nevertheless be violative of the Constitution's due process clause. This unmistakably becomes an unconstitutional application of an otherwise constitutional law. Very clearly, the Court felt quite uneasy towards the possible violation of substantive due process.[95]

Aside from a violation of the due process clause, the suspension of an elective local official for an unreasonable length of time raises an equal protection question. In the instant case, Layno was prosecuted *criminally* under the Anti-Graft Law. The Court pointed out that had Layno been prosecuted *administratively*, which could have just as easily been done given the facts of the case, the Local Government Code[96] would have been applicable. Under the latter law, the preventive suspension of an elective local official shall not extend beyond 60 days after the start of such suspension. The Court in effect was pointing out the absurdity, not to mention the unconstitutionality, of providing for such a limitation in administrative proceedings

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[94] Layno v. Sandiganbayan, G.R. No. L-65848, 136 SCRA 536, 541 (1985).

[95] *See* ISAGANI A. CRUZ, CONSTITUTIONAL LAW 104 (8th ed. 1998). In his textbook on Constitutional Law, former Supreme Court Justice Isagani Cruz explained the concept of substantive due process. He explains that substantive due process requires the intrinsic validity of the law in question. To be considered intrinsically valid, the law must comply with two requisites: First, it must have a valid governmental objective, and second, this objective must be pursued in a lawful manner, meaning the means employed must be reasonably related to the accomplishment of the purpose and not unduly oppressive.

[96] At the time *Layno* was decided, the Local Government Code then in force was still Batas Pambansa Blg. 337 (1983). This law has already been expressly repealed by the current Local Government Code, Rep. Act No. 7160 (1991).

while at the same time leaving the elective local official hanging out to dry if the proceedings were criminal in nature. The Court concluded its constitutional tirade by asserting that the mere fact that the petitioner is facing a charge under the Anti-Graft Law does not justify a different rule of law for to do so would be to negate the safeguard of the equal protection guarantee.

Interestingly though, while the Court was quite emphatic in declaring the unconstitutionality of indefinitely suspending an elective local official, *it did not make any mention whatsoever of the applicable duration of preventive suspension under section 13 of the Anti-Graft Law for elective local officials*. The oversight, however, was remedied four years later by *Deloso v. Sandiganbayan*.[97]

E. DELOSO *V.* SANDIGANBAYAN

In *Deloso*, five separate informations were filed accusing petitioner Amor Deloso, then the incumbent municipal mayor of Botolan, Zambales, of violations of the Anti-Graft Law. The charges pertained to his involvement in irregularities in the award of licenses for the operation of fish corral within municipal waters. By the time he was placed under preventive suspension by the Sandiganbayan pursuant to section 13, however, Deloso had already been elected provincial governor. Nevertheless, the local executive was still preventively suspended. The preventive suspension was questioned before the Supreme Court. Initially, Deloso challenged the very constitutionality of the mandatory preventive suspension under section 13. The Court, however, saw no need to rule on such issue inasmuch as the factual setting of Deloso's case was similar to that of the *Layno* case. Once again, therefore, the Court opted instead to test the constitutionality of the *application* of the provision in question.

By way of introduction, the Court cited the separate opinion of former Chief Justice Fred Ruiz Castro in the case of *Oliveros v. Villaluz*[98] wherein the former Chief Justice called the Court's attention to the absurd effects of allowing an elective local official to be preventively suspended indefinitely. Thereafter, the Court proceeded to resolve the issue by relying on and quoting extensively from the *Layno* case. Hereunder are the words of the Court, delivered through Mr. Justice Hugo Gutierrez:

> Petitioner Deloso was elected governor of the Province of Zambales in the January 18, 1988 local elections. The regular term of a governor is only 3 years although he shall serve until noon of June 30, 1992 by special provision of the Constitution. (Section 8, Article X, Section 2, Article XVIII, Constitution). He

[97] G.R. Nos. 86899-903, 173 SCRA 409 (1989).
[98] Oliveros v. Villaluz, G.R. No. L-34636, 57 SCRA 163 (1974).

> was, however, ordered suspended from performing his duties as governor by the Sandiganbayan pursuant to Section 13 of Republic Act No. 3019 by virtue of the criminal charges filed against him. The order of suspension does not have a definite period so that the petitioner may be suspended for the rest of his term of office unless his case is terminated sooner. An extended suspension is a distinct possibility considering that the Sandiganbayan denied the petitioner's plea for earlier dates of trial of his cases on the ground that *there are other cases set earlier which have a right to expect priority.*
>
> Under these circumstances the preventive suspension which initially may be justified becomes unreasonable thus raising a due process question.[99]

Having ruled on the invalidity of Deloso's indefinite preventive suspension, the Court, which practically cut and pasted the *Layno* ruling upon the *Deloso ponencia*, nevertheless decided to go one step further. As if determined to pick up from where the *Layno* Court left off, the *Deloso* Court was determined to finally provide for a rule regarding the applicable duration of preventive suspension under section 13 of the Anti-Graft Law for elective local officials.

F. THE "DELOSO DOCTRINE"

The Court in *Deloso* was not content with just "parroting" the *Layno* Court and declaring Deloso's indefinite preventive suspension unconstitutional for being violative of the due process clause. The ruling in *Garcia v. Executive Secretary*[100] was again thrust into the limelight, so to speak, and was to play a crucial role in the formation of the new doctrine. Just as had been done in *Layno*, the Court first applied the *Garcia* ruling to the predicament of *Deloso* in particular and to elective local officials in general. Said the Court:

> The application of the *Garcia* injunction against preventive suspensions for an unreasonable period of time applies with greater force to elective officials and especially to the petitioner whose term is a relatively short one. The interests of the sovereign electorate and the province of Zambales cannot be subordinated to the heavy caseload of the Sandiganbayan and of this Court.
>
> It would be most unfair to the people of Zambales who elected the petitioner to the highest provincial office in their command if they are deprived of his services for an indefinite period with the termination of his case possibly extending beyond his entire term simply because the big number of sequestration, ill-gotten wealth, murder, malversation of public finds and other more serious offenses plus incidents and resolutions that may be brought to

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[99] Deloso v. Sandiganbayan, G.R. Nos. 86899-903, 173 SCRA 409, 415-16 (1989).
[100] G.R. No. L-19748, 6 SCRA 1 (1962).

> the Supreme Court prevents the expedited determination of his innocence or guilt.[101]

Having declared expressly that the proscription against indefinite preventive suspension, which *Garcia* held applicable to presidential appointees *with a fixed term of office*, applies with greater force to elective local officials for the reasons excerpted above, the Court then decisively laid down the following rule:

> The order dated February 10, 1989 suspending the petitioner without a definite period cannot be sanctioned. *We rule that henceforth a preventive suspension of an elective public officer under Section 13 of Republic Act 3019 should be limited to the ninety (90) days under Section 42 of Presidential Decree No. 807, the Civil Service Decree,* which period also appears reasonable and appropriate under the circumstances of this case.[102] [Emphasis supplied.]

With a stroke of the pen, therefore, the Court filled in a gaping hole in section 13 of the Anti-Graft Law, which it could have done in *Layno* but did not. By virtue of its pronouncements in this case, the rule is now clear: *A preventive suspension of an elective public officer under section 13 of the Anti-Graft Law should be limited to the ninety (90) days under section 42 of Presidential Decree No. 807,*[103] *the Civil Service Decree.* This specific provision reads:

> Sec. 42. Lifting of Preventive Suspension Pending Administrative Investigation. *When the administrative case against the officer of employee under preventive suspension is not finally decided by the disciplining authority within the period of ninety (90) days after the date of suspension of the respondent who is not a presidential appointee, the respondent shall be automatically reinstated in the service:* Provided, That when the delay in the disposition of the case is due to the fault, negligence or petition of the respondent, the period of delay shall not be counted in computing the period of suspension herein provided.[104] [Emphasis supplied.]

This very same section of the old Civil Service Decree is what is now section 52 of Book V, Title I, Subtitle A of the current Administrative Code of 1987,[105] the current Civil Service Law. Under the current state of case law, therefore, the governing law with regard to the duration of preventive suspension under section 13 of the Anti-Graft Law is section 52 of the current Civil Service Law, and the maximum period allowed therein is *only* 90 days.

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[101] Deloso v. Sandiganbayan, G.R. Nos. 86899-903, 173 SCRA 409, 418-419 (1989).

[102] *Id.* at 419.

[103] Pres. Decree No. 807 (1975). Providing for the Organization of the Civil Service Commission in Accordance with Provisions of the Constitution, Prescribing its Powers and Functions, and for Other Purposes.

[104] Pres. Decree No. 807 (1975), sec. 42.

[105] Exec. Order No. 292 (1987). Instituting the Administrative Code of 1987.

Very noticeable indeed was the absence in section 13 of the Anti-Graft Law of any specific provision regarding the duration of preventive suspension therein for any official whether elective, appointive, or a regular civil service eligible. The law simply provided:

> Sec. 13. *Suspension and Loss of Benefits.* Any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property whether as a simple or as a complex offense in whatever stage of execution and mode of participation, is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him.
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> In the event that such convicted officer, who may have already been separated from the service, has already received such benefits he shall be liable to restitute the same to the Government.[106]

The law's failure to provide for such a period can indeed have undesired effects. Even as far back as 1974, again in the case of *Oliveros v. Villaluz*,[107] a member of the Supreme Court had to resort to some great deal of statutory construction just to be able to arrive at a conclusion as to what period should be applied for elective local officials. The effect was catastrophic. Mr. Justice Esguerra, in a separate concurring opinion in said case, suggested thus:

> [U]nder Section 13 of Republic Act 3019 the suspension shall continue during the pendency in court of the criminal prosecution under a valid information for violation of said Act, and shall cease only if he is acquitted as shown by the explicit provisions of said Section 13.
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> ...
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> Even if the law did not explicitly specify how long such suspension shall last, it should be understood that it is for the duration of the criminal prosecution for violation of Republic Act 3019.[108]

It is quite fortunate that this interpretation of the law never found its way into the majority opinion, otherwise the very results feared by Chief Justice Castro would have come to fruition. The doctrine laid down in *Deloso*, therefore, provided the element of certainty that was sorely lacking in the law, at least as far as the

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[106] Rep. Act. No. 3019 (1960), sec. 13, as amended by Batas Pambansa Blg. 195 (1982).
[107] Oliveros v. Villaluz, G.R. No. L-34636, 57 SCRA 163 (1974).
[108] *Id.* at 216.

duration of preventive suspension under section 13 is concerned. Glaring however, is the fact that the *Deloso* ruling *never* explained why the 90-day period in the Civil Service Decree was chosen. The only explanation offered therein was that the 90-day period "also appear[ed] reasonable and appropriate under the circumstances of this case."[109]

F. GONZAGA *V.* SANDIGANBAYAN

Just two years after the *Deloso* doctrine became a part of the Philippine legal system,[110] it was again about to undergo an expansion, or better yet, a clarification. The avenue this time around is the case of *Gonzaga v. Sandiganbayan*.[111] The factual setting of *Gonzaga* was very much the same as that of *Layno*. A public officer was charged with malversation of public funds[112] and, pursuant to section 13 of the Anti-Graft Law, was suspended *pendente lite*. Once again, a very stubborn Sandiganbayan ordered an indefinite preventive suspension.[113] As the anti-graft court had been accustomed to doing, its order suspending Gonzaga specified no period over which the suspension was to be effective.

The petitioner Gonzaga decided to question her suspension, alleging that it violated her constitutional right to be presumed innocent inasmuch as it practically amounted to a penalty. The Court however, brushed aside the contest, holding that this issue had already been long resolved in previous cases. What it did, however,

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[109] Deloso v. Sandiganbayan, G.R. Nos. 86899-903, 173 SCRA 409, 419 (1989).

[110] Art. 8 of the New Civil Code provides that "judicial decisions applying or interpreting the laws or the Constitution shall for a part of the legal system of the Philippines."

[111] G.R. No. 96131, 201 SCRA 417 (1991).

[112] REV. PEN. CODE, art. 207. The provision reads:

ART. 217. *Malversation of public funds or property - Presumption of malversation.* - Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

1. The penalty of *prision correccional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed 200 pesos.

2. The penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than 200 pesos but does not exceed 6,000 pesos.

3. The penalty of *prision mayor* in its maximum period to *reclusion temporal* in its minimum period, if the amount involved is more than 6,000 pesos but is less than 12,000 pesos.

4. The penalty of reclusion temporal in its medium and maximum periods, if the amount involved is more than 12,000 pesos but is less than 22,000 pesos. If the amount exceeds the latter, the penalty shall be *reclusion temporal* in its maximum period to *reclusion perpetua*.

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses. (As amended by Rep. Act. No. 1060.)

[113] Gonzaga v. Sandiganbayan, G.R. No. 96131, 201 SCRA 417, 422 (1991).

was to point out that the proper issue, as had been the case in *Layno* and *Deloso*, was *whether or not the suspension was carried out constitutionally.*

As if telling the petitioner that she was barking up the wrong tree, the Court identified the proper issue in this wise: "The issue in this case, as we see it, is not whether Section 13, Rep. Act 3019 is valid or not, but rather whether the same is constitutionally applied in relation to the surrounding circumstances."[114]

The Court could have easily engrafted the *Deloso* ruling and held that the suspension is unconstitutional inasmuch as it was for an indefinite period and that it had already exceeded the 90-day limit. This would have been possible, since the factual settings of *Deloso* and *Gonzaga* are practically the same. This could not be done immediately, however, due to one slight twist. The petitioner Gonzaga was *not an elective local official.* She was a pubic school principal. The Court, therefore, had to make additional clarifications.

First, the Court reiterated the proscription against indefinite preventive suspension, citing *Garcia* and *Layno*. Thereafter, it cited the case of *Doromal v. Sandiganbayan*,[115] where, on the strength of the 90-day limit prescribed by section 42 of the Civil Service Decree and the *Deloso* ruling, the Court held as unconstitutional the preventive suspension of a commissioner of the Presidential Commission on Good Government (PCGG) for having exceeded the said 90-day limit. Finally, the *Deloso* and *Doromal* rulings were applied to Gonzaga's case. The effect was that Gonzaga's suspension for an indefinite period was likewise held unconstitutional. The *ponencia*, penned by Mr. Justice Teodoro Padilla, provided:

> In the more recent cases of *Deloso vs. Sandiganbayan*, and *Doromal vs. Sandiganbayan*, suspension under Section 13 of Rep. Act 3019 was held as limited to a maximum period of ninety (90) days, in consonance with Section 42 of Pres. Decree No. 807 (otherwise known as the "Civil Service Decree"). We see no cogent reason why the same rule should not apply to herein petitioner.
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> In fact, the recommendation of the Solicitor General (counsel for public respondent) is that, inasmuch as the suspension mentioned under Section 13 of Rep. Act 3019 is understood as limited to a maximum duration of ninety (90) days, the order of suspension imposed on petitioner, having been rendered on 10 September 1990, should now be lifted, as suspension has already exceeded the maximum period of ninety (90) days.[116]

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[114] *Id.* at 423.

[115] G.R. No. 85468, 177 SCRA 354 (1989).

[116] Gonzaga v. Sandiganbayan, G.R. No. 96131, 201 SCRA 417, 424-426 (1991).

But the Court was not about to stop there. It went on to merge the rulings in Deloso and Doromal and held that henceforth, the 90-day maximum period of preventive suspension under section 13 of the Anti-Graft Law shall be applicable to all those who are validly charged under the said Act, whether elective or appointive officer or employee as defined in section 2(b)[117] of the Anti-Graft Law.[118] The Court believed this was the proper ruling "considering that the persons who can be charged under [the Anti-Graft Law] include elective and appointive officers and employees, and further taking into account the rulings in the *Deloso* and *Doromal* cases."[119]

Concluding the *ponencia*, Mr. Justice Padilla summarized the rulings they reached on that occasion:

> To the extent that there may be cases of indefinite suspension imposed either under Section 13 of Rep. Act 3019, or Section 42 of Pres. Decree 807, it is best for the guidance of all concerned that this Court set forth the rules on the period of preventive suspension under the aforementioned laws, as follows:
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> 1. Preventive suspension under Section 13, Rep. Act 3019 as amended shall be limited to a maximum period of ninety (90) days, from issuance thereof, and this applies to all public officers, (as defined in Section 2(b) of Rep. Act 3019) who are validly charged under said Act.
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> 2. Preventive suspension under Section 42 of Pres. Decree 807 shall apply to all officers or employees whose positions are embraced in the Civil Service, as provided under Sections 3 and 4 of said Pres. Decree 807; and shall be limited to a maximum period of ninety (90) days from issuance, except where there is delay in the disposition of the case, which is due to the fault, negligence or petition of the respondent, in which case the period of delay shall not be counted in computing the period of suspension herein stated; provided that if the person suspended is a presidential appointee, the continuance of his suspension shall be for a reasonable time as the circumstances of the case may warrant.[120]

With the establishment of the new doctrine, the issue regarding the duration of preventive suspension appeared to have been settled with finality.

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[117] Section 2(b) of Rep. Act. 3190 (1960) provides:
Sec. 2. Definition of terms. As used in this Act, that term
....
(b) "Public officer" includes elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government as defined in the preceding subparagraph.

[118] Gonzaga v. Sandiganbayan, G.R. No. 96131, 201 SCRA 417, 426 (1991).

[119] *Id.*

[120] *Id.* at 427-428.

G. BRANDISHING THE NEW BLADE

With the rulings in *Garcia v. Executive Secretary*,[121] *Layno v. Sandiganbayan*,[122] *Deloso v. Sandiganbayan*,[123] and *Gonzaga v. Sandiganbayan*,[124] there appeared to be ample jurisprudence to address whatever controversy may arise regarding the duration of the imposable preventive suspension under section 13 of the Anti-Graft Law. For quite some time, such was indeed the case.

Less than a year after *Gonzaga*, the new doctrine was finally applied in the first of what would turn out to be a string of consistent rulings where the Court unflinchingly applied the 90-day limit. The first-born case was that of *Pimentel v. Garchitorena*[125] in 1992. The petitioner Pimentel was at the time the Governor of the Province of Quirino. Together with other provincial officials, Pimentel was charged with falsification of public documents, in violation of section 4, paragraph (h) of the Anti-Graft Law. On motion of the prosecution, Pimentel was thereafter placed by the Sandiganbayan under preventive suspension pursuant to section 13 of the Anti-Graft Law.

Undaunted, Pimentel questioned the validity of his suspension before the Supreme Court. The Court upheld the validity of the suspension, but in the same breath ordered said suspension lifted inasmuch as, by the time the decision was promulgated, the suspension had already exceeded the 90-day limit. The Court, speaking through Mme. Justice Carolina Griño-Aquino, held that "in the light of our decisions in *Deloso v. Sandiganbayan*, *Doromal v. Sandiganbayan*, and *Gonzaga v. Sandiganbayan*, such suspension may not exceed the maximum period of 90 days fixed in section 42 of P.D. 807."[126]

Next came *Bunye v. Escareal*[127] in 1993 where the 90-day preventive suspension of a municipal mayor, vice-mayor, and members of the *Sangguniang Bayan* was likewise sustained by the Court.

H. BOLASTIG *V.* SANDIGANBAYAN

Thereafter came the 1994 case of *Bolastig v. Sandiganbayan*.[128] This case involved the 90-day preventive suspension of petitioner Antonio Bolastig, who was

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[121] G.R. No. L-19748, 6 SCRA 1 (1962).
[122] G.R. No. L-65848, 136 SCRA 536 (1985).
[123] G.R. Nos. 86899-903, 173 SCRA 409 (1989).
[124] G.R. No. 96131, 201 SCRA 417 (1991).
[125] G.R. Nos. 98340-42 and 101066-68, 208 SCRA 122 (1992).
[126] *Id.* at 124 (citations omitted).
[127] G.R. No. 110216, 226 SCRA 332 (1993).
[128] G.R. No. 110503, 235 SCRA 103 (1994).

at the time the Governor of Samar province, for violations of the Anti-Graft Law. The charges involved the over-pricing of certain office supplies. On motion of the prosecution, Bolastig was placed under a 90-day preventive suspension by the Sandiganbayan on the authority of section 13. Bolastig contested his suspension, alleging that "while the Sandiganbayan has the power to order preventive suspension, there is a need [for the Sandiganbayan] to go further, beyond the filing of the information, to a determination of the necessity of the preventive suspension in accordance with the spirit and intent of the Anti-Graft Law."[129]

The argument appeared novel, but the Court was unimpressed. Predictably, the Sandiganbayan's order of suspension was sustained. Worth noting, however, is that in this case, the Court clarified that once all requisites therefor are satisfied, the Sandiganbayan will have no discretion but to impose a 90-day preventive suspension and that it was not within the graft court's power to impose a shorter duration. The Court, this time through Mr. Justice Vicente Mendoza, justified such a holding by explaining thus:

> Indeed, were the *Sandiganbayan* given the discretion to impose a shorter period of suspension, say, 80, 70 or 60 days, as petitioner asserts, it would lie in its power not to suspend the accused at all. That, of course, would be contrary to the command of sec. 13 of Republic Act No. 3019.[130]

It was further explained in *Bolastig* that when the Supreme Court used the phrase "the maximum period of 90 days" in its previous rulings, it was *only for the purpose of emphasizing that the preventive suspensions in question in those cases had exceeded the limit allowed by law, and did not in any way grant the Sandiganbayan the discretion of imposing a suspension for less than 90 days.* The reason again is that to grant the anti-graft court such discretion will be tantamount to granting it the discretion not to suspend at all. This of course will go against the grain of the well-founded doctrine that preventive suspension under section 13 of the Anti-Graft Law is mandatory.

The Court was, however, quick to assert further that this did not mean on the other hand that since only a 90-day suspension may be imposed, the suspension will always have to be served for the full 90 days. Explained the Court:

> It is to be noted that the ninety-day period of preventive suspension is not found in sec. 13 of Republic Act No. 3019 but was adopted from sec. 42 of the Civil Service Decree (P.D. No. 807), which is now sec. 52 of the Administrative Code of 1987. This latter provision states:

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[129] *Id.* at 107.
[130] *Id.* at 109.

> Sec. 52. *Lifting of Preventive Suspension Pending Administrative Investigation.* — When the administrative case against the officer or employee under preventive suspension is not finally decided by the disciplining authority within the period of ninety (90) days after the date of suspension of the respondent who is not a presidential appointee, the respondent shall be automatically reinstated in the service: *Provided*, That when the delay in the disposition of the case is due to the fault, negligence or petition of the respondent, the period of delay shall not be counted in computing the period of suspension herein provided.
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> The duration of preventive suspension is thus coeval with the period prescribed for deciding administrative disciplinary cases. If the case is decided before ninety days, then the suspension will last less than ninety days, but if the case is not decided within ninety days, then the preventive suspension must be up to ninety days only. *Similarly, as applied to criminal prosecutions under Republic Act No. 3019, preventive suspension will last for less than ninety days only if the case is decided within that period; otherwise, it will continue for ninety days.*
>
> The duration of preventive suspension will, therefore, vary to the extent that it is contingent on the time it takes the court to decide the case but not on account of any discretion lodged in the court, taking into account the probability that the accused may use his office to hamper his prosecution.[131] [Emphasis supplied.]

The doctrine, by virtue of *Bolastig*, had thus been fine-tuned even further. So much so that in the 1996 case of *Socrates v. Sandiganbayan*,[132] the Court found no difficulty in again sustaining the 90-day preventive suspension of petitioner Salvador P. Socrates who was then the Governor of the province of Palawan.

Up to this point, there seemed to be no possibility whatsoever of a case coming up which the Court will not be able to decide correctly. Such was the case until, once again, the seemingly unthinkable happened. All because of the case of *Rios v. Sandiganbayan*.[133]

V. A PERPLEXED SUPREME COURT: 60 OR 90 ?

Maledicta expositio qua corrupit textum.[134]

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[131] *Id.* at 108-109.
[132] G.R. Nos. 116259-60 and 118896-97, 253 SCRA 773 (1996).
[133] G.R. No. 129913, 279 SCRA 581 (1997).
[134] It is dangerous construction which is against the text.

A. THE PRODIGAL SON: RIOS V. SANDIGANBAYAN

Dindo C. Rios was the incumbent Mayor of the Municipality of San Fernando, Romblon. An information for a violation of the Anti-Graft Law was filed against him alleging unauthorized disposition of confiscated *tanguile* lumber. The Office of the Special Prosecutor thereafter filed a motion with the Sandiganbayan seeking the preventive suspension of Rios pursuant to section 13 of said law. The Sandiganbayan granted the motion and handed down a resolution suspending Rios for a period of 90 days counted from receipt thereof.

Rios was not about to take the developments sitting down. By way of *certiorari* before the Supreme Court, the embattled mayor tested the validity of his 90-day preventive suspension on the ground that the Sandiganbayan committed grave abuse of discretion when it provided for a 90-day suspension in clear disregard of the pertinent provisions of the Local Government Code of 1991.[135] The provision relied upon by Rios, section 63 of the aforestated code, reads:

> Sec. 63. Preventive Suspension. (a) Preventive suspension may be imposed:
>
> (1) By the President, if the respondent is an elective official of a province, a highly urbanized or an independent component city;
>
> (2) By the governor, if the respondent is an elective official of a component city or municipality; or
>
> (3) By the mayor, if the respondent is an elective official of the barangay.
>
> (b) Preventive suspension may be imposed at any time after the issues are joined, when the evidence of guilt is strong, and given the gravity of the offense, there is great probability that the continuance in office of the respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence: *Provided, That, any single preventive suspension of local elective officials shall not extend beyond sixty (60) days*: Provided, further, That in the event that several *administrative* cases are filed against an elective official, he cannot be preventively suspended for more than ninety (90) days within a single year on the same ground or grounds existing and known at the time of the first suspension.
>
> (c) Upon expiration of the preventive suspension, the suspended elective official shall be deemed reinstated in office without prejudice to the continuation of the proceedings against him, which shall be terminated within one hundred twenty (120) days from the time he was formally notified of the case against him. However, if the delay in the proceedings of the case is due to his fault, neglect, or request, other than the appeal duly filed, the duration of

[135] Rep. Act No. 7160 (1991). An Act Providing for a Local Government Code of 1991.

> such delay shall not be counted in computing the time of termination of the case.
>
> (d) Any abuse of the exercise of the power of preventive suspension shall be penalized as abuse of authority.[136] [Emphasis supplied.]

Given the effort and the number of cases it took the Supreme Court to finally establish the rules that would govern preventive suspension under the Anti-Graft Law, it appeared as though it could just easily dismiss Rios' contention. That was not to happen, however, as the court perplexingly bit Rios' bait. The Court's Third Division, speaking through Mme. Justice Flerida Ruth Romero, held that while the imposition of suspension in this case was indeed proper, the 90-day duration nevertheless exceeded the 60-day limit pegged by section 63 of the Local Government Code of 1991[137] and thus ordered that the same be reduced to 60 days. The exact terms of the decision were:

> On the other hand, we find merit in petitioner's second assigned error. The *Sandiganbayan* erred in imposing a 90-day suspension upon petitioner for the single case filed against him. Under Section 63 (b) of the Local Government Code, "any single preventive suspension of local elective officials shall not extend beyond sixty (60) days."
>
> WHEREFORE, the appealed decision of the *Sandiganbayan* is AFFIRMED subject to the MODIFICATION that the suspension be reduced to 60 days.[138]

And just like that, it seemed as though the judicial handiwork of several years had been whisked away by the stroke of a pen.

B. BLIND CONCURRENCE

The *Rios* decision had the unanimous concurrence of the entire Third Division composed of Messrs. Justices Jose A. R. Melo, Ricardo Francisco, Artemio Panganiban, and the Division Chairman, Mr. Chief Justice Andres Narvasa.

Aside from the glaring deviation from well-settled and fully developed case law, what adds to the disbelief with which this decision should be met is the fact that then Chief Justice Narvasa was actually the former Chairperson of the Court's Second Division that only three years ago in 1994 promulgated the definitive ruling in the case of *Bolastig v. Sandiganbayan*.[139] It will be recalled that in *Bolastig*, the Court

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[136] Rep. Act No. 7160 (1991), sec. 63.
[137] Rep. Act No. 7160 (1991).
[138] Rios v. Sandiganbayan, G.R. Nos. 129913, 279 SCRA 581, 588-89 (1997).
[139] G.R. No. 110503, 235 SCRA 103 (1994).

held that all requirements being satisfied, the Sandiganbayan had no choice but to impose a 90-day preventive suspension in cases falling under the Anti-Graft Law. Again, the reason for such a holding is that to grant the Sandiganbayan the discretion to impose a shorter suspension will be tantamount to granting it the discretion not to suspend at all, and that this will go against the well-settled doctrine that preventive suspension under section 13 of the Anti-Graft Law is mandatory.

Chief Justice Narvasa moreover had likewise previously given his concurrence to the rulings in *Bunye v. Escareal*,[140] *Pimentel v. Garchitorena*,[141] *Gonzaga v. Sandiganbayan*,[142] *Doromal v. Sandiganbayan*,[143] and *Deloso v. Sandiganbayan*.[144] Suffice it to say, therefore, that he was one of the magistrates practically responsible for the creation of the "90-day rule" for preventive suspensions under section 13 of the Anti-Graft Law. Indeed, to say that his recalcitrance in *Rios* is surprising is an extreme understatement. The Chief Justice was absolutely in a perfect position to register an enlightened dissent, yet such was not to be the case here.

On the other hand, the *ponente*, Mme. Justice Romero, lent her concurrence in the cases of *Socrates* and *Bunye*. At the time the doctrine was still in its formative stages, however, Justice Romero was not yet a member of the Court.

As for the other concurring members of the Division, Messrs. Justices Melo, Francisco, and Panganiban, none of them were members of the Court prior to the *Rios* ruling. This fact, however, does not excuse what would seem to be their blind concurrence to the revolting decision in *Rios*.

In any case, it is clear that the *Rios* ruling cannot and should not be considered as formulating an authoritative interpretation of law that may be applied to future cases. For one, it goes against the unequivocal mandate of the Constitution that only the Court *en banc* can reverse or modify a doctrine or principle of law laid down by the Court, whether in division or *en banc*. In *Rios*, what the Court did was to modify the 90-day rule by opting to apply the pertinent provisions of the Local Government Code and instead impose a 60-day limit upon preventive suspensions under section 13. Was the Court's action valid and thus deserving of jurisprudential status? The Constitution says no. The pertinent constitutional provision very clearly states:

Sec. 4.

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[140] G.R. No. 110216, 226 SCRA 332 (1993).
[141] G.R. Nos. 98340-42 and 101066-68, 208 SCRA 122 (1992).
[142] G.R. No. 96131, 201 SCRA 417 (1991).
[143] G.R. No. 85468, 177 SCRA 354 (1989).
[144] G.R. Nos. 86899-903, 173 SCRA 409 (1989).

...

> (3) Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such Members. When the required number is not obtained, the case shall be decided *en banc*: Provided, that *no doctrine or principle of law laid down by the Court in a decision rendered en banc or in division may be modified or reversed except by the Court sitting en banc.*[145] [Italics supplied.]

Rios was decided by the Court's Third Division. It cannot therefore modify, reverse, or in any way put its fingers on the doctrine gradually and painstakingly formulated and fine-tuned by the Court in the cases of *Layno v. Sandiganbayan*,[146] *Deloso v. Sandiganbayan*,[147] *Doromal v. Sandiganbayan*,[148] *Gonzaga v. Sandiganbayan*,[149] *Pimentel v. Garchitorena*,[150] *Bolastig v. Sandiganbayan*,[151] and *Buraye v. Escareal*[152] without running afoul of the very clear constitutional requirement that a doctrine or principle of law laid down by the Supreme Court can be reversed or modified *exclusively by the Court en banc*. It is worth noting that all of these cases, with the exception of *Bolastig*, were decided by the Court sitting *en banc*.

This circumstance, in addition to others that will be discussed in the next portions of this study, definitely casts a doubtful light upon the ruling in the *Rios* case.

C. LEGAL HERMENEUTICS OR LEGAL ACROBATICS

Another reason for one to be baffled by the *Rios* ruling is that the Court, despite having gone against the grain of a well-established and often-used doctrine, cited no precedent for the ruling whatsoever. It merely quoted the provisions of section 63 of the Local Government Code of 1991[153] as its basis for its decision. In fact, it took the Division just all of two sentences to negate a principle that took decades to formulate. It was thus almost as if a new interpretation of the law was plucked literally from out of nowhere.

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[145] CONST. art. VIII, sec. 4, par. (3).
[146] G.R. No. L-65848, 136 SCRA 536 (1985).
[147] G.R. Nos. 86899-903, 173 SCRA 409 (1989).
[148] G.R. No. 85468, 177 SCRA 354 (1989).
[149] G.R. No. 96131, 201 SCRA 417 (1991).
[150] G.R. Nos. 98340-42 and 101066-68, 208 SCRA 122 (1992).
[151] G.R. No. 110503, 235 SCRA 103 (1994).
[152] G.R. No. 110216, 226 SCRA 332 (1993).
[153] Rep. Act. No. 7160 (1991).

It seems as though the Court itself misread the provision of law that was supposed to be the basis for the *Rios* ruling. The provision in question explicitly provides:

> Sec. 63. Preventive Suspension.
>
> ...
>
> (b) Preventive suspension may be imposed at any time after the issues are joined, when the evidence of guilt is strong, and given the gravity of the offense, there is great probability that the continuance in office of the respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence: *Provided*, That, any single preventive suspension of local elective officials shall not extend beyond sixty (60) days: *Provided*, further, That in the event that several *administrative* cases are filed against an elective official, he cannot be preventively suspended for more than ninety (90) days within a single year on the same ground or grounds existing and known at the time of the first suspension.[154] [Emphasis supplied.]

It is crystal clear that sec. 63 itself very plainly indicates that it shall be applied only to administrative cases, as shown by the reference to administrative cases in the second proviso thereof. Agpalo authoritatively states the rule regarding the proper construction of the effects of a proviso:

> The general rule is that the office of a proviso qualifies or modifies only the phrase immediately preceding it or restrains or limits the generality of the clause that it immediately follows. A proviso is to be construed with reference to the immediately preceding part of the provision, to which it is attached, and not to the statute itself or to other sections thereof. It should be confined to that which directly precedes it, or to the section to which it has been appended, unless it clearly appears that the legislature intended it to have a wider scope.[155]

Given the above stated rule of legal hermeneutics, therefore, it follows that the second proviso, which makes mention of "several *administrative* cases," qualifies the phrase preceding it, which in turn is the proviso that limits the preventive suspension of an elective local official to 60 days. What results from this exercise is that there can be no other interpretation for sec. 63 other than that it applies *only to administrative* and *not criminal* proceedings.

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[154] Rep. Act No. 7160 (1990), sec. 63, par. (b).

[155] RUBEN E. AGPALO, STATUTORY CONSTRUCTION 188-189 (3rd ed. 1995), *citing* Chinese Flour Importers Assn. v. Price Stabilization Board, 89 Phil. 461 (1951); Arenas v. City of San Carlos, G.R. No. 24024, 82 SCRA 318 (1978); and Collector of Internal Revenue v. Angeles, 101 Phil 1026 (1957).

Moreover, it is a fundamental rule of statutory construction that when the words and phrases of a statute are clear and unequivocal, their meaning must be determined from the language employed and the statute must be taken to mean exactly what it says. What is not clearly provided in the law cannot be extended to those matters outside its scope.[156]

For a thorough understanding of the application of sec. 63 of the Local Government Code,[157] said section must also be read together with the other provisions of the chapter of the Code in which it is found. Worth noting is the location of the section in question within the Code. Section 63 is found in Title Two, Chapter 4 of said Code. Title Two is entitled "Elective Officials," while Chapter 4 therein is entitled "Disciplinary Actions." This chapter contains sections 60 to 68 of the Code. Section 60 provides the grounds for disciplinary actions against elective local officials.[158] Section 61, in turn, is entitled "Form and Filing of *Administrative* Complaints." Section 64 provides for the respondent's salary pending suspension and sec. 65 enumerates the rights of the respondent. Section 66 lays down the form and notice of the decision. Notice should however be taken of sec. 66 (b) which provides the rules for the *penalty* of suspension in *administrative* offenses, and sec. 66 (c) which in turn lays down certain rules applicable to the penalty of removal from office after an *administrative* investigation.[159] Section 67, meanwhile, is entitled "*Administrative* Appeal," while sec. 68 is entitled Execution Pending Appeal.

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[156] *Id.* at 99-100.

[157] Rep. Act No. 7160 (1990).

[158] Rep. Act 7160 (1990), sec. 60 reads:

Sec. 60. Grounds for Disciplinary Actions. An elective local official may be disciplined, suspended, or removed from office on any of the following grounds:

(a) Disloyalty to the Republic of the Philippines;

(b) Culpable violation of the Constitution;

(c) Dishonesty, oppression, misconduct in office, gross negligence, or dereliction of duty;

(d) Commission of any offense involving moral turpitude or an offense punishable by at least prision mayor;

(e) Abuse of authority;

(f) Unauthorized absence for fifteen (15) consecutive working days, except in the case of members of the sangguniang panlalawigan, sangguniang panlungsod, sangguniang bayan, and sangguniang barangay;

(g) Application for, or acquisition of, foreign citizenship or residence or the status of an immigrant of another country; and

(h) Such other grounds as may be provided in this Code and other laws.

An elective local official may be removed from office on the grounds enumerated above by order of the proper court.

[159] Rep. Act. No. 7160 (1991) sec. 66 (b) and (c) provide:

Sec. 66. Form and Notice of Decision.

... .

b) The penalty of suspension shall not exceed the unexpired term of the respondent or a period of six (6) months for every *administrative* offense, nor shall said penalty be a bar to the candidacy of the respondent so suspended as long as he meets the qualifications required for the office.

(c) The penalty of removal from office as a result of an *administrative* investigation shall be considered a bar to the candidacy of the respondent for any elective position. [Italics supplied.]

Right in the center of these sections that provide for rules to be applied in *administrative* disciplinary proceedings is sec. 63 entitled "Preventive Suspension."

That sec. 63 was placed in Chapter 4, Title Two of the Code together with the other provisions pertaining to *administrative* proceedings against local elective officials was not an accident but was instead done for a purpose, and this is none other than *to make said sec. 63 applicable only to administrative complaints.*

D. A WORD FROM OUR SPONSOR

Likewise enlightening are the commentaries on the Local Government Code of 1991 written by Senator Aquilino Q. Pimentel, Jr., the principal author of said law. Commenting on sec. 63, he clarified that "a preventive suspension of a local elective official for one *administrative* case against him cannot exceed 60 days. And even if he is facing several *administrative* cases, he cannot be preventively suspended for more than 90 days within a single year on the same ground or grounds existing and known at the time of his first suspension."[160]

The principal author of the law himself had thus pointed out that the provision in question applies to administrative cases, similarly lending support to the conclusion that the Court in *Rios* had indeed rendered a dubious ruling.

E. THE PROPER APPLICATION OF SECTION 63

Lending further credence to the assertion that sec. 63 of the Local Government Code, which provides for a 60-day preventive suspension for a single administrative complaint, should apply only to administrative proceedings are a number of decided cases where the Supreme Court properly applied the limitation in sec. 63.

One such case is that of *Ganzon v. CA*.[161] Involved in *Ganzon* was a city mayor who had 10 administrative complaints filed against him on various charges such as abuse of authority, oppression, grave misconduct, and other charges. In this particular case, the Court took judicial notice of the then newly-enacted Local Government Code, immediately applied the provisions of sec. 63 thereof,[162] and thus ended up ruling that a single preventive suspension of an elective local official for an *administrative* charge cannot exceed the 60-day limit under the Local Government Code.

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[160] AQUILINO Q. PIMENTEL, JR., THE LOCAL GOVERNMENT CODE OF 1991: THE KEY TO NATIONAL DEVELOPMENT 177 (1993).

[161] G.R. Nos. 93252, 93746, and 95245, 203 SCRA 399 (1991).

[162] *Id.* at 408.

Another case is that of *Espiritu v. Melgar*[163] which involved a provincial governor who had been suspended preventively due to several administrative charges alleging grave misconduct, oppression, abuse of authority, culpable violation of the Constitution, and conduct prejudicial to the best interest of the public service. In addressing the issues regarding the proper duration of his preventive suspension, the Court applied sec. 63 of the Local Government Code and ruled in favor of a 60-day limit.

In the 1998 case of *Joson v. Torres*,[164] the Court finally made a categorical pronouncement that the provisions of the Local Government Code apply only to administrative disciplinary proceedings. The case involved a provincial governor who had been placed under preventive suspension following the filing of several administrative charges against him. The Court, this time through Mr. Justice Reynato Puno, stressed:

> Administrative disciplinary proceedings against elective local officials are governed by the Local Government Code of 1991, the Rules and Regulations Implementing the Local Government Code of 1991, and Administrative Order No. 23 entitled "Prescribing the Rules and Procedures on the Investigation of Administrative Disciplinary Cases Against Elective Local Officials of Provinces, Highly Urbanized Cities, Independent Component Cities, and Cities and Municipalities in Metropolitan Manila." In all matters not provided in A.O. No. 23, the Rules of Court and the Administrative Code of 1987 apply in a suppletory character.[165]

The categorical ruling in *Joson*, to the effect that administrative disciplinary proceedings against elective local officials are to be governed by the Local Government Code, should finally put to rest any discussion whatsoever regarding the matter. Unfortunately, *Joson* came in May 1998, some eight months after *Rios* was promulgated. The ruling therein would have been a big help to the *Rios* Court. With the way the *Rios* predicament was resolved, it seemed as though the Court could have used all the jurisprudential help it could have gotten— as if extant jurisprudence at that time was not enough.

F. THE COURT REVERTS TO THE ESTABLISHED DOCTRINE

After the aberration that was *Rios*, it did not take too long for the Court to revert to the well-settled doctrine laid down in *Deloso v. Sandiganbayan*.[166] The about-face came in the form of *Segovia v. Sandiganbayan*,[167] a 1998 case.

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[163] G.R. No. 100874, 206 SCRA 256 (1992).
[164] G.R. No. 131255, 290 SCRA 279 (1998).
[165] *Id.* at 296.
[166] G.R. Nos. 86899-903, 173 SCRA 409 (1989).

Although the case was a reversion to the established doctrine, it nevertheless featured an interesting bit of trivia: The *ponente* was Chief Justice Andres Narvasa, the former Chair of the Court's Third Division that unanimously promulgated *Rios* just a couple of years before. The *ponente* of *Rios*, on the other hand, Madame Justice Romero, is now one of the concurring members of the Division that was to rule on *Segovia*.

Segovia did not involve an elective local official. It instead involved executives of the National Power Corporation (NAPOCOR), a government-owned and controlled corporation, who were charged with violations of the Anti-Graft Law. By that time, however, such a fact had already been rendered immaterial by the *Gonzaga* ruling that was relied upon heavily by the Court this time around.

Needless to say, the Sandiganbayan placed the NAPOCOR executives under 90-day preventive suspension. Undaunted, the petitioners challenged the validity of the suspension by way of *certiorari* and prohibition before the Supreme Court. The Court denied *certiorari* and declared, rather emphatically, thus:

> The provision of suspension *pendente lite* applies to all persons indicted upon a valid information under the Act, whether they be appointive or elective officials; or permanent or temporary employees, or pertaining to the career or non-career service. It applies to a Public High School Principal; a Municipal Mayor; a Governor; a Congressman; a Department of Science and Technology (DOST) non-career Project Manager; a Commissioner of the Presidential Commission on Good Government (PCGG).[168]
>
> ...
>
> However, the preventive suspension may not be of indefinite duration or for an unreasonable length of time; it would be constitutionally proscribed otherwise as it raises, at the very least, questions of denial of due process and equal protection of the laws. The Court has thus laid down the rule that preventive suspension may not exceed the maximum period of ninety (90) days in consonance with Presidential Decree No. 807 (the Civil Service Decree), now Section 52 of the Administrative Code of 1987.[169]

The Court in *Segovia* relied primarily on the doctrine it developed through the cases of *Bolastig v. Sandiganbayan*,[170] *Gonzaga v. Sandiganbayan*,[171] *Deloso v. Sandiganbayan*,[172] and *Doromal v Sandiganbayan*.[173] By virtue of the *Segovia* ruling, there

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[167] G.R. No. 124067, 288 SCRA 328 (1998).
[168] *Id.* at 337-338.
[169] *Id.* at 338-339.
[170] G.R. No. 110503, 235 SCRA 103 (1994).
[171] G.R. No. 96131, 201 SCRA 417 (1991).
[172] G.R. Nos. 86899-903, 173 SCRA 409 (1989).

was thus a reversion to the well-settled rule that an elective local official preventively suspended under sec. 13 of the Anti-Graft Law cannot be suspended for more than 90 days, following sec. 52 of the current Civil Service Law.

However, notwithstanding the promulgation of the *Segovia* ruling, *Rios* would not have its "categorical death," if there is such a thing, until 1999, with the promulgation of the case of *Layus v. Sandiganbayan*.[174]

G. "... A LAWLESS THING THAT CAN BE SLAIN ON SIGHT, OR IGNORED WHENEVER IT REARS ITS UGLY HEAD... "

Celia T. Layus, the mayor of the municipality of Claveria, Cagayan, was charged with *estafa* through falsification of public documents and for violations of the Anti-Graft Law in an information filed before the Sandiganbayan. Layus moved for the quashal of the information, alleging that irregularities attended her preliminary investigation and thus demanded a reinvestigation. Unfortunately for Layus, the motion was denied.

Following its finding that the informations were validly filed, the anti-graft court eventually placed Layus under 90-day preventive suspension. It was this last resolution that Layus attacked by way of *certiorari* and prohibition before the Supreme Court. Immediately, the confusing effect of the *Rios* ruling made its presence felt. The petitioner assailed the 90-day suspension *pendente lite*. In support of her contention, Mayor Layus invoked the Supreme Court's ruling in the case of *Rios v. Sandiganbayan*[175] where the Court held that a 90-day preventive suspension was excessive and consequently reduced it to 60 days pursuant to the provisions of sec. 63 of the Local Government Code. The Supreme Court, however, did not budge. It dismissed the petition for lack of merit and upheld the 90-day preventive suspension. The pertinent portion of the *ponencia*, crafted by Mr. Chief Justice Hilario Davide, is reproduced hereunder:

> Finally, on the questioned 90-day suspension *pendente lite*.
>
> Having ruled that the information filed against Layus is valid, there can be no impediment to the application of Section 13 of R.A. No. 3019, which states:
>
> Sec. 13. *Suspension and loss of benefits.* — Any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property, whether as a simple or as

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[173] G.R. No. 85468, 177 SCRA 354 (1989).
[174] G.R. No. 134272, 320 SCRA 233 (1999).
[175] G.R. No. 129913, 279 SCRA 581 (1997).

> a complex offense and in whatever stage of execution and mode of participation, is pending in court, *shall be suspended from office.* [Emphasis supplied.]
>
> This provision makes it *mandatory* for the Sandiganbayan to suspend any public officer who has been validly charged with a violation of R.A. No. 3019, as amended, or Book II, Title 7 of the Revised Penal Code, or any offense involving fraud upon government or public funds or property. This is based on the presumption that unless the public officer is suspended, he may frustrate his prosecution or commit further acts of malfeasance or both.
>
> The imposition of the suspension, however, is not automatic or self-operative. There must first be a valid information, determined at a pre-suspension hearing, where the court is furnished with the basis to suspend the accused and proceed with the trial on the merits of the case, or refuse suspension of the latter and dismiss the case, or correct any part of the proceedings which impairs its validity.
>
> In the instant case, the records show that LAYUS was given adequate opportunity to challenge the validity of the criminal proceedings against her. Since the required pre-suspension hearing was complied with and the information was deemed valid, it then becomes the ministerial duty of the Sandiganbayan to forthwith issue the order of preventive suspension which, however, may not be for an indefinite duration or an unreasonable length of time. Thus, in *Segovia v. Sandiganbayan*, we ruled that preventive suspension may not exceed 90 days in consonance with Presidential Decree No. 807 (the Civil Service Decree), now Section 52 of the Administrative Code of 1987.
>
> Considering that the imposed 90-day suspension *pendente lite* of LAYUS does not exceed the maximum period thus fixed, the Sandiganbayan did not abuse its discretion in granting the prosecution's motion to suspend petitioner.[176]

A few observations need to be discussed concerning the *Layus* ruling. While the Court did in fact sustain the validity of the 90-day preventive suspension on the strength of *Segovia*, which at the time, had been promulgated just over a year ago, it, however, did not provide for any express abrogation of the *Rios* ruling. There was no extended discussion as to why the *Rios* ruling, relied upon by petitioner Layus in the hope of shortening her preventive suspension, was not to be followed as precedent. No explanation whatsoever was given why the application of sec. 63 of the Local Government Code to preventive suspensions under sec. 13 of the Anti-Graft Law was erroneous, and the application of Sec. 52 of Book V, Title I, Subtitle A of the Administrative Code of 1987 valid. Instead, the Court was content with simply restating the doctrines formed before the aberration that was *Rios*. In fact, as basis for its holding that the mandatory suspension is "based on the presumption that unless the public officer is suspended, he may frustrate his prosecution or

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[176] Layus v. Sandiganbayan, G.R. No. 134272, 320 SCRA 233, 242 (1999).

commit further acts of malfeasance or both,"[177] it even cited the *Rios* case, as shown in the footnotes of the case report.[178]

While *Layus* nevertheless effected a reversion to the well-settled doctrine providing for a 90-day preventive suspension for elective local officials prosecuted for violations of the Anti-Graft Law and relegated *Rios* to the status of a mere "stray case," it would have been more prudent and judicious of the Court had it rendered a thorough discussion as to why the *Rios* ruling was erroneous. In fairness to and in defense of the Division that decided *Rios*, the author submits that, perhaps, there may be greater wisdom and common sense in applying the Local Government Code, instead of the Civil Service Law, to elective local officials. The Court, however, sees otherwise, hence an explanation as to why it is of such a mind will go a long way in answering nagging questions regarding the matter. Such an effort would have been immensely helpful to law students, law practitioners, and even those who sit on the bench, had the Court proffered a clear and categorical pronouncement regarding the true status of the *Rios* ruling.

The mere fact that petitioner Layus herself relied upon *Rios* is a sign that the ruling in the latter case can and does indeed lead to confusion, if not false hopes altogether, for expectant litigants such as Mayor Layus. After all, *Rios* was still a pronouncement by the highest court of the land and thus possesses, at least *prima facie*, some degree of jurisprudential weight. The Court however seemed to have rested on its laurels, contented that it had sufficiently ironed out the aberration.

This inaction notwithstanding, under the current state of jurisprudence, the prevailing doctrine is still that enunciated by *Deloso v. Sandiganbayan*,[179] as clarified by *Doromal v. Sandiganbayan*[180] and *Gonzaga v. Sandiganbayan*,[181] and fine-tuned even further by *Bolastig v. Sandiganbayan*.[182]

VI. RULES FOR THE PREVENTIVE SUSPENSION OF ELECTIVE LOCAL OFFICIALS UNDER SECTION 13 OF THE ANTI-GRAFT AND LAW

Summarized hereunder are the rules regarding the applicable duration of preventive suspension under sec. 13 of the Anti-Graft Law, culled from jurisprudence and whose development the instant study has just traced:

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[177] *Id.*

[178] *Id.* *See* footnote number 24 of the case report, *vis-à-vis* footnote number 12.

[179] G.R. Nos. 86899-903, 173 SCRA 409 (1989).

[180] G.R. No. 85468, 177 SCRA 354 (1989).

[181] G.R. No. 96131, 201 SCRA 417 (1991).

[182] G.R. No. 110503, 235 SCRA 103 (1994).

1) From *Luciano v. Mariano*[183] and *Socrates v. Sandiganbayan*[184]

Preventive suspension under sec. 13 is mandatory, provided the information filed is determined to be valid in a pre-suspension hearing held specifically for that purpose.

2) From *Layno v. Sandiganbayan*[185]

Although preventive suspension under the Anti-Graft Law is, *per se*, constitutional, its persistence for an unreasonable length of time nevertheless will be violative of the due process and equal protection clauses of the Constitution. This then becomes a case of an unconstitutional application of an otherwise constitutional law.

3) From *Deloso v. Sandiganbayan*[186]

Preventive suspension under sec. 13 of the Anti-Graft Law shall be limited to a maximum period of 90 days from issuance thereof.

4) From *Deloso v. Sandiganbayan*[187] and *Bolastig v. Sandiganbayan*[188]

The 90-day period, although not appearing within the text of sec. 13 itself, is provided by sec. 42 of PD 807, the old Civil Service Decree, now sec. 52 of the current Civil Service Law found in Book V, Title I, Subtitle A of the Administrative Code of 1987.

5) From *Bolastig v. Sandiganbayan*[189]

The Sandiganbayan cannot impose a preventive suspension for less than 90 days. However, although a 90-day suspension is imposed, if the case is decided in less than 90 days, the suspension will likewise be for less than 90 days only. Corollarily, if the case is not decided within 90 days, the preventive suspension must be up to 90 days only.

The reason for such a rule is that if the Sandiganbayan is given the discretion of imposing a shorter period of suspension, say, 80, 70, or 60 days, it

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[183] G.R. No. L-32950, 40 SCRA 187 (1971).
[184] G.R. Nos. 116259-60 and 118896-97, 253 SCRA 773, 796 (1996).
[185] G.R. No. L-65848, 136 SCRA 536 (1985).
[186] G.R. Nos. 86899-903, 173 SCRA 409 (1989).
[187] *Id.*
[188] G.R. No. 110503, 235 SCRA 103 (1994).
[189] *Id.*

would likewise lie within its power not to suspend the accused at all. This will then be contrary to sec. 13 of Republic Act No. 3019, under which preventive suspension is mandatory upon the determination of the validity of the information.

6) From *Gonzaga v. Sandiganbayan*[190]

The 90-day rule applies to *all public officers* against whom a valid information for violation of the Anti-Graft Law is filed, *whether the accused be an elective official or an appointive official or employee.*

VI. CONCLUDING INSIGHTS

A. JUDICIAL LEGISLATION

The Supreme Court is indeed the final interpreter of the laws of the land, for upon it the Constitution chose to vest the sole authority of wielding judicial power. Thus, while holding neither purse nor sword, the pen it wields may be just as mighty as either of the two. However, just like all other powers it allocates among the three great branches of government, the Constitution itself provides parameters to prevent indiscretion on the part of the delegates. Needless to say, even the power to interpret laws is subject to such circumscriptions.

When the legislature crafted the Anti-Graft and Corrupt Practices Act, it saw fit to incorporate therein a provision for the preventive suspension of erring public officers who commit the acts proscribed by said law. The necessity for such a provision is beyond question. Curiously, however, Congress never provided for a period that shall limit the duration of the suspension. The Supreme Court itself pointed out this deficiency in the *Bolastig* case and noted that "the ninety-day period of preventive suspension is not found in sec. 13 of Republic Act No. 3019 but was adopted from sec. 42 of the Civil Service Decree (P.D. No. 807), which is now sec. 52 of the Administrative Code of 1987."[191] The confusion created by such an omission is simply amazing, and this is shown by the sheer number of cases, whose issues revolve around the issue of duration of preventive suspension, that make it all the way to the Supreme Court.

Indeed, "bad laws make bad cases." For the longest time, those unfortunate enough to actually have the need to challenge the validity of their preventive suspensions under sec. 13 of the Anti-Graft Law were treading murky waters and were left in a quandary as to what the proper duration for preventive suspension under sec. 13 really was. The Supreme Court, ever mindful of the law's abhorrence

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[190] G.R. No. 96131, 201 SCRA 417 (1991).

[191] Bolastig v. Sandiganbayan, G.R. No. 110503, 235 SCRA 103, 108 (1994).

of vacuums, thus decided to remedy the situation. It was decades in the making, but ultimately the efforts paid off. The end result was a veritable plug for the gaping hole left by legislators in sec. 13 of the Anti-Graft Law. Thus, the "90-day preventive suspension" rule was crafted.

While its justifications for having to come up with the doctrine are indeed valid and noble, foremost of which is the need to prevent injustice upon the accused and prejudice to his constituents, it would however appear that the Court overstepped the boundaries of its constitutional powers. So much so, that it did not merely interpret the law. To the mind of this author, it actually amended the law, thus engaging in what is known as judicial legislation. Says Agpalo:

> Courts may not, in the guise of interpretation, enlarge the scope of a statute and include therein situations not provided nor intended by the lawmakers. *An omission at the time of enactment, whether careless or calculated, cannot be judicially supplied however later wisdom may recommend the inclusion.* Courts are not authorized to insert into the law what they think should be in it or to supply what they think the legislature would have supplied if its attention had been called to the omission.
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> They should not, by construction, revise even the most arbitrary and unfair action of the legislature, nor rewrite the law to conform with what they think should be the law nor may they interpret into the law a requirement which the law does not prescribe. *Where a statute contains no limitations in its operation or scope, courts should not engraft any.* And where a provision of law expressly limits its application to certain transactions, it cannot be extended to other transactions by interpretation. *To do any of such things would be to do violence to the language of the law and to invade the legislative sphere.*[192] [Emphasis supplied.]

Bad laws make bad cases. And bad cases make very tired judges. But tired judges or not, the judiciary must never interfere with the affairs of Congress. "It is the duty of the legislature to make the law; of the executive to execute the law; and of the judiciary to construe the law."[193] Yes, the Supreme Court can and should interpret the law. However, it must never render interpretations and constructions that tend to encroach upon the powers vested by the Constitution exclusively upon another co-equal branch of government. If the Court would insist on doing so, it would violate the doctrine of separation of powers that, among other things, it has sworn to defend.

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[192] R. AGPALO, *supra* note 155, at 53, *citing* Morales v. Subido, G.R. No. 29658, 26 SCRA 150 (1968); People v. Garcia, 85 Phil 657 (1950); Vera v. Avelino, 77 Phil. 192 (1946); Baking v. Director of Prisons, G.R. No. 30363, 28 SCRA 850 (1969); Inchong v. Hernandez, 101 Phil. 1155 (1957); Palanca v. City of Manila, 41 Phil. 125 (1920); Hong Kong & Shanghai Bank v. Peters, 116 Phil. 284 (1910); Republic Flour Mills v. Commissioner of Customs, G.R. No. 28463, 39 SCRA 268 (1971); Crisolo v. Macadaeg, 94 Phil. 862 (1954).

[193] *Id.* at 54, *quoting* U.S. v. Ang Tang Ho, 43 Phil. 1, 6 (1922).

Did the Court in this particular case legislate judicially? Perhaps it did. For now, however, the Court's interpretation of the law is the law – a classic case indeed of *dura lex sed lex*.

Besides, in this particular instance, nobody seems to be complaining.

B. A SQUARE PEG FOR A ROUND HOLE

In *Deloso* and *Bolastig*, there was an overt admission on the part of the Court that indeed, the 90-day limit was nowhere to be found within the four corners of the Anti-Graft Law, and that it was actually taken from sec. 42 of the old Civil Service Decree, now sec. 52 of the current Civil Service Law found in the Administrative Code of 1987. But was the 90-day period found in the Civil Service Law really a valid choice and the best possible option?

In practically all the decisions upholding a 90-day suspension, the Court cited the relatively short term the Constitution grants an elective local official as a justification for holding that an indefinite preventive suspension is not favored by the Constitution. It was likewise declared however, that, more than looking after the interests of the official concerned, the 90-day limit was meant to safeguard the interests of the elective official's constituents who presumably elected the official concerned in particular because they wanted such official to lead them. This sentiment of the Court was very much visible in *Deloso v. Sandiganbayan*:[194]

> The application of the *Garcia* injunction against preventive suspensions for an unreasonable period of time applies with greater force to elective officials and especially to the petitioner whose term is a relatively short one. The interests of the sovereign electorate and the province of Zambales cannot be subordinated to the heavy caseload of the Sandiganbayan and of this Court.
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> It would be most unfair to the people of Zambales who elected the petitioner to the highest provincial office in their command if they are deprived of his services for an indefinite period with the termination of his case possibly extending beyond his entire term simply because the big number of sequestration, ill-gotten wealth, murder, malversation of public funds, and other more serious offenses plus incidents and resolutions that may be brought to the Supreme Court prevents the expedited determination of his innocence or guilt.[195]

The charges against Deloso sound more like the rap sheet of a common criminal rather than that of a public officer's. Nevertheless, as if to emphasize the

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[194] G.R. Nos. 86899-903, 173 SCRA 409 (1989).
[195] *Id.* at 418-419.

necessity and primacy of safeguarding the interests of the sovereign electorate, the Court nonetheless remained intent on precluding an indefinite preventive suspension of the officer concerned.

Prior to *Deloso*, the Court could only go as far as decreeing that indefinite preventive suspension is unconstitutional. In *Deloso*, however, it seemed as though the members of the Court, recognizing the necessity for the pronouncement it was about to make, all of a sudden decided to apply a 90-day limit for preventive suspensions under the Anti-Graft Law. The *ponencia*, however, never explained why 90 days was chosen. It merely declared that from that moment forth, the 90-day limit prescribed by the Civil Service Law was likewise to be the limit for preventive suspension under sec. 13 of the Anti-Graft Law. This crucial pronouncement was followed with a terse explanation that this period "also appears reasonable and appropriate under the circumstances of this case."[196]

Why exactly was the 90-day limit chosen? In his concurring opinion in *Lastimosa v. Vasquez*,[197] Mr. Justice Florenz Regalado related that one of the reasons why the Ombudsman Act[198] allowed for a longer duration of six months for preventive suspensions imposed under such law was that before such suspension may be imposed, there needed to be a showing that the respondent's guilt is strong.[199]

He contrasted this with the much shorter 90-day preventive suspension allowed under the Civil Service Decree, and explained that the reason why under said Decree the shorter period of 90 days is sufficient is because preventive suspension may be imposed on the "mere simple showing" that the charge involved any of the causes enumerated therein.[200]

Finally, he lectured further that the even shorter period of 60 days under sec. 63 the Local Government Code is "justifiable and deemed sufficient not only because the respondent involved is elected by the people, but more precisely because such preventive suspension may only be ordered 'after the issues are joined.'"[201]

There is thus here an acknowledgement by a member of the Court that the 60-day period in the Local Government Code is likewise motivated by a desire to uphold the interests of the respondent's constituents – a desire that is consistent

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[196] *Id.* at 419.
[197] G.R. No. 116801, 243 SCRA 497 (1995).
[198] Rep. Act No. 6770 (1989).
[199] Lastimosa v. Vasquez, G.R. No. 116801, 243 SCRA 497, 511-512 (1995).
[200] *Id.* at 512.
[201] *Id.*

with the reason for applying a 90-day limit for the preventive suspension, under sec. 13 of the Anti-Graft Law, for elective local officials. This has likewise been one of the factors why a 90-day limit, pursuant to the Civil Service Decree, was applied in the first place.

The question that now begs to be asked is this: If both the 90 and the 60-day periods are capable of protecting the interests of both the elective local official and his constituents, what makes 90 days more favorable than 60 days? For all the years the Court had spent formulating a workable doctrine, this angle had never been explained.

Considering the short three-year term available to local officials, would not a 60 instead of a 90-day suspension be more, as the Court is so fond of saying, "reasonable"? A 60-day suspension would probably strike a better balance between the interests of the official and his constituents on the one hand, and those of the state's prosecutory arm on the other. If the reasoning of the Court, which makes reference to the relatively short three-year term of elective local officials, is to be followed, a 60-day preventive suspension would perhaps be a better alternative. Is the reason therefore one that is merely of procedural character, as Mr. Justice Regalado, a noted Remedial Law expert, opines? The Court has never given any explanations whatsoever.

It would likewise seem logical to surmise that, had the Local Government Code been applied instead of the Civil Service Law, less confusion would ensue. It surely takes a great deal of legal hermeneutics, if not acrobatics, to conceive that the Civil Service Law is the law that which ought to be applied to elective officials of *local governments*, and not the *Local Government* Code which was crafted specifically to apply to local governments. The petitioner in *Rios* got confused. A Division of the Court itself, in that same *Rios* case, similarly fell prey to the puzzling situation. What's more, the fact that no less than the *Chief Justice* himself was actually the Chairman of that Division adds an aggravating circumstance to the anomalous scenario. If the ultimate arbiters of the law themselves had gotten confused, how much more the ordinary law student, the average law practitioner, and the non-lawyer elective local official? The Court had already bordered on judicial legislation when it decided to apply the 90-day limit. Would the situation have been any better or worse, at least from a constitutional perspective, had the Court instead decided to interpret sec. 63 of the Local Government Code as likewise being applicable to criminal cases under the Anti-Graft Law? Once again, explanations are very much in order.

In an earlier portion devoted to the discussion of the *Rios* case, the instant study pointed out the apparent legal absurdity of applying sec. 63 of the Local Government Code to preventive suspensions imposed on the occasion of criminal

prosecutions pursuant to violations of the Anti-Graft Law and certain provisions of the Revised Penal Code. One reason suggested for such an assertion is that sec. 63 expressly applies to *administrative* cases only. At first blush, this would perhaps seem to be a good reason for applying the 90-day limit in the Civil Service Law instead of the 60-day limit in sec. 63 of the Local Government Code. However, a closer scrutiny of the pertinent provision of sec. 52 of the Civil Service Law will reveal that, similar to sec. 63 of the Local Government Code, it likewise pertains to *administrative* cases. Reproduced hereunder in its entirety is sec. 52:

> SEC. 52. *Lifting of Preventive Suspension Pending Administrative Investigation.* – When the *administrative* case against the officer or employee is not finally decided by the disciplinary authority within the period of ninety (90) days after the date of suspension of the respondent who is not a presidential appointee, the respondent shall be automatically reinstated in the service: *Provided*, That when the delay in the disposition of the case is due to the fault, negligence, or petition of the respondent, the period of delay shall not be counted in computing the period of suspension herein provided.[202]

Perhaps even more expressly than does sec. 63 of the Local Government Code, sec. 52 of the Civil Service Law provides that it shall be applicable to *administrative* cases. Momentarily leaving behind the issue of whether or not the Court engaged in judicial legislation, would it not have been a more logical move on the part of the Court to instead decree that the 60-day limit in sec. 63 of the Local Government Code be applied to preventive suspensions of elective local officials under sec. 13 of the Anti-Graft Law, rather than the 90-day limit under the Civil Service Law? The author humbly submits that it would have been a better alternative that would perhaps result in less confusion. It would perhaps have been better for the Court to have simply said that "a reasonable period would be 90 days," instead of engrafting upon sec. 13 the limitation in the Civil Service Law. Was the Court surreptitiously avoiding allegations of judicial legislation when it chose to cite the a specific law as basis for its ruling? Maybe it was. Was it successful in its effort? It seems that it wasn't.

It is highly probable that during the deliberations on this issue, viable reasons were proffered by the participating magistrates. The *ponencia*, however, was bereft of such reasons and justifications. Consequently, those who would care to closely analyze the matter of duration are left hanging as to what exactly moved the Court to decide the way it did. For now, however, the limit is 90 days; and this shall be the controlling period until the doctrine is overturned by the Supreme Court; or better yet, until sec. 13 is amended by Congress itself by specifying therein an applicable duration.

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[202] ADMIN. CODE OF 1987, book V, title I, subtitle A, section 52.

The question therefore remains: Why 90 and not 60?

Throughout this entire study, the author had striven to remain objective and simply trace the origin and the development of the doctrine that had just been discussed – reserving for this, the concluding portion, observations regarding the methodology followed by the Court in formulating the "90-day rule." Sadly, however, several queries still remain unanswered.

The instant study, however, has reached its conclusion and will neither seek the answers nor attempt to extract them from jurisprudence yet again. For the time being, the author remains content, as had been the late former Chief Justice Fred Ruiz Castro in his separate opinion in *Oliveros v. Villaluz*,[203] "that I have put down my thoughts, my misgivings, and my doubts in writing – this in the hope that they will, at some future proper occasion, be accorded the serious attention that they so obviously deserve."[204]

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[203] G.R. No. L-34636, 57 SCRA 163 (1974).
[204] *Id.* at 198.