# DUTY-BOUND: CONSTITUTIONAL PROVISIONS VITAL & INTEGRAL TO THE ADJUDICATORY FUNCTION OF THE SUPREME COURT THAT ARE NOT FULLY AND TRULY IMPLEMENTED*

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The Supreme Court, more than any other branch or instrumentality of the Government, is the refuge of persons whose rights, particularly those enshrined in the Bill of Rights, have been violated, or of which they have been deprived, by the Government or any of its branches, instrumentalities, or officials.

The 1987 Constitution, broadening the scope of judicial power, imposes upon the courts of justice the "duty," not just the power, but the "**DUTY"** to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

More than any branch or instrumentality of the Government, the Supreme Court itself must discharge its duty or exercise its power as directed by, and in accordance with, the Constitution. Otherwise, it would itself be guilty of the gravest abuse of discretion and its decisions void for lack or excess of jurisdiction in their rendition. Non-compliance with this duty is, therefore, not an option.

In this article, I draw attention to provisions of the Constitution directed at the courts, and more particularly the Supreme Court, which have

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* *Cite as* Estelito Mendoza, *Duty-Bound: Constitutional Provisions Vital & Integral to the Adjudicatory Function of the Supreme Court that are Not Fully and Truly Implemented*, 87 PHIL. L. J. 288, (page cited) (2012).

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not been fully and truly implemented, or in the efforts of implementation of which much yet has to be done, or needs to be accomplished.

Needless to add, the provisions were intended to assure that in the adjudication of cases, more particularly by the Supreme Court and other collegiate courts, their decisions are of the "court" itself, and not of any particular member, reached after "deliberations" on the issues in the case and rendered expeditiously as required by Section 16, Article III of the Bill of Rights, which reads as follows:

> All persons shall have the **right to a speedy disposition of their cases** before all judicial, quasi-judicial, or administrative bodies. (Emphasis supplied)

### A. As to the adjudication of cases before the Supreme Court

Article VIII
Judicial Department

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> Section 4. (1) The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit *en banc* or in its discretion, in division of three, five, or seven Members. Any vacancy shall be filled within ninety days from the occurrence thereof.
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> (2) All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court *en banc*, and all other cases which under the Rules of Court are required to be heard *en banc*, including those involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations, **shall be decided 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**.

(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*.[1] (Emphasis supplied)

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Section 13. **The conclusions of the Supreme Court in any case submitted to it for decision *en banc* or in division shall be reached in consultation before the case is assigned to a Member for the writing of the opinion of the Court**. A certification to this effect signed by the Chief Justice shall be issued and a copy thereof attached to the record of the case and served upon the parties. Any Member who took no part, or dissented, or abstained from a decision or resolution, must state the reason therefor. **The same requirements shall be observed by all lower collegiate courts**.[2] (Emphasis supplied)

### B. As to the time within which cases before the Supreme Court and other courts must be decided

Article VIII
Judicial Department

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[1] The requirement under Section 4, Article VIII of the 1987 Constitution that a decision may be reached only after "deliberations" was not yet explicitly provided in the 1935 and 1973 Constitutions. Sec. 10, Art. VIII of the 1935 Constitution and Sec. 2, Art. X of the 1973 Constitution only provided for the number of votes required to decide cases before the Supreme Court.

[2] The requirement for a certification by the Chief Justice to the effect that the conclusions of the Supreme Court were reached in consultation before the case was assigned to a Member for the writing of the opinion is provided only in the 1987 Constitution (Sec. 13, Art. VIII). Both the 1935 and 1973 Constitutions already required that the conclusions of the Supreme Court in any case submitted to it for decision shall be reached in consultation before the case is assigned to a Justice for the writing of the opinion of the Court. (Sec. 11, Art. VIII and Sec. 8, Art. X, respectively).

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> SEC. 15. (1) All cases or matters filed after the effectivity of this Constitution **must be decided or resolved within twenty-four months from date of submission for the Supreme Court**, and, unless reduced by the Supreme Court, twelve months **for all lower collegiate courts, and three months for all other lower courts**.
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> (2) A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the Rules of Court or by the court itself.
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> (3) **Upon the expiration of the corresponding period, a certification to this effect signed by the Chief Justice or the presiding judge shall forthwith be issued and a copy thereof attached to the record of the case or matter, and served upon the parties**. The certification shall state why a decision or resolution has not been rendered or issued within said period.
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> (4) Despite the expiration of the applicable mandatory period, the court, without prejudice to such responsibility as may have been incurred in consequence thereof, shall decide or resolve the case or matter submitted thereto for determination, without further delay. (Emphasis supplied)

## AS TO THE ADJUDICATION OF CASES BEFORE THE SUPREME COURT: SECTIONS 4 (1), (2), (3) & 13, ARTICLE VIII OF THE CONSTITUTION

The Constitution requires that in the Supreme Court, and other lower collegiate courts, a decision may only be rendered after "**deliberations**" on the issues by **all of those who participate in the resolution of the case and who, thereafter, vote on the decision.** The requirement is unequivocal. For this reason, the Constitution requires that the member of the Court who writes the decision shall **only** be designated or "assigned" after the vote is taken. The

"*ponente*"[3] shall only be designated **after** the issues in the case are "deliberated" upon **and** a vote is taken on the decision. Only then would the decision of the Court be written.

Not only is the language of the constitutional provisions clear and straightforward, the exhaustive, at times passionate, discussion of the provisions by the members of the Constitutional Commission cannot but impress how vital the members of the Commission regarded the provisions. The discussion would also show not only the meaning, but more importantly the intent in the inclusion of those provisions in the Constitution. I quote extensively pertinent records of those discussions, as follows:

> MR. RODRIGO: Mr. Presiding Officer.
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> THE PRESIDING OFFICER (Mr. Bengzon): Yes, Commissioner Rodrigo is recognized.
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> MR. RODRIGO: Since the phrase "majority of the members who have actually participated when the case was submitted for decision" still appears on paragraphs 3 and 4 of Section 3, may I ask some clarificatory questions for the record.
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> If a case is brought before the Supreme Court, briefs are submitted—appellant's brief, attorney's brief, reply brief—sometimes together with the petition for certiorari and reply. Afterwards, oral argument follows and sometimes, memoranda are filed. Then a deliberation by the court follows. In this instance, what is the meaning of "members who actually participated?" Let us say a member has read all the briefs, all the pleadings but was not present at the oral argument, did he or did he not participate?
>
> MR. PADILLA: Yes, he participated. It is not necessary that the justices should be present at every single instance during the proceedings. However, in the resolution or decision of the court, sometimes it is stated that some justices took no part or are on leave, and these are those who did not participate.
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> THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Concepcion is recognized.

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[3] "*Magistrado Ponente*," the judge who writes for the court. In Philippine legal circles, he is the justice or the judge who appears to be the author of the "Decision" or "Resolution" promulgated by the Court of which he is a member.

MR. CONCEPCION: "Participated" means those members who took part in the deliberations and reached the conclusions that are incorporated in the court's opinion.

MR. RODRIGO: Suppose a member has read all the briefs and the memoranda and he was at the oral argument but was not present during the deliberations by the members of the court, had he not participated?

MR. CONCEPCION: Actually he had not participated because he was not present in the deliberations. He did not vote or express his opinion for consideration by his colleagues.

MR. RODRIGO: Suppose he had read all the briefs and the memoranda and had listened to the oral argument but he happened to have been sick when the court deliberated, would he not have been considered as having participated?

MR. CONCEPCION: No.

MR. RODRIGO: So he would not be included in determining the majority plus one?

MR. CONCEPCION: That is right.

MR. RODRIGO: The deciding factor then is that the member must have participated in the deliberations of the court.

MR. CONCEPCION: That is the meaning of the draft proposed by the Committee.

MR. RODRIGO: As long as he was present during the deliberations by the members of the court, then he had participated.

MR. CONCEPCION: He cast his vote then.

MR. RODRIGO: For the record, I would like to get an answer because this is very important.

MR. CONCEPCION: Does the Commissioner mean one who was not present but who concurred in the written opinion?

MR. RODRIGO: Let us first say he was actually present — that would be the determining factor he was physically present in the deliberations by the court. Is that the determining factor?

MR. CONCEPCION: If he also signed the concurring opinion, then he participated.

MR. RODRIGO: Even if he was not physically present in the deliberations by the court?

MR. CONCEPCION: Commissioner Regalado will answer.

MR. REGALADO: I think we have to take into consideration another related provision because we speak here of concurrence of a majority of the members who actually participated when the case was submitted for decision. Section 14 (2) says:

> A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of court or by the court itself.

MR. RODRIGO: Yes. That is not my point. My point is to define "participated." When is a justice considered to have participated or not in the deliberations of the court? This is very, very important because this will decide whether or not he would be included in the number which will serve as basis to determine the majority or the majority plus one.

MR. CONCEPCION: **As we already said, "participated" means those who took part in the deliberations and cast their votes that were taken at the end of the deliberations when the case was referred to one of the members of the court for the writing of the court's opinion.**

MR. RODRIGO: **So, I repeat my question. Does he have to be physically present in the deliberations?**

MR. CONCEPCION: **That is correct.**

MR. RODRIGO: I thought it was said that even if he was not physically present but concurred in the court's opinion, he would be considered as having participated?

MR. CONCEPCION: We mean having participated in the deliberations and concurred in the opinion.

MR. RODRIGO: **He must be physically present and concur in the court's opinion?**

MR. CONCEPCION: Yes.

MR. RODRIGO: Suppose he was physically present but he dissented?

MR. CONCEPCION: Yes, he participated.

MR. RODRIGO: He participated. So the important thing is his physical presence?

MR. CONCEPCION: No, his taking part in the deliberations.

MR. RODRIGO: **But how could he take part, if he was not physically present?**

MR. CONCEPCION: **That is it. He did not take part in the deliberations. So he did not participate.**

MR. RODRIGO: So even if he was physically present but just kept quiet, he did not participate?

MR. CONCEPCION: If he kept quiet, that means he agreed with the opinion of the majority. Silence means, consent.

MR. RODRIGO: **May I just make my question very, very simple. Must a justice be physically present during the deliberations to be considered as having participated?**

MR. CONCEPCION: **As I said, he must be present in the deliberations and cast his vote before the case is assigned to one of the members of the court for the presentation of the opinion.**

MR. RODRIGO: **So, two things must be considered: First, he must be physically present in the deliberations and second, he must cast his vote.**

MR. CONCEPCION: **Yes.**

MR. RODRIGO: Suppose he was physically present in the deliberations and said he would abstain, is he considered as having participated also?

MR. CONCEPCION: Yes, he participated also.

MR. RODRIGO: So, the important thing is his physical presence.

MR. CONCEPCION: No, because he has to vote also, or at least abstain from voting.

MR. RODRIGO: Yes. So if he abstained from voting but was physically present, is he considered to have participated?

MR. CONCEPCION: Yes.

MR. RODRIGO: Thank you.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Lerum be recognized to introduce an amendment on Section 3.[4] (Emphasis supplied)

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MR. RAMA: Madam President, I ask that Commissioner Suarez be recognized on Section 11.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Madam President.

As proposed to be amended, Section 11 would read: "THE CONCLUSIONS OF THE SUPREME COURT IN ANY CASE SUBMITTED TO IT FOR DECISION EN BANC OR IN DIVISION SHALL BE REACHED IN CONSULTATION

[4] I REC. CONST. COMM'N. 478-79 (Jul. 14, 1986).

BEFORE THE CASE IS ASSIGNED TO A MEMBER FOR THE WRITING OF THE OPINION OF THE COURT. A CERTIFICATION TO THIS EFFECT SIGNED BY THE CHIEF JUSTICE SHALL BE ISSUED AND A COPY THEREOF ATTACHED TO THE RECORD OF THE CASE AND SERVED UPON THE PARTIES. ANY MEMBER WHO TOOK NO PART OR DISSENTED, OR ABSTAINED FROM A DECISION OR RESOLUTION MUST STATE THE REASON THEREFOR. THE SAME REQUIREMENTS SHALL BE OBSERVED BY ALL LOWER COLLEGIATE COURTS."

The proposed amendment seeks the deletion of the phrase "dissenting or abstaining," and in lieu thereof, the substituted phrase "WHO TOOK NO PART, OR DISSENTED, OR ABSTAINED FROM A DECISION OR RESOLUTION" and then the word "THEREFORE Madam President.

THE PRESIDENT: Are there any comments? Commissioner Guingona is recognized.

MR. GUINGONA: Madam President, may I just inquire where the reason is supposed to be indicated.

Does the reason refer to the certification, Madam President?

MR. CONCEPCION: No. In the decision itself.

MR. GUINGONA: That is it. I am referring now to the first instance where a Member takes no part, where, for example, he takes no part because he is abroad or is hospitalized. I was wondering whether this need not be a personal statement.

MR. CONCEPCION: If he is hospitalized or abroad, it cannot be a personal thing.

MR. GUINGONA: Yes, Madam President. Just for clarification.

MR. CONCEPCION: Generally, the Chief Justice certifies. But as to reasons for an abstention, it is a personalized matter that only the judge concerned may explain it.

MR. GUINGONA: This was an addition, Madam President. Originally, it was only referring to "abstentions;" it was only referring to instances when the justices dissented. Thank you.

MR. CONCEPCION: It is also one way of seeing to it that all justices participate, because something must be done by the judge who did not take part and the reason for his failure to participate should be so stated. It may be rather awkward for a judge to say that he is abroad. We feel that judges would, in general, prefer to avoid such explanations to appear in many cases. The explanation was required before in case of dissent. Now a judge must state why he took no part, or dissented or abstained.

MR. JAMIR: Madam President, just one question for clarification.

THE PRESIDENT: Commissioner Jamir is recognized.

MR. JAMIR: If the Chief Justice is abroad or is incapacitated from discharging the duties of his office, who will perform the certification?

MR. CONCEPCION: Actually, there is a law to the effect that whenever the Chief Justice is absent, his next in rank performs his duties. That is automatic; the senior Associate Justice takes over.

MR. JAMIR: Is there a rule of court on that matter?

MR. CONCEPCION: No, there is a law to that effect in determining the rank.

MR. JAMIR: Thank you very much.

MR. LERUM: Madam President.

THE PRESIDENT: Commissioner Lerum is recognized.

MR. LERUM: May I be allowed to ask a question.

THE PRESIDENT: Please proceed.

MR. LERUM: As worded, Section 11 says:

> The conclusions of the Supreme Court in any case submitted to it for decision en banc or in

> division shall be reached in consultation before the case is assigned to a Member for the writing of the opinion of the court. A certification to this effect signed by the Chief Justice shall be issued . . .

Does the certification include the fact that certain justices have participated, and to whom the case has been assigned for the writing of the opinion?

MR. CONCEPCION: No.

MR. LERUM: Is this certification different from the decision to be promulgated by the Supreme Court?

MR. CONCEPCION: **Yes. That is a certification that must be issued immediately after the deliberation**.

MR. LERUM: Thank you.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: Just a question; will this statement of the reasons why somebody took no part or dissented or abstained be simultaneous with the issuance of the decision?

MR. CONCEPCION: Yes.

MR. RODRIGO: Suppose a justice is abroad and the decision is due for promulgation and the justice stays abroad for a month more?

MR. CONCEPCION: The Chief Justice or Associate Justice will state why he is abroad.

MR. RODRIGO: But here, it is the Member who took no part that should state the reason, not the Chief Justice. It says: "Any Member WHO TOOK NO PART, OR DISSENTED, OR ABSTAINED from a decision OR RESOLUTION must state the reason THEREFORE."

So, it is not the Chief Justice who will state the reason.

MR. CONCEPCION: The committee would welcome the Commissioner's suggestion as to the language.

MR. RODRIGO: I really would not know because before it just applies to Members who dissented or abstained. But the justice who took no part might be abroad or he might be so sick in the hospital that he cannot explain the reason.

MR. BENGZON: Madam President.

MR. CONCEPCION: Would the Commissioner prefer not to state that he is abroad?

MR. RODRIGO: Yes, that can be stated. But the provision says that he is the one who must explain.

MR. CONCEPCION: That is why I am stating that the committee is willing to accept the Commissioner's suggestion. What is the Commissioner's suggestion?

MR. BENGZON: Madam President, may I offer a suggestion.

MR. CONCEPCION: All right.

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: In that particular case, if a justice is out of the country, can we not interpret and read into the record that in such a case, the Chief Justice or whoever is the next ranking justice will certify and state that the reason that particular justice took no part is that he was away. Maybe we can consider that as an interpretation, as an exception to this particular basic rule.

MR. CONCEPCION: The requirement that he should state the reason is that very often some of them are here, but still they do not take part.

MR. RODRIGO: If the member is around, then he can state the reason he did not take part. But how about occasions when a member is out of the country?

MR. CONCEPCION: The Chief Justice can say he cannot certify that a member was not able to participate because he was abroad.

MR. RODRIGO: I am satisfied with that.

THE PRESIDENT: Are we now ready to vote?

MR. SUMULONG: Madam President.

THE PRESIDENT: Commissioner Sumulong is recognized.

MR. SUMULONG: May I direct some questions to the committee, especially to the chairman, Chief Justice Concepcion?

MR. CONCEPCION: Certainly, Madam President.

THE PRESIDENT: The Commissioner will please proceed.

MR. SUMULONG: Section 11 says:

> The conclusions of the Supreme Court in any case submitted to it for decision en banc or in division shall be reached in consultation before the case is assigned to a Member for the writing of the opinion of the court . . .

**The words "in consultation" make me doubt as to whether or not all the justices will take part in discussing the issues and reaching a decision before selecting the member who will write the opinion of the court.**

MR. CONCEPCION: There are those who dissent or abstain, or are abroad.

MR. SUMULONG: Under our Rules of Court and in the Article on the Judiciary that we have approved on Second Reading, a case is submitted for decision in the Supreme Court or in the Court of Appeals when the appellant has filed his reply-brief.

MR. CONCEPCION: That is right.

MR. SUMULONG: **Suppose after the reply-brief has been filed with the appellant, the chairman of the division will just call up by phone the other members of the division and ask what they think of the case without any discussion? I am asking this**

**question because there are several occasions where the cases are not discussed by the whole division or by the whole court. They are usually assigned only to one member of the court who just prepares a draft decision and afterwards, when the draft decision is already prepared, he just goes to the other members of the division to secure their concurrence. To make sure that the decision will be that of a collegiate court, can we not make it clearer if instead of the words "in consultation," we substitute the phrase "AFTER DUE DELIBERATION ON THE ISSUES INVOLVED"?**

MR. CONCEPCION: That appears in another section which provides that the cases must be decided by a vote of the majority of those who took part in the deliberations and voted thereon.

MR. SUMULONG: That is precisely why I am suggesting that we use the phrase "AFTER DUE DELIBERATION ON THE ISSUES INVOLVED."

MR. CONCEPCION: That is stated in another section.

MR. SUMULONG: In another section but not in this section, Madam President.

MR. CONCEPCION: In other words, they cannot vote if they did not take part in the deliberations.

MR. SUMULONG: The words we used in Section 11 are "in consultation."

MR. CONCEPCION: That is right but that is complemented by the provision that the members cannot vote unless they take part in the deliberations. We cannot put everything in one section.

MR. SUMULONG: Would it not be better if we repeat that phrase here in Section 11 so that we can be sure that when the case is submitted for decision, all the members of the division or the court will meet together as a collegiate court, then deliberate on the issues and reach a conclusion before a member of the court is selected to write the opinion of the court?

SUSPENSION OF SESSION

THE PRESIDENT: The session is suspended for a few minutes.

It was 4:24 p.m.

RESUMPTION OF SESSION

At 4:31 p.m., the session was resumed with the Honorable Jose F .S. Bengzon, Jr. presiding.

THE PRESIDING OFFICER (Mr. Bengzon): The session is resumed.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized.

MR. RAMA: There has been a reformulation of the provision. May I ask that Commissioner Regalado be recognized.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Regalado is recognized.

MR. REGALADO: We have discussed the point raised by Commissioner Sumulong and we have agreed that **the phrase "in consultation**," on which he sought a clarification, **shall be understood to mean that these justices took part in the deliberations on the issues of the case** and we want that to be made of record instead of amending Section 11, because the phrase "took part in the deliberations of the issues in the case" already appears in Section 3 (2) and (3), and also in Section 10. So the phrase "in consultation," appearing on line 17 of page 2, is likewise understood to mean that before a decision or a conclusion of the court shall be submitted for decision, it shall be reached in consultation, meaning, with the participation of the justices involved in the case.

MR. SUMULONG: Mr. Presiding Officer, just not to delay the proceedings, I would agree to that, although I would have preferred that in Section 11 itself, the words "in consultation" should be deleted, and the words substituted should be "AFTER DUE DELIBERATION ON THE ISSUES INVOLVED."

Thank you, Mr. Presiding Officer.

MR. GUINGONA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Guingona is recognized.

MR. GUINGONA: Would the committee have any serious objection to that suggestion, which I was going to propound myself, that we substitute the words "in consultation" with the phrase "AFTER DUE DELIBERATION ON THE ISSUES INVOLVED," in view of the manifestation made by Commissioner Regalado, in order to align this particular section with the other sections that he has referred to?

THE PRESIDING OFFICER (Mr. Bengzon): What does the committee say?

MR. CONCEPCION: I would have no objection. But let us remember that the last sentence of Section 10, which is followed by Section 11, uses that phrase already. And sometimes, repeating the same expression appears a little awkward. But if that is the suggestion, it is all right.

MR. GUINGONA: Precisely, if we change this, there might be some doubts raised because we were talking of "deliberations" in the previous sentence, and then we shift to "consultations" in the second sentence in the next section.

MR. REGALADO: The phrase "in consultation" also appears in the previous Constitutions where it was always understood to mean "AFTER DUE DELIBERATION."

MR. GUINGONA: Yes. But, **precisely, the intention of the committee has been to stress the need for deliberations in order to avoid the kind of consultations that the Honorable Commissioner Sumulong has mentioned.**

May I propose an amendment, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): What is the amendment of Commissioner Guingona?

MR. GUINGONA: Instead of the words "in consultation," we use the phrase "AFTER DUE DELIBERATION."

THE PRESIDING OFFICER (Mr. Bengzon): That seems to be the proposal of Commissioner Sumulong. Is the Commissioner insisting on that?

MR. GUINGONA: I would like to find out if the committee would accept it and I will appreciate it if so.

MR. REGALADO: **The phrase "in consultation" has already a settled meaning, having been used in two previous Constitutions and Commissioner Sumulong is already satisfied that it means "AFTER DUE DELIBERATION."**

THE PRESIDING OFFICER (Mr. Bengzon): Is Commissioner Guingona insisting on his amendment?

MR. GUINGONA: I will accept the sense of the committee. And speaking of the sense of the committee, Mr. Presiding Officer, in reply to my inquiry earlier, the Honorable Chief Justice mentioned that as far as the statement on nonparticipation is concerned, that would not necessarily mean a personal statement; it could be done by either the Chief Justice or any other responsible official of the court.

Thank you.

MR. RAMA: Before the committee reads the section for voting I move that we delete the words "TO IT" between the words "SUBMITTED" and "FOR" because it is already obvious that it is submitted to the Supreme Court for decision, so the words "TO IT" will be unnecessary.

THE PRESIDING OFFICER (Mr. Bengzon): The committee chairman is recognized.

MR. SUAREZ: The committee is happy to accept the proposal to delete the words "TO IT."

THE PRESIDING OFFICER (Mr. Bengzon): May we now request the committee through Commissioner Suarez to read the whole section.

MR. SUAREZ: Thank you, Mr. Presiding Officer.

Section 11, as amended, will now read: "THE CONCLUSION OF THE SUPREME COURT IN ANY CASE SUBMITTED FOR DECISION EN BANC OR IN DIVISION SHALL BE REACHED IN CONSULTATION BEFORE THE CASE IS ASSIGNED TO A MEMBER FOR THE WRITING OF THE OPINION OF THE COURT. A CERTIFICATION TO THIS EFFECT SIGNED BY THE CHIEF JUSTICE SHALL BE ISSUED AND A COPY THEREOF ATTACHED TO THE RECORD OF THE CASE AND SERVED UPON THE PARTIES. ANY MEMBER WHO TOOK NO PART OR DISSENTED, OR ABSTAINED FROM A DECISION OR RESOLUTION MUST STATE THE REASON THEREFOR. THE SAME REQUIREMENTS SHALL BE OBSERVED BY ALL LOWER COLLEGIATE COURTS."

THE PRESIDING OFFICER (Mr. Bengzon): Is there any objection? (Silence) The Chair hears none; **the section is approved.**

MR. RAMA: May I ask that Commissioner Suarez be recognized on Section 13.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Suarez is recognized.[5] (Emphasis supplied)

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MR. SUMULONG: Mr. Presiding Officer, anterior amendment to Section 11.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Sumulong is recognized.

MR. SUMULONG: Thank you.

On page 5, Section 11, line 11, insert AND OF THE INTERMEDIATE APPELLATE COURT between "Court" and "in."

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[5] V REC. CONST. COMM'N. 642-45 (Oct. 8, 1986).

On line 12, change the word "it" to THEM and on line 15, after "Chief Justice," insert OF THE SUPREME COURT OR BY THE PRESIDING JUSTICE OF THE INTERMEDIATE APPELLATE COURT, AS THE CASE MAY BE.

So the first two sentences of Section 11 will read as follows: "The conclusions of the Supreme Court AND OF THE INTERMEDIATE APPELLATE COURT submitted to THEM for decision en banc or in division shall be reached in consultation before the case is assigned to a Member for the writing of the opinion of the court. A certification to this effect signed by the Chief Justice OF THE SUPREME COURT OR BY THE PRESIDING JUSTICE OF THE INTERMEDIATE APPELLATE COURT, AS THE CASE MAY BE, shall be issued an copy thereof attached to the record of the case and served upon the parties."

May I explain these amendments, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Sumulong has five minutes to explain.

MR. SUMULONG: The Supreme Court is a collegiate court and so is the Intermediate Appellate Court. **It is only natural and logical that the decisions of these collegiate courts should be arrived at after all the justices shall have studied the case before them and shall have deliberated upon the briefs and the oral argument of the parties before a justice is assigned to be the ponente of the case.** If that is true of the Supreme Court, it should be true also of the Intermediate Appellate Court. But I am more concerned about the Intermediate Appellate Court because **I know for a fact that many of the divisions of the Intermediate Appellate Court, formerly the Court of Appeals, simply choose one of their members to make a draft decision and then just pass this draft decision to the other members of the division for their concurrence and signature. So only one justice studies and decides the case.** That is the reason for proposing my amendment on Section 11, so that the provisions contained therein will apply not only to the Supreme Court but also to the Intermediate Appellate Court. As a matter of fact, Mr. Presiding Officer, I know of many cases where lawyers and litigants appealed cases to the Court of Appeals or the Intermediate Appellate Court knowing that the practice is for a division to select one member to

make a draft decision and let the other members concur. **Many lawyers use fixers to find out who makes the draft decision, and they concentrate their pressure on that justice of the Court of Appeals. This is a practice that should be terminated as early as possible,** and I think this provision contained in Section 11 will be the solution by applying it, not only to the Supreme Court but also to the Intermediate Appellate Court.

Thank you, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): The Chair thanks Commissioner Sumulong.

May we have the comments of the Committee.

MR. ROMULO: Commissioner Regalado will reply.

MR. REGALADO: Mr. Presiding Officer, we all share the concern of the honorable Chairman of the Committee on the Executive. We also know those alleged practices in the Intermediate Appellate Court, however, I would make two comments on that point.

The Intermediate Appellate Court is a statutory court, not a constitutional re-created court. If we mention here specifically the Intermediate Appellate Court, then it becomes part of the Constitution, although the fact is the Intermediate Appellate Court may also be abolished merely by statute later.

Second, because we appreciate and fully share the concern of Commissioner Sumulong, we added this sentence: "The same requirement shall be observed by all lower collegiate courts," which means that the Intermediate Appellate Court and the Sandiganbayan, which are collegiate courts, have to follow the same requirements that their decisions shall be reached at only after consultation before a case is assigned to a member for the writing of the opinion with the corresponding certification of the highest magistrate of that particular collegiate body. By the way, there may be a little typographical error on line 19. It should be "The same requirements shall be observed by all lower collegiate courts."

MR. SUMULONG: Do I understand this last sentence which will read: "The same requirements shall be observed by all lower collegiate courts" will require the Intermediate Appellate Court, the Sandiganbayan, the Court of Tax Appeals and all other collegiate

> courts to follow the rule established in Section 11 and that **these collegiate courts are not allowed to assign the preparation of a draft decision to one justice alone and have it concurred by the other justices to reach a decision?**
>
> MR. REGALADO: Yes, Mr. Presiding Officer, the Intermediate Appellate Court, the Sandiganbayan and the Court of Tax Appeals have to follow the same requirements.
>
> MR. SUMULONG: Is that the clear intent and purpose of this Section 11, Mr. Presiding Officer?
>
> MR. REGALADO: Yes, Mr. Presiding Officer.
>
> MR. SUMULONG: I am satisfied. Mr. Presiding Officer.
>
> THE PRESIDING OFFICER (Mr. Bengzon): So the proposed amendment of Commissioner Sumulong is withdrawn?
>
> MR. SUMULONG: Yes, Mr. Presiding Officer, I am satisfied with the explanation of the Committee.[6] (Emphasis supplied)

By the language of the provisions of the Constitution and the discussions in the Constitutional Commission, it is indubitably clear that cases or matters shall be decided or resolved by the Supreme Court, whether *en banc* or by a division, 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…"**

Further, as provided in Section 13, the conclusion "**shall be reached in consultation before the case is assigned to a member for the writing of the opinion of the Court.**"

In the discussion before the Constitutional Commission on these provisions, Delegates Sumulong and Regalado pointedly clarified:

> MR. SUMULONG: **Suppose after the reply-brief has been filed with the appellant, the chairman of the division will just call**

[6] I REC. CONST. COMM'N. 498-99 (Jul. 14, 1986).

> **up by phone the other members of the division and ask what they think of the case without any discussion? I am asking this question because there are several occasions where the cases are not discussed by the whole division or by the whole court. They are usually assigned only to one member of the court who just prepares a draft decision and afterwards, when the draft decision is already prepared, he just goes to the other members of the division to secure their concurrence. To make sure that the decision will be that of a collegiate court, can we not make it clearer if instead of the words "in consultation," we substitute the phrase "AFTER DUE DELIBERATION ON THE ISSUES INVOLVED"?**
>
> xxx xxx xxx
>
> MR. REGALADO: **The phrase "in consultation" has already a settled meaning, having been used in two previous Constitutions and Commissioner Sumulong is already satisfied that it means "AFTER DUE DELIBERATION."**[7] (Emphasis supplied)

The key requirement, both in the language of the Constitution and emphasized extensively in the discussions before the Constitutional Commission, is that the members of the Supreme Court *en banc* or in divisions may only decide a case or resolve a matter after "**DELIBERATIONS** on the issues in the case" and that only after such deliberations may they vote thereon. Further, only after the vote may a *ponente* be designated to write the opinion of the Court in the form of a decision or a resolution.

"To deliberate" has been defined as follows:

> Deliberate, (*vb*) — to think about or discuss issues and decisions carefully ~ *vt*: to think about deliberately and often with formal discussion before reaching a decision
>
> Deliberate (*adj*) — 1: characterized by or resulting from careful and thorough consideration; 2: characterized by awareness of the consequences; 3: slow, unhurried, and

[7] V REC. CONST. COMM'N. 644-45 (Oct. 8, 1986).

> steady as though allowing time for decision on each individual action involved[8]

> Deliberate, *v.* — To weigh, ponder, discuss, regard upon, consider. To examine and consult in order to form an opinion. To weigh in the mind; to consider the reasons for and against; to consider maturely; reflect upon, as to deliberate a question; to weigh the arguments for and against a proposed course of action.[9]

> Deliberate, *adj.* — Well advised; carefully considered; not sudden or rash; circumspect; slow in determining. Willful rather than merely intentional. Formed, arrived at, or determined upon as a result of careful thought and weighing of considerations, as a deliberate judgment or plan. Carried on coolly and steadily, especially according to a preconceived design; given to weighing facts and arguments with a view to a choice or decision; careful in considering the consequences of a step; slow in action; unhurried; characterized by reflection; dispassionate; not rash.[10]

"Deliberation," on the other hand, in its general and common meaning, means:

> Deliberation, (*n*) - 1 a: the act of deliberating; b: a discussion and consideration by a group of persons of the reasons for and against a measure; c: the quality or state of being deliberate — deliberative (*adj*); deliberatively (*adv*); deliberativeness (*n*)[11]

while in legal context means:

> The act or process of deliberating. The act of weighing and examining the reasons for and against a contemplated act or course of conduct or a choice of acts or means.

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[8] MERRIAM WEBSTER'S COLLEGIATE DICTIONARY 305 (10th ed., 1993)

[9] People v. Thomas, 25 Cal. 2d 880, 156 P.2d 7, 17, 18 (1953).

[10] *Id. See also* BLACK'S LAW DICTIONARY 426-27 (7th ed., 1999).

[11] MERRIAM WEBSTER'S , *supra* note 8.

> In the context of jury function means that a properly formed jury, comprised of a number of qualified persons required by law, are within the secrecy of jury room analyzing, discussing and weighing evidence which they have heard with a view to reaching a verdict based upon law applicable to facts of case as they find them to be; such deliberation can only be carried on by a lawful number of jurors in the presence of all.[12]

The definitions clearly contemplate a study of the facts and of the applicable law on the basis of the entire record of the case, in light of the issues of the case, by every member of the court, with an exchange of views among them before a decision on how to resolve the issues is made by each member, and thereafter a vote on the case or resolution of the matter is reached and taken.

While the legal definition offered by Black's Law Dictionary may be referring to a jury system, as adopted in the United States, it is clearly applicable to a collegial court where the members need to be of a lawful number (*quorum*), and together "analyzing, discussing, and weighing evidence which they have heard with a view to reaching a verdict based upon law applicable" to the facts of the case as they find them to be. Such deliberation can only be carried on by a lawful member of jurors **in the presence of all**. Such careful analysis and discussion cannot be had without a comprehensive study of the entire records of the case.

It was for this reason that the Constitution, in Sections 4 and 13 of Article VIII, requires, to reiterate, as follows:

> Article VIII
> Judicial Department
>
> xxx xxx xxx
>
> (2) All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court *en banc*, and all other cases which under the Rules of Court are required to be heard *en banc*, including those involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances,

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[12] Rushing v. State, Tenn. Ct. App., 565 S.W.2d 893, 895 (1978). *See also* BLACK'S LAW DICTIONARY 427 (7th ed. 1999).

> and other regulations, **shall be decided 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**.
>
> (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*. (Emphasis supplied)
>
> x x x x x x x x x
>
> Section 13. **The conclusions of the Supreme Court in any case submitted to it for decision *en banc* or in division shall be reached in consultation before the case is assigned to a Member for the writing of the opinion of the Court**. A certification to this effect signed by the Chief Justice shall be issued and a copy thereof attached to the record of the case and served upon the parties. Any Member who took no part, or dissented, or abstained from a decision or resolution, must state the reason therefor. **The same requirements shall be observed by all lower collegiate courts**. (Emphasis supplied)

All of these provisions, if religiously followed and implemented, would assure that every member of the Court that participates in the deliberations on a decision and vote thereon, studied the case, read all pertinent pleadings, examined the evidence, and had reached a conclusion before voting on the decision. The practice that was sought to be abolished was to designate, at the inception of the case, a member of the Court to study the case, to oversee and steer its way through the process, and finally, to make a recommendation on the case. The procedure mandated by the Constitution would assure that decisions of the Supreme Court and lower collegiate courts would be truly collegial, enhancing at the same time the integrity of the process of adjudication.

It bears stressing that the members of the Commission who participated in their drafting and in the inclusion of the provisions in the Constitution, which included former Chief Justice Roberto Concepcion, were knowledgeable persons experienced in the judicial and adjudicative process and leading members of the Bar. They were aware of the decision-making process then prevailing in the Supreme Court and other collegiate courts. They knew its shortcomings and wanted to terminate it. There is thus an assurance that the requirements are realistically implementable.

After the Constitution came into effect, there does not appear to have been a meaningful effort – which ought to have been immediately taken – to make the necessary changes in the prevailing practice to assure compliance with the requirements of the Constitution.

* * *

It is apparently for this reason that when the Supreme Court finally promulgated its Internal Rules[13] on May 4, 2010, as recent only as less than three (3) years ago, it referred to the member of the Court to whom the case is assigned for study and for overseeing not as the "*ponente*" but as the "Member-in-Charge." But several provisions of the Internal Rules show, and I believe in actual practice, the use of the term "Member-in-Charge" in the "Internal Rules..." rather than "*ponente*" is but a euphemism to avoid patent non-compliance with Section 13, Article VIII of the Constitution. This is evident from the following provisions of the Internal Rules:

1. Provisions for "**strict confidentiality on the identity of the Member-in-Charge or *ponente*.**"[14]

2. The "Member-in-Charge is defined in the Rules as "the Member given the responsibility of **overseeing the progress and disposition of a case** assigned by raffle."[15]

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[13] INTERNAL RULES OF THE SUPREME COURT, A.M. No. 10-4-20-SC (2010).

[14] Rule 9, §§ 2 and 4.

[15] Rule 2, § 9; Rule 7, § 1.

a. "[C]ases already assigned to a Member-in-Charge shall be transferred to the Division to which the Member-in-Charge moves."[16]

b. Under the Rules, the Member-in-Charge -

(1) is referred to as the one who is "assigned to **oversee** the progress and disposition of a case" and who is "**to decide or resolve**" a case.[17]

(2) is the one who "shall report the case for deliberation."[18]

(3) is required to initially submit "a summary of facts, the issue or issues involved, and the arguments that the petitioner presents in support of his or her case."[19]

(4) "shall recommend to the Court the action to be taken on any incident during the pendency of the case."[20]

(5) when a case is submitted for decision or resolution, the Member-in-Charge shall submit "a report that shall contain the facts, the issue or issues involved, the arguments of the contending parties, and the laws and jurisprudence that can aid the Court in deciding or resolving the case."[21]

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[16] Rule 2, § 9.
[17] Rule 13, § 1, ¶ 2.
[18] ¶ 3.
[19] § 3(a).
[20] § 3(b).
[21] § 3(c).

3. On the other hand, the "*ponente*" is defined as "the Member to whom the court, **after its deliberation** on the merits of a case, assigns the writing of its decision or resolution in the case."[22]

   a. Motions for reconsideration or clarification of an unsigned resolution or a minute resolution shall be acted upon by the regular Division to which the *ponente* belongs at the time of the filing of the motion."[23]

   b. Motions for reconsideration or clarification of a decision or of a signed resolution shall be acted upon by the *ponente* and the other Members of the Division who participated in the rendition of the decision or signed resolution.[24]

   c. From Section 5 of Rule 13, it is implicit that the conclusion arrived at by the *ponente* may be different from the conclusion of the majority of the Members regarding the issue or issues in the case.

4. As stated at the outset, Sections 2 and 4 of Rule 9 of the SC Internal Rules provide for "**strict confidentiality on the identity of the Member-in-Charge or *ponente*.**"

   a. Yet, Rule 7 provides as follows:

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[22] Rule 2, § 6; Rule 13, § 5.
[23] Rule 13, § 6.
[24] § 7, ¶ 1.

> (1) Every initiatory pleading shall be raffled among the Members of the Court **to a Member-in-Charge.**[25]
>
> (2) "The Clerk of Court shall make the result of the raffle **available to the parties and their counsels or to their duly authorized representatives.**"[26]

5. From the above, it would appear that the "**parties and their counsels or to their duly authorized representatives"** have access to the identity **of the Member-in-Charge but not of the *ponente***.

6. However, the Member-in-Charge is actually the one who studies the case, prepares a report that shall contain the facts, the issue or issues involved, shepherds the case through the entire process and makes a recommendation thereon.

   In most cases, the "Member-in-Charge" who is chosen by raffle when the "**initiatory pleading**" is filed with the Court, would be the "ponente" when a decision on the case is made and promulgated. Instances when the "Member-in-Charge" would not be the "ponente" are the following: (a) he would have cast a "dissenting" vote which means, he would have proposed a decision which did not obtain the support of the majority of the members of Court who participated in the case; (b) before the case is deliberated upon and decided, he would have retired or resigned from the court or inhibited himself from participating in the case.

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[25] Rule 7, § 1.
[26] § 3.

Apparently, the functions and responsibilities of the Member-in-Charge under the Internal Rules are not much different from that of the "*ponente*" before the promulgation of the rules. Like the "*ponente*," he is designated by raffle upon the filing of the "initiatory" pleading. He oversees and steers the case through the entire process and eventually, subject to certain exceptions, writes the opinion of the court on the case.

I understand that this practice has been adopted and has persisted through the years in the interest of expediency. No reason, least of all expediency, can justify non-compliance with explicit requirements of the Constitution. Moreover, it does not seem to have assured the expedient resolution of cases by the Supreme Court in light of the long delay in the disposition of many cases.

## AS TO THE TIME WITHIN WHICH CASES BEFORE THE SUPREME COURT AND OTHER COURTS MUST BE DECIDED

Section 15, Article VIII of the Constitution provides:

> Article VIII
> Judicial Department
>
> xxx xxx xxx
>
> SEC. 15. (1) All cases or matters filed after the effectivity of this Constitution **must be decided or resolved within twenty-four months from date of submission for the Supreme Court**, and, unless reduced by the Supreme Court, **twelve months for all lower collegiate courts, and three months for all other lower courts**.
>
> (2) A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the Rules of Court or by the court itself.
>
> (3) **Upon the expiration of the corresponding period, a certification to this effect signed by the Chief Justice**

> **or the presiding judge shall forthwith be issued and a copy thereof attached to the record of the case or matter, and served upon the parties**. The certification shall state why a decision or resolution has not been rendered or issued within said period.
>
> (4) Despite the expiration of the applicable mandatory period, the court, without prejudice to such responsibility as may have been incurred in consequence thereof, shall decide or resolve the case or matter submitted thereto for determination, without further delay. (Emphasis supplied)

Rule 13 of the Internal Rules of the Supreme Court, in implementation, similarly provides:

> SECTION 1. *Period for deciding or resolving cases.* — **The Court shall decide or resolve all cases within twenty-four months from the date of submission for resolution**. A case shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum that the Court or its Rules require.
>
> The Member-in-Charge, assigned to oversee the progress and disposition of a case, **who is unable to decide or resolve the oldest cases within that period shall request the Court *en banc* for an extension of the period**, stating the ground for the request. The Court shall act on the request as it sees fit, according to the circumstances of the case.
>
> Should a Member object to the request, the Court shall grant a final extension of thirty days within which the Member-in-Charge shall report the case for deliberation, failing which, the case shall be re-raffled to another Member who shall submit the report within thirty days from assignment. (Emphasis supplied)

Those unfamiliar with the process of adjudication may be misled into believing that cases before the Supreme Court and lower courts must be decided within the periods provided in the above provisions of the Constitution. The periods provided for, it must be emphasized, are to be counted "**from the date of submission**" for decision or resolution of the case before the court. The period does not commence upon the institution of the action.

Referring to cases before the Supreme Court, upon the institution of an initiatory pleading before the Supreme Court, such as a petition for certiorari or a petition for review, the process which the case undergoes before it is submitted for resolution often takes longer than the time within which the court would decide the case from the time it is submitted for resolution.

As now practiced, when a petition for certiorari is filed before the Supreme Court, unless the petition is, on its face, insufficient in form or in substance, in which case it would be dismissed outright, the court would order the respondent to comment on the petition, usually within ten (10) days. It could take months, except in high profile cases, before the court issues an order to comment.[27] In most cases, the respondent would ask for extension of time within which to file the comment. At times, the period sought, including extensions which are subsequently requested, and usually granted, could be months so that the comment would be filed only after such period.

After the respondent files a comment, it would take weeks or months before the court takes further action on the case. When it does, it may require the petitioner to file a reply to the comment or just hold the case for a while. After these pleadings are filed, the parties are asked to file memoranda and, in rare cases, to set the case for oral arguments.

Thus, the period before the case is submitted for decision may not only take months but years. It is only after the case is submitted for decision will the period provided for in the Constitution within which the court must decide cases start to run.

Apparently overlooked, the Constitution, in its Bill of Rights, perhaps unique to our Constitution, provides as follows:

> Section. 16. All persons shall have **the right to a speedy disposition of their cases** before all judicial, quasi-judicial, or administrative bodies. (Emphasis supplied)

This should put constraints on the process before a case is submitted for decision.

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[27] *See* People v. Webb, 638 SCRA 104 (2010).

The general perception, shared by myself, is that except for high profile cases, it takes the Supreme Court years, inclusive of what is known as the "completion process," and the period within which cases must be decided after submission, to decide cases which come before it. Deciding cases expeditiously is particularly vital for criminal cases where the accused is detained. I would surmise that this is due to the number of cases which are instituted before the Supreme Court, the unnecessarily lengthy process before the case is submitted for decision, compounded by its responsibility to exercise administrative supervision over all courts and the personnel thereof."[28]

In a lecture I delivered at the U.P. College of Law during its centennial celebration,[29] I suggested that the 1987 Constitution reflected a distrust of the other departments and instrumentalities of government and which it sought to alleviate by giving the Judicial Department broader oversight or checking power over them. For this purpose, the judicial power has been redefined in Section 1, Article VIII of the Constitution, particularly its second paragraph:

> SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies, involving rights which are legally demandable and enforceable and **to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.** (emphasis supplied)

This definition of judicial power has brought about the weakening, if not the obliteration, of the traditional limitation on judicial power. Judicial power is now referred to as the "**duty** of the courts of justice to settle **not only** actual controversies involving rights which are legally demandable and enforceable **but to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government**."

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[28] *See* CONST., art. VIII, § 6.

[29] Estelito Mendoza, The 1987 Constitution: A Marcos Legacy?, 9th UP College of Law Centennial Lecture (Nov. 22, 2011).

The well-entrenched requirement that only a person with "standing" may file a petition before a court to initiate a "case" has now often been disregarded.[30] The "political question" doctrine has apparently been abolished. In that sense, the judiciary has become the Ombudsman of the entire government overseeing the exercise of legislative, executive, and administrative powers. This has practically eliminated the limitations in the exercise of the judicial power and has correspondingly increased the number of petitions or cases instituted before the Supreme Court. Nonetheless, it is my view that, except for cases over which exclusive jurisdiction is vested in the Supreme Court, the jurisdiction of the court, albeit judicial power is regarded as a "duty," remains to be largely permissive.

We may consider the practice in the U.S. Supreme Court of reviewing only a hundred or so cases each year notwithstanding the thousands of petitions for review which are filed with the U.S. Supreme Court each year. How do we achieve this? And will the people, or the litigants, then feel that they do not obtain the "ultimate justice" that they deserve? We may learn from the experience of the United States.

In the late 1700s, the Supreme Court of the United States, because of circumstances which had developed, was confronted with the problem of having an excessive amount of cases. Chief Justice William Rehnquist narrates how the present practice in the Supreme Court of the United States evolved:

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[30] *See the following cases:* Osmeña v. Comm'n. on Elections, 199 SCRA 750 (1991); Oposa v. Factoran, 224 SCRA 792 (1993); Kilosbayan, Inc. v. Guingona 232 SCRA 110 (1994); Kilusang Mayo Uno Labor Center v. Garcia, Jr., 239 SCRA 386 (1994); Tañada v. Angara, 272 SCRA 18 (1997); Tatad v. Secretary of the Department of Energy, 281 SCRA 330 (1997); Integrated Bar of the Philippines v. Zamora, 338 SCRA 81 (2000); Del Mar v. Phil. Amusement & Gaming Corp., et al., 346 SCRA 485 (2000); Matibag v. Benipayo, 380 SCRA 49 (2002); Lim, v. Executive Secretary, 380 SCRA 739 (2002); Macalintal v. Comm'n. on Elections, 405 SCRA 614 (2003); Francisco, Jr. v. House of Representatives, 415 SCRA 44 (2003); La Bugal B'Laan Tribal Assoc., v. Ramos, 421 SCRA 148 (2004); Jaworski v. Phil. Amusement & Gaming Corp., 419 SCRA 317 (2004); Tolentino v. Comm'n. on Elections, 420 SCRA 438 (2004); Sanlakas v. Executive Secretary, 421 SCRA 656 (2004); Disomangcop, et al. vs. Datumanong, et al., 444 SCRA 203 (2004); Kilusang Mayo Uno v. Director-General of the National Economic Development Authority, 487 SCRA 623 (2006); Coconut Oil Refiners Assoc., Inc. v. Torres, 465 SCRA 47 (2005); David v. Macapagal-Arroyo, 489 SCRA 160 (2006); Biraogo v. Philippine Truth Commission of 2010, 637 SCRA 78 (2010); and Magallona v. Ermita, 655 SCRA 476 (2011).

Examination of the certiorari process naturally brings up the question of the precise role of the Supreme Court of the United States in our country's legal system. Many would intuitively say that the task of the "highest court in the land" is to make sure that justice is done to every litigant, or some similarly general and appealing description. The Supreme Court of the United States once played a role in the federal system corresponding fairly closely on that description, but the days when it could do so are long gone.

The first Congress in 1789 established the Supreme Court of the United States, and lower federal courts which were essentially trial courts. In the lower courts witnesses testified, documents were received in evidence, and at the close of the trial the judge or the jury ruled in favor of one of the parties and against the other. Congress provided that appeals from these decisions should lie to the Supreme Court of the United States, and the task of the latter Court in these early days was to do what any other appellate court traditionally does: make sure that the trial was fairly conducted, that the judge correctly applied the law, and that the evidence supported the result reached by the lower court. In its earlier days, as I have previously indicated, the Supreme Court did not have a great deal to do as an appellate court—for several decades it sat in Washington for only a few weeks a year, hearing appeals from the lower federal courts and from state supreme courts. Indeed, the justices spent far more of their time circuit riding to sit as trial judges in the geographic circuits to which they were assigned than they did as appellate judges in Washington.

But this rather easygoing picture changed before the Civil War, and the Supreme Court justices had to spend more of their time sitting as appellate judges and still found themselves falling behind in their docket. After the Civil War, court congestion increased. Congress expanded the jurisdiction of the lower federal courts, so that they could hear types of cases they had previously been denied the authority to hear. Congress began to enact regulatory legislation, which created new kinds of lawsuits that could be brought in the federal courts. Finally, both the commercial activity and the population of the United States continued to increase dramatically, and both of these kinds of growth naturally caused more litigation. **By 1890 it took three and one half years between the time a case was first docketed in the Supreme Court and the time it was orally argued before the justices. Court congestion is not often a major concern of Congress, but**

**these extreme delays caused the legal profession to rise up in righteous indignation, and in 1891 Congress responded by creating the federal circuit courts of appeals**.

The federal circuit courts of appeals were regional federal appellate courts. Congress provided that in cases where the federal trial courts had jurisdiction not because of a federal question involved in the case but only because one of the parties was a citizen of one state and the other a citizen of another, appeal from the decision of the trial court would lie not to the Supreme Court of the United States, **but to the federal court of appeals in the geographic region in which the trial courts lay**. Review of the decision of the court of appeals could not be had automatically in the Supreme Court, but only if the Supreme Court agreed to review the decision.

Other acts of Congress in the early part of this century, culminating in the **Certiorari Act of 1925, further limited the access of parties to Supreme Court review**. After 1925, review not only of diversity cases but of most federal-question cases decided by the federal trial courts was to be had as a matter of right not in the Supreme Court but in the federal courts of appeals. **Further review by the Supreme Court was made to depend on the discretionary decision of that court to hear the case**. Chief Justice William Howard Taft was one of the architects of the Certiorari Act of 1925, and his biographer, Henry F. Pringle, summarizes his view of the role of the Supreme Court in these words:

> It was vital, he said in opening his drive for the Judges' Bill, that cases before the Court be reduced without limiting the function of pronouncing "the last word on every important issue under the Constitution and the statutes of the United States." A supreme court, on the other hand, should not be a tribunal obligated to weigh justice among contesting parties.
>
> "**They have had all they have a right to claim," Taft said, "when they have had two courts in which to have adjudicated their controversy**." [Pringle, Vol. II, pp. 997-998]

> There are **thousands of state-court judges** in this country at the present time, and hundreds of federal judges.[31] Each of these has sworn to uphold the Constitution and laws of the United States, and the overwhelming majority of these judges are capable of applying settled law to the facts of the cases before them, and eager to do so. **Occasionally, these trial judges make mistakes but the federal courts of appeals sit to correct these mistakes within the federal system**, and state appellate courts sit to do the same in every state system. **It would be a useless duplication of these functions if the Supreme Court of the United States were to serve simply as an even higher court for the correction of errors in cases involving no generally important principle of law**. The Supreme Court, quite correctly in my opinion, instead seeks to pick, from the several thousand cases it is annually asked to review, those cases involving unsettled questions of federal constitutional or statutory law of general interest.
>
> Ever since I have been on the Court, **we have heard somewhere around one hundred fifty cases each year on the merits**, and I know of no member of the Court or student of the Court who feels that we ought to try to hear more cases than this. Each year we find more than enough cases to meet the demanding standards for Supreme Court review, and must turn down many that several of the justices, although not a sufficient number to grant certiorari, think do meet the standard for review. **We are stretched quite thin trying to do what we ought to do—in the words of Chief Justice Taft, pronouncing "the last word on every important issue under the Constitution and the statutes of the United States"—without trying to reach out and correct errors in cases where the lower courts may have reached an incorrect result, but where that result is not apt to have any influence beyond its effect on the parties to the case**.[32] (Emphasis supplied)

Without benefit of the time for a more exhaustive study, I would venture to suggest that what the Supreme Court of the United States has done

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[31] In our country, as of 2011, there are a total of 2,198 judicial positions. Regrettably, of these positions, as of the end of 2011, only 1,603 have been filled and there were 595 vacancies. *See* SUPREME COURT OF THE PHILS., ANNUAL REPORT (2011).

[32] WILLIAM REHNQUIST, THE SUPREME COURT: HOW IT WAS, HOW IT IS 267-269 (1987).

to limit its caseload may be achieved without need of amending the Constitution or a radical change in the Rules of Court. The jurisdiction of the Supreme Court is largely permissive, not mandatory.

What would perhaps be correspondingly necessary is to review the instances where only an appeal to, or a review by, the Supreme Court is allowed by law, such as those of the Sandiganbayan, and of the Court of Tax Appeals.[33]

And to assure that justice has been done by the "last word" on a case where no appeal is allowed to the Supreme Court, a study may be made of the process of adjudication in the Court of Appeals and assure that by its judgments "justice is done." Parenthetically, the Court of Appeals is bound, as the Supreme Court is, to decide cases which come before it in accordance with Sections 4 and 13, Article VIII of the Constitution.

More easily implementable to expedite resolution of cases before the Supreme Court is to simplify the procedure a petition for certiorari, for example, undergoes before the court assumes jurisdiction and is submitted for decision. The procedure which a case of such a nature undergoes before the United States Supreme Court has been described briefly, as follows:

> According to the website of the Supreme Court of the United States, the Court's caseload is around 10,000 cases on the docket per term. This is a marked increase from about 2,000 cases in 1960, and around 1,400 in 1945. The Court grants plenary review with oral arguments to around 100 cases per term.[34]
>
> In practice, most Justices have their clerks participate in what is called a "certification pool", where law clerks from each Justice's office share a legal labor pool to streamline the work of reviewing cases. The pool comes up with a "pool memo" which is given to a Justice and contains an analysis of the petition and makes a recommendation on whether it should be granted. The Justice's

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[33] Appeal may be taken under Rule 45 of the Rules of Court; in the case of the Sandiganbayan, pursuant to Republic Act No. 8249; and in the case of the Court of Tax Appeals, pursuant to Republic Act No. 1125, as amended.

[34] *Available at* http://www.supremecourt.gov/about/justicecaseload.aspx

> law clerks may also review these memos and make their own recommendations.[35]

Thompson and Wachtell succinctly describe the "road to the Supreme Court," thus:

> On a practical level, the road to the Supreme Court starts after having a case decided in the United States Court of Appeals or a state supreme court or other court of last resort. The losing party files a petition for a writ of certiorari with the Supreme Court—better known simply as a "cert petition"— and then crosses her fingers and waits. The respondent then has the right to file a brief in opposition to the writ; the brief will usually argue why the Justices should decline to hear the case. Or, the respondent may simply waive his right to file a brief and wait to see if the Court requests one. If the respondent files a brief in opposition, the petitioner has the right to file a reply brief and to get the last word before the Court considers whether or not to hear the case.[36]

The Court has several information-gathering tools at its disposal to aid in the disposition of a cert petition, the two most common of which are the subject of this Article. First, if a respondent has waived the right to file a brief in opposition then the Court may request (practically, require) him to file a brief. This process is known as a "call for response," or simply a "CFR." No formal vote is necessary and any single Justice may direct the Clerk of the Court to enter the appropriate order. The identity of the Justice who requested the response is not publicly revealed. The Court uses the practice frequently, calling for an average of just over 200 responses per Term. The Court will almost never grant plenary review in a case without a response on file. Second, the Court may invite the Department of Justice, through the Solicitor General of the United States (known simply as the "SG"), to file a brief analyzing the petition. This process is referred to as a "call for the views of the SG," or "CVSG." The Court requires a formal vote of the Justices to issue a CVSG and uses this practice in only about a dozen cases per Term.

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[35] Adam Liptak, *A Second Justice Opts Out of a Longtime Custom: The 'Cert. Pool,'* NEW YORK TIMES, Sep. 26, 2008, *available at* http://www.nytimes.com/2008/09/26/washington/26memo.html?_r=0

[36] David Thompson & Melanie Wachtell, *An Empirical Analysis of Supreme Court Certiorari Petition Procedures: The Call for Response and the Call for the Views of the Solicitor General*, 16 GEO. MASON L. REV. 237, 241-42 (2009).

Once the briefs have been filed, oral arguments are heard by the Court. Then the Court goes into conference and votes on the matter and a written decision will be issued thereafter.[37] Justice John Paul Stevens gives a similar description:

> The work of the entire Court generally falls into three categories: choosing which cases to decide; deciding those cases; and explaining those decisions. The cases that the Court is asked to decide are extremely numerous. Most of them are initiated by the filing of a petition for certiorari, which, as noted earlier, is a request for the Supreme Court to review a decision made by a federal court of appeals or the highest appellate court in a state. It takes four justices to grant such a petition; well over 98 percent of requests are denied unanimously.
>
> After deciding whether to hear a case initiated by a cert petition, the Court usually enters a simple order granting or denying the petition; the order expresses no view about the merits of the lower court's decision. Jurisdictional statements, it will be recalled, also initiate some of the cases that the Court is asked to decide. The Court may respond to such statements in several different ways. Most frequently it will enter an order noting probable jurisdiction, which means that the parties will then file written briefs and present an oral argument to the Court. If the case raises a substantial question but the Court is uncertain about its jurisdiction, it may enter a postpone order, which directs the parties to include in their briefs a discussion of the case's jurisdictional issue as well as its merits. If the Court concludes that there is no merit to the appeal and that it should dispose of the case without further argument, it will enter one of three orders: in cases coming from state courts, it will simply affirm without further explanation; in cases coming from federal courts, it will either dismiss for want of jurisdiction, which means that no federal statute has authorized the Court to hear the case, or dismiss for want of a substantial federal question, which means that the case involves no significant issue of federal law. The

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[37] *See* RULES OF THE UNITED STATES SUPREME COURT, *available at* http://www.supremecourt.gov/ctrules/2010RulesoftheCourt.pdf. *See also* U.S. SUPREME COURT, GUIDE FOR COUNSEL IN CASES TO BE ARGUED BEFORE THE SUPREME COURT OF THE UNITED STATES (October 2012), *available at* http://www.supremecourt.gov/oral_arguments/guideforcounsel.pdf

> vast majority of the papers filed in the Court relate to its function of choosing which cases to decide.
>
> After a cert petition is granted or the Court has noted probable jurisdiction of an appeal, the parties file written briefs, and an oral argument is held. Thereafter, in a conference attended only by the justices, the members of the Court discuss and vote on how the case should be decided. Usually, but not always, the decision made at conference determines the outcome.
>
> After the conference, the senior justice in the majority — most often the chief — assigns either himself or another justice in the majority the task of writing an opinion explaining the result. The author then prepares a draft that is circulated to all members of the Court. After receiving this draft, each justice suggests changes, prepares a dissent or a separate concurring opinion, or simply joins the circulating draft. Depending on the difficulty of the case, the process of explaining the decision may take days, weeks, or months. On rare occasions, the Court is unable to resolve all the issues in a case before the term ends (usually in late June or the first week in July) and orders the parties to file additional briefs and present a second oral argument in the next term, which, following a long tradition, begins on the first Monday in October.[38]

## CONCLUSION

Although I never had the privilege of being a member of the Supreme Court, or of any court of justice for that matter, I fully realize the burden of adjudicating cases. But however difficult the task may be, the Supreme Court, as well as other collegiate courts, are without any choice but to comply with, and implement, the pertinent provisions of the Constitution.

Perhaps because of the number of cases which have accumulated through the years, it would be impossible to implement all the provisions I have earlier referred to immediately. But there cannot be any passing of the buck. The difficulty of the task may require the Supreme Court and other courts to "bite the bullet," but they must do so now — not later.

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[38] JOHN PAUL STEVENS, FIVE CHIEFS: A SUPREME COURT MEMOIR 42-44 (2011).

It may take some time to accomplish all that is needed to build and complete the infrastructure that will support the effort, but as the Supreme Court has, by the mandate of the Constitution, become the "Ombudsman" of the branches and instrumentalities of the Government –that in the performance of its functions and discharge of their duties, it ensures that the branches and instrumentalities do not act with "grave abuse of discretion amounting to lack or excess of jurisdiction –" it is thus the Supreme Court's duty to abide by , peremptory and mandatory Constitutional provisions.

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