

Supreme Contradictions

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More than a hundred years ago, Justice Oliver Wendell Holmes wrote that the object of the study of law is prediction, “the prediction of the incidence of the public force through the instrumentality of courts.” A current legal theorist, on the other hand, writes that predictability, together with acceptability, is one of the most important features of legitimacy of any legal system.² A stable body of rules, changed only after a careful consideration, is one guarantee of predictability.³

With respect to decisions, the most important tool for enhancing consistency and predictability is the policy of *stare decisis*.⁴ The policy means that “once a point of law has been established by the court, that point of law will, generally, be followed by the same court and by all courts of lower rank in subsequent cases where the same legal issue is raised.”⁵ One needs no authority for the proposition that lawyers and litigants will find no solace in a system where legal rules are interpreted by judges in any which way they want.

This essay is a cautious excursion into the field of conflicting pronouncements of a Supreme Court that can split itself into several divisions, and the implications of the resulting uncertainty in the practice of law.

Supreme Court Divisions

The basis of the current practice of the Supreme Court of working in three divisions, each with five members, is in the 1987 Constitution which provides:

The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit *en banc* or, in its discretion, in divisions of three, five, or seven Members. . . .⁶

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² Oliver Wendell Holmes, Jr., *The Path to Law*, 10 Harvard Law Review 457 (1897) at <<http://www.constitution.org/lrev/owh/path-law.htm>> (visited in Feb. 20, 2006).

³ See Christian Dahlman, *Predictable Rules and Flexible Principles—The Problem of Ideological Pluralism and Legitimacy*, in *Legisprudence: A New Theoretical Approach To Legislation* (Luc J. Wintgens ed., 2002). [“One of the most important features of legitimacy is that it demands that the law satisfy two needs at the same time: it must be *predictable* as well as *acceptable*. The law’s predictability is equivalent to the degree that people (or rather, their lawyers) correctly predict what rights and duties courts will accord them.”], at p. 81.

⁴ See Jerome Frank, *Courts on Trial* (1963) (discussing ambiguities in legislation, the problems of judicial interpretation and the resulting legal uncertainty), at p. 292.

⁵ See F. James Davis, Henry H. Foster, Jr., C. Ray Jeffery and E. Eugene Davis, *Society & The Law* (1962), at p. 108.

⁶ Art. VIII, Sec. 4 (1).

However, the Court's power to divide itself in deciding cases is restricted by the following provision:

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 on the case and voted thereon.⁷

Apparently, to minimize the problem of perpetually warring jurisprudence churned out by various divisions, each of which is supreme by itself, to the Supreme Court *en banc* was reserved the prerogative of reversing its own pronouncement or that of any of its divisions. Thus, the framers of the Constitution introduced this:

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*.⁸

To safeguard the collegial nature of the Tribunal and ensure that no individual member develops a set of doctrines independent of his brethren, this was added:

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. . . .⁹

⁷ 1987 Constitution, Art. VIII, Sec. 4(2).

⁸ *Id.*, Art. VIII, Sec. 4(3).

⁹ *Id.* Art. VIII, Sec. 13. See also Joaquin G. Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary* (2003) ("At the time this provision was inserted in the 1935 Constitution, there was a widespread belief that many of the decisions of the Supreme Court were really the decisions of only one Justice."), at p. 992.

Conflicting Pronouncements

It would seem, however, that the built-in safeguards have not produced the desired results of stability and predictability in the Court's decisions.¹⁰

Rules laid down by the Supreme Court *en banc* have been modified in a short span of time. Situations have also occurred when the Court *en banc* would cuff a Division, or a Division would hurl itself against the full Court, or clash with another Division, as illustrated below.

1. On the Right to be Informed

The Revised Rules of Court, on Criminal Procedure, requires that the criminal Information must specify the qualifying circumstances of the offense charged.¹¹ In which portion of the Information or complaint should this be alleged?

In *People v. Mendoza, Jr.*,¹² a decision rendered on July 31, 2003, the Supreme Court *en banc* declined to convict the accused of qualified rape on the ground that the age of the victim was not stated in the body of the information. Through Associate Justice Carpio-Morales, it held:

Monaliza's [victim] age at the time of the filing of the complaints appears in the caption or preamble thereof as a description of her as the private complainant. Her age at the time the incident occurred was, however, not specified in the accusatory portion of the complaints. Such omission is prejudicial to the right of the accused to be informed of the nature of the accusation against him. *Thus, in several cases, this Court held that it is not sufficient to simply allege the qualifying circumstances in the caption or the preamble but, more importantly, these must be alleged in the body or the accusatory portion of the information.*¹³ [italics supplied]

Less than three months later, in *People v. Villanueva*,¹⁴ the Supreme Court *en banc* found the Information sufficient to convict accused of qualified rape even if the qualifying circumstance of relationship was not alleged in the body of the Information. Through Associate Justice Bellosillo, it ruled:

¹⁰ See, for instance, Rene A. Saguisag, *Politics, Policy and Judicial Review*, 31 IBP Journal 28 (2005) ("But, the greatest sin of this Supreme Court is that predictability, the hallmark of a mature legal system or institutional arrangement, has been lost.")

¹¹ Revised Rules of Court, Rule 110, Sec. 8.

¹² 407 SCRA 563 (2003).

¹³ *Id.*, at p. 579.

¹⁴ 413 SCRA 431 (2004).

Nothing in Secs. 6 and 8 of Rule 110 mandates that material allegations should be stated in the body and not in the preamble or caption of the Information. Instead, both sections state that as long as the pertinent and significant allegations are enumerated in the Information it would be deemed sufficient in form and substance. *We hold that it is irrelevant and immaterial whether the qualifying circumstance of relationship is mentioned in the opening paragraph of the Information or in the second paragraph which alleges the acts constituting the crime charged since either paragraph is an integral part of the Information.*¹⁵ [italics supplied]

2. On the Rulemaking Power of the Supreme Court

Both the 1935 Constitution¹⁶ and the 1973 Constitution¹⁷ explicitly provided that the rules promulgated by the Supreme Court concerning pleading, practice and procedure in all courts could be repealed, altered or supplemented by the legislature. The 1987 Constitution,¹⁸ however, deleted this provision. What is the effect of the deletion?

The Second Division of the Supreme Court, through Associate Justice Puno, had occasion to pass upon the issue in *Webb v. De Leon*.¹⁹ The case was a challenge to Sec. 12 of RA No. 6981 that allows the Department of Justice to exclude from an Information a person utilized as a state witness. To the argument that the statute intruded into the rule-making power of the Court, the highest Tribunal responded:

The Rules of Court does not support the proposition that the power to choose who shall be a state witness is an inherent judicial prerogative. *Moreover, the Rules of Court have never been interpreted to be beyond change by legislation designed to improve the administration of justice.*²⁰ [italics supplied]

About 3 years later, in *Echegaray v. Secretary*,²¹ the Supreme Court saw a stronger and more independent judiciary under the 1987 Constitution. Associate Justice Puno, now Chief Justice, acting in behalf of a Supreme Court criticized for issuing a temporary restraining order staying the execution of convicted rapist Leo Echegaray, declared:

Most importantly, it [the 1987 Constitution] took away the power of the Congress to repeal, alter or supplement rules

concerning pleading, practice and procedure. In fine, the power to promulgate rules of pleading, practice and procedure is no longer shared by this Court with the Congress, more so with the Executive.²² [italics in the original]

3. On the Requirements for a Decision

The 1987 Constitution provides that no decision shall be rendered by any court without clearly and distinctly stating the facts and the law on which it is based.²³ Does this provision apply to administrative and quasi-judicial bodies?

In *Dadubo v. Civil Service Commission*,²⁴ the Supreme Court *en banc*, through Associate Justice Cruz, faced the issue squarely:

We must also dismiss the petitioner's complaint that CSC Resolution No. 92-878 failed to comply with the constitutional requirement to state clearly and distinctly the facts and the law on which a decision is based. *We have held that this provision applies only to courts of justice and not to administrative bodies like the Civil Service Commission.*²⁵ [italics supplied]

Three years later, in *Saballa v. NLRC*,²⁶ Justice Panganiban, speaking for the Third Division, faulted the National Labor Relations Commission, in this wise:

This Court has previously held that *judges and arbiters* should draw up their decisions and resolutions with due care, and make certain that they truly and accurately reflect their conclusions and their final dispositions. *A decision should faithfully comply with Section 14, Article VIII of the Constitution which provides that no decision shall be rendered by any court without expressing therein clearly and distinctly the facts of the case and the law on which it is based.*²⁷ [italics supplied]

Six years later, the same division, in *Padua v. Ranada*,²⁸ a case involving the Toll Regulatory Board (TRB), backtracked to the *Dadubo* rule. Through Associate Justice Sandoval-Gutierrez, it held:

Petitioner Zialcita faults the TRB for not stating the facts and the law on which Resolution No. 2001-89 is based. Petitioner is wrong. Suffice it to state that while Section 14,

¹⁵ *Id.*, at 440-441.

¹⁶ 1938 Constitution, Art. X, Sec. 13.

¹⁷ 1973 Constitution, Art. X, Sec. 5 (5).

¹⁸ Art. VIII, Sec. 5 (5).

¹⁹ 247 SCRA 652 (1995).

²⁰ *Id.*, at p. 686.

²¹ 301 SCRA 96 (1999)

²² *Id.*, at p. 112.

²³ 1987 Constitution, Art. VIII, Sec. 14.

²⁴ 223 SCRA 747 (1993).

²⁵ *Id.*, at p. 754.

²⁶ 260 SCRA 697 (1996).

²⁷ *Id.*, at p. 706.

²⁸ 390 SCRA 663 (2002).

Article VIII of the 1987 Constitution provides that “no decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based,” this rule applies only to a decision of a court of justice, not TRB.²⁹ [emphasis from the original]

4. On the Rights of a Person under Custodial Investigation

A confession made by a suspect in the course of a custodial investigation obtained without counsel is inadmissible in evidence.³⁰ What about a confession taken without counsel but later on signed with the assistance of counsel?

In *People v. Lucero*,³¹ the Second Division, through Justice Puno ruled that such confession is inadmissible. The accused here conferred with a lawyer before and after he made the confession, but the lawyer was absent when the confession was being taken. In rejecting the confession, the Court said:

We hold that when the Constitution requires the right to counsel, it did not mean any kind of counsel but *effective and vigilant* counsel. The circumstances of the case at bench clearly demonstrate that appellant received no effective counseling from Atty. Peralta. In *People v. De Guzman*, we held that in custodial investigation, the right to counsel attaches from the moment the investigation starts, i.e., when the investigating officer starts to ask questions to elicit information and confessions or admissions from accused. In this case, at the crucial point when the interrogation was *just starting*, Atty. Peralta left appellant to attend the wake of a friend. At the critical stage, appellant gave his uncounselled confession. Surely such a confession where appellant was unprotected from mischief cannot convict.³² [italics from the original]

At about the same time that the Second Division was condemning Lucero’s confession, the Third Division, through Justice Melo, was validating a confession that was similarly extracted in the case of *People v. Rous*.³³ In admitting the confession, the Court declared:

Although Atty. Ferrer, the counsel of Rous, was not present when the confession was taken, after the confession was prepared, Sgt. Gaddi brought Rous to the office of Atty. Ferrer who read the confession and fully explained it to Rous. Only

after Atty. Ferrer had interviewed Rous and fully explained the confession and apprised Rous of his rights and the consequences of his answers did Rous sign said confession. It is clear, therefore, that Rous signed his confession upon advice and in the presence of counsel, without any violence, intimidation or threats being employed against him. Said confession suffers from no infirmity and is, therefore, admissible in evidence.³⁴

5. On the Exclusionary Rule

What about objects retrieved by the police after a suspect disclosed the location thereof in the course of a confession made without counsel?

On November 13, 1996, the Court decided *People v. Sequino*,³⁵ involving a charge for robbery with homicide. The accused confessed to the police, without the assistance of counsel, that his share of the loot in the amount of P9,000.00 was kept in a shoe in his house. Justice Davide, speaking for a unanimous Third Division, declared:

“Since the “recovery” of the P9,000.00 from Melvida was due to his “admission” in the course of the custodial interrogation made in violation of paragraph (1) of Section 12, Article III of the Constitution and, therefore, inadmissible in evidence pursuant to paragraph (3) of the said section then the P9,000.00 cannot also be admitted in evidence as a “fruit of the poisonous tree.” The rule is settled that once the *primary source* (the “tree”) is shown to have been unlawfully obtained – as the admission of Melvida in this case – any *secondary or derivative evidence* (the “fruit”) derived from it – the P9,000.00 obtained from Melvida as a consequence of his “admission” – is also inadmissible.³⁶ [italics from the original]

The following day, the same division decided *People v. Malimit*,³⁷ also involving the crime of robbery with homicide. The accused in this case revealed the location of Malaki’s (the victim) wallet containing the latter’s residence certificate, identification card and a bunch of keys. Justice Francisco, joined by the *ponente* and all three justices who concurred in *Sequino*, but without any reference to the said case, wrote:

However, infractions thereof [Sec. 12, Art. III] render inadmissible only the extrajudicial confession or admission made during custodial investigation. *The admissibility of*

²⁹ *Id.*, at p. 684.

³⁰ 1987 Constitution, Art. III, Sec. 12.

³¹ 244 SCRA 425 (1985).

³² *Id.*, at p. 435.

³³ 242 SCRA 732 (1995)

³⁴ *Id.*, at p. 743.

³⁵ 264 SCRA 79 (1996).

³⁶ *Id.*, at p. 98.

³⁷ 264 SCRA 167 (1998).

other evidence, provided they are relevant to the issue and is not otherwise excluded by law or rules, is not affected even if obtained or taken in the course of custodial investigation. Concededly, appellant was not informed of his right to remain silent and to have his own counsel by the investigating policemen during custodial investigation. Neither did he execute a written waiver of these rights in accordance with the constitutional prescriptions. Nevertheless, these constitutional short-cuts do not affect the admissibility of Malaki's wallet, identification card, residence certificate and keys for the purpose of establishing other facts relevant to the crime. Thus, the wallet is admissible to establish the fact that it was the very wallet taken from Malaki on the night of the robbery. The identification card, residence certificate and keys found inside the wallet, on the other hand, are admissible to prove that the wallet really belongs to Malaki.³⁸ [italics supplied]

6. On the Speedy Disposition of Cases

The 1987 Constitution guarantees the right of persons to speedy disposition of cases.³⁹ Does one's failure to invoke the right result in waiver?

In 1993, in *Alvizo v. Sandiganbayan*,⁴⁰ the Supreme Court en banc, through Justice Regalado, denied a motion to quash an Information based on the right, stating:

Petitioner was definitely not unaware of the projected criminal prosecution posed against him by the indication of this Court as a complementary sanction in its resolution of his administrative case. He appears, however, to have been insensitive to the implications and contingencies thereof, by not taking any step whatsoever to accelerate the disposition of the matter, which inaction conduces to the perception that the supervening delay seems to have been without his objection hence implicitly with his acquiescence.⁴¹ [italics supplied]

Six years later, in *Cervantes v. Sandiganbayan*,⁴² Justice Pardo of the First Division granted a motion to quash an Information based on the same right, declaring:

We cannot accept the Special Prosecutor's ratiocination. It is the duty of the prosecutor to speedily resolve the complaint, as mandated by the Constitution, regardless of whether the

petitioner did not object to the delay or that the delay was with his acquiescence provided that it was not due to causes directly attributable to him.

Consequently, we rule that the Sandiganbayan gravely abused its discretion in not quashing the information for violation of petitioner's constitutional right to the speedy disposition of the case in the level of the Special Prosecutor, Office of the Ombudsman.⁴³ [italics supplied]

7. On the Authority of the Ombudsman

On August 9, 1999, in *Uy v. Sandiganbayan*,⁴⁴ the Supreme Court en banc ruled that the authority of the Ombudsman to conduct preliminary investigation and file Information is co-extensive with the jurisdiction of the Sandiganbayan in criminal cases.⁴⁵ Sec. 4 of the Sandiganbayan Law, as amended by RA 8294, requires that the accused must have a rank of Naval Captain or higher to come within the court's jurisdiction, whereas Uy was a mere Lieutenant Commander of the Philippine Navy. Associate Justice Pardo wrote for a unanimous Court:

In this connection, it is the prosecutor [of the Department of Justice], not the Ombudsman, who has the authority to file the corresponding Information/s against petitioner in the regional trial court. The Ombudsman exercises prosecutorial powers only in the cases cognizable by the Sandiganbayan.⁴⁶ [italics supplied]

Six months later, in *Cuyco v. Sandiganbayan*,⁴⁷ after holding that the Regional Trial Court, not the Sandiganbayan, had jurisdiction to try accused Cuyco, a government employee whose Salary Grade was below 27, Associate Justice Pardo, this time writing for the First Division, contradicted his pronouncement.

The Court orders the Sandiganbayan to dismiss Criminal Cases Nos. 23016 and 23017, for lack of jurisdiction. *However, the Ombudsman may re-file the cases with the court of proper*

³⁸ *Id.*, at p. 155.

³⁹ 312 SCRA 77 (1999).

⁴⁰ On March 20, 2001, the Court en banc vacated the decision through a Resolution issued following a second Motion for Clarification filed by the Ombudsman. The Resolution held that the Ombudsman is clothed with authority to conduct preliminary investigation, file Information and prosecute all criminal cases involving public officers, not only those within the jurisdiction of the Sandiganbayan, but those within the jurisdiction of the regular courts as well. Of the 14 Justices who voted for the original decision, 10 supported the Resolution, leaving its ponente Justice Pardo and a new appointee standing by the August 9, 1999 Decision. *Uy v. Sandiganbayan*, 354 SCRA 651 (2001).

⁴¹ *Id.*, at pp. 89-90.

⁴² 307 SCRA 149 (1999).

³⁸ *Id.*, at p. 177.

³⁹ Sec. 16, 1987 Constitution, Art. III, Sec. 16.

⁴⁰ 220 SCRA 55 (1993).

⁴¹ *Id.*, at 64.

⁴² 307 SCRA 149 (1999).

*jurisdiction, the Regional Trial Court, Zamboanga City, and inform this Court of the action taken hereon within ten (10) days from finality.*⁴⁸ [italics supplied]

Implications on the Practice of Law

Until the Supreme Court sitting *en banc* and acting on an actual case modifies or reverses, in accordance with Art. VIII, Sec. 4 (3) of the Constitution,⁴⁹ the conflicting interpretations handed down by its different divisions, each pronouncement remains part of the law of the land. Obviously, because of the same provision, the rule *lex posterior derogat priori* of statutory construction does not apply. "The Court *en banc* is not an Appellate Court and, therefore, exercises no appellate or supervisory jurisdiction over its Divisions, and a Decision of a Division of the Court is as binding as the Decision of the Court *en banc*."

How does this state of uncertainty affect the practice of law?

The principal function of the lawyer is to give advice to his clients. Effective counseling requires a thorough knowledge of both legal rules and their interpretations.⁵¹ The lawyer in the process of counseling is called upon to prophesy the outcome of a dispute if it should reach the court.⁵² But when the meaning of a rule shifts from time to time, or from division to division, a lawyer must also be adept at predicting how long an interpretation will remain unmodified, or in which division his client's case will be eventually raffled. The role of a lawyer is, thus, relegated to that of a fortune-teller, and a crystal ball would be more useful than the case reports.

As advocate, the lawyer must prosecute or defend the legal rights of his clients.⁵³ It is in the courtroom where he is called upon to apply the law to specific facts. Facts themselves are difficult to ascertain, and the trial process fraught with defects;⁵⁴ but assuming he succeeds in proving his client's version, the greater challenge is how to apply the varying interpretations of the law. Not unusually, a lawyer who argues with the authority of a pronouncement of one division of the Supreme Court finds himself against an adversary armed with a decision from another division. Lawyers do not dispute Justice Charles Evans Hughes' proposition that the law is what the Supreme Court says it is. But which pronouncement?

⁴⁸ *Id.*, at p. 98.

⁴⁹ *Supra*, at note 8 and accompanying text.

⁵⁰ *Buehs v. Hatab*, G.R. No. 162714, October 11, 2004 (visited Feb. 20, 2007) <<http://www.supremecourt.gov.ph/resolutions/3rd/2004/3/cr/162714.htm>>

⁵¹ Arthur T. Vanderbilt, *The Five Functions of the Lawyer*, 40 ABA Journal 31 (1954), in *The Lawyer's Treasury* 211 (Eugene C. Gerhart, ed., 1963).

⁵² See Holmes, *supra* at note 1. ("The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law.")

⁵³ See Vanderbilt, *supra*, at note 50.

⁵⁴ See Frank, *supra*, at note 3, p. 22. ("A trial court's findings of fact is, then, at best, its belief or opinion about someone else's belief or opinion.")

Conclusion

A Supreme Court that can dispose of cases by divisions, it cannot be denied, can dispense justice more speedily. But unless conflicting pronouncements of various divisions are resolved expeditiously, the legal system becomes unpredictable. Without predictability, a vital attribute of a functioning legal system, lawyers cannot discharge their duties to their clients adequately. In such a scenario, the erosion of society's perception of the system's legitimacy may not be far behind.

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