

Thoughts On The Narcotics Issue

By Abdiel Dan Elijah S. Fajardo

Chairman Of The Board And National President

Intregrated Bar Of The Philippines

THERE WAS clear legislative intention behind the enactment of the Comprehensive Dangerous Drugs Act in 2002. All campaigns and strategies against illegal drugs would be formulated under the direction of one body - the Dangerous Drugs Board (DDB).

A total of nine (9) Cabinet Secretaries are members of the DDB. This is meant to ensure a balanced and coordinated approach to the drug problem. For example, membership of the DOH Secretary is acknowledgment that drug dependence is a health issue, while membership of the DILG Secretary ensures amplification of programs in basic units of Philippine society.

Remarkably, the Director of the National Bureau of Investigation (NBI) and the Chief of the Philippine National Police (PNP) are not members of the drug board. They are consultants who have no vote in the drafting of policy.

The reason is likewise clear. The same law activated the Philippine Drug Enforcement Agency (PDEA), which is designed to be the implementing arm of the DDB. The DDB enacts the rules, PDEA enforces them.

Thus, the transitory provisions of the law are a veritable road map for the anti- drug campaign thenceforth. Discordant units like the Narcotics Group of the PNP, the Narcotics Division of the NBI, and the Customs Narcotics Interdiction Unit, had been operating for decades without extraordinary success. They were abolished by Congress that saw wisdom in developing one (1) cohesive enforcement unit with special training and competence to address the growing drug problem.

The law also authorized the establishment of the PDEA Academy which was made responsible for the recruitment and training for all agents and personnel. Operatives from the defunct enforcement units were given the option of being integrated into the PDEA with positions similar in rank and salary.

Congress wanted the organizational structure of PDEA to become fully operational and the number of graduates of the PDEA Academy sufficient to conduct anti-drug operations nationwide. The NBI and the PNP were directed to continue with enforcement activities *on all other crimes* as provided for in their respective organic laws.

It is now apparent that the law passed fifteen years ago is yet to see full light of day. Several petitions have reached the Supreme Court questioning arrests and admissibility of items presented in court that did not pass through PDEA custody and documentation as required by the law.

Despite operational lapses, the High Court felt constrained to rule in favor of admissibility of evidence secured by agencies other than by the PDEA because “great public interests would be endangered or sacrificed, or great mischief done,” were it to rule otherwise. This judicial pronouncement has palliative effects in the meantime that PDEA is not being sufficiently manned and funded by the very Congress that created it.

Despite the unmistakable direction set by Congress towards complete empowerment of the DDB and PDEA, with the latter as lead agency in anti-drug operations, the PNP was allowed by the current government to implement Oplan Double Barrel from day one (1) of its assumption (PNP CMC No. 16-2016 dated July 1, 2016). The police Circular makes express reference to, as it appears to have been impelled by, the pronouncement made by the President “to get rid of illegal drugs during the first six months of his term.”

CMC 16-2016 was never abrogated nor rescinded by authorities higher than the Chief of the PNP in the rungs of the power ladder. Not until recently, that is, when the President issued an un-numbered “Memorandum” dated 16-2016 October 10, 2017 directing all agencies to leave to the PDEA “as sole agency,” the conduct of all campaigns and operations involving illegal drugs.

It is widely alleged that police abuses may have been committed in the implementation of CMC 16-2016. Notably, the Presidential memorandum seems to have acknowledged the violations because it cites a particular provision in the Anti-Drugs Act which provides that when the investigation being conducted by PNP is “found to be a violation” of any of the provisions thereof, the PDEA shall be the lead agency.

Anointing PDEA as the “sole” agency in the anti-drug campaign contradicts its plain and simple designation in the law as the “lead” agency created to enforce the policies spelled out by the DDB. In this respect, the memorandum teeters towards invalidity as an unauthorized amendment of the law. It is a testy response to accusations that Oplan Double Barrel may have failed in its avowed purpose to “generate impact and public support.”

CMC 16-2016, which effectively enacts several policies in the conduct of the drug war, does not claim that it had been vetted by the DDB prior to its issuance, for the obvious reason that it was launched on “the first day of office of the CPNP.”

No explanation has been offered to this short-circuit, except that CMC 16-2016 has projected a “worsening drug problem that has victimized mostly the underprivileged...” Ironically, Oplan Double Barrel cites DDB’s 2015 national household survey estimating the nation’s drug users at 1.8 million people - a much lower figure than other publicized estimates.

Parties assisted by the Free Legal Assistance Group (FLAG) have petitioned the Supreme Court to nullify CMC 16-2016. A decision of the Court in that case will hopefully affirm the leading role of PDEA in combating the drug menace, and closely adhere to the framework exhaustively deliberated in Congress, rather than experiment on hastily formulated solutions that are based primarily on the emotions of the day.