

LEGAL EDUCATION IN THE PHILIPPINES: THE ROLE OF *THE PHILIPPINE LAW JOURNAL* IN THE 1990s*

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This year we celebrate the 80th year of the founding of the U.P. College of Law¹ and of the Philippine Law Journal (PLJ), the 75th.²

It is appropriate that we pause and give some thought to legal education in the country today with particular reference to the U.P. College of Law. Although it is not the first law school established in the Philippines, its establishment marked the shift of legal training from that introduced by Spaniards and conducted in their language, to the present system which is modeled after American law schools with English, as the medium of instruction. A vital part of the training in the latter schools was the publication of a student-edited law journal, the first being the Harvard Law Review which celebrated its centennial in 1987.

The founder and first permanent Dean, George A. Malcolm, members of the faculty, alumni and students launched the Philippine Law

*Lecture delivered during the 75th Anniversary Symposium of the PHILIPPINE LAW JOURNAL.

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¹On June 12, 1911, the Board of Regents of the University of the Philippines adopted a resolution establishing the College of Law as a separate department or unit of the University. The College formally opened in June 1911. But the school can trace its beginnings to the YMCA in Manila which offered law courses in English in 1910-1911. The students there were subsequently enrolled in the U.P. College of Law. George A. Malcolm, then a young graduate of the University of Michigan Law School proposed the establishment of the law school in the U.P. but it was not until 1911 that his idea gained acceptance.

²1914-1989. The first issue of the Philippine Law Journal was dated August 1914. It was published monthly during the schoolyear 1914-1915, August to April in 9 issues. But its publication was interrupted twice: first for seven years (1919-1926) then, as a result of the Japanese occupation in 1941.

Journal (PLJ) in 1914. Through the years, it has become an essential part of the training which the College offers.

It is one of the few if not the only law review in this country that can look back to such a long life. Though interrupted in 1919-1926 for financial reasons³ and again during the Japanese occupation, when the College of Law itself was closed, it was revived in 1947.⁴ At the start it came out monthly during the academic year in nine slim issues,⁵ later it was reduced to six⁶ thicker issues. Now it is a quarterly.⁷

Student Editorial Board

My experience with the PLJ began when the College reopened after World War II and the PLJ was revived with the publication of volume 22 consisting of six issues. Contributions came from the faculty and the students. The latter worked together on assignments given by the faculty editor. This first volume includes an article written by Ameurfina A. Melencio-Herrera now Supreme Court Associate Justice⁸, Emma Quisumbing, now Mrs. Enrique M. Fernando and myself.⁹

Dean Agabin and I share the unique experience of having been members of the student editorial board, faculty editor and dean of the College. Present and past members of that editorial board who actually wrote articles and prepared the journal issues are witnesses to the value of the PLJ training.

PLJ membership involves assumption of serious responsibility. As official publication of the college, the PLJ must satisfy academic standards. This is the faculty editor's/adviser's principal responsibility.

³ See Custodio, *History of the Philippine Law Journal*, 35 PHIL. L.J. 1461 (1960) which traces the development of the PLJ, and lists down its faculty editors/advisers, chairmen and members of the student editorial boards, and also refers to its content.

⁴ Ambion, *The U.P. College of Law, in a Historical Perspective*, 31 PHIL. L.J., 1423 (1960).

⁵ It was discontinued after Volume 6 during the schoolyears 1919-1926. It was revived during the schoolyear 1927-1928 continuing the publication with volume 7 until the outbreak of the war in 1941.

⁶ The College resumed publication in 1947, this time in six issues. In 1969 it was reduced to 5.

⁷ Starting with Volume 57, the Philippine Law Journal became a quarterly.

⁸ As Associate Justice, she carries her married name, Ameurfina A. Melencio-Herrera.

⁹ Quisumbing, Melencio, Cortes, *Strikes and Civil Liberties*, 22 PHIL. L.J. 79 (1947).

The issues must also come out on time.¹⁰ The PLJ has subscribers here and abroad and maintains exchanges with law reviews.¹¹ It is essential for the PLJ board to get contributions fit for publication; to sit down and write legal essays; nurse each issue from the time the materials are gathered until the issue is printed and released for distribution. In the process, research, writing, and editing skills are acquired and honed. The quality of the yearly PLJ volume depends not only on the faculty editor/adviser but also on the composition and capability of the students who chair and make up the board. Student editorial boards with initiative, imagination, and resolve can produce volumes which compare well with law reviews published in English any where in the world.

As part of legal education, what role does the PLJ play? The publication itself serves as teaching aid for it contains articles on significant legal problems. At times, it has been cited by the bench and the bar.¹² And for law students the PLJ is training ground for future work in the legal profession.

A PLJ members who takes responsibility seriously, acquires self-discipline in pursuing subjects of study and research. Writing on unsettled issues can be taxing but highly stimulating. The sense of achievement after producing a highly reasoned and well-crafted piece on any subject can be its own reward.

Law journal work develops in the students valuable skills in research and writing. Even more important are the lasting attributes of thoroughness, accuracy, precision of language, clear thinking, and integrity which they can acquire. PLJ writing, by and large, involves inquiry into the literature and jurisprudence on particular subjects which means a review of what has been written thereon. A wealth of relevant materials dealing with various aspects of a given subject may be found by serious research. The writer's job will then be to determine what is relevant, gather materials, analyze and synthesize and draw conclusions from them. Pitfalls to be carefully avoided are the failure to acknowledge sources and the temptations to appropriate others' ideas. Plagiarism is dishonest and deserves severe sanctions. Editors/advisers of the PLJ have the responsibility of making sure that those who write for it, be they

¹⁰This has been a continuing problem. While well-known law reviews in the United States can afford to turn down articles submitted by law faculty members, the Philippine Law Journal rarely gets articles submitted whether from faculty members or other members of the legal profession. Lately, the published articles are those written by students in supervised research in partial compliance with course requirements.

¹¹At present there are 94 foreign and 3 local exchange agreement with other Journals.

¹²*Ayer Productions Pty. Ltd. v. Capulong*, 160 SCRA 861 (1988).

students, faculty or alumni scrupulously acknowledge their sources and accurately attribute ideas. It must also be stressed that quoting out of context misleads and destroys the integrity of a writer's position.

I well remember as a graduate student abroad how law review students went about the business of producing issues of the law review. The editorial board composed of top students did not seem to count the hours they devoted to it. They had their own library and work space where oftentimes they would be so engrossed in writing or passing upon contributions that they would forget that they had classes to attend.

While they had a faculty advisor, those students wielded power. They determined what articles to accept or reject among the contributions coming from legal scholars and from members of the faculties of well-known law schools. These students could, on the basis of their own plans for a particular issue screen and evaluate the papers submitted. Students on their own contributed NOTES or COMMENTS, usually without indication of authorship but many of them nonetheless competently prepared.

PLJ issues, on the other hand, not infrequently carry law students' by-line. This is an incentive for creativity and scholarly interest. The faculty editor then, adviser now, still plays an important role.

Publishing the PLJ has its share of problems. Aside from financial constraints,¹³ the dearth of contributions can at times be acute. Faculty contributions are not always forthcoming and students on the editorial board may not readily respond to the call for contribution, or seriously take the editorial task of putting out the PLJ. The task of making the PLJ up-to-date has long eluded its editors.

Work on the PLJ editorial board used to be credited as an equivalent of the thesis required of graduating students, and the PLJ published in full the best senior thesis of the year.

As in other offerings on the law curriculum the benefit a student derives is directly proportional to the effort put in. For PLJ work is hands-on training. It starts with the identification of suitable subjects for inquiry and research, collection of data, their analysis, development, the drawing up of conclusions, and finally the writing of a logical, coherent, and highly crafted piece. Since English is the language used, the writers must not

¹³The Philippine Law Journal has always had a precarious balance sheet. The U.P. Law Foundation, Inc. has a number of times come to the rescue by subsidizing PLJ issues.

only have a good command of it, but must also have a style that will make their work readable.

Some student members of the PLJ may be able to accomplish their work with hardly any supervision from the faculty. Others need guidance every step of the way. Having submitted their draft they may have to write and rewrite until a piece can be considered worthy of publication. The work of student editors can be as exacting. With the latest revision of the curriculum, requiring supervised research for all students, it is not only PLJ members who go through this exercise. However, since membership in the PLJ is competitive and is obtained only after rigid screening, there is higher expectation of superior written submissions from them.

Aside from the credit earned from PLJ work another benefit accrues to students who seriously work on the PLJ by seeing issues through and more specially by publishing in it. After graduation, such membership becomes a factor which prospective employers in-the-know look for, and the committees for graduate law study will give much weight to in considering applications for admission and the grant of fellowships. I know this for a fact since in the interview of applicants for laws clerkship I used to inquire about such membership and experience. This was also something I always asked for when requested to recommend for graduate admission and fellowship grant. It is easier to support the application of former members and contributors to this law review.

The PLJ training is also valuable for those who go into practice. In my stint in the Supreme Court, it was easy to spot practitioners who had, as students, done research and writing, especially as PLJ members, by the quality of the pleadings they filed.

The PLJ and the Faculty

The second aspect to consider in the relation of the PLJ to legal education is that which concerns the faculty. Although the publish or perish syndrome does not apply with equal urgency among law teachers in this country, still recognition and prestige are accorded to those who write and publish scholarly works. In the PLJ, faculty members have an outlet for their articles. This College is the only one in the country with a substantial number of full-time teachers. As such, their function is not satisfied by simply coming to class, conducting sessions, and expounding on the day's assignment. It is also their task to contribute to the widening of the horizons of knowledge.

In the recruitment of members of the faculty in this state law school and in their progress as academics, their scholarly work is an important consideration. As members of the legal profession much more is expected of them. The Code of Professional Responsibility imposes on members of the bar the obligation to:

... participate in the development of the legal system by initiating or supporting efforts in law reform and in the improvement of the administration of justice.¹⁴

To establish what fields of law need change and how the administration of justice may be improved requires more than a bare assertion and formulation of proposals. Reflection, thorough study, and well reasoned positions will have to be the bases for proposed reform or innovations. The law faculty of the College are expected to be in the vanguard and the PLJ is a vehicle through which their thinking can be disseminated.

Canon 5 which is even more explicit and has particular relevance to our subject provides:

A lawyer shall keep abreast of legal developments, participate in continuing legal education programs, support efforts to achieve high standards in law schools as well as in the practical training of law students and assist in disseminating information regarding law and jurisprudence.

There was a time when some issues of the PLJ were devoted to annual reviews of Supreme Court decisions. Many of us in the faculty painstakingly went over every decision of the Supreme Court (released in advance sheets [G.R.s]) to prepare critical reviews. But later, when the Law Center took over the pre-bar review courses, the preparation of the review of recent cases was transferred to it. The College had found out that the information on law and jurisprudence which members of the bench, the bar and students, as ultimate users preferred was not a critique of court decisions, but a simple and outright resume of facts and issues.¹⁵ This relieved the faculty of the preparation of the annual review of decisions and legislations and gave them the time to write on subjects of their choice.

¹⁴CODE OF PROFESSIONAL RESPONSIBILITY, Canon 4.

¹⁵The last issue of the Journal containing survey of Supreme Court decisions is Vol. 49, Nos. 1 and 2 (February and April 1974).

However, the academe can make valuable contribution to legal development by subjecting decisions of the highest court to fearless and careful scrutiny, analysis and criticism. The Supreme Court may be the court of last resort; but its decisions are not immune from informed critique. This is a function best performed by the academe, which hosts those who, by devoting themselves to study and reflection can disseminate through teaching, writing and in public discussion, the fruit of their inquiry. Publication in the law review widens the reach of those ideas. PLJ writing by faculty and other lawyers can by study and analysis of decisions as well as legislation, indicate emerging trends in law and jurisprudence.

The role of the PLJ is not thus limited to the formal legal training of students in the law school. Members of the legal profession know only too well how exacting a mistress the law is. Whatever field of legal activity the lawyers may be engaged in, they need to keep abreast with developments. The explosion of legal knowledge is a reality they have to live with. Hence, students, alumni, faculty, members of the bench and of the bar can profit from exhaustively studied and well-written articles dealing with unresolved legal problems as well as problems which may be expected to arise in the future.

I am sure the members of the panel with their stint in the PLJ and their experience as law teachers, legal scholars and law practitioners will bring in their insights on the subject I have discussed.

The first issue of the PLJ carried a message from then Chief Justice Cayetano Arellano. He welcomed the happy idea of "the students of the College of Law of the University of the Philippines to publish a monthly journal as an open arena of their debates and other intellectual productions; a field for training in literary pursuits; innocent amusement for recreation of the mind, or for seriously occupying moments of leisure - all such and more, it will be the medium of publicity which may perhaps also draw forth hidden abilities, excite emulation in the modest ones who are now lightly esteemed but have real worth and stimulate them to strengthen and apply the knowledge they have acquired, a thing that happens when appeal is made to the public."¹⁶ That first issue carried among other things, news about the activities of the College and its alumni. Subsequently, these were published in a supplement to the PLJ known as the Law Register.

¹⁶1 PHIL. L.J. 1 (August, 1914).

Today, 75 years later we can more fully appreciate the vision of Dean Malcolm and the others who with him launched the PLJ and all those who through the years have carried on and strived to develop it into an institution with a tradition of excellence in the College. It is a legacy of the past which must be faithfully safeguarded and transmitted to the future.

The PLJ as of today maintains exchange arrangements with other law reviews. The role it plays in legal education in this country is best appreciated by relating to it the system of law and of legal education which bear the imprint of foreign influence, particularly that of the U.S.A.

Thus, the prototype from which the PLJ has been drawn is the student-edited law reviews of American law schools, the first of which as earlier mentioned, is the Harvard Law Review, now more than a hundred years old. In 1987 each of the 153 members of the Association of American Law Schools had at least one law review, edited by students, the larger programs maintaining as many as nine.¹⁷

Following the Harvard Law Review, student-edited journals continue to publish principally the contributions of faculty and other writers and include students' NOTES and COMMENTS. Contributors receive no remuneration, the screening and evaluation of submissions is still done by student editors.

There are critics of the system. Frank Rodell's articles entitled *Goodbye to Law Review*¹⁸ achieved "a certain amount of fame, or possibly notoriety." One of his pointed observations was: "There are two things wrong with almost all legal writing. One is style. The other is content. . . . The average law review writer is peculiarly able to say nothing with an air of great importance." Twenty-five years later he wrote a sequel.¹⁹ Among other things, he said: "A quarter of a century has wrought no revolution among professional purveyors of pretentious poppycock, even while hot war and cold war and split atoms and space shots have rocked the earth; No, the law review *literati* have stayed self-locked in their libraries, as though the latter were fall-out shelters in which they may some day prove to be, since their shelves are so loaded with legalistic lead ..."

¹⁷Liebman and White, *How Student Edited Law Journals Make the Publication Decisions*, 39 JOURNAL OF LEGAL EDUCATION 387 (1989).

¹⁸22 VIRGINIA L. QUARTERLY 1 (1938).

¹⁹*Goodbye to Law Reviews - Revisited*, 48 VIRGINIA L. REV. 279 (1962).

Writing along the same line as Rodell, John Nowak expanding on the talk at a banquet of the *Arizona Law Review* in an article entitled *Woe Unto You, Law Review* added that the three main culprits in the death of decent writing in law reviews are, of course, the footnote, the impersonal tone of writing and the reversal of normal grammatical principles.

Church makes *A Plea for Readable Law Review Articles*²⁰ saying that "the current law review focus on exhaustively detailed articles, namely, that many of them are too long and too complex to be of much real value in advancing legal discourses."

Judith S. Kaye of the Court of Appeals of the State of New York in an article entitled *One Judge's View of Academic Law Review Writing*²¹ finds well-founded the concern that "academics are writing for each other".

It is now that law reviews have not left their mark in and jurisprudence. An outstanding example is the Warren and Brandeis article written a century ago entitled *The Right to Privacy*.²² So far reaching has been the effect of this that it added a new rubric to American tort law, has been cited by numerous court decisions, served as starting point for law review articles and influenced the enactment of privacy statutes,²³ and ultimately a recognition of the right to privacy as an independent constitutional right.²⁴ The influence of the Warren and Brandeis article is felt in the Philippines where the right to privacy finds support in a number of constitutional provisions.²⁵

How applicable in the Philippines are criticism of student-edited law reviews?

Besides the criticisms already referred to is this:

... law reviews are unique among publications in that they do not exist because of any large demand on the part of a reading public. Whereas most periodicals are published primarily in order that they may be read, the law reviews are published primarily in order that they may be written. ...²⁶

²⁰WISCONSIN L. R. 739 (1989).

²¹39 J. OF LEG. EDUC. 313, 320 (1989).

²²4 HARV. L. REV. 193 (1890-91).

²³Cortes, *Constitutional Foundations of the Right to Privacy, in Emerging Trends in Law*, PHIL. L. J. (1983).

²⁴*Griswold v. Connecticut*, 381 US 479 (1965).

²⁵Cortes, *supra* note 23.

²⁶Havighurst, *Law Reviews and Legal Education*, 51 N.W.U. L. REV. 22, 24 (1956).

Much blame is laid on the law professors who publish to impress deans and earn promotions and the law students who write following their style.²⁷ A plea is made for a section of law reviews to be set aside for articles of a short, lucid uncluttered format, "some articles might actually turn out to be more insightful stripped of what can sometimes be a camouflaging layer of documentation."²⁸

The Philippine situation differs somewhat. We do not have the avalanche of law reviews and journals the U.S.A. has. There are only a handful or less of law schools which publish journals regularly. Law teachers are under no pressure to publish to become tenured. There are unfortunately not enough good lawyers who choose law teaching as a career. But the same question may well be asked – are law review articles read? The PLJ has the longest history of continuous publication among law school based journals – perhaps of any law journal in the country, but its circulation is limited. The latest figures reveal that it has less than 300 paid subscriptions, local and foreign combined. Its exchange arrangements total 97, three local and 94 foreign.²⁹ The bulk of the copies printed go to the law students enrolled in the College who read journal articles because they are assigned readings. The articles which are exhaustively researched and well documented find use among practicing lawyers and judges, but articles which inquire into legal theory or philosophy or matters other than the technical issues in different fields of law may have few readers.

On the role of the PLJ in the 90s in Philippine legal education, I venture to say that it will in the foreseeable future continue to be mainly a vehicle for studies in depth done by faculty and other writers, and for students in supervised or independent research and writing.

The PLJ has yet to embark on empirical research which in law has not yet caught on in this country. Another point to consider is: Should, within the decade, Filipino eventually become the official language in the courts and the medium of instruction in the educational system³⁰ an entirely new scenario will open for the College and the PLJ. In the meantime, some planning will have to be made on what can be done here

²⁷Rodell, *supra* note 19 at 285. Novak, *Woe Unto You, Law Reviews*, 27 ARIZONA L. REV. 317, 319-320 (1985).

²⁸Church, *A Plea for Readable Law Review Articles*, WIS. L. REV. 739, 744 (1989).

²⁹Data furnished by Atty. Antonio M. Santos, University of the Philippines College of Law Librarian.

³⁰CONSTITUTION, art. XIV, sec. 6, par. 2.

and now insofar as the use of Filipino in legal education particularly in PLJ research and writing.