# RINGS AND TOWERS: A STUDY OF JUDICIAL AND LEGAL ETHICS IN THE PHILIPPINES*

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**ABSTRACT**

The article suggests that there is a defect in the manner by which accountability is enforced in the bench and the bar, arising out of the inability to balance the values and interests involved in lawyering and in rendering justice. It notes that lawyers place a premium on reputation over responsiveness to client needs, while the Judiciary values judicial independence at the expense of accountability. Citing recent administrative cases, the article shows how lawyers, judges, and justices have been made to answer for violations in their respective capacities. The article then concludes that lawyer-judge regulation in the Philippines is highly misguided, and recommends that such regulation should be reoriented as an initial step for stronger accountability. To this end, it proposes a shift of the system of lawyer regulation from one of self-regulation to co-regulation. As to the Judiciary, this work suggests that judicial privilege should not be used to resist legitimate questions on accountability, as the former must be tempered by the latter.

The Philippines is a country in awe of its lawyers.

In 2001, Filipinos all over the country followed Former President Joseph Estrada's impeachment like a soap opera. In 2011, the people were glued to their television sets to witness Former Chief Justice Renato Corona's impeachment trial. They watched in admiration and wonder as legal stalwarts talked about concepts such as due process, evidence, separation of powers, Roman law, and other legalistic terms. Some of the lawyers who appeared in these trials became instant household names.

The bar examination in the Philippines is not just a government examination for those who wish to practice law; it is also a national event of

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sorts. It is, perhaps, the only government examination accorded wide media coverage. Topnotchers are celebrated, their faces placed on the front page of national newspapers, and their stories are featured in television shows.

There is something about being a lawyer that Filipinos find so admirable. Perhaps it is the years of education that lawyers go through that compel people to automatically assume that all lawyers are brilliant, or perhaps it is their knowledge of the legal system that creates an image of their power and capacity to navigate the system with ease.

Yet, for a country in awe of its lawyers, people hardly understand what lawyers really do, apart from the traditional notion that lawyers go to court and conduct dramatic cross-examinations that tear the opponent's case to pieces.

In the same vein, the Judiciary, the branch of government made up of lawyers constitutionally authorized to interpret the laws, is a force to be reckoned with. It is seen as the ultimate arbiter, not only of legal questions between private parties, but also—in many instances—the final decision-maker in crucial political questions, such as the legitimacy of a sitting President and the morality of a governmental action. The Judiciary, especially the Supreme Court, is a societal force. Judges and justices command respect in our society.

Notwithstanding this respect, the Judiciary is an institution shrouded in mystery. People hardly understand the procedures used by the Judiciary to arrive at its decisions. There is respect for what the Judiciary does, but most people only have a vague idea of how they do what they do. To a certain extent, the respect given to the Judiciary is a kind of blind faith—belief without clear understanding.

This admiration without understanding raises questions of accountability. Indeed, mechanisms are in place to ensure that lawyers and judges do not abuse their influence and power. The system, however, relies heavily on self-regulation, and this is where the problem lies.

A system that depends on its own choices of what is right or wrong and on the blind faith of society it is supposed to serve is a system in peril.

One is reminded of the rise and fall of Saruman the White in THE LORD OF THE RINGS. Saruman was the greatest wizard to have walked Middle Earth. Yet for a long time, his power remained unchecked and his activities unknown. The other societies admired and feared him, yet they never understood the full extent of what he stood for, until his faults were revealed. Saruman the White is

a cautionary tale for the regulation of legal and judicial ethics in a society where a license to practice the law is power.

This paper proposes that there is a defect in the manner by which accountability is being enforced in the bench and the bar. This defect arises out of the inability to balance the values and interests involved in the task of lawyering and rendering justice. The legal profession places a premium on reputation over responsiveness to client needs, while the Judiciary values judicial independence at the expense of accountability.

Part I of this paper discusses the bar as a profession and the Judiciary as an institution. It explains the structures constituting the bench and the bar. It also highlights their value in the Philippine society. In doing so, this paper aims to establish why reputation and independence are prized values in the Judiciary and the legal profession. At the same time, Part I argues for the need for accountability.

Part II explains the rules of procedure within the bench and the bar for enforcing accountability. Primarily, lawyers are held responsible for their actions through regulation by the Supreme Court. As to the Judiciary, the Constitution and the Supreme Court have put in place mechanisms of regulation to ensure that judges and justices remain accountable. At the same time, Part II takes a look at how these procedures are actually being used. To this extent, the paper looks at administrative cases decided by the Supreme Court from 2008 – 2012, in order to get a picture of how lawyers, judges, and justices are being made to answer for violations. To aid in this task, important cases decided by the Supreme Court involving the bench and the bar will also be discussed. Part II also analyzes the decisions rendered during this period and makes a conclusion that lawyer-judge regulation in the country is misguided.

Part III argues that lawyer-judge regulation should be reoriented as a requisite for stronger accountability. To this end, Part III includes proposals for regulation that highlight client satisfaction and public service as the pillars of lawyer-judge regulation.

## I. MEN, WIZARDS AND THEIR RULES

### A. The Judiciary

The Judiciary is the third branch of government under the Philippines' system of separation of powers. It is tasked to interpret the law, while the other two branches, the Legislative and the Executive departments, are tasked to enact

and enforce laws, respectively. It comprises the Supreme Court, which is the highest court of the land, the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Courts, and the Municipal Trial Courts, all of which are vested with judicial power by the Constitution.[2]

The Constitution defines judicial power as:

> [T]he 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.[3]

The Judiciary does this by deciding actual cases filed before it by interested parties. In arriving at decisions, the courts first look at the facts and issues presented to them. They then proceed to determine the applicable laws in order to make a pronouncement on the rights and liabilities of the parties.

The Judiciary follows a hierarchy. At the bottom are the Municipal Trial Courts.[4] Their decisions are generally appealable to the Regional Trial Courts,[5] although the latter also has original jurisdiction over certain cases.[6] Cases may then be brought to the Court of Appeals which is an appellate court.[7] The Court of Appeals also enjoys original jurisdiction over a limited range of cases.[8] The Sandiganbayan[9] and the Court of Tax Appeals[10] are also appellate courts with the same rank as the Court of Appeals. However, the said courts are different in that they handle special cases: those involving tax issues for the Court of Tax Appeals, and those involving public officers for the Sandiganbayan. Both courts also possess original jurisdiction over specific cases. Finally, the Supreme Court is at the top of the hierarchy. Its decisions are not appealable. Once it has spoken, the matter is settled and no further proceedings may be had. It is the final arbiter. Once a case reaches the Supreme Court and it renders a decision,

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[2] CONST. art. VIII, § 1.

[3] Art. VIII, § 2, ¶ 2.

[4] Batas Blg. 129, § 25 (1980). The Judiciary Reorganization Act of 1980.

[5] § 22.

[6] § 19.

[7] § 3.

[8] § 9.

[9] Rep. Act No. 8249 (1997). An Act Further Defining the Jurisdiction of the Sandiganbayan.

[10] Rep. Act No. 9282 (2004). An Act Expanding the Jurisdiction of the Court of Tax Appeals.

this decision becomes part of the law of the land[11] and no other court or government body may review the case to reverse it.

The courts are headed by judges, for the Municipal and Regional Trial Courts, and justices, for the Court of Appeals, Court of Tax Appeals, Sandiganbayan, and the Supreme Court. The President appoints judges and justices,[12] from a list of nominees given by the Judicial and Bar Council, a body created under the Constitution with the duty of recommending appointees to the Judiciary.[13]

*1. The Value of Judicial Independence: The Ring that Binds*

Under the system of separation of powers, the Judiciary is supreme within its own province. Not even the two other branches of government can interfere with the Judiciary's power. This is the first important element of judicial independence. The Judiciary must be independent from the Executive and Legislative departments. It must be free to perform its constitutionally mandated duty without interference from any other entity. When the Judiciary enforces its independence, it is not merely asserting it for its own sake, but for the sake of the government and the people. Its independence is an indispensable element of separation of powers. Separation of powers, in turn, is necessary to ensure that no single entity is too powerful as to trample upon the rights of the people.

> [T]here is no liberty, if the judiciary's power be not separated from the legislative and the executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.[14]

The second element of judicial independence is freedom from the pressures of public opinion. Compared with the Executive and the Legislative departments, the Judiciary is unique in that its members are not chosen directly by the people. Judges and justices are appointed by the President rather than elected by the public. This manner of selection affects the process of decision-making in the Judiciary. Judges and justices, in deciding cases brought before

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[11] CIVIL CODE, art. 8.

[12] CONST. art. VIII, § 9.

[13] Art. VIII, § 8.

[14] CHARLES DE MONTESQUIEU, THE SPIRIT OF THE LAWS, *in* 1 THE GREAT POLITICAL THEORIES 434 (Michael Curtis ed., 1985).

them, are "insulated from the direct impact of public opinion."[15] In promulgating their decisions and issuing their orders, they need only consider what the law says. They are not compelled to appease lobbyists and political parties. They are not bound to a promised platform of government or ideology. The Judiciary, as the interpreter of the laws in a democratic legal system, is an institution whose members are not chosen democratically.

The Judiciary is purposely modelled in this way to insure its independence. A judiciary that is subject to the whims and caprices of public opinion might not remain loyal to the law alone. Moreover, because our government is a democratic one, the majority already possesses power. The Judiciary, not beholden to any majority, can therefore protect more adequately those in the minority. "Every citizen should have a surer pledge for his constitutional rights than the wisdom and activity of any occasional majority of his fellow citizens, who, if their own rights are in fact unmolested, may care very little for his."[16]

Viewed in this context, the value of judicial independence becomes clear. First, separation of powers can only be fleshed out if the Judiciary is independent from the two other branches of government. Second, the judiciary must be insulated from ever-changing public opinion in order to be able to protect not only the majority but also the minority.

Hence, the Constitution has mechanisms to ensure judicial independence. Under the Constitution, the Supreme Court *en banc* has the power to discipline judges of lower courts. It also has the power to dismiss judges upon a majority of the votes of all its members who participated in the deliberation of the case.[17] The fifteen Justices of the Supreme Court, in turn, may be removed only through the political process called impeachment.[18] The conduct of judges and justices are also regulated through the Code of Judicial Conduct. The Judiciary also enjoys fiscal autonomy.[19] Further, appointments in the Judiciary require no confirmation from the Commission on Appointments,[20] which is a requirement for other public offices. Instead, the President appoints from a list

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[15] STEPHEN BREYER, MAKING OUR DEMOCRACY WORK 4 (2010).

[16] Letter from James Iredell to Richard Spaight (Aug. 26, 1787), *in* 2 LIFE AND CORRESPONDENCE OF JAMES IREDELL 172, 175 (Griffith J. McRee ed., 1857).

[17] CONST. art.VIII, § 11.

[18] CONST. art. XI, § 2.

[19] CONST. art. VIII, § 3.

[20] Art. VIII, § 9.

given by the Judicial and Bar Council, an independent body created under the Constitution for the purpose of screening applicants to the Judiciary.[21]

In addition to the two aforementioned facets of the importance of judicial independence, the Judiciary, particularly the Supreme Court, forcefully asserts this independence for its own survival.

The Judiciary is often described as the weakest branch of the government because it has neither the power of the purse nor the power of the sword.[22] While it has the power, under the law, to execute its decisions, it relies to a large extent on the Executive Department, particularly the police force, for the effective enforcement of its orders and judgments.

The effectiveness of the Judiciary as the final arbiter of legal disputes involving life, liberty, and property depends upon its ability to execute its decisions. The enforcement of its decisions, in turn, depends upon first, the willingness of other government agencies to enforce judicial decisions and second, the willingness of the parties to obey them. As such, the Judiciary highly values legitimacy. Legitimacy, or the popular belief that government should be obeyed and by virtue of which persons exercising authority are lent prestige,[23] determines whether the other branches of the government and the people will choose to respect or disobey judicial decisions.

Hence, the Judiciary tends to be protective of its independence. Not only must it ensure that it is independent from the pressures of other government branches and interested parties, it must also be able to encourage public perception that it is indeed independent and impartial. Judges must not only be impartial, they must also appear impartial.[24]

As will be shown later in this paper, the Judiciary, through the Supreme Court, asserts judicial independence through the administrative cases it handles involving judges, justices, lawyers, and in some instances, non-lawyers. But while the Judiciary may be fulfilling an important duty when it seeks to uphold its judicial independence, it must also be able to balance this with the need for accountability. In concrete terms, while the Judiciary may be justified in penalizing a person who seeks to pressure the courts into making a decision by releasing false information to the media, it is not justified in penalizing him if he merely voices out a criticism against the courts. This is because judicial

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[21] Art. VIII, § 8.

[22] ISAGANI CRUZ, PHILIPPINE POLITICAL LAW 244 (2002).

[23] MAX WEBER, ESSAYS IN SOCIOLOGY (H. H. Gerth & C. Wright Mills eds. 1946).

[24] People v. Nuguid, G.R. No. 148991, 420 SCRA 533, 551-552, Jan. 21, 2004.

independence is not an end in itself.[25] It is only a means to an end—the end being the delivery of justice for the benefit of the people. Ultimately, therefore, the loyalty of judges and justices does not lie with the Judiciary itself but with the people. Judges and justices are not ultimately accountable to the Judiciary as an institution, but to the public.

Hence, for an institution as important to the people as the Judiciary, accountability should be valued as much as judicial independence.

*2. The Value of the Judiciary in Philippine Society: The Ring that Rules*

The value of an institution that resolves legal disputes among its citizens is unquestionable. But for the Philippines in particular, the importance of the judiciary goes beyond this. The Judiciary, especially the Supreme Court, is not just an institution. It is seen as the final arbiter not just of legal disputes but also of important national issues that have rocked the country in its years of existence.

*Estrada v. Arroyo*[26] is a case in point. In 2001, amidst the clamor for then-President Joseph Estrada to step down from office in what is now known as People Power II, Chief Justice Hilario Davide swore in Vice-President Gloria Macapagal-Arroyo as the new President. However, even after Estrada left Malacañang, his right to the office and the legitimacy of Macapagal-Arroyo's assumption remained highly contentious national issues.

When Estrada went to the Supreme Court, asserting that he was still the duly-elected President and Macapagal-Arroyo's presidency was illegitimate, the the Court was confronted with a dilemma. First, it had to acknowledge the fact that, at that point, Congress had already recognized Macapagal-Arroyo's presidency. She had already passed laws and appointed a Vice-President. Second, the issue was so contentious that were the Supreme Court to decide against Macapagal-Arroyo, the political consequences would be dire. It could have led to more street protests. The outcome would have been detrimental to the stability of the nation. Third, the Supreme Court was not an impartial adjudicator because its very own Chief Justice had opted to swear in Macapagal-Arroyo as the new President at the height of People Power II. In fact, the Supreme Court itself had issued a resolution expressly authorizing the Chief Justice to administer

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[25] MAURO CAPPELETTI, WHO WATCHES THE WATCHMEN: A COMPARATIVE STUDY ON JUDICIAL RESPONSIBILITY *in* JUDICIAL INDEPENDENCE: THE CONTEMPORARY DEBATE (S. Shetreet & J. Deschenes eds. 1985).

[26] G.R. Nos. 146738, 353 SCRA 452, Mar. 2, 2001.

the oath. Were the Supreme Court to rule against Macapagal-Arroyo, it would put in jeopardy the legitimacy of its very own actions.

The Supreme Court could have said that the matter was a political question, hence beyond its jurisdiction. It could have said that the removal of then President Estrada through People Power II was extra-constitutional. It could have taken the position that the legitimacy of Macapagal-Arroyo's presidency at that point was for the people to decide, as in fact the people did decide through their elected representatives in Congress, when Congress voted to recognize Macapagal-Arroyo as the new president. The Supreme Court itself resorted to citing surveys and statistics showing that the people had accepted Macapagal-Arroyo's presidency.

But the Supreme Court had to rule because it had to legitimize its own actions. Moreover, no other branch of government could settle the matter. The longer the legitimacy of Macapagal-Arroyo's presidency remained in question, the more politically unstable the country would be. Hence, the Supreme Court held that Estrada had resigned and that Macapagal-Arroyo was the legitimate President of the Philippines.

The decision may have been questionable but, in the end, it did serve the purpose that the Supreme Court intended. It solidified Macapagal-Arroyo's legitimacy. The Supreme Court's arguments may have been forced, but the people chose to respect it. There may have been other factors that convinced the people that the Supreme Court was correct, but it cannot be discounted that one factor for the Supreme Court's ability to convince was its Chief Justice. Chief Justice Davide was a hero in Estrada's impeachment trial. His trust rating reached a peak of 49%.[27] The people generally listen to the Supreme Court, and in the particular case of the Supreme Court of 2001, the people not only listened to them—the people also trusted them.

Another case in point is the Puno Court. In 2007, the number of extrajudicial killings and enforced disappearances in the Philippines reached alarming heights. There were sufficient indications that the military may be involved in a large number of these killings and disappearances and that these were being committed with impunity.[28] The Executive and the Legislative

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[27] Joanne Rae Ramirez, *Davide's Ratings Shoot Up in Pulse Asia Poll*, The Phil. Star, Dec. 17, 2000, *available at* http://www.philstar.com/headlines/89142/davide%C2%92s-trust-rating-shoots-pulse-asia-poll (last visited Jan. 9, 2013).

[28] Report of the Melo Commission, *quoted in Scared Silent: Impunity for Extrajudicial Killings in the Philippines*, *in* Human Rights Watch, *available at* http://www.hrw.org/sites/default/files/reports/philippines0607webwcover.pdf (last visited Jan. 14, 2013).

Departments appeared unable to remedy the situation. On September 25, 2007, the Supreme Court, under the leadership of Chief Justice Reynato Puno, promulgated the Rule on the Writ of *Amparo*. Invoking its rule-making power to protect and enforce rights under the Constitution,[29] the Supreme Court drafted the Writ of *Amparo* as a judicial remedy for "any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity."[30] This was followed by the Rule on the Writ of *Habeas Data* on January 22, 2008.[31] The Puno Court envisioned the Writ of *Habeas Data*, like the Writ of *Amparo*, as a remedy against enforced disappearances and extrajudicial killings.

The promulgation of the two writs was an instance showing that where the two other branches of the government are unable to remedy a pressing national problem, the Judiciary, particularly the Supreme Court, will step in to fill the void. This situation is peculiar because the Judiciary has always been viewed as a passive body—its jurisdiction only triggered if an actual case is brought before it. It cannot decide on its own initiative.[32] But Filipino culture and its Judiciary are unique. From the acceptance that the two writs have received since their promulgation, there is reason to believe that when the Supreme Court intervenes in matters of national importance, the people welcome such as a necessary function of the highest court of the land.

These two cases highlight the unique position of the Judiciary in Philippine society. In this country, the Judiciary does not just interpret the law; it is also a political force. The Supreme Court is not just the final adjudicator of legal disputes among litigants, it is also the test that numerous political issues and governmental choices must pass. In this country, the value of Supreme Court decisions in controversial political cases far exceeds the basic conceptions of *stare decisis* or of *res judicata*. Supreme Court decisions help in building a nation. These decisions are important pieces in the narrative of the Philippines' growth.

This unique place of the Judiciary in the country's history and society creates a strong argument for accountability. Because the Judiciary is a force to reckon with, it must have a greater sense of its duty to the people.

*3. Regulating the Bench: The Rules for Wizards*

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[29] CONST. art. VIII, § 5(5).

[30] A.M. No. 07-9-12-SC, Sept. 25, 2007.

[31] A.M. No. 08-1-16-SC, Jan. 22, 2008.

[32] David v. Arroyo, G.R. No. 171396, 489 SCRA 160, 213, May 3, 2006.

The Constitution provides for the regulation of the members of the Judiciary. Under the Constitution, the 15 members of the Supreme Court can be removed from office only through impeachment.[33] The Supreme Court has administrative supervision over all courts and court personnel.[34] It has the power to hear administrative cases involving erring judges and to impose penalties such as removal from office, suspension, fine, and admonition. The New Code of Judicial Conduct for the Philippine Judiciary,[35] promulgated by the Supreme Court on April 27, 2004, also regulates judges and justices. It has six canons that highlight six important values for the Judiciary: independence,[36] integrity,[37] impartiality,[38] propriety,[39] equality,[40] and competence and diligence.[41]

Under this scheme, except for the justices of the Supreme Court, all members of the Judiciary are accountable to the Judiciary alone. No other branch of government has jurisdiction to discipline judges and justices. While in theory, judges and justices, as public officers, are accountable to the people, in practice, there simply is no mechanism under our laws by which the people can have a direct hand at holding judges and justices responsible for their actions. The Judiciary is a self-regulating institution.

Again, this system finds its moorings in the need for judicial independence. A judiciary may be held hostage to the whims and caprices of other entities if the power to discipline its members is vested in the hands of other governmental entities or the people. Judges and justices must be able to freely render their decisions in accordance with what the law says, without fear of reprisal from those who may not find their decision satisfactory. How the Judiciary actually exercises this power of self-regulation to strengthen judicial independence and how, in a number of instances, it may have exceeded the limits, will be discussed in Part II of this paper.

**B. The Legal Profession**

The practice of law in the Philippines is a prestigious profession. As early as the Spanish colonial era, lawyering has already been highly esteemed as a

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[33] CONST. art. XI, § 2.
[34] CONST. art. VIII, § 6.
[35] A.M. No. 03-05-01-SC, Apr. 27, 2004.
[36] CODE OF JUD. CONDUCT, Canon 1.
[37] Canon 2.
[38] Canon 3.
[39] Canon 4.
[40] Canon 5.
[41] Canon 6.

profession for the elite and the learned.[42] Yet for all its prestige, the common understanding of a lawyer's job is usually limited to a cliché—lawyers who appear before trial courts to engage in courtroom drama. The legal profession, however, is much more than that.

*1. The Practice of Law: Fighting for Other Men's Wars*

Martin Mayer, author of the book THE LAWYERS, noted that the activities of a lawyer may be broken down into four general categories: fighting, negotiating, securing, and counselling.[43]

Fighting pertains to the tasks of trial lawyers.[44] They are those who appear in court to argue a case. Litigation is the most common notion of what a lawyer does. The fighter is the kind of lawyer featured in numerous movies involving courtroom dramas—arguing against the opposing lawyer, reasoning before a judge, examining witnesses, and presenting evidence.

But a court trial is only one means of resolving conflicts between parties. Through the years, there has been a movement to provide alternative modes of settling disputes.[45] In this set up, the lawyer does not carry out his job in courtrooms. The process is not adversarial. The lawyer's job is to arrive at a fair settlement for his client through negotiations with the other party. While alternative modes of settling disputes may not involve technical rules of procedure and voluminous laws and jurisprudence, lawyers retain a quasi-monopoly in negotiating controversies because settlements must be able to survive a challenge in court. Lawyers are more capable of guaranteeing this than other non-lawyer negotiators.[46]

The provision of security is also a lawyer's job. It may be deemed as the most legal of a lawyer's skills. Lawyers provide security by the drafting of documents.

> The one necessary societal function of the lawyer—the reason why it is necessary to license lawyers and to demand that all entrants to the profession pass a bar examination—is that the lawyer writes

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[42] Jonathan Pampolina & Juan Crisostomo Echiverri, *You, Me and the Firm: Tracing the Historical Development of Philippine Legal Practice from Solo Practice to Law Firms*, 81 PHIL. L.J. 879 (2007).

[43] MARTIN MAYER, THE LAWYERS 29 (1967).

[44] *Id.*

[45] *See* Rep. Act No. 9285 (2004), Alternative Dispute Resolution Act of 2004; Puromines v. CA, G.R. No. 91228, 220 SCRA 281, Mar. 22, 1993.

[46] Mayer, *supra* note 43, at 36.

> enforceable contracts. Communal life in a modern society rests upon pieces of paper—wills, trust agreements, mortgages, deeds, certificates of incorporation, leases, agreements to purchase or to sell, warrants and so forth—must stand up. The lawyer assures that they will.[47]

Counselling is also an essential aspect of a lawyer's work. In litigating cases, negotiating matters, or drafting contracts, the lawyer must consider not only what the law requires but also what the client needs. The lawyer not only has the duty to insure that he provides the best lawyering services, but he must also insure that those services are what the client needs.

The lawyer practices these skills in diverse circumstances. Some lawyers practice law in law offices and law firms. Some function as in-house counsels for companies. Some bring their skills into the government. The lawyer performs many tasks in many different environments.

From the foregoing, it becomes apparent that a lawyer is a person preoccupied not with his own concerns but with the concerns of others. He speaks for his clients, argues on their behalf, and makes decisions for them.

If the law is a map that can guide a person to his destination, lawyers are persons well versed in reading maps; they are persons who are trained to know every left or right turn, every dead end and every road sign. Because the lawyer reads the map not for himself but for the benefit of another, his errors are crucial. If he misreads a road sign, the client may end up getting lost. The lawyer is a person who is in a position to alter the direction of the lives of his clients, for better or for worse.

As described by Justice Felix Frankfurter of the US Supreme Court, "[O]ne does not have to inhale the self-adulatory bombast of after-dinner speeches to affirm that all the interests of man that are comprised under the constitutional guarantees given to 'life, liberty, and property' are in the professional keeping of lawyers."[48] In the words of John W. Davis:

> True, we build no bridges. We raise no towers. We construct no engines. We paint no pictures—unless as amateurs for our own principal amusement. There is little of all that we do which the eye of man can see. But we smooth out difficulties; we relieve stress; we

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[47] *Id.* at 42.

[48] Schware v. Board of Bar Examiners, 353 U.S. 232, 77 S. Ct. 752 (1957).

> correct mistakes; we take up other men's burdens and by our efforts we make possible the peaceful life of men in a peaceful state.[49]

This value of a lawyer's tasks qualifies lawyering as a profession. While there may be no universally accepted meaning for what makes a certain activity a profession, one common notion is that where entry to the practice of a certain activity requires service to the public, this activity can be considered as a profession.[50]

Yet treating lawyering as a profession is just one side of the story. The practice of law is also a business—to the extent that it generally involves the rendering of services for a fee.[51] Lawyers, in carrying out their tasks, may be serving as officers of the court, but at the same time, they are also earning a living.

This side of a lawyer's job—the part where he charges clients for the tasks he performed, the part where he seeks to maximize profits and to compete in the market of legal services—is a controversial topic in legal ethics.

During the impeachment trial of Estrada, there was an incident when Senator Miriam Defensor-Santiago interrogated a witness, Jasmin Banal, a young lawyer who left a high-paying job in a law firm when she found out that the firm was setting up dummy corporations for Estrada. Sen. Defensor-Santiago, at one point, asked, "So you deviated from the usual career path, since you and I and all UP law graduates virtually pursue the same career path after graduation. Isn't that so? We try and get the highest salary we can get."[52] When Senator Raul Roco, who was also a lawyer, spoke after Sen. Santiago, he reacted to Defensor-Santiago's line of questioning by famously retorting, "We as lawyers should be motivated by a sense of idealism." Sen. Roco was, of course, correct. Law is a profession—that has been stated in numerous texts by numerous people. But Sen. Santiago was not necessarily wrong. She was trying to make a point. She was summoning the experience of the common person to get to this point. That she insinuated that it is outside of the ordinary when a person leaves a high-paying job for a low-paying one did not mean that she was immoral or materialistic or that she failed to live up to the high standards of the noble

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[49] Mayer, *supra* note 43, at 3.

[50] Steve Mark, Legal Servs. Comm'r, N.S.W. Office of the Legal Servs. Comm'r, Keynote Address at the Australian Academy of Law Symposium 2008: Re-imaging Lawyering: Whither the Profession?, *available at* http://www.lawlink.nsw.gov.au/lawlink/olsc/ll_olsc.nsf/vwFiles/AALS (last visited Jan. 5, 2013).

[51] Michael Asimow, *Embodiment of Evil: Law Firm in the Movies*, 48 UCLA L. REV 1339 (2001).

[52] Conrado De Quiros, *There's the Rub: Contempt*, Phil. Daily Inquirer, Mar. 5, 2012.

profession. She was just doing what lawyers do—asking commonsensical questions to lead to the truth.

The "commercialization" of the law cannot be avoided. With the increase in the influx of business, the strengthening influence of globalization and the revolutionizing effects of technology, the practice of law cannot simply refuse to meet the needs of the times.

The value of the practice of law in the society is an argument in itself for better lawyer regulation. That the legal profession is being "commercialized" is another argument tending to the same end. That lawyering can be viewed from two prisms—as a profession and as a business—however, gives rise to problems in regulation. How the Supreme Court, as the main regulatory body, deals with this and how it appears to fall short of its task will be discussed in Part II.

*2. Regulating the Bar: The Rules of Engagement*

Lawyers can be regulated in many different ways. Regulation may come from traditional bodies who admit lawyers to practice, discipline them and promulgate rules of conduct.[53] There are also less formal sources of regulation such as the media, clients, non-governmental organizations and customs.[54]

Lawyer regulation can be described as either under a regime of *self-regulation* or *co-regulation*.[55] Self-regulation can range from total freedom from external controls, regulation by the bar association, to a system where only the judiciary, and no other governmental entity, exercises control over the legal profession.[56] Co-regulation, in contrast, is a system where oversight authority is vested in an alternate body. For example, in the United Kingdom and Scotland, the regulatory board which regulates lawyers is made up of a non-lawyer majority and a non-lawyer chair.[57]

The Philippines follows the self-regulation model. The Judiciary regulates the legal profession. In particular, the Supreme Court has the power to discipline lawyers.[58] This power includes the power to suspend and disbar.

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[53] Laurel S. Terry, Steve Mark & Tahlia Gordon, *Trends And Challenges In Lawyer Regulation: The Impact Of Globalization And Technology*, 80 FORDHAM L. REV. 2661 (2012).

[54] *Id.*

[55] Andrew Boon, *Professionalism Under the Legal Services Act 2007*, 17 INT'L J. LEGAL PROF. 195 (2010).

[56] *Id.*

[57] *Id.*

[58] RULES OF COURT, Rule 138, § 27.

Under Section 27 of Rule 138 of the Rules of Court, a member of the Bar may be suspended or disbarred "for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a wilful disobedience of any lawful order of a superior court, or for corruptly or wilfully appearing as an attorney for a party to case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice."

An administrative case for the discipline of lawyers may be initiated by the Supreme Court on its own initiative or upon the written complaint under oath of another person.[59] The Court of Appeals and Regional Trial Courts also have the power to suspend lawyers on the same grounds.[60] However, these lower courts must transmit to the Supreme Court a certified copy of the order of suspension and a full statement of the facts upon which the court based the suspension. The Supreme Court must then conduct a full investigation. After this investigation, it has the option of revoking or extending the suspension or removing the attorney from office.[61]

Lawyers are also subject to the regulation of the Integrated Bar of the Philippines (IBP). The IBP is an organization of all persons admitted into law practice.[62] It has the power to hear disciplinary cases involving lawyers and to recommend the appropriate penalties to the Supreme Court.[63]

The second part of this paper looks at how the Supreme Court and the Integrated Bar of the Philippines exercises this power of regulation by reviewing administrative cases involving the discipline of lawyers.

## II. PROTECTING THE FELLOWSHIP: HOW THE RULES ON LEGAL AND JUDICIAL ETHICS ARE ENFORCED

This part of the paper is a survey of the administrative cases decided by the Supreme Court from 2008 – 2012. This survey is intended to achieve two things: first, it will look into the kinds of offenses that are frequently involved in disciplinary cases of lawyers and judges; and second, it will determine the

[59] Rule 139, § 1.
[60] Rule 138, § 28.
[61] Rule 138, § 29.
[62] Rule 139-A, § 1.
[63] Rule 139-B, § 1.

offenses generally regarded by the Supreme Court as violations warranting disbarment, as well as those sufficiently penalized by warnings, fines and suspension. Ultimately, this survey intends to identify what the Supreme Court considers as values that should be instilled in the bench and the bar.

This survey was done by looking at all the published Supreme Court decisions on lawyers and judges for the past four years. A total of 347 cases were used for this study. There were 47 cases for 2012, 78 for 2011, 40 for 2010, 90 for 2009, and 92 for 2008. To make sense of this large amount of data, a sampling method was employed. More specifically, purposive quota sampling was used. Under this method, 200 was the number set as the quota of cases that must be surveyed. These 200 cases were then proportionally spread out for each year. In other words, a specific number of cases was taken from each year in accordance with the proportion that the total cases in each year bore to the total number of cases. Hence, this paper surveyed 27 cases for 2012, 45 for 2011, 23 for 2010, 52 for 2009 and 53 for 2008. The procedure for choosing the cases in each year is a combination of random and purposive sampling. All cases involving justices of the Sandiganbayan, the Court of Appeals and the Supreme Court were automatically included owing to the fact that there were very few administrative cases involving them. Hence, in order to capture the data pertaining to the regulation of justices, these cases were immediately chosen. The rest were chosen randomly.

Further, in identifying the offenses involved in each administrative case, the technical grounds under the Rules of Court were not adopted. Rather, a system of codes was developed to function as categories within which specific violations can be encompassed. For lawyers, the offenses were categorized into the following: (1) gross ignorance, (2) immorality, (3) partiality, (4) violation of the Notarial Law, (5) dishonesty, (6) unauthorized practice of law, (7) undue delay, (8) conduct unbecoming of a lawyer, (9) conflict of interest, (10) grave abuse of authority, (11) violation of law and Supreme Court rules/orders, (12) gross misconduct, (13) simple misconduct, (14) negligence, (15) gross negligence, (16) failure to account for client's properties, (17) inducing a client to obtain a loan to pay attorney's fees, (18) extortion, (19) suppression of evidence, (20) disrespect to the courts, impropriety, and (21) unlawful solicitation of cases. For judges and justices, the categories are the following: (1) gross ignorance, (2) immorality, (3) partiality, (4) violation of the Notarial Law, (5) dishonesty, (6) unauthorized practice of law, (7) undue delay in deciding a case, (8) conduct unbecoming of a judge, (9) grave abuse of authority, (10) violation of law and Supreme Court rules and orders, (11) gross misconduct, (12) simple misconduct, (13) inefficiency, (14) negligence, (15) borrowing money from a litigant, (16) absenteeism, (17) impropriety, (18) failure to file Statement of Assets, Liablilities, and Net Worth (SALN), and (19) plagiarism.

In analyzing these cases, the number of lawyers and judges involved were used as basis instead of using the number of cases since each case may involve several lawyers and judges. Hence, while there may be only 200 cases surveyed, there were actually 132 lawyers and 130 judges and justices studied for this paper. Moreover, it must be said at this point that there are certain cases involving multiple violations, hence, the number of offenses and penalties imposed may not necessarily match the number of lawyers, judges, or justices penalized.

### A. Lawyers and Legal Ethics

From 2008 – 2012, the offense most often committed by lawyers was disrespect to the courts, with 40 lawyers subjected to disciplinary cases. Out of this, the Supreme Court exonerated only three. Thirty-five were "reminded" of their duties, one was suspended for one year, and another was admonished. However, the numbers might not serve as a basis for the conclusion that there is a high incidence of disrespect towards the courts or that the Supreme Court is obsessed with penalizing disrespectful lawyers since 37 of these lawyers were involved in only one administrative case: they are the *UP Law 37*, a group of law professors who wrote an open letter to the Supreme Court denouncing Justice Mariano Del Castillo's alleged plagiarism.[64]

The second most often committed violation falls under the category of gross misconduct. Twenty-one lawyers faced administrative proceedings. Of this number, the Supreme Court exonerated only two, while the rest were penalized. The Supreme Court disbarred ten lawyers out of the nineteen who were found liable. The violations committed include the failure of the lawyer to perform his duty to the client after receiving his attorney's fees;[65] the *modus operandi* of a lawyer who lent money to government employees, on the condition that they sign unfunded checks as collateral, which he would eventually use to sue them for violation of the Anti-Bouncing Checks Law in the event that they defaulted;[66] the scheme of a lawyer of leading a foreigner to believe that aliens could own land in the Philippines in order to induce the same foreigner to deliver the purchase price for a property to him, and then absconding with the money later on;[67] the lawyer's act of transferring to his own name the title to a

[64] *See In re* Letter of the UP Law Faculty entitled Restoring Integrity: A Statement by the Faculty of the University of the Philippines College of Law on the Allegations of Plagiarism and Misrepresentation in the Supreme Court, A.M. No. 10-10-4-SC, 644 SCRA 543, Mar. 8, 2011.

[65] Overgaard v. Valdez, A.C. No. 7902, 567 SCRA 118, Sep. 30, 2008.

[66] Mendoza v. Deciembre, A.C. No. 5338, 580 SCRA 26, Feb. 23, 2009.

[67] Stemmerik v. Mas, A.C. No. 8010, 589 SCRA 114, Jun. 16, 2009.

property awarded to his clients in the case he handled;[68] the lawyer's active participation in the kidnapping and torture of his mistress by a cult of which he was a member;[69] the lawyer's act of facilitating a judge's extortion;[70] and the lawyer's forging of his client's signature in order to sell the latter's property without consent.[71]

In a majority of these cases, the Supreme Court emphasized that these lawyers were disbarred because they failed to meet their duties of "inspiring obedience to the law."[72] The Court often highlighted that lawyers who brought disrepute to the bar were not fit to remain members thereof.[73] In the words of the Court, "[t]o this end[,] a member of the legal profession should refrain from doing any act which might lessen in any degree the confidence and trust reposed by the public in the fidelity, honesty and integrity of the legal profession."[74]

The Supreme Court justified its emphasis on the duty of lawyers to maintain public confidence by explaining that "[p]ublic confidence in law and in lawyers may be eroded by the irresponsible and improper conduct of a member of the bar."[75] This apparent value on the need to maintain the good image of the bar is a theme that pervades many of the cases surveyed in this study.[76]

Next to "reminder," which was imposed on 35 lawyers, the penalty most often imposed by the Supreme Court is disbarment, with 24 lawyers disbarred in a span of four years. Notably, next to gross misconduct, disbarment was most often imposed in immorality cases, with four out of the eight lawyers involved stripped of their license to practice law. All four lawyers were disbarred for having extra-marital relationships.

While extra-marital affairs go well beyond a lawyer's duties and into his private life, the Supreme Court has consistently sanctioned lawyers for this

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[68] Angalan v. Delante, A.C. No. 7181, 578 SCRA 113, Feb. 6, 2009; Alcantara v. De Vera, A.C. No. 5859, 635 SCRA 674, Nov. 23, 2010.

[69] Mecaral v. Velasquez, A.C. No. 8392, 622 SCRA 1, Jun. 29, 2010.

[70] Rafols v. Barrios, Jr., A.C. No. 4973, 615 SCRA 206, Mar. 15, 2010; Office of the Court Administrator v. Liangco, A.C. No. 5355, 662 SCRA 103, Dec. 13, 2011.

[71] Brennisen v. Contawi, A.C. No. 7481, 670 SCRA 358, Apr. 24, 2012.

[72] Stemmerik v. Mas, A.C. No. 8010, 589 SCRA 114, Jun. 16, 2009.

[73] *Id.*; Alcantara v. De Vera, A.C. No. 5859, 635 SCRA 674, Nov. 23, 2010; Mendoza v. Deciembre, A.C. No. 5338, 580 SCRA 26, Feb. 23, 2009; Overgaard v. Valdez, A.C. No. 7902, 567 SCRA 118, Sep. 30, 2008.

[74] Alcantara v. De Vera, A.C. No. 5859, 635 SCRA 674, Nov. 23, 2010.

[75] Belleza v. Macasa, A.C. No. 7815, 593 SCRA 549, Jul. 23, 2009.

[76] Arnobit v. Arnobit, A.C. No. 1481, 569 SCRA 247, Oct. 17, 2008; Catu v. Rellosa, A.C. No. 5738, 546 SCRA 209, Feb. 19, 2008; *In re* Devanadera, A.M. No. 07-11-13-SC, 556 SCRA 522, Jun. 30, 2008; Velasco v. Doroin, A.C. No. 5033, 560 SCRA 1, Jul. 28, 2008.

conduct. It has justified this intrusion into the personal lives of lawyers by arguing that the community looks upon lawyers as paragons of obedience to the law. Hence, when a lawyer engages in an extra-marital affair, he creates "the public impression that laws are mere tools of convenience that can be used, bended and abused to satisfy personal whims and desires."[77]

Moreover, the Supreme Court has explained in several cases that:

> [A] lawyer may not divide his personality so as to be an attorney at one time and a mere citizen at another. He is expected to be competent, honorable and reliable at all times since he who cannot apply and abide by the laws in his private affairs, can hardly be expected to do so in his professional dealings nor lead others in doing so.[78]

In fact, the expectation that lawyers must be beyond reproach at all times is a duty that not only extends to the future for as long as they are lawyers, but also one that may reach back into the past. In *Garrido v. Garrido*,[79] the Supreme Court disbarred two lawyers who entered into a relationship while one of them was still married, even when the affair happened before they passed the bar. According to the Court, good moral character was a prerequisite for membership in the bar.

Notably, in the cases surveyed, there were five[80] involving lawyers who issued bouncing checks, a crime punishable under Philippine law.[81] Out of these five cases, only one led to the disbarment of the lawyer, while the rest resulted merely in suspension from the practice of law. The only difference was that the disbarred lawyer had two prior administrative cases.[82] Apparently, the Supreme Court's position that when a lawyer violates his marital vows, he also violates the law and is therefore unfit to be a member of the bar, does not apply with equal force to the case of a lawyer who issues a bouncing check, notwithstanding that it is a criminal act.

There were also considerably high incidences of lawyers penalized for dishonesty and violation of Supreme Court orders. Meanwhile, for those

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[77] Garrido v. Garrido, A.C. No. 6593, 611 SCRA 508, Feb. 4, 2010.

[78] Villatuya v. Tabalingcos, A.C. No. 6622, 676 SCRA 37, Jul. 10, 2012.

[79] A.C. No. 6593, 611 SCRA 508, Feb. 4, 2010.

[80] Wong v. Moya, A.C. No. 6972, 569 SCRA 256, Oct. 17, 2008; Wilkie v. Limos, A.C. No. 7505, 570 SCRA 1, Oct. 24, 2008; Mendoza v. Deciembre, A.C. No. 5338, 580 SCRA 26, Feb. 23, 2009; Tan v. Rabiso, A.C. No. 6383, 582 SCRA 556, Mar. 31, 2009.

[81] *See* Batas Blg. 22 (1979). An Act Penalizing the Making or Drawing and Issuance of a Check Without Sufficient Funds or Credit and for Other Purposes.

[82] Garrido v. Garrido, A.C. No. 6593, 611 SCRA 508, Feb. 4, 2010.

categories of offenses that are more related to a lawyer's duties to his clients, such as negligence in handling a client's case, conflict of interest, and failure to account for a client's property, the Supreme Court does not appear to be as strict. Of the six lawyers found liable for representing conflicts of interest, only one was disbarred, while the rest were suspended. Of the ten lawyers found to have neglected their duties to their clients, only one was disbarred, while the others were given lighter penalties. Of the seven lawyers who failed to properly account for the properties entrusted to them by their clients, only one was disbarred, while five were suspended and one was admonished. One of these suspended lawyers was entrusted by his client to sell three parcels of land. He was able to sell two lots but reported the sale of only one property, pocketing the proceeds of the other lot for himself. The Supreme Court suspended him for six months.[83]

### B. Judges and Justices

From 2008 – 2012, the most common offense of judges that was penalized by the Supreme Court was gross ignorance of the law. Of the 21 judges held liable, 15 were fined, three were exonerated and three were dismissed from service. Undue delay in deciding cases and gross misconduct were also common offenses penalized by the Supreme Court. Of the 16 judges charged with unduly delaying the rendition of judgments, the Supreme Court sanctioned 15 of them with penalties ranging from fines to dismissal from service. Meanwhile, the Supreme Court penalized 14 out of the 16 judges charged with gross misconduct.

The penalty most often imposed was dismissal from service. Of the offenses involved in the cases filed against 105 judges, the Supreme Court dismissed 15 judges. Of these 15 judges, four were found guilty of gross misconduct, three of gross ignorance of the law, and three of violation of the law and Supreme Court rules or orders; one each were found guilty of grave abuse of authority, conduct unbecoming of a judge, undue delay in deciding a case, absenteeism, and borrowing money from a litigant.

Unlike the policy pursued in the case of lawyer regulation, immorality cases have not led to any dismissal of a judge from service. Notably, the Supreme Court tended to impose heavier penalties for gross ignorance of the law, gross misconduct in office, and undue delay in deciding a case.

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[83] Blanco v. Lumasag, A.C. No. 5195, 585 SCRA 56, Apr. 16, 2009.

The Supreme Court seemed to be stricter in regulating behavior that had a direct bearing to the functions of judges. In many of the cases involved in this study, the Supreme Court often stressed that "[l]ower court judges [...] play a pivotal role in the promotion of the people's faith in the judiciary. They are front-liners who give human face to the judicial branch at the grassroots level in their interaction with litigants and those who do business with the courts."[84]

In gross ignorance cases, the Supreme Court often emphasized that an incompetent judge who was unaware of rules that were so elementary, weakened the people's faith in the Judiciary. In the same vein, in cases of undue delay in deciding a case, the Supreme Court appeared to be willing to mete out heavier penalties. It rationalized this policy by saying that undue delays in deciding cases reinforced the perception that the "wheels of justice grind ever so slowly."[85]

Meanwhile, of the 20 instances when the Supreme Court took cognizance of administrative charges against Court of Appeals justices, 12 led to exoneration. Three were fined, two were admonished, one was warned, and another was dismissed from service, albeit for two distinct offenses: dishonesty, and undue delay in deciding a case.[86] The most common charge against Court of Appeals justices for the years 2008 – 2012 was gross misconduct, with five incidences. However, the Supreme Court dismissed all these complaints.

As to the Supreme Court, over the same period, it handled five cases involving its own justices. The charges involved were conflict of interest, grave abuse of authority, gross misconduct, and plagiarism. Of these cases, only one resulted in a finding of liability for gross misconduct.

In the 2008 case of *In re Letter of Irma Villanueva*,[87] Irma Villanueva alleged that her nephew was the accused in the homicide of Justice Mariano Del Castillo's brother-in-law. Villanueva claimed that she saw Justice Del Castillo following up the case, and that he was using his position to influence the outcome of the same case, which was then pending in the Court of Appeals. The Supreme Court dismissed the charge for Villanueva's failure to establish the fact that Justice Del Castillo did influence the Court of Appeals to decide the case in his favor. According to the Court, the charge was highly speculative.

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[84] Garcia v. Pagaytan, A.M. No. RTJ-08-2127, 566 SCRA 320, Sept. 25, 2008.

[85] De los Reyes v. Cruz, A.M. No. RTJ-08-2152, 610 SCRA 255, Jan. 18, 2010.

[86] *In re* Letter of Presiding Justice Conrado Vasquez, A.M. No. 08-8-11-CA, 564 SCRA 365, Aug. 04, 2008.

[87] OCA-IPI No. 08-141-CA-J, Feb. 10, 2009.

In 2009, the Supreme Court faced controversy when a purported unsigned decision of Justice Ruben T. Reyes in an election case pending before the high court circulated in the media. After investigations headed by the justices themselves, the Supreme Court, in *In re Biraogo*,[88] traced the leakage of the unsigned *ponencia* to Justice Reyes himself. Justice Reyes, who was already retired from the Judiciary at the time of the promulgation of the decision, was indefinitely suspended from the practice of law. Of all the cases covered in this study, this is the only case in which a justice of the Supreme Court was found liable for an administrative offense.

In 2010, Justice Dante Tinga was charged with conflict of interest for using his position to forward his own interests.[89] The charge pertained to his conduct while he was a Congressman before he became an Associate Justice of the Supreme Court. The allegations of the complaint stated that Justice Tinga had used his position as a member of the Committee on Awards to facilitate the sale of a parcel of land declared available for disposition to his nephew. The said Committee on Awards made recommendations for the approval of the sale. The Supreme Court dismissed the case for the complainant's failure to prove his claims.

In 2011, the Supreme Court ruled, for the first time, on the issue of plagiarism in the ponencias of justices in the case of *In re Del Castillo*.[90] The administrative matter arose out of *Vinuya v. Romulo*.[91] The petitioners in that case filed a complaint decrying Justice Mariano Del Castillo's failure to cite properly his sources in his *ponencia*. Even worse, the complainants alleged that Justice Del Castillo had twisted the meaning of certain International Law authors to fit the decision in *Vinuya*. The Supreme Court dismissed the charge on two grounds. First, the Supreme Court was convinced that the failure to attribute was unintentional. Second, in the words of the Supreme Court:

> A judge writing to resolve a dispute, whether trial or appellate, is exempted from a charge of plagiarism even if ideas, words or phrases from a law review article, novel thoughts published in a legal periodical or language from a party's brief are used without giving attribution. Thus judges are free to use whatever sources they deem appropriate to resolve the matter before them, without fear of reprisal. This exemption applies to judicial writings intended to decide cases for two reasons: the judge is not writing a literary work and, more

[88] A.M. No. 09-2-19-SC, 580 SCRA 106, Feb. 24, 2009.
[89] Olazo v. Tinga, A.M. No. 10-5-7-SC, 637 SCRA 1, Dec. 7, 2010.
[90] *In re* Del Castillo, A.M. No. 10-7-17-SC, 642 SCRA 11, Feb. 8, 2011.
[91] G.R. No. 162230, 619 SCRA 533, Apr. 28, 2010.

> importantly, the purpose of the writing is to resolve a dispute. As a result, judges adjudicating cases are not subject to a claim of legal plagiarism.[92]

This case did give rise to the imposition of certain penalties, but not against Justice Del Castillo. In *In re UP Law 37*,[93] the Supreme Court "reminded" 35 lawyers of their duties and admonished one. This case arose out of an open letter written and signed by 37 professors of the University of the Philippines College of Law, denouncing Justice Del Castillo's alleged plagiarism. Copies of the letter circulated in the media and were posted on the bulletin boards of the College, before the professors sent it to the Supreme Court. The Supreme Court held that the letter went beyond the domain of fair criticism and had jeopardized the independence of the Judiciary, especially because at the time the letter was sent to the Supreme Court, the *Vinuya* case was still the subject of a Motion for Reconsideration. Moreover, the Supreme Court, irked by the strong language used in the letter, stated, "[v]erily, the accusatory and vilifying nature of certain portions of the Statement exceeded the limits of fair comment and cannot be deemed as protected free speech."[94]

In 2012, the Supreme Court ruled on an administrative case[95] involving an allegation that Justice Antonio Carpio had granted a Motion for Clarification in a case pending before his division, notwithstanding that the members of the division clearly agreed to merely note the motion. The complainant, Atty. Magdaleno Peña, presented internal documents of the Supreme Court to prove his claim. Finding that there was no veracity to Peña's allegations, as in fact the division did grant the motion for clarification, the Supreme Court dismissed the charges against Justice Carpio. Instead, the Supreme Court sanctioned Peña for "making gratuitous imputations of bribery and wrongdoing against a member of the Court."[96] The Supreme Court also penalized him for having illegal access to Court documents and for asking the inhibition of 11 justices in separate motions involving the same case.

Within the period covered in this study, the Supreme Court also ruled on two other administrative matters that had implications on judicial ethics, although the cases themselves did not involve charges against specific Supreme Court justices.

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[92] *In re* Del Castillo, A.M. No. 10-7-17-SC, 642 SCRA 11, Feb. 8, 2011.

[93] A.M. No. 10-10-4-SC, 644 SCRA 543, Mar. 8, 2011.

[94] *Id.*

[95] *In re* Supreme Court Resolution dated 28 April 2003 in G.R. Nos. 145817 and 145822, A.C. No. 6332, 669 SCRA 530, Apr. 17, 2012.

[96] *Id.*

In *In re Macasaet*,[97] the Supreme Court investigated allegations that one of its justices, Justice Consuelo Ynares-Santiago received bribe money in her office. The allegations appeared in Amado Macasaet's newspaper column in *Malaya*. Journalist Maritess-Danguilan Vitug was running a similar story in *Newsbreak*. The Supreme Court ended up disregarding the accusations against Justice Ynares-Santiago and fined Macasaet for contempt of court. According to the Supreme Court, Macasaet published the articles without verifying the veracity of the statements made. This, to the Court, went beyond protected speech. Speaking through Justice Ruben T. Reyes, the Court said:

> We have no problems with legitimate criticisms pointing out flaws in our decisions, judicial reasoning, or even how we run our public offices or public affairs. They should even be constructive and should pave the way for a more responsive, effective and efficient judiciary.
>
> Unfortunately, the published articles of respondent Macasaet are not of this genre. On the contrary, he has crossed the line, as his are baseless scurrilous attacks which demonstrate nothing but an abuse of press freedom. They leave no redeeming value in furtherance of freedom of the press. They do nothing but damage the integrity of the High Court, undermine the faith and confidence of the people in the judiciary, and threaten the doctrine of judicial independence.
>
> A veteran journalist of many years and a president of a group of respectable media practitioners, respondent Macasaet has brilliantly sewn an incredible tale, adorned it with some facts to make it lifelike, but impregnated it as well with insinuations and innuendoes, which, when digested entirely by an unsuspecting soul, may make him throw up with seethe. Thus, he published his highly speculative articles that bribery occurred in the High Court, based on specious information, without any regard for the injury such would cause to the reputation of the judiciary and the effective administration of justice. Nor did he give any thought to the undue, irreparable damage such false accusations and thinly veiled allusions would have on a member of the Court.[98]

In 2011, the Supreme Court resolved an administrative matter that was filed way back in 2003. The administrative matter pertained to Atty. Victor C. Avecilla and Louis C. Biraogo's request for documents related to the expenditure of the Judicial Development Fund ("JDF"). Avecilla, a former Supreme Court attorney under Justice (Ret.) Gancayco, and Biraogo claimed that

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[97] A.M. No. 07-09-13-SC, 561 SCRA 395, Aug. 8, 2008.

[98] *Id.*

they had the right to demand access to the said documents, since they had contributed to the JDF by way of docket fees in a case they filed in 1985. Eight years later, the Supreme Court acted on the administrative matter, but the result was not what Avecilla and Biraogo had expected. The Supreme Court discovered that the *rollo* for the said 1985 case was not in its possession, and that Avecilla had, in fact, withdrawn the *rollo* while he was still a Supreme Court employee, but after the decision in the said case had already been promulgated. According to the Court, "[t]he act of [Avecilla] in borrowing a *rollo* for unofficial business entails the employment of deceit not becoming a member of the bar."[99] Avecilla was suspended from the practice of law for six months.

## III. THE TWO TOWERS: THE NEED FOR BETTER REGULATION IN THE BENCH AND THE BAR

### A. Lawyer-Regulation

#### *1. A Problem of Priorities*

The survey presented above sheds light unto the policy pursued by the Supreme Court in lawyer regulation. In addition, the reasons often invoked by the Court in deciding administrative cases against lawyers also reveal the values that it places higher in the hierarchy of traits that a member of the bar must possess. That more lawyers are disbarred for immorality and gross misconduct than for representing conflicting interest, neglecting a client's case, or absconding with a client's property, depicts a heavier emphasis on penalizing behavior that lessens public confidence in the bar as opposed to punishing conduct that falls short of a lawyer's basic duty to a specific client. That the Supreme Court, in a majority of these cases, often repeats that lawyers must not weaken public confidence in the bar reinforces the statement that lawyer regulation values reputation over other values. Indeed, maintaining a good reputation is essential in the life of a lawyer. After all, a person will only be willing to entrust his life, liberty, or property to a lawyer if the former is sure that the lawyer is trustworthy in the first place.

Nonetheless, a system of lawyer regulation focused on reputation over other important values is a system that entirely misses the point. First, it regulates certain kinds of conduct at the expense of overlooking other pernicious practices. Second, its broad sweep goes into conduct that is outside of a lawyer's professional duties.

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[99] *In re* Avecilla, A.C. No. 6683, 652 SCRA 415, Jun. 21, 2011.

The Supreme Court and the Integrated Bar of the Philippines (IBP) regulate both the rendering of legal services and the behavior of lawyers themselves. In the latter category, regulation covers both behavior that is related to the practice of law and behavior that does not involve the delivery of legal services. While the regulation of legal services is rightfully within the jurisdiction of the Supreme Court and the IBP, there is a need to question whether the behavior of lawyers that goes beyond the practice of law and into their personal lives is an appropriate subject of regulation. This is an important issue in view of the fact that, at least in the past few years, the Supreme Court has imposed far heavier punitive sanctions on a lawyer's private acts—acts that do not immediately affect his duties to his clients—than on a lawyer's conduct that has a direct impact on the well-being of his clients. One must only compare the cases of *Garrido v. Garrido*[100] and *Blanco v. Lumasag*[101] to see the inherent problems in a system of regulation with a skewed sense of priorities. The lawyer involved in *Garrido* broke his marital vows and was disbarred, while the one in *Blanco* absconded with his client's money and was suspended for six months. Parenthetically, the case of *Garrido* may be immoral by society's standards, but Philippine criminal laws at present will not penalize the act as adultery. On the other hand, the facts in *Blanco* paint, at the very least, a *prima facie* case for estafa. In any event, one of them has been forever barred from practicing law for cheating on his wife, while the other is now back to lawyering for his clients, his previous disloyalty to a former client notwithstanding.

This kind of system of regulation incentivizes behavior that depicts lawyers as morally upright individuals, yet fails to place a similar value on qualities such as loyalty to clients, competence and efficiency.

*2. Regulating Morality*

The recent scandal involving a married public prosecutor and his supposed girlfriend, who is also a lawyer from the Public Attorney's Office (PAO), comes to mind. The prosecutor's wife allegedly found a video of her husband and the mistress engaged in lewd behavior. The video was uploaded to the internet. The prosecutor and the PAO lawyer are now facing disbarment cases.[102]

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[100] A.C. No. 6593, 611 SCRA 508, Feb. 4, 2010.

[101] A.C. No. 5195, 585 SCRA 56, Apr. 16, 2009.

[102] Prosecutor in Sex Scandal Probed, Manila Standard Today, *available at* http://manilastandardtoday.com/2012/12/14/prosecutor-in-sex-scandal-probed (last visited Jan. 5, 2013).

Based on the way the Supreme Court has ruled in similar cases, the lawyers will most probably be disbarred. Here, as in previous cases, the Supreme Court will most likely look at the effect of the scandal on the legal profession, without taking into consideration how well these two individuals performed their jobs. Were they honest lawyers and public servants? Was the public prosecutor corrupt? Did he make accurate findings of probable cause? Did he zealously represent the interests of the State? Was the PAO lawyer a good lawyer for the underprivileged? Did she work toward the acquittal of the innocent accused who were wrongfully charged? Will their disbarment affect the delivery of services by the Department of Justice and the PAO? These are relevant questions as they affect not just the reputation of the legal profession, but also—and more importantly—public service. Yet these are questions that will not be raised in determining this kind of case. The reasons for penalizing this kind of conduct can be encapsulated in two statements: first, a lawyer who is involved in an extra-marital affair violates the law, and a lawyer with no respect for the law endangers the well-being of his clients; second, adultery and concubinage are criminal offenses. But there is a defect in this kind of reasoning.

Indeed, lawyers who have been found guilty of criminal offenses may be reasonably disbarred. Concubinage, admittedly, is a criminal offense. But whether or not a lawyer has committed a criminal offense is within the province of a trial court to decide. The IBP and the Supreme Court, in administrative cases, cannot go about deciding whether a lawyer is guilty of a crime involving moral turpitude, precisely because that is not the function of an administrative matter. In disciplinary cases, the IBP and the Supreme Court cannot replace the role of criminal courts.

Moreover, the reasoning—that a lawyer who has committed an immoral act in his private life will most likely be unethical in his practice—is flawed. "The public protection rationale assumes that those who break rules in non-professional settings are also likely to do so in professional settings. Yet a vast array of psychological research makes clear that ethical decision making is highly situational, and depends on circumstantial pressures and constraints."[103] Ethical or unethical behavior in "practical situations is not simply a product of fixed individual characteristics, but results from an interaction between the individual and the situation."[104] There are also studies suggesting that moral decision-

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[103] Deborah L. Rhode & Alice Woolley, *Comparative Perspectives On Lawyer Regulation: An Agenda For Reform In The United States And Canada*, 80 FORDHAM L. REV. 2761 (2012).

[104] Linda Klebe Trevino, *Ethical Decision Making In Organizations: A Person-Situation Interactionist Model*, 11 THE ACAD. OF MGMT. REV. 3 (1986).

making is issue dependent.[105] In other words, it is possible for one to be unable to preserve the sanctity of his marriage, while still remaining ethical in protecting his client's interests.

Furthermore, the broad sweep of the Supreme Court's regulatory power over lawyers raises privacy issues. Indeed, an argument can be made that a person surrenders a certain portion of his privacy when he becomes a member of the bar. Membership in the bar, after all, is "a privilege given to lawyers who meet the high standards of legal proficiency and morality."[106] Nonetheless, membership in the bar is not a complete and utter surrender of one's right to privacy.

The right to live one's life in accordance with the dictates of his own conscience is a right that cannot be impaired through mere sweeping pronouncements that lawyers cannot separate their public and private lives. Lawyers are citizens first, before they are members of the bar. As such, their privacy rights are entitled to protection. As elucidated in the case *Morfe v. Mutuc*:[107]

> Ultimate and pervasive control of the individual, in all aspects of his life, is the hallmark of the absolute state. In contrast, a system of limited government safeguards a private sector, which belongs to the individual, firmly distinguishing it from the public sector, which the state can control. Protection of this private sector—protection, in other words, of the dignity and integrity of the individual—has become increasingly important as modern society has developed.[108]

Staying in a marriage or not,[109] choosing one's sexual preference,[110] and deciding not to get married,[111] are matters that a person ought to decide for himself. However, because of the Supreme Court's pursued policy in regulating lawyer behavior, these choices have become subject to the Court's "stamp of approval."

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[105] Thomas M. Jones, *Ethical Decision-Making by Individuals in Organizations: An Issue Contingent Model*, 16 THE ACAD. OF MGMT. REV. 2, at 366-395 (1991).

[106] Brennisen v. Contawi, A.C. No. 7481, 670 SCRA 358, Apr. 24, 2012.

[107] G.R. No. 20387, 22 SCRA 424, Jan. 31, 1968.

[108] *Id.*

[109] Garrido v. Garrido, A.C. No. 6593, 611 SCRA 508, Feb. 4, 2010.

[110] Campos v. Campos, A.M. No. MTJ-10-1761, 665 SCRA 238, Feb. 8, 2012.

[111] *In re* Toledo, A.M. No. P-07-2403, 544 SCRA 26, Feb. 6, 2008.

In *In re Toledo*,[112] for example, the Office of the Court Administrator, which investigated the complaint, went as far as recommending Atty. Toledo's suspension for the following reasons:

> Anent the charge of immorality ascribed to respondent for maintaining a common-law wife, although both respondent and his partner Normita are single, and do not appear to be suffering from any impediment to marry, it is worth to note, however, that this arrangement was sought by them in order not to prejudice Normita's employment opportunities abroad, as stated in the latter's affidavit. In effect, the sacred institution of marriage was sacrificed for the "American Dream" and this shows a personality that is unprincipled and undesirable. It is for this reason, not the relationship per se, that we fault him for perpetuating such kind of love affair.[113] (Citations omitted.)

While the Supreme Court ultimately dismissed the charges, explaining that the choice of whether or not a person should get married is outside the area of its regulation, the Court did "remind" Toledo to be more "circumspect in his public and private dealings."

As former US Supreme Court Justice Robert H. Jackson noted, "a standard like moral turpitude, which permits decisions to turn on reactions of 'particular judges to particular offenses,' invites caprice and clichés."[114]

*3. The Other Side of the Fence*

In stark contrast, the Supreme Court appears to temper the power of its regulation over conduct that directly affects the client's interests. The Supreme Court has penalized lawyers for conduct that has nothing to do with the practice of law, yet it has *not* provided for clear-cut standards to determine how well lawyers in this country are serving their clients. Even the Code of Professional Responsibility, as it provides for guidelines on how to deal with clients in certain situations, do not provide for a mechanism whereby the quality of legal services may be measured by the clients themselves.

The current system of regulation lacks a method of measuring the quality of legal services rendered by lawyers. Regulation depends on a breach of duties enumerated in the Code of Professional Responsibility. These duties, however, do not necessarily reflect a specific standard for legal services. A lawyer

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[112] *Id.*

[113] *Id.*

[114] Jordan v. DeGeorge, 341 U.S. 223, 239 (1951).

may be "immoral" in his private affairs, but may be an excellent advocate for his client's cause. Conversely, a lawyer may be a "morally upright" individual yet be an incompetent counsel. Nevertheless, the probability that a lawyer who commits an immoral act will be disbarred is greater than the probability that an incompetent lawyer will be meted out the same penalty.

This creates problems in lawyer-regulation. "Frequently, the [results are] inadequate responsiveness to consumer concerns and unduly punitive sanctions for misconduct that occurs outside professional contexts but that threatens lawyers' public image."[115]

Harry Arthur's critique of Canadian lawyer regulation may well apply in the Philippine setting. He characterizes Canadian lawyer regulation as "reflecting an 'ethical economy,' in which law societies focus disciplinary attention on marginal members of the profession who have engaged in obviously immoral conduct or who have violated the regulatory requirements imposed by the law societies." Arthur suggests that law society discipline "reflects a tendency to allocate its scarce resources of staff time, public credibility and internal political consensus to those disciplinary problems whose resolution provides the highest returns to the profession with the least risk of adverse consequences."[116] It is, after all, easier to disbar lawyers in cases where what is "right" and what is "wrong" are clear cut, such as in matters of adultery or concubinage. Disbarring lawyers for incompetence, however, such as when they choose the wrong remedy, is a contentious area.

Moreover, the lack of clear standards for legal services can be explained by the fact that the consumers have no say in the disciplining of lawyers. They do not participate in the determination of penalties. Their expectations as to the kind of service that lawyers ought to render are not taken into consideration in the formulation of codes of ethics and other policies. The Supreme Court and the IBP treat administrative cases against lawyers as a matter between the State and the lawyer. The complaining client is, thereby, "left out in the cold."[117] The only avenue by which consumers can raise their concerns is through the filing of administrative cases against erring lawyers. However, this scheme captures only a small segment of consumers. While it is true that the Supreme Court often relies

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[115] *Id.*

[116] Harry W. Arthurs, *Why Canadian Law Schools Do Not Teach Legal Ethics*, *in* Ethical Challenges to Legal Education and Conduct 105, 112 (Kim Economides et al. eds., 1998), *cited in* Deborah L. Rhode & Alice Woolley, *Comparative Perspectives On Lawyer Regulation: An Agenda For Reform In The United States And Canada*, 80 FORDHAM L. REV. 2761 (2012).

[117] Katherine R. Kruse, *The Promise of Client Centered Professional Norms*, 2 NEV. L.J. 342 (2012).

on complaints filed by disgruntled clients, these complaints do not represent the level of satisfaction of consumers as a whole. That some clients actually file complaints while some do not does not mean that the former are unsatisfied while the latter are contented.

Furthermore, the skewed hierarchy of values in lawyer-regulation may not be simply a product of a regulator that is unwilling to place importance on what truly matters. The problem may be inherent in the system of regulation itself. This problem is two pronged. First, the prevailing system of regulation in the Philippines is self-regulation. Lawyers are regulated through the IBP and the Supreme Court. No entity from outside the bar participates in the disciplining of lawyers. As such, the regulators tend to pursue a policy focused on its own interests and reputational concerns. It is easier to lose sight of what those outside of the profession expect because self-regulation tends to perpetuate a notion that lawyers should be disciplined for the sake of the profession itself. Self-regulation permits "the continued government of the guild, by the guild, and for the guild."[118] Second, the main regulatory power in this system of regulation is the Supreme Court. This gives rise to logistical as well as policy-related problems. On one hand, the Supreme Court does not have the time, the expertise, or the human resource sufficient to adequately regulate lawyers and investigate administrative cases. To begin with, the Court dockets are already clogged with ordinary cases; administrative cases are certainly not at the top of the list of priorities. Moreover, bringing administrative cases to the Supreme Court subjects these cases to processes and procedures of the highest, and the most "secretive," Court in the land. This sacrifices transparency in the conduct of these proceedings. On the other hand, Supreme Court justices are also lawyers and, as such, "share the background and world view of those [whom] they claim to regulate."[119] Hence, the policy it pursues in lawyer-regulation centers on the values that the profession cherishes, rather than consumer concerns.

*4. A Proposed Model for Regulation*

The flaws in the system of lawyer-regulation in the Philippines may be categorized into the following:

(1) A skewed sense of priorities caused by self-regulation;
(2) Lack of adequate standards to protect consumer interests due to the absence of consumer-participation in regulation; and

[118] John C. Coffee, Jr., *The Attorney as Gatekeeper: An Agenda for the SEC*, 103 COLUM. L. REV. 1293, 1316 (2003).

[119] Rhode & Woolley, *supra* note 103.

(3) Lack of time, expertise and human resource for better regulation since the Supreme Court is not built to prioritize lawyer regulation.

Clearly then, to remedy these problems, the Supreme Court needs to develop a system of regulation that will be able to readjust its policies, can accommodate consumer-participation in lawyer-regulation, and has better logistical capabilities in handling administrative cases.

Inevitably, the bar must be willing to give up a certain degree of self-regulation.

An example of a bar association giving up a portion of its power to regulate itself is the Illinois bar.[120] The Illinois experience may be a model for reforms in lawyer-regulation in the Philippines. In November 1971, the Illinois bar voluntarily asked the Illinois Supreme Court to divest it of the power of regulating the conduct of lawyers. Prior to this period, the regulation of lawyers in Illinois operated under similar conditions as the Philippines. Lawyers were regulated through the Chicago Bar Association ("CBA"). Within the CBA, there were several levels of investigations that eventually led to the Illinois Supreme Court. The Illinois Supreme Court had the final say in disciplining the members of the bar. During this period, the Illinois Bar was severely criticized for its inability to adequately regulate lawyers. Pernicious practices such as ambulance chasing were not properly addressed. The public viewed the disciplinary process as ineffective. The CBA and the Illinois Supreme Court prosecuted only a very small number of lawyers. Administrative cases dragged on for years. The public viewed the CBA as "a conservative and self-protective interest group."[121] Interested parties began demanding for public representation in the disciplinary process. The bar association faced a "crisis of legitimacy."[122]

Hence, when the bar association petitioned to the Illinois Supreme Court to relieve it of the duty of regulating itself, the Supreme Court granted it. It then created the Attorney Registration and Disciplinary Commission ("ARDC"). The ARDC consisted of five attorneys appointed by the Supreme Court to serve as commissioners, three levels of investigatory and hearing boards, and a professional staff of attorneys and investigators headed by an administrator. The ARDC was devoted solely to the regulation of lawyer

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[120] Michael J. Powell, *Professional Divestiture: The Cession of Responsibility for Lawyer Discipline*, 11 AM. B. FOUND. RES. J. 1 (1986).

[121] *Id.*

[122] *Id.*

behavior. It was directly answerable to the Illinois Supreme Court and not to any bar association.[123]

Michael J. Powell identified three important effects of the creation of the ARDC. First, it paved the way for a regulatory body that was independent from the bar association.

> An important consequence of the attenuation of bar association influence over disciplinary procedures was that bar leaders were no longer in a position from which they could intervene in particular cases or lines of investigation in order to protect colleagues or to direct attention to particular types of practice. It would be naïve to think that removal of lawyer discipline from the organized bar totally removed bar politics from the process, but it certainly reduced the opportunities for prominent members of the bar to distort its direction through cronyism and lobbying. Whereas influence could be quietly peddled within the bar association, the semipublic standing of the ARDC and its professional staff made such intervention in the discipline process more difficult.[124]

Second, the ARDC established offices separate from the bar association. Prior to the ARDC, hearings in disciplinary cases were conducted in the offices of the CBA. To the public, the CBA offices served as shelters whereby lawyers could hide and expect support from their colleagues. The ARDC made the procedure for disciplining lawyers accessible to the public.

Finally, the ARDC was better funded and staffed than the disciplinary bodies within the CBA. This significantly increased the ARDC's capacity to investigate cases. Lawyer-regulation thus became professionalized.

However, the ARDC did not pursue a qualitative change in its policies.[125] The emphasis on certain values such as the profession's reputation remained. Nonetheless, similar efforts to reform the system of lawyer regulation in other jurisdictions show that this shift in the hierarchy of values from reputation to consumer protection may be achieved by changing the structure of regulation.

In the United Kingdom, Parliament passed the Legal Services Act in 2007. The Act established an independent Legal Services Board which exercises

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123 *Id.*

124 *Id.*

125 *Id.*

oversight powers over the bar. The Board is composed of a majority of non-lawyer members and a non-lawyer head.

Australia is another country which shifted from self-regulation to co-regulation as a response to the clamor for a better system for disciplining lawyers. In Queensland, for example, an independent Legal Services Commission was established, headed by a non-lawyer.[126] "Its disciplinary system includes a Client Relations Center, which resolves minor disputes, and a Legal Practice Tribunal, composed of a Supreme Court Justice, one non-lawyer, and one practitioner. Problems of competence and diligence can be subjects for discipline, and all disciplinary actions are published on the Legal Service Commission website."[127]

The reform in lawyer-regulation in other countries, as well as their shift from a system of self-regulation to one of co-regulation, can prove to be a model for change in the Philippines' system of lawyer-regulation.

From the perspective of legal procedure, there is no real legal obstacle to changing the status quo. The Constitution vests in the Supreme Court the power to promulgate rules concerning the admission to the practice of law and the integrated bar.[128] As such, a reorganization of the existing structures may follow the Illinois model—a reorganization enforced through the Supreme Court's issuance of the appropriate rules for the purpose.

The imperative for change is, of course, an entirely different matter. For as long as the romanticizing of the role of lawyers is perpetuated, there can never be a real clamor for change.

### B. The Supreme Court and Judicial Independence

The Supreme Court appears to be stricter in disciplining job-related conduct among lower court judges. The number of judges penalized for gross misconduct, gross ignorance of the law and undue delay in deciding cases reveals that the Supreme Court values efficiency and competence. The Supreme Court is willing to dismiss judges from the judiciary if they persistently fail to display the capacity to perform their tasks within the period mandated in the Constitution and the rules and if they fail to keep abreast of legal developments.

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[126] Legal Profession Act, § 591 (2007), *available at* http://www.legislation.qld.gov.au/legisltn/current/l/legalproa07.pdf (last visited Mar. 15, 2013).

[127] Rhode & Woolley, *supra* note 103.

[128] CONST. art. VIII § 5.

The implementation of legal ethics *within* the Supreme Court, however, is unique. The Supreme Court appears to have created a special class within the Judiciary in such a way that while lower court judges are subjected to stringent standards of behavior, the Supreme Court Justices are protected by the cloak of judicial independence. If reputation is the primary concern for the regulation of lawyers, judicial independence is the ultimate goal for regulation of the members of the Judiciary.

As already explained, judicial independence is indeed a very important value for any government. Yet judicial independence is only a means to an end. It is a tool to uphold the system of separation of powers. Nonetheless, even in a system of separation of powers, the three branches of government are subject to checks and balances. In the same way that separation of powers is in place to avoid the concentration of power on any single branch of government, judicial independence must give way to accountability where doing so is necessary to check abuses within the judiciary itself.

Unfortunately, the manner by which the Supreme Court has decided administrative cases involving its members reveals that between judicial independence and accountability, it is the former that often wins the day.

*1. An Impregnable Tower*

Over the years, the Supreme Court has established doctrines and implemented rules that effectively hinder accountability. It has limited the zones for public criticism against the institution and its members. It has shielded itself from inquiry regarding its expenditures. It has laid down principles, in seemingly innocuous cases, to raise walls against unwanted inquiries from outside. It has severely constricted the pathways through which the public may hold it accountable.

In *In re Macasaet* and *In re UP Law 37*, the Supreme Court pronounced a strict policy against criticizing the institution and the members thereof. Of course, in both cases, the Supreme Court anchored its decision on the need to protect the institution from unwarranted, unconfirmed, and defamatory comments that allegedly weakened the people's faith in the Judiciary and exposeed the Supreme Court to certain kinds of pressures that might influence them in deciding cases. In other words, the need to uphold judicial independence justified the curtailment of speech in both cases.

Both *In re Macasaet* and *In re UP Law 37* appear to have carved out an exception for Justices of the Supreme Court, if indeed it has not fully deviated from the rule laid down in *US v. Bustos*.[129] In that case, the Supreme Court refused to convict the accused for libel. The accused were charged for sending a letter to the then Executive Secretary accusing Roman Punsalan, a justice of the peace, with malfeasance in office and asking for his removal. Punsalan filed a case for libel against Felipe Bustos, et al. When the case reached the Supreme Court, it laid down the rules for treating libel of public officers. The Supreme Court, in words that have since then become immortal, said:

> The interest of society and the maintenance of good government demand a full discussion of public affairs. Completely liberty to comment on the conduct of public men is a scalpel in the case of free speech. The sharp incision of its probe relieves the abscesses of officialdom. Men in public life may suffer under a hostile and an unjust accusation; the wound can be assuaged with the balm of a clear conscience. A public officer must not be too thin-skinned with reference to comment upon his official acts. Only thus can the intelligence and the dignity of the individual be exalted. Of course, criticism does not authorize defamation. Nevertheless, as the individual is less than the State, so must expected criticism be born for the common good. Rising superior to any official or set of officials, to the Chief of Executive, to the Legislature, to the Judiciary—to any or all the agencies of Government—public opinion should be the constant source of liberty and democracy.[130]

The facts in *Bustos* and the two cases discussed above are strikingly similar. In all these cases, a member of the judiciary became subject to severe criticism. The allegations in the said cases involved a form of wrongdoing—malfeasance, corruption, and plagiarism. The only difference was that in the *Bustos* case, the accused actually sent the letter to the Executive Secretary asking for the justice of the peace's removal. *Macasaet* and the *UP Law 37* were not as bold. Nonetheless, the rulings were entirely different. While *Bustos* established a rule of tolerance, *Macasaet* and *UP Law 37* promulgated a policy of strict regulation. What is unfortunate in these last two cases is that they arose out of legitimate issues concerning the Supreme Court. *Macasaet* involved a story of possible corruption in the Supreme Court, while *UP Law 37* questioned the integrity of a Supreme Court decision that failed to acknowledge properly its

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[129] 37 Phil. 371 (1918).

[130] *In Re* Production of Court Records and Documents and the Attendance of Court Officials and Employees as Witnesses Under the Subpoenas of February 10, 2012 and the Various Letters for the Impeachment Prosecution Panel dated January 19 and 25, 2012 (Feb. 14, 2012).

sources. Unfortunately, both cases quickly turned into proceedings to "shoot the messenger."

The Supreme Court has invoked judicial independence not just to constrict avenues for criticism; it has also used this to prevent inquiries into its affairs.

In *Senate v. Ermita,* a case involving the extent of the President's executive privilege as against the power of Congress to conduct legislative inquiry, the Supreme Court, in an *obiter dictum*, stated that it is exempt from Congress' power of inquiry under Section 21, Article VI of the Constitution.

This concept of judicial privilege was tested when the prosecution team in former Chief Justice Renato Corona's impeachment trial requested for copies of certain documents and records relating to cases in the Supreme Court. The Supreme Court promulgated a Resolution[131] which established the following rules in determining whether certain Supreme Court documents and information are privileged or not:

> To summarize these rules, the following are privileged documents or communications, and are not subject to disclosure:
>
> (1) Court actions such as the result of the raffle of cases and the actions taken by the Court on each case included in the agenda of the Court's session on acts done material to pending cases, except where a party litigant requests information on the result of the raffle of the case, pursuant to Rule 7, Section 3 of the IRSC;
>
> (2) Court deliberations or the deliberations of the Members in court sessions on cases and matters pending before the Court;
>
> (2) Court records which are "predecisional" and "deliberative" in nature, in particular, documents and other communications which are part of or related to the deliberative process, [i.e.] notes, drafts, research papers, internal discussions, internal memoranda, records of internal deliberations, and similar papers.
>
> (4) Confidential Information secured by justices, judges, court officials and employees in the course of their official

[131] *Id.*

functions, mentioned in (2) and (3) above, are privileged even after their term of office.

(5) Records of cases that are still pending for decision are privileged materials that cannot be disclosed, except only for pleadings, orders and resolutions that have been made available by the court to the general public.

(6) The principle of comity or inter-departmental courtesy demands that the highest officials of each department be exempt from the compulsory processes of the other departments.

(7) These privileges belong to the Supreme Court as an institution, not to any justice or judge in his or her individual capacity. Since the Court is higher than the individual justices or judges, no sitting or retired justice or judge, not even the Chief Justice, may claim exception without the consent of the Court.[132]

Applying these guidelines, the Supreme Court denied the release of *rollos* in both pending and terminated cases on the ground that they all contained privileged and confidential information. In the end, the Supreme Court agreed to the release only of documents that are already available to the public.

In an earlier case involving requests by certain citizens to obtain a copy of the Statement of Assets and Liabilities (more commonly called "SALN") of certain Justices, the Supreme Court again laid down guidelines for accessing information from the Court.

According to the Court, request for any information pertinent to the salaries and other matters involving members of the judiciary shall be granted only upon compliance with the following requirements:

1. All requests shall be filed with the Office of the Clerk of Court of the Supreme Court, the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals; for the lower courts, with the Office of the Court Administrator; and for attached agencies, with their respective heads of offices.

2. Requests shall cover only copies of the latest SALN, PDS and CV of the members, officials and employees of the Judiciary, and may cover only previous records if so specifically requested and considered

[132] *Id.*

> as justified, as determined by the officials mentioned in par. 1 above, under the terms of these guidelines and the Implementing Rules and Regulations of [Republic Act] No. 6713.
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> 3. In the case of requests for copies of SALN of the Justices of the Supreme Court, the Court of Appeals, the Sandiganbayan and the Court of Tax Appeals, the authority to disclose shall be made by the Court En Banc.
>
> 4. Every request shall explain the requesting party's specific purpose and their individual interests sought to be served; shall state the commitment that the request shall only be for the stated purpose; and shall be submitted in a duly accomplished request form secured from the SC website. The use of the information secured shall only be for the stated purpose.
>
> 5. In the case of requesting individuals other than members of the media, their interests should go beyond pure or mere curiosity.
>
> 6. In the case of the members of the media, the request shall additionally be supported by proof under oath of their media affiliation and by a similar certification of the accreditation of their respective organizations as legitimate media practitioners.
>
> 7. The requesting party, whether as individuals or as members of the media, must have no derogatory record of having misused any requested information previously furnished to them.[133]

Notably, members of the Judiciary are public officers and, as such, are covered by Republic Act No. 6713, or the Code of Conduct and Ethical Standards for Public Officials and Employees. Under this law, any statements required to be filed by a public officer must be made available to the public, subject only to the following conditions:

> (1) Any and all statements filed under this Act, shall be made available for inspection at reasonable hours.
>
> (2) Such statements shall be made available for copying or reproduction after ten (10) working days from the time they are filed as required by law.

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[133] *In re* Request for the 2008 SALN and PDS of Justices, A.M. No. 09-8-6-SC, Jun. 13, 2012.

> (2) Any person requesting a copy of a statement shall be required to pay a reasonable fee to cover the cost of reproduction and mailing of such statement, as well as the cost of certification.
>
> (4) Any statement filed under this Act shall be available to the public for a period of ten (10) years after receipt of the statement. After such period, the statement may be destroyed unless needed in an ongoing investigation.[134]

Moreover, under Republic Act No. 6713, only the following grounds are sufficient to deny access to documents:

> It shall be unlawful for any person to obtain or use any statement filed under this Act for:
>
> (a) Any purpose contrary to morals or public policy; or
>
> (b) Any commercial purpose other than by news and communications media for dissemination to the general public.[135]

The laws of the land mandate public disclosure as a matter of policy. The right to information is given such a great importance that under existing laws, particularly Republic Act No. 6713, there are only very few restrictions imposed on the right to access documents. The Supreme Court, however, has chosen a stricter regime.

As such, notwithstanding the Supreme Court's' proclaimed willingness to uphold the citizens' right to information, when it was confronted with a request for access to certain documents relating to the expenditure of the Judiciary Development Fund, the Supreme Court responded by charging the requesting party with an administrative case.[136]

The Supreme Court is undoubtedly entitled to claim judicial privilege. It also has the duty to protect itself from any undue interference from the other branches of the government or from entities that seek to unlawfully interfere with its duties. However, judicial privilege is never an absolute protection from any outside inquiry. As a tool created to foster the independence of the judiciary, the privilege must only find application where the interests of justice will be

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[134] Rep. Act No. 6713, § 8 (c). The Code of Conduct and Ethical Standards for Public Officials and Employees.

[135] § 8 (d).

[136] *In re* Avecilla, A.C. No. 6683, 652 SCRA 415, Jun. 21, 2011.

better served by non-disclosure than by full disclosure. Justice Sereno, in a dissenting opinion, stated:

> For communication and correspondences to be considered privileged, there must be an advantage derived from the protection that outweighs, in the hierarchy of governmental and societal values, the detrimental effect of the privilege on the search for truth. In short, once higher societal values, such as the public's right to information, and the constitutional directive to extract accountability from public officers, are found to supersede the advantages of protecting confidential information, qualified judicial privilege must necessarily succumb.[137]

There may indeed be merit and wisdom in the Supreme Court's decision of providing guidelines for the access of documents and information emanating from it and its members. Nevertheless, the exercise of judicial privilege becomes relevant only when viewed within the context in which it operates. In the case of the Philippine Supreme Court, the stringent rules only further shroud an institution that is already inaccessible to the public. Its chosen policy of constricting access to court-related information and limiting criticisms directed at the institution creates an impenetrable wall.

On one hand, people are not free to criticize the Supreme Court unless they can prove their claims.[138] To prove their claims, they may need to obtain certain court documents and information, the disclosure of which is within the full power of the Supreme Court to decide. Even when the rules may grant such access, there is no assurance that the Supreme Court will not alter them in order to prevent access. After all, under the Constitution, the Supreme Court has rule-making powers.[139] On the other hand, without the information necessary to form an opinion about how the Supreme Court conducts its affairs, the people's criticism will inevitably be baseless in the eyes of the Court. Taken to the extreme, there may come a point when the people no longer have anything to say about the Supreme Court, not only because they may get punished if they do so, but also because they know nothing of the institution.

The Supreme Court has transformed itself into an impregnable tower with its passageways blocked.

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[137] *In re* Production of Court Records and Documents and the Attendance of Court officials and employees as witnesses under the subpoenas of February 10, 2012 and the various letters for the Impeachment Prosecution Panel dated January 19 and 25, 2012 (Feb. 14, 2012) (Sereno, J., *dissenting*).

[138] *In* re Macasaet, A.M. No. 07-09-13-SC, 561 SCRA 395, Aug. 8, 2008.

[139] CONST. art. VIII, § 5.

While judicial independence is undoubtedly a value that must be placed high in the list of values that the Supreme Court must uphold, the quest for judicial independence need not exclude all other values. Independence is not an end itself. Rather it is a means to an end—the impartiality of the judge.[140] This, in turn, is a tool to achieve justice, or at the very least, what is beneficial for the public. Moreover, judicial independence is a function of the concept of separation of powers. It exists to prevent the dangerous concentration of power in a single branch of the government. Hence, judicial independence cannot be used as a mantra to resist inquiry when there are legitimate questions that must be asked. Judicial independence must be tempered by accountability. Such is the only way for it to attain what it has been intended to achieve.

*2. Power and Invisibility:*
*One Ring to Find Them, and in the Darkness Bind Them*

The dangers in erecting an impenetrable wall around the highest court of the land lie in the fact that such a wall will, in effect, make the men and women on the other side invisible to the public.

In the Lord of the Rings, the infamous ring of Sauron makes the person wearing it invisible to the eye. Yet for all the wonders of the ring, the longer one keeps it, the more wretched he became. Absolute power, especially when it is exercised beyond the prying eyes of others, corrupts absolutely. This, in simplistic terms, is the argument for transparency and against building impregnable towers. "Corruption thrives in environments in which the members of a community or organization are unable to obtain key information, whether it be through an effective news media, elected representatives, or individuals who wish to come forward and bring corrupt practices to light."[141]

Yet even when the intent of those who wield absolute power in the dark is not corruption but the common good, a lack of a sense of accountability may justify one to impose values that he believes are right, in ways that are beyond what is legally permissible. A Supreme Court that wields absolute power can decide cases in the same way that it chooses to distinguish between right and wrong, with little regard for the law. The dictatorial imposition of values to the citizens by a group that is not directly accountable to, not elected by and not

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[140] Francesco Contini & Richard Mohr, *Reconciling Accountability and Independence in Judicial Systems*, *available at* http://webcache.googleusercontent.com/search?q=cache:http://www.utrechtlawreview.org/index.php/ulr/article/view/46/46 (last visited Mar. 15, 2013).

[141] Seumas Miller, Peter Roberts & Edward Spence, CORRUPTION AND ANTI-CORRUPTION: AN APPLIED PHILOSOPHICAL APPROACH 152 (2005).

representative of the people, is a scenario as dangerous as corruption. Insulation from outside forces, when taken to the extreme, will lead to detrimental consequences. The experience of the Ancien Regíme in France is a cautionary tale: "[t]he higher court judges, central and provincial, became so deaf to the societal needs as to turn into one of the most hated targets of the Revolution."[142]

In the great debate between judicial independence and accountability, many legal scholars have advocated a middle ground. Professor Cappelleti proposes a *responsive model of judicial accountability.* This model combines a reasonable degree of political, societal and legal responsibility without subordinating the judges to the political branches and other societal organizations and without exposing them to vexatious suits.[143] In other words, the model attempts to strike a balance between independence and accountability. It is characterized by an adherence to the concept of checks and balances. It refocuses the value of judicial independence in that it should not be viewed as a function of the prestige of the judiciary but as an element of a system of justice at the service of the people. Cappelleti did not fully expound on the concept of a responsive model, admitting some vagueness in his description. Nonetheless, his description may be translated into more concrete terms.

A Supreme Court that seeks to strike a balance between judicial independence and accountability must accept the full force of the system of checks and balances. This means that there should be no place for absolute judicial privilege and overly strict access to information. At the same time it should be more open to public scrutiny. As suggested by Shimon Shetreet:

> The past judicial record in many countries suggests a high degree of isolation and insufficient responsiveness to social change. Continued public pressure will counterbalance this prevalent tendency among judges. The social price which society may have to pay as a result of a chilling effect on judicial independence and impartiality is marginal and will be balanced by the social benefit which will accrue from a judiciary which is more responsive to social change and which will enjoy the confidence of all sections of the public.[144]

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[142] Mauro Cappelletti, *Who Watches the Watchmen: A Comparative Study on Judicial Responsibility, in* JUDICIAL INDEPENDENCE: THE CONTEMPORARY DEBATE 550 (S. Shetreet & J. Deschenes eds. 1985).

[143] *Id.*

[144] Shimon Shetreet, *Judicial Independence: New Conceptual Dimensions and Contemporary Challenges, in* JUDICIAL INDEPENDENCE: THE CONTEMPORARY DEBATE 657 (S. Shetreet & J. Deschenes eds. 1985), (1985).

A Supreme Court that is open and responsive is one that the people can trust. A trustworthy Court is one that enjoys legitimacy. A Court that wields legitimacy is one that need not jealously guard its independence and reputation, because a Supreme Court that is responsive is one that possesses independence not as a product of rules carefully crafted, but as a reflection of the faith of the people in the Judiciary.

## IV. THE DUTY OF THE LEGAL PROFESSION AND THE JUDICIARY: TO HELP THE PEOPLE BEAR THE BURDEN

The Philippines is a country in awe of its lawyers and judges. Because of the importance of lawyers and judges in this country, they are in a position to create meaningful change.

The practice of law is a profession in the same way that the duty of a judge is to serve the people. In the end, mechanisms for the regulation of lawyers, judges, and justices exist in order to become tools in the performance of these servants of the law of their duty to society.

When Frodo Baggins decided to burn the Ring in the fires of Mordor, Gandalf the wizard assured him, "I will help you bear this burden...for as long as it is your burden to bear."

Ultimately, this is the true mandate of lawyers, judges and justices—not to wrest power from the people, or to jealously guard its own interests against the legitimate inquiries of the public, or to wield power in order to decide which direction must be pursued.

The people are free to chart their own destinies. Lawyers, judges, and justices must not grapple with power but must leave it in the hands of the people where it rightfully belongs. Lawyers, judges and justices must help the people bear this burden, for it is a burden that the people themselves must endure and conquer.

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