

SPECIAL MESSAGE —

“THERE IS PLENTY OF ROOM AT THE TOP!” *

CESAR BENGZON **

Dean Abad Santos, Members of the Faculty,
Fellow students of the law:

To the gallery of pictures decorating the College of Law library one more has been added. I saw it last month in the office of the Dean. It is an oil reproduction of my picture published this year by the *Sunday Times Magazine*. It is undoubtedly a fine painting. However, had I been previously consulted, I am sure a finer painting would be there today, because I would have given the artist my photograph of twenty years ago. This canvas, I understand, hangs alongside other oil paintings of the former Chief Justices—eight of them.

If you visit the Session Hall of the Supreme Court on Taft Avenue you will see four pictures only those of Chief Justices Arellano, Araullo, Mapa, and Abad Santos. Avanceña's and Moran's likenesses will soon appear there too. Why the difference? Our custom in the Court is that only after death may the picture of the chief justice adorn the hall wherein he had presided. Perhaps because only after death may the true value of his services be accurately assessed. Perhaps, because the Court, conservative as it is, proceeds on the theory that “death opens the gates of fame and shuts the gate of envy after it.”

On the other hand, the College of Law authorities believe that every Chief Justice is entitled to a place among his predecessors the moment he assumes office—irrespective of what may happen afterwards. For my part, modesty aside, I find no objection to the idea. Nevertheless, I suspect there is method in their course of conduct. They invite the honoree to witness the installation of his picture, and deliver an address, thereby impliedly to urge him to follow the example of his predecessors—with whom he is thus honored—so that the performance of the future may, at least, equal the record of the past.

Ladies and gentlemen, I perceive the significance of the occasion; and so, in a spirit of humility I pledge, here and now, that the office I am privileged to hold shall not, thru my fault, suffer any diminution of the prestige it has heretofore enjoyed. This, I

* Speech delivered at the U.P. College of Law Theater, on the occasion of the ceremonies held in connection with the unveiling of the portrait of the new Chief Justice at the Law library.

** A.B. (Ateneo); LL.B. (U.P.); Chief Justice, Supreme Court of the Philippines.

must confess, entails a tremendous responsibility. It might be impossible to match, let alone surpass, Arellano's vast erudition, or Mapa's felicity of expression. Nevertheless, like my predecessors, I would claim that the merit lies in trying to achieve the high standards those worthies have set, considering that only in the pursuit of noble ends does life acquire a laudable meaning. Anyway, the list of outstanding qualities attributed to the previous occupants of this office have one common denominator: the purpose to administer impartial justice. That is the same purpose I have promised to stand by.

A few years ago, ceremonies were held to commemorate the hundredth anniversary of the birth of Cayetano S. Arellano. After perusing the speeches therein delivered, and the praises spoken at the necrological services held upon his death, one should be convinced that he is indeed the foremost Chief Justice of this country. President Taft admitted that he (Arellano) "could fill with honor the chief justiceship of the highest tribunal of any civilized nation." His profound juridical learning and wisdom, his refined culture, and nobility of character undoubtedly deserve the highest commendation.

When he died after leading the Court for twenty years he was succeeded by a no less brilliant jurist, the then Secretary of Justice—Don Victorino Mapa. Mapa's appointment caused the resignation of Don Florentino Torres, who sat next to Don Cayetano in the Supreme Bench. Many believe that such regrettable incident gave rise to the custom observed here of appointing the senior justice whenever the position of Chief Justice becomes vacant.¹ On the other hand, almost all the chief justices of the United States Supreme Court had no connection with such Court when appointed.

Without any desire to make comparisons, I believe our law and public policy require the continuation of our present usage. Having lost personal interest in the matter, since my appointment has already been confirmed, and I am actually occupying the position, I deem this to be a suitable occasion to give expression to those unpublished thoughts underlying such generally approved usage. Overcoming some pricks of squeamishness I resolved to speak my mind on the subject—for the future, in the best interest of the Court, and of sound official relations.

At least five reasons may be given in support of the aforesaid usage: First, the statute, in specifically providing for seniority, established a precedence that should not, except for good reasons, be disregarded whenever a vacancy in the position of Chief Justice oc-

¹ Yulo was appointed during the enemy occupation. The conqueror was not then aware or bound by the precedent.

curs. The statute—passed years after the Mapa-Torres affair—provides that in case of temporary disability of the chief justice, the associate justice who is first in precedence shall act in his place. Then it says:

“The Associate Justices shall have precedence according to the dates of their respective commissions; *Provided, however*, That any member of the Supreme Court who has been reappointed to that Court after rendering service in any other branch of the Government shall retain precedence to which he is entitled under his original appointment.”

Note that the statute does not stop at establishing the line-up. It goes further, and allows a member to retain his rank therein, even if he leaves the Court to serve another government branch.

Such meticulous concern about the preservation of the order of precedence can mean only one thing: the Government's insistence that the stepping stones leading to the chief justiceship be observed.

Second, there are many unpublished rulings and doctrines of the Court, with which an outsider newly appointed to it would be wholly unfamiliar. Surely it would be embarrassing for the chief to be overruled now and then by his colleagues.

Third, one important function of the chief justice is that of designating the member who will speak for the Court on significant controversies. To discharge it properly, the Chief must be one who has served in the Court for some time and had the opportunity to know the caliber and the inclinations even the prejudices of every member of the Court. In fact his leadership and effectiveness wholly depends upon such intimate knowledge.

Fourth, the appointing powers should be made fully aware that every appointee to the Supreme Court is a potential Chief Justice; and every member should have the assurance and incentive that if he lives long enough and behaves well, he shall reach that much-coveted position.

Fifth, the Chief Justice designates the court members of the Senate and House Electoral Tribunals, and there is the possibility that the President, if entirely free to make his choice of chief justice, might be swayed by the advantages accruing to his political leaders thru the appointment of his own partisan nominee.

This point leads to a final consideration. The Supreme Court is the Presidential Electoral Tribunal which is charged with the determination of election contests for the office of the President. Imagine the consequences of giving a President who is a candidate,

absolute, unrestrained freedom to choose even a lawyer fresh from the political field, to preside over the tribunal that will be later called upon to decide the validity of his election.

In fine, being already the most powerful official in the Government, the Chief Executive should be precluded from using his power of appointment of the chief justice to enhance his political fortunes.

This is not to deny the constitutional power of the President to select and appoint the Chief Justice. The effect of the statute and of the practice I have explained should mean only that whenever the position becomes vacant, the senior associate justice automatically becomes the logical candidate, whom the President may not bypass except for valid reasons. And I refer to the senior justice only, because it would not be conducive to the morale in the judiciary for the President to consider a junior justice over and above those who precede him in rank. The differences between Justices Jackson and Black of the U.S. Supreme Court remain fresh in the minds of lawyers here and abroad.

In this connection it may be interesting to relate another not so well-known episode in that Supreme Court. When President Taft appointed the then Governor of New York, Charles E. Hughes, to the said Court, he practically promised to appoint him Chief Justice as soon as the then Chief Justice Fuller retired or died. About two months later, the vacancy occurred, and everybody thought Hughes would be chosen. But the other justices, who had been in the Court for years, didn't like the prospect. Some of them visited Taft with the result that Hughes was not named. White of Louisiana received the appointment.

I regard this convocation, not as an honor to me personally, but rather as an honor to the position I happen to occupy: the chief justiceship. Which brings me back to the pictures in the library.

I agree with the faculty that such is the proper place to exhibit them in the College of Law. Every student at one time or another has to go there. And when he sees those pictures he can not help but remember their lives, their virtues and qualifications; and remembering, profit by their example. He will recall the prestige and erudition of Arellano, the distinctive brevity of Mapa, the rock-bottom integrity of Araullo, the modesty of Avanceña, the patriotism of Abad Santos, the industry and resourcefulness of Moran, the juridico-economic talents of Yulo, and the basic humanity of Paras. As to me—let my successor have his say.

Way back in 1919, speaking to my co-graduates during the commencement exercises of this College at the Marble Hall I concluded

with these words: "there is plenty of room at the top." And lo and behold—in the Supreme Court nowadays—ten out of eleven justices came from this institution, and two belong to my class of 1919. So I say to you, ladies and gentlemen of the College of Law, when you gaze at my picture just remember: *there is plenty of room at the top*. That idea, valid in 1919 is still valid in 1961.

That same idea I should like to impart to the awardees of the various scholarships today, even as I congratulate them for their winning accomplishments. To them I repeat, there is plenty of room at the top.