

FOREWORD

ON THE PHILIPPINE LAW JOURNAL*

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I am honored to be here at the 90th Anniversary celebration of the PHILIPPINE LAW JOURNAL.

I have been asked to make a short speech, something, which intrigues me. In my three terms in the Senate, before and after martial rule, when a Senator wanted to make a short speech, he was expected to talk one hour or more. It is probable that this is no longer true today. I am told — and this is hearsay — there are some new Senators who are not inclined to speak in the best sense of the word — they sing and dance and they are through with their song-and-dance routine after only ten minutes

I

I notice that today, there is a lot of legal writing going on in the daily periodicals, such as the *Philippine Daily Inquirer*, and in monthly publications, such as our *Kilosbayan-Bantay Katarungan Magazine*, *Kilosbayan*, in short.

Fortunately, *Kilosbayan* is known to most professors, lawyers law students, and the general public, for two reasons: (1) its nature and character as a People's Organization, speaking out from time to time on public issues; and (2) the kind of public interest cases it handles before the courts. For

* This speech was delivered during the PHILIPPINE LAW JOURNAL's 90th Anniversary Celebration, held last September 14, 2004 in the Sta. Ana Room of Malcolm Hall, University of the Philippines. The author was invited by the new student editorial board, inducted after the speech, as their Guest of Honor. Cite as Jovito Salonga, Foreword, *On the Philippine Law Journal*, 79 PHIL. L.J. 541, (page cited) (2004).

** Chairman Emeritus, *Kilosbayan*, Inc.. Chairman, Bantayod ng mga Bayani Foundation. Founder, Adviser and Coordinator, Bantay Katarungan. President, Senate of the Philippines, (Jul. 1987-Dec. 1991); Senator (1965, 1971, 1987). Congressman, 2nd District of Rizal, (1961-1965). First Chairman, Presidential Commission on Good Government (Feb. 28, 1986-Mar. 9, 1987). J.S.D., Yale Law School (1949). J.L.M., Harvard Law School (1948). LL.B., University of the Philippines (1946). Member, Sigma Rho Fraternity.

and (2) the kind of public interest cases it handles before the courts. For instance, the two cases against on-line lotto, which Kilosbayan filed with the Supreme Court less than one year after it was organized in August 1993, placed it in the limelight. Kilosbayan won the first case in a May 1994 decision penned for the majority by Mr. Justice Davide who squarely tackled the procedural question raised by Malacañang regarding Kilosbayan's lack of standing. The Justice ruled that Kilosbayan has the *locus standi* to file the petition because of its transcendental importance to the public.¹ On the substantive issue, Justice Davide ruled that the lotto contract between PCSO and the gambling firm PGMC, dominated by Malaysian businessmen, was illegal and void. It was a closely divided court, chiefly due to the intervention of Malacañang. After the May decision, some Justices who voted for Kilosbayan retired – they had been appointed by President Cory Aquino – and President Fidel V. Ramos, who, despite his Protestant upbringing, had allowed the Malaysian gambling firm to come in, saw his chance to overturn the decision. FVR appointed new justices and in two months' time, that is, in July 1994, the new majority held that Kilosbayan had no legal standing and that the new lotto contract, basically the same as the one that had been declared illegal and void, was perfectly legal.

How do law professors explain the zigzagging, somersaulting proclivity of the Narvasa Court in so short a time? Up to now, many law students and professors believe – or would like to believe – that a judicial decision is the result of the application of the law to the facts, on the basis of the formula $D = \text{Law} \times \text{Facts}$. But long ago, Professor Jerome Frank of Yale Law School had insisted that the more realistic formula is $D = \text{Stimuli} \times \text{Personality of the Judge}$. The stimuli affecting judges may be desirable, such as the impact of ethical, moral values on men, the influence of jurists like Manresa, Sanchez Roman, Holmes, Cardozo or Brandeis, and home-grown jurists like Jose P. Laurel, Claro M. Recto or J.B.L. Reyes. Undesirable stimuli include corruption, outright bribery or personal gain. In the context of Philippine conditions today, the undesirable stimuli may range all the way from *utang ng loob*, *pakikisama*, and expectations of promotion to a higher position in government, or personal profit. In any case, Kilosbayan's unswerving stand against lotto won the backing of the Catholic Church hierarchy, all Protestant churches, the Iglesia ni Cristo, Muslim

¹ Ordinarily to have legal standing or *locus standi*, the plaintiff or petitioner must have a personal stake in the controversy or be placed in a position where he will be injured if the contract in question is carried out. The exception is where the contract or the petition itself is of transcendental importance to the public. *Kilosbayan, Inc. v. Morato*, G.R. No. 118910, 246 SCRA 540, Jul. 17, 1995.

organizations, the media, civil society, and many local governments which refused to accept the lotto such as Makati City, Laguna, Oriental Mindoro, Baguio City, Dumaguete City, Negros Oriental, Iloilo, Davao, General Santos, and the whole of Muslim Mindanao. Paradoxically, Kilosbayan's defeat in the High Court led to its moral victory.

II

Let us now take up the newspaper dailies that could adversely affect the role of the PHILIPPINE LAW JOURNAL. In the *Inquirer*, the paper reputed to have the biggest circulation, former Senior Justice Isagani A. Cruz and our own Dean Raul Pangalangan have columns I always read. In *Manila Bulletin*, there is former Court of Appeals Justice Jesus Elbinias, and in the *Philippine Star*, Jose C. Sison writes on legal subjects. In *Today*, a daily with a smaller circulation, Father Joaquin Bernas, S.J. writes a column I do not miss. In short, the PHILIPPINE LAW JOURNAL, with a very limited circulation of around 800 copies, is now running into very heavy competition from well-known authorities who write in simple, non-academic language in columns read by lawyers and non-lawyers in newspaper dailies.

In the United States, articles, editorial comments and notes in the *Harvard Law Review*, the *Yale Law Journal*, the *Columbia Law Review* and journals of similar stature are cited by Supreme Court Justices, whether penning majority or dissenting opinions, partly because of the influence of their law clerks who had been with these law reviews during their law studies. Editorial notes are often cited, mostly through footnote documentation. It seems to me we do not have such a tradition here, although I am willing to be proved wrong.²

Nor do we give as much importance here to those connected with the PHILIPPINE LAW JOURNAL or the *Ateneo Law Journal* and the other Law magazines, the *University of Sto. Tomas Law Journal*, the *Far Eastern University Law Journal* and the *Lyceum Law Review*. Barack Obama, born of a Kenyan

² In the 90th Anniversary issue, released immediately before this speech was delivered, Student Editorial Board Chair Oscar Franklin B. Tan wrote, "From 1991 to 2003, the Court promulgated fourteen cases that cited PHILIPPINE LAW JOURNAL articles or roughly two citations a year. This figure must, however, be scrutinized qualitatively." The apparent implication was this was not good enough, and Mr. Tan discussed how most of these citations supported merely preliminary, historical, or parenthetical points in decisions. Foreword, *Sisyphus' Lament, Part I: The Next Ninety Years and the Transcendence of Academic Legal Writing*, 79 PHIL. L.J. 7, 10 (2004).

father and a white mother from Kansas, created quite a sensation during the Democratic Convention last July 27 when the Convention Delegates and the television audience throughout the world were told that this young man from Kenya was the first black to sit as President of the *Harvard Law Review*.

The question may be asked – how can the PHILIPPINE LAW JOURNAL make a difference? It may not make a difference if the articles and essays it publishes are commonplace and run-of-the-mill. But if the JOURNAL takes the road less traveled or goes beyond the writings found in the dailies, perhaps lawyers, justices and judges here will take notice.

Let me cite a few instances.

First, the legal implications of the American invasion and occupation of Iraq, the fate of our OFWs in the Middle East, and the question of international terrorism – a term which President George W. Bush has been using since 9/11 in 2001 without adequately defining it – would be of great interest to the Departments of Foreign Affairs and of Justice, and to legal and non-legal scholars here and abroad. From the point of view of international law and in the context of the United Nations Charter, is there any legal justification for what President Bush has been doing these last three years, namely, terrifying Americans and the whole world against a hypothetical enemy such as Iraq, killing in the process countless thousands of innocent Iraqi children, women and elderly non-combatants? The PHILIPPINE LAW JOURNAL would do well to answer this question.³

Second, here at home, there was an interesting development in the last elections. Brother Eddie, the founder and moving spirit of Jesus is Lord Fellowship (JIL) – which is more than a fellowship since it has church buildings and congregations in many places in the Philippines – ran for president and campaigned on the issue of moral righteousness. His two or three million ardent followers, who were at the Luneta before the May 10 elections, promised to vote for Brother Eddie, and like Josiah's army in the Old Testament, each promised to get seven more. This impressed and also scared a lot of people. But for some reason Brother Eddie himself could not

³ Shortly after this speech was delivered, Secretary General Kofi Annan of the United Nations stated in an interview with the BBC World Service on Sept. 14, 2004 that "the decision by President George W. Bush to go to war in Iraq was illegal because he didn't have UN Security Council approval." Annan also said that the wave of violence engulfing Iraq puts in doubt the national elections scheduled for January 2005. See INTERNATIONAL HERALD. TRIBUNE (United States), Sep. 17, 2004; PHIL. STAR and TODAY (PHILIPPINES) issues of the same date.

comprehend, he obtained less than two million votes, not the ten million he had expected. In fact, he was the last placer. Even so, many members of JIL campaigned and worked hard for him, giving contributions for his candidacy through the Church he had founded. The Church itself has been enjoying tax exemption. Are these contributions tax exempt or not? If he had won, would there have been a breach of the separation between Church and State? Again, the PHILIPPINE LAW JOURNAL should help us answer this question.

Third, The INC, admittedly more disciplined than the JIL, is in a special category. Its members vote as one, by virtue of the INC's interpretation of Paul's first letter to the Corinthians, his letter to the Ephesians⁴ and Psalm 133:1. Unlike any Church here or abroad, it expels members who are found to have disobeyed its instruction to vote for its own set of candidates, from president down to mayors and councilors. Theoretically, the Roman Catholic Church, headed by the likes of Cardinal Sin, enjoys the support of 85% of our people. But because of its political clout, only INC Executive Minister Manalo is favored with the personal visits of high and powerful dignitaries during the height of the election campaign. Competing presidential candidates, such as GMA, Fernando Poe, Jr. or FPJ, Ping Lacson and others – except Bro. Eddie perhaps – senators, congressmen and lesser candidates went to the INC Palace in Quezon City and humbly asked for his valued support in the manner of ordinary Iranian Muslims paying homage to Ayatollah Khomeini.

When the INC celebrated its 90th Anniversary last July 27, many people saw the huge streamers of grateful mayors backed by the INC like Lito Atienza of Manila, and thankful governors in Central Luzon and Southern Tagalog. In fact, some presidents, from Marcos to Estrada, went out of their way to accommodate INC members, who in fairness to them were qualified, for positions ranging from Justice of the Supreme Court and Secretary of Justice to various Assistant Secretary, Minister, and Consul slots. Former and present senators, congressmen, governors and mayors make it a point to locate jobs for INC members aspiring for lesser offices. These members have only one loyalty, and cannot even be members of labor unions or service clubs like the Rotary.

But the INC Executive Minister also knows how to reciprocate favors. It is no secret that when Erap wanted to have a knee operation in the United States, his motion was granted by the Sandiganbayan, due to outside

⁴ 1 Corinthians 1:10; Ephesians 1:15-23.

pressure. When he wanted to be placed under house arrest in his luxurious villa, his motion was granted, admittedly because of the intervention of GMA, who was supported by the INC in the last election. The resourceful, pragmatic president justified her act by invoking national unity and reconciliation. However, Justice Isagani Cruz, in his July 24, 2004 column, contended that the unusual concession to this "privileged prisoner" was a violation of the Equal Protection clause.

In the same article, the former Justice expressed the view that the other part of the Sandiganbayan order stating that Erap is "not to give any interview with the media" nor shall he "express any views that are likely to cause public unrest," in exchange for the privilege of house arrest, was a violation of the Bill of Rights. This guarantees freedom of speech and the press, and this freedom is not negotiable. But with due respect to the good Justice who believes that detention prisoners can express their views without any limitation, presumably even to attack – by means of TV, radio or press interviews – the impartiality of the Sandiganbayan Special Division, deny its jurisdiction over him, and berate the whole system of justice which he himself invokes when it pleases him. I submit that: (1) the representatives of the media, broadcast and print alike, have no greater access to persons in detention than do members of the general public; and (2) that detention prisoners are subject to penological regulations that are based on common sense and reason. Ex-presidents and high society figures in detention do not enjoy rights greater than those enjoyed by other detention prisoners. Unrestricted freedom of speech and press in all prisons in the country for all detention prisoners would be a sure recipe to widespread social disorder and chaos.

These contemporary events I have just mentioned, including the novel idea of "international terrorism," as conceived and carried out by President George W. Bush, are mere examples of what the PHILIPPINE LAW JOURNAL and law magazines should probably write about, so the whole nation, including the legal profession and non-lawyers who are decision-makers in our society, may be induced to read and cite its articles and editorial notes.

Salamat po.