Feminine Grace, the High Court, and Jurisprudence

Ameurfina A. Melencio Herrera[*]

I. INTRODUCTION

Feminine Grace comprises 19.45 %[1] of the Philippine judicial roster, broken down as follows:

SUPREME COURT	3 out of 15	20%
COURT OF APPEALS	12 out of 51	23.5%
SANDIGANBAYAN	3 out of 15	20%
REGIONAL TRIAL COURTS	122 out of 755	16.6%
1ST LEVEL COURTS	154 out of 644	23.9%
SHARI'A DISTRICT COURTS	0 out of 1	0%
SHARI'A CIRCUIT COURTS	0 out of 19	0%
TOTAL	276 out of 1,419	19.45%

In the 100 years of the Supreme Court, out of 147 justices, eight women have made it to the Court, but not one has been privileged to sit at its helm.

Feminine Grace, the High Court, and Jurisprudence: why the juxtaposition? What has been the contribution of feminine grace to the fortunes of the judiciary as well as to jurisprudence? Does it make a difference that a magistrate is a woman? Should it? Conventional wisdom

* Retired Supreme Court Justice (1979-1992). '47, LL.B., *cum laude*, University of the Philippines College of Law. She is the Chancellor of the Philippine Judicial Academy. This Speech was delivered before the Ninth Centenary Lecture in the Supreme Court Centenary Lecture Series, held at the Supreme Court Session Hall in Manila, on May 17, 2001. The information contained herein is true as of the time of the delivery of the speech.

Cite as 52 ATENEO L.J. 965 (2008).

1. Statistical Reports Division, Court Management Office, Office of the Court Administrator (Mar. 31, 2001).

would seem to suggest that a jurist is a jurist, gender being an irrelevant fortuity to the dispensation of justice.

Assessments on these points would have been more fittingly made by an incumbent lady Justice of the Court, but the task to memorialize the role of women judges is also mine, as they say, for being the second woman justice elevated to the Court, the second most senior among the women judges, and the founder and first President of the Philippine Women Judges Association.

Whether the credentials are valid or not, it is an honor, indeed, to have been selected to lecture on the subject. And since Justice Artemio V. Panganiban, Chair of the Centenary Celebrations Committee, additionally reminded me that I owe it to our women judges, I dedicate this effort to them, to the women's cause, and to the centenary of our Supreme Court.

We thank Chief Justice Hilario G. Davide, Jr., for having said in his Keynote Address entitled, *Women Judges Moving On* before the Philippine Women Judges Association, last 2 March 2001, *that verily, lady justices and judges are gems for the historic event.*

II. A BIT OF HISTORY

The historical fact is that women in the High Court are relatively a recent phenomenon. Justice Cecilia Muñoz-Palma reached our Supreme Court earlier than Justice Sandra Day O'Connor of the United States Supreme Court. By the time the *Brethren's First Sister* was appointed, we already had two lady Justices in our Supreme Court: Justice Irene Cortes and myself.

And yet, it is only in the last thirty years that women have sat on our High Court — always outnumbered by their gentlemen colleagues. This is not true of the judiciary only, of course, for it has taken women considerable time and effort to assert their rightful place in other fields of human endeavor.

Women judges started coming into the scene only during the Commonwealth period. In 1935, Natividad Almeda Lopez broke the barrier as the first woman to be appointed to the Municipal Court of Manila. That was even before Filipino women won the right of suffrage in 1937. She was also the first judge of the Juvenile and Domestic Relations Court, and the first to grace the Court of Appeals, from which court she retired in 1962.

Other lady judges and justices followed in slow succession.

III. PERFORMANCE

Women judges take on the same kind of assignments given their male counterparts in the trial courts and appellate courts.

I recall that just before the declaration of Martial Law, judges of the Court of the First Instance of Manila were asked to perform night duty because of the spate of bombings occurring around Manila. Judge Hilarion Jarencio, our Executive Judge, kindly offered to exempt me from emergency duty. I respectfully declined for I thought it unfair to be so exempted only because of gender.

As the years went by, the innate capacity for management of women judges has been recognized. Many of them have been designated by the Supreme Court as Executive Judges and Vice Executive Judges in the Regional Trial Courts, the Metropolitan Trial Courts, and the Municipal Trial Courts for Cities. Opinion gathered from the former Judicial Planning Development Implementation Office showed that, on the whole, women judges have shown competence, efficiency, and innovativeness in the performance of administrative functions.

Recognition awards from the Foundation for Judicial Excellence have added to their accomplishments. We have had seven awardees from the Regional Trial Courts, four from the Metropolitan Trial Courts, and three from the Municipal Trial Courts in Cities, or 14 in all. They have been singled out for their diligence, competence, and moral integrity.

Statistics from the Office of the Court Administrator also show that women judges' performance compares favorably with their male counterparts, which includes their case disposition. They are carrying on true to the tradition of Filipino women who have always assumed responsibility and performed their work capably, most of them balancing their duties as wife and mother at some point in their judicial career. Individually, and as members of the Philippine Women Judges Association, they are committed to do their share of the responsibility to upgrade the administration of justice not by word alone but, more importantly, by deed.

Lady Justices in the Court of Appeals have also served in various capacities aside from their adjudicative functions. They have been assigned by the Supreme Court to be Investigating Justices in administrative cases filed against lower court judges. They have ably served as Chairmen of Divisions and as Presiding Justices. We have had four Presiding Justices across the years.

And in the Supreme Court, Justice Irene Cortes had occasion to state that women members take on exactly the same kind of assignments given

their male counterparts. They dispassionately and truly consider issues and write *ponencias* on all kinds of controversies including landmark decisions on constitutional law. They have also taken other tasks: chairing a Court Division, a Senate or House of Representatives Electoral Tribunal, the Committee on Bar Examinations, and other committees assigned to work on crucial subjects like the Rules of Judicial Conduct, the Code of Professional Responsibility, and the Computerization Committee as well.

It is a fact that in 100 years of the history of the Court, Feminine Grace has not had the extraordinary honor of sitting at the helm. Women judges came quite close to it but the vagaries of fortune destined otherwise. Upon the installation of the revolutionary government in 1986, all Justices of the Supreme Court were asked to resign. Reorganization of the Judiciary came swiftly. In the appointments that followed, the senior Associate Justices before the reorganization, who would have been logical candidates for the topmost position, lost their ranks. The opportunity for women judges to have the uniqueness and the novelty of one of their own at the helm of the Philippine Judiciary was lost. Would it have made a difference otherwise? The answer belongs to the realm of contemporary history.

IV. LADY JUSTICES OF THE SUPREME COURT

Let us now focus on the lady Justices of the Supreme Court. We will also touch on the content analysis of their decisions, separate opinions, or resolutions, but always remembering that, although with a known *ponente*, these are the products of the collective wisdom of the Court.

A. Madame Justice Cecilia Muñoz-Palma

Shortly after Justice Cecilia Muñoz-Palma was appointed to the Supreme Court on 29 October 1973, almost every journalist and reporter queued up for an interview with her. Magazines bore her picture on their front pages, and essays on her life and her career ran to several pages. She was, after all, the first lady Justice of the Philippine Supreme Court, and among the very first in the world. Her five-year stint on the High Court, as well as the important positions entrusted to her after her retirement, leave no doubt that her appointment was definitely more than a mere concession to femininity. It was her privilege — as well as her burden — to be on the Court during the confusing times of the Martial Law years. Hardly had she been on it for a year, when the late Senator Benigno Aquino, Jr. came before the Court on a petition for the writ of *habeas corpus*. Likewise petitioners were then Senator Jose W. Diokno and other well-known personalities of the opposition at the

time. *Aquino, Jr. v. Enrile*,[2] would later on be known as the "Martial Law cases." There is something very odd about these cases, for there would be no majority opinion, although there was a judgment. The petitions for *habeas corpus* were denied, but the Justices who concurred in this result reached the conclusion through different reasoned paths. Chief Justice Querube C. Makalintal, who presided over the Court at the time, expressly disclaimed authorship of the majority opinion and made it quite clear that there was none. The result was that each Justice wrote a separate opinion, some of considerable length.

The Justices of the High Court had to reckon with the stance of petitioner Jose Diokno. His petition had, strictly speaking, become moot and academic. He had been ordered to be released from detention before the Supreme Court could rule on his petition. In his motion to withdraw his petition, however, he bluntly informed the Court that, as it had been reconstituted under the Constitution of 1973 and its members had taken their oaths of office to uphold a constitution he questioned, he no longer had faith in the Court. The Justices of the High Court, at that time, were not about to let the aspersion of doubt pass without comment, if not censure. A good number of the members of the Court wrote lengthily on this point. Justice Muñoz-Palma was for granting the motion to withdraw the petition, and found no trouble with petitioner Diokno's confession of skepticism towards the Court. Wrote Justice Muñoz-Palma with utmost judicial equanimity:

> I shall explain why I voted to grant the motion. I believe that a petition for habeas corpus basically involves the life and liberty of the petitioner, and, if for reasons of his own — the wisdom and/or correctness of which are best left to him to determine — he desires to withdraw the same and leave his present condition of indefinite detention as it is, such is his right which I, as a fellow-human being and as a magistrate of the law, should not deny him. My distinguished colleagues who opted to deny said 'Motion to Withdraw,' argue mainly that to grant the motion of petitioner Diokno is for the Court to accept the truth of his allegations and deny itself the opportunity to act on and resolve the basic issues raised in the petition for habeas corpus which issues are of 'utmost public importance' and 'involve the very life and existence of the present Government under the new Constitution.' ... What concerns this writer most is that the thrust of Diokno's motion to withdraw is his belief that he 'cannot reasonably expect either right or reason, law or justice' from this Court, it being a new Court under the new Constitution, a different Court from the Supreme Court to which he originally applied for his release. In plain and simple language, petitioner Diokno is bereft of faith in this Court and prefers that his fate be left undecided; who are we then to impose our will on him and force him to litigate under a cloud of distrust where his life and liberty are inextricably involved? Just as love is an emotion which springs spontaneously from the heart and never coerced into existence, so also is faith, trust, born and nurtured in freedom and never under compulsion. Thus, to deny petitioner Diokno's motion is to compel him to have faith in this Court; can we do so when faith has to be earned, and cannot be forced into being? Hence, my vote. [3]

2. Aquino, Jr. v. Enrile, 59 SCRA 183 (1974).

In a very gentle, yet persuasive and well-argued manner, Justice Muñoz-Palma was instructing her colleagues that the Court had to be worthy of faith and had to discharge its constitutionally apportioned tasks in such wise as to earn the trust and confidence of the citizens.

While some of the members of the Court were not too inclined to retain the posture the Court had taken in the earlier case of *Lansang v. Garcia*,[4] which had held that the Court had jurisdiction to inquire into the factual basis of the suspension of the privilege of the writ of *habeas corpus*, Justice Muñoz-Palma called it *the better rule*, and refused her concurrence to any reversion to the doctrines of *Barcelon v. Baker et al.*[5] and *Montenegro v. Castaneda and Balao*[6] that would confine such questions within the inviolable turf of executive determination.

The public respondents had argued that the declaration of Martial Law entailed the suspension of the privilege of the writ of *habeas corpus*. After all, the very same conditions the Constitution demanded for the suspension of the privilege were the conditions for the declaration of Martial Law. Justice Muñoz-Palma would not be persuaded. The writ, which she categorized as a *writ of liberty*, could not be suspended *by implication*. She read the Constitution to offer the President, as Commander-in-Chief, three courses of action: call out the armed forces, suspend the privilege of the writ, and declare Martial Law. If there were three possibilities, then choosing one did not entail another.

After an honorable retirement from the Supreme Court, Justice Muñoz-Palma took center stage as President of the Constitutional Commission of 1986. It is not difficult to see that two of the doctrines she tenaciously maintained — the justiciability of the factual basis for the declaration of

3. *Id.* at 620-22 (Muñoz-Palma, J., dissenting).

4. Lansang v. Garcia, 42 SCRA 448 (1971).

5. Barcelon v. Baker *et al.*, 5 Phil. 87 (1905).

6. Montenegro v. Castañeda and Balao, 91 Phil. 882 (1952).

martial law and the separateness of the suspension of the privilege of the writ of *habeas corpus* and of Martial Law — eventually found their way into the fundamental law of the land. Among other guarantees provided for, Section 18 of Article VII of the 1987 Constitution announces:

> The Supreme Court may review, in an appropriate proceeding, filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law, or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision within thirty days from its filing.
>
> A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians, where civil courts are able to function, nor automatically suspend the privilege of the writ.[7]

Yet a second time, the beleaguered Senator Benigno Aquino, Jr. sought relief from the Supreme Court. He contested the jurisdiction of a military commission over him, a civilian, without a war in progress. He complained that being tried by a military commission was a denial of his right to due process. Once more, however, the Court was faced with a petitioner who subsequently sought leave to withdraw his petition. Senator Aquino, it seemed, had given up on the courts, and was consigning himself to the mercy of his Creator.

In *Aquino, Jr. v. Military Commission No. 2*,[8] Justice Muñoz-Palma had the occasion to affirm her position that it was the petitioner's prerogative to withdraw his petition, whatever his motives might be. In sentences barely concealing her sympathy for the petitioner, she wrote:

> From a letter of Benigno Aquino, Jr. of April 14, 1975, addressed to his wife, children, relatives, and friends submitted to the Court and now part of the record of the case ... , I am convinced that petitioner no longer desires to seek redress or relief from this Court. He would rather make of his plight (his continued detention from [23 September 1972], in a military camp and trial before a Military Commission for crimes allegedly committed before the proclamation of Martial Law) a matter of conscience between himself and the President of the Republic, and offer his life for what he believes is a rightful cause. Who am I to stand on the way of this man who offers himself in supreme sacrifice, and is ready to consign his fate to his Maker, for his country and his people?[9]

7. PHIL. CONST. art VII, § 18.
8. Aquino, Jr v. Military Commission No. 2, 63 SCRA 546 (1975).
9. *Id.* at 665.

Hers was definitely a minority position — but it was certainly a prophetic and courageous stance she took.

She voted to grant the petition for prohibition, for *the gruesome specter of one, a hundred, a thousand civilian Filipinos being dragged by the mighty arm of the military before its own created and manned tribunals, commissions, etc., for offenses, real or imaginary, and tried and sentenced without the constitutional safeguards attendant to a trial by civil courts*[10] was nightmarish for her. She was writing — and so she did make clear — not only for the case then before the Bench but for posterity. It was not accolades she was after, but the intransigent defense of fundamental civic rights.

Justice Muñoz-Palma had very firm beliefs about certain issues, but she was by no means bigoted. She conceded that there were factual reasons in support of the declaration of Martial Law. She also conceded that then President Marcos may have been committed to the Rule of Law, but that did not guarantee that future leaders, with the military at their beck and call, would be as willing to submit to the precepts of the law and to the commands and the writs of the courts.

Always gentle, but steadfast and uncompromising in the things that matter, Justice Muñoz-Palma is not one who shies away from confronting issues that demand confrontation. When she ran for a seat in the Batasang Pambansa in the opposition ticket, shortly after the assassination of the late Senator Benigno Aquino, Jr., allusions were repeatedly made in campaign sorties of the opposition to the gruesome scene at the tarmac of the Manila International Airport. When administration candidates endeavored to deflect attention from the incident by calling on the opposition to focus on *performance*, Madame Justice Muñoz-Palma quickly and sharply retorted: "*[b]ut the assassination of Senator Aquino while in military custody is certainly a case of non-performance.*"

B. Madame Justice Ameurfina A. Melencio-Herrera

It was from an earlier Macapagal that she received her first appointment to the Bench. President Diosdado Macapagal appointed her in 1965 to preside over the Court of First Instance in Baler, Aurora, Quezon. At that time, it took all of nine hours to reach Baler; so it was nine hours twice a week: early Monday morning to Quezon and then Saturday morning back to Manila. In 1973, she had the privilege of serving on the Court of Appeals, and six years thereafter, at 57, she was appointed Associate Justice of the High Court.

10. *Id.* at 666 (Muñoz-Palma, J., dissenting) (emphasis supplied).

In the Supreme Court, she chaired the Bar Examinations Committee, the first lady member of the Court to do so; the next year, she was asked to preside over the examinations again. It was the second time around, in 1981, that her decision to resign the Chairmanship of the Committee and return the honorarium caused a stir of a magnitude she could never have anticipated nor intended. The facts are, she believes, still well known. She was convinced, under the circumstances that the unauthorized review and the premature disclosure of examination results indicated that, without her wanting it, things had gone out of hand. Popularity and popular acceptance had never appealed to her, and it was never her intention to cause any of her colleagues embarrassment, much less pain. On the other hand, she was not about to risk the credibility of the Bar Examination itself, nor maintain the silence of conspiracy after she had discovered that the goings-on had clearly run contrary to established policy. The records and the reports of the time will bear her out: she accused no one, laid the blame on no one's doorstep, much less did she impute malice to anyone. She resigned because she firmly believed — as she still does now, several years later — that it was the most decent thing for her to do, as some events had transpired that had obviously put matters beyond her control.

Several years later, this time as a retired Justice, she would be asked to chair a Committee composed of esteemed, retired members of the Court, Mr. Justice Jose Feria and Mr. Justice Camilo Quiason, created in the wake of a serious attack both on the credibility of the Bar Examinations as well as on the impartiality of a member of the Court. This time, she could play a more positive, prospective role: making a contribution towards the reform of the Bar Examinations and of its administration.

She retired as Chairperson of the Second Division. She had been on the Court through eight Chief Justices, from the late Chief Justice Fred Ruiz Castro to Chief Justice Andres Narvasa. Soon, thereafter, she was asked to lead the Philippine Judicial Academy through its infancy. Till now, the relaxed pace and blessed tranquility that seem to be the perks of one's golden years have eluded her, but she has no regrets continuing to serve the Judiciary in a field that is novel and challenging although, at times, frustrating.

Van Dorn v. Romillo[11] is one of her *ponencias* that has found its way into almost every hornbook on Persons and Family Relations as well as treatises in Private International Law. It is also an opinion that has been cited in subsequent decisions on related themes. At the time the First Division of the

11. Van Dorn v. Romillo, 139 SCRA 139 (1985).

Court decided the case, the Civil Code,[12] not the Family Code,[13] controlled marriages and marriage incidents. She respectfully submits, however, that, even with the enactment of the Family Code, what was taught in *Van Dorn* is still controlling jurisprudence.

A Filipina, married to a foreigner, had sued for and obtained divorce from her American husband in Nevada. Returning to the Philippines, her ex-husband, arguing that the Nevada divorce had no effect on his marriage to his Filipina wife under Philippine laws, sought to continue to manage the conjugal property. The Court ruled against him. Writing for the Court, she argued that under the laws of his own country that determined his personal status, he was already a divorcé, and hence, no longer the husband of his former Filipina partner. As such, he no longer had any right to manage the conjugal property. She must admit that it was a gut-conviction of the unfairness of allowing a divorcé — one who had been party to the divorce proceedings, who had agreed to the divorce, and who had not contested it — to assert his right to manage the conjugal property and to disclaim the efficacy of the divorce to which he had been an active, consenting party. In effect, the Court held that a foreign divorce could, under certain circumstances, have juridical effects in the Philippines, particularly when, by the national law of a foreigner, his status is altered by the divorce decree.

The Family Code has not brought with it the obsolescence of this doctrine. True, Article 26 of the Family Code, as amended, allows the Filipino spouse to re-marry when his or her foreign spouse obtains a divorce decree allowing the foreigner to re-marry.[14] The operative premise, of course, is if it is the foreigner who sues for and obtains the decree of divorce. The doctrine of *Van Dorn* remains unaffected, however, because the issue there was whether or not a foreigner, against whom a Filipina had obtained a divorce decree, could continue to manage conjugal property even if he participated in the divorce proceedings, consented to divorce, and did not oppose it.

Nolasco v. Pano[15] was a pre-EDSA case, but it raised issues that would be resolutely dealt with in the Constitution and would be crafted in the aftermath of the awe-inspiring, national defining moment that was EDSA.

12. An Act to Ordain and Institute a Civil Code of the Philippines [NEW CIVIL CODE], Republic Act No. 386 (1950).

13. The Family Code of the Philippines [FAMILY CODE], Executive Order No. 209 (1988).

14. *Id.* art. 26.

15. Nolasco v. Pano, 139 SCRA 152 (1985).

At issue was the validity of search warrants issued in connection with the widely reported M/V *Karagatan* arms cache landing. The petitioners came to Court asking Us to void the search warrants, and the Court acceded. Among other observations, she pointed out that the questions asked by the issuing judge were not the searching questions at all that the Constitution had made a condition precedent to the issuance of a search warrant.[16] She also pointed out that there was no particularity as regards the objects to be seized. Clearly, when the enumeration of items that are the object of the search is so broad that almost anything at all can fall under the categories, one is faced with the terrible specter of a general warrant, and this, our laws frown on. The Court enjoined the respondent judge from admitting the evidence obtained from the search done on the basis of the fatally defective warrant.

Many commentators have characterized her juridical inclination as *conservative*. She will not contest that characterization. True, she has always been wary of taking the Court too far afield, especially when the provisions of the law are clear and when settled principles are relevant. In *Garcia v. Board of Investments*,[17] she dissented, and in a very brief opinion, she explained that as the case involved passing on the wisdom, feasibility, reasonableness, and practicability of the transfer and capitalization of the Bataan Petrochemical Plant, the matter was not within the province of judicial inquiry and review.

She has not been unwilling, however, to break new ground — particularly when this was necessary to safeguard core personal and social values. In *Harvey v. Defensor-Santiago*,[18] two American nationals and a Dutch, by way of a Petition for a Writ of *Habeas Corpus*, assailed their apprehension and detention by virtue of Mission Orders issued by then Commissioner Miriam Defensor-Santiago. There were, as yet, no laws defining and penalizing the crime of pedophilia or perverse acts of child abuse. Republic Act (R.A.) No. 7610[19] was yet a long way off. She reasoned for the Court that while *pedophilia* was not, at the time, punished by our statutes, it was nevertheless offensive to public morals and "*violative of the declared policy of the State to promote and protect the physical, moral, spiritual, and social well-being of our youth.*"[20] Absent a statute, she sought anchorage in a clear constitutional provision. The Court ruled that, since the Commissioner of Immigration and Deportation had acted in the interests of the State, the Court was not going to void her orders.

16. PHIL. CONST. art III, § 2.

17. Garcia v. Board of Investments, 191 SCRA 288 (1990).

18. Harvey v. Defensor-Santiago, 162 SCRA 840 (1988).

19. An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, and For Other Purposes, Republic Act No. 7610 (1992).

In the twin cases of *Galman v. Pamaran* and *People v. Sandiganbayan*,[21] she dissented from the majority opinion that ruled to exclude from the evidence introduced before the *Sandiganbayan* the testimonies of the accused before the Agrava Board. The majority had reasoned out that since the accused testified before the Board without invoking their right against self-incrimination, their testimonies before the Board could not be used to incriminate them before the Sandiganbayan. She thought otherwise. She believed that the accused testified before the Agrava Board not as accused, but as mere witnesses. In the criminal case, they were not being asked self-incriminatory questions, and she was unwilling to make their testimonies before the Agrava Board a shield against their prosecution or a bar to evidence against them. At the time, she wrote:

> While the right against self-incrimination is indubitably one of the most fundamental of human rights, [Section] 5 of [P.D. No. 1886] should be construed so as to effect a practical and beneficent purpose and not in such a manner as to hinder or obstruct the administration of criminal justice.[22]

C. Madame Justice Irene R. Cortes

She left our midst much too early on 29 October 1996, when we were still in the organizational stages of the Philippine Judicial Academy. She left as quietly as she had lived with her intellectual endowments, but not without her indelible imprints in the academe and on jurisprudence. She was soft-spoken and always unassuming, but when she spoke, everyone listened, for her words issued not only from a keen intellect, but from an honest conscience and a noble spirit. She also possessed a good sense of humor and till now we still refer to the "*peanut order*" that she had naughtily coined referring to the principle of seniority practiced in the Court.

Even before she donned the robes of a Justice of the Supreme Court, Justice Cortes was already a jurist to contend with. An honor graduate of the University of the Philippines College of Law, she went on to earn a Master of Laws degree from the University of Michigan, and 10 years later, in 1966,

20. *Defensor-Santiago*, 162 SCRA at 848 (citing PHIL. CONST. art II, § 13) (emphasis supplied).

21. Galman v. Pamaran, 138 SCRA 294 (1985) (consolidated).

22. *Id.* at 382 (Melencio-Herrera, J., dissenting).

a Doctor of Jurisprudential Science degree from the same prestigious university, with a doctoral dissertation on the powers of the President — an area of specialization in juridical science that would lend the weight of academic authority to a decision she would write for the Supreme Court several years later. She was one who would never flaunt her academic credentials, however, — and certainly not one to announce the prestigious institutions which she attended for different courses — yet her scholarship and perspicacity always shone through in what she wrote and taught.

Her academic career at the University of the Philippines commenced with an Assistant Professorship in 1954, but talent always stands out, and in 1970, she became Dean of the College. At the time she was appointed to the Supreme Court, she was the holder of the Albino Z. SyCip Professorial Chair in Law and a Member of the United Nations Committee on the Elimination of Discrimination against Women.

The right of the public to information on matters of public concern[23] was the issue in *Legaspi v. Civil Service Commission.*[24] The petitioner came to Court asking that *mandamus* be issued against the Civil Service Commission to compel it to disclose the eligibility of appointees whose qualifications he doubted. The Commission was not too sure that the petitioner had the standing and the right to make such a demand. Justice Cortes, writing for the Court, laid to rest once and for all the question as to the status of the constitutional provision on the right of the public to information on matters of public concern. The Court, through her, held the provision to be self-executory. There was no need for ancillary statutory enactment to give it effect. In matters that had to do with public welfare, a citizen had the right to information, and where this was withheld, the Constitution itself provided him with cause of action.

She reiterated her stand for the right to information in *Valmonte v. Belmonte.*[25] In this case, media personalities claimed their right as citizens to information from the Government Service Insurance System (GSIS) on those who had secured clean loans from it, guaranteed by Madame Imelda R. Marcos. GSIS resisted, claiming that the privacy of its transactions with its clients did not allow such a disclosure. The Supreme Court would not be persuaded, and Justice Cortes, writing for the Court, taught that *mandamus* would issue to compel the GSIS to yield the sought-for information. Significantly, however, Justice Cortes also squarely confronted the elusive

23. PHIL. CONST. art III, § 7.

24. Legaspi v. Civil Service Commission, 150 SCRA 530 (1987).

25. Valmonte v. Belmonte, 170 SCRA 256 (1989).

concept of a "*matter of public concern.*" She argued that because of the public nature of the funds that could be loaned out by the GSIS, information as to the manner in which these funds were loaned and had been managed is a matter of public concern.

Justice Cortes, of course, is best remembered for her *ponencia* in *Marcos v. Manglapus.*[26] It was only expected that the Court *en banc* would ask her to pen the majority opinion. Not only did she specialize in Constitutional Law, she had written precisely on the powers of the President for her doctoral degree — and that was precisely what was in issue in this case. With characteristic precision, Justice Cortes severed the question on the right to travel from the right to return to one's own country. Under international covenants, as well as under the Bill of Rights, the right to travel[27] and the right to return to one's country are distinctly treated. Thus did she reject a facile resolution of the difficult question before the Court by recourse to American precedents on the right to travel. She then enunciated the core issue to be one of Presidential power. Did the President have the right to prohibit the return of a citizen to his country? Justice Cortes first turned to the Constitution and observed that it vested *executive power* on the President — leaving this concept, however, undefined. Was executive power then to be construed as limited to the specific powers dealt with by the various sections of Article VII of the Constitution?[28] If this were so, then the traditional canons of constitutional and statutory interpretation would not allow the assertion of any power not included in the enumeration. She then went on to reason that if the Constitution apportioned legislative power to the Legislature,[29] executive power to the Executive,[30] and judicial power to the Supreme Court and to the other courts constituting the Judiciary,[31] the grant of such powers to each branch must have been plenary. To the Executive then, the Constitution has conferred all of executive power. She then rejected the common statement of the power of the President as *the power to execute laws* since, she reasoned, as both head of government and head of state, he/she possessed all the powers appurtenant to such offices.

Put otherwise, unless proscribed by the Constitution, the President wields all the powers traditionally and commonly wielded by one who is

26. Marcos v. Manglapus, 177 SCRA 668 (1989).

27. PHIL. CONST. art III, § 6.

28. PHIL. CONST. art VII.

29. PHIL. CONST. art VI, § 1.

30. PHIL. CONST. art VII, § 1.

31. PHIL. CONST. art VIII, § 1.

both head of government and head of state. That is to say that Article VII does not enumerate an exclusive list of the powers of the President. Thus, there are *residual powers* that the President may exercise as protector of the general welfare of the people. There having been no showing that the President acted capriciously and whimsically in banning the return of the petitioners, the Court ruled that it was not going to disturb the exercise of Presidential power.

There were very strong voices of dissent, however, and from very distinguished members of the Court. I, however, concurred in Justice Cortes' disquisition and thought it unnecessary to write a separate opinion. I recall that after the decision was released, I received an anonymous letter reminding me that it was President Marcos who had appointed me to the Court of Appeals and to the Supreme Court. Little did they know that, as Chief Justice Teehankee had occasion to state, appointments become *functus officio* once extended. Authority of the appointing power expires. The appointee must discharge the duties of the position as he or she may see fit. Doing so is not a manifestation of ingratitude.

There is one prefatory statement in the *ponencia* that is hardly adverted to whenever this decision is cited. Justice Cortes wrote:

> This case is unique. *It should not create a precedent*, for the case of a dictator forced out of office and into exile after causing twenty years of political, economic and social havoc in the country and who, within the short space of three years seeks to return, is in a class by itself.[32]

I wonder if legal scholars will be willing to treat *Marcos v. Manglapus* as *pro hac vice*, but it does seem to me that what is articulated therein is controlling jurisprudence on the extent of the powers of the President.

It has been asked several times whether or not having a pure academic on the High Court — or in any court for that matter — is a good idea after all. Having sat with Justice Cortes in the Supreme Court and having learned from her in many ways, I have no hesitation in affirming the value of appointing an academic to the High Court. When an academic has the breadth of vision and the boldness in thought of Justice Cortes, then what one gets through such an academic is a whiff of fresh air that can spur paradigm shifts.

D. Madame Justice Carolina C. Griño-Aquino

32. Marcos v. Manglapus, 177 SCRA 668, 682 (1989) (emphasis supplied).

The 24 January 1951 issue of *Manila Times* carried the following report entitled: "423 Examinees Pass Bar Tests: Woman Cops First; UP Student Second:"

> [t]he Supreme Court this noon registered the biggest mortality in the history of the local bar examinations as 893 flunked out of 1,316 candidates in the last bar tests. [32 percent] passed the examinations.
>
> For the third time since liberation, a woman, Carolina C. Griño, a special examinee, topped the 423 successful candidates with an average of 92.05 percent.

The topnotcher that year, Carolina C. Griño, did not carry the name of a school in the list of successful examinees. Rather, after her name was written the letters *Sp.* for, as reported, she was a *special examinee*. At this time, she was *special* in a technical sense: she had finished the first two years of law school at the Colegio de San Agustin at Iloilo. Encouraged by her Law Dean, Felipe Ysmael, however, she moved to the University of the Philippines at Diliman for the last two years of law school. Ironically, it was not a regular graduate of any of the renowned institutions that made it to the very top of the barristers that year, but a *special student*. She was marked out, however, to be *special* in the history of the Judiciary for a more significant reason later in her career. Her professor in Transportation and Admiralty Law, Ramon C. Aquino, won her hand. He went on to become Chief Justice of the Supreme Court, the very same High Court to which she would be promoted as Associate Justice after her husband's retirement. It is not often in the world that a husband and a wife are privileged to sit on the highest court of the land — but of course, this was no ordinary couple.

The published collection of Justice Aquino's *ponencias* is entitled, *A Life in the Law*.[33] It is a most apt and accurate title. Of law practice, she had more than sufficient exposure. She started as an Assistant Attorney at the Claro M. Recto Law Office in 1951, and from 1964 to 1971 she was with the SyCip, Salazar, Luna, Manalo & Feliciano Law Offices, starting as an Assistant Attorney and rising to be a junior partner of the firm. She was District Judge of the Court of First Instance in 1971, and eight years after, was promoted to the Court of Appeals. Of the second highest court of the land, she became Presiding Justice in 1987, a position she relinquished one year later upon her appointment to the Supreme Court.

33. CAROLINA G. AQUINO, A LIFE IN THE LAW: RECENT DECISIONS OF JUSTICE CAROLINA G. AQUINO (1993).

Her first *ponencia* for the Court *en banc* was *Pajaro v. Sandiganbayan*,[34] a case that should be referred to more often as it enunciates an important rule in the hierarchy of Courts. In many respects, the Sandiganbayan has been considered co-equal with the Court of Appeals; but there are limits to this categorization.

The facts are themselves interesting. The petitioner was charged before the Sandiganbayan with the violation of R.A. No. 3019,[35] the law penalizing graft and corrupt practices. It was alleged that, to the damage and prejudice of the government, he had accepted and agreed to the promissory note of a movie company that had obliged itself to pay its delinquent taxes for a lesser rate of interest and within a period not fixed by the Local Tax Code. The same complainant who initiated the charges against the petitioner, however, brought a special civil action against city officials asking that the promissory note be annulled and the taxes due the government from the movie company be collected immediately. The lower court, and, thereafter, the Court of Appeals, ruled that the promissory note was not defective, and that there was nothing illegal about it, for there was nothing to preclude the collection of whatever balance might still be due the government. On the basis of this finding of the Court of Appeals, the Tanodbayan moved the Sandiganbayan to dismiss the criminal case against the petitioner, but the Sandiganbayan refused. The Supreme Court ordered the Sandiganbayan to dismiss the case and, through Justice Aquino, laid down the rule as regards the relation between the Court of Appeals and the Sandiganbayan:

> To continue the prosecution of the petitioner despite the Court of Appeals' finding that his acceptance of McAdore's promissory note was not illegal and did not unduly benefit McAdore, nor did it cause damage and prejudice to the City Government of Dagupan would, in effect, diminish the authority and jurisdiction of the second highest court of the land, and denigrate the binding force of its final judgment.
>
> ...
>
> In view of the findings of the Court of Appeals in CA-G.R. No. SP 07493, April 30, 1987, the prosecution of petitioner in the Sandiganbayan should be discontinued for the Sandiganbayan may not review, revise, or reverse the findings of the Court of Appeals in relation to which the Sandiganbayan, a special court with special and limited jurisdiction, is inferior.[36]

34. Pajaro v. Sandiganbayan, 160 SCRA 763 (1988).

35. The Anti-Graft and Corrupt Practices Act, Republic Act No. 3019 (1960).

36. *Pajaro*, 160 SCRA at 770.

This *ponencia* carried with it the unqualified concurrence of all the other members of the Court, I, among them. Because of Mr. Justice Sarmiento's association with one of the law firms representing one of the parties, he had recused himself.

Members of the Judiciary will also gratefully remember her for having penned *Re: Application for Retirement under R.A. No. 910 of Associate Justice Ramon B. Britanico of the IAC*.[37] At 59, Justice Britanico, in compliance with Proclamation No. 1, following the establishment of a revolutionary government in the wake of EDSA I, tendered his courtesy resignation. President Corazon C. Aquino accepted his resignation. He had served the government for over 32 years, and 10 years of these were with the Judiciary. He prayed the Court to allow him the benefits granted by R.A. No. 910.[38]

The Court, through Justice Aquino, conceded him the benefits he prayed for. He fell under the category, the Court ruled, of those who *resign by reason of their incapacity to discharge the duties of their office*. The High Court reiterated the doctrine that a *courtesy resignation* is not, in fact, a resignation but a submission to the will of the appointing authority. It also refused to identify a courtesy resignation with a voluntary resignation. Since there is no age requirement for one who resigns by reason of incapacity to discharge his office to be able to benefit from the provisions of the law, Justice Aquino wrote that Justice Britanico was eligible to receive the benefits granted by R.A. No. 910. Following the founding of a revolutionary government — albeit born of a peaceful, bloodless, and precedent-setting struggle — this *ponencia* was itself bold and precedent-setting. It effectively held that benefits that vest on a person under a former regime need not be voided because of a change of regime, no matter how revolutionary. It also lent a protective, legal category to a situation brought about by a political maneuver, and so strengthened the position of those who serve in the Judiciary.

Ebralinag v. The Division Superintendent of Schools of Cebu[39] received mixed reviews. Earlier, in *Gerona, et al. v. Secretary of Education, et al.*,[40] the

37. Re: Application for Retirement under R.A. No. 910 of Associate Justice Ramon B. Britanico of the IAC, 173 SCRA 421 (1989).

38. An Act to Provide for the Retirement of Justices of the Supreme Court and of the Court of Appeals, for the Enforcement of the Pensions hereof by the Government Service Insurance System, and to Repeal Commonwealth Act Numbered Five Hundred and Thirty-Six, Republic Act No. 910 (1953).

39. Ebralinag v. The Division Superintendent of Schools of Cebu, 219 SCRA 256 (1993).

40. Gerona, *et al.* v. Secretary of Education, *et al.*, 106 Phil. 2 (1959).

Supreme Court refused to exempt a student from the obligation to salute the flag and to render it honor on the grounds of religious conviction. The Court held that the flag was not an image, but a symbol of the Republic of the Philippines, and being a Jehovah's Witness did not provide anyone with legal excuse to not salute it. The Court thought it was time to review the doctrine. Through Justice Aquino, the Court held that, on account of the exulted rank of religious freedom[41] in our hierarchy of liberties — *"for it involves the relationship of man to his Creator"*[42] — and there be no showing that refusal to salute the flag would visit a serious threat to public safety, the expulsion of Jehovah's Witnesses on the ground of their refusal to participate in flag ceremonies was not justified. The dangers feared in *Gerona*, Justice Aquino observed, had not come to pass, and their refusal to participate in flag ceremonies was not disruptive of the reverence others of a different persuasion showed the symbol of the country. While the abandonment of *Gerona* is remembered in the *Ebralinag* case, a gem — not only of juridical thought but of historical insight — is to be found in the closing words of the *ponencia*:

> Before we close this decision, it is appropriate to recall the Japanese occupation of our country in 1942-1944, when every Filipino, regardless of religious persuasion, in fear of the invader, saluted the Japanese flag and bowed before every Japanese soldier. Perhaps, if petitioner had lived through that dark period of our history, they would not quibble now about saluting the Philippine flag. For when liberation came in 1944 and our own flag was proudly hoisted aloft again, it was a beautiful sight to behold that made our hearts pound with pride and joy over the newly-regained freedom and sovereignty of our nation.
>
> Although the Court upholds in this decision the petitioners' right under our Constitution to refuse to salute the Philippine flag on account of their religious beliefs, we hope, nevertheless, that another foreign invasion of our country will not be necessary in order for our countrymen to appreciate and cherish the Philippine flag.[43]

Another of Justice Aquino's landmark *ponencias* was *Bondoc v. Pineda*,[44] a case in which I was involved as Chair of the House of Representatives Electoral Tribunal. On the day a judgment of the Tribunal was to be promulgated, the Secretary General of the House of Representatives gave

41. PHIL. CONST. art III, § 5.

42. *Ebralinag*, 219 SCRA at 270 (emphasis supplied) (citing German v. Barangan, 135 SCRA 514, 530-31 (1985) (Fernando, C.J., separate opinion)).

43. *Id.* at 273.

44. Bondoc v. Pineda, 201 SCRA 792 (1991).

the Tribunal notice that the House was withdrawing the nomination and rescinding the election of one of the members of the Tribunal from the dominant political party who had, however, cast his vote in favor of the protestant, who came from the opposite party. Clearly, it was an attempt on the part of the dominant political party to thwart a decision of the Tribunal unfavorable to one of its members — and it was going to do this by attempting to change the composition of the Tribunal.

Mr. Justice Isagani A. Cruz, Mr. Justice Florentino P. Feliciano, and I, then composing the judicial component of the Tribunal, staged a virtual walk-out, since we were distressed that the Tribunal's independence was about to be seriously impaired. Before the Supreme Court, the protestant questioned the maneuvers of the dominant party. Justice Aquino put the issue with succinct clarity:

> Is the House of Representatives empowered by the Constitution to interfere with the disposition of an election contest of the House Electoral Tribunal through the ruse of 'reorganizing' the representation in the tribunal of the majority party?[45]

Arguing from the constitutional provision that made the Electoral Tribunals the *sole judge* of contests relating to the election of senators or of representatives,[46] Justice Aquino, for the Court, argued that the Electoral Tribunal was *created to function as a non-partisan court ... a non-political body in a sea of politicians*. To discharge its duty as sole judge, it had to be independent. If its membership could be altered so as to alter the judgments it rendered, it could not be independent.

The Court then annulled the resolution of the House withdrawing the nomination and rescinding the election of the representative who had incurred the ire of his party-mates. The Court went further. Since the decision of the House of Representatives Electoral Tribunal had already been inordinately delayed, the Court declared that *in the interest of justice*, the Electoral Tribunal's decision was *duly promulgated*.[47]

It is by reason of the circumstances of this case that the Judicial Reforms Office of the Philippine Judicial Academy has batted for the amendment of the provision on proportional representation found in Article VI, Section 17 of the 1987 Constitution,[48] and to provide instead for a return to equal

45. *Id.* at 806.

46. PHIL. CONST. art VI, § 17.

47. *Bondoc*, 201 SCRA at 813 (emphasis supplied).

48. PHIL. CONST. art VI, § 17, states that:

representation mandated in the 1935 Constitution.[49] Thereby, no party or coalition of parties can dominate the legislative component in the Tribunal.

E. Madame Justice Flerida Ruth P. Romero

Justice Romero introduces herself best when, of the primary duty of a judge — arriving at a judgment — she writes:

> Early in my term as Justice, I came to realize that the purported *via dolorosa* trodden by judges in arriving at a decision need be neither agonizing nor unduly prolonged if one has erected a solid foundation of moral values and ethical guidelines through the years. Resolutely applied, one can, resisting pressures and temptations, cut the Gordian knot of indecision.

Thus does Justice Flery, to her friends, unabashedly profess the relevance of moral values and ethical standards to the task of applying the law and resolving controversies. There is nothing to be found of that apparently fashionable posture of being wary of the intrusion of morals into the province of the law. Once more, Justice Romero puts it in a direct a manner as possible: "[w]hen I release a decision as *ponente* or a separate opinion as dissenter, the litigants, no less than the public, can be assured that it has passed through the exacting prism of intellectual, emotional and moral rumination."

Hers then has been the confidence born not of intellectual arrogance, but of wholeness, succinctly called *integrity*.

She was conscripted from the ranks of academe — in large measure, because of her formidable stature as an academic — and it was as an academic that her contribution to the Supreme Court and to Philippine jurisprudence has been invaluable. After only three years as a Member of the Philippine Bar, she attended graduate school at the Indiana University

> The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman.
>
> *Id.*

49. 1935 PHIL. CONST. art VI, § 11 (superseded 1973).

School of Law where she earned a Master of Laws degree in 1955 and an LL.D. (*honoris causa*) in May 2001. From 1964 to 1985, she was a law professor at the University of the Philippines, where eager students sat at her feet to be taught by a real *guru* in Civil Law and Labor Relations Law, her two areas of particular expertise. From 1979 to 1985, she was Director of the University of the Philippines Law Center where she, with others, launched an innovative program: Popularizing the Law. She wanted Filipinos at the grassroots and even high school students to know the law, to be familiar with their rights, and to be apprised about the remedies available to them as they sought redress of grievances.

She has always had a fondness for Labor Law and for labor issues. On 8 November 1972, she was appointed the First Labor Arbitrator under Presidential Decree No. 21.[50] As a retired Justice, she was asked by the International Labor Organization to be judge of its Administrative Tribunal in July 2001.

As the country buckled down to the task of writing a constitution that would enshrine the ideals that the nation had so gallantly stood for at EDSA, there was need for a Secretary-General of the Constitutional Commission whose task was *legislation of the highest order* — rewriting the fundamental law of the land. For the first time in Philippine history, a woman was at the helm of government. She had chosen a woman to chair the Commission, Madame Justice Cecilia Muñoz-Palma, and she chose another woman to be its Secretary-General, Madame Justice, then Professor, Flerida Ruth P. Romero. There was, of course, a more compelling denominator than gender: They were — intellectually and morally — eminently qualified.

De Santos v. Angeles[51] had to do with the Civil Code's convoluted classification of children, and the issue in this case was whether or not natural children by legal fiction could be legitimized. She first accounted for this strange category: it was a fiction resorted to so that children born of a marriage void *ab initio* could have a classification that would equate them with acknowledged natural children, since the latter category applied to illegitimate children *conceived or born of marriages which are void from the beginning*. Would the subsequent marriage of such a child's parents — of whose bigamous union he is born — operate to legitimize such a child?

Justice Romero observed that the Civil Code was very keen on classifying children *vis-à-vis* their parents. She inferred that it was the intent

50. Creating a National Labor Relations Commission and for Other Purposes, Presidential Decree No. 21 (1972).

51. De Santos v. Angeles, 251 SCRA 206 (1995).

of the law to differentiate the substantive rights accruing to one class as against others. *Natural children by legal fiction* are conceived and born out of illicit relations — and the spirit as well as the tradition of Spanish Civil Law was unwilling to confer the benefits of legitimation to children born of those unions on which it frowned.

Although later on reversed by the Court *en banc*, Justice Romero's *ponencia* in *Dans, Jr. v. People* and *Marcos v. Sandiganbayan*[52] cannot be passed over in silence for they remain samples of Justice Romero's incisiveness and her courage and steadfastness in the face of might and influence. She commenced the opinion with words that could very well have been Kahlil Gibran's own.

> A man's signature, even if merely a flourish or even if indecipherable, may signify authority, agreement, acknowledgment and ownership. As indelible as his fingerprints, dental records or DNA genetic map, it denotes trust and honor. But the same trust and honor may be tainted by polluted intentions, as when signing is done in bad faith, or to perpetrate a fraud, to deceive others, or to commit a crime. The petitions at bar will illustrate how one's John Hancock can bring a man, or a woman for that matter, to ruin.[53]

Justice Romero was beyond the pettiness of the vengeful — and the very same party whose plea she could reject in one case, she had no trouble favoring in another. While, in this case, she affirmed the conviction of Madame Imelda Romualdez-Marcos, she had earlier voted to affirm Ms. Marcos' victory at the polls in 1995. In *Romualdez-Marcos v. Commission on Elections*,[54] she wrote a separate opinion, voting in favor of Ms. Marcos, because she wanted to underscore the applicability of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).[55] In the spirit of the Convention, Justice Romero would not concede that a widow was bound to the domicile of her departed husband, or that upon his demise, she reverted to her domicile of origin. In exercising her liberty, she may opt to re-establish her domicile of origin, or adopt a new one. Hers was a stirring call to her colleagues in the Court:

> [a]s the world draws the curtain on the Fourth World Conference of Women in Beijing, let this Court now be the first to respond to its clarion call that 'Women's Rights are Human Rights' and that 'all obstacles to women's full participation in decision-making at all levels, including the family, should be removed.' Having been herself a Member of the Philippine Delegation in the International Women's Year Conference in Mexico in 1975, this writer is only too keenly aware of the unremitting struggle being waged by women the world over, Filipino women not excluded, to be accepted as equals of men and to tear down the walls of discrimination that hold them back from their places under the sun.[56]

52. Dans, Jr. v. People, 285 SCRA 504 (1998) (consolidated).
53. *Id.* at 509.
54. Romualdez-Marcos v. Commission on Elections, 248 SCRA 300 (1995).
55. Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46 (1980).

People v. Naparan[57] reviewed the conviction of the accused for illegal recruitment on a large scale. It is a unique Romero *ponencia* for, while the body is written in English, its penultimate portion, prior to the dispositive portion, is written in Filipino. Sounding the warning bell against illegal recruiters and articulating the sympathy of the Court for their hapless victims, Justice Romero wrote:

> *Totoóng nápakarami na ang ating kaawa-awang kababayan na napagsamantalahán na ng gayón. Nakalulungkót na kahit na magbabalâ ang pámahalaán at ang mga opisinang kinauukulan, hindî rin dinidinggín ng mga nais na mapabuti ang kalagayan nilá sa buhay sa pamamagitan ng pangingibáng bayan.*
>
> *Nápapanahón nang iparatíng sa mga salarín na iyán na hindî pahihintulutan ng pámahalaán ang gayóng malawakang pangloloko sa mga maralitâ na masasabing ang kasalanan lamang ay 'naghangád ng kagitnâ, isang salop ang nawalâ.' Kamí ay máasahang magpataw ng akmâ at nauukol na parusa na bilanggô habang buhay at multá sa halagáng Isáng Daang Libong Piso (₱ 100,000.00) sa katulad ng nasasakdál sa kasong itóng nakasalang sa Kátaastaasang Hukuman ngayon. Umaasa kamíng itó ay magsisilbing halimbawa sa mga waláng awà nating kababayan na patuloy ang gawáng panlilinláng sa kaniláng kapwà Pilipino.*[58]

To Justice Romero can be attributed the present rule that a rape victim, when the accused is found guilty beyond reasonable doubt, is entitled to a ₱50,000.00 indemnity, without need for her to prove her suffering — as the suffering and anguish of any person violated by a dastardly act of rape should be obvious.

V. THE INCUMBENT LADY JUSTICES[59]

The time has not yet come to speak of our incumbent lady Justices in the same manner that we have of those before them whose feminine presence

56. *Romualdez-Marcos*, 248 SCRA at 348 (Romero, J., separate).
57. People v. Naparan, 225 SCRA 714 (1993).
58. *Id.* at 724-25.
59. The information given in this portion refer to incumbent lady Justices and facts that were true at the time of the delivery of this speech in 2001.

has graced the Supreme Court. They must be given every opportunity to add their own lines, write their own pages to that on-going journal that is the history of the Court, and to enrich its tradition with their presence, their suasion and their insight. An account of Feminine Grace in the High Court would, however, be incomplete were we to leave out all reference to them.

A. Madame Justice Minerva Gonzaga-Reyes

Justice Gonzaga-Reyes brought with her impressive academic distinctions. She graduated with a Bachelor of Laws degree from the University of the Philippines, *magna cum laude*, in 1954. She is one of the six with that great honor emblazoned after their LL.B.s, the other two being Justice Florentino P. Feliciano and Justice Teodoro R. Padilla, both of whom also made it to the Supreme Court.

When asked which aspects of her academic background and professional experience have served her in good stead, Justice Minerva Gonzaga-Reyes referred to her years with the Department of Justice, besides, of course, her stint in the Court of Appeals. As a law student, she joined the Department of Justice and clerked there. Diligence and innate brilliance propelled her to the highest echelons of the Department: Chief State Counsel, Deputy Minister of Justice, and then Acting Minister of Justice in 1986. She was in the Court of Appeals for 13 years before her promotion to the Supreme Court. She left that court without any case backlog. Her colleagues in the appellate court remember her for her incisive mind, friendly disposition, and unassailable integrity.

With the elections just over and our courts readying for the expected influx of election contests and protests, *Jaafar v. Commission on Elections*,[60] and *Recabo, Jr. v. Commission on Elections*,[61] both penned by Justice Reyes, should be of timely interest. In some ways, *Jaafar* predated the famous Gore-Bush controversy over automated elections — and the failure of technology — that would be laid at the doorstep of the United States Supreme Court. In the local case, the Commission had ordered a manual recount after it was alleged that the automated system failed. The petitioner sought to have the Commission's order nullified, but noting prematurity in the petition, the Court declined. In *Recabo*, on the other hand, in issue was the evidentiary value of *certificate of votes* and the *certified list of winning candidates*. The Court, speaking through Justice Reyes, held that while these could be evidence of tampering, falsification, and other forms of fraud, they did not constitute

60. Jaafar v. Commission on Elections, 304 SCRA 672 (1999).

61. Recabo, Jr. v. Commission on Elections, 308 SCRA 793 (1999).

conclusive evidence of the results of an election in the same way that election returns did.

Agbay v. Deputy Ombudsman for the Military[62] addressed two important issues: first, in view of the civilian character of the Philippine National Police, was it legal for the Deputy Ombudsman for the Military to take cognizance of cases against them? Second, to forestall liability under Article 125 of the Revised Penal Code,[63] — Delay in the Delivery of Detained Persons to the Proper Judicial Authorities — was delivery to the first-level trial court that had authority to conduct preliminary investigation alone sufficient? The Court taught, through Justice Reyes, that even conceding the categorically civilian character of the Philippine National Police, there was nothing repugnant about assigning cases involving police officers to the Deputy Ombudsman for the Military — himself a civilian. As regards the propriety of delivery of a detained person to a first-level trial court, Justice Reyes characterized as central the authority of the court to release from commitment or to commit. Since the first-level trial court had authority to do that, delivery of the detained person to the first-level trial court obviated any liability under Article 125 of the Revised Penal Code.

B. Madame Justice Consuelo Ynares-Santiago

This is Justice Consuelo Ynares-Santiago's 28th year in the Judiciary. For 13 years, starting in 1973, she was judge of the Municipal Trial Courts of Cainta, Malabon, Caloocan, and Pasig. That was a long time, indeed, presumably brought about by one of her decisions in that court acquitting Alejandro Roces who was accused of violation of Section 178, Article 16 of the 1978 Election Code[64] for having boycotted the elections. She then became a Regional Trial Court judge for four years before her promotion in 1990 to the Court of Appeals, which was home to her for eight years. On 6 April 1999, she was elevated to the Supreme Court and is now on her 3rd year.

Though relatively new on the Court, some of her *ponencias* have drawn considerable attention and commentary. In *People v. Webb*,[65] in issue was the

62. Agbay v. Deputy Ombudsman for the Military, 309 SCRA 726 (1999).

63. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815, art. 125 (1932).

64. Enacting 'The 1978 Election Code,' Presidential Decree No. 1296 (1978) (superseded by Omnibus Election Code of the Philippines, Batas Pambansa Blg. 881 (1985)).

65. People v. Webb, 312 SCRA 573 (1999).

deposition-taking of more witnesses for Hubert Webb. While most Remedial Law experts were alert to whatever the Court would hold on the matter of allowing depositions in criminal cases, she wrote for the Court that whatever more would be affirmed or corroborated through the depositions was already before the trial court. Being merely corroborative and cumulative, deposition-taking could be dispensed with. Some would have preferred her to address the sticking point of Remedial Law squarely, but Justice Santiago did not see the need to do so, as her overriding concern was the expeditious disposition of the case. Quite significantly, the 2000 revisions to the Rules of Criminal Procedure[66] did not incorporate what some hoped would have been the more progressive attitude towards depositions in criminal cases.

The issue in *People v. Jalosjos*,[67] was whether or not Congressman Romeo Jalosjos, convicted for rape, could be allowed to attend the sessions and the committee hearings of the Legislature. It had been argued that to deny him the opportunity to so participate would deprive the people who had elected him of representation. The Court brushed aside the contention and refused to grant the jailed representative's motion. To grant it, Justice Santiago wrote, would be to make of him virtually a free man and to render nugatory the sentence imposed on him.

Of late, *Liang v. People*[68] caused quite a stir. The petitioner, a foreigner, had defamed a Filipina co-employee at the Asian Development Bank. He sought to ward off criminal prosecution by claiming immunity under the agreement between the Bank and the Philippine government. Through Justice Santiago, the Court ruled that as immunity could be claimed only for one's official acts, and defaming another could never be an official act, the petitioner was not entitled to immunity. Laying down an important rule for Public International Law *vis-à-vis* domestic courts, Justice Santiago maintained that courts were not bound by declarations of the political branches of government — such as the Executive, through the Department of Foreign Affairs — that a party before it was entitled to immunity. As expected, the Bank flexed its muscle in an attempt to protect its official, at one time even raising the possibility that it would withdraw from the Philippines. This did not in any way intimidate the Court, and when the petitioner moved it to reconsider its verdict, once more, through Justice Santiago, the Court denied his claim to immunity with finality.

66. 2000 REVISED RULES OF CRIMINAL PROCEDURE.

67. People v. Jalosjos, 324 SCRA 689 (2000).

68. Liang v. People, 323 SCRA 692 (2000).

Chief Justice Davide had occasion to say that Justices Minnie Reyes and Elo Santiago were a *formidable duo* in the Court.

C. Madame Justice Angelina Sandoval-Gutierrez

That *duo* has now become a *trio*.

A pianist on the High Court — that is one apt way of introducing Madame Justice Angelina Sandoval-Gutierrez. She finished her Music Teachers Course in piano; but she was called to produce harmony, not only on the keyboard, but in human affairs, and her law degree from the Faculty of Civil Law of the University of Santo Tomas prepared her for this. Her career in the Judiciary commenced in 1983 with her appointment as judge of the Metropolitan Trial Court of Manila. Three years later, she was a Regional Trial Court judge. Five years later, she was on the Court of Appeals, and after having been an appellate court justice for nine years, she was named to the Supreme Court on 22 December 2000.

With the excitement of the newest member of the Court, she recalls the immense gratification it gave her when the Court *en banc* approved her first *ponencia* unanimously. She finds comfort, solace and warmth in the company of her colleagues, she says, *during luncheon, after an en banc session.*

In *Republic v. Sandiganbayan*,[69] the Court was asked to direct the *Sandiganbayan* to deposit the proceeds held in escrow realized from the sale of an airplane erroneously sequestered. The Court ordered the *Sandiganbayan* to release the fund held in escrow. Although, however, the District Court of Texas had found the Republic of the Philippines liable for the erroneous act of the Presidential Commission on Good Government (PCGG) in sequestering and selling the aircraft, the Supreme Court, through Justice Gutierrez, held that, in so doing, the PCGG had exceeded its authority, and therefore its acts could not be imputed to the Republic of the Philippines, against which, there was no cause of action.

Once more, an election case recently decided by the Supreme Court, through Justice Gutierrez, should be of particular interest these days. *Gementiza v. Commission on Elections*[70] asked whether or not a protestee could, as in civil and criminal cases, file a Demurrer to Evidence after the protestant had presented his evidence. Reasoning from the nature of election protests — which demand expeditious and speedy resolution — the Court

69. Republic v. Sandiganbayan, 354 SCRA 756 (2001).

70. Gementiza v. Commission on Elections, 353 SCRA 724 (2001).

held, through a *ponencia* of Justice Gutierrez, that such a procedural maneuver was impermissible.

Justices Gonzaga-Reyes, Ynares-Santiago, and Sandoval-Gutierrez are the three incumbent members of the Supreme Court. This is the second time in the Supreme Court's centennial history that we can count with three lady Justices serving at the same time in the Court.

VI. CONCLUSION

Is there a gender perspective in deciding cases? This question, which I asked the lady members of the High Court, both retired and incumbent, elicited different responses. While two were very direct in saying there was none at all, one was equally certain that *it is inevitable that there be a gender perspective in deciding cases.*

I submit that the fact that a magistrate is a woman is more than mere fortuity. One appreciates the evidence and renders a verdict as a woman, although it is, concededly, exceedingly more difficult to isolate the femininity that goes into appreciation of evidence and arriving at a decision.

As regards gender being an issue, it should be a non-issue when one deals with eligibility for membership in the Judiciary — and particularly a seat on the High Court.

Quite significantly, none of the lady Justices of the High Court ever had to deal with discrimination against them or unfavorable bias. None of them had ever to prove her worth and to measure up to standards imposed on them. Except for the courtesies that are extended ladies, their views were listened to and discussed with seriousness, not because they were women, but because they were juridically sound. This augurs well for the future of women in this exulted Bench.

It is important that a woman magistrate on the High Court sit as a woman, for this can be her contribution to the Judiciary and to jurisprudence. But it is also important that she be listened to, that her views go into shaping legal and judicial policy and form, that her vote be assiduously considered and zealously guarded, not because she is a woman, but because she is a magistrate, a guardian of the law and a guarantor of its protection and its liberties.

The symbol of justice is often shown as a woman blindfolded and holding the scales of justice. Women judges are living in that image.

In addressing the Philippine Women Judges Association, former Chief Justice Marcelo B. Fernan pointedly stated:

> The nobility of our efforts brings home the truth that it was not a trick of accident or a twist of whim, neither was it a turn of masculine idealism nor pure symbolic license that justice assumed the form and visage of a woman — justitia.
>
> Justitia — with eyes blindfolded, her hands holding the scales of justice aloft endures, to remind us all that in human society, women above all, have the capacity to see the affairs of humankind, not with the eyes of men or women, but with the heart and mind of a human being who knows that justice, the law, as well as rights, freedom and dignity, are beyond the limitations of gender — they belong to all. Justitia has her best children in the Philippine Women Judges Association.[71]

As a parting thought, and speaking for feminine grace in the Judiciary, I pray with them: "Let God's power shine in our strengths; Let God's power assist us in our inadequacies; Let God be the security of our lives."

I submit.

71. Justice Marcelo B. Fernan, Philippine Women Judges Association, Keynote Address in Proceedings of the 1991 National Conference Seminar on Judicial Objectives and Approaches (Sep. 13-14, 1991).