THE JUDICIARY AND THE CHALLENGES OF THE TIMES*

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I. INTRODUCTION

This subject, *The Judiciary And The Challenges Of The Times*, offers a wide landscape of inquiry. Do we intend to explore the role of the Judiciary within the framework of the whole complex social system? Are we to delve into the relationship of the Judiciary with the other democratic institutions in place in society today? Or are we to assess the Judiciary's powers and functions, and how they are or can be mobilized to address perceived needs of the national community?

To limit our discussion, I have taken liberty of formulating a more forthright issue which we can comfortably tackle within the constraints of time and opportunity given us in this gathering. What is the role of the Judiciary in the collective struggle to revitalize Philippine democracy?

II. CHALLENGES OF THE TIMES

The EDSA Revolution in 1986 ended a thirteen-year dictatorship. It also offered to the Filipino a threshold opportunity to restore the full vigor of the democratic institutions and processes that constitute his vision of an independent republic.

But seizing that opportunity put him to face with an array of formidable challenges -- a plundered economy that left more than seventy percent of the population in abject poverty, a legacy of massive corruption in government that created a culture of public resentment and mistrust against those wielding political power, and a political system tailored to perpetuate one-man rule at the expense of citizen's rights and public liberties.

After three difficult years, we have witnessed the restoration of democratic institutions and processes. A new Constitution was drafted and ratified. The popular will, expressed through a series of free elections, has re-established a bicameral legislature and the institutions of local

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government. A reorganization of the Executive Branch with an accompanying overhaul of the bureaucracy was implemented. And the Judiciary was reorganized.

The more difficult task is at hand -- the harnessing of these institutions and processes to bring to our people the blessings of democracy, social justice, human freedom, human dignity and a better quality of life.

In this task, what are our expectations from the Judiciary? What directions must the Judiciary pursue?

III. The Judiciary In a Democratic Constitutional Government

In a democratic constitutional government, the Judiciary is vested with a special vital function. It is a *defensor fidei*, a watchman of the constitutional edifice. Alexander Hamilton said, "The courts of justice are to be considered as the bulwarks of a limited constitution," and as an "excellent barrier to ... encroachments and oppression."[1]

Thus, in *Osborn v. Bank of the United States*[2] judicial power was described as follows:

> Judicial power, as contradistinguished from the power of the laws has no existence. Courts are mere instruments of the law, and can will nothing. When they are said to exercise discretion, it is a mere legal discretion to be exercised in discerning the course prescribed by law; and when that is discerned, it is the duty of the courts to follow it. Judicial power is never exercised for the purpose of giving effect to the legislature; or, in other words, to the will of the law.[3]

The Judiciary, therefore, is the **ultimate** guardian of the constitutional order and the rule of law. I underscore the word "ultimate " because securing the constitutional order and the rule of law is a shared burden of the three branches of government and the community of citizens, but the Judiciary acts as the forum which determines the constitutional fidelity of any act or policy, as well as ensures that the mandate of the law is upheld in any question, issue or controversy submitted to it

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1 John Agresto, **The Supreme Court and Constitutional Democracy**, 21.

2 9 Wheaton 738

3 *Id.*, at 866.

From a larger perspective, however, it is submitted that the Judiciary's true functions in a democratic society are to see that our laws apply to secure justice for every man, and that the rights, liberties, and dignity of every citizen enjoy real effective protection of the law.

Indeed, securing the arena of justice, freedom and dignity in society can never be an exclusive responsibility of the courts. Especially since in the allocation of governmental powers, the Judiciary cannot intervene on its own unless its authority is invoked in justiciable or litigable claims and controversies by proper parties.[4]

But such an assertion cannot diminish from the pivotal responsibility of the Judiciary to guarantee that justice be a living, civilizing and sobering principle in society. For when the citizen fails to reap justice from other available fora, he turns to the courts for ultimate refuge. In the courts, the judicial officers, lawyers and other forces within the judicial system, the citizen sees the kind and quality of justice that government and our system of laws are able to dispense.

If the citizen receives from the courts, the lawyers and other judicial officers warped and corrupted justice, would he not lose faith in the government's capability to protect his rights? Would he not lose trust in the potency of the law to uphold his dignity? Would he still believe he belongs to a community of equals in a truly democratic society?

IV. The Right to Justice

The right to justice is vested in every citizen by the aggregate of various constitutionally protected rights among which are the rights to due process,[5] equal protection of the laws,[6] free access to the courts[7] and the right to life, liberty and dignity.[8]

Upon the Judiciary rests the primary responsibility to uphold and protect this right to justice. In this task, how has the Judiciary fared?

A white paper submitted to the Supreme Court just after the EDSA

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4 People v. Vera, 65 Phil. 56 (1937). *See also* Dumlao v. Commissions on Elections, 95 SCRA 392, *per* Melencio Herrera, J.; Tan v. Macapagal, 43 SCRA 677, 681, *citing* Planas v. Gil, 67 Phil. 62,73.

5 Art. III, Sec. 1, 1987 Constitution.

6 *Id.*

7 Art. III, Sec. 11, 1987 Constitution.

8 Art. II, Sec. 11; Art. III, Sec. 1, 1987 Constitution.

revolution identified three critical weaknesses of the Judiciary -- questionable independence, vulnerability to ethical corruption, and a general impotence of institutional structures and processes -- all of which combined to hamper the Judiciary's ability to respond swiftly, fairly and effectively to the people's yearnings for justice.

Thirteen years of one-man rule[9] brought unprecedented assaults against the independence of the Judiciary that it was transformed into almost total subservience to the Executive, and not to the law. The Judiciary was used to clothe the dictatorship and its acts with the vestments of legality and constitutional fidelity.

The downgrading of judicial prestige, caused by the glorification of military tribunals, the instability and insecurity felt by many members of the judiciary due to various causes, both real and original, and the many judicial problems spawned by extended authoritarian rule which effectively eroded judicial independence and self-respect, will require plenty of time and determined efforts to cure.[10]

Judicial office became subject to political patronage and many judges and lawyers were willing to compromise judicial office and transform the courts into trading zones of rights and claims for the highest price.

Moreover, the judicial machinery was burdened with clogged dockets,[11] and procedural rules that delayed instead of facilitated litigation and the disposition of cases.

A judicial system suffering from these maladies can never be a safe haven for our people's right to justice. It became imperative, that in rebuilding our democratic institutions from the rubble left behind by the dictatorship, judicial reform be a priority in the national agenda.

V. Blueprint for Judicial Reform

Our blueprint for judicial reform is aimed at three major objectives: an independent judiciary, a moral judiciary and an efficient judiciary. In plain terms, we must put in place a judicial system freed from political

[9] On Sept, 21, 1972, Pres. Ferdinand E. Marcos declared Martial Law and stayed in power until ousted on Feb. 26, 1986 by an unprecedented peaceful revolution more popularly known as the People Power Revolution or EDSA revolution.

[10] Rodolfo Animas v. Minister of National Defense, GR 51747, 29 Dec. 1986, Gutierrez, Jr. J.

[11] In 1986, there were 342,751 cases pending in the courts. *See* Institute on Judicial Administration study statistics.

interference and subject only to the rule of law and the ends of justice. We must have morally upright judges and lawyers and we must operationalize an efficient court system.

A. Judicial Independence

In the pre-Marcos and Marcos eras, political patronage overrode the independence of the Judiciary. Before Martial Law, appointments to the Judiciary were submitted for approval by the Commission on Appointments, and the consequent political horse-trading eroded the primacy of merit and integrity as the best qualifications for judicial office. During Martial Law, Marcos was the sole appointing authority. As such, he made a mockery of security of tenure not only by requiring judges to submit undated letters of resignation, but by using judicial re-organization[12] to justify periodic removals of judges critical of his regime. With judicial officers under constant threat of removal and their tenure dependent on the will of the Executive, judicial independence became a farce.

Under the New Constitution, guarantees to judicial independence are set forth. No law can be passed reorganizing the Judiciary when it undermines the security of tenure of its members.[13] The Supreme Court is empowered to have administrative supervision over all courts and the personnel thereof.[14] The Judiciary shall enjoy fiscal autonomy.[15] The use of the doctrine of political question to bar judicial inquiry of government action prevalent during the Marcos regime is now prevented by an explicit constitutional provision which includes within the ambit of judicial power the duty of courts of justice to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.[16]

Through a Judicial and Bar Council, the Judiciary is now in full control of judicial appointments, thereby barring political patronage from seeping into the process of identifying and screening nominees for judicial

[12] One instance is the Judiciary Reorganization Act of 1980.

[13] Art. VIII, Sec. 2, 1987 Constitution.

[14] Art. VIII, Sec. 6, 1987 Constitution.

[15] Art. VIII, Sec. 3, 1987 Constitution.

[16] Art. VIII, Sec. 3, 1987 Constitution.

office.[17]

To further enhance the integrity of the Judicial and Bar Council's process of screening nominees for judicial office, the list of such nominees is published in a newspaper of general circulation.[18] Such publication encourages the public to inform the Council of the merits of the appointees' qualifications, as well as widens the arena of scrutiny relative to the qualifications of individuals who aspire for judicial office.

B. Moral and Competent Judiciary

The Constitution mandates that members of the Judiciary must be of proven competence, integrity, probity and independence.[19]

In effect, the Judiciary needs good judges. By "good judges" we mean not only morally upright judges, but competent judges who are studied in the law, abreast with current legal developments, and are efficient court administrators and case managers.

To bring in, keep, develop, and harness within the Judiciary good judges, we have undertaken significant reform initiatives.

A Code of Judicial Conduct[20] is being fleshed out to provide a firm ethical framework for our judges. The Code incorporates measures to secure and guarantee discipline as a cornerstone of judicial integrity.

We have also implemented a continuing judicial education program[21] to provide judges and judicial officers opportunities to enhance their legal proficiency as well as keep them informed of current legal developments. Aside from seminars and symposia on vital legal issues, we are disseminating legal information materials[22] inclusive of digests of Supreme Court decisions to judges and lawyers' groups nationwide. Periodic case management and court administration training are also to be implemented so that judges may be better equipped to run the courts as efficiently as we envision them to be.

17 Art. VIII, Sec. 8 (i), 1987 Constitution.

18 *Manila Bulletin*, February 14, 1989.

19 Art. VIII, Sec 7 (3), 1987 Constitution.

20 The Committee drafting the Code is chaired by Justice Irene R. Cortes.

21 Managed by the Institute on Judicial Administration.

22 Supreme Court Committee on Case digests chaired by Justice Irene R. Cortes.

We have also implemented a Judicial Orientation Program[23] whereby new judges, before they assume office, go through a seminar that prepares them for the tasks of magistracy. These orientation seminars focus on sharpening the procedural and evidentiary rule proficiency of judges, as well as provide them with exhaustive lectures on judicial ethics and decorum, communication skills and the preparation and/or writing of decisions.

A program for periodic performance evaluation of judges will also be implemented. The Judicial Planning and Implementing Panel[24] is setting up a monitoring system, initially regionalized, to provide us with solid information on the performance of individual judges and their courts. The performance evaluation takes into consideration the following criteria:

1. Integrity and moral character;
2. Proficiency in the rules of procedure and evidence;
3. Judicial decorum and courtroom demeanor;
4. Attitude and behavior towards lawyers and litigants;
5. Quality of decisions, orders, and rulings;
6. Industry, diligence, and dedication in the performance of judicial functions; and
7. Speed and dispatch in disposition of cases and petitions.

In this regard, the involvement of civic groups, bar associations and the general public is a vital input as our aim is to make our courts accountable for their performance to the people they are bound to serve.

Moral and competent judges are not instant creations of judicial policy or government will. Thus, we have embarked on parallel efforts to improve the quality of legal education in the country. Reform of the legal curriculum is being undertaken to ensure adequate legal training for prospective lawyers and judges, as well as to provide them with a greater immersion into the ethical values which are indispensable to legal advocacy and judicial office. Moreover, the Rules of Court have been amended to require legal work apprenticeship for prospective law graduates.[25]

With the heavy ethical burden of judicial office and the amount of industry and diligence required by daily judicial tasks, many of our more brilliant and exceptional minds in the legal profession have shunned judicial

23 Program Director is Judge Ernani Cruz-Pano.

24 Chaired by Chief Justice Marcelo B. Fernan.

25 Rule 138-A, Rules of Court.

appointment because of the low salaries and minimal benefits given to judicial officers.[26] We have also realized that this situation has made many judges vulnerable to the temptations of corruption. Thus, we sought an upgrading of salary scales and the provision of better benefit packages for judges and court personnel. The present salary standardization bill[27] for government officers and employees brings us closer to this objective.

C. Efficient Court System

The goal of an efficient court system is, indeed, half-won by having morally upright and competent judges and court personnel. The other half, however, is equally important and it includes the streamlining of procedural rules together with the provision of improved facilities and adequate resources for our courts.

The Committee on the Revision of the Rules of Court[28] is presently studying proposed amendments that would cut procedural red-tape and limit avenues for the abuse of technical rules to delay litigation. Our first effort, pending completion of the Committee's work, is to require strict compliance with legally mandated periods for the resolution and disposition of cases.

We also promulgated Administrative Circular No. 4[29] and Circular 1-89[30] which implement on an experimental basis the adoption of the continuous trial process to ease court dockets congestion and to facilitate swift disposition of cases. After three months of implementation, initial assessment of the efficacy of the continuous trial process within our judicial system is encouraging enough to bolster our hopes for a wider implementation of Administrative Circular No. 4.

We are also encouraging optimal use of pre-trial processes as a means of settling disputes outside the arena of in-court litigation. Alternative dispute resolution systems such as arbitration, mediation and conciliation are also being institutionalized to stem the flow of adversarial litigation into the

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[26] A Regional Trial Court judge receives P13,200 a month, a Municipal Trial Court and Municipal Circuit Trial Court Judge P6,985. A Metropolitan Trial Court judge receives P9,900 while a Municipal Trial Court in Cities judge receives P 8,316.

[27] H.B. No. 10054 authored by Congressman Rolando Andaya and S.B. 862 authored by Senator Alberto Romulo.

[28] Chaired by Justice Andres R. Narvasa.

[29] September 22, 1988.

[30] January 19, 1989.

court system.[31]

To date, we are finalizing arrangements with the Department of Local Government to strengthen the barangay justice system.[32] The agreement includes the conduct of training and information dissemination programs to upgrade the skills of the *lupong tagapayapa* at mediation, arbitration and conciliation.

We are seriously looking into the prospect of establishing small claims courts, or specialized courts for specific classes of offenses and claims that can function to swiftly settle localized controversies.

On the basis of recommendations made by the Presidential Task Force on Improving the Judicial System, we are now pursuing a court facilities upgrading program which includes providing our courts with readily available supplies and requisite court equipment.

For 1988, the government earmarked three hundred forty million pesos and for the current year three hundred million to construct new courthouses and halls of justice and to upgrade our dilapidated courtrooms. The Department of Justice and the Department of Public Works and Highways are assisting us in the repair and construction of court houses.

The need for more efficient records and information systems that guarantee easy access, recall and transmission within the court system of case files, data and documents dictates the immediate acquisition of requisite equipment and supplies for our courts.

In all these initiatives, our efforts are inevitably focused on impressing upon our legislators and policy makers the need to elevate in the hierarchy of government priorities in the allocation of available funds, the requirements of the Judiciary for better courts and better judicial officers who must be given living incomes and sufficient benefits.

Our people's need for justice deserves equal priority as their needs for education and defense which enjoy infinitely greater allocations from the national budget.

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[31] Currently under study by the Judiciary Planning Development and Implementation Office.

[32] Presidential Decree 1508

VI. Beyond Court-Bound Reforms

A. Right of Free Access to the Courts

A cursory appraisal of current judicial reform initiatives would reveal that a substantial segment thereof deals with the court system -- the judges, court procedures and court facilities and equipment. The enemy sought to be conquered is a court-bound malady -- court delay manifest in clogged dockets, protracted litigation and incompetence within the judicial machinery which, when taken together, create the conditions that breed judicial corruption.

Court delay and judicial corruption are, indeed, the twin evils oppressing the Judiciary. They erode our people's faith in the kind and quality of justice our courts are able to dispense.

But an equally vital facet of our people's right to justice subsists beyond the court system -- and that is the right to full and effective access to the courts as well as to facilities and services to gain that access.

The Constitution guarantees full access to the courts. But rights like democracy and freedom are never realized on paper or even by a sacred document like the Constitution. For of what use are good judges and efficient courts, if the people who direly need their wisdom and assistance are unable to bring their claims and grievances to them, and worse, if they are unable to fully comprehend their rights and liberties under the law that warrant the intervention of our courts?

I have declared sometime ago that the system of justice in this country is bound to an invisible caste system. Invisible because our laws and democratic institutions do not recognize its existence, but such a system is manifest in the reality that only the wealthy and the privileged have effective access to our courts, while the poor and the destitute, by sheer poverty, are excluded from the bounties of court justice.

The problem of access certainly must be addressed by a variety of policy reforms not exclusive to the Judiciary. But the Judiciary is bound to harness initiatives within its ambit to render the right of access a firmer, achievable right for the Filipino.

In this regard, we need to put in place a more responsive national legal aid program that provides not only legal assistance but incorporates an integrated system of legal counselling, case evaluation and referral, socialized documentation and legal service costs and/or subsidized legal representation, and the designation of certain courts to try and decide specific claims and offenses. This concept of a "one-stop shop" legal aid program for the poor deserves close study.

Hand in hand with a legal aid program would be a program for popularizing the law in the grassroots. The UP Law Center has initiated bold efforts in this area which only need to be expanded and given greater support both by the national and local governments.

B. The *Writ of Amparo*

Under existing laws, every citizen can invoke the protection of the writ of *habeas corpus* against infringement of personal liberty. Current court procedural rules are in place to render the writ effective.

However, the privilege of the writ of *habeas corpus* cannot be invoked to protect other constitutionally-vested rights of the Filipino.

The New Constitution embodies a sequel innovation that assures full protection of all the Filipino's constitutional rights.

Sec. 5 (5) of Art. VIII provides that the Supreme Court can promulgate rules concerning the protection and enforcement of constitutional rights. In compliance with this mandate, the Supreme Court is presently considering such rules to provide omnibus protection to every citizen's rights under the Constitution-- and these procedural rules constitute the writ of *amparo*. Through the writ of *amparo*, the country's judicial system with the wide array of human and institutional resources at its disposal, can fully be a refuge of the Filipino's rights and freedom.

VII. Conclusion

The results of our reform programs in the judiciary may yet come about after years of labor and resolute persistence. But we have made the first efforts. And we are determined to gain more inroads into the arena of positive change.

But the burden of strengthening the moral fiber of the Judiciary and rendering the court system an efficient machinery of swift and impartial justice cannot be borne by us in the Judiciary alone.

It is a burden that must be shared by every citizen who fiercely believes that injustice, oppression and partiality to the privileged and powerful have no place in a democratic society that has full respect for the rule of law.

Every Filipino must begin in earnest to rise above the comforts of apathy and indifferent tolerance to do all he can to make our system of justice respond fully to the defense and protection of our rights and freedoms.

Corruption, inefficiency, partiality and discrimination which make

justice a luxury the poor cannot afford, happen and subsist largely because we dare not whimper if our individual safety and integrity are neither threatened nor violated. We must begin imbibing the irrevocable truth that we belong to one nation; that we are one people sharing a common will, a common spirit and a common destiny -- and that any misfortune or suffering descending upon each diminishes us all.

With that consciousness, we can work together to make justice an abiding sustenance of our democratic society and a refuge of our claims to equality, freedom and human dignity.

A statesman[33] once said, "If the record of man's progress is the chronicle of everlasting struggle between right and wrong, it follows that the solutions of our problems lie largely within ourselves, for only with self-mastery can we hope to master history."

I urge you, therefore, to bring the powers of self-mastery into the task of helping us put our judicial house and the whole democratic social landscape in order -- a self-mastery that is emboldened by the will to see right, justice and human dignity prevail in our troubled land.

33 Adlai Stevenson.

IMPROVING LEGAL EDUCATION: THE APPLICATION OF MODELS OF LAWYERING AND TEACHING TO LAW SCHOOL PEDAGOGY

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Professor Karl Llewellyn explained the primary job of legal education to new students at Columbia Law School in these terms: "[the job is] to discover what you need in order to practice your profession, to pick out such parts of that equipment as are either most fundamental or best teachable in school, and to devise means of getting these things across to you."[1] This article addresses Llewellyn's first and third directives. In the language of this article they become a "model of lawyering" and a "model of teaching." The challenge of legal education is to assimilate the attributes of these models.

Almost six decades after Llewllyn's remarks, doubt continues whether legal education does its job most effectively. Reform in law school programs is debated at the behest of student and faculty striving to create better education. The organized bar calls on law schools to improve the quality of bar candidates. The public, perennial critics of the legal *profession*, are now turning their attention to the "source" of the "plague of lawyers" -- law schools.

The current dialogue regarding legal education is carved out of the tension between the academic education of lawyers and their practical training. It has been characterized as "[s]chool v. reality"[2] or Langdell's "science of law" v. Jerome Frank's "lawyer school."[3] The debate is not new. Summarizing the historical trend, Gordon Gee and Donald Jackson conclude,, "[a]s we considered the experience of English legal education, the educational programs of other professions, and the history of and recent

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1 K. Llewellyn, **Bramble Bush** 19 (1930).

2 Turrow, *School v. Reality*, New York Times, Sunday Magazine; November 8, 1988.

3 Frank, *A Plea for Lawyer-Schools*, 56 Yale L.J. 1303 (1949).