

An Introduction To The Philippine Supreme Court

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The first time I joined the Supreme Court was in 1957 just months after taking the Lawyer's Oath. Mr. Justice Jose B.L. Reyes, best known to most of us as "JBL," took me in to be his Technical Assistant. It was for me as pleasant and delightful an association as it proved to be a humbling and instructive an experience. Many years later, in 1993, I went back to the Court just as privileged although this time as its 132nd Associate Justice.

Some of the things about the Court, I would later find out, have not changed. I could sense the same civility among the Justices but I would not be all that candid if I did not admit having been overwhelmed and awed by the imposing presence of my colleagues. It should partly explain why during the initial period of incumbency, junior Associate Justices would not normally talk too much but, I must hasten to add, not certainly because of lack of capability more than the need of their getting used to being with so many eminently learned men as they are all at once.

The Supreme Court of the Philippines could trace its roots to the *Royal Audiencia* established in the country on 05 May 1583 which remained in existence until its abolition 318 years later by Act No. 136 on 11 June 1901. No Filipino served in the *Royal Audiencia* until 29 May 1899.

On 13 August 1898, Major General Wesley Merrit established a military government for the Philippines by authority of the President of the United States as Commander-in-Chief of its armed forces. Merrit maintained in existence the *Audiencia Territorial* and the local minor tribunals, including the justice of the peace courts, but suspended their criminal jurisdiction which was taken over by military commissions or courts-martial and provost courts established for the purpose. In a later move, he also suspended the civil jurisdiction of the *Royal Audiencia* effective as of 30 January 1899. General Orders No. 20, issued 29 May 1899 by Major General Otis, re-established the *Audiencia Territorial* of the Philippines to exercise the civil and criminal jurisdiction it had possessed prior to 13 August 1898.

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The *Audiencia*, thus re-established and reconstituted by the American authorities, continued to exercise its original powers and functions under Spanish law until the effectivity on 11 June 1901 of Act No. 136 of the Philippine Commission. Act No. 136 abolished the courts established under Spanish sovereignty and vested the judicial power in: (1) a Supreme Court (replacing the *Royal Audiencia*); (2) courts of first instance and justice of the peace courts (replacing the tribunals of the same appellation under the Spanish system); and (3) such municipal courts or special tribunals as might thereafter be created by law.

The Philippine Constitution adopts the presidential form of government with three principal departments – the Legislative,¹ the Executive,² and the Judicial³ – which, conceptually, are co-equal and independent branches, with a mechanism of checks and balances. The judiciary, holding neither the “purse” nor the “sword” as so often said, serves as the nation’s balance wheel. The Supreme Court functions both as the court of last resort and as the Constitutional Court of the country. Everything that the Court, adjudicatively, can do is contained in just a single, but quite encompassing, sentence of the Philippine Constitution. Section 1, Article VIII, of our fundamental law reads:

“Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and **to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.**”

The expanded definition of judicial power seems to be the immediate reaction to abuse of recourse to the political question doctrine, a *dictum* that the judiciary does not pass upon the wisdom of legislation or of the executive action in consonance therewith or upon matters that, under the Constitution, are to be decided by the people themselves in the exercise of sovereign power.

It is not to say, however, that the Philippines has all but done away with old and established principles. Pervasive and limitless its power, such as it may seem, the Court does not ignore but subscribes to the doctrine of separation of powers. Congress is the branch of government, composed of the representatives of the people that lays down the policies of government and provides the direction that the nation must take. The Executive carries out the mandate. The Court does not negate all that is done by these co-equal and co-ordinate branches simply because of its perceived view of grave abuse of discretion on their part,

¹ Article VI, 1987 Constitution

² Article VII, *ibid*

³ Article VIII, *ibid*

clearly too relative a phrase to be its own sentinel against misuse, even as it will not hesitate to wield the power if that abuse becomes all too clear. The exercise of judicial statesmanship, not judicial tyranny, is what has been envisioned by and institutionalized in the Philippine Constitution.

Today, the Court is also witness to novel developments. Unlike recently when the Court would only take on purely justiciable questions, now it is also charged with the administrative responsibility over the entire judicial system in the country. The Court supervises all regular courts below the Supreme Court, comprising the Integrated Judicial System or the Four-Level Judicial Hierarchy inclusive of the Court of Tax Appeals and the Sandiganbayan. Although the Supreme Court performs its supervisory functions through the Office of the Court Administrator (created by PD 828), all major actions must priorly be referred to the Supreme Court for approval. The Court likewise exercises administrative supervision over the Judicial and Bar Council, which has the primary duty of recommending appointees to the judiciary and the Philippine Judicial Academy, which is tasked with the implementation of a continuing program of judicial education for justices, judges, court personnel and lawyers. The rule-making power and the admission, as well as the discipline, of lawyers remain vested in the Supreme Court.

The Supreme Court may sit *en banc* or, in its discretion, in divisions of three, five, or seven members.⁴ Save in those instances that by Constitutional directive must be heard *en banc*, cases may be resolved either by the Court *en banc* or by a division. The cases required to be heard *en banc* include, among other instances, (1) matters involving the constitutionality of a treaty, international or executive agreement, or law; (2) controversies involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations; (3) cases heard by a division of the Court when the required majority in the division is not obtained;⁵ (4) instances when the Supreme Court would modify or reverse a doctrine or principle of law previously laid down either *en banc* or in division; (5) administrative cases where the vote is for dismissal of a judge of a lower court;⁶ and, (6) election contests involving the Offices of the President and the Vice-President.⁷

Interestingly, under the 1973 Charter, certain Court *en banc* cases, like those involving the constitutionality of treaties, executive agreement, or law, needed the vote of at least ten (10) Justices⁸ for a decision of unconstitutionality to pass. Presently, however, decisions of the Court uniformly could be reached upon

⁴ Section 4, paragraph 1, *ibid*

⁵ Article VIII, Section 4(3), *ibid*

⁶ Article VIII, Section 11, *ibid*

⁷ Article VII, Section 4, *ibid*

⁸ Section 2(2), Article X, 1973 Constitution

concurrence of a mere majority of the members who would actually take part in the deliberations on the issues and vote thereon.

In a departure from the old way of having two divisions⁹ of the Supreme Court, the Court may now sit in divisions “of three, five or seven Members.” The different sizes of the divisions, according to the Constitutional Commission, should reflect the relative importance of cases.¹⁰ There can thus be as many five divisions in the Court as against the present three divisions of five members each.¹¹ When a case is to be decided by a division of three or five members, the concurrence of at least three members is sufficient to decide the case.¹² Corollarily, a division of the Court may not review a case already passed upon by another division of the Court¹³, nor may a writ of *certiorari* issue from the Court *en banc* to annul a decision of one of the Court’s divisions.¹⁴

The Court *en banc* is not an appellate tribunal *vis-à-vis* the divisions and exercises no appellate or supervisory jurisdiction over the latter; and a division of the Court is the Supreme Court as fully and veritably as the Court *en banc* itself.¹⁵ Decisions or resolutions of a division of the court when concurred in by a majority of its members who actually take part in the deliberations on the issues in a case and vote thereon, and in no case without the concurrence of at least three of such members, is a decision or resolution of the Supreme Court.¹⁶ No doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*.

All cases filed with the Supreme Court, which must accord with certain guidelines, commonly termed “technicalities,” in order to be entertained, are promptly raffled by a committee of three justices to a member of the Court for initial study. This procedure is a departure from the old practice of having the Chief Justice distribute the cases to the Associate Justices.

The member of the Court to whom the case is assigned, conducts his review of the case and thereafter makes his report, stating the facts and the issues, as well as specific recommendations, to the Court *en banc*, or division, as the case may be, i.e., whether to go any further on, or to dismiss outrightly, the petition. If, following the deliberations, the case is found to be meritorious or to pose

⁹ Section 2(1), Article X, *ibid*

¹⁰ V Con Com Record 636

¹¹ Par. 1, Circular No.2-89, 07 February 1989, effective 01 March 198

¹² Realty Sales Enterprises, Inc. vs. Intermediate Appellate Court, G.R. No. 6145, 23 August 1998, En Banc Minute Resolution

¹³ Church Assistance Program, Inc. vs. Sibulo, G.R. No. 76552, 21 March 1989

¹⁴ *Bienvenido Garcia vs. Second Division, Supreme Court of the Philippines*, G.R. No. 85676, 22 November 1988, En Banc Minute Resolution

¹⁵ *Ando, et al. vs. Hon. Judge Fortunato Valloces, et. al.*, G.R. No. 88099, First Division Minute Resolution, 28 May 1990

¹⁶ Article VIII, Section 4(3), 1987 Constitution

substantive issues, a comment would then be required from the other party. After the comment is submitted, the case undergoes another round of discussion. A reply may additionally be required. Customarily, a lengthy and more comprehensive deliberation would be conducted if the recommendation given by the Justice to whom the case has been assigned were to dismiss or deny the petition. If no agreement is reached during the deliberations on any case, a hearing could be called during which the opposing parties are heard on oral argument. Occasionally, the Court would call an *amicus curiae* particularly when complex issues are involved and an expert opinion is desirable. If, during their deliberations, the members feel that a full length decision is appropriate, the Court would then likely opt for giving due course to the petition and requiring both parties to submit their respective memoranda on the case.

There are cases, which although involving factual matters, are appealed to the Supreme Court *via* petition for review on *certiorari*. Prior to the effectivity of Circular No. 2-90, dated 09 March 1990, cases involving factual issues erroneously appealed to the Supreme Court are simply remanded to the Court of Appeals for resolution since it is the latter court that has jurisdiction to resolve appeals involving questions of fact or mixed questions of fact and law. With Circular 2-90 in place, an appeal taken to either the Supreme Court or the Court of Appeals by wrong or inappropriate mode can be dismissed. Although the submission of issues of fact in an appeal by *certiorari* to the Supreme Court is ordinarily proscribed, if there is clear merit in the petition, however, the Court, in the exercise of sound discretion, could suspend the rules and resolve the case on the merits or refer the case to the Court of Appeals. Incidentally, only the Supreme Court can suspend the Rules.

There is no single case that is disposed of without the serious consideration it deserves. On a regular basis, the Court receives about 5,000 to 6,000 cases, give or take a few hundreds, every year. The Court disposes of about that same number annually, close to a thousand by full-blown or penned decisions, some by extended resolutions, and the rest by minute resolutions. It would simply be physically impossible for the Court to write full-length decisions or extended resolutions on all the cases that come to the door. Observe, however, that when a case is disposed of by minute resolution, the Court, in effect, adopts the decision handed down by the court *a quo* either because there has been no reversible error (in petitions for review) or grave abuse of discretion (in petitions for *certiorari*) committed by that court. The denial spells the legal end of the road for those outrightly rejected cases.

The United States Supreme Court, whose structure is similar in many ways to the Philippine Supreme Court, would receive about 6,000 petitions each term. From this number, only approximately 90 are accepted for consideration by the U.S. Court, the rest are turned down that spells the legal end of the road for those

outrightly rejected cases. That Court would thus come out with a much lower figure of full-length decisions, fewer than a hundred annually, than its Philippine counterpart of about a thousand.

The high rate of affirmance by the Supreme Court of cases appealed to it is a given fact, and it is almost invariable that we would see a litany of previous rulings of the Court in its “new” decision. This situation suggests one of two things: One, the lawyer can easily succumb to strong influence exerted on him by his client to appeal the case or, two, the Court would repose a misplaced reliance on the word of the lawyer even when he cries wolf. What must not be missed is that the prevailing party below, not unlike the appellant or petitioner, should equally be entitled to a speedy resolution of the controversy.

The Court *En Banc* meets once a week on Tuesdays. Special sessions may at all times be called, on a Thursday or a Friday. Division sessions are held on Mondays and Wednesdays. *En Banc* and Division sessions start at 10.00 a.m. although, occasionally, when a case is scheduled for oral argument at either 10:30 or 11:00 a.m., the Court session is convened at 9:00 or 9:30 a.m. to allow the Court to take up matters in the regular agenda. Sessions always start on time and it would be quite embarrassing for a Justice to be late. Except during hearings or reception of oral argument and special occasions, the judicial robes are not worn. The Justices use two robes, the working robe during hearings on the oral argument and the ceremonial robe for formal occasions.

The Court holds sessions in Baguio City during every April of the year. The summer months are devoted to decision writing when the Justices are given time to handle the Court backlog (generally those cases with extraordinary voluminous records). The so-called “Court recess” during the summer months is really no recess at all. Regular sessions give way to decision writing. Not too infrequently, special sessions are called to take care of urgent matters. The work is a 16 hours of hard labor, and it is not at all unusual for a Justice to wake up during wee hours to write down his thoughts during the night.

Official sessions start with an opening prayer delivered by a member to whom the first case on the agenda is assigned. The next few minutes is devoted to light talk, and anything under the sun, within or outside the agenda for the day. The deliberations, depending on the nature of the case, would either be dull and boring or lively and spirited but never mean or violent. When there is no disagreement among the Justices, resolutions or decisions are arrived at fairly quickly. At times, the Justices would be divided on an issue. Extensive discussions would expectedly then follow which may last even beyond just one or two session days. Rarely, would a Justice offer to excuse himself from a case for some personal or other reasons. More often than not, the Court would not

accept an offer of inhibition and, out of respect, the Justice concerned would not normally insist in having his own way.

Not infrequently, the inclination of each justice on how a case is to be resolved may not exactly be known until after the actual voting takes place. The formal vote begins with the most junior justice and moves up through the ranks of seniority, the Chief justice voting last, the apparent rationale of the rule being to avoid the relatively new Justices from being unduly influenced by the vote of their senior colleagues. In the United States, the justices once also voted in the same inverse order of seniority but the descending order has been adopted since the time of Chief Justice Hughes. When the reporting Justice gets the nod of at least a majority, he becomes the *ponente*; if he fails to obtain the majority, he then could write a dissenting opinion. It is not unusual for the *ponencia* to become dogmatic or subtle, normally or abnormally crafted, more than how the *ponente* might rather wish it to be, all because of the other justices who would proffer specific suggestions or modifications on the *ponencia* before agreeing to sign it that leaves the *ponente* hardly with choice.

The Supreme Court is composed of a Chief Justice and fourteen Associate Justices who hold office until reaching the age of seventy years. No Chief Justice or Associate justice of the Court has ever been impeached. From 1901 to date, about one hundred fifty Justices have been named to the Highest Court of the land. Chief Justice Hilario G. Davide, Jr., is the 124th member and now the 20th Chief Justice of the Philippines.

The Court, like everywhere else, is not spared from criticism. But criticism is not bad. Indeed, when made within bounds and not motivated by ill will, such reaction from the public can have constructive effects. Cynicism though never does. The honor and reputation of judges can be sullied so badly and so unfairly by wild *innuendos* and unfounded accusations. The unwritten rule on judicial conduct, however, just does not allow judges to respond to such kind of aspersions by putting aside the judicial robe and engaging in street debate. The eminence of the position does not permit the judge to risk the dignity of his office to demean it to the level of the adversary.

I have been on the Court for close to a decade now. It is a Court I have always highly regarded with respect and reverence. It is a Court, which in my humble view, has been able to consistently prove itself equal to the challenges of the office, the milieu of time, and the imperatives in which it works.