Foreword

If I recall correctly, it was on July 15, 2006, when Chief Justice Artemio V. Panganiban spoke to me about writing the Foreword to his eleventh and last book while a sitting member of the Supreme Court. I felt so touched and moved by his gesture I just kept quiet. I would allow him, I told myself, to change his mind, should he want to.

But a formal letter dated July 20, 2006, confirming his request, ruled out this possibility. He stressed a fact I could not deny: I had written the Preface to his first book - *Love God, Serve Man* – a year before he was appointed to the High Court. I now quote his letter: "I thought I would request you to write the Foreword to my last book as a sitting justice of the Court." The quoted portion might, in a subtle sense, qualify as a *non sequitur*. Obviously, others, perhaps better situated, could write the Foreword. But how do I say that to a Chief Justice, without being somehow guilty of false humility?

I

In any case, there are some facts that are worth repeating in the case of Chief Justice Panganiban, whom I have fondly called Art since his student days:

> In evaluating President GMA's appointment of Art in December 2005, two facts that can neither be changed nor erased stand out: (1) this is the first time a poor man's law school, the FEU Institute of Law, ever produced a Chief Justice since its foundation in 1930; (2) also, this is the first time a person born poor, orphaned while studying in school, a former newsboy and bootblack, from Sampaloc, Manila, rose to become Chief Justice of the nation.

Incidentally, from Chief Justice Cayetano Arellano in August 1901 up to Chief Justice Ramon Avanceña before the outbreak of the Pacific War in December 1941, or a long period of 40 years; from Chief Justice Manuel V. Moran in 1945 to Chief

Justice Roberto Concepcion until Ferdinand Marcos declared martial law in September 1972, or a turbulent period covering 27 years; and after the People Power Revolution of February 25, 1986, from Chief Justice Claudio Teehankee to Chief Justice Davide, Jr., who retired in December 2005, no one came from the ranks of the very poor – until Art Panganiban was formally appointed by the President on December 21, 2005.

On December 7, 2006, Chief Justice Art will reach 70 and forthwith retire from his position of honor, as many would probably say. But the honor, in Art's case, belongs to the person holding the position, not the position regardless of the person.

The Five Pressing Problems
of Our System of Justice

Whether one is an impartial observer or a habitual faultfinder, here or abroad, the first thing one asks about our system of justice may involve one or more of these traits: corruption, lack of independence, incompetence, delay or inefficiency and no access by the poor.

Chapter 10 discusses what he has done as a jurist to solve these problems. And because he considers the problem of delay very important – in fact, there are so many cases that have been pending in the Supreme Court for decades, despite the time limitations set forth in the 1987 Constitution – he created a "Committee on Zero Backlog," chaired by Senior Justice Reynato Puno to immediately monitor the flow of cases and to resolve the "old" ones.

Chief Justice Panganiban is not awed by all sorts of criticisms, whether from friends, well-wishers, skeptics, or cynics. As soon as he was appointed by President Gloria Macapagal-Arroyo (GMA), who has been berated by political foes for her "authoritarian inclinations," former Senate President Franklin Drilon, a leading critic

of GMA, conceded the Chief Justice was "extremely qualified" since he had the necessary attributes – an unblemished record, integrity, intellect and industry; nevertheless, the people will be watching "the independence of the Panganiban court." Which is why his performance since he assumed the highest position in the judiciary, as well as his latest book, is right on the nose.

Decision-Writing Style

In his second book, *Justice and Faith* – a collection of Justice Panganiban's selected writings and speeches for the period 1995-1997 – there are relevant passages at the beginning of the *opus* that speak of his decision-writing style:

> ". . . I have endeavored to write in simple English, comprehensible as much as possible to a college graduate. I want to be understood not only by the legal profession but also by the parties themselves, especially by persons accused of crimes, and by the public at large as regards cases involving the interpretation of the Constitution. As I wrote in my Dissenting Opinion in *Marcos*:
>
> > 'The Constitution is the most basic law of the land. It enshrines the most cherished aspirations and ideals of the population at large. It is not a document reserved only for scholarly disquisitions by the most eminent legal minds of the land. The Constitution is not intended only for lawyers to quibble over. . . . Its contents and words should be interpreted in the sense understood by ordinary men and women who place their lives on the line in its defense and who pin their hopes for a better life on its fulfillment.'
>
> "More than lingual elegance . . . I strive for simplicity, clarity and precision in nuances and shades of meanings."

Not for him are the polished style and clever turn of phrases with which some justices – before and after Art's appointment to the High Court in October 1995 – try to impress one another and the legal profession.

Considering that our Supreme Court was patterned, with some modification, after that of the United States Supreme Court, whose members are well-versed in English, how do we compare with them in point of style and content?

Distinguished justices in the United States, such as Oliver Wendell Holmes, Benjamin C. Cardozo, and Louis D. Brandeis, developed their own writing style. (See Oxford Companion to the Supreme Court of the United States [1992]).

Holmes is best remembered for "his wit, style and ability to sum up an argument in a pithy epigram." Many judges, lawyers and law professors in Anglo-American jurisdictions, as well as in countries like the Philippines, remember what he wrote in *Common Law,* often called the greatest work of American legal scholarship: *"The life of the law is not logic, it has been experience, the felt necessities of the time*…."

In Constitutional law cases, terms and concepts keep on changing and evolving. Holmes believed that such terms as "freedom of speech" and "due process of law," embodied certain "fundamental principles of right" that should be viewed from the perspective of the common law and from centuries of experience. Because individual liberty lies at the very core of the American constitutional system, he wrote what has become a classic: "*A word is not a crystal, transparent and unchanging, but the skin of a living thought*."

He laid down the "clear and present danger" rule to protect honest expressions of opinion. "The best test of truth," said Holmes in the 1919 case *Abrams v. United States*, "is the power of thought to get itself accepted in the competition of the market, and that truth is the only group upon which our wishes can be safely carried out." In other words, political dissent, honestly expressed by a citizen, must be protected. This may well correspond to the emphasis of Chief Justice Art on Liberty, the first part of what he calls his judicial philosophy.

While on the New York Court of Appeals, Benjamin N. Cardozo became the most celebrated common law judge of his time. In contract law, he exerted his efforts to instill fairness into ambiguous contracts rather than permitting contracts to entrap one of the parties. He was invited to deliver the Storrs Lectures at Yale Law School, which embodied his statement of the proper judicial decision-making process. In his 1921 book, *The Nature of the Judicial Process,* Cardozo argued for what he termed "sociological jurisprudence," rooted in a sophisticated understanding of positivist jurisprudence and expressed with elegance and clarity. *He led both bench and bar to interpret law guided by its purpose and function rather than as purely conceptual.*

After he was appointed by President Hoover in 1932 to the Supreme Court, replacing Holmes, he became a famous dissenter, together with Brandeis and Stone. He contributed to the redefinition of a constitutional rationale in *Palko v. Connecticut* (1937) in which Cardozo's formula, "the essence of a scheme of ordered liberty," became the basis for incorporating most of the Bill of Rights into the Fourteenth Amendment (the due process clause).

It was Brandeis, a well-known legal practitioner and social activist before his appointment to the High Court, who became famous for his "Brandeis brief." In the 1908 case *Muller v. Oregon*, he devoted only two pages of his brief to the discussion of legal issues; the remaining 110 pages presented evidence of the harmful effects of "long hours of labor on the health, safety, morals and general welfare of women." His evidence was culled from medical reports, psychological treatises, statistical compilations and expert studies. The Brandeis brief was unprecedented – it was used to demonstrate that there was a reasonable basis for the Oregon statute.

Before that, Supreme Court justices merely imposed their own views about what constituted reasonable legislation. The brief's analysis was in line with fact-

oriented sociological jurisprudence. It forced the Court to consider data that state legislators employed in drafting reform laws. The success of the Brandeis brief led many lawyers and courts to support a wide ranged economic legislation – which may well pertain to nurturing our poor people's **Prosperity,** the second part of Art's judicial philosophy. The Mining Law case,[1] the resolution of which was penned by then Associate Justice Panganiban, may be cited as a relevant example of the Brandeis approach.

How about the importance of communicating the decisions of the Supreme Court to our people? In other countries, such as Japan, China, Russia, India, South Korea and Indonesia, decisions by all courts are written and promulgated in their own language. Our Supreme Court, weighed down by tradition and other considerations, may not go this far. But to enable the parties to the case and the public at large to know the important decisions of the Supreme Court, as stated by Justice Art, the latter can do something unprecedented here since the turn of the 20th century: hire and retain the services of proficient translators of most of its decisions into Filipino. This might serve as a model for other collegiate courts, such as the Sandiganbayan and the Court of Appeals.

The fact of the matter is that Tagalog, the basis of Filipino, has been used in political discourse and campaigns since the 1930s. Today, TV and radio broadcasts, especially for entertainment and for the dissemination of local news, are usually in Filipino, the language of the masses. As usual, the courts, in a manner of speaking, seem to be far behind.

II

The Leadership of Chief Justice Art

The leadership of Chief Justice Art is not a new trait. Consider only these 2 cases that could have diminished his chance to become Chief Justice, given the bias and predisposition of the appointing power.

During the time of President Joseph "Erap" Estrada, who, even before he assumed office, had been for a compromise settlement with the Marcoses and their major cronies, Associate Justice Panganiban ruled that the General and Supplemental Agreements (otherwise known as the "Compromise Deal") between the PCGG and the Marcos heirs dated December 28, 1993, were null and void, in that, *inter alia*:

1. "Criminal immunity cannot be granted to the Marcoses who are the principal defendants in the state of ill-gotten wealth cases now pending before the Sandiganbayan."

2. Exempting the properties to be retained by the Marcos heirs from all forms of taxes "is a clear violation of the Constitution since the power to tax and grant exemptions is vested in Congress." (Sec. 28 (4) Article VI of the Constitution)

3. The provision in the Agreement binding the Government "to cause the dismissal of all cases against the Marcos heirs is a direct encroachment on judicial powers, particularly in regard to criminal jurisdiction. Once a case is filed before a court of competent jurisdiction, the matter of its dismissal is within the full discretion and control of the judge."

4. The provision in the Agreement that the Government waives "all claims . . . past, present and future" against the Marcoses is "contrary to law. . . . It is a virtual warrant for all public officials to amass funds illegally, since there is an option to compromise their liability in exchange for only a portion of their ill-gotten wealth."

In addition, be it noted that the compromise deal was entered into by PCGG Chairman Magtanggol Gunigundo, with the consent of President Fidel V. Ramos, who had appointed Art Panganiban to the High Court in October 1995.

Then, at a time when it was uncertain whether Estrada would remain President or whether GMA would succeed him as President, Justice Panganiban, as *ponente*, ruled against Eduardo Danding Cojuangco in *Republic v. Cocofed, et al.*, GR 147062-64. Justice Art declared in this landmark case that "coconut levy funds are not only affected with public interest" (as held by ex-Chief Justice Narvasa); "[t]hey are, in fact, *prima facie* public funds, because they are moneys belonging to the State or to any political subdivisions," raised by taxes, customs duties, and other operations. . . . Coconut levy funds are levies imposed by the State for the benefit of the coconut industry and its farmers."

Since he occupied the position of Chief Justice, his leadership – particularly in the timely disposition of the three cases involving Executive Order 464, the CPR policy, and Presidential Proclamation 1017, each of which was very important to President Gloria Macapagal-Arroyo who had appointed Art – was placed at stake and became crucial. All the three decisions on these crucial cases showed beyond doubt the independence and the competence of the High Court and, in particular, the quality of Chief Justice Panganiban's leadership.

The Administration spokesmen said the President would follow the Supreme Court in each of these cases. Meantime, the Chief Justice was accorded glowing tributes by respected commentators and legal luminaries. (Nevertheless, the new Solicitor General filed Motions for Reconsideration in two cases – EO 464 and PP 1017 – both of which the Supreme Court, in a restatement of its independence, denied with finality.)

In any case, of the three departments and agencies of Government, the July 6, 2006 SWS survey of Enterprises on Corruption gave the Supreme Court the most favorable rating: Net +40. The President, Congress, and the other agencies, such as the Comelec and the present PCGG, obtained negative ratings.

Leadership Functions
of a Chief Justice

In the cover article of the January 2006 issue of *Kilosbayan-Bantay Katarungan* Magazine, we stated that in every organization, three things are essential – leadership, leadership, and leadership. For example, in the U.S. Supreme Court, the Chief Justice, as Presiding Officer, controls the flow of the proceedings; as Titular Leader, the Office affords special opportunities for leadership; as Court Manager and Guardian, promoting intracourt harmony are tested to the limit. Each in his own time, Chief Justice John Marshall, Charles Evans Hughes, and Chief Justice Earl Warren possessed these talents and earned the respect of Bench and Bar and the entire nation.

In the Preface to his latest book, Chief Justice Panganiban informs his readers here and abroad about the roles and functions of a Philippine Chief Justice, the gist of which is as follows:

The Roles and Functions
***of a Chief Justice* -- a Gist**

1. He is the *primus inter pares* among the 15 members of the Supreme Court. As presiding officer, he is able to control the flow of the proceedings, shape the Court's agenda, summarize the discussions and influence the pace and direction of the Court's work. Because he has only one vote, sometimes he may find himself voting with the minority in important litigations.

2. He is the leader of the entire judiciary and might become the role model of all public servants. The 2,000 judges and 26,000 employees hold him up for inspiration and example. In a corrupt, graft-ridden government, he is expected to be the role model and exemplar of many public servants. As the *CJ* is the head of the third branch of government, ambassadors routinely make courtesy calls on him upon their assumption of office.

3. He is a reformer and action person. Because the judiciary must cope with the judicial, social, economic, scientific and technological developments, he has to institute reforms. To keep up with the Information Age, the judiciary must automate and computerize; it must also interact with other offices, agencies and persons, public or private -- and even with foreign governments and international aid institutions.

4. He is also the uncrowned leader of the bar. As the Constitution vests in the Supreme Court supervision over admission to the practice of law and the integrated bar itself, the *CJ* is looked upon by all lawyers and bar associations for guidance, direction and inspiration in the practice of law.

5. As *ex-officio* chair of the Philippine Judicial Academy, he is also a leader of the academe. He must be a teacher and scholar. He is expected to make the education of the judges a necessary component of his judicial priorities.

6. As chair of the Judicial and Bar Council, his crucial job is to find new and better ways of searching for, screening and selecting applicants for vacancies in the judiciary, especially in the lower courts. Because of the many vacancies in about 600 trial courts, the *CJ* is constrained to work for better compensation, better security for judges in remote areas, and better working conditions and facilities, and thereby entice competent, upright attorneys to join the judiciary.

The current task is to get the JBC to select nominees in about 300 vacant courts, thus reducing the past vacancy rate from 30%-40% to around 15%. Assuming an average of 10 applicants per position, the JBC must process, interview and select from 3,000 applicants. Failure to do so will mean no major breakthrough in carrying out the judicial reform program. The problem of delay in trial courts will not be solved.[2]

7. He is an administrator, manager and financial wizard all rolled into one. Though the Constitution vests in the Supreme Court "administrative supervision over all courts and the personnel thereof," in actual practice, it is the *CJ* that discharges administrative functions.

This is inevitable. The Administrative Code and the General Appropriation Act recognize the Chief Justice as the administrative head of the Judicial Department. The Judiciary Development Fund (PD 1949) and the Special Allowance for the Judiciary Law (RA 9227) places "sole exclusive power" upon the Chief Justice to disburse the JDF and the excess SAJ funds.

ALL the foregoing roles of the Chief Justice detract from his basic judicial work of decision-making. But he cannot shun public appearances and speaking engagements. He must be reasonably visible in many social functions and receptions. He cannot isolate himself from the world but he must not be involved in the darkness and corruption of our society.

One final word. Up to now, Chief Justice Art refers to me as his mentor or *guru*. He has exaggerated my role, as I stated elsewhere. He has spoken for the Supreme Court on various subjects beyond my limited range – including mathematics, the latest advances in science and technology, economics, accounting and even canon law. In a deeper sense, Art is my mentor. For he is no longer the same person I used

to know. Like St. Paul who saw the blinding light on the road to Damascus, Art embarked on his own inward journey, saw the light and was transformed. I noticed the profound change after my return from exile on January 21, 1985 – one year before the EDSA 1 Revolution.

As I wrote in the Preface to his first book, *Love God, Serve Man:*

> God is not finished with him yet. For life is a continuing process … all of us are enroute on some kind of never-ending journey. In Art's case, it has been a spiritual journey more than anything else. From the usual concern for himself and his worldly pursuits, his post-EDSA speeches reflect a deeper concern for the riches of the human spirit; his strong faith in a power bigger than himself; and his abiding concern for the poor, the weak and the marginalized in a society that should be just, more caring and more compassionate.

JOVITO R. SALONGA

July 31, 2006
Pasig City, Metro Manila

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[1] *La Bugal-B'laan Tribal Association, Inc., et al. v. Victor O.Ramos et al.,* GR No. 127882, December 1, 2004.

[2] Unfortunately, there is a widespread perception among many capable judges and bright lawyers that the JBC is not independent, as envisioned under the Constitution. This is reportedly due to the pervasive influence of Malacañang in the nomination of aspirants for important positions in the judiciary. Even those who have worked for the JBC in the ConCom, such as Fr. Joaquin G. Bernas, SJ, are now for its abolition. Perhaps. A change for the better must be initiated now by all the members, especially its regular members.

In fairness to Chief Justice Panganiban, the problems happened before his appointment by the President in December 2005. Since then, he has been working hard to make the JBC independent, in terms of higher salary for every JBC member. The monthly pay of a JBC member is now equivalent to the monthly compensation plus allowances of a Court of Appeals Justice. The hope is that outstanding judges and practising lawyers will now be induced to apply for vacant positions in the JBC, because of incentives in terms of more prestige and higher salary.