

Chapter 5

Nominating the Best and the Brightest^{*}

A year ago, on February 11, 2005, I was summoned by my revered guru, former Senate President Jovito R. Salonga, to come down from the perches of the Olympian gods and address the fifth anniversary celebrations of Bantay Katarungan (Justice Watch) and the monthly forum of Kilosbayan. Obedient to his call and ever faithful to his teachings, I spoke on the topic “Judging the Judges.”^[1]

During that occasion, I recalled that our Constitution requires four attributes from every magistrate; namely, competence, integrity, probity and independence.^[2] On the other hand, the New Code of Judicial Conduct for the Philippine Judiciary, which took effect on June 1, 2004, speaks of independence, integrity, impartiality, propriety, equality, competence and diligence.^[3]

Attributes of a Good Magistrate

For simplicity and ease in remembering these essential attributes, I encapsulated them into four ***Ins***; namely, **integrity**, **independence**, **industry** and **intelligence**.

I shall no longer repeat my discussion of the four ***Ins***. Suffice it to say that I stand by these four attributes as the standards by which to judge the performance of our judiciary and all our judges. This standard holds true for our incumbent magistrates, as it does for all those aspiring to wear the black robes. In fact, I believe

that these criteria are even more important for the entry of new magistrates. While it is essential to be ever vigilant in cleansing the judiciary of the errant and the misfit, it is even more necessary to see to it that a new entrant to the bench be possessed of these four ***Ins***. Otherwise, the water of the judicial reservoir will always be murky, polluted and unclean, if the new water that flows in is muddy and contaminated with the germs of incompetence, indifference, influence and indolence.

Now that I have been chosen Chief Justice of the country and ex-officio chairperson of the Judicial and Bar Council (JBC), I have been placed in a leadership position to reform the entry problems bugging our judicial enclave. This, I realize only too well. And so, upon my first official days of work in January 2006, I immediately convened the JBC. Together with the members, we reviewed at length its mission, processes, and effectiveness (or lack of it) in achieving its goals; the main problems restricting its work; as well as the criticisms of the public. Most important, the Council discussed ways of solving the problems and meeting criticisms, as well as elevating the entry standards into the judiciary.

Three General JBC Functions

Broadly speaking, I believe that the task of the Judicial and Bar Council can be divided into three **Ss**: **search for, screen and select** the best and the brightest lawyers to join the judiciary. In the past, the JBC concentrated only on the second and the third **Ss**; that is, to screen and to select nominees. However, on my initiative, the JBC agreed to expand its functions by conducting an activist search. Indeed, how can the judiciary recruit the best and the brightest, if the pool from which the JBC screens and selects is not wide enough and deep enough to attract the excellent and the ethical?

Doubtless, the quality of the judiciary hinges on the worth of the members composing it; in turn, their worth depends on the quality of the nomination process. This truism is stated in the United Nations Declaration of Basic Principles on the Independence of the Judiciary.^[4] For the purpose of selecting worthy magistrates, judicial councils have been created to guarantee the selection of the better ones, in order to advance judicial independence and depoliticize appointments.^[5]

One such council was brought into existence by the 1987 Constitution, which created a Judicial and Bar Council (JBC). The Council has been vested with the authority to recommend at least three nominees each for vacant positions in the judiciary,^[6] as well as for the ombudsman and the deputy ombudsmen.^[7] To “forestall as much as possible the influence of partisan politics,”^[8] the appointments subsequently made from the nominations do not require the confirmation of the Commission on Appointments.^[9]

Wider Search

As I said earlier, the nomination process should begin with the enlargement of the pool from which the filtering is to take place. Thus, the JBC agreed to conduct nationwide dialogues with the various sectors interested in improving the quality of our judges.^[10] These sectors are the bar; the government agencies involved in the delivery of quality justice, like the prosecutors, the government corporate counsels, and the public attorney; the academe; the nongovernment organizations like Kilosbayan and Bantay Katarungan; the media; the civic groups; and the general public.^[11]

To search actively for candidates to vacant courts, the JBC has also agreed to resort to radio and television public service announcements, which are more pervasive

in scope. And to make it more accessible, promote transparency in its processes, and provide a feedback mechanism for the public, a JBC website was developed, hyperlinked to and accessible from the main page of the Supreme Court website.^[12] The website was launched on April 21, 2006.

However, the present Supreme Court and Court of Appeals vacancies -- important and critical as they are -- have required immediate attention, because the Constitution set deadlines for the selection process.^[13] For the Supreme Court vacancy created by the retirement of Chief Justice Hilario G. Davide Jr. and my ascension to his post, the process must be completed within 90 days from the vacancy, which occurred on December 20, 2005.

To give the President at least three weeks within which to appoint from the list of JBC nominees, the Council had to speed up the process to be able to submit its list by February 27, 2006, at the latest. Thus, it had time to dialogue with only these groups: (1) the bar, led by the Integrated Bar of the Philippines (IBP), the Philippine Bar Association (PBA), and the Women Lawyers' Circle (Wiloci);^[14] (2) the Society for Judicial Excellence, the association comprised of all the winners of the annual Search for Judicial Excellence since 1991; and (3) the media.

I must add that after the JBC is finished with the nomination process for these SC and CA vacancies that need to be filled immediately, it will resume on a nationwide basis its dialogues with the groups I adverted to earlier.

During these dialogues, the JBC intends to be proactive in encouraging the application or nomination of the best and the brightest by pointing out various reform projects the Supreme Court has been able to put in place, including the

following:

1. The doubling of the judicial compensation through the enactment of Republic Act (RA) 9227, which authorized the 100 percent increase of the take-home pay of justices and judges over a four-year period from 2003. As of November 6, 2005, the monthly pay has been increased by 75 percent; and in November this year, by the full 100 percent. Thus, towards the end of this year, the full implementation of the law will have meant a doubling of the judicial compensation.

2. The heavy workload of the judges will be eased, once we are able to fill the vacancies. The Office of the Court Administrator reported that in trial courts nationwide, as of June 30, 2006, there was a total of 618 judicial vacancies, which was 28.86 percent of the total 2,152 authorized judicial positions in the trial courts.^[15] This figure shows a slight improvement over that at the beginning and the end of last year, during which the vacancy rate was about 32 percent and 29.49 percent, respectively. This minimal improvement, despite the pay increase, is due to many factors, principally (a) the promotion of lower court judges, which shifted the vacancies to the lower judicial levels; and (b) the slow pace of filling vacancies, a process that takes an average of one year and three months, according to statistics.

The bulk of the vacancies are in first-level courts -- especially in rural, far-flung or less urbanized areas, and those with peace and order problems. For a long time, the practice of the JBC has been to post administrative circulars, announcements, notices of vacancies, lists of applicants,^[16] and schedule of interviews in the courts and other public places;^[17] publish those issuances and announcements in the print media; and disseminate them to the Integrated Bar of the Philippines (IBP) and other organizations.^[18]

In spite of these efforts to publicize the search, some vacant courts had only one or two applicants; while others had none at all. Of course, when the number of nominees is less than the constitutional requirement of three for every vacant post, the vacancy cannot be taken up by the council.

In the past, after a vacancy occurred, the JBC used to take about three months to announce the opening, and several months -- sometimes years -- for the Palace to announce the appointment. To address this problem, the council now announces the vacancies, as well as the acceptance of applications for them, three months before the compulsory retirements of the incumbents.^[19] The search, screening and selection process can then begin even before the vacancy actually occurs. The goal is to finish the nomination process on or before the date of the actual vacancies.

Thus, from January to July of this year, the JBC has started to announce way ahead of time the following vacancies, among others: 10 in the Court of Appeals, 246 in Regional Trial Courts, 34 in Metropolitan Trial Courts, 47 in Municipal Trial Courts in Cities, 191 in Municipal Trial Courts, and 261 in Municipal Circuit Trial Courts.^[20]

Based on a continuing inventory of vacancies, the JBC also determines the necessity of re-opening the acceptance of applications when the number of applicants is less than sufficient.^[21] Forthwith, it also announces vacancies arising from judges' optional or disability retirement, promotion, resignation, death, or dismissal from the service.

Under this plan, the JBC hopes to submit the list of nominees to Malacañang on the very day the vacancy arises. The council will make representations with the President to release the appointment within 90 days thereafter. In this manner, after the project is implemented, the time lag will be reduced dramatically, and the vacancy

rate will drop by half.

3. The personal security problem of judges is being addressed by the Supreme Court. The newly created Supreme Court Security Committee, headed by Justice Cancio C. Garcia, is fast at work in tackling this menace.

4. The improvement of working conditions of judges through the construction of more dignified halls of justice is underway. Recently, I inaugurated the new Halls of Justice of Guagua, Pampanga, and the City of Iloilo. On the other hand, the City of Manila -- the capital of the country -- will soon have its own hall of justice. A few months ago, the Supreme Court was able to take over the old Government Service Insurance System (GSIS) building on Arroceros Street. It is now being renovated, with funding assistance from the World Bank.

More Thorough and Transparent Screening

After broadening the **search**, the next step is a more thorough and transparent **screening** of the candidates. Apart from evaluating their qualifications, the JBC conducts background investigations,^[22] as well as psychological and psychiatric examinations.^[23] As a final step to eliminate unfit candidates and to choose the best and the brightest among the aspirants, it conducts personal interviews.^[24]

Subsequently, to enhance public awareness of its proceedings, the JBC has opened to the public the interviews of applicants for the positions of ombudsman; and of justices of the Court of Appeals, Sandiganbayan, Court of Tax Appeals, and the Supreme Court.^[25]

In screening applicants, the JBC looks into the applicants' track record and personal background, including the existence of administrative cases or administrative sanctions against them. With regard to track record, we consider each applicant's educational background, bar ratings, books and papers published, speeches, and employment record.^[26]

For judges, we take into account the length of their service in the judiciary, present stations, quality of decisions (reversals and affirmations), and speed of disposition of cases,^[27] among others. An Award for Judicial Excellence will certainly be a plus. Bantay Katarungan may be pleased to know that regional trial court judges who had less than five years of experience in their courts were disqualified for promotion to the Court of Appeals.^[28]

For prosecutors and private practitioners, factors such as the number of cases won or lost, the quality of memoranda and briefs filed in courts, and appearances in the Supreme Court and the Court of Appeals are considered.

Background investigations will continue to be conducted to check the applicant's lifestyle, family origin, character, or reputation in the community. At present, this work is done mostly by the National Bureau of Investigation (NBI). Due to insufficient personnel, however, there is a delay in the investigation itself or in the submission of reports, 95 percent of which have been positive. Under its new staffing pattern, the council is set to hire 12 investigators to augment this lack of NBI personnel.

Under the JBC Rules, those who are facing administrative complaints and are under informal preliminary investigations may be disqualified, if the charges are so serious as to affect their fitness for nomination.^[29] Those who have pending serious criminal or regular administrative cases are also barred from being nominated to

judicial posts. So are those who have been convicted in any criminal or administrative case, in which the penalty imposed was at least a fine of more than ₱10,000.^[30]

I was present during all the interviews conducted on February 14, 15 and 16 for the screening of the 14 candidates for the lone vacancy in the Supreme Court. I was pleased to note the presence of the Bantay Katarungan monitors, who diligently attended even after office hours, up to 7:00 or 8:00 p.m. I hope they were satisfied that their written questions were propounded to the applicants during the interviews by the JBC members,^[31] especially by Justice Raoul V. Victorino. Although he was a new member of the council, he took pains to explain that the questions he was asking came from Bantay Katarungan.

The Stricter Process of Selection

The final phase in the JBC process is the **selection**, which is usually done after verbal discussions and secret voting by the council members. An innovation adopted this year was the implementation of a new rule. That rule disqualifies a candidate upon the negative vote of a single member on an integrity issue, as provided under Section 2 of Rule 10 of the JBC Rules.

We are mindful of the fact that some applicants, in their bid for judgeship, try to secure -- maybe through go-betweens -- the recommendations of well-known figures in society.^[32] The latter, in turn, yield to the intercession of the go-betweens. In this regard, I enjoin the organizations and individuals concerned, especially the politicians, to exercise prudence in giving out endorsements by refraining from recommending the undeserving.

At any rate, in sizing up a candidate, we assess the quality of recommendations or endorsements by taking into consideration the credibility of the endorsers, the length of their professional or personal association, the degree of their closeness or relationship with the applicants, as well as the specific bases of the endorsements. If the JBC finds from other reliable sources that certain candidates do not deserve to be nominated, no amount of recommendation can save them.

To repeat, the final selection is done by secret ballot of the JBC members. Subject to the “integrity vote,” only those who obtain a majority of the votes of the Council are included in the list to be submitted to the President.

One measure that has been suggested to ensure the transparency and integrity of the selection process is the use of a point system. Under this system, points are allotted to each selection criterion. The scores given to each of the applicants on the criteria to be adopted will then be added to determine their rankings.

Conclusion

I realize that the Judicial and Bar Council has been criticized in the past for allegedly being complacent -- if not ineffective -- in its role of screening and nominating candidates for judicial positions, particularly in the appellate courts. Some critics have even proposed its abolition and a return to the old system. They claim that appointment by the President and then confirmation by the Commission on Appointments is more effective in rejecting unqualified applicants.

In response, I ask our critics to consider that the JBC was an innovation started by our country in 1987 and now copied in various forms by many other countries in

the world.

Please note that, unlike the Commission on Appointments, the Judicial and Bar Council is deemed to be a part of the Judicial Department, not of the Legislature. The creation of the council is found in Article VIII of the Constitution, which governs the judicial branch. In fact, the Constitution expressly places the JBC “under the supervision” of the Supreme Court, with the Chief Justice as its chairperson. Thus, it conducts its systems and procedures pursuant to the more somber and more dignified judicial process, not to the more political and partisan slinging in the legislature.

While I do agree that the JBC must be more proactive, more transparent, more assertive and more accountable in the discharge of its functions, I ask everyone to be a little patient while its new leadership is installing reforms and instilling a new spirit of transparency, assertiveness and accountability in the council.

As I end, may I reiterate my appreciation of the Bantay Katarungan and the Kilosbayan for their perseverance in helping the Judicial and Bar Council in its campaign to search for, screen and select quality magistrates; and to weed out the unfit and the misfit. I am certain that, with your unqualified support and continuing commitment, the JBC will fulfill its noble task of nominating the best and the brightest.

Maraming salamat po!

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Address I delivered during the regular joint monthly meeting of Kilosbayan and Bantay Katarungan on February 23, 2006, at the Far Eastern University Auditorium. The address has since been updated to reflect JBC's activities between February and July 2006.

[1]

This address is reprinted as Chapter 9 of my book JUDICIAL RENAISSANCE 167-184 (2005).

[2]

CONSTITUTION, Art. VIII, Sec. 7.

[3]

Canons 1 to 6.

[4]

Cited in *Strengthening the Judicial Appointment and Career Development Systems and Capacity of the Judicial and Bar Council (JBC)*, ADB REVISED FINAL REPORT, ADB TA No. 3693-PHI. In its discussion of the reform context and scope, the report said that "[t]he essence of a well-functioning Judiciary is an impartial and competent judge working efficiently and effectively x x x. The question of quality of judges is correlated with a number of issues that range from how the judges are selected, promoted, paid, protected (physically and from civil suit in the course of their duties), monitored, [and] disciplined, to how they are removed from office."

[5]

Linn Hammergin, *Do Judicial Councils Further Judicial Reform? Lessons from Latin America*, WORKING PAPERS (Carnegie Endowment for International Peace, Rule of Law Series, No. 28), June 2002, 45 pp. The papers discussed various council models, including those in Europe (France, Italy, Portugal and Spain) and Latin America (particularly in Venezuela, Argentina, El Salvador, Peru, Mexico, Colombia and Bolivia). It is worthwhile to note that the Philippine model (the JBC) resembles the model in the four prototype European countries, in which the "council is an independent entity adopted as a means to increase judicial independence by removing power over judicial appointments from the executive x x x and placing it in a body composed of judges and representatives of other branches of government and professional associations."

[6]

CONSTITUTION, Art. VIII, Sec. 8, par. (5).

[7]

CONSTITUTION, Sec. 9, Art. XI, which provides as follows:

"Sec. 9. The Ombudsman and his Deputies shall be appointed by the President from a list of at least six nominees prepared by the Judicial and Bar council, and from a list of three nominees for every vacancy thereafter. Such appointments shall require no confirmation. All vacancies shall be filled within three months after they occur."

[8]

I RECORD, CONSTITUTIONAL COMMISSION, 439.

[9]

CONSTITUTION, Art. VIII, Sec. 9; and Art. XI, Sec. 9.

[10]

The most recent dialogue was with various sectors in Region I, held on July 13, 2006, in San Juan, La Union. Region 1 tops the list of regions having the most number of vacant courts, but a dearth of applicants.

[11]

The JBC held a dialogue with representatives of the Integrated Bar of the Philippines (IBP) and other law associations on January 9, 2006.

[12]

The JBC Web site -- jbc.supremecourt.gov.ph -- provides the following data, among others:

- General information about the JBC
- General information about the SSS of appointment to judicial posts
- JBC Rules
- Application guidelines and requirements
- Downloadable documents; i.e., JBC Form 1, Listings of application requirements
- Announcements of vacancies, lists of applicants and nominees, schedule of interviews,

- updates on the status of applications
- JBC contact information
- Message and inquiry boards with access to the JBC e-mail [address: jbcphilippines@yahoo.com](mailto:jbcphilippines@yahoo.com), which serves as the main Internet contact and inquiry facility of the office

[13] For the Supreme Court, the President is required to issue the appointment within 90 days from the *occurrence* of the vacancy [CONSTITUTION, Art. VIII, Sec. 4, par. (1)]; and for the lower courts, within 90 days from the *submission* of the list [CONSTITUTION, Art. VIII, Sec. 9].

[14] The dialogue with the IBP League of Governors and officers of the PBA and WILOCI was held on January 9, 2006.

[15] Of the total vacancies, 139 are in Regional Trial Courts, 23 in Metropolitan Trial Courts, 55 in Municipal Trial Courts in Cities, 133 in Municipal Trial Courts, 240 in Municipal Circuit Trial Courts, five in Shari'a District Courts, and 23 in Shari'a Circuit Courts. The latest data on existing vacancies are as follows:

**Vacancy Rate of Judges in the
First and Second Level Courts
as of May 31, 2006**

Courts	Total Judicial Positions	Total Incumbent Judges	Total Vacancies	Vacancy Rate
<i>Regional Trial Court</i>	952	813	139	14.60%
<i>Metropolitan Trial Court</i>	82	61	21	25.61%
<i>Municipal Trial Court in Cities</i>	204	149	55	26.96%
<i>Municipal Trial Court</i>	388	254	134	34.54%
<i>Municipal Circuit Trial Court</i>	470	226	244	51.91%
<i>Shari'a District Court</i>	5	0	5	100.00%
<i>Shari'a Circuit Court</i>	51	28	23	45.10%
TOTAL	2,152	1,531	621	28.86%

[16] To further promote public awareness of and accessibility to the proceedings of the JBC, the council promulgated Rule No. JBC-10 (effective October 1, 2002). The rule mandates the publication of the long list of candidates who appear, *prima facie*, to be qualified in two newspapers of general circulation; along with a notice to the public that any complaint or opposition against a candidate may be filed with the JBC Secretary within 10 days from the publication (Section 1 thereof). Section 4 of the same Rule provides that the Secretary of the Council “shall again cause to be published the dates of the interview of candidates in the shorter list in two (2) newspapers of general circulation,” as well as in the “websites of the Supreme Court and the Judicial and Bar Council.”

[17] The posting must be made in three conspicuous places in the province, city, or municipality where the vacancy concerned is located (Rules of Judicial and Bar Council, JBC-009, Sec. 9, effective December 1, 2000).

[18] Aside from the IBP, copies of the list shall, as far as practicable, also “be furnished the major religious, civic, social, professional, business and other non-governmental organizations in the city or municipality where such vacancy is located” (JBC-009, Sec. 9, *id.*)

[19] For this purpose, the JBC formulated (1) Resolution No. JBC-007 entitled “A Resolution Directing Wide Publicity of Notice of Opening of Nomination and of List of Applicants for Judicial Positions; and (2) Rule No. JBC-10 entitled “Rule to Further Promote Public Awareness and Accessibility to the Proceedings of the Judicial and Bar Council.” The new procedure adopted by the JBC has already started through newspaper advertisements, which came out in the Manila Bulletin and the Philippine Star, February 10, 2006. On August 19, 2005, the Council also published announcements of vacancies occurring from August 30, 2005, to August 27, 2006, in anticipation of the compulsory retirements of incumbent judges.

[20] The figures on court vacancies were based on the JBC Statistical Data by Court Classification for the period January 1, 2006 to June 30, 2006. As of June 30, 2006, there were a total of 618 vacant *salas*. The JBC agreed with my proposal to submit nominations to the Palace for at least 50 percent or 300 in round figures. Before the end of 2006, the JBC will have to interview about 3,000 (300 x 10) applicants.

[21] The requirement is three applicants per vacant *sala*. In March 2006, the inventory showed that, all in all, there were 280 vacant courts having less than 3 applicants. Hence, on April 7 and 25, 2006, the JBC caused the re-publication, in two newspapers of general circulation, of an announcement of these vacancies. The inventory of June 2006, subsequently showed that, of the 280 courts having insufficient applicants, only 27 received the required number of applications, prompting the Council to re-publish the announcement for the remaining 253 courts.

[22] JBC-009, Rule 4, Sec. 2. Presently, the JBC is undertaking a study to develop a new psychometric examination for applicants, because of observations from some judges that the psychological examinations being administered to applicants were like those given to test for psychological incapacity in cases for the annulment of marriage.

[23] JBC-009, Rule 6, Sec. 2.

[24] JBC-009, Rule 7, Sec. 1.

[25] The public interviews of applicants to vacant positions in the courts mentioned were conducted on the following dates: February 14-16, 2006, for the lone vacancy in the Supreme Court; in March, 2006, for the six vacant posts in the Court of Appeals, and on June 16, 2006, for the position of overall deputy ombudsman. In 2005, JBC conducted four interviews and psychological/psychiatric examinations for 258 applicants for judicial positions -- twice in Cebu City and twice in Davao City. As of July 10, 2006, the JBC had interviewed a total of 377 applicants to fill vacancies in the courts and in the Office of the Ombudsman.

[26] JBC Rules, Rule 3, Secs. 1- 5.

[27] JBC Rules, Rule 3, Sec. 4.

[28] This policy is pursuant to JBC Rules, Rule 9, which provides for special guidelines for nomination to a vacancy in the Court of Appeals and in the Sandiganbayan.

[29] JBC Rules, Rule 4, Sec. 6.

[30] JBC Rules, Rule 4, Sec. 5.

[31] Under the JBC Rules, only members of the council can question the candidate (JBC Rules, Rule 10, Sec. 5).

[32] Certifications or testimonials from reputable government officials and nongovernmental organizations are required to be submitted to the Council to attest to the applicant's record of and reputation for honesty, integrity, incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards (JBC Rules, Rule 4, Sec. 1). “The Council may likewise consider validated testimonies of the applicant's probity and independence from reputable officials and impartial organizations.” (JBC Rules, Rule 5, Sec. 2).

