

Cebu Bench and Bar: In the Forefront*

Maayong gabi-i kaninyong tanan!

First of all, let me thank you for honoring me with this testimonial dinner. As I myself am going through the motions of preparing for my own retirement parties, I know that it was a challenge for you to bring together so many people in one place at one time. Thus, I must thank the organizers, as well as every one of you for coming here tonight. You honor me by your presence. *Daghang salamat!*

In just two weeks, I shall be retiring from the judiciary. This testimonial dinner is therefore especially meaningful, because it is my last official meeting, as Chief Justice, with the members of the bench and bar of Cebu.

The Bench and Bar Through the Years

As you probably have noticed, Cebu has received considerable attention, as it should, from the highest echelons of the judiciary. Every major project under the

Action Program for Judicial Reform (APJR) has had Cebu in mind either in the pilot-testing or in the final implementation stage.

I would like to cite, to name just a few, the establishment of a Court of Appeals branch in Cebu City, for which we laid the building marker this morning; the model electronic court of Lapu-lapu, whose building was topped off also this morning; and the establishment of various Halls of Justice in the province in the past few years.

Your good luck may be attributed to a number of factors. *First*, Cebu has produced and nurtured three of the 21 Chief Justices in the Philippine judiciary's 105-year history: Chief Justices Pedro Yap, Marcelo B. Fernan, and Hilario G. Davide Jr. While my own home province of Pampanga accounts for at least 18 justices, only two have had the honor of serving as Chief Justice -- Jose Abad Santos, the fifth Chief Justice of the Philippines, and yours truly. I can only surmise that eating *mais* (which is actually a favorite of mine), *sinugba*, *utan* and *pusu* must have contributed beneficially to the physical and intellectual development of Cebuano lawyers and jurists!

Cebu and the Judiciary

Levity aside, I believe that the significant contributions of the bench and bar of Cebu to our rich legal and judicial traditions underlie the prominent standing of the province and city not only among our trial courts, but also in the High Court.

Indeed, the pioneering spirit and innovative thinking of Cebuano lawyers and jurists animate and illuminate the judicial firmament. In particular, Philippine jurisprudence has been made even richer by the passionate advocacy of a distinguished environmentalist, Atty. Antonio Oposa. His pioneering efforts to preserve and conserve our environment and thus save it from degradation and waste have made all of us realize that our generation owes the next and succeeding generations the responsibility of maintaining nature's rhythmic balance.

The ardent *ponencia* of a fellow Cebuano, then Justice Hilario G. Davide Jr., immortalizes the principles of inter-generational responsibility and inter-generational justice in relation to the right to a balanced and healthful ecology.^[1] This mission has since been borne by environmentalists, conservationists, and lawyers worldwide. His other equally important *ponencias* emphasized (1) important doctrines in defense of civil liberties, among them, the right of the accused to be fully apprised of the consequences of pleading guilty to a criminal offense, particularly when the capital penalty is to be imposed;^[2] (2) issues concerning the validity of state contracts over government projects impressed with public interests;^[3] and (3) election-related questions.^[4]

The Honorable Pedro L. Yap, the 17th Chief Justice, himself “left behind a

legacy of opinions that have become jurisprudential classics.”^[5] While he served the judiciary for only two years and the chief justiceship for only three months, he contributed immensely in the development of the law during his years as secretary of the United Nations Commission on Human Rights; law practitioner in the Salonga, Ordonez, Yap and Associates Law Office; law professor at the University of San Carlos here in Cebu; author of various books and publications; and delegate to the 1971 Constitutional Commission.^[6]

Chief Justice Marcelo B. Fernan, who succeeded Chief Justice (CJ) Yap in 1988, also had an illustrious legal and judicial career. He served as a delegate to the Constitutional Convention in 1971 and as assemblyman of the Batasang Pambansa in 1984 before he was appointed justice of the Supreme Court in April 1986.

Among his many contributions to jurisprudence were his incisive discussions of the “single entity concept” in taxation law;^[7] the right-of-control test in determining the existence of an employer-employee relationship;^[8] and the famous *Civil Liberties Union v. Executive Secretary*,^[9] which expressed in categorical language the stricter prohibition on the President and the President’s official family against holding multiple offices or employment in the government or elsewhere.

As head administrator of the Supreme Court, CJ Fernan is best remembered for

improving information systems in monitoring the performance of judges. He himself staunchly believed that morally upright and competent judges and court personnel were required for the courts to win the battle for justice.^[10]

The current batch of Cebuano magistrates exemplifies the same fervent passion for excellence in the law. As the former chairperson of the Committee on Judicial Excellence, I passed upon and evaluated nominations for the coveted awards. Several Cebuano judges have been nominated and later selected under various categories. Let me cite some of them.

In 2003, then Regional Trial Court (RTC) Judge, now Court of Appeals Justice Pampio A. Abarintos of Branch 22, Cebu City was ranked among the country's outstanding judges. As the executive and family court judge of the Cebu City RTC, he was especially cited for his relentless crusade of the protection of children's rights, an advocacy that led to several innovations in court procedure. For his enormous contributions to the field of service and community work, he received the Chief Justice Jose Abad Santos Award.

This year, Judge Fortunato M. de Gracia Jr. of the Regional Trial Court of Cebu City, Branch 15, bagged the Chief Justice Ramon Avanceña Award. Meanwhile, Judge Simeon P. Dumdum Jr. of the Regional Trial Court of Cebu City, Branch 7, was cited

in 2005 for writing the Best Decision in a Criminal Case.

If we have competent and excellent judges from Cebu, we also have an equally able Cebuano administering the affairs and serving the needs of our courts nationwide. He is Court Administrator Christopher A. Lock.

I can go on and on with my list of great lawyers and jurists from Cebu, but that might take the whole night and I do not want to keep you up that long.

***Liberty and Prosperity
Under the Rule of Law***

Ladies and gentlemen, over the past years especially during my chief justiceship, I have outlined my twin beacons for the Philippine judiciary: **Liberty** and **Prosperity** under the rule of law. Those of you who attended the National as well as the Global Forum on Liberty and Prosperity in August and October of this year would note that I outlined my visions for the bench (the 4 ***Ins*** of **i**ndependence, **i**ntegrity, **i**ndustry and **i**ntelligence); the bar (a morally courageous and ethical crop of lawyers); and court employees (DHL for **d**edication to duty, **h**onesty in every way and **l**oyalty to the judiciary). These visions, though, are not ultimate ends in themselves. They must lead to the two loftier goals of **safeguarding the liberty** and **nurturing the prosperity**

of our people under the rule of law.

As I have stated in my previous speeches, the twin desiderata of liberty and prosperity are enshrined in Philippine jurisprudence. Thus, **in cases involving liberty**, the scales of justice have weighed heavily against government and in favor of the people -- especially the poor, the oppressed, the marginalized, the dispossessed and the weak. On the other hand, **in cases involving prosperity and development** issues, deference has been accorded to the political branches of government; namely, the Presidency and Congress.

My 11 months as chief justice, though brief, have been especially challenging times for the Supreme Court. As issues bearing on civil and political freedoms were brought before its portals for resolution, its resolve to uphold the people's liberties was tested anew. I am proud to say that the Panganiban Court decided the cases in favor of the constitutionally enshrined liberty of our people. In the cases involving Executive Order 464,^[11] the so-called calibrated preemptive response (CPR)^[12] and Presidential Proclamation 1017,^[13] the Supreme Court adhered to the judicial philosophy of liberty, which I articulated early on.

On the other side of the spectrum, the Court has, over the last ten years, ruled deferentially on cases involving the *merits* or *wisdom* of economic policies. The cases

of *Tañada v. Angara*^[14] and *La Bugal-B'laan Tribal Association v. Ramos*^[15] among others, demonstrated that the Supreme Court deferred to the wisdom and prerogative of the legislative and executive departments to decide on matters involving the economy and the nation's development.

As I have said before, the Court defers to the determinations made by the political branches of government on economic matters. However, it cannot and will not abdicate its duty to strike down (1) *gravely abusive* legislative or executive acts that *clearly* violate the Constitution, the laws, or settled jurisprudence;^[16] or (2) those that have been issued with arbitrariness, whim, caprice, bias or personal hostility.^[17] Precisely, it was on the basis of either one or both of these exceptions that several contracts entered into by the government have been judicially nullified. The ways of the market and of merchants must adhere to society's rules on fairness, equity and reasonability. After all, liberty and prosperity must be pursued **under the rule of law**.

Before leaving the subject, I would like you to know that these twin Liberty and Prosperity beacons have been exported by our Supreme Court during the Global Forum on Liberty and Prosperity held last October in Makati City. Equally important, most if not all of the judiciaries represented accepted them as worthy of adoption. Heart warming are the responses of many chief justices present, especially those of Canada, France, Russia, Nepal and Slovakia, to name a few.

Continuing Quest for Liberty and Prosperity

Ladies and gentlemen, I know that the bench and bar of Cebu can play a significant role in spreading the gospel of liberty and prosperity. As you and your forebears have shown, there is much to be expected and much more that you can offer at the altar of freedom and food, justice and jobs, integrity and investments, democracy and development, all of which are reinstatements of liberty and prosperity.

Closing

Now, as I look towards retirement, I am seized by both anxiety and hope. Like any new chapter in one's journey, the uncertainty of what lies ahead accounts for much of the anxiety. But, given time to adjust, I am sure that the apprehension will soon be gone.

Hope, however, burns more than ever in my heart now and for the days and years to come. That hope comes from knowing that within the time we have been allowed, we have all have tried our very best to plant the seeds of reform, to nurture them to be sturdy trees of transformation, and to harvest the fruits of our labors.

That hope also springs eternal because of the realization that the bench and bar of Cebu would always be in the forefront of our collective quest for liberty and prosperity under the rule of law.

Daghang salamat! Maayong gabi-i kaninyong tanan!

* Speech I delivered during a testimonial dinner tendered in my honor by the judges and lawyers of Cebu on November 24, 2006, at the Hilton Hotel in Lapu-lapu City.

[1] *Oposa v. Factoran*, 224 SCRA 792, July 30, 1993.

[2] The “searching inquiry” doctrine, in place since 1987, was reviewed by *CJ Davide* in the case of *People v. Aranzado* (418 Phil. 125, September 24, 2001) to provide guidelines as to how a judge should conduct the inquiry. According to the *ponencia*, the trial court must inform the accused that his plea of guilt would not affect or reduce the death sentence as he might have erroneously believed.

[3] Among these cases were *Tatad v. Garcia*, 313 Phil. 296, April 6, 1995; *Kilosbayan v. Morato*, 316 Phil. 652, July 17, 1995 and *Kilosbayan v. Guingona*, 232 SCRA 110, May 5, 1994.

[4] These cases include *Sinaca v. Mula*, 373 Phil. 896, September 27, 1999; *Dimaporo v. Mitra Jr.*, 202 SCRA 779, October 15, 1991; *Villarosa v. House of Representatives Electoral Tribunal*, 394 Phil. 730, September 14, 2000; *Sarmiento v. Commission on Elections*, 212 SCRA 307, August 6, 1992.

[5] Remarks made by Chief Justice (CJ) Davide of *CJ Yap* and the latter’s Decisions, *Sun.Star Cebu*, November 29, 2003.

[6] C. PARAS AND R. ROQUE, THE CHIEF JUSTICES OF THE SUPREME COURT OF THE PHILIPPINES, 109-110 (2000).

[7] *Marubeni Corporation v. Commissioner of Internal Revenue*, 177 SCRA 500, September 14, 1989.

[8] *Ruga v. National Labor Relations Commission*, 181 SCRA 266, January 22, 1990.

[9] 194 SCRA 317, February 22, 1991.

[10] *Id.* at 111-114.

[11] *Senate v. Executive Secretary Ermita*, GR No. 169777, April 20, 2006, per Carpio Morales, *J.*

[12] *Bayan v. Ermita*, GR No. 169838, April 25, 2006, per Azcuna, *J.*

[13] *David v. Arroyo*, GR No. 171396, May 3, 2006, per Gutierrez, *J.*

[14] 338 Phil. 546, 604-605, May 2, 1997, per Panganiban, *J.* (now *CJ*).

[15]

445 SCRA 1, December 1, 2004, per Panganiban, *J.* (now *CJ*). *La Bugal's* pronouncements were reiterated this year in *Didipio Earth Savers Multi-Purpose Association v. Gozun* (GR No. 157882, March 30, 2006), written by Justice Minita Chico-Nazario.

[16]

Republic v. COCOFED, 423 Phil. 735, December 14, 2001.

[17]

Benito v. Comelec, 349 SCRA 705, January 19, 2001; *Defensor-Santiago v. Guingona Jr.*, 359 Phil. 276, November 18, 1998; and *Philippine Airlines, Inc. v. Confesor*, 231 SCRA 41, March 10, 1994.