

Chapter 6

Holmes, Money and Trust*

Three weeks ago, my wife and I attended a concert at the Carlos P. Romulo Auditorium of the RCBC Center in Makati. I happened to be seated beside a visiting banker, Mr. Richard Holmes, president of American Express International. Trying to strike a conversation while waiting for the concert to begin, I remarked that one of the greatest justices ever to grace the US Supreme Court was also named Holmes – Oliver Wendell Holmes Jr.

The visitor smiled and replied that the great jurist was well-known, not only in law but also in business. He added, “A famous quotation of Justice Holmes is displayed in my office. It goes this way: ‘Do not put your trust in your money. Rather, put your money in trust.’”

In my address today, I would like to take off from this simple but sensible quotation from Mr. Justice Holmes about money and trust. I suppose the main concern of business is money -- to earn it honestly through gung ho entrepreneurship, superior technology and best management practices. With business growth comes economic development for the nation and prosperity for the people.

The SC's Need for Public Trust

On the other hand, the Supreme Court (SC) needs your trust. If it must be true to its

name and if its decisions must be obeyed, it must have the continuing trust of the populace. True, court decisions are not crafted on the basis of what is popular. Rather, judges act only to weigh the logical compatibility of the established facts with the applicable law. That is, cases are won or lost, not because of popular palatability or compromise or friendship or pecuniary consideration, but because of reasoned arguments flowing from legal principles and precedents.^[1]

This postulate does not mean, however, that the Supreme Court is averse to public opinion. On the contrary, the SC can be effective only if it retains the faith and trust of the public. It has no army or police to enforce its decisions. Neither does it have the money to exact loyalty or patronage, or the inclination to mount rallies to incite obedience to its authority.

But there is a difference between the shifting winds of public emotion and the long-term trust in the institution. While its critics --including those in the business community -- may rant from time to time about what they perceive are erroneous judgments, the Court must enjoy enough residual trust that it will turn out to be justified after all. And even if its level-headed critics may disagree with specific decisions, they should trust it enough to concede its good faith; and the wisdom, the probity and the diligence with which its members have done their work. I take your invitation to me to be your keynote speaker today as a manifestation of your residual trust in the institution I represent, the Supreme Court of the Philippines.

Having said that, may I however add that I am aware of some criticisms lodged by a

few sectors at the Supreme Court for allegedly interfering inordinately with the economic policies of the country. The critics say that the Court has no expertise in business; that therefore, it should not make judgments that reverse or modify economic actions of the legislative or the executive department.

SC's Relations with the Other Branches of Government

The Court's very recent pronouncement upholding the constitutionality of the Mining Law should put to rest all these criticisms. The 246-page Decision in this case, which I had the honor of writing, clearly stated the Supreme Court's firm policy in interpreting our Constitution, especially in regard to the President and Congress:

“The Constitution should be read in broad, life-giving strokes. It should not be used to strangle economic growth or to serve narrow, parochial interests. Rather, it should be construed to grant the President and Congress sufficient discretion and reasonable leeway to enable them to attract foreign investments and expertise, as well as to secure for our people and our posterity the blessings of prosperity and peace.”^[2]

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“Verily, under the doctrine of separation of powers and due respect for coequal and coordinate branches of government, this Court must restrain itself from intruding into policy matters and must allow the President and Congress maximum discretion in using the resources of our country and in securing the assistance of foreign groups to eradicate the grinding poverty of our people and answer their cry for viable employment opportunities in the country.

“x x x. Let the development of the mining industry be the responsibility of the political branches of government. And let not this Court interfere inordinately and unnecessarily.”^[3]

This very clear statement of the role of the judiciary in determining economic policies is really an echo of an earlier pronouncement made in 1997 in *Tañada v. Angara*,^[4] which I also penned on behalf of the Court. In this earlier case, the petitioners asked the Supreme Court to annul the concurrence of the Philippine Senate in the Agreement establishing the World Trade Organization (WTO), on the main ground that the WTO Treaty had allegedly violated the “economic nationalism” provisions of the Constitution. In refusing to invalidate the Philippine ratification of the WTO, the Court unanimously declared:

“It is not impossible to surmise that this Court, or at least some of its members, may even agree with petitioners that it is more advantageous to the national interest to strike down Senate Resolution No. 97 [which expressed the Philippine adherence to WTO]. But that is *not a legal reason* to attribute grave abuse of discretion to the Senate and to nullify its decision. To do so would constitute grave abuse of discretion in the exercise of our own judicial power and duty. Ineludibly, what the Senate did was a valid exercise of its authority. As to whether such exercise was wise, beneficial or viable is outside the realm of judicial inquiry and review. That is a matter between the elected policy makers and the people. As to whether the nation should join the worldwide march toward trade liberalization and economic globalization is a matter that our people should determine in electing their policy makers.

“x x x. Let the people, through their duly elected officials, make their free choice.”^[5]

In spite of this 1997 *laissez-faire* declaration, the critics still pummeled the Court for its alleged “inordinate” interference in annulling three international contracts: (1) the AMARI reclamation of Manila Bay, (2) the PIATCO construction and operation of the new Manila airport terminal, and (3) the MEGA-PACIFIC automation of the last national elections. What our critics have conveniently neglected to say is that these three Contracts were entered into in

clear violation of specific provisions of our Constitution, our laws on public bidding, and the very regulations issued by the government agencies that had executed these mega-Contracts. Furthermore, these agreements reeked of corruption; in one case, the Court ordered the ombudsman and the solicitor general to determine the criminal and civil liabilities of the government officials concerned; and in another, the transaction was labeled as the “grandmother of all scams.”

Because of time constraints, I cannot discuss in full the ramifications of these cases. Suffice it to say for the present that the Supreme Court does not interfere in economic policy judgments of the President or of Congress, even if these judgments may turn out to be unwise or inconvenient. However, when the actions of any official of the government blatantly violate the Constitution or the law, or are otherwise done with grave abuse of discretion, the Court is *duty-bound* to “interfere” and to uphold the rule of law. It should correctly be understood, therefore, that the Court does not render economic decisions. Rather, it issues judgments on how laws are applied to or interpreted in any field of human endeavor – family matters, criminal prosecutions or business activities.

Satisfactory Relations with Business and the Public

Despite occasional criticisms from some businessmen, especially those who lose their court cases, I must say that the Supreme Court’s relationship with business and with the general public has been cordial and satisfactory. This fact is demonstrated by the results of independent surveys conducted by the influential Makati Business Club and the Social

Weather Stations, which always place the Supreme Court among the top five most trusted institutions in this country.

For this expression of trust, we are grateful. And because of it, the Court has been able to act independently as befits the highest tribunal of the land. Also, because of this residual public trust, the decisions of the Court are always obeyed, even when they run against public opinion or the wishes of the other organs of government.

One of the severest tests of trust undergone by the Tribunal as an institution was when it declared the unconstitutionality of the second impeachment Complaint lodged last year against Chief Justice Hilario G. Davide Jr.^[6] As a lasting testament to the rule of law and to the trust reposed in the Tribunal, Congress -- albeit reluctantly -- obeyed the Decision and stopped the impeachment proceedings. President Gloria Macapagal Arroyo hailed this congressional acquiescence as proof of the viability of our system of government in this Republic.

Let me clarify that the Court's victory did not mean that it was superior to Congress or to the President. Such outcome merely signified that the Constitution was supreme, and that all government officials were duty-bound to observe its provisions, as interpreted by the Supreme Court.

Let me proclaim this loud enough: the Supreme Court is grateful for the trust our people have reposed in it. Because it wants to retain this all-important public faith and to

deliver speedy justice from the lower courts up to the highest court, it is working assiduously to improve the *entire* judiciary and to reform judicial processes. Let me then devote a few minutes to an exposition of the judiciary's reform program.

Action Program for Judicial Reforms

When Chief Justice Davide took office on November 30, 1998, he immediately issued the "Davide Watch," which envisioned an "independent, effective and efficient [judiciary] x x x worthy of public trust and confidence; and a legal profession that provides quality, ethical, accessible and cost-effective legal service to the people and is willing and able to answer the call to public service."

To complement this vision-mission statement, the Supreme Court launched the Action Program for Judicial Reform (APJR). Approved by the Court on December 8, 2000,^[7] this program has six components that address all conceivable factors that would make the judiciary continuously worthy of public support. The reforms start with the judges -- their qualification, selection, education, on-the-job training, discipline and compensation. Such reforms also focus on the development of judicial institutions themselves -- their autonomy, accountability, transparency and the speed with which they issue *quality* judgments.

The APJR has secured unqualified support and generous grants from the world's most important developmental agencies, including the World Bank, the Asian Development Bank, the United Nations Development Fund and The Asia Foundation. It has also been the

recipient of assistance from various foreign governments, like Australia, Britain, Canada, Japan, the Netherlands, the United States, and lately the European Union.

In fact, the World Bank has included the APJR in its own website as a model that other developing nations may follow, should they want World Bank's support.

The APJR is a complete blueprint of almost all possible measures to solve the main plagues of the judiciary -- mainly corruption, incompetence and delay in the rendition of judgments. I do not have the time to discuss all the many aspects and projects of the APJR. That will require at least five hours of talking. However, allow me to say that it spells out a transformation of, *first*, the judges themselves; and, *second*, the environment in which they work.

Transformation of Judges

The program to recruit and maintain the best and the brightest judges start with upgrading the law curriculum and improving the law schools themselves by placing them under the supervision of a new government office known as the Board of Legal Education. This Board falls under the aegis of the Supreme Court.

There are also ongoing efforts to improve the bar examinations -- the subjects to be taken, the appointment of examinees and the kinds of questions to be asked.

After passing the bar, new lawyers desiring to join the bench undergo the required number of years of law practice. Afterwards, the Judicial and Bar Council undertakes a

transparent and rigid screening of the applicants. It then submits for presidential appointment at least three names for every vacant judicial post.

After appointment, a new judge must still take up a pre-judicature program and later a continuing judicial education course, in order to be able to keep up with the latest legal knowledge. The Supreme Court is in an advanced stage of negotiation with the Japan International Cooperation Agency (JICA) for the construction of the ₱600 million Philippine Judicial Academy complex in Tagaytay.

Aside from mandating continuous intellectual formation, the Supreme Court is also emphasizing ethics. To this end, it promulgated on June 1, 2004, (1) the New Code of Judicial Conduct for the Philippine Judiciary and (2) the Code of Conduct for Judicial Personnel.

The new Code for judges stresses the values of independence, integrity, impartiality, propriety and diligence. It takes off from the Bangalore Draft of the Code of Judicial Conduct, agreed upon during the Judicial Round-Table Meeting in the Hague on November 25-26, 2002. This draft was intended to be the Universal Declaration of Judicial Standards applicable to all judiciaries of the world.

If we expect the best and the brightest lawyers to join the judiciary, judicial compensation must be improved. Along this line, Congress has heeded the Supreme Court's request by passing last year a law^[8] doubling judicial compensation through a 25 percent increase per year over four years, starting on November 6, 2003.

To weed out corruption, inefficiency and delay, the Supreme Court penalized 262 justices, judges and court personnel last year alone. It has also meted out sanctions to 119 lawyers for various offenses.^[9] This disciplinary process continues to this date.

But while the Court has not hesitated to wield the rod of discipline, it has been equally resolute in its efforts to reward exemplary performance. Every year it conducts a search for outstanding judges and clerks of court, as well as for other judicial officers. As chair of the committee in charge of the Judicial Excellence Awards (JEA), I announced during the awarding ceremonies last September 17 that the awardees would be honored all year round in judicial functions, given roles in lectures and other public fora, elevated as role models for all judicial personnel, and recommended for promotion.

For his part, Chief Justice Davide has set aside the earnings from the cash prize he received as the 2002 Ramon Magsaysay Awardee for Government Service, in order to fund the Chief Justice Awards to outstanding court personnel holding positions below the rank of clerk of court. The first awarding ceremonies will be held next week, on December 15.

Upgrading the Judicial Environment

After discussing our APJR to transform judges, let me now go the portion of our reform program aimed at transforming the judicial environment.

Construction of Courthouses

First, those of you who have visited our lower courts have undoubtedly noted the poor, sometimes dilapidated, condition of many of our courthouses all over the country. Well, we are steadily constructing and renovating them. In fact, we are even experimenting on the installation of the first electronic court in Branch 140 of the Makati Regional Trial Court.

This Pilot E-Court Program has four features: (1) computer-aided transcription machines, (2) a video-equipped room for child witnesses, (3) a trial court website and (4) a direct electronic link between the trial court and the Supreme Court. The trial court website aims to provide the public with information on trial schedules and the status of cases. This computer linkage will enable the Office of the Court Administrator (OCA) to monitor case loads, fees paid, and compliance with the Supreme Court's rules on the disposition of cases.

Three more model electronic courts are being built -- one each in Angeles City, Lapu Lapu City and Cagayan de Oro City.

Computerization

Second. The Supreme Court has existing computerized systems tracking payrolls, attendance, leaves, property accountabilities and other administrative functions.

It has an official website -- **www.supremecourt.gov.ph** -- showing all relevant information about the Court.

With assistance from the USAID, the computerized Case Flow Management (CFM) system is being piloted in Pasay City's 18 regional and metropolitan trial courts. This system aims to expedite the resolution of cases through effective monitoring and strict observance of time limits in the conduct of case events, from the filing of the complaint up to its final disposition.

With a grant from the Canadian International Development Agency (CIDA), the Court Administration Management Information System (CAMIS) is being implemented on a trial basis in Metro Manila. CAMIS is an on-line case management system that automates information, as well as the reporting and analysis of court data, to help the OCA supervise the lower courts effectively.

Last November 19, 2004, the Court formally launched the Electronic Judicial Library. The e-Library contains in digital format all Decisions of the Supreme Court from 1901 to the present. It is equipped with a search engine that speeds up research, in tune with the e-age. It is still being expanded to include decisions of the appellate courts, as well as all laws and executive issuances.

At the moment, the Court's Computerization Committee, which I also chair, is integrating all the foregoing stand-alone pilots. In preparation for this integration, the Tribunal will soon launch a computer literacy program for all its 28,000 officials and employees.

Unclogging

Court Dockets

Third. Admittedly, most court dockets in our country are clogged not only because of too many cases filed, but also because one third of our trial courts are vacant. Given the low pay, there are not enough competent and ethical lawyers interested in joining the judiciary.

To remedy the problem, the Supreme Court is encouraging the use of alternative modes of dispute resolution or ADRs. These include mediation, arbitration and conciliation.

New Court Rules and Various Information Campaigns

Fourth. To hasten cases and to keep up with modern technology, the Court has issued new rules on, among others, the infringement of intellectual property, the use of electronic evidence, corporate rehabilitation, conduct of pretrial, the use of discovery measures, family problems, and violence against women and children.

Fifth. To open up new vistas, the Court is conducting various information campaigns, like Chamber-to-Chamber Dialogues, Justice-to-Justice Conversations, and Access to Justice for the Poor programs. The last one is supported by the European Union.

The foregoing are only some of the many projects being undertaken to reinvent the judiciary; to keep it in stride with new technology; and to meet ever increasing demands for transparency, competence and integrity.

It is gratifying that our judicial reforms have not gone unnoticed in our part of the world. We have entertained jurists from Bhutan, Nepal, Vietnam and Indonesia, who have come to observe our judicial reforms. The APJR was cited as a model for judicial reform by guest speakers from the World Bank and the United Nations during the 9th Conference of Chief Justices held in Christchurch, New Zealand, on October 4-8, 2001.

As I conclude, let me go back to where I started. Let me say again how grateful we are that the Supreme Court has earned the trust not only of the Filipino public, but also of the international community. The international funding agencies have not only supported our reform program, they have also referred to it as a model for other developing countries. I hope that all the members of the Philippine Business Forum/Economist Corporate Network would likewise put their trust in our Supreme Court. And to paraphrase Justice Oliver Wendell Holmes Jr., may I assure you that you can put your trust in the Supreme Court, which will in turn protect your investments by leveling the business playing field and promoting the rule of law.

Maraming salamat po.

* Address I delivered as guest of honor of the Philippine Business Forum/Economist Corporate Network at the Oakwood Premiere on December 8, 2004.

[1] Panganiban, *Transparency, Unanimity, & Diversity* (2000), p. 62.

[2] *La Bugal B'laan v. Ramos*, GR No. 127882, December 1, 2004, p. 6, per Panganiban, *J.*

[3] *Id.*, pp. 240-241.

[4] 272 SCRA 18, May 2, 1997.

[5] *Id.*, pp. 81-82.

[6] *Francisco v. House of Representatives*, GR No. 160261, November 10, 2003.

[7] For a detailed discussion, see Panganiban, *Reforming the Judiciary* (2002).

- [8] Republic Act No. 9227.
- [9] 2003 Annual Report of the Supreme Court, pp. 23-24.