

'Chief Justice Roberto Concepcion: Thomasian and Vanguard of the Rule of Law

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This year marks the centenary of one of the greatest Thomasians—the late Chief Justice Roberto Concepcion. Born on June 7, 1903 in Manila, to Isidro Concepcion and Catalina Reyes, Chief Justice Concepcion finished his Bachelor of Laws degree in the Faculty of Civil Law of the University of Santo Tomas, *summa cum laude*. In 1924, he became the first private school graduate to top the bar examinations breaking the ten year dominance of the University of the Philippines.

After a short stint as an associate in the law firm of Senator Jose P. Laurel, he eventually ventured into public service. First, as an Assistant Attorney in the Bureau of Justice, he rose meteorically to become an Assistant Solicitor General in 1938, a Judge-at-large in 1940, Undersecretary of Justice in 1946, Associate Justice of the Court of Appeals in the same year, Associate Justice of the Supreme Court in 1954 and its 10th Chief Justice in 1966.

At an early age, Chief Justice Concepcion already earned the respect and stature many would not even achieve in a lifetime. In 1936, he defended the then new constitution against such legal luminaries as Claro M. Recto and Clyde De Witt. He became a General Consultant to the First Code Committee and eventually a member of the First Code Commission in 1942.

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A man truly dedicated to his work, he labored to clear the dockets of the Supreme Court. He instituted many reforms in the internal procedures of the highest court in order to maximize its efficiency in the disposition of cases. Preoccupied with the backlog of the Supreme Court cases, he drove himself to write over 1100 decisions and inspired his colleagues to similar efforts, so that during his incumbency as Chief Justice, the number of cases decided yearly by the Court more than doubled.¹

EMPHASIS ON ETHICS

The late Chief Justice was also a respected educator. He became the Dean of the Faculty of Civil Law of the University of Santo Tomas from 1948-1950 and again in 1976-78. Teaching in the leading law schools such as the University of the Philippines, Ateneo de Manila, University of Santo Tomas, San Beda and the Philippine Law School among others, he emphasized the value of ethics in the study of law. He said that ethics plays an important part in the training of law students and should be taught in the first year of legal training instead of on the third or the fourth, as is customary. This is in recognition of the fact that a strong and sturdy foundation in ethical principles will likely protect young lawyers from the temptations and impurities of actual practice. In the words of the Chief Justice:

Since justice is the ultimate objective of the law and the main concern of all especially lawyers, it is only fitting and proper that pertinent tenets of ethics be projected and emphasized as the root cause of law and the moral source of its binding force, and it is best that this be done from the very beginning, so that, as they delve into different fields of law and learn their respective purposes, as well as the special techniques prescribed for the attainment thereof, would-be lawyers may do so having said tenets and the general principles of morality as their guiding star.²

¹ Speech of J.B.L. Reyes, Published in 38 Lawyers Journal NO.7 (July 31, 1973).

² Journal of the Integrated Bar of the Philippines, No.2, p. 89, Second Quarter, 1976.

The focus on imparting technical proficiency, without the proper stress on the values that should govern the entire life of a law practitioner, bothered the late Chief Justice. -Legal training should be devoted not only to the study of legal principles but, more importantly, to the development of a strong ethical foundation. He ever deplored the blindness of the law curriculum (as set and standardized by the Department of Education) to the importance of legal ethics.³ This emphatic devotion to the moral and ethical aspect of lawyering distinguished the late chief justice in his decades of public service.

LAWYERS AND THE ADMINISTRATION OF JUSTICE

Understanding the importance of the role of lawyers in the administration of justice, he pointed out that legal education should be aimed principally at preparing lawyers to discharge adequately their functions as such. Further, the training should be geared to familiarizing them to the cause of social justice and humanity. He stressed that the lawyer's first duty is to present the truth with candor and fairness. Truth must not be distorted, no matter how good the ultimate purpose may be, for the end does not justify the means.⁴ He said:

The administration of justice by the courts connotes a suitable adjudication of disputes of a justiciable nature. This requires (1) an accurate assessment of the relevant facts, (2) a correct interpretation or application of the pertinent laws, and (3) a speedy settlement of the controversy. The degree of compliance with these requirements depends considerably upon the lawyers who represent the parties in each litigation.⁵

The fate of the litigants lies primarily in the hands of their lawyers as the latter play a vital role in the solution of questions of law and the determination of questions of facts. Indeed, a lawyer may suppress or overstate facts to suit the exigencies of his case. With respect to the

³ *In Memoriam*, 1 *Lawyers Review*, No.5, p.1 (May 31, 1987).

422 *Lawyers Journal*, No.4, p. 166, April 30, 1957.

⁵ Address on the Commemoration of Law Day at the P..B. A. Building Auditorium, Manila on September 19, 1966.

facts presented in court, the judge is almost at the mercy of the lawyers. The extent of the judge's knowledge of the case will depend on the pleadings submitted to him. The truthfulness of these allegations is still another matter.

In the Philippines, the success of a litigant may not depend on the merits of his case alone. More often than not, litigants lose because of the inadequacies of their counsel. Failure to appeal within the reglamentary period, availing of the wrong mode of appeal filing of defective pleadings and gross ignorance of procedure may spell doom for a hapless litigant. This is not apt to happen when the opposing counsels are highly competent and their clients can afford to give them the necessary facilities. In such case, each counsel will surely try to straighten out what his opponent may have presented in a light less favorable to the former's client than it really is. The rank and file of our court litigations does not belong, however, to this class.⁶

Today, the bulk of the cases pending in our courts involve parties belonging to a relatively poor sector of society. These parties do not have the resources to engage the services of top lawyers and at the same time provide their lawyers with the necessary facilities. That is why, as Chief Justice Concepcion pointed out the role of counsel in these cases may thus be almost decisive upon the determination of the relevant facts and accordingly upon the opportunity of the overwhelming bulk of our population to get justice, not merely on the legal plane but also from an objective viewpoint.⁷

The influence of lawyers finds greater significance in relation to the speed of judicial adjudication. True enough; lawyers have a plethora / of dilatory tactics up their sleeves. Like magicians and wizards casting spells on the courts, they can delay a man's cause, transforming the suit into a battle of nutrition. In the end, the poorer and less ardent litigant usually surrenders to the futility of a protracted siege. What is then the solution to this problem? Chief Justice Concepcion answers in this wise:

⁶ *Ibid.*

⁷ *Ibid.*

I believe, however, that the problem can be met adequately and solved properly through collective action. I believe that the politicalization of the people and a strong, enlightened and militant public opinion, are essential to the satisfactory adjustment of any question or issue that has reached the proportions of a social evil. In connection with the rule of law, in particular, the people must be made to realize that adherence to law is vital to the welfare of the entire nation and that compliance with law is to the best interest of all its component elements, especially, of the poor or the masses; and that, whereas justice, and, hence the rule of law, are the main, if not the only, bulwarks of the rights and liberties, the other members of the community have, in addition thereto, their own resources to lean on. Such enlightened view and conviction can be brought about through education in the schools and in the homes and through other activities that affect the way of life in the community. This, however, is a long and somewhat tedious process. It takes years to bear fruits.⁸

The role of lawyers in the administration of justice is vital. A corrupt breed of lawyers would surely tilt the scales of justice wherever they' may choose. They can make a mockery out of our courts of justice and sow discontent in the minds of the litigants. There can be no peace with discontent and no prosperity without peace.

THE RULE OF LAW

Chief Justice Concepcion distinguished himself from the other jurists by his strict and adamant devotion to the rule of law. The Rule of Law, to the Chief Justice Concepcion, is the only acceptable touchstone by which the judge may test and weigh the options to him in a given case. All other considerations perform a secondary role.⁹ He stressed the duty of everyone in the promotion of the Rule of Law. He said:

⁸ Address on the Commemoration of Law Day at the P.B. A. Building Auditorium, Manila on September 19, 1966.

⁹ Querube C. Makalintal. *The Chief Retires*, 2 Journal of the Integrated Bar of the Philippines, No.1, Vol. 2, p. 14, March 1974.

There seems to be the impression-and this impression apparently prevails in some quarters-that the administration of justice and the Rule of Law are functions pertaining exclusively to the government. This impression must be rectified. It is urgently necessary to stress the fact that there is a limit to what the government can accomplish in the discharge of public functions, and that, without the cooperation and active support of the people-nay, their wholehearted participation-there is not much that the government can do to promote the commonwealth. ¹⁰

The administration of justice should neither be regarded as the sole responsibility of the courts. For the courts of justice are merely instrumentalities of the people. This is especially true in the Philippines, being a democratic and republican state, where sovereignty resides in the people, from whom all government authority emanates. Indeed, the government is the agent of the people and its actuations, at least in principle, are reflections of the will of the people. It is the people who elect the public officers. It is but proper that government policies should be consistent with the needs of the citizenry. On the other hand, the people should support the government and the courts. Without their cooperation and support, it would be hardly possible for the public authorities to enforce the Rule of Law, promote justice and maintain peace. ¹¹ These institutions, in turn, should strive to earn the trust and confidence of the people for their effectiveness depends on the civic spirit of the people. For the late Chief Justice, the best means to insure the observance of the Rule of Law is to foster the conviction that it is fundamentally and inherently wise, and to leave no room for doubt on its efficacy as an instrumentality of the people's welfare. He stated that without adherence to law there can be no justice, and without justice there can be no peace and order, without which, in turn, there can be neither progress nor happiness for mankind. ¹²

¹⁰ Speech delivered before the Knights of Columbus on June 7, 1967.

¹¹ Keynote Address before the Grand Lodge of Free and Accepted Masons of the Philippines on April 28, 1970.

¹² Speech delivered at the Annual Convention of the Federal Bar Association of the United States of America in San Francisco, California, U.S.A. on July 28, 1967.

With his impartiality, integrity and commitment to the Rule of Law, the late Chief Justice firmly believed that no one is above the law. The law is supreme and its promotion paramount. In the terse words of his close friend Justice J.B.L. Reyes:

He has staunchly advocated that no one is above the law and maintained that conviction against the highest officers of the land: against President Quirino in the complex rebellion cases (People vs. Hernandez, 99Phil 515); against President Magsaysay in Hebron vs. Reyes (104 Phil 175); against President Macapagal in Pelaez vs. Auditor General (15 SCRA 569). Hence, his opinion in the case of the ratification of the new constitution was both logical and foreseeable, and surprised only those unfamiliar with his personality and conviction.¹³

Chief Justice Concepcion firmly believed that the end does not justify the means. For him, this dictum applies to the majority and the minority with equal validity and force. A staunch advocate of the Rule of Law, he did not espouse any violent means of effecting change in the society. He believed that even if the system were, at a given time, dominated by a powerful minority-which makes use thereof to promote its selfish and partisan interests-it is within the power of the majority-if its members but strive hard enough, singly and collectively, within the established order, and by peaceful means-to wrest control from said minority.¹⁴ He favored the slow yet peaceful road towards social reforms as it provides for safer and more constructive results. He believed that the resort to physical force and violence would subside as the people become more enlightened. Truly, a peaceful, gradual and mature road to change would effect a more stable result.

In the case of *Tolentino vs. Comelec*¹⁵ concerning the advance submittal of the proposed partial amendments by the 1971 Constitutional Convention, he remained true to his conviction that the end does not justify the means. He was uncompromising in his

¹³ Speech oo.B.I. Reyes, Published in 38 Lawyers Journal NO.7 (July 31, 1973).

¹⁴ Keynote Address before the Grand Lodge of Free and Accepted Masons of the Philippines on April 28, 1970.

¹⁵ (G.R. No. L-34150, Nov. 4, 1971)

stand even in the face of the demand for political expediency and judicial statesmanship. In his concurring opinion he stated:

As the Supreme Court of the land, a Constitution would not be worthy of its name, and the Convention called upon to draft it would be engaged in a futile undertaking, if we did not exact faithful adherence to the fundamental tenets set forth in the constitution and compliance with its provisions were not obligatory. If we, in effect approved, consented to or even overlooked a circumvention of said tenets and provisions, because of the good intention with which Resolution No. 1 is animated, the Court would thereby become the judge of the good or bad intentions of the Convention and thus be involved in a question essentially political in nature.

This is confirmed by the plea in the motions for reconsideration in favor of the exercise of judicial statesmanship in deciding the present case. Indeed, "politics" is the word commonly used to epitomize compromise, even with principles, for the sake of political expediency or the advancement of the bid for power of a given political party. Upon the other hand, statesmanship is the expression usually availed of to refer to high politics or politics in the highest level. In any event, politics, political approach, political expediency and statesmanship are generally associated, and often identified with the dictum that "the end justifies the means." I earnestly hope that the administration of justice in this country and the Supreme Court, in particular, will never adhere to or approve or indorse such dictum.¹⁶

STONEHILL VS. DIOKNO (C.R. NO. L-19550 (JUNE 19, 1967))

As a seasoned jurist and a respected authority in Political Law and Constitutional Law, Chief Justice Concepcion led the Supreme Court in abandoning the doctrine laid down in *Moncada vs. People's Court*¹⁷ in the much celebrated case of *Stonehill vs. Diokno*.

¹⁶ Concurring opinion in Tolentino vs Comelec

¹⁷80 Phil 1

In the said case, 42 search warrants were issued against the petitioners and the corporations of which they were officers. Alleging that the search warrants were null and void, as contravening the Constitution and the Rules of Court, petitioners argued, inter alia, that: (1) they did not prescribe with particularity the documents, books and things to be seized; (2) cash money, not mentioned in the warrants, was actually seized; (3) the warrants were issued to fish evidence against the aforementioned petitioners in the deportation cases filed against them; (4) the searches and seizures were made in an illegal manner; and (5) the documents, papers and cash money seized were not delivered to the courts that issued the warrants, to be disposed of in accordance with law.

The respondent-prosecutors contended inter alia (1) that the contested search warrants were valid and had been issued in accordance with law; (2) that the defects of the said warrants, if any, were cured by the petitioners' consent; and (3) that, in any event, the effects seized were admissible in evidence against the petitioners, regardless of the alleged illegality of the aforementioned searches and seizures.

The Supreme Court, through the late Chief Justice, declared that there were two groups of documents, papers and things involved in this case namely: (1) those found in the offices of the aforementioned corporations and (2) those found in the residences of the petitioners therein. With regard to the first group, the petitioners had no cause of action to assail the legality of the contested warrants and seizures as the corporations had personalities separate and distinct from those of the petitioners. The objection to any unlawful search and seizure was purely personal and could be availed only by the party whose rights had been impaired thereby. In connection to the second group of documents, there were two important issues: (1) the validity of the search warrants and the search and seizure made in relation thereto; (2) assuming the negative, whether the documents, papers and things seized might be used in evidence against the petitioners.

The Supreme Court declared the search warrants invalid as it was impossible for the judge to have found probable cause as the application for the said warrants were not based on any specific offense, act or omission. It would be a legal heresy, of the highest order, to

convict anybody of a "violation of Central Bank Laws, Tariff and Customs Laws, Internal Revenue Code and Revised Penal Code, "- as alleged in the aforementioned applications-without reference to any determinate provision of said laws and codes. 18

Furthermore, the warrants did not particularly describe the things to be searched and seized. It virtually pertained to the records of all business transactions of the petitioners whether legal or not.

Relying on the ruling of the Court in *Moncada vs. People's Court*, the respondent-prosecutors argued that notwithstanding the unconstitutionality of the search warrants, the documents, papers and things seized were still admissible in evidence against the petitioners. The position was in line with the American common law rule that the criminal should not be allowed to go free merely "because the constable blundered.¹⁹

The Court dismissed the argument by contending that most common law countries had abandoned such approach and had eventually adopted the exclusionary rule, as it was the only practical means of enforcing the constitutional injunction against unreasonable searches and seizures. Indeed, the non-exclusionary rule was contrary, not only to the letter, but also, to the spirit of the constitutional injunction against unreasonable searches and seizures. 20

TANADA VS. CUENCa (G.R. NO. L-10520)

Another landmark case penned by the late Chief Justice is the case of *Tañada vs. Cuenco*. The case involve the power of the Court to review the act of the Committee on Rules in nominating and the Senate in choosing two additional members of the Senate Electoral Tribunal in addition to the three to which the party having the highest number of votes was constitutionally entitled. The electoral tribunal, under the 1935 Constitution, was to be composed of nine members: three to be nominated by the party having the largest number of votes in

18 *Stonehill vs. Diokno* C.R. No. L-19550 (1967).

19 *People vs. Defore* 140 NE 5S5 cited in *Stonehill vs. Diokno* 20

Stonehill vs. Diokno C.R. No. L-19550 (1967).

the Senate, another three by the party having the second largest number of votes therein and the last three to be designated by the Chief Justice from among the justices of the Supreme Court.

The Senate then was composed of 23 Senators from the Nacionalista party and 1 Senator from the Citizens Party. The Nacionalista Party nominated Senators Laurel, Lopez and Primicias. The Citizens Party, having only one member in the Senate, nominated Senators Laurel, Lopez and Primicias. The Citizens Party, having only one Senator Lorenzo Tañada. Upon the nomination of Senator Primicias, on behalf of the Committee on Rules of the Senate, and over the objections of Senators Sumulong and Tañada, the Senate chose respondents Senators Cuenco and Delgado to fill in the remaining two seats. Both Senators were also members of the ruling Nacionalista Party. As a result of such action, Senator Tañada and Congressman Diosdado Macapagal instituted the present action, assailing the act of the Committee on Rules in nominating and the Senate in choosing Senators Cuenco, and Delgado to fill in the two positions in the electoral tribunal.

The respondents argued that the Supreme Court was without jurisdiction to entertain the petition on the ground that the power to choose six Senators as members of the of the Senate Electoral Tribunal had been expressly conferred by the Constitution upon the Senate and that the only remedy available to the petitioners was not a judicial forum but to bring the matter to the bar of public opinion.

The Supreme Court, through then Justice Concepcion, held that although the Senate had, under the Constitution, the exclusive power to choose the Senators who should form part of the Senate Electoral Tribunal, the Fundamental Law had prescribed the manner in which the authority should be exercised. Even if, under the Constitution, legislative power was vested in Congress, this did not mean that the courts of justice were without power to determine the constitutionality of the acts of Congress.

In fact, whenever the conflicting claims of the parties to a litigation could not be properly settled without inquiring into the validity of an act of Congress or of either House thereof, the courts have, not only jurisdiction to pass upon the said issue, but also the

duty to do so, which cannot be evaded without violating the fundamental law and paving the way to its eventual destruction. ²¹

LANSANG VS. GARCIA

One of the most important decisions penned by the late Chief Justice is the case of *Lansang vs. Garcia*. This case involved, among others, the baffling question of whether the authority to determine the existence of an exigency which would require the suspension of the privilege of the writ of habeas corpus belonged to the president and whether his decision was final and conclusive upon the courts and all other persons.

This case was a predicate of the Plaza Miranda bombing of August 21, 1971, where two hand grenades were thrown into the Liberal Party meeting, killing eight people and wounding several others. Soon thereafter, the President of the Philippines issued Proclamation No. 889 and its amendments.²² The petitions arose when, in relation to the said proclamation, several persons were arrested and detained in connection with their alleged involvement in the crime of insurrection and rebellion.

The Supreme Court, speaking through the late Chief Justice, held that the grant of power to suspend the privilege of the writ of habeas corpus was neither absolute nor unqualified. On the other hand, this power conferred by the Constitution was limited and conditional. What is more, it postulated the former in the negative, evidently to stress its importance, by providing that "the privilege of the writ of habeas corpus shall not be suspended xxx." It was only by way of exception that it permitted the suspension of the privilege" in cases of invasion, insurrection and rebellion" -or, under Article VII of the Constitution, "imminent danger thereof" when the public safety required it, in any of which events the same might be suspended whenever during such period the necessity for such suspension should exist.²³ The power to suspend the privilege was limited not only by

²¹ Taftada vs. Cuenca (G.R. No. L-10520)

²² Proclamation Nos. 889-a, 889-b, 889-c and 889-d. ²³

1935 Constitution cited in *Lansang vs. Garcia*

the conditions prescribed for its existence, but also, as regards the time and the place where it was to be exercised. And, like the limitations and restrictions imposed by the Fundamental Law upon the legislative department, adherence thereto and compliance therewith may, within proper bounds, be inquired into by courts of justice. ²⁴ However, owing to the principle of separation of powers and the system of checks and balances, the function of the Supreme Court was merely to check the acts of the executive and not to supplant the with its own. It could only ascertain whether the Chief Executive had exceeded the constitutional limits of his jurisdiction and not judge the wisdom of his act. The proper test was not the correctness but the arbitrariness of the act.

Consequently, the Supreme Court had the authority to inquire into the existence of the factual bases in the light of the requirements of the constitution. The determination of the President of the existence of such bases was neither absolute nor binding upon the courts.

THE JAVELLANA CASE (C.R. NO. L- 36142, MARCH 31, 1973)

Finally, in the case of *Javellana vs. The Executive Secretary*²⁵ he bravely defended the Rule of Law by firmly and categorically declaring that the Constitution prepared by the Constitutional Convention of 1971 had not been validly ratified by the citizenry, that the same was without any force and effect and that the 1935 Constitution was still the Fundamental Law of the Land.

This was his valedictory dissenting opinion before his retirement from the Supreme Court on April 17, 1973²⁶ the date the said decision became final declaring that "there is no more judicial obstacle to the new constitution being considered in force and effect," a conclusion inconsistent with his dissenting opinion.²⁷ It was an enlightening decision written without hesitation and fear of reprisal. Such was a

²⁴ *Ibid.*

²⁵ C.R. No. L- 36142, March 31. 1973

²⁶ Two months before the date mandated by the Constitution

²⁷ Atty. Leon L. Asa, *Chief Justice Roberto Concepcion and the Supreme Court*, 10 Lawyers Review NO.5 (May 31. 1996).

display of unbreakable spirit and devotion to truth and justice reminiscent of our national hero Dr. Jose P. Rizal. In the said case, he stated that the demands of judicial statesmanship could not prevail over the Rule of Law. Expressing his views with regard to the reliefs sought by the parties, he said:

Perhaps others would feel that my position in these cases overlooks what they might consider to be the demands of judicial statesmanship, whatever may be the meaning of such phrase. I am aware of the possibility, if not the probability; but "judicial statesmanship," though consistent with the Rule of Law cannot prevail over the latter. Among consistent ends and consistent values, there always is a hierarchy, a rule of priority.

We must realize that the New Society has many achievements, which would have been very difficult, if not impossible, to accomplish under the old dispensation. But, in and for the judiciary, statesmanship should not prevail over the Rule of Law. Indeed, the primacy of the law or of the Rule of Law and faithful adherence thereto are basic, fundamental and essential parts of statesmanship itself.²⁸

LIFE AFTER THE SUPREME COURT

Fifty days before his compulsory retirement age, Chief Justice Concepcion retired as Chief Justice of the Supreme Court on April 17, 1973. For many, his retirement was a great loss to the highest tribunal. He retired at a time when our history was rapidly unfolding into uncertainty. His leadership would have been a guiding beacon during the darkest part of our history. His impartiality and integrity would have been the sturdy foundation which the Supreme Court could rely upon during the times of great political turmoil and social unrest. His unmarred and intractable character could have added to the strength and objectivity of the judiciary during the times when political pressure from all directions was unveiling.

After forty five years of outstanding public service, the late Chief Justice deprived himself of a well earned rest by devoting his time to

²⁸ Javellana vs. Executive Secretary, et al., C.R. No. L- 36142 (1973)

human rights causes through legal assistance to the poor. He offered to lead without compensation the Legal Aid Committee of the Integrated Bar of the Philippines. Even after his long and arduous tenure in the judiciary he still found time to help poor litigants and started a crusade emulated by lawyers all over the country.

Despite his advanced age and fragile physical condition, he still refused to shun from the demands of the public good and served as a distinguished member of the 1986 Constitutional Commission. He was the Chairman of the Committee on the Judiciary and the principal architect of the Judiciary Article of the 1987 Constitution, whose draft was designed at his sickbed. He strengthened the independence of the judiciary with the creation of the Judicial and Bar Council. The expanded judicial power enshrined in Section 1 of Article VIII²⁹ of the present constitution is reflective of the views that he expressed in the cases of Tañada and Lansang. In the words of Justice Cecilia Muñoz Palma, the President of the 1986 Constitutional Commission:

Roberto Concepcion's ideas and ideals firmly enthroned in the Article in the Judiciary and other provisions in the new Charter, constitute the priceless legacy he leaves to the Filipino people—the rule of law, a regime of truth and justice, a just and humane society based on freedom, love, equality and peace. Many years from now, legal historians, apostles and students of the law, recognizing him in the Article on the Judiciary, I am sure are bound to say— "This was a man of law—when come such another."³⁰

Chief Justice Roberto Concepcion died at the age of 83 on May 3, 1987. His death was a great loss, as the legal profession lost one of its greatest luminaries. A gentleman and a scholar, he was the fiercest vanguard of the Rule of Law. His unconquerable spirit and unswerving

²⁹ Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

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.

³⁰ Atty. Leon A. Asa, *Chief Justice Roberto Concepcion and the Supreme Court*, 10 *Lawyers Review* NO.5 (May 31, 1996).

dedication to his principles will be remembered for generations to come.

THE CHIEF JUSTICE AND THE 1987 CONSTITUTION

Section 1 of Article VIII of the Constitution provides:

Section 1. The Judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

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 grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

The first part of the authority represents the traditional concept of judicial power, involving the settlement of conflicting rights as conferred by law. The second part of the authority represents a broadening of judicial power to enable the courts of justice to review what was before forbidden territory, to wit, the discretion of the political departments of the government.³¹

The 1987 Constitution expands the power of the judiciary by granting to the courts the power to determine whether there has been grave abuse of discretion on the part of any branch or instrumentality of the government. Although pervasive, it does not totally abolish the long standing doctrine on political questions. Political questions, as 'defined in the case of *Tañada vs Cuenco*,³² are "those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority' has been delegated to the legislative or executive, branch of government." However, using the definition of judicial power under the present constitution, it could be said that' "the second clause effectively limits the political question area which, heretofore, was

³¹ Isagani A. Cruz, *Philippine Political Law*, p. 247 (1998). ³²

C.R. No. L-10520, February 28, 1965.

forbidden territory for the courts." 33 The present definition has strengthened and broadened the scope of judicial power consistent with the decisions of the Supreme Court in *Lansang and Tañada*.

The case of *Stonehill vs. Diokno*³⁴ also made a monumental impact to subsequent decisions of the Supreme Court including the 1973 and 1987 Constitutions. It abandoned the ruling in the case of *Moncado vs. People Court*³⁵ where the Supreme Court ruled it is well-settled doctrine in the Philippines, the United States, England and Canada, that the admissibility of proof is not affected by the illegality of the means used in obtaining them. The guilty should not escape punishment even if the evidence against him had been obtained illegally.

The exclusionary doctrine has been adopted in the 1973 Constitution when it provided in Section 4(2) of Article IV thereof that "any evidence obtained in violation of this and the preceding section shall be inadmissible for any purpose in any proceeding. " The same provision is enshrined in Section 3 (2) of Article III of the 1987 Constitution.

An innovation in the 1987 Constitution is the Judicial and Bar Council which takes the place of the Commission on Appointments in the matter of judicial appointments.³⁶ The Council shall have the principal function of recommending appointees to the judiciary. It may exercise such other functions and the duties as the Supreme Court may assign to it.³⁷ The Council was principally designed to eliminate politics from the appointment of judges and justices.³⁸ Section 9 of Article VIII provides:

The members of the Supreme Court and the judges of lower courts shall be appointed by the President from a list of at least

33 Antonio B. Nachura, *Outline Reviewer in Political Law*, p. 237 (2002). 34 C.R. No. L-19550, June 19, 1967.

³⁵45 O.C. 2850

36 Isagani A. Cruz, *Philippine Political Law*, p. 251 (1998). 37

Section 8(5) of Article VIII of the 1987 Constitution.

38 Joaquin C. Bernas, *The 1987 Philippine Constitution A Reviewer-Primer*, p. 397 (2002).

three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation.

For the lower courts, the President shall issue the appointments within ninety days from the submission of the list.

This, at least in theory, would insulate the judiciary from the influence of the two other branches of the government.

Another provision which aims to promote the independence of the judiciary is Section 6 of the Article VIII. It states that the Supreme Court has the administrative supervision overall courts and personnel thereof. This provision was one of the most significant innovations in the 1973 Constitution that has been retained in the new Charter.³⁹ The old set up placed the courts under the administrative supervision of the Department of Justice which somewhat impaired the independence of judges and made it prone to the influence -of the executive branch. Under the present provision, the judiciary is insulated from outside influences and control making it a more efficient institution.

Two provisions in Article VIII of the 1987 Constitution protect the security of tenure of judges. The first is the 2nd paragraph of section 2 which provides:

No law shall be passed reorganizing the Judiciary when it undermines the security of tenure of its members.

And the other is Section 11 which provides:

The members of the Supreme Court and judges of lower courts shall hold office during good behavior until they reach the age of seventy years or become incapacitated to discharge the duties of their office. The Supreme Court en bane shall have the power to discipline judges of lower courts, or order their dismissal by a vote of a majority of the Members who actually took part in the deliberations on the issue in the case and voted thereon.

³⁹ Isagani A. Cruz, *Philippine Political Law*, p. 281 (1998).

These provisions are also designed to promote the independence and efficiency of the judiciary by giving its members an assurance that they will not be ousted from their offices except for cause. Such assurance tends to create a more fearless judiciary; one who can decide cases without fear of retaliation and harassment.

In the case of *Ocampo vs. Secretary of Justice*,⁴⁰ the Supreme Court resolved the constitutional question of whether or not a law abolishing certain courts violated the security of tenure of the affected judges. In this landmark case, the late Chief Justice, along with Justices J.B.L. Reyes, Bengzon, Montemayor, Angelo- Bautista, Pablo and Hugo moved to declare R.A. No. 1186 unconstitutional, holding that "the implied authority invoked by the respondents collides with the express guarantee of tenure protecting the petitioners." However, for lack of one vote, the constitutionality of the said law was upheld. In sustaining the validity of the law, the Court distinguished between removal from office and abolition of the office. The Court held:

The security of tenure is not a personal privilege of any particular judge; the right of a judge to his full tenure is not dependent alone upon his good conduct, but also upon the contingency that the legislature may, for the public good, in establishing the courts, from time to time consider his office unnecessary and abolish it. Tenure presupposes the existence of the office.

In the case of *De la Llana vs. Alba*, another law was assailed to be unconstitutional for undermining the security of tenure of judges. The Supreme Court upheld the justification that statutory courts may be abolished by the legislature provided that the abolition is done in good faith.

However, the doctrine announced in the *Ocampo* and *De la Llana* cases has been rendered obsolete with the adoption of the second paragraph of section 2, providing that no law shall be passed reorganizing the judiciary when it undermines the security of tenure of its members.⁴¹

⁴⁰ C.R. No. L-7910, January-IS, 1955.

⁴¹ Isagani A. Cruz, *Philippine Political Law*, p. 285 (199S).

Decades after the Ocampo decision, the view of Chief Justice Concepcion finds vindication and is immortalized in the 1987 Constitution.

Many provisions in the present Constitution can be traced from past Supreme Court decisions reflecting the principled opinions of Chief Justice Concepcion. The exclusionary rule, security of tenure and a desire for a more independent judiciary are manifestations of his desire to create a more credible and efficient judicial system. The expanded power of the courts of justice provided in section 1 of Article VIII is a reflection of his devotion to the Rule of Law.

CONCLUSION

More than sixteen years after his death, the memory of Chief Justice Concepcion and his contributions to the legal profession continue to provide us guidance and inspiration. He has distinguished himself without fear as a true advocate of the Rule of Law. Today, he lives through the numerous works and decisions that he has written. His invaluable efforts as head of the Legal Aid Committee of the Integrated Bar of the Philippines and his contributions to the 1987 Constitution, among others, will be remembered by a grateful nation whom he has served his entire life. His activism and integrity in the cases of Stonehill, Tañada, Lansang and Javellana will be immortalized in the halls of justice and in schools of law.

Members of the legal profession and students of law will never forget the legacy that he has given. The Rule of Law, his ideas on the administration of justice and the landmark decisions will reverberate throughout the years constantly reminding us that no one is above the law and the end does not justify the means. His incorruptibility and punctiliousness will be the benchmark for future great servants of the Filipino people.

The Faculty of Civil Law of the University of Santo Tomas salutes this great man-Chief Justice Roberto Concepcion- A Thomasian and Vanguard of the Rule of Law.