



THE BAR TRIBUNE

Official Publication of the Integrated Bar of the Philippines
15 J. Vargas Avenue, Ortigas Center, Pasig City

Vol. 5 No. 5

August 2008

IBP Joins Multi-Sectoral 'Access to Justice' Forum



IBP National President Feliciano M. Bautista addressing members of various sectors in the Manila leg of the Forum

The Integrated Bar of the Philippines joined representatives from various sectors last June 30 to July 1, 2008 in simultaneous discussion groups in Manila, Cebu and Cagayan de Oro to thresh out workable policies and programs to improve people's access to justice. The Supreme Court-initiated forum carried the theme "Bridging Gaps and Removing Roadblocks." It was sponsored by the Supreme Court with assistance from the European Union, The Asia Foundation and USAID.

IBP National President Feliciano "Shane" M. Bautista spoke in behalf of the legal profession and outlined IBP's key proposals. Representatives from farmers, peasants, urban poor, labor, women, children, indigenous people, Moro communities, fisherfolk, environment groups, the elderly and the informal sector likewise gave their respective programs of action.

President Bautista divided his presentation into substantive and procedural proposals. The substantive proposals included (a) full recognition of economic and social rights and the need to amend the ruling in *Simon vs. Commission on Human Rights* that these economic and social rights need enacting legislation; (b) establishment of a Free Legal Aid program among lawyers, and mandate for lawyers to render 100 hours of free legal service; (c) making Alternative Dispute Resolution a mandatory subject in law schools; (d) continuation and expansion of the pilot program of the Supreme Court for third year law students to assist as clerks to judges.

The procedural proposals meanwhile were (a) full and strict implementation of the Speedy Trial Act; (b) reduction of court fees and review of incidental expenses of litigants such as photocopying of transcripts, as well as removing fees in criminal cases; (c) grant of autonomy to the Public Assistance Office (PAO) from

the Department of Justice (DOJ), PAO should be attached to the DOJ only for budgetary purposes; (d) possible IBP accreditation as a safe haven that is legally permitted to implement the Witness Protection Program; (e) creation of small claims courts where the claims do not exceed Php 50,000, and the parties can settle without lawyers; (f) allow judicial affidavits in our courts, and encourage counsels to make full use of discovery proceedings in order to make trials faster and more efficient.

"As the saying goes, those who have less in life should have more in law. Our advocacies should not end with our participation in this forum because basically we are just sharing our wishlist. More importantly, we need extensive follow throughs and concrete action and cooperation among various stakeholders so that our proposals are realized. These would all benefit our countrymen who have difficulty in accessing justice because of their dire economic situation," Bautista stressed. ■

The Present State of 'Terrorism' in the Philippines

By Nasser Marohomsalic

The terror campaign of the Marcos dictatorship in the closing years of the 60s and during the regime of Martial Law was best remembered for the monstrosity of the military and the police.

In 1971, Congressman Salipada Pendatun took the floor of the House of Representatives and raged against the mad design of government to disperse the Bangsa Moro.

Senator Domacao Alonto made the world his stage and denounced government compliance in the conspiracy to eradicate Islam in the country.

Senator Mike Tamano, a fellow partyman of Marcos in the Nacionalista, disassociated himself from the Dictator and foreswore any appeasement from him including membership in the Cabinet.

Libya's Moamar Khadaffi saw genocide and threatened intervention.

Malaysia trained Moro youth in its territory and bankrolled their rebellion.

Moro Diaspora

So much for history. Suffice it to say, one vestige of this terror campaign and the dictatorship is the diaspora of the Bangsa Moro.

They emigrated in great numbers, and Muslim communities sprang up throughout the country especially in populous urban areas. After Martial Law, most chose to stay in their adopted homes eking out a living, their children enrolled in English schools and acquiring mostly the mannerisms, speech, and accent of the majority.



Discrimination and Xenophobia

Nowadays, in Metro Manila as in many Christian cities, one easily encounters them in busy streets and commercial districts wearing their traditional fashion or their accoutrements. In plain outfit, they appear like everybody else. But beneath the ordinariness in their expressions are plaintive emotions. Many of them have experienced acts of discrimination from the majority. Incidents are abundant where taxi drivers avoided to ferry them, mall security subjected them to rigorous inspection, Christian children covered in fear or contempt when seated beside them in fast-food establishments, etc.

No doubt, the notoriety of the Abu Sayyaf as a kidnap-for-ransom gang wrecked through the psyche of the uninitiated among the majority and

colored the perceptions of the Muslims in the country.

Anti-Islamic Crusade

The Philippine government shed tears for the American 911 tragedy and pursued a terror campaign that goes wayward to the lure of the US dollar and the noise of American rhetoric. Insurgent organizations of the Bangsa Moro are seen no different from the terrorist Abu Sayyaf as an enemy in military terms that must be destroyed, and the government courts public support by painting them, the MILF in particular, as an Islamist organization pursuing an Islamic agenda which makes them an internal security threat. On a licentious scale, the Philippine government directed its terror campaign against the Moro religious without regard for human rights, particularly clamping down on Islamic educational and *da'wah* centers outside of their homeland.

These centers are social citadels mostly erected by Muslim émigrés in their own enclaves in Christian communities to keep themselves connected with Islam.

On January 7, 2005, the campaign claimed for its first victims some Moro religious people who managed the Islamic Information Center at Pasay Taft, Manila. Combined elements of the Police Criminal Investigation Division Group (CIDG) at Camp Crame, Quezon City, and the Western Police District, Manila, raided the center and arrested its officers and habitués who were there at the time in its library and prayer room. Claiming that bomb

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materials and guns that were shown before the media were seized from the place, the police charged them in court for illegal possession of explosives and firearms with the intention to bomb the Black Nazarene Fest at Quiapo, Manila, that was going to be celebrated two days later, January 9, 2005, with the procession and parade of thousands of Christian devotees of the local religious icon.

The court dismissed the case for lack of merit. In a congressional hearing, it was found out that the evidence was made up and the raid was conducted to prop up the promotion of a police colonel, among others.

In the anti-terror campaign of the government, the Muslim reverts are hardest hit too. In 2005, some of them were branded by the police as organizers and financiers of a terrorist group named Green Archers. According to the police, the group is out to assassinate the president and foreign embassy dignitaries. The timely intervention of Muslim leaders in Congress, who probed into this concoction by the police, saved them.

In 2006, Discovery Islam founded by Muslim reverts and located at Pasay City



was closed down after it was raided by the police.

Presently, Muslims in Metro Manila raised alarms at the information doing rounds in Metro Manila that the security and police agencies of government are poised to close down the Islamic Studies Call and Guidance (ISCAG), the biggest Muslim cultural and educational center at Dasmariñas, Cavite, by branding its management as terrorists. The matter is reported to a flag officer in the Philippine National Police.

Ordinary, innocent Muslims were not spared from the campaign against terrorism. One case pierced the heart like a serrated sword. In the morning of October 6, 2004, a 24-year old lady from Maguindanao was arrested in her house at Paco, Manila. Earlier, her fiancé, who was allegedly the object of a warrant of arrest in connection with incidents of

bombing in Davao City in 2003, was arrested along Fabie Street at Paco. Incidentally, the Oakwood mutineers owned up responsibility for some of these bombings. Along with two others, she was presented to the media as a terrorist, despite police claim that she was arrested for poking a .45 pistol at the arresting officers who, according to her, barged into her room without warrant and despite her objection. She was detained at the ISAFP compound at Camp Aguinaldo, and her visitors consisting of members of her family and representatives from the Commission on Human Rights, among others, were denied access to her twice. The ISAFP initially denied having custody of the woman. Twenty-one days after her captivity, she was released, then subjected to medical examination at the instance of her family and was found that her womanhood was violated during her detention.

Our narratives show enough how the anti-terror campaign of government has gone awry and subverted the Bill of Rights. As it is, indeed, in flesh and form, said campaign looks like it belongs to the Neanderthal period. ■

Downloadable copies of the IBP Journal and The Bar Tribune are available at www.ibp.org.ph

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Sexual Infidelity or Perversion *Per Se* Insufficient to Prove Psychological Incapacity

Irreconcilable differences, sexual infidelity or perversion, emotional immaturity and irresponsibility and the like do not warrant a finding of psychological incapacity in marriage, as these may only be due to a person's refusal or unwillingness to assume the essential obligations of marriage and not due to some psychological illness.

In a decision penned by Justice Ma. Alicia Austria-Martinez, the Court's Third Division granted the petition for review on *certiorari* filed by Nilda Navales, ruling that the evidence presented by her husband Reynaldo was insufficient to establish that she was psychologically incapacitated to comply with her marital obligations as a wife.

Nilda was accused of being, among others, a nymphomaniac, emotionally immature, having a borderline personality, in complete denial of her actual role as a wife, and a social deviant with a very weak conscience or superego and strong sexual urges which are incurable.

The Court noted that the psychological report presented to support Reynaldo's claims failed to specify the identities of the persons Nilda allegedly had relationships with, or the circumstances surrounding the same and the identities of the persons whom the clinical psychologist had interviewed.

As such, the Court found that the psychological report failed to show the root cause of Nilda's psychological incapacity; it also failed to demonstrate that there was a natal or supervening disabling factor or an adverse integral element in Nilda's character that effectively incapacitated her from accepting, and thereby complying with, the essential marital obligations and that her psychological malady existed even before the marriage.

"Mere difficulty, refusal or neglect in the performance of marital obligations or ill will on the part of the spouse is different from incapacity rooted on some debilitating psychological condition or illness," the Court stressed.

(GR No. 167523, *Navales v. Navales*, June 27, 2008)/**Helen D. Santos**



Court Upholds Executive Privilege in JPEPA Case



The Court recently upheld as covered by the executive privilege on diplomatic communications the offers made by the Philippine and Japanese governments during the negotiations of the Japan-Philippines Economic Partnership Agreement (JPEPA).

JPEPA, the first bilateral free trade agreement between the Philippines and another country, has yet to take effect since it still has to obtain Senate concurrence as required under Art. VII, Sec. 21 of the Constitution.

The Court noted that the petition "has been largely rendered moot and academic" by the public disclosure of JPEPA's text after its signing by President Gloria Macapagal-Arroyo during the pendency of the petition.

As for the Philippine and Japanese offers during JPEPA's negotiations, the

Court applied the principles in *People's Movement for Press Freedom (PMPF) v. Manglapus, En Banc Res.*, GR No. 84642, September 13, 1998 in ruling that the offers are privileged communications that are confidential in character.

The Court also held that to overcome executive privilege, the party demanding the information must show that the information sought is vital not just for satisfaction of curiosity but for effective and reasonable participation in social, political, and economic decision-making. "We reiterate that our people have been exercising their right to participate in the discussion on the issue of JPEPA, and they have been able to articulate their different opinions without need of access to the JPEPA negotiation documents," it said.

(GR No. 170516, *Akbayan Citizen's Action Party v. Aquino*, July 16, 2008)/**Gleo Sp. Guerra**

Creation of the Province of Shariff Kabunsuan Voided

The Supreme Court recently declared unconstitutional the grant to the Regional Assembly of the Autonomous Region in Muslim Mindanao (ARMM) of the power to create provinces and cities by Congress under RA 9054.

Consequently the Court voided Muslim Mindanao Autonomy (MMA) Act No. 201 passed by the aforesaid Regional Assembly creating the province of Shariff Kabunsuan out of certain municipalities in the First District of the Province of Maguindanao as well as upheld Commission on Elections Resolution No. 7902 for maintaining the *status quo* in the first legislative district of Maguindanao despite the creation of the Province of Shariff Kabunsuan out of such district (excluding Cotobato City).



Voting 8-6, the Court *en banc* in a decision by Justice Antonio T. Carpio held that “Only Congress can create provinces and cities because the creation of provinces and cities necessarily includes the creation of legislative districts” and that “Congress exercises these powers through a law that a regional or local legislative body enacts.”

“It would be anomalous for regional or local legislative bodies to create or apportion legislative districts for a national legislature like Congress. An inferior legislative body, created by a superior legislative body, cannot change the membership of the superior legislative body,” the Court added.

(GR Nos. 177597 and 178628, *Sema v. Comelec and Marquez v. Comelec*, July 16, 2008)/**Gleo Sp. Guerra**

SC Orders Disbarment of Lawyer

The Supreme Court has ordered the disbarment of a lawyer for fraud.

In a nine-page *per curiam* decision, the Court ordered that Atty. Antonuitti K. Palaña’s name be stricken from the Roll of Attorneys. The Court held Palaña’s conduct fell short of the exacting standards expected of him as a vanguard of the legal profession.

“Considering the serious nature of the instant offense and in light of his prior misconduct...the contumacious behavior of respondent in the instant case which grossly degrades the legal profession indeed warrants the imposition of a much graver penalty – disbarment,” the Court said.

In 2004, complainants Catherine and Henry Yu, together with other investors, engaged in spot currency trading with Wealth Marketing and General Services Corporation, whose Board of Directors was chaired by respondent Palaña. Complainants were made to believe that the corporation would return to its investors their principal investments including



guaranteed interests should the corporation suffer any loss.

Complainants, however, learned that Wealth Marketing had ceased operations. The checks issued to them representing their principal investments were also dishonored for being drawn from a closed account. Complainants also learned that a new corporation, Ur-Link, was formed and would assume the obligations of Wealth Marketing.

Atty. Palaña, assuring complainants that the new corporation would assume its responsibilities to its investors, even signed an agreement to effect such. However,

despite demand letters from complainants, no action was taken by Wealth Marketing’s officers and directors, prompting complainants to lodge a criminal case for estafa against Palaña.

Respondent’s offense is highlighted by his lack of regard for the charges against him. His offense is also exacerbated by his hiding instead of facing the charges head on, the Court said.

The Court also noted that this is not respondent’s first administrative offense. In *Samala v. Palaña*, respondent was suspended from the practice of law for three years for violating a provision in the Code of Professional Responsibility. Respondent was again meted a six-month suspension in *Tejada v. Palaña* for his refusal to settle his obligations. (AC No. 7747, *Yu v. Palaña*, July 14, 2008)/**Maribeth C. Cruz**

(SC Reports articles are reprinted from the Supreme Court’s Benchmark, July 2008 issue)

Bicolandia Regional Convention (Led by Governor Bonifacio T. Barandon, Jr.) - May 22-24, 2008, Avenue Convention Center, Avenue Plaza Hotel Magsaysay Avenue, Naga City
Theme: "The Bicolandia Lawyers: Purveyors of Political Reforms"



Governor for Bicolandia Bonifacio T. Barandon, Jr. delivers his welcome message



National President Feliciano M. Bautista, Governor for Bicolandia Bonifacio T. Barandon, Jr. and IBP Camarines Sur Chapter President Leo Arnel M. Caayao presents Plaque of Appreciation to Solicitor General Agnes VST Devanadera



Board of Governors and National Officers Meeting



Fellowship Dinner and Induction of New Lawyers
 Camsur Watersports Complex (CWC)
 Provincial Capitol Complex, Cadlan, Pili, Camarines Sur, May 22, 2008

Central Luzon Regional Convention (Led by Governor Ernesto A. Gonzales, Jr.) - June 5-7, 2008, El Centro, Legenda Hotel, Subic Bay Freeport Zone
Theme: "The Filipino Lawyer as a Leader for Legal and Moral Revolution"



National President Feliciano M. Bautista delivers his inspirational message



Governor for Central Luzon Ernesto A. Gonzales, Jr. welcomes the participants



Delegates sing the IBP March



Board of Governors and National Officers Meeting



18th Board of Governors and National Officers with SC Associate Justices Consuelo Ynares-Santiago and Minita Chico-Nazario

Southern Luzon Regional Convention (Led by Executive Vice President & Governor for Southern Luzon Rogelio A. Vinluan) - July 18 & 19, 2008
Renaissance Hotel (Formerly New World Hotel) Esperanza Street corner Makati Avenue, Makati City
Theme: "Judicial Reform: An Assessment of the Role of IBP and A Call to Action"



Testimonial Dinner for Supreme Court Associate Justice Arturo D. Brion

July 17, 2008, IBP Building, Ortigas Center, Pasig City



IBP Journal Lecture Series

(Sponsored by IBP Journal in cooperation with the U.P. Law Center Training and Convention Division)

“Questions on National Integrity: The Spratly’s Dilemma”

May 29, 2008, UP Law Malcolm Theater, Diliman, Quezon City



Dean Merlin M. Magallona gives his presentation in front of more than 300 lecture participants



IBP Journal Editor-in-Chief Roan I. Libarios together with the IBP Journal Lecture Series speakers

IBP Mandatory Continuing Legal Education (MCLE) Program

July 29, 2008 to August 19, 2008

Justice J. B. L. Reyes Hall formerly IBP Multi-Purpose Hall, 4th Floor, IBP Building, Ortigas Center, Pasig City.



Justice Zenaida N. Elepaño (Ret.) lectures on Ethics & the Law and Writ of Amparo

