

A Proposal on Judicial Reform in the Philippines¹

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Introduction

For justice to be within reach of every person, it is not enough that the members of the Judiciary be fearlessly committed to the rule of law. That commitment must be matched by a sustained effort to improve the competence and efficiency of the entire judicial machinery so that justice can be done quickly, inexpensively and fairly. In plain terms, the judicial reform agenda by the reforming government must focus on a judicial system that not only adheres to the supremacy of the rule of law but also promotes the ends of social justice, served by morally upright and competent judges and lawyers, through an efficient court system.

Analyzing the Problems

The nature of justice in the Philippines has long been a burning issue in its political system. In spite of the introduction by the Supreme Court of several reforms in the judicial system, the mills of justice still grind slowly especially for the poor. Complaints of inordinate delay and dishonesty partially continue to be aired publicly. Among practicing lawyers, many stories circulate about members of the judiciary who sell their decisions and about judicial officers who amass unexplained wealth. Yet, no exposes are made because there is no guarantee that these court officers would be booted out or that the cases being handled by the complaining lawyers would be prejudicial. Clearly, the judiciary's perceived weaknesses concern primarily the court system -- incompetent judges, complex procedures and court delay which is manifested in clogged dockets and protracted litigation. Court congestion and litigation delay perhaps pose the biggest deterrents to the speedy and inexpensive delivery

of justice. Long, arduous procedures likewise deter the ordinary citizen from seeking the aid of the court. One has to recognize, too, that all the expert arguments and the fancy words that the lawyers conjure are almost useless if cases are never resolved soon enough. On the other hand, incompetence erodes the people's faith in the kind and quality of justice that the judiciary is able to administer. When taken together, these evils can produce conditions that breed and sustain judicial corruption.

But an equally destructive impediment to the Filipino people's right to justice rests outside the court system, that is, in their own inability to exercise their right to full and effective access to the courts. True, the Philippine Constitution guarantees full access to the courts. But what good are rights like justice and democracy reflected in a document when the majority are unable to bring their grievances to the courts? How can they seek redress from the courts when they do not even know their rights under the law, much less afford to seek such redress? If one were to ask the ordinary citizen on the street, the perception is that only the wealthy, the educated and the privileged have effective access to the courts, while the poor and the destitute are marginalized from the bounties of court justice. Apparently, the delivery of justice is tied to an invisible caste system.

Proposed Reform Initiative

Without doubt, there is a clear need to design and implement a reform program to minimize the impact of the problems involving the efficiency and effectiveness of the court system.

It must be noted that past judicial reforms instituted by the Supreme Court have primarily centered on strengthening the court system, such as the continuous trial system and the publication of the list of nominees for judicial offices. But, sadly, the tarnished image of the judiciary remains. The only explanation this writer can think of for this sad state of affairs is the continuing omission to take into the reform equation the essential involvement - which is deplorably lacking at present - of the masses in making justice a reality for them. Hence, this paper proposes a judicial reform measure that aims at fully securing for the common people their right to judicial access.

For sure, the creation by the government of the Public Attorney's Office (PAO) under the Department of Justice has not adequately answered the necessity for a more comprehensive national legal aid program. Though the PAO renders free - but still limited - legal assistance to the poor, it has been greatly hampered by lack of lawyers and insufficient resources. There is indeed a huge hole to be filled in terms of providing systems for legal counseling, case evaluation and referral, socialized documentation and subsidized legal representation services. A "one-stop shop" legal aid program for the poor should be put up to meet all these needs. This may be achieved through the institutionalization of paralegal services backed up by the establishment of paralegal institutes in the best law schools to train and accredit paralegals

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in the country. Law interns, who either may be in the last year of their law studies or have not passed the Bar Examinations, can be tapped to render paralegal services as part of the legal discipline. Such plan is certainly feasible considering both the attractiveness of law to young individuals as a field of post-graduate study and the presence of quality law schools in the three major geographical areas of the Philippines. This innovation can serve three purposes.

First, by reaching out and popularizing law at the grassroots level, law interns can assist people in having a better understanding and awareness of basic laws on family relations and property, contracts and specific crimes, as well as their basic freedoms and individual rights. Uncondescending and freed of personal interests to think much about, paralegals are better able to impart knowledge in simple lay terms. The poor and the powerless, ever conscious of their own ignorance and lowly stature and fearful of attorney's fees, generally find dealing with lawyers a discomfort. They are probably more at ease with the paralegals using the vernacular as the medium of communication. Not that the lawyers cannot effectively do this. Simply, there may be a barrier in that lawyers, by training and necessity, couch their language in a legalese manner not easily understood by the masses. The use of English in court proceedings may have wrongly reinforced the view that there exists a system that favors the rich and the educated, a system where justice is compartmentalized. A more active role for the paralegals in the justice process can contribute to the erosion of the invisible caste.

Second, and more importantly, the active involvement of the law interns in the legal education of the public at large can contribute much to improving the quality and effectiveness of justice in the country. Without doubt, the judicial system can take advantage of their youthful idealism and fresh perspectives. Their advocacy work with the people can help to bridge the wide gap between the ideal justice and existing reality and can constantly serve as a reminder to the judiciary that legal justice, while important, is only a portion of a bigger, more compelling social concern. The members of the Bench and Bar will constantly be put on guard and in check so that redistributive or social justice remains the appropriate framework for the judicial administration of justice in the country.

Third, and similarly of utmost importance, representation by law interns helps to remedy the problem of judicial access partly resulting from the high costs of administering justice. Given the costs of utilizing the judicial system, the vast majority of people - who are barely able to afford the basic necessities of life - simply do not expect to benefit much, if any at all, from it. To begin with, lawyers constitute an immediate cost. The professional fee of a lawyer is probably the most expensive of the cost items in the utilization of the judicial system. Opening up opportunities for law interns to participate and represent marginalized clients, with minimal supervision of lawyers, expands the people's access to justice at the least cost to them. It must also be noted that

although the population of lawyers in the Philippines is rising, still lawyers are not equitably distributed as most of them are based in Metropolitan Manila and the key cities. Expanding the paralegal aid to the rural areas and other peripheries is one effective way of bringing down the fees that the lawyers charge.

The Philippine Supreme Court, in accord with its mandate to protect and enforce constitutional rights and legal assistance to the underprivileged, can promulgate the rules of procedure for the training and accreditation of the paralegals. The legal institute, composed of professors of the law school setting it up, shall supervise the student-paralegals under its free legal aid program to the poor. To help finance this project, part of the subsidy for legal aid annually given by the Supreme Court to the national association of lawyers, known as the Integrated Bar of the Philippines (IBP), may be rechannelled to the legal institutes.

Constraints to Reform Proposal

Given that the distribution of power and wealth in Philippine society is terribly skewed, any comprehensive, revolutionary change designed to empower the masses' exercise of their basic rights is certain to face rough sailing in implementation. Hence, it is reasonable to expect that important and influential sectors whose interests are going to be adversely affected by the judicial reform measure, namely, the lawyers, the less reputable and mediocre law schools and the elite, are bound to oppose the reform.

Lawyers may feel strongly against the proposed reform for two reasons. One, the establishment of a free legal aid office under the law school's paralegal institute may pose unfair competition to their own legal practice and radically reduce their income in terms of consultation and appearance fees and so on. Second, the reform program may unfairly treat lawyers since hurdling the Bar Examinations (which they did) is a requisite to the practice of law. Nevertheless, one must always bear in mind - and certainly, lawyers know this by heart - that the law profession is a noble service - oriented vocation, and not an ambulance - chasing pursuit. The rendition of pro bono work is part of the lawyer's oath. The choice really belong to lawyers because if they had just been more willing to render legal services for the poor, many of the problems earlier identified would have been eliminated. Further, unfair treatment can be avoided since the participation of the paralegals in the judicial system would be subject to stringent guidelines as may be promulgated by the Supreme Court. For instance, in rural or peripheral areas where there is a scarcity of lawyers, paralegal services would certainly be very much needed. Also, indigent cases handled by paralegals would still be handled under the guidance of the legal institutes.

Law schools may feel the financial pinch of a national rule enjoining the establishment and maintenance of legal institutes. As the legal aid program constitutes added cost, not a few law schools might be forced to close down. But on the positive side, the implementation of the reform would in fact upgrade and ensure the quality of graduates of law schools as there is increased competition among these schools in providing good education which, in turn, is essential for access to legal aid subsidy, either from the Supreme Court (through the Integrated Bar of the Philippines) or from donor foundations. It is to be noted that of about 60 law schools in the Philippines, almost half of them fail to measure up to the national passing average in the Bar Examinations. The legal aid is aimed at imparting more intensively to law students the rudiments of law through actual internship and to instilling legal ethical norms. Of course, the bigger picture is the provision of social justice for the poor.

Finally, opposition can also come from the powerful and wealthy elite who may wish to perpetuate the long period of denial to the masses of the legal guarantees on their rights. By keeping the majority chained in ignorance and poverty, the elite is able to solidify its economic and social grip. Clearly, it is the most dangerous of the three oppositionist groups because of the resources it enjoys. It can effectively lobby before high officialdom to prevent passage of pro-people rules and laws. It can even use force to strike fear among the poor. Here is where the true character of the Supreme Court will be severely tested. What becomes paramount is a strong leadership deeply committed to redistribute justice, regardless of short-term political risks.

Conclusion

In Philippine society where there exists great disparities in wealth, opportunities and respect, justice becomes more valuable. Any proposed judicial reform must thus give meaning to the adage that "those who have less in life should have more in law," though this truly sounds a bias for the poor program. If the government cannot spread wealth, then it must at least distribute justice. For at some point, justice may even spread wealth.

The implementation of a comprehensive legal aid program, provided by paralegals and administered by legal institutes of law schools, may yet be the other vital piece, apart from the "within court system" reform already instituted by the Supreme Court, in making justice a truly living and humanizing right for millions of poor Filipinos.

