JGL Eye

By JOSEPH G. LARIOSA

C HICAGO (*JGL*) – The Philippine Supreme Court has a message to at least two senators, who were "unaware of the existence and implementation of the Disbursement Acceleration Program (DAP)" during the impeachment proceedings of Chief Justice Renato Corona: speak now or forever hold your peace!

In an obiter dictum, the unanimous Supreme Court ruling (*Maria Carolina P. Araullo, et al. v. Benigno S. C. Aquino, III, et al.*
G.R. No. 209287) said as to the "claim that the Executive discriminated against some legislators on the ground alone of their receiving less than the others could not of itself warrant a finding of contravention of the Equal Protection Clause.

"The denial of equal protection of any law should be an issue to be raised only by parties, who supposedly suffer it, and, in these cases, such parties would be the few legislators claimed to have been discriminated against in

the releases of funds under the DAP.

“Only such affected legislators could properly and fully bring to the fore when and how the denial of equal protection occurred, and explain why there was a denial in their situation. The requirement was not met here.”

Call it the Supreme Court’s exercise of judicial restraint, which limits the judges’ exercise of their own decisions based on *stare decisis* or existing laws, as opposed to judicial activism, whose judicial rulings are suspected of being based on personal or political considerations rather than on existing laws.

But the uneven distribution of DAP or none of it could not put the Court in a position to determine if there was denial of equal protection. To have the court to do so despite the inadequacy of the showing of factual and legal support would be to compel it to speculate, and the outcome would not do justice to those for whose supposed benefit the claim of denial of equal protection has been made, according to the ruling.

DOTING CHILD GETS BIGGEST SHARE

I look at the ruling this way: If a dying wealthy parent realizes that only one of his three children was looking after him in the remaining years of his life, he can allocate in his will 75% of his assets to his doting child, 25% to his

other child, who calls him up from time to time and nothing for the third prodigal son, who has not been heard from after leaving the nest empty.

Based on the Supreme Court ruling, if there was a testate proceeding before a probate court, only the second child and the prodigal son can contest the will. Nobody else can.

According to the 92-page decision, on Sept. 25, 2013, Sen. Jinggoy Ejercito Estrada delivered a privilege speech in the Senate to reveal that some Senators, including himself, had been allotted an additional P50-M (US$1.1-M) each as “incentive” for voting in favor of the impeachment of Chief Justice Corona.

If the P50-M was a bribe or not, it is hard to divine because Senator Estrada did not file a complaint. But why would Estrada complain if he received a huge windfall?

Or if Secretary Florencio B. Abad was guilty of “corruption of a public official” for dangling the DAP money so Mr. Estrada would vote to convict Mr. Corona. It will never be known unless one of the two senators, namely, Senators Miriam Defensor Santiago and Joker Arroyo, who did not get any DAP, would step forward to complain, “where is my share,” to mount a full-blown investigation and trial?

Actually, other Congressmen, including sectoral representatives, who were not offered any DAP largess at all, can also come to court to complain against Abad’s arbitrary distribution of the DAP.

But because the senators and congressmen are hoping to get a piece of the

P500–billion plus (US$11.1-B) discretionary fund of President Aquino in the 2015 budget, none of them would ever dare question this proposed appropriation even if it could violate the 1987 Philippine Constitution.

SHOW US THE APPROPRIATE VOUCHERS

A ccording to Sec. 25 (6) of Art. VI of the Constitution, "(6) Discretionary funds appropriated for particular officials shall be disbursed only for public purposes to be supported by appropriate vouchers and subject to such guidelines as may be prescribed by law."

Will the oversight committees of Congress looking into the General Appropriation Acts for 2011, 2012 and 2013 subpoena the records of the Commission on Audit whether the past three annual discretionary funds of President Aquino were properly covered "by appropriate vouchers" before the current 16th Congress approve the proposed P500-B discretionary fund of President Aquino?

If Congress will not scrutinize the lump sum appropriation of Mr. Aquino because Aquino's allies are looking the other way during the committee hearings, the various citizens, taxpayers, lawyer and lawyers group (Integrated Bar of the Philippines) and other complainants, who were instrumentals in having the

DAP and the PDAF (Priority Development Assistance Fund, *Greco Antonious Beda B. Belgica, et al. v. Sec. Paquito N. Ochoa, et a*
l. G.R. 208566) declared unconstitutional, can always regroup and file a new case of
certiorari
, prohibition and mandamus against Mr. Aquino and his cabal, questioning Aquino's P500-B discretionary fund.

Mr. Aquino should be reminded by the separate and concurring opinion of Justice Arturo D. Brion in *Araullo, et al. v. Aquino, et al* case that the "doctrine of operative fact can apply only to PAPs (Programs and Projects) that can no longer be undone, and whose beneficiaries relied in good faith on the validity of DAP, but cannot apply to the authors, proponents and implementors of the DAP, unless there are concrete findings of good faith in their favor by the proper tribunals determining their criminal, civil, administrative and other liabilities."

In other words, if President Aquino cannot show vouchers to match his discretionary expenses during the past three years (2011, 2012 and 2013), and cannot show good faith, then, the P500-B discretionary fund request of Mr. Aquino must be denied for being unconstitutional! (lariosa_jos@sbcglobal.net)

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