

It is necessary to "reinvent" the criminal-justice system of the Philippines if people want to reduce, if not eradicate, corruption, especially among government workers and public servants. If the crooks cannot be brought to justice in a swift and orderly manner, there can never be any practical way to reduce, if not eliminate, graft and corruption.

Excerpts from "How to Reinvent the Criminal-Justice System of the Philippines:"

* 1.0 I discussed also the merit of introducing the Jury System (JS) in my position paper called, "Reinventing the Criminal-Justice System (CJS) of the RP" (still unpublished), which I prepared for the then presidential bid of Sen. Nene Pimentel. It was supposed to be part of his platform of government. I was then the senator's spokesman to the Overseas Filipinos.

1.1 BTW even if I reached only the fourth-year at the Ateneo de Manila College of Law, I defended myself in the jury trial of a libel case filed against me in the Superior Court of Los Angeles, CA. An American libel suit is only a civil case, as libel is not treated as part of the CJS in the United States, unlike in the Philippines where the defendant becomes the accused, who has to post bail and go to jail if convicted.

1.1.1 I won five out of the seven issues that were raised in the plaintiffs' complaint. I did not present any witness and due to my haste, I failed to ask the presiding judge to accept the exhibits that I presented during my cross examination of the plaintiffs' seven witnesses. Some of the exhibits that I should have presented were the testimony of the plaintiff's bookkeeper during a deposition made prior to the jury trial and the financial documents that I obtained through a court-issued subpoena. In fact, very few Filipino-American lawyers appear in jury trials, as they said that they do not have the training for it.

1.2 I have asked some fellow Ateneo Law alumni to help in finalizing my draft of the proposal but we still on the drawing board. Perhaps the senior Philippine legislators and leaders may be able to help complete the proposal and/or do a more-thorough study.

* 2.0 For purposes of this discussion in the MabuhayRadio forum, let us examine the merits and

demerits of introducing the JS as part of the civil and/or criminal-justice systems (C/CJS) in the RP.

2.1 RE: The merits of adopting the JS, especially in the CJS of the RP. No doubt, the JS will elevate the C/CJS to a level "beyond the sabotage by, or control of, government officials," the rich, the powerful and/or the influential segments of Philippine society.

2.2 The major hindrance (demerit) of the JS is the fact that litigants who opt for the civil trial by jury have to pay the allowances given to the jurors (all 12 of them plus the four alternates). The American civil-justice system permits the so-called "pauper litigants" to dispense with paying the jurors' fees but in practice, very few litigants are given the right to do so, as the application process is very tedious.

2.2.1 Please note also that in civil cases, an American respondent (defendant), who cannot afford counsel, is not given the right to be defended by the so-called Office of the Public Defender (OPD). That right to counsel, as stated in the so-called Miranda Ruling, applies only to the accused (in criminal cases) who cannot afford to hire private lawyers.

2.2.2 The problem of funding, which presently ails the Philippine Department of Justice and the court system of the homeland, will no doubt prevent or limit the introduction of the JS in the RP. I have, however, suggested the introduction of the JS in the military justice system as you will find in par. 2.4 and its subparagraphs.

2.2.3 Several legal-aid societies organized by well-meaning Filipino lawyers (acting pro bono) are doing in the RP the functions of the American OPD. The RP has to come up with its version of the OPD and even strengthen it by modifying some of its practices to suit local conditions.

2.3 In fact, what I was trying to recommend (as Step One in "Reinventing the Philippine CJS") in my position paper was for the Philippines to establish and subsidize a Filipino version of the OPD, which is an omnipresent feature of the American CJS. Without a functional and well-funded OPD, the JS will not work in a CJS, as proposed for the RP.

2.3.1 As the Los Angeles Times said in its series, "Ground-Level Justice," the OPD has 15 deputy public defenders assigned to the Los Angeles Superior Court in the City of Norwalk, California. The County of Los Angeles has Superior Courts not only in Norwalk but also in several cities such as Los Angeles, Pomona (for the so-called Pomona Valley), Citrus in West Covina (for the San Gabriel Valley), Pasadena, and other locations. Each Superior Court has a well-funded and maintained OPD, which boasts of well-educated and trained trial lawyers. BTW to read the five-part LA Times series, as written by John Balzar, an LA Times staff member, please log on to www.latimes.com/norwalk .

2.4 Step Two is my suggestion of commissioning all public officials and civil servants into the Armed Forces of the Philippines (AFP) and all cases for graft, corruption and/or criminal misconduct (filed against any public servant by any person, including civilians) be heard and decided within 60 to 90 days by a Court Martial.

2.4.1 The AFP's Judge Advocate General's Office (JAGO) will have to be "reinvented," so that a military version of the JS will be in place, with a civilian-controlled OPD handling the defense for the accused public servant(s).

2.4.2 For a the jurors' pool, my suggestion was to tap not only the AFP's four branches (army, air force, navy and marines) but also law students and former law students, so that the Court-martial experience will further train them for the eventual introduction of the JS in the civil courts.

2.4.3 I suggested also that law students be tapped and deputized to prosecute graft cases, especially those involving the Bureau of Customs, the Bureau of Internal Revenue and the Bureau of Immigration, where reports of rampant corruption are being reported almost daily in newspapers. The rationale for this suggestion is that it will be very difficult for a man of influence and/or affluence (who is charged with a crime) to bribe and/or threaten the whole college of law while it would be easier to do so when dealing with a single prosecutor like the provincial or city fiscal (equivalent of the American District Attorney).

* 3.0 Other Suggested Steps in "Reinventing the Philippine CJS:"

3.1 Indeed the JS has to be introduced to give more humanity to the C/CJS of the RP but on a well-planned and staggered basis.

3.1.1 The RP has to change the curriculum in its colleges of law, so that the law students not only learn the JS theory but also the actual practice as may be experienced in the Court Martial (as stated in par. 2.4.2), which will replace the school's Moot Court.

3.1.2 The RP has to invite American Superior Court judges, especially those of Filipino descent, to give seminars on the JS in the Philippines while at the same time scheduling Filipino Regional Trial Court (RTC) judges to go to the United States and attend jury trials as observers.

3.2 Reinventing the country's bail-bond system, so that the poor litigants -- who have no previous criminal record and sane (meaning, those who do not plead insanity as a defense) -- are temporarily set free during the pendency of the trial on their own recognizance or given to the custody of their parish priest, church minister or pastor or employer or the OPD.

3.2.1 This recommendation will decongest the overcrowded jails, especially for nonviolent or less-serious offenses. As of now, defendants of petty-theft cases, whose maximum jail term if convicted is one year or so, serve in detention (during the often-delayed trial) longer than what it would take them to serve the sentence if found guilty.

3.3 Requiring the Bench (RTC judges) simply to pronounce the guilt or innocence of the accused without being required to put down in writing the court's decision. Only when there is an appeal in civil and/or criminal cases should an RTC judge be required to submit in writing (within 60 days from the time it is pronounced) the decision, including the legal basis for the conviction or judgment, aside of course from the facts that the parties established during the trial.

3.3.1 The basis for my recommendation is that the jurors in the United States are not required to put down in writing their decision. If we have to adopt the JS, then we might as well follow the practice of just deciding the guilt or non-guilt of the accused.

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3.3.2 Freeing the RTC judges and his/her staff of the job of writing down every court decision will give them more time to hear and decide (other) cases on a faster pace. There are other aspects and suggestions in my position paper but there are more-than sufficient items for discussion.

Perhaps readers can incorporate them in the draft of the proposed amendments to the CJS of the country -- after they/we have deliberated them further in this MabuhayRadio forum. # # #

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