

Appendix A

VVM: Vital Volume from a Magistrate*

With no small amount of trepidation, I accepted the invitation of the erudite Dean Raul C. Pangalangan to be the guest of honor in today's launching here at the University of the Philippines of Mr. Justice Vicente V. Mendoza's book, *Judicial Review of Constitutional Questions: Cases and Materials*.

My Consuming Ambition to Enter UP

Since my high school days, I have always been fascinated by the Oblation that greets visitors to the UP. My batch mates at Mapa High School and I frequently toured the UP campus in the early 50s. We promised one another back then that we would study diligently to be worthy of entrance to this great institution of learning.

My consuming ambition to enter UP was frustrated, however. Although granted a UP entrance scholarship, I could not enroll because my impoverished parents could not afford the then 15-centavo bus ride between Diliman and Cataluña Street in Sampaloc, Manila, where we were staying. Instead, I had to content myself by enrolling at nearby Far Eastern University, which was walking distance from our little apartment.

Fate had other plans for me. At FEU I met the young, brilliant and ebullient Law Dean Jovito R. Salonga, who taught me not only UP-style education, but also a smattering of Harvard and Yale. As many of you may know, Dr. Salonga was a graduate of UP, Harvard and Yale; and a bar topnotcher besides.

Although I might have been amply armed by FEU with a formidable legal arsenal, I did not forget UP. So when the opportunity came, I married a fine lady who -- though cloistered in St. Scholastica's for her elementary, high school, and college education -- nonetheless found the wisdom to finish one of her two masteral degrees at the UP.^[1] But that's not all. Our only son graduated from the UP Conservatory of Music, *summa cum laude*, thereby proving the theory that the genes of mothers are passed on to their sons.^[2] Not only that; the youngest of our four daughters finished her BS Biology at the UP College of Arts and Sciences. Our two children's UP education became their passport to esoteric and diverse graduate degrees. Our son completed his Ph.D. in Engineering Economic Systems at Stanford; and our daughter, her Master in Public Policy at Harvard.^[3]

But the closest I have been to garnering a UP diploma was when the Honor Society of the *Phi Kappa Phi* granted me a certificate of honorary membership in its UP Chapter.

***Disciplined, Scholarly
and Conservative***

With this background, I hope you now understand the reverence I hold for UP,

especially for its College of Law. Indeed, I am honored to have been given this singular opportunity to speak of the latest masterpiece of a veracious and venerable magistrate. He is the learned Mr. Justice Mendoza, who was first taught the law in the UP tradition and is now teaching it here in the grand manner that Justice Oliver Wendell Holmes Jr. prescribed.

First, allow me to speak of the author. As a jurist, Mr. Justice Mendoza may be characterized as disciplined, scholarly and conservative. His mind is methodical and deliberate. At the Supreme Court, every word he spoke and every sentence he wrote always carried the authority of some law or precedent. He did not bluff or second-guess. He decided with certainty, predictability and finality. That was why it was easy to concur in his decisions, but very difficult to dissent from them.

Difficult as it may have been, I sometimes found the courage to challenge his opinions, and at times to dissent from his *ponencias*. *Au contraire*, he did not always agree with my own decisions. Nonetheless, I always, without exception, sought his views on all important issues deliberated upon by the Supreme Court. Even on those occasions when I suspected beforehand that his opinion might be different from mine, I still consciously sought it anyway. And he never withheld it, because we both realized that the Supreme Court thrived in a kettle of free ideas, where truth, fairness and justice could be distilled only after all sides - - including the most outlandish ones -- had poured in and percolated.

Indeed, inside the hallowed halls of the Supreme Court, we discussed and debated animatedly, even ardently. Although we disagreed on ideas, philosophies and other matters of the mind, we never carried those differences on the personal -- much less on the emotional --

level. True, our minds may have clashed some of the time, but our friendship has remained robust and pleasant all the time.

But whether or not we were on the same side of a controversy, let me tell you that Mr. Justice Mendoza was always a stickler for accuracy. His opinions were always carefully phrased, grammatically precise and minutely calibrated to express, as correctly as possible, the principles expounded and the limitations within which they could be applied. He explained with the methodology of a teacher, the clarity of a savant, the finesse of an artist, and the passion of a lover -- all of which he was and still is.

From then until now, Mr. Justice Mendoza has always been prudent, never shoddy; always certain, never tentative. He is moved never by pique and spite, never by prejudice and vindictiveness, but always by deliberate and well-studied choice. In sum, he was one of the brightest, calmest, most diligent and most trustworthy jurists I had been privileged to encounter.

A Treasure Chest of Insights and Lessons

Second, let me now speak of the latest book of Justice Mendoza. This volume echoes the same scholarship, diligence, thoroughness and precision that mark his *ponencias*. The author's keen and masterful grasp of concepts and doctrines makes the book a treasure chest of insights and lessons. While purportedly addressed to law students, it is just as useful to professors and lawyers, especially those who would like to practice in the Supreme Court. In

fact, it would be equally valuable to the incumbent justices of our High Court as they grapple with delicate constitutional questions.

Like the adroit constitutionalist that he is, Justice Mendoza discusses important constitutional topics and issues with razor-sharp precision. With well-studied thoughts and reflections, he always follows through the cases he cites. He also synthesizes the concepts well, leaving the reader sometimes beguiled, but not confused; oftentimes hungering, but not frustrated; and always itching to read on.

The book opens with a discussion of the historicity of the power of judicial review, both in the United States and in the Philippines. Appropriately, it quotes extensively from both *Marbury v. Madison* and *Angara v. Electoral Commission*. But it is ever careful to situate the cases within the factual milieu of their times. Hence, what comes out is an interesting exposition of convergences as well as differences, both as to the political environments and as to the judicial ring tones of the rulings in the two cases.

To the early and rich history of judicial power, Justice Mendoza adds a chapter on the varieties of judicial review. His discussion here provides the necessary background for the succeeding discourse on the current framework of Philippine judicial review. Justice Mendoza is quick to point out the rationales for the centralized and the decentralized systems - their inherent weaknesses, their abiding strengths, and the procedural implications of adopting either system.

After reading the chapter, neophyte defenders of the Constitution would have a more

than nodding acquaintance with such important principles as *stare decisis*; *incidenter* and *principaliter*; and the commonly heard but often misunderstood *certiorari*. I am equally sure that seasoned constitutional law lovers would be just as charmed, because they would find depth and breadth in his presentation and analysis.

Passion for Authority and Certainty

Justice Mendoza's passion for authority and certainty is reflected in his choice of cases to illustrate his teachings: *Marbury v. Madison* and *Angara v. Electoral Commission*, as earlier mentioned, for the historical bases of judicial review; and *Muskrat v. United States*, *Halls v. Beals*, *Alunan v. Mirasol*, *Kilosbayan v. Morato* and *Tan v. Macapagal*, for the conditions for the exercise of judicial review.

On the latter topic, he explains clearly the requirements of "case and controversy" and the exceptions thereto; namely, "(1) where the case is capable of repetition yet evading review; (2) where it has been rendered moot by the unilateral act of the defendant but there is reasonable ground to believe that the wrong complained of will be repeated; and (3) where the case has collateral consequences." (p. 107)

Like his gilt-edge *ponencias*, he emphasizes the need for the "standing" or *locus standi* of the plaintiff. Again, by a deft choice of cases, he effectively illustrates the crucial ramifications of standing -- be it in relation to citizens' actions or taxpayers' suits; or when used to assert the constitutional rights of others; or when employed by a legislator to challenge

acts that violate legislative prerogatives. His incisive discussion of what a political question is and what its elements are should be a required reading not only for students, but also for lawyers and judges alike.

His notes on collateral legal consequences as a bar to mootness (pp. 133-137) are particularly riveting, in the light of the Supreme Court's renewed vigor in discharging its symbolic teaching function along the lines espoused decades earlier by Dean Eugene Rostow of Yale.

Master and Connoisseur par Excellence

To cap his authoritative volume, Justice Mendoza quotes liberally from his favorite scholars, including Learned Hand, Herbert Wechsler, Alexander Bickel, and his close friend and co-author Paul A. Freund.

With due respect, I believe however that he did not really need these versed scholars of the law to prove his theses. He has written enough decisions in the Court to demonstrate, without "mystic overtones," that judicial review by the Court is justified only to decide live cases -- not to answer academic issues of law, much less to satisfy curiosity over political questions. He has shown more than enough intellectual gravitas, such that -- singly and independently -- he can argue convincingly and authoritatively. Indeed, he did not have to point to any authority, for in Philippine constitutional law, he is *the* master and connoisseur *par excellence*.

In closing, I must congratulate Justice Mendoza for his latest opus. In many senses, this book is really a systematic and flawless exposition of what he holds dear in his heart. It is distinctively and characteristically Mr. Justice Mendoza at his finest. I invite all of you, ladies and gentlemen, to pore over and enjoy this intellectual masterpiece, this vital volume from our veracious and venerable magistrate.

Maraming salamat po.

* Remarks I delivered as guest of honor during the launching of Justice Vicente V. Mendoza's *Judicial Review of Constitutional Questions: Case and Materials* on February 16, 2005, at the University of the Philippines College of Law, Diliman, Quezon City.

[1] Prof. Elenita C. Panganiban holds a master's degree in statistics from the University of the Philippines and a Masters in Business Administration from the Asian Institute of Management. She is currently a professor at the Asian Institute of Management.

[2] Dr. Jose Artemio C. Panganiban III finished his BS Management Engineering at Ateneo de Manila University; BS Music at the University of the Philippines; Advance Course in Piano at the *Fortbildungsklasse, Hochschule Fuer Musik* in Munich, Germany; Masters in Engineering Economic Systems and Operations Research at Stanford University and Ph.D. in Engineering Economic Systems, also at Stanford.

[3] Maria Evelyn C. Panganiban finished her BS Biology at the University of the Philippines, MA Economics at Boston University, and Masters in Public Policy at Harvard University.