

EN BANC

[A.M. No. 10-10-4-SC, October 19, 2010]

RE: LETTER OF THE UP LAW FACULTY ENTITLED "RESTORING INTEGRITY: A STATEMENT BY THE FACULTY OF THE UNIVERSITY OF THE PHILIPPINES COLLEGE OF LAW ON THE ALLEGATIONS OF PLAGIARISM AND MISREPRESENTATION IN THE SUPREME COURT."

RESOLUTION

VILLARAMA, JR., J.:

Plagiarism is the act of appropriating the literary composition of another, or parts or passages of his writings, or the ideas or language of the same, and passing them off as the product of one's own mind.^[1]

Allegations of this intellectual offense were hurled by Atty. Harry L. Roque, Jr. and Atty. Romel R. Bagares against Justice Mariano C. Del Castillo for his *ponencia* in the case of *Vinuya v. Executive Secretary*, G.R. No. 162230, April 28, 2010. In said case, the Court denied the petition for certiorari filed by Filipino comfort women to compel certain officers of the executive department^[2] to espouse their claims for reparation and demand apology from the Japanese government for the abuses committed against them by the Japanese soldiers during World War II. Attys. Roque and Bagares represent the comfort women in *Vinuya v. Executive Secretary*, which is presently the subject of a motion for reconsideration.

The authors and their purportedly plagiarized articles are: (1) Evan J. Criddle and Evan Fox-Decent from their article, "A Fiduciary Theory of Jus Cogens" published in 2009 in the *Yale Journal of International Law*; (2) Christian J. Tams from his book, "Enforcing Erga Omnes Obligations in International Law" published by the Cambridge University Press in 2005; and (3) Mark Ellis from his article, "Breaking the Silence: On Rape as an International Crime" published in the *Case Western Reserve Journal of International Law* in 2006. The allegations of plagiarism centered on Justice Del Castillo's discussion of the principles of jus cogens and erga omnes.

On August 9, 2010, Attys. Marvic M.V.F. Leonen, Froilan M. Bacungan, Pacifico A. Agabin, Merlin M. Magallona, Salvador T. Carlota, Carmelo V. Sison, Patricia R.P. Salvador Daway, Dante B. Gatmaytan, Theodore O. Te, Florin T. Hilbay, Jay L. Batongbacal, Evelyn (Leo) D. Battad, Gwen G. De Vera, Solomon F. Lumba, Rommel J. Casis, Jose Gerardo A. Alampay, Miguel R. Armovit, Arthur P. Autea, Rosa Maria J. Bautista, Mark R. Bocobo, Dan P. Calica, Tristan A. Catindig, Sandra Marie O. Coronel, Rosario O. Gallo, Concepcion L. Jardeleza, Antonio G.M. La Viña, Carina C. Laforteza, Jose C. Laureta, Owen J. Lynch, Rodolfo Noel S. Quimbo, Antonio M. Santos, Gmeleen Faye B. Tomboc, Nicholas Felix L. Ty, Evalyn G. Ursua, Raul V. Vasquez, Susan D. Villanueva, and Dina D. Lucenario, members of the faculty of the University of the Philippines College of Law published a statement on the allegations

of plagiarism and misrepresentation relative to the Court's decision in *Vinuya v. Executive Secretary*. Essentially, the faculty of the UP College of Law, headed by its dean, Atty. Marvic M.V.F. Leonen, calls for the resignation of Justice Mariano C. Del Castillo in the face of allegations of plagiarism in his work.

Notably, while the statement was meant to reflect the educators' opinion on the **allegations** of plagiarism against Justice Del Castillo, they treated such allegation not only as an established fact, but a truth. In particular, they expressed dissatisfaction over Justice Del Castillo's explanation on how he cited the primary sources of the quoted portions and yet arrived at a contrary conclusion to those of the authors of the articles supposedly plagiarized.

Beyond this, however, the statement bore certain remarks which raise concern for the Court. The opening sentence alone is a grim preamble to the institutional attack that lay ahead. It reads:

An extraordinary act of injustice has again been committed against the brave Filipinas who had suffered abuse during a time of war.

The first paragraph concludes with a reference to the decision in *Vinuya v. Executive Secretary* as a reprehensible act of dishonesty and misrepresentation by the Highest Court of the land. The authors also not only assumed that Justice Del Castillo committed plagiarism, they went further by directly accusing the Court of perpetrating extraordinary injustice by dismissing the petition of the comfort women in *Vinuya v. Executive Secretary*. They further attempt to educate this Court on how to go about the review of the case.

The insult to the members of the Court was aggravated by imputations of deliberately delaying the resolution of the said case, its dismissal on the basis of "polluted sources," the Court's alleged indifference to the cause of petitioners, as well as the supposed alarming lack of concern of the members of the Court for even the most basic values of decency and respect. Paragraph 9 of their published statement reads,

But instead of acting with urgency on this case, **the Court delayed its resolution for almost seven years**, oblivious to the deaths of many of the petitioners seeking justice from the Court. **When it dismissed the *Vinuya* petition based on misrepresented and plagiarized materials, the Court decided this case based on polluted sources.** By doing so, the Supreme Court added insult to injury by failing to actually exercise its "power to urge and exhort the Executive Department to take up the claims of the *Vinuya* petitioners. **Its callous disposition, coupled with false sympathy and nonchalance**, belies (sic) [betrays] a more alarming **lack of concern for even the most basic values of decency and respect.** (Emphasis supplied).

The publication of a statement by the faculty of the UP College of Law regarding the allegations of plagiarism and misrepresentation in the Supreme Court was totally unnecessary, uncalled for and a rash act of misplaced vigilance. Of public knowledge is the ongoing investigation precisely to determine the truth of such

allegations. More importantly, the motion for reconsideration of the decision alleged to contain plagiarized materials is still pending before the Court. We made it clear in the case of *In re Kelly*^[3] that any publication, pending a suit, reflecting upon the court, the jury, the parties, the officers of the court, the counsel with reference to the suit, or tending to influence the decision of the controversy, is contempt of court and is punishable.

While most agree that the right to criticize the judiciary is critical to maintaining a free and democratic society, there is also a general consensus that healthy criticism only goes so far. Many types of criticism leveled at the judiciary cross the line to become harmful and irresponsible attacks. These potentially devastating attacks and unjust criticism can threaten the independence of the judiciary.^[4] The court must "insist on being permitted to proceed to the disposition of its business in an orderly manner, free from outside interference obstructive of its functions and tending to embarrass the administration of justice."^[5]

The Court could hardly perceive any reasonable purpose for the faculty's less than objective comments except to discredit the April 28, 2010 Decision in the *Vinuya* case and undermine the Court's honesty, integrity and competence in addressing the motion for its reconsideration. As if the case on the comfort women's claims is not controversial enough, the UP Law faculty would fan the flames and invite resentment against a resolution that would not reverse the said decision. This runs contrary to their obligation as law professors and officers of the Court to be the first to uphold the dignity and authority of this Court, to which they owe fidelity according to the oath they have taken as attorneys, and not to promote distrust in the administration of justice.^[6] Their actions likewise constitute violations of Canons 10, 11, and 13^[7] and Rules 1.02 and 11.05^[8] of the Code of Professional Responsibility.^[9]

WHEREFORE, in light of the foregoing, Attys. Marvic M.V.F. Leonen, Froilan M. Bacungan, Pacifico A. Agabin, Merlin M. Magallona, Salvador T. Carlota, Carmelo V. Sison, Patricia R.P. Salvador Daway, Dante B. Gatmaytan, Theodore O. Te, Florin T. Hilbay, Jay L. Batongbacal, Evelyn (Leo) D. Battad, Gwen G. De Vera, Solomon F. Lumba, Rommel J. Casis, Jose Gerardo A. Alampay, Miguel R. Armovit, Arthur P. Autea, Rosa Maria J. Bautista, Mark R. Bocobo, Dan P. Calica, Tristan A. Catindig, Sandra Marie O. Coronel, Rosario O. Gallo, Concepcion L. Jardeleza, Antonio G.M. La Viña, Carina C. Laforteza, Jose C. Laureta, Owen J. Lynch, Rodolfo Noel S. Quimbo, Antonio M. Santos, Gmeleen Faye B. Tomboc, Nicholas Felix L. Ty, Evalyn G. Ursua, Raul V. Vasquez, Susan D. Villanueva, and Dina D. Lucenario, members of the faculty of the University of the Philippines College of Law, are directed to **SHOW CAUSE**, within ten (10) days from receipt of a copy of this Resolution, why they should not be disciplined as members of the Bar for violation of Canons 10, 11, and 13 and Rules 1.02 and 11.05 of the Code of Professional Responsibility.

Further, Dean Marvic M.V.F. Leonen is directed to SHOW CAUSE, within ten (10) days from receipt of this Resolution, why he should not be disciplinarily dealt with for violation of Canon 10, Rules 10.01, 10.02 and 10.03 for submitting, through his letter dated August 10, 2010, during the pendency of G.R. No. 162230, *Vinuya v. Executive Secretary* and of the investigation before the Committee on Ethics and Ethical Standards, for the consideration of the Court *En Banc*, a dummy which is not a true and faithful reproduction of the purported statement, entitled "Restoring

Integrity: A Statement by the Faculty of the University of the Philippines College of Law on the Allegations of Plagiarism and Misrepresentation in the Supreme Court." Enclosed are copies of the said dummy and signed statement, respectively, attached to the said letter dated August 10, 2010 and to the Compliance dated August 31, 2010 filed by Roque & Butuyan Law Offices with the Committee on Ethics and Ethical Standards.

Let this matter be **DOCKETED** as a regular administrative matter.

Let service of this Resolution upon the above-named UP College of Law faculty members be effected by personal delivery.

SO ORDERED.

Corona, C.J., Velasco, Jr., Nachura, Leonardo-De Castro, Brion, Peralta, Bersamin, Perez, and Mendoza, JJ., concur.

Carpio, J., joins the dissenting opinions of J. Morales and J. Sereno.

Carpio Morales, J., certify that J. Carpio-Morales write a dissenting opinion.

Del Castillo, J., no part.

Abad, J., on leave.

Sereno, J., see dissenting opinion.

[1] Black, Henry Campbell, black's law dictionary, 5th ed., St. Paul Minn., West Publishing Co., 1979, p. 1035.

[2] Executive Secretary Alberto G. Romulo, Secretary of Foreign Affairs Delia Domingo-Albert, Secretary Mercedes N. Gutierrez, and Solicitor General Alfredo L. Benipayo.

[3] 35 Phil. 944, 950-951 (1916).

[4] *In the Matter of the Allegations Contained in the Columns of Mr. Amado P. Macasaet Published in Malaya Dated September 18, 19, 20 and 21, 2007*, A.M. No. 07-09-13-SC, August 8, 2008, 561 SCRA 395, 434.

[5] *Teehankee v. Director of Prisons*, 76 Phil 630 (1946).

[6] *Id.*

[7] CANON 10 -- A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes.

CANON 11 -- A lawyer shall observe and maintain the respect due to the Courts and to judicial officers and should insist on similar conduct by others.

CANON 13 -- A lawyer shall rely upon the merits of his cause and refrain from any impropriety which tends to influence, or gives the appearance of influencing the Court.

[8] Rule 1.02 -- A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

Rule 11.05 --A lawyer shall submit grievances against a judge to the proper authorities only.

[9] Promulgated by this Court on June 21, 1988.

DISSENTING OPINION

CARPIO MORALES, J.:

The Resolution directs certain members of the law faculty of the University of the Philippines (UP) to "SHOW CAUSE x x x why they should not be disciplined as members of the Bar for violation of Canons 1, 11 and 13 and Rules 1.02 and 11.05 of the Code of Professional Responsibility."^[1]

The Resolution demonstrates nothing but an abrasive flexing of the judicial muscle that could hardly be characterized as judicious. This knee-jerk response from the Court stares back at its own face, since this judicial act is the one that is "totally unnecessary, uncalled for and a rash act of misplaced vigilance."^[2]

The road embarked by the Court as paved by the Resolution leads the Court into an autocratic pit with only an artificial twig of "independence of the judiciary" to hang on to somewhere in that precarious cliff where public esteem shall ultimately reckon what "dignity of the Court" means. I regret that I could not join in treading such crooked road.

The institution of a disciplinary action smacks of injudiciousness

In instituting the proceedings^[3] against the UP law faculty, the Court appears to be lending only a semblance of due process by ordering them to answer the administrative charges. The Resolution is replete with conclusions that already adjudge them guilty of violating the canons of ethics. Aside from concluding that the publication of the statement of the UP law faculty was "totally unnecessary, uncalled for and a rash act of misplaced vigilance," the Resolution classifies it as an "institutional attack" and an "insult to the members of the Court."^[4] The Court has already determined that it "could hardly perceive any reasonable purpose for the faculty's less than objective comments"^[5] that "fan the flames and invite resentment."^[6] The adverse declarations describing the written work of the UP law faculty operate to their prejudice since that would render any subsequent proceeding illusory, because the Court, which would ultimately decide the administrative case, has already made up its mind even before hearing the parties.