



DEPARTMENT OF JUSTICE

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of Rotary International District 3800*

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SPEECH

“Applying Rotary’s Four Way Test on the Philippine Justice System”

by

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Good afternoon to all the officials, members and their spouses, and guests of Rotary International District 3800.

It is an honor and a pleasure to be one of the guests who are given an opportunity to be a part of this annual District Conference. It is always an interesting, insightful and uplifting experience to be a part of events organized for and by Rotarians.

From the moment I received the invitation of District Governor Ma. Lourdes “Marilou” O. Co, I knew that my participation in this District Conference would be no less interesting and insightful. While it is focused on a subject matter to which I have devoted my last four and a half years in public service, that is, the Philippine Justice System, in an event that is designed to bring forth to the public discourse matters that I attend to on a daily basis, such as the current issues and concerns of our country, I was quite interested to note that I am given the task of approaching them from a slightly different light: by attempting to apply the Rotary’s Four Way Test on the Philippine Justice System.

The Four-Way Test is, of course, something that is globally associated with Rotary International. Yet, no one can deny its universal application. Although it was conceived by its author, Rotarian Herbert J. Taylor, during the Great Depression as “a simple, four-part ethical guideline” to help him “rescue a beleaguered business”,¹ it resonates anywhere and everywhere in the world, and finds application in just about any aspect of life. In the Philippines, many Filipinos grew up having the Four Way Test at the back of their consciousness, whether or not they belong to the Rotary International family, because of the strategically placed markers in public places, especially along major thoroughfares.

A popular internet meme revolves around the concept of “shower thoughts”, or those ideas or epiphanies that are formed, most often randomly and inexplicably, while taking a morning shower. Ever since the idea became popular in the early half of this decade, one psychological theory that has arisen to explain it is that long drives, short walks and other aimless engagements are great catalysts for free association and, thus, for triggering revelations.² Which is why I think the placement of Four-Way Test markers along the roads and public places in Metro Manila is a brilliant idea for evoking insights and self-reflection, because what activity is more monotonous than traversing the slow-moving traffic during rush hour? That probably explains why many people, who aren’t necessarily Rotarians or consciously exposed to the decades-old ethical road map of this organization, have had at least one “Four-Way Test” thought at some point in their lives – and I believe that their lives have been all the better for it.

Why? Because it engages people to think and evaluate situations for themselves. They are not *taught* what to think or told what is the right or wrong answer to a problem, but are guided as to how they could approach such a problem.

In that way, by providing standards and allowing people to assess each case on their own merits, the Four-Way test is exactly how our Justice System is intended to work. It is little wonder, therefore, that there are judicial systems in the world that expressly invoke it.

The relevance of the first part of the test, as it asks “*Is it the truth?*” is quite apparent. The application of laws cannot result in the delivery of justice, if such application is based on falsehoods. However, our Justice System asks those who come before it to do one better, that is, not only

¹<http://www.rotaryfirst100.org/presidents/1954taylor/taylor/storybehind.htm#.VQuD6Y7LdNk> (last accessed 20 March 2015)

²<http://www.wired.com/2014/08/shower-thoughts/> (last accessed 20 March 2015).

to tell the truth, but the *whole* truth. This is because omissions can be heinous instruments for Injustice, as are outright lies. To this I would add that, whether we accept it or not, truth, the whole truth, is often difficult to ascertain. People's perception, memory and even motivations are, at times, less than perfect. Truth, especially in the judicial system, is not always the same "truth" we, as ordinary people, perceive it to be. Our evidentiary rules sometimes rule out the admissibility of certain pieces of evidence, not because we are sure that they are not "true" but because they are *susceptible* to being obtained through abuse, such as through violations of Constitutionally enshrined rights. In other words, it is a fact that, sometimes, our courts do not actually see and decide cases based on the whole truth.

And that is where investigative agencies such as the National Bureau of Investigation and the Philippine National Police play a critical role. These limitations do not only make the work of investigative agencies difficult, but it also heightens the need to build their capabilities for detection and investigation, as well as their reputation for credibility and competence. And that is what we, in the Department of Justice, have worked towards these five and a half years, in building the capacity and the reputation of the National Bureau of Investigation. Hence, if people should be moved to ask why the NBI has been instrumental in the probe into high-profile cases, it is because we have worked hard to build its reputation through thorough and impartial investigations. As elusive as Truth is, the best way to improve our chances of ascertaining it is through the capability of trustworthy institutions that are known for their integrity. That's a reputation that we intend to continue upholding.

As to the second part of the test, which asks "*Is it fair to all concerned?*" This, too, is quintessentially part of our Justice System, although in a way that many people probably take for granted.

Many people probably think that judges decide what is "fair". That is partly true, for those instances where judges are legally given the discretion to determine what is "fair under the circumstances". After all, it is not for nothing that our courts are called "courts of law and equity".

However, that in itself hints at a distinction: there is the law, and there is equity. Ideally, those two coincide. However, there are times that not many people would agree that they do. How often have we heard the Latin maxim: "*Dura Lex Sed Lex*"? The law may be harsh, but it is the law.

In truth, therefore, the determination of what is "fair" and how our laws could be made to reflect and produce a "fair" outcome, does not

begin when a case is filed in court. In reality, it begins at the law-making process. And, yes, never doubt that the Legislative Branch of Government plays a very important role in the "Justice System", foremost because it is the laws they write that bind the hands of judges in imposing "fair" penalties and punishments to fit the crime.

This insight, I hope, encourages people like you, Rotarians who are persons of consequence and influence in your own right and even more so as an organization, to take heed of the work that is done in the Legislative Department. Public hearings in the course of law-making process, for instance, are a very critical way by which so-called "ordinary" but civic-minded and concerned citizens can make their voices heard. If we want change, that is where change truly begins.

This insight, too, helped me reconcile the last two parts of the test to the Philippine Justice System. In truth, I initially found it difficult to reconcile them because, at first glance, they appear to be concerned about matters that are extrinsic considerations in relation to the Philippine Justice System. When the last two parts of the test ask whether a decision will "*build goodwill and better friendships*" or whether it will "*be beneficial to all concerned,*" my initial thought is that courts do not and, perhaps, should not concern itself with the effects of a decision, for so long as they are applying the law to the letter or to the spirit.

And, in a very real way, that is very true. Courts do not usually have the discretion to disregard or deviate from what the law requires in considerations of "amity", "goodwill" or resulting benefit to "all concerned". Again, *Dura Lex Sed Lex*. The only exception I could think of is where an appeal to equity is applicable and appropriate.

In our justice system, this hands off approach is referred to as the "Political Question Doctrine". These are questions of policy that are the concern of the political branches of government. For the Judiciary to interfere in them is to violate the Separation of Powers doctrine enshrined in our Constitution.

However, as history has taught us, the "Political Question Doctrine" could be misused or abused in such a way that it results in the perpetuation of injustices committed by those in political power. Hence, the 1987 Constitution expressly empowered the Supreme Court and other courts to exercise the power of judicial review, or the power to "determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." Thus, while the courts cannot look

into the wisdom of policy decisions of the political branches of government, it can nonetheless look into whether the latter have acted contrary to law or the Constitution.

It's a fine balancing act, true, especially when it comes to politically charged issues, but it is an important distinction for it puts each Branch of Government where they properly belong.

Which is especially a timely insight in light of the recent controversy about the implementation of the Suspension Order issued by no less than the independent, Constitutionally created Office of the Ombudsman. Courts are not supposed to interfere unless the Office of the Ombudsman have acted without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. As an independent Constitutional body that plays a critical role in ensuring the accountability of no less than public officials, laws have been passed that further empowered the Office of the Ombudsman and protected it in the discharge of its mandate. After all, those who are subjects of inquiry of the Office of the Ombudsman are no ordinary citizens, but are often people in positions of power who can use their position and influence to derail its investigations.

One of those legal provisions that see to strengthen and insulate or, at least, protect the Office of the Ombudsman from undue interference is Section 14 of Republic Act No. 6770 or the Ombudsman Act of 1989, which expressly prohibits the issuance of injunctions, such as a TRO, by *any court*, that would delay an investigation being conducted, unless the subject matter of the investigation is apparently outside the jurisdiction of the Office of the Ombudsman. Hence, it seems inexplicable why any court would issue a TRO against an Order of the Ombudsman, in cases that are obviously within its jurisdiction, such as those involving grave allegations of graft and corruption by a Chief Executive of a Local Government Unit, among others. The essence of the law is to say, "Let the Ombudsman do its job". It is difficult enough to hold powerful people accountable, let us not make it more difficult by allowing court processes to be used to derail its investigations.

So, too, the second paragraph of Section 14 clearly states that only the Supreme Court can hear an appeal or application for remedy against the decision or findings of the Ombudsman. Even then, only on pure question of law; not question of wisdom, policy or equity: PURELY QUESTION OF LAW. And only the Supreme Court.

Yet, here we are now.

And here I am now. Again being accused of having issued an unconstitutional opinion. In the first place, how can the act of rendering an opinion be unconstitutional? It does not purport to adjudicate or bind any one. It is an opinion. It is advisory in nature. How can such a mere act be unconstitutional? How can that be violative of the Separation of Powers when the request was made by another Department in the Executive Branch, which is merely seeking a legal opinion to guide them in determining how to proceed in the discharge of their own mandate, that is, the Department of the Interior and *Local Government* asking for a legal opinion on what recent developments mean for them when it comes to the leadership of a *Local Government Unit*. How can it be unconstitutional for the DOJ to respond to the query of the DILG when rendering such an opinion and legal advice is precisely our role, not just as principal law agency of the Philippine Government, but the undersigned's as well as Attorney General?

Obviously, more is at play here than the application of law and the fulfillment of the ends of justice. So-called "Expert Opinions" are a dime a dozen these days, and that is but right because of the Constitutionally enshrined freedom of speech. But that doesn't mean all these "expert opinions" are right, especially when they suggest that those who are legally mandated to actually render an "expert opinion" is wrong to do so.

What all these suggest is simple. The questions of whether a decision will build goodwill and better friendships, or will be beneficial to all concerned, are outside the purview of the courts, unless courts are expressly empowered to take such into consideration. That is the essence of Separation of Powers.

On the other hand, it doesn't mean that such considerations are completely alien to the Philippine Justice System. It simply means that such considerations are policy decisions that are not to be decided by the Judiciary, especially where the People, through the laws passed by Congress and approved by the President, have already spoken.

Speaking of Separation of Powers, much has been said about the Powers of the President, especially in light of the Mamasapano Incident. And the people have the right to attempt to understand the intricacies thereof.

I wish to mention two of such powers: the Chief Executive Power and the Commander-in-Chief Power. The first is his primary constitutional mandate, one that he exercises on a daily basis. The other is one of his special powers, which was constitutionally enshrined to emphasize the

supremacy of civilian authorities over military ones: a necessary legacy of our Martial Law years.

When the PNP was taken away from the structure of the armed forces and placed under the Executive Department, though those belonging to it may have retained "militaristic mentalities" – which in itself might raise some concerns – it is a fact that it is now a part of the Executive and not the armed forces. Hence, the President's authority over the PNP is as Chief Executive, not as Commander in Chief.

I mention this distinction, not to minimize or lessen the President's command responsibility in either scenario, if, when we speak of "command responsibility" we speak of accountability. The President is, of course, accountable. No questions about it.

However, the distinction is important when we ask whether he has anything to account for in, as some say, "violating the Chain of Command".

From the very beginning, we, in the DOJ, have been clear in saying that the "Chain of Command as a *military construct*" is not applicable to the PNP, especially in relation to the President's prerogatives. It is important to note the phrase "as a military construct" because there is a "chain of command" that we use in ordinary parlance to describe hierarchy in any organization.

Why is the distinction important? Because we are referring to the concept of Chain of Command that dictates strict adherence, *i.e.*, "the line of authority and responsibility along which orders are passed within a military unit and between different units. Orders are transmitted down the chain of command, from a higher-ranked soldier, such as a commissioned officer, to lower-ranked personnel who either execute the order personally or transmit it down the chain as appropriate, until it is received by those expected to execute it."³We mean the concept that appears to suggest that the President cannot give direct orders to anyone in the PNP other than the official immediately following him in the Chain of Command. This is not correct.

Under the Constitution, "The President shall have control of all the executive departments, bureaus, and offices."⁴ The PNP, as part of the executive department, is under the control of the President. Hence, he can give orders directly to lower-ranked officials without standing on

³North Central Texas Search And Rescue Operational/By-Laws Manual Dedication By J.P. Moss

⁴ Section 17, Article VII, 1987 Constitution.