THE CALL OF THE TIMES: STRATEGIC PUBLIC INTEREST LAWYERING DURING THE ARROYO REGIME IN THE PHILIPPINES (2001-2010)

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Lawyers take up the challenge of public interest litigation when the times dictate the need for it. The names of Salonga, Tañada, and Diokno are etched in the annals of Philippine history as lawyers who dared to uphold the law—in all its glory and splendor—in times of darkness. It was said that martial law was the saddest period for the rule of law in peace time. It was the time when the courts abdicated their function to uphold the basic rights of individuals.[2] It was the time when courts refused to exercise basic judicial functions such as the review of

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[2] *See* Sanlakas v. Reyes, G.R. No. 159085 (S.C., Feb. 3, 2004) (Phil.), *available at* http://sc.judiciary.gov.ph/ jurisprudence/2004/feb2004/159085.htm.

the factual basis of the imposition of martial law that led to the curtailment of fundamental rights. While martial law led to Supreme Court decisions that merely legitimized the acts of a despot, the few lawyers that risked life and limb in defense of civil liberties kept the light of freedom burning.

Similar challenges to the rule of law under the Arroyo administration led to a resurgence of public interest lawyering in the last decade. Whereas it was statesmen and former politicians that dominated this field in the dark days of martial law, it was non-governmental organizations and academics that were most active in the field under the Arroyo regime. This is a narrative about how lawyers from a civil society organization, the Center for International Law, took up the challenges of the times.

I. CENTERLAW

Centerlaw, or the Center for International Law, had an auspicious beginning. In 2004, when then Philippine President Gloria Macapagal-Arroyo sent logistical support to the initial American invasion of Iraq, I gave several interviews on why the Philippines should not be privy to an act of aggression, or the use of force, that was contrary to international law. The media sought my opinions because I had been Director of the University's Institute of International Legal Studies. I had also been teaching International Law at the state university; however because I could not survive on the salary paid by a public university, I had permission from the University to engage in limited private practice. This enabled me to be a partner at Roque & Butuyan Law Offices.

At the time of the Iraq war, my law firm was one of the very few firms engaged in international trade law. We were specifically active in the area of fair trade measures which, pursuant to the World Trade Organization (WTO), was heard by the Philippine Tariff Commission as the nationally competent office. At the time of the war, my firm had at least sixty percent of the legal services market for anti-dumping, safeguards, and countervailing measures.

Apparently, President Arroyo watched me express my views on television against the Philippine involvement in the war in Iraq. She did not like it. The following day, the president ordered her cabinet to ensure that "all of Prof. Roque's clients drop him if they want to procure the fair

trade duties" that ultimately, the president will authorize.[3] Overnight, my private practice went from being one of the most lucrative in the Philippines to literally a firm without a single client. I had no choice. What were we to do? It was then that I decided to devote all my time and energy to engage against a regime that was clearly evil.

Under these conditions, my partner Joel Butuyan, our associates—many of whom were my former students in law school,—and I would shed the suits typically worn by lawyers from commercial firms in favor of the traditional Filipino business attire: the barong. And with the change in outfit, Roque & Butuyan Law Offices would morph into the Centerlaw, which was amongst the few outfits devoted to public interest litigation on a full time basis.

We chose to focus on international law because another Centerlaw lawyer and I are specialists in the field. Furthermore, even before 2004, I had been at the forefront of promoting the binding nature of International Humanitarian Law, or the laws and customs of warfare, in the Philippines. Although there have been many organizations that seek to advance the cause of human rights, Centerlaw was to be the first to concentrate on humanitarian law.

II. THE 1987 CONSTITUTION AS A TOOL

Lawyers from the academe and non-governmental associations—Centerlaw in particular—had the benefit of using expanded certiorari powers under the 1987 Constitution as newfound tools against a regime that was only the second despotic regime in Philippine history. With these powers, these lawyers protected hard-fought freedoms from being extinguished under the kleptocracy of the Arroyo regime. However, their predecessors during martial law were crippled by a Court that normally exercised judicial restraint, nay judicial subservience, owing to certiorari powers that required material injury as a prerequisite for the exercise of judicial review.

Precisely because of the bitter experience under the martial law dictatorship, the Filipino people ratified a Constitution in 1987 which provided for institutional checks against despotic regimes. Amongst these provisions was an expanded definition of certiorari power under the 1987 Constitution to include "determining whether or not there has been

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[3] Attributed to Cesar Purisima, then Secretary of the Department of Trade and Industry.

a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."[4]

However, it was not until 2003 that an opportunity to define the expanded scope of judicial review under the 1987 Constitution arose.[5] The opportunity arose from a case that sought to restrain the impeachment of the former Supreme Court Chief Justice Hilario Davide.

A. THE CONTOURS OF THE EXPANDED SCOPE OF JUDICIAL REVIEW

Article XI, Section 3(5) of the Constitution bars the filing of more than one impeachment complaint against an impeachable officer within a period of one year. The Constitution vests in the House of Representatives the sole power to determine probable cause in an impeachment complaint, and in the Senate the power to sit in judgment on whether said official should be removed. In the Supreme Court case entitled *Roque, Jr. v. de Venecia*, the issue submitted to the High Court was when to reckon the one year ban: from date of filing of the complaint or from the date when the House of Representatives' Justice Committee finds probable cause and transmits an impeachment complaint to the plenary of the House of Representatives?[6] The respondent in the impeachment was no less than the Chief Justice of the Supreme Court. For this reason, the Court had to struggle with the question of whether it would exercise judicial power or defer to the political branch of government.

It was this context of justifying the exercise of judicial power that laid the groundwork for public interest lawyers and activists to satisfy the requirement of justiciability. Under the traditional test of justiciability, no person has standing to sue unless he can satisfy the rule of "standing" which in turn depends on his suffering a material injury. This standing is governed by Rule 3, Section 2 of the Revised Rules of Court.[7]

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4 CONST. (1987), art. VIII, sec. 1 (Phil.).

5 David v. Macapagal-Arroyo, G.R. No. 171396 (S.C. May 3, 2006) (Phil.), *available at* http://sc.judiciary.gov.ph/jurisprudence/2006/may2006/G.R.%20No.%20171396.htm.

6 Roque, Jr. v. de Venecia, Jr., G.R. No. 160292 (S.C., Nov. 10, 2003) (Phil.), *available at* http://sc.judiciary.gov.ph/jurisprudence/2003/nov2003/160261.htm.

7 The Rule states, "A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest." 1997 Rules of Civil Procedure, as Amended, Bar Matter No. 803, r. 3, sec. 2 (Apr. 8, 1997) (Phil.), *available at* http://elibrary.judiciary.gov.ph/the bookshelf/showdocs/11/374.

It was in *Roque* that the Court gave the go-signal to relax standing as a bar to justiciability. Recognizing for the first time a "citizen's standing," the court finally recognized the standing of ordinary citizens in the enforcement of public rights:

> When suing as a *citizen*, the interest of the petitioner assailing the constitutionality of a statute must be direct and personal. He must be able to show, not only that the law or any government act is invalid, but also that he sustained or is in imminent danger of sustaining some direct injury as a result of its enforcement, and not merely that he suffers thereby in some indefinite way. It must appear that the person complaining has been or is about to be denied some right or privilege to which he is lawfully entitled or that he is about to be subjected to some burdens or penalties by reason of the statute or act complained of. In [fact], when the proceeding involves the assertion of a public right, the mere fact that he is a citizen satisfies the requirement of personal interest.[8]

i. Events Before the Davide Case

In 2001, the Philippines was once again in turmoil. For the first time since a bloodless People Power revolution led to the exile of the dictator Ferdinand Marcos[9], another President, Joseph Estrada (also known as "Erap"), was sought to be ousted from the presidency.[10] This was apparently a result of the chicanery of then Vice President Gloria Macapagal-Arroyo, herself to be a dreaded despot for nine years.

It started with a series of newspaper exposés concerning the unethical and critical conduct of the popular Estrada, who was once one of the country's more popular action stars. Notorious as a womanizer, Estrada recognized illegitimate children from at least four women other than his wife. The media focused on his vast amount of wealth, which was evidenced by the huge mansions that he gave to each and every mistress. The obvious question was: how did he afford it? To this day, Estrada swears that it was because of good business decisions in investing his

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[8] Francisco v. House of Representatives, G.R. No. 160261 (S.C., Nov. 10, 2003) (Phil.), *available at* http://sc.judiciary.gov.ph/jurisprudence/2003/nov2003/160261.htm.

[9] Ferdinand Marcos was president of the Philippines from 1965–1986. Having been elected to two terms already in 1965 and 1969, he proclaimed Martial Law in 1972 to further extend his rule as president of the country. *See generally The Era of Ferdinand Marcos*, TAGALOG LANG, http://tagaloglang.com/The-Philippines/History/the-era-of-ferdinand-marcos.html (last visited Feb. 22, 2014).

[10] Estrada was elected in the 1998 Presidential Elections and won by huge margin over his competitors.

earnings as a popular action star. [11] However, civil society did not accept such a suggestion. Soon after the exposés, Luis "Chavit" Singson—who is Governor of a province associated with the dictator Marcos and who was at the time a close ally and business associate of President Estrada—told the nation how Estrada received huge amounts of payoffs from operators of illegal numbers games in the country.[12] He also claimed that Estrada benefitted from the tobacco excise tax collected to benefit the tobacco farmers in Singson's home province of Ilocos Sur.[13]

These allegations led to an impeachment complaint against the formerly popular president.[14] Unfortunately, the trial at the Senate failed to reach its conclusion after the prosecutorial team—members of the House of Representatives—walked out of the proceedings. The walk-out was a result of a decision by the Senate, sitting as an impeachment court, not to open a vital document which the prosecutors thought would establish that Estrada had stashed huge amounts of money in a particular bank account.[15] Subsequently, on January 20, 2001, Estrada left the grounds of the Presidential Palace.[16] In a case decided by the Supreme Court, the Court ruled that Estrada had constructively resigned on that date.[17]

It was in this context that the impeachment complaint against Chief Justice Davide was brought. Shortly after, then Associate (but later Chief) Justice Artemio Panganiban wrote a book detailing how the country's Supreme Court acted on the day Estrada allegedly resigned.[18] In his memoirs, Panganiban recalled that as an answer to his prayers, he and

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[11] *See generally* Sheila S. Coronel, *Erap and Families*, PUBLIC EYE, http://pcij.org/imag/PublicEye/edifice.html (last visited Feb. 22, 2014).

[12] Jerome Aning & Nancy Calauor-Carvajal, *Now, It's 'Jueteng' War: Chavit Singson takes on Atong Ang, Bares Payoffs to Palace*, PHIL. DAILY INQUIRER, Oct. 5, 2000, at A1, A17.

[13] *Ombudsman Charges Chavit After 14 Years*, MANILA TIMES (July 5, 2013), http://manilatimes.net/ombudsman -charges-chavit-after-14-years/16162/.

[14] Complaint, People v. Estrada, Sandiganbayan Crim. Case No. 26558 (Sept. 12, 2007) (Phil.), *available at* http://www.lawphil.net/current/impeachment/articles.html#Complaint.

[15] Efren Danao, *Estrada to Senate: Open 2nd Envelope*, PHILSTAR.COM, http://www.philstar.com/headlines/89494/ estrada-senate-open-2nd-envelope (last updated Jan. 23, 2001).

[16] Alex Spillius, *'People Power' Topples Estrada*, TELEGRAPH (Jan. 21, 2001), http://www.telegraph.co.uk/news/ worldnews/asia/philippines/1318823/People-power-topples-Estrada.html.

[17] Estrada v. Desierto, G.R. Nos. 146710–15 (S.C., Mar. 2, 2001) (Phil), *available at* http://sc.judiciary.gov.ph/ jurisprudence/2001/mar2001/146710_15.htm.

[18] ARTEMIO V. PANGANIBAN, REFORMING THE JUDICIARY 130 (2002).

the rest of his colleagues at the Court agreed to swear in then Vice President Gloria Macapagal-Arroyo as Acting President.[19]

Strangely enough, when then Chief Justice Davide administered the oath to Mrs. Arroyo before a crowd of at least a hundred thousand, he deleted the word "acting" from that oath.[20] Panganiban remarked that administering an oath to an "Acting President" would have been sufficient to further agitate an already restive crowd, which could have vented its ire on Davide. Davide's act was justified hence as a matter of personal necessity for the administering officer.

Armed with this revelation, former President Estrada filed a petition for impeachment against eight of the Supreme Court magistrates who ruled that he had constructively resigned from office. The complaint was for "culpable violation of the constitution and betrayal of public trust."[21] This was because, as alleged by Justice Panganiban, they voted to swear in Arroyo as a "message from God," which echoed the church-backed EDSA People Power II[22] rally to oust him.[23] The complaint was filed on June 2, 2003 and dismissed by the House Justice Committee on October 22, 2003.[24]

The following day, ninety-three members of the House of Representatives—dominated by supporters of former President Estrada—filed an impeachment complaint anew against Chief Justice Davide.[25] This complaint was allegedly on the basis of a misuse of the Judicial Development Fund which the Court, invoking fiscal autonomy and judicial independence, refused to submit for review to Congress.[26] In filing the complaint, the Congressmen insisted on a provision of their internal rules on when the impeachment is commenced for purposes of

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[19] *Id.* at 126–29.

[20] MARITES DAÑGUILAN VITUG, SHADOW OF DOUBT 50 (2010).

[21] Ben R. Rosario, *Erap Files Impeach Raps vs SC Justices*, MANILA BULL., June 2, 2003.

[22] Days after the prosecutor's walkout came the so-called "EDSA People Power II." In the 1986 EDSA Revolution, people congregated in EDSA, Metro Manila's major thoroughfare, and brought about the downfall of the Marcos dictatorship. Fifteen years later, people were once more in EDSA to demand the resignation of President Estrada.

[23] *See* PANGANIBAN, *supra* note 18.

[24] Lawrence de Guzman, *In the Know: The Path of Impeachment*, PHIL. INQUIRER (Dec. 13, 2011), http://newsinfo.inquirer.net/110005/in-the-know-the-path-of-impeachment; Jose C. Sison, *Another Controversy*, PHILSTAR.COM, http://www.philstar.com/opinion/26522/another-controversy (last updated Nov. 9, 2007).

[25] Fr. Joaquin G. Bernas S. J., *Impeachment and the Supreme Court*, INQUIRER.NET (Jan. 16, 2012), http://opinion.inquirer.net/21195/impeachment-and-the-supreme-court.

[26] *See* Francisco v. House of Representatives, G.R. No. 160261 (S.C., Nov. 10, 2003) (Phil.), *available at* http://sc.judiciary.gov.ph/jurisprudence/2003/nov2003/160261.htm.

the one-year ban.[27] According to them, it is commenced when the Justice Committee finds probable cause and refers the petition to the plenary.[28] This second impeachment complaint would mark the debut of Centerlaw in the field of public interest litigation.

ii. Centerlaw in the Davide Case

What was at stake in the Davide case was not only the tenure of the Chief Justice himself, but of the entire independence of the judiciary. Fiscal autonomy is provided in the Constitution precisely to insulate the judiciary from political influence, since it would spare them from begging Congress for their budget.[29] Likewise, the judicial development fund was created by law to bolster the financial position of the courts, so they would not be totally dependent on Congress for their funding.[30]

Centerlaw filed a petition for certiorari coupled with a prayer for issuance of a temporary restraining order (TRO) to restrain the filing of the articles of impeachment in the Senate. The Supreme Court issued the TRO, but scheduled oral arguments that lasted for an unprecedented twenty-four hours. Centerlaw's argument during oral argumentation was simple. If the House's construction was adopted, this would mean that according to the rules of the House, a complaint filed within one year from the date the committee refers the matter back to the committee would still not be barred.

The Court resolved the matter in favor of Centerlaw. According to the court,

> It is thus clear that the framers intended "initiation" to start with the filing of the complaint. In his *amicus curiae* brief, Commissioner Maambong explained that "the obvious reason in deleting the phrase "*to initiate impeachment proceedings*" as contained in the text of the provision of Section 3 (3) was *to settle and make it understood once and for all that the initiation of impeachment proceedings starts with the filing of the complaint,* and the vote of one-third of the House in a resolution of impeachment *does not initiate* the impeachment proceedings *which was already initiated by the filing*

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[27] *Id.*

[28] *Id.*

[29] CONST. (1987), art. VIII, sec. 3 (Phil.).

[30] Establishing a Judiciary Development Fund and for Other Purposes, Pres. Dec. No. 1949 (July 18, 1984) (Phil.).

> *of a verified complaint under Section 3, paragraph (2), Article XI of the Constitution."*[31]

However, the crux of the decision was whether the lawyers of Centerlaw had standing. Under Rule 65 of the Rules of Court,[32] only the Chief Justice stood to suffer an injury. Nevertheless, in a landmark decision, the Court declared that Centerlaw lawyers had standing as citizens:

> When suing as a *citizen*, the interest of the petitioner assailing the constitutionality of a statute must be direct and personal. He must be able to show, not only that the law or any government act is invalid, but also that he sustained or is in imminent danger of sustaining some direct injury as a result of its enforcement, and not merely that he suffers thereby in some indefinite way. It must appear that the person complaining has been or is about to be denied some right or privilege to which he is lawfully entitled or that he is about to be subjected to some burdens or penalties by reason of the statute or act complained of. In fine, when the proceeding involves the assertion of a public right, the mere fact that he is a citizen satisfies the requirement of personal interest.[33]

This decision paved the way for Centerlaw and other civil society organizations to use the Court's expanded certiorari power to promote the public good.

B. IN DEFENSE OF FREEDOMS

Interestingly, the issues of engagement under the Arroyo administration were almost the same as during the days of martial law under the Marcos administration. There were the familiar themes of upholding freedom of expression and of peaceful assembly and the right to life and liberty as well as the issue of regime legitimacy. The Arroyo regime faced a similar issue of legitimacy as did Marcos, who effectively extended his stay by declaring martial law and doing away with a Constitution that contained term limits which would have

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[31] *See* Francisco v. House of Representatives, G.R. No. 160261 (S.C., Nov. 10, 2003) (Phil.), *available at* http://sc.judiciary.gov.ph/jurisprudence/2003/nov2003/160261.htm.

[32] 1997 Rules of Civil Procedure, as Amended, Bar Matter No. 803, r. 65 (Apr. 8, 1997) (Phil.), *available at* http://elibrary.judiciary.gov.ph/the bookshelf/showdocs/11/374.

[33] Francisco v. House of Representatives, G.R. No. 160261 (S.C., Nov. 10, 2003) (Phil.), *available at* http://sc.judiciary.gov.ph/jurisprudence/2003/nov2003/160261.htm.

prevented him from remaining in office beyond 1972.[34] The issue of legitimacy under the Arroyo administration, however, was because of a recording believed to contain a conversation between Arroyo and an election commissioner, referred to as the "Hello Garci" recordings.[35] This recording contained a conversation where the former president instructed the election commissioner to resort to vote padding and vote shaving to defeat her popular action star rival in the 2004 elections.[36] It was the "Hello Garci" recording that led to widespread and popular dissent against the Arroyo administration. The social unrest arising from the "Hello Garci" recording would culminate on February 26, 2006. Ironically, that day was also the twentieth year celebration of 1886 EDSA Revolution that had ousted Marcos from power.

When the "Hello Garci" recording was first broadcast, Arroyo initially attempted to deny its authenticity.[37] Later though, she would appear on television to acknowledge that she did an inappropriate act: that of talking to an elections commissioner about the conduct of an election where she was a candidate.[38] Stage-directed by a veteran movie director, she would later on tell the nation: "I am sorry."[39]

If it was the intention of the Arroyos' spin-doctors to limit the damage of the fallout from the scandal by apologizing, it had the opposite result. Militant groups and key personalities of the influential Catholic Church went back anew to the streets to demand the ouster of Arroyo.[40] The so-called "parliament of the streets," as the protest movement was referred to in the days of martial law, was back in session. February 25, 2006 was of course significant since it marked the second decade of the end of martial law.[41] Invoking an alleged "conspiracy of the left and the right to bring down her government," President Arroyo issued

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[34] *The Marcos Era and Martial Law (1965-1986)*, PHILLIPPINECOUNTRY.COM, http://www.philippinecountry.com /philippine_history/marcos_time.html (last visited Feb. 22, 2014).

[35] Sheila S. Coronel, *The Unmaking of the President*, PHILIPPINE CTR. FOR INVESTIGATIVE JOURNALISM (July 1, 2005), http://pcij.org/stories/the-unmaking-of-the-president/.

[36] *Hello Garci Scandal*, GMA NETWORK.COM (Jan. 25, 2008), http://www.gmanetwork.com/news/story/27477/ news/hello-garci-scandal.

[37] *'Hello, Garci' Timeline*, GMA NETWORK.COM (Sept. 6, 2007), http://www.gmanetwork.com/news/story/59406 /news/hello-garci-timeline.

[38] *The President Says, 'I Am Sorry; I Want to Close This Chapter.'*, PHILIPPINE CTR. FOR INVESTIGATIVE JOURNALISM (June 28, 2005), http://pcij.org/blog/2005/06/28/the-president-says-i-am-sorry-i-want-to-close-this-chapter-2.

[39] *Hello Garci Scandal*, *supra* note 36.

[40] *'Hello, Garci' Timeline*, *supra* note 37.

[41] *Id.*

Presidential Proclamation No. 1017, declaring the existence of a state of emergency, and General Order No. 5, calling on the police and the military to deal with lawless violence and acts of terrorism.[42]

Centerlaw was expecting this: the declaration of martial law to prop up a regime bereft of a popular mandate. To tell the truth, Centerlaw had been ready, on the eve of the anniversary, with petitions for the issuance of the writ of habeas corpus in anticipation that the Arroyo regime would resort to widespread arrest on the day of the celebration itself. Organizers of the People Power monument hoped to replicate the days of EDSA I when millions congregated on EDSA thoroughfare to oust the Marcos regime, but Arroyo knew this.[43] The immediate ramification from this declaration was to prohibit all rallies at EDSA.[44]

Armed this time with the ruling in *Roque*, Centerlaw proceeded to file an urgent Petition for Certiorari to question the constitutionality of the declaration of a state of emergency and General Order No. 5.[45] This began the case of *David v. Macapagal-Arroyo*.[46] The petitioners were Professor Randolph David and Ronald Llamas, his close associate in the party-list Akbayan.[47]

Professor David, a University of the Philippines professor of Sociology and well-known public intellectual, was marching with his some of his students and activists from the campus of the University of the Philippines in Quezon City to the People Power monument.[48] The monument was built at that portion of EDSA thoroughfare where people

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[42] Gen. Ord. No. 5 (Sept. 22, 1972) (Phil.), *available at* http://www.lawphil.net/executive/genor/go1972/ genor_5_1972.html.

[43] *NR0910: Defy No-Permit, No-Rally in EDSA Order*, ANAKPAWIS NEWS RELEASES (Sept. 12, 2005), http://anakpawis.blogspot.com/2005/09/nr0910defy-no-permit-no-rally-in-edsa.html.

[44] *Batas Pambansa Bilang 880*, PHILIPPINE CTR. FOR INVESTIGATIVE JOURNALISM (Mar. 21, 2006), http://pcij.org/blog/2006/03/21/batas-pambansa-bilang-880.

[45] *Timeline of Events: PP107*, GMA NETWORK.COM (Feb. 24, 2006), http://www.gmanetwork.com/news/story /7900/news/specialreports/timeline-of-events-pp-1017.

[46] David v. Macapagal-Arroyo, G.R. No. 171396 (S.C. May 3, 2006) (Phil.), *available at* http://sc.judiciary.gov.ph/ jurisprudence/2006/may2006/G.R.%20No.%20171396.htm.

[47] *Timeline of Events: PP107*, *supra* note 45; *UP Prof. Randy David, Ralley Leaders Arrested*, GMA NETWORK.COM (Feb. 24, 2006), http://www.gmanetwork.com/news/story/874/news/nation/up-prof-randy-david-rally-leaders-arrested. Akbayan is a social democratic party that came about when the Philippine left broke up into two factions in the late 1980s. The division was between the so-called Reaffirmists and Rejectionists. The Reaffirmists clung to the Maoist philosophy of the Communist Party of the Philippines and its allied organizations, including the armed struggle being waged by the New People's Army (NPA). The Rejectionists were essentially socialists but were composed of individuals who had done away with Maoist thought and renounced the use of force. Professor David was a founder of Akbayan.

[48] *UP Prof. Randy David, Ralley Leaders Arrested*, *supra* note 47.

had congregated to oust Marcos in 1986.[49] Before arriving at the premises of the monument, Professor David was apprehended by police operatives and was asked to join them at a nearby police headquarters.[50] Professor David first asked whether he could refuse their invitation. The police answered in the negative, and after Professor David asked for the cause of his arrest he was informed that it was pursuant to Proclamation 1017.[51]

Centerlaw argued that Proclamation 1017 was martial law in disguise, and in fact, the legal eagles of the Arroyo administration even resorted to a *carte blanche* restatement of the words used in the Marcos' proclamation of martial law in Proclamation 1017. [52] Again, it is worth pointing out that because of the bitter experience during martial law, the 1987 Constitution now provides for safeguards whenever the president exercised his or her extraordinary powers as Commander-in-Chief of the armed forces, including the declaration of martial law. This includes automatic review by both Congress and the Courts of the factual and legal basis of the declaration.[53] By not resorting to a declaration of martial law, but clearly, akin to the declaration of one —since what purported to be a declaration of fact led to arrest of persons, closing of an opposition newspaper, and the posting of military personnel in the premises of media networks —Centerlaw argued that Proclamation 1017 was martial law in disguise.

The Arroyo regime, in response to the *David* petition, argued that the power of the president as Commander-in-Chief —where it falls short of the declaration of martial law— was beyond judicial review.[54] It was, according to them, a political question. Centerlaw, in turn, argued that this could no longer be invoked as a defense given the expanded certiorari powers of the Court.[55] Certainly, the grave abuse of discretion in this case was because the president exercised extraordinary powers,

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[49] *See* Rodel Rodis, *The Monuments to Edsa*, INQUIRER.NET (Mar. 22, 2011), http://globalnation.inquirer.net/ columns/columns/view/20110322-326966/The-monuments-to-Edsa.

[50] *See* David v. Macapagal-Arroyo, G.R. No. 171396 (S.C. May 3, 2006) (Phil.), *available at* http://sc.judiciary.gov. ph/jurisprudence/2006/may2006/G.R.%20No.%20171396.htm.

[51] *UP Prof. Randy David, Ralley Leaders Arrested, supra* note 47; Proclamation Declaring a State of National Emergency, Proc. No. 1017 (Feb. 24, 2006) (Phil.) *available at* http://www.lawphil.net/executive/proc/proc_1017_ 2006.html.

[52] Proclaiming a State of Martial Law in the Philippines, Proc. No. 1081 (Sept. 21, 1972) (Phil.) *available at* http://www.lawphil.net/executive/proc/proc_1081_1972.html.

[53] CONST. (1987), art. VII, sec. 18 (Phil.).

[54] *See* David v. Macapagal-Arroyo, G.R. No. 171396 (S.C. May 3, 2006) (Phil.), *available at* http://sc.judiciary.gov. ph/jurisprudence/2006/may2006/G.R.%20No.%20171396.htm.

[55] *Id.*

including resort to warrantless arrest and prior restraint on a newspaper that the military had taken over contrary to the Constitution and existing laws.[56]

The Supreme Court ruled in favor of the petitioners, but not on the basis that it was martial law in disguise.[57] Instead the Court ruled that as applied, Proclamation 1017 was unconstitutional because a declaration of a state of fact—that of an emergency—could not lead to warrantless arrests and infringement of freedom of the press. Insofar as Proclamation 1017 actually resulted in these, the acts were declared invalid.[58] Hence, the arrest of David and the closure of the Daily Tribune newspaper were held invalid. The Court, dominated by appointees of President Arroyo, ruled nonetheless that Proclamation 1017 was valid pursuant to the calling out powers of the president mandated in the Constitution to deal with lawless violence. General Order No. 5, on the other hand, insofar as it purports to deal with acts of terrorism even in the absence of an internationally accepted definition, was declared unconstitutional for violating the due process clause of the Constitution.[59] Again, we quote at length from the pronouncements of the Supreme Court, as follows:

> G.O. No. 5 mandates the AFP and the PNP to immediately carry out the "necessary and appropriate actions and measures to suppress and prevent acts of terrorism and lawless violence."
>
> . . . .
>
> The basic problem underlying all these military actions – or threats of the use of force as the most recent by the United States against Iraq – consists in the absence of an agreed definition of terrorism.
>
> Remarkable confusion persists in regard to the legal categorization of acts of violence either by states, by armed groups such as liberation movements, or by individuals.
>
> . . . .
>
> The absence of a law defining "acts of terrorism" may result in abuse and oppression on the part of the police or military. An illustration is when a group of persons are merely engaged in a drinking spree. Yet the military or the police may consider the act as an act of terrorism and immediately arrest them pursuant to G.O. No. 5. Obviously, this is abuse and oppression on their part. It must be

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[56] *Id.*
[57] *Id.*
[58] *Id.*
[59] *Id.*

> remembered that an act can only be considered a crime if there is a law defining the same as such and imposing the corresponding penalty thereon.[60]

While *David v. Macapagal-Arroyo* was the single most important decision of the Philippine Supreme Court in defense of civil liberties, it would also serve as a lesson to Arroyo. Since an overwhelming majority of the Justices that voted to declare as unconstitutional Proclamation 1017 as applied and General Order No.5 were appointees of President Arroyo, this would prompt her now to emphasize political loyalty in her future appointments.[61] This would lead later to the impeachment of an Arroyo-appointed Midnight Chief Justice, Renato Corona.

C. ATTEMPTED IMPEACHMENT OF PRESIDENT ARROYO

However, the victory in *David v. Macapagal-Arroyo* was short lived. Despite popular belief that she had no popular mandate, Arroyo continued to lead, and because a libertarian court under Supreme Court Chief Justice Davide and Associate Justice Panganiban stood against a regime that engaged in "stretching the bounds of the constitution," the Arroyo regime dealt with dissent differently.[62] The dictator Marcos did not even resort to it in the manner that the Arroyo regime did: extralegal killings, torture, and enforced disappearances.[63]

i. Extralegal Killings Sanctioned by Arroyo

Centerlaw was the first civil society organization that addressed the problem of the killings before an international forum. In 2007, the International Commission of Jurists (ICJ) conducted worldwide consultations on counter-terrorism legislation and human rights.[64] The consultations for the Asia Pacific region were scheduled in December

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[60] *Id.*

[61] Aries Rufo, *More 'Midnight Appointees' of GMA Bared*, ABS-CBN NEWS (June 7, 2010), http://www.abs-cbnnews.com/nation/06/07/10/more-midnight-appointees-gma-bared.

[62] *See Extrajudicial Killings & Human Rights Abuses in the Philippines*, ASIAN HUM.RTS. COMM'N, http://www.humanrights.asia/resources/journals-magazines/article2/0505/extrajudicial-killings-human-rights-abuses-in-the-philippines (last visited Feb. 22, 2014).

[63] *Id.*

[64] *ICJ Intervention in Response to the Update by the High Commissioner for Human Rights*, INT'L COMM'N JURISTS, (Dec. 11, 2007), http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2012/04/Response-Update-High-Commissioner-for-HR-Position-letters-2007.pdf.

2007.[65] A Filipina employee then at ICJ invited me to make submissions on behalf of civil society. Casually though, I suggested that in addition, the ICJ should also conduct consultations with the Philippine government and civil society on the issue of extralegal killings. This was acted upon favorably by the ICJ.[66]

At the time of the consultations, it was still unclear how many had become victims of extralegal killings in the country. What was clear though was that there was a sudden rise in the numbers reported which, the left suspected, was part of an ongoing anti-insurgency campaign.[67] It is worth noting that there are three ongoing armed conflicts in the Philippines involving the New People's Army (NPA).[68] These conflicts are with the armed wing of the Communist Party of the Philippines (CPP) and two Muslim separatists groups, namely the Moro National Liberation Front (MNLF) and the Moro Islamic Liberation Front (MILF).[69] With three ongoing armed conflicts, the number of suspected insurgents who might become targets of extralegal killings was undeniably a cause for concern.

In 2007, an observation had already been made that a majority of the victims were left-leaning and middle-level community organizers.[70] Almost all of the killings were perpetrated in identical manner: motorcycle tandem riders wearing bonnets and killing their victims at close range.[71] There was also the observation that killings were highest where an army officer, General Jovito Palparan (a.k.a. "The Butcher") was assigned.[72] In a State of the Nation Address,[73] President Arroyo

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65 *Id.*

66 *Id.*

67 *Extrajudicial Killings & Human Rights Abuses in the Philippines*, *supra* note 62.

68 *Philippines (New Peoples Army) (1972-)*, POL.ECON. RES. INST., http://www.peri.umass.edu/fileadmin/pdf/ Philippines2.pdf (last visited Feb. 22, 2014).

69 Jigs Nepomuceno, *The MNLF and MILF Conflict*, ZAMBOTIMES (June 5, 2006), http://www.zambotimes.com/ archives/news/2542-The-MNLF-and-MILF-conflict.html.

70 Kiely Lewandowski, *UN Rights Expert Says Philippines Army Deliberately Killed Left-Wing Activists*, JURIST (Nov. 26, 2007), http://jurist.org/paperchase/2007/11/un-rights-expert-says-philippines-army.php.

71 Marlon Ramos et al., *Armed Men Reported Staking Out Satur's House*, PHIL. DAILY INQUIRER (Apr. 21, 2008), http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20080421-131668/Armed-men-reported-staking-out-Saturs-house?ModPagespeed=noscript.

72 Patnubay De Guia, *The People of Southern Tagalog Will Never Forget the Crimes of General Jovito Palparan*, PHILIPPINE REVOLUTION WEB CENT. (Dec. 29, 2011), http://www.philippinerevolution.net/statements/20111229 _the-people-of-southern-tagalog-will-never-forget-the-crimes-of-general-jovito-palparan.

73 Gloria Macapagal–Arroyo, President of the Phil., Sixth State of the Nation Address During the Opening of the 3rd Regular Session of the 13th Congress (July 24, 2006).

reaped praises on General Palparan even when the General was already being linked publicly in newspaper accounts to a spate of extralegal killings.[74] Today, General Palparan is a fugitive from justice charged with the abduction of two female University of the Philippines activists who remain missing.[75]

Centerlaw took the lead in persuading foreign missions in Manila to prompt the permanent member-nations of the United Nations Security Council to create an international tribunal. The purpose of this tribunal would be to prosecute Arroyo for the extralegal killings, since many of them were perpetrated against civilians in war torn provinces of the Philippines. Hence, these killings constituted war crimes, while those killings committed in areas without conflict could be prosecuted as crimes against humanity since they were widespread and systematic.[76]

The European Union responded through the Europe-Philippine Justice Support Plan ("EP-Just").[77] The project sought to improve the capacity of both governmental entities and civil society organizations to effectively investigate, prosecute, and punish the perpetrators of these crimes.[78] The United States government, at least initially, supported Centerlaw's training programs for the country's judges and prosecutors to better investigate and prosecute these crimes. Meanwhile though, the killings continued, with no signs of abating.[79]

ii. Beginning of the Impeachment Proceedings

It was not just the killings that continued in 2007. President Arroyo continued to rule even without a mandate. The widow of her chief

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[74] *Philippines: Can the Government Overcome General Palparan's Resistance to Abandon the Practice of Gross Abuses of Human Rights*, ASIAN HUM. RTS. COMM'N (Aug. 18, 2006), http://www.humanrights.asia/news/ahrc-news/AS-194-2006.

[75] Rhodina Villanueva, *Where is Jovito Palparan?*, ABS-CBN NEWS (Aug. 28, 2013), http://www.abs-cbnnews.com/nation/regions/08/27/13/where-jovito-palparan.

[76] *See AFP Unveils New Anti-Insurgency Plan*, GMA NETWORK.COM (Dec. 22, 2010), http://www.gmanetwork.com/news/story/208850/news/nation/afp-unveils-new-anti-insurgency-plan.

[77] Press Release, Delegation of the European Union to the Phil. & Gov't of the Phil., EU-PH Expand Partnership for Justice Reform Through New PhP 570 Million Support Programme (July 11, 2013).

[78] *See* EUR. UNION – PHIL. JUST. SUPPORT PROGRAMME, http://epjust-testingserver.orgfree.com/ (last visited Feb. 22, 2014).

[79] *Extrajudicial Killings & Human Rights Abuses in the Philippines*, *supra* note 62.

rival would declare that she stole the presidency not once, but twice.[80] Not only was Arroyo believed to be behind the ouster of President Estrada– in fact her legal counsels, referred to in the country as "the Firm," were at the forefront of efforts to impeach Estrada.[81]

It was in this context that Centerlaw advocated that Arroyo should be removed through lawful means. Under the Constitution, a President was an impeachable officer.[82] Hence, the only way to remove her was through the process of impeachment.

The initial effort to impeach Arroyo was a brainchild of myself and Rolex Suplico, a close friend and classmate since our college days at University of the Philippines. We both knew that with Arroyo firmly entrenched her removal was a far shot, yet it was agreed that nothing could be certain unless resort was through the constitutional process. Aside from the traditional armed insurgent groups, there was already growing restiveness in the military.[83] Junior officers under the "Magdalo" group—named after a faction of fighters during the Philippine revolution against Spain —had previously called for the military to break from the chain-of-command and heed their role as "protectors of the people."[84] The role of the military as protectors of the people—a role that is spelled out as a specific provision in the 1987 Constitution[85]—is due to the 1986 People Power Revolution. In that Revolution, Marcos had ordered that the civilians gathered in EDSA be dispersed using all means necessary.[86] Rather than obey, factions of the military broke away from the chain-of-command and chose to protect the civilians gathered in EDSA.[87]

Although political parties exist in the Philippines, Philippines politics is dominated still by personalities. While Arroyo's party, the Lakas-NUCD was a juggernaut, there are remnants of the pre-martial law political parties—such as the Liberal Party and the Nacionalista Party—

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[80] *Arroyo's Husband to Leave Country*, N.Y. TIMES (June 29, 2005), http://www.nytimes.com/2005/06/29/world/ asia/29iht-web.0629phils.html?_r=0.

[81] Peter Symonds, *Philippines Congress Rushes Through Impeachment of President Estrada*, WORLD SOCIALIST WEB SITE (Nov. 16, 2000), http://www.wsws.org/en/articles/2000/11/phil-n16.html.

[82] CONST. (1987), art. XI, sec. 2 (Phil.).

[83] *What Went Before: Oakwood Mutiny*, PHIL. DAILY INQUIRER (July 27, 2013), http://newsinfo.inquirer.net/453525/what-went-before-oakwood-mutiny.

[84] Arturo P. Garcia, *On Coups and the "Magdalo Group"—Reliving History*, BULATLAT (Aug. 10–16, 2003), http://www.bulatlat.com/news/3-27/3-27-relivehistory.html.

[85] CONST. (1987), art. II, sec. 3 (Phil.).

[86] *Day One*, STUARTXCHANGE, http://www.stuartxchange.com/DayOne.html (last visited Feb. 22, 2014).

[87] *Id.*

still in existence. In addition, there are still parties of Marcos –though limited to one of his daughters, Imee. PDP-Laban, a party which came about when Ninoy Aquino ran for parliament in the 1978 elections while in prison, is also still in existence. Finally, there are the party-list groups, an innovation of the post-Marcos Constitution.[88] There were the two biggest party-list parties representing the two factions of the political left, namely the Bayan Muna and Akbayan party-list groups.[89]

It was this "ragtag" army of the very few political opposition groups that came together in various attempts to impeach President Arroyo.[90] What is perhaps the biggest achievement of Centerlaw is that it brought together at the same conference table the son of Ninoy and Cory Aquino, current President Noynoy Aquino, Imee Marcos, daughter of the dictator, as well as the two major factions of the left and the members of the opposition groups who were either loyal to former President Erap Estrada or the cheated presidential candidate the action star Fernando Poe.

Only thirty members of Congress supported the impeachment, which was short of the one-third required to impeach Arroyo; however, the few who dared impeach her knew that public opinion was in their favor.[91] All they needed was a trigger of the same type that almost toppled Arroyo when she declared a state of national emergency in 2006.

It was agreed that each of the political groups joining the coalition to impeach Arroyo would sponsor a pet issue in the articles of impeachment. The result was a menu of Arroyo sins against the Filipino people: culpable violation of the Constitution for cheating her way to the presidency as evidenced by the "Hello Garci" recordings; graft and corruption as evidenced by Chinese-funded bad road infrastructure that cost double its normal price, with fifty percent of the cost believed to have been received by Arroyo and her cohorts as bribe money; misuse of public funds from the national health insurance system, Philhealth, for illegal purposes; misuse of the public road users tax to fund Arroyo's

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88 CONST. (1987), art. VI, sec. 5(2) (Phil.).

89 Jerome Aning, *28 Party-List Groups Proclaimed, Land Seats in House*, INQUIRER.NET (May 31, 2010), http://newsinfo.inquirer.net/breakingnews/nation/view/20100531-273110/28-party-list-groups-proclaimed-land-seats-in-House.

90 Michael Sung, *Philippines Opposition Lawmakers File Impeachment Complaint Against Arroyo*, JURIST (Nov. 13, 2007), http://www.jurist.org/paperchase/2007/11/philippines-opposition-lawmakers-file.php.

91 Conrad Angeles, *The 4th Impeachment Case Filed Against GMA is Supported by Filipinos*, ABS-CBN NEWS (Oct. 27, 2008), http://www.abs-cbnnews.com/feedback/10/27/08/4th-impeachment-case-filed-against-gma-supported-filipinos.

2004 presidential election campaign; and the *coup de grace* of the Philippine Left against Arroyo: betrayal of public trust for the many extralegal killings committed during her administration.

The charge of betrayal of public trust was an innovation. The ground of betrayal of public trust was not included in the earlier constitutions of the country. The 1987 Constitution included this to cover similar instances experienced in the past when then President Marcos could not be impeached because acts which the opposition could prove were not criminal and hence not impeachable offenses. According to the drafters of the Constitution, this new ground is a "catch all provision" which contemplates all acts which, even if not criminal, would impact on the fitness of an impeachable officer to remain in office.[92]

Of course the ragtag army behind the impeachment attempt could not prove that Arroyo had in fact ordered any of the killings. They instead relied on the principle of superior liability, and argued that she knew about the killings from, among other sources, newspaper reports and reports of human rights organizations.[93] This, according to the International Court of Justice in the 2007 case of *Bosnia Herzegovina v. Serbia-Montenegro*, was sufficient to ascribe superior responsibility since the information was sufficient to provoke the duty to investigate.[94] It was then argued that despite this knowledge, she did nothing to investigate and punish the perpetrators thereof.

iii. The End of the Impeachment Proceedings

The loose coalition behind the effort to remove Arroyo attempted impeachment three times—in 2006, 2007, and 2008.[95] Because of the one year bar, the impeachment coalition retained Centerlaw to draft a foolproof impeachment complaint. This required precision and thorough research. While Centerlaw was finalizing the petition, Marcos' counsel, Oliver Lozano, filed a three-page impeachment complaint against

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[92] Reynaldo Geronimo, *Betrayal of Public Trust – The Framers' Intent*, SUN STAR (Jan. 12, 2012), http://www.sunstar.com.ph/manila/opinion/2012/01/12/geronimo-betrayal-public-trust-framers-intent-200172.

[93] *See Extrajudicial Killings & Human Rights Abuses in the Philippines*, *supra* note 62.

[94] Application of Convention on Prevention and Punishment of Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Summary of Judgment, 2007 I.C.J. 17, 17 (Feb. 26).

[95] *Impeachment Complaints Filed Against President Arroyo in 2005*, GMA NETWORK.COM (Nov. 5, 2007), http://www.gmanetwork.com/news/story/67288/news/impeachment-complaints- filed-against-president-arroyo-in-2005.

Arroyo.[96] This was a surprise to all including Marcos' daughter who was part of the coalition. Initially, Lozano's complaint was viewed merely as a publicity stunt by one who had run and lost in at least three elections for the post of Senator.[97]

However, the Lozano complaint proved to be more malicious than originally thought, as shown by the testimony of Dinky Soliman. Soliman was the Secretary of the Department of Social Work and Development under Arroyo, and is criticized as a turncoat because she occupies the same position under Aquino, Macapagal–Arroyo's Arroyo's successor. Soliman testified that, at the height of her closeness to Arroyo, she heard the President inquire from a political operator if the Lozano complaint had already been endorsed.[98] This is apparent reference to the rule that no impeachment complaint is deemed filed unless duly endorsed by at least one member of Congress.[99] When allegedly told that it had not yet been endorsed, Soliman reported in a sworn statement that the President then asked to let a certain "Marcoleta" to endorse the complaint.[100] Marcoleta is the surname of a party-list Congressman who eventually endorsed the Lozano impeachment complaint.[101]

The House of Representatives refused to inquire into the sufficiency of form and substance of the amended impeachment complaint without first deliberating alleged prejudicial questions, to wit: whether or not the amended complaint is a second complaint and whether it is barred as a second complaint.[102] Voting overwhelmingly, the House Justice Committee dismissed the amended complaint, ruling that it was a barred second complaint.[103] It then voted that the three-page Lozano complaint was insufficient in form and substance and ordered it likewise dismissed.[104] Arroyo effectively bought herself a year of impeachment-free reign.

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96 *Id.*

97 Marc Jayson Cayabyab, *Ex-Marcos Lawyer Lozano Drops Senate Bid for Bongbong's Sake*, GMA NETWORK.COM (Oct. 17, 2012), http://www.gmanetwork.com/news/story/278646/news/nation/ex-marcos-lawyer-lozano-drops-senate-bid-for-bongbong-s-sake.

98 *A Grand Conspiracy?*, PHILIPPINE CTR. FOR INVESTIGATIVE JOURNALISM (Aug. 30, 2005), http://pcij.org/blog/2005/08/30/a-grand-conspiracy.

99 CONST. (1987), art. XI, sec. 3(2) (Phil.).

100 *See Impeachment Complaints Filed Against President Arroyo in 2005*, *supra* note 95.

101 *Id.*

102 *Id.*

103 *Id.*

104 *Id.*

This then led to the filing of the cases of *Aquino v. House of Representatives* and *Martinez v. House of Representatives*.[105] Four years before becoming President, Noynoy Aquino[106] would question the dismissal of the amended impeachment complaint on the ground that what is barred by the Constitution are "multiple proceedings" and not multiple complaints.[107] Centerlaw argued in the *Martinez* petition that to accept the House of Representatives' construction would result in a "race amongst rats" to file even frivolous impeachment complaints to ensure an impeachment-free year for impeachable officers. These complaints were dismissed when Aquino ascended into power with the court ruling that the issues had been mooted.

III. FREEDOM OF EXPRESSION

A. LIBEL CASES AGAINST JOURNALISTS

The impeachment complaints accused Arroyo of complicity in the extralegal killings that had already earned the Philippines the notoriety of being amongst the most murderous country for journalists.[108] Meanwhile, Arroyo's husband, Juan Miguel, complaining that the media was biased, filed an unprecedented forty-six complaints for libel against at least sixty journalists.[109] He filed libel complaints against all the members of the editorial board of the country's biggest newspaper, the *Philippine Daily Inquirer*, and made sure that all of them would at least spend a day in jail while they processed their bail to secure their provisional release.[110]

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[105] Martinez v. House of Representatives, G.R. No. 169561 (S.C., July 20, 2010) (Phil.), *available at* http://www.chanrobles.com/scresolutions/2010julyresolutions.php?id=220.

[106] President Aquino is the only son of Senator Ninoy Aquino, considered the foremost Filipino martyr during the Martial law, and former President Corazon Aquino. Following the death of his mother in 2009, many people began to convince him to run in the 2010 Presidential elections, which he won by defeating another former president, Estrada as his closest competition.

[107] Martinez v. House of Representatives, G.R. No. 169561 (S.C., July 20, 2010) (Phil.), *available at* http://www.chanrobles.com/scresolutions/2010julyresolutions.php?id=220.

[108] Robert Gonzaga, *PH: Most Dangerous Place for Journalists*, INQUIRER.NET (Nov. 24, 2010), http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20101124-304957/PH-Most-dangerous-place-for-journalists.

[109] *License to Libel*, PHILIPPINE CTR. FOR INVESTIGATIVE JOURNALISM (Sept. 21, 2006), http://pcij.org/blog/2006/ 09/21/license-to-libel.

[110] *See Inquirer Publisher, Editors Post Bail in Mike Arroyo Libel Suit*, GMA NETWORK.COM (Mar. 20 2007), http://www.gmanetwork.com/news/story/35051/news/nation/inquirer-publisher-editors-post-bail-in-mike-arroyo-libel-suit.

He filed a libel case against one of the most senior journalists of the country, Ellen Tordesillas, who was a veteran of the silenced press during the Marcos regime.[111] He filed a libel case against a journalist assigned by a small newspaper to cover the Presidential Palace.[112] He ensured that police authorities would serve the warrant of arrest against her in the premises of no less than the palace press room.[113] He undoubtedly intended to send a message to all journalists there that the same could happen to them if they too wrote unflattering stories about the President and her husband. He even filed complaints for libel against journalists who were reporting on what had transpired in official hearings of the Philippines Senate which undisputedly was covered by privilege. [114] By 2007, it was clear that the First Gentleman ("FG") had declared war against the Philippine media.

Centerlaw has always had a working relationship with the media, because its chairperson is married to a journalist.[115] In the beginning it was a rare request for libel-proofing of stories. Then there were also inquiries about working conditions in media companies. Then there came the libel cases, which had to be defended on pro-bono basis because the journalist accused was a friend of the chairperson's wife. All this changed when the FG filed multiple libel suits.

Under Philippines laws, libel is the public imputation of a crime, vice, and /or defect on a person.[116] Since the intention of the law was to protect the privacy of those who want to be left alone, the law provided for a shifting of the burden of evidence.[117] If the complainant is a private individual then he or she was entitled to a legal presumption that the imputation against him or her was malicious in law. If, however, the complainant is a public person —defined as a person who by the nature of his work, profession, or calling has given the public a right to inquire into his private affairs—then the law requires the complainant to prove

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[111] *Tordesillas, Tatad Reinstated in Mike Arroyo Libel Case*, PHILIPPINE CTR. FOR INVESTIGATIVE JOURNALISM (Oct. 16, 2006), http://pcij.org/blog/2006/10/16/tordesillas-tatad-reinstated-in-fg-libel-case.

[112] Reuters, *Manila Police Try to Arrest Reporter in Palace*, PINOY (Nov. 14, 2006), http://thepinoy.com/?p=408.

[113] *Id.*

[114] *President's Husband Files Another Libel Charge*, CTR. FOR MEDIA FREEDOM & RESP. (Feb. 22, 2007), http://www.cmfr-phil.org/2007/02/22/president's-husband-files-another-libel-charge-updated/.

[115] The author is married to Mylah Reyes–Roque, who is a journalist working with verafiles.org.

[116] REVISED PENAL CODE, art. 353, Act. No. 3815, as amended (Phil.).

[117] *Id.* art. 361.

libel in fact. The law also recognized qualified interest to include not only fair reporting of official proceedings, but also fair commentaries on issues affecting public concerns.[118]

Clearly, the FG is a public figure. All the stories written about him and for which he sued for libel involved public interest.[119] Why was he suing for libel knowing fully well that he had the burden to prove malice in fact? Why were prosecutors too quick to file criminal information for complaints filed by him? The latter was easy to answer. No prosecutor would refuse to file information on the basis of a complaint filed by the FG. The former, insofar as it was a pattern for the FG to serve warrants of arrests on a Friday so that the journalists would not be able to post bond and would spend time behind bars, it was meant not just to silence those who he sued, but all those who may write stories unfavorable to him and his wife.

Combining both, the following cause of action was born: the FG, being himself a lawyer, ought to have known the fact that he was a public figure, and hence had the burden to prove malice in fact. Still, he filed these cases to silence a free press, knowing that many of the alleged offending articles were covered by privilege. It was done therefore in violation of the right of others and is also covered by the norm that his conduct, insofar is it infringes on freedom of the press, would be actionable for damages.

On December 28, 2006, at least forty journalists suing for themselves and for others, joined by press groups and ordinary citizens who argued the need for a free press in any democracy, filed a damage suit for 12.5 million pesos against the FG for abuses of right and for infringing freedom of the press.[120] This was unprecedented.

After the filing of the civil case, the FG later withdrew all the libel cases that he had filed citing health reasons.[121] The journalists and the public persisted with their class suit. While the FG asked the courts, including his wife's appointees at the Supreme Court, to dismiss the civil case for lack of cause of action specially since he had withdrawn his libel

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[118] REVISED PENAL CODE, art. 354(2), Act. No. 3815, as amended (Phil.).

[119] *See* Ayer Prods. Pty. v. Capulong, G.R. No. 82380 (S.C., Apr. 29, 1988) (Phil.), *available at* http://www.lawphil.net/judjuris/juri1988/apr1988/gr_82380_1988.html.

[120] *RP Journalists Fight Back, Will File 'Abuse of Power' Suit vs FG*, GMA NETWORK.COM (Nov. 22, 2006), http://www.gmanetwork.com/news/story/21675/news/nation/rp-journalists-fight-back-will-file-abuse-of-power-suit-vs-fg.

[121] *Mike Arroyo Drops All Libel Cases vs Media*, GMA NETWORK.COM (May 3, 2007), http://www.gmanetwork.com/news/story/40816/news/nation/mike-arroyo-drops-all-libel-cases-vs-media.

complaints, the Court reiterated that the specific allegation that his indiscriminate and widespread resort to the filing of libel cases as causing a "chilling effect" on the exercise of freedom of the press was sufficient cause of action.[122] This was probably the single most important achievement of media advocates for a free press. It was also this case that led to Centerlaw's recognition as the leading legal advocate for the promotion of freedom of expression in the country and the region. The FG would thereafter desist from filing any further libel complaint.

B. CRIMINAL LIBEL

Alexander Adonis was a radio broadcaster in a provincial affiliate of a national radio station called Bombo Radyo.[123] Adonis was based in Davao City, which is notorious for two things: rampant vigilante killings which are suspected to be fully supported by the local leadership as a viable and effective deterrent against the drug malaise, and Prospero Nograles, a loyal Arroyo supporter who would become the Speaker of the House of Representatives.[124]

On July 21, 2001, Adonis was on air for his 7:00 a.m. program for the local affiliate of Bombo Radio in the city. He read a report published in two newspapers about the Congressman of the city allegedly being caught in an illicit affair by his alleged mistress' husband.[125] The reports then said that in a state of panic, the good Congressman was seen running around the corridors of the hotel where he was at buck naked.[126] This has since been referred to in the city as the "burlesque king incident."[127] Later in his evening program, Adonis dramatized the details of the incident.

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[122] *See* S. Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, G.R. No. 178552 (S.C., Oct. 5, 2010) (Phil.) *available at* http://sc.judiciary.gov.ph/jurisprudence/2010/october2010/178552.htm.

[123] *Philippine Libel Law Incompatible with Freedom of Expression – UN HRC*, PHILIPPINE PRESS INST. (Feb. 23, 2012), http://www.philpressinstitute.com/2012/02/23/philippine-libel-law-incompatible-with-freedom-of-expression-%E2%80%93-un-hrc/.

[124] Xinhua, *Philippines House Speaker Becomes New Ruling Party President*, PEOPLE'S DAILY ONLINE (Mar. 11, 2008), http://english.people.com.cn/90001/90777/90851/6370217.html.

[125] *'Burlesque King': Libel Law Dooms Davao Newsman*, DAVAO TODAY (Mar. 10, 2007), http://davaotoday.com/main/2007/03/10/burlesque-king-scandal-libel-law-dooms-davao-broadcaster/.

[126] *Philippine Libel Law Incompatible with Freedom of Expression – UN HRC*, *supra* note 123.

[127] *Id.*

The Congressman sued for libel and Adonis was subsequently convicted and sentenced to jail.[128] Centerlaw heard about his case one year after he was committed to prison and brought it to the United Nations Human Rights Committee, the treaty monitoring body of the International Covenant for Civil and Political Rights ("ICCPR").[129]

The Adonis communication to the United Nations Human Rights Council alleged that criminal libel in the Philippines is contrary to Article 19 of the ICCPR for two reasons. First, criminal libel is not a reasonable restriction on freedom of expression because under the Revised Penal Code truth is not a complete defense.[130] Second, he argued that the penalty is not proportional to the aim which the law professes to attain — the protection of the privacy of private individuals —since there is an alternative sanction in the form of civil libel.[131]

For the first time, the United Nations Human Rights Committee ruled that criminal libel is contrary to freedom of expression.[132] In a communication dated October 26, 2011—but received by Centerlaw in its capacity as counsel for Adonis, on January 25, 2012—the Committee, citing its General Comment 34 declared that Philippine criminal libel law was in fact contrary to freedom of expression:

> "General Comment 34 which states: "defamation laws must be crafted with care to ensure that they do not stifle. . .freedom of expression. All such laws should include such defenses such as defense of truth and they should not be applied with regard to those forms of expression that are not, of their nature, subject to verification. At least with regard to comments about public figures, considerations should be given to avoiding penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice. In any event, a public interest in the subject matter of the criticism should be recognized as a defense. Care should be taken. . . to avoid excessively punitive measures and penalties. State parties should consider the decriminalization of defamation."[133]

The committee then ordered the Philippines to pay Adonis compensation for time spent while in prison, and for it to take steps to avoid a repeat of the breach in the Philippines, a view that suggests repeal

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[128] *Id.*

[129] *See* Communication No. 1815/2008, Human Rights Comm., 103d Sess., Oct. 17–Nov. 4, 2011, U.N. Doc. CCPR/C/103/D/1815/2008 (Jan. 10, 2011).

[130] *Id.*

[131] *Id.*

[132] *Id.*

[133] *Id.*

of the Philippine criminal libel law.[134] This was a very big win for freedom of expression.

IV. MAGUINDANAO MASSACRE

After the Open Society Institute and later, the Media Legal Defense Network, institutionalized its support to Centerlaw in 2007, Centerlaw was able to conduct at least eight training sessions for prosecutors and judges on the effective investigation and prosecution of extralegal killings insofar as it target members of the media in particular. The last of these trainings was held in July 2008 in General Santos City.[135]

Ironically, months after conducting the last training on the investigation and prosecution of extralegal killings in the country, the single largest and most horrific case of extralegal killings happened in the area right where the last training was conducted: Maguindanao, which is about two hours from General Santos City.[136] The massacre would claim fifty-eight lives, including thirty-three media practitioners, a few of whom had attended Centerlaw's last training in General Santos City.[137]

By utilizing the massacre as a case study, specifically on the delay in the manner by which victims are accorded justice in the country, Centerlaw has been at the forefront of reforming the pillars of the criminal justice system to ensure the effective prosecution of perpetrators of extralegal killings in the Philippines. The massacre took place on November 23, 2008. It was made public the very same day. As soon as the news reached it, Centerlaw dispatched its Executive Director, Romel Bagares—himself a former journalist before being called to the bar, to the area at a time when even media outfits opted to stay out of the scene of the crime. Fortunately, Romel is a native of the area and knew his way around.

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[134] *See Philippine Libel Law Incompatible with Freedom of Expression – UN HRC*, *supra* note 123.

[135] The program was a huge success, but had to be stopped after the United States embassy ended its funding. This was in response to a case successfully argued by Centerlaw, *Salonga v. Smith*, where the Philippine Supreme Court ruled that the transfer of a United States marine found guilty of rape from a Philippine jail to the premises of the United States embassy in Manila was in violation of the Philippine-US Visiting Forces Agreement. Nicolas v. Romulo, G.R. No. 175888 (S.C., Feb. 11, 2009) (Phil.), *available at* http://sc.judiciary.gov.ph/jurisprudence /2009/feb2009/175888.htm.

[136] *See Maguindanao Massacre Timeline*, GMA NETWORK.COM, http://www.gmanetwork.com/news/ maguindanaomassacre (last visited Feb. 22, 2014).

[137] *Id.*

The first challenge was to apply what Centerlaw had taught prosecutors and judges in its own trainings, the need to preserve physical evidence. The Maguindanao massacre though presented peculiar challenges. The suspects behind the massacre, members of the Ampatuan clan, were very close political allies of President Arroyo.[138] One eyewitness to the massacre who himself would later killed, recalled that the former President would refer to the patriarch of the clan as "father," while the patriarch's favorite son, Unsay, would refer to the former President as "mother."[139] But beyond personal ties, the alliance between the Arroyos and the Ampatuans is a classic case study on why the Muslim separatist movement persists in the country. The Muslims of Mindanao are proud of the fact that neither Spain nor the United States succeeded in colonizing them. It is on this basis that leaders in the island have advocated the creation of an independent Bangsa Moro (moro national state) state in the island of Mindanao.[140]

Historically, Manila has been able to exercise control over the island through the local elite. It was not unprecedented hence that the Arroyo regime largely depended on the Ampatuans as allies in the anti-insurgency campaign, which happened to be most active in the Ampatuan home province, Maguindanao.[141] This explains why throughout the reign of the Ampatuans in Manila, the Palace closed its eyes to shameless acts of plunder. More often than not, more than half the funds intended for the citizens of the Maguindanao—characterized as amongst one of the two poorest provinces in the country—ended up in the pockets of the Ampatuans.[142] This is why Manila also legitimized the private armies of the Ampatuans through a presidential edict, Executive

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[138] Carlos H. Conde & Norimitsu Onishi, *Suspect in Philippine Election Killing Surrenders*, N.Y. TIMES, Nov. 26, 2009, at A8.

[139] Carolyn O. Arguillas, *Whatever Happened to the "Freeze the Assets of the Ampatuans" Order Under GMA, the COA's Special Audits and the Ombudsman's Lifestyle Check Report?*, MINDA NEWS (Nov. 27, 2010), http://www.mindanews.com/governance/2010/11/27/whatever-happened-to-the-freeze-the-assets-of-the-ampatuans-order-under-gma-the-coas-special-audits-and-the-ombudsmans-lifestyle-report/.

[140] Thomas M. McKenna, *The Origins of the Muslim Separatist Movement in the Philippines*, ASIA SOC'Y, http://asiasociety.org/countries/conflicts/origins-muslim-separatist-movement-philippines (last visited Feb. 22, 2014). Just recently, the Government of the Philippines had ended a successful negotiation with the MILF and secured the establishment of the Bangsamoro.

[141] Xinhua, *Philippine House Speaker Becomes New Ruling Party President*, PEOPLE'S DAILY ONLINE (Mar. 11, 2008), http://english.people.com.cn/90001/90777/90851/6370217.html.

[142] *Ampatuans, Others Charged with Graft, Money Laundering*, GMA NETWORK.COM (Nov. 4, 2010), http://www.gmanetwork.com/news/story/205162/news/nation/ampatuans-others-charged-with-graft-money-laundering.

Order 546.[143] This explains too why the Manila government ensured that this private army, referred to as "force multipliers," were armed and funded by the State.[144]

This was the context by which the massacre happened. A nephew of the Ampatuan patriarch, Toto Mangundadatu, known to be a sort of a black sheep in his own clan, declared that he would contest the post of governor then being held by his uncle and surrogate father, Andal Ampatuan, Sr. Toto Mangundadatu was warned by the Palace that what he intended to do was dangerous, as in fact, Palace officials warned him about the violent nature of the Ampatuan clan.[145] Against all these warnings, Toto Mangundadatu persisted.[146] Aware though of the dangers, he sent his wife, two sisters, and other female relatives away under the assumption that under the Muslim faith women should not be harmed even in armed conflicts.[147]

Entering the town of Ampatuan, the convoy was stopped at a checkpoint then manned by no less than 300 heavily armed men.[148] The convoy was then led to the top of a nearby hill where at least eight men, all armed with assault weapons, shot all of the fifty-eight victims, mostly journalists who went along with Mangudadatu to submit his certificate of candidacy, to their deaths.[149] All the victims were shot at close range and all of them had at least five shots in their bodies.[150] All of them sustained injuries that caused instant death.[151]

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[143] Directing the Philippine National Police to Undertake Active Support to the Armed Forces of the Philippines in Internal Security Operations for the Suppression of Insurgency and Other Serious Threats to National Security, Amending Certain Provisions of Executive Order No. 110 Series of 1999 and for Other Purposes, Exec. Ord. No. 546 (July 14, 2006) (Phil.), *available at* http://www.gov.ph/2006/07/14/executive-order-no-546-s-2006/.

[144] Gemma Bagayaua Mendoza, *85 Armed Groups Maintained by Politicians – PNP*, RAPPLER (Nov. 24, 2012), http://www.rappler.com/nation/politics/elections-2013/16706-85-armed-groups-maintained-by-politicians-pnp.

[145] Anthony Vargas, *Mangudadatu: Gibo Warned Me Not to Run vs Ampatuan*, MINDORO POST (Jan. 28, 2010), http://mindoropost.wordpress.com/2010/01/28/mangudadatu-gibo-warned-me-not-to-run-vs-ampatuan/.

[146] *Id.*

[147] *Id.*

[148] Analyn Perez & TJ Dimacali, *The Ampatuan Massacre: A Map and Timeline*, GMA NETWORK.COM (Nov. 25, 2009), http://www.gmanetwork.com/news/story/177821/news/specialreports/the-ampatuan-massacre-a-map-and-timeline.

[149] *Id.*

[150] *Id.*

[151] *Id.*

It was only after Centerlaw, armed with consent from the victims' heirs, offered to conduct its own post-mortem medical examination —using its own pathologists from the Medical Action Group (MAG) in a leased morgue, including a leased refrigerated van —did the government finally agree to conduct the post-mortem examination of the remains of the victims.[152] Subsequently, when these pathologists testified to identify their medico-legal reports on the remains of the victims, the defense raised on cross examination the possibility of misidentification of the victims since they were examined and identified by the kin in moderately advanced state of decomposition.

Centerlaw today is private prosecutor for seventeen victims of the massacre, including fifteen media victims. It has actively participated in both the civil aspect of the multiple criminal cases filed against members of the Ampatuan family. It has also been the only group that filed separate criminal and administrative cases against the highest-ranking military officers in Maguindanao who refused the request of the media victims to be provided with a military escort prior to the massacre.[153] The military escort could have prevented the massacre. Centerlaw is also the only group representing some of the heirs of the victims to file administrative cases for the termination from service of all sixty-two policemen who were accused of having participated in the massacre.

Centerlaw has also filed a civil case against former President Arroyo for complicity in the commission of the massacre since: one, she legitimized the private army of the Ampatuans through her issuance of an Executive Order recognizing them as force multipliers of the Philippine Armed Forces and two, she armed the Ampatuan private army that is accused today of perpetrating the deadliest single attack against journalists in the annals of world history. Centerlaw has furthermore taken steps to freeze the vast ill-gotten wealth of the Ampatuans by suing the Anti-Money Laundering Council of the Philippines. This is an effort to compel the latter to freeze the Ampatuan assets, which it has finally done. Centerlaw has also filed plunder complaints against the Ampatuans in the office of the Ombudsman.

Beyond filing all the administrative, civil, and criminal cases that should be filed to punish those behind the massacre, Centerlaw has also

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[152] *Id.*

[153] Dennis Carcamo, *Henchmen Determined to Kill Mangudadatu Even with Military Escorts*, PHILSTAR.COM (Sept. 29, 2010), http://www.philstar.com:8080/breaking-news/616074/henchmen-determined-kill-mangudadatu-even-military-escorts.

sought to further advocate two issues related to the massacre: an overhaul of the criminal justice system of the Philippines and victims' rights.[154] Thus far, it has been somehow successful in reforming the witness protection program. As a result of its advocacy, the program now admits witnesses prior to the filing of criminal cases for which their testimony is required.[155] The rules of the witness protection program previously required that a case had to be filed first in court before these witnesses could be afforded protection.[156] Oftentimes, this was too late.

Centerlaw has also succeeded in its effort to make the program less political. One witness to the massacre – who Centerlaw offered to admit to the program – was later killed after a political decision was made by the Arroyo administration to refuse him protection. Moreover, Centerlaw's involvement in the massacre has led it to espouse the rights of victims of human rights violations, which Philippine law does not recognize. In the case of the massacre victims, it has endeavored that the victims be recognized as such in the first ever individual communication filed before the ASEAN Inter-Governmental Commission on Human Rights in Jakarta, Indonesia.[157]

Centerlaw continues to lobby for the massacre victims to receive compensation from the state, which while remaining elusive has at least resulted in current President Aquino meeting with the victims and apologizing for the failure of the state to pay them the compensation due because of alleged budgetary restrictions. There is also Centerlaw's continuing drive to accord the victims reparation by providing the victims psycho-social support from private contributions, albeit it also has a pending motion to compel the government to provide all the victims with these psycho-social supports.

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[154] *HB 5060 Amended Witness Protection, Security and Benefit Act of 2011*, AGHAM PARTYLIST (Jan. 6, 2013), http://agham.org.ph/house-bill-5060-amended-witness-protection-security-benefit-act-2011/.

[155] *Id.*

[156] An Act Providing for a Witness Protection, Security and Benefit Program and for Other Purposes, Rep. Act No. 6981, § 3 (Apr. 24, 1991) (Phil.).

[157] *See Maguindanao Massacre Case Reaches ASEAN Human Rights Body*, VERA FILES (Feb. 3, 2010), http://verafiles.org/maguindanao-massacre-case-reaches-asean-human-rights-body/.

V. PEDAGOGICAL TOOLS

A. PETITIONS FILED BY LAW STUDENTS

Since many of the lawyers behind Centerlaw are academics, it has been inevitable for them to involve their law students in the filing of landmark test cases often related to their field of study. Centerlaw has filed no less than five leading cases before the Supreme Court where students gathered the evidence, researched jurisprudence, and drafted pleadings that were filed and ruled upon by the Court. The Court accepted all these cases as involving issues of "transcendental importance."[158] For instance, in *Pimentel vs. Executive Secretary*,[159] third year students of Public International law from the University of the Philippines College of Law sought to compel the transmittal of the signed Rome Statute of the International Criminal Court to the Senate pursuant to a constitutional provision that no treaty in the Philippine may be valid and binding without concurrence of at least two-thirds of all members of the Senate.[160] The students argued that Arroyo's refusal to transmit the signed treaty violated the power of the Senate to give its consent to a signed treaty.[161] This petition did not only create vast opportunities for discussion and debates on whether or not the Philippines should become a member of the Court, but it was also recognized as one of the most effective lobby tools that led to the country's eventual membership to the Court in November of 2011.[162]

Another student initiative was to declare the country's anti-terror legislation, ironically referred to as the Human Security Act to be declared unconstitutional for authorizing the wiretapping of private communication, prolonged periods of pre-trial detention, and violation of privilege communication between journalists and their sources, lawyers and their clients, and even religious leaders and their flock. The petition was for declaratory relief filed with the lower court. This petition is today

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[158] *See* David v. Macapagal-Arroyo, G.R. No. 171396 (S.C. May 3, 2006) (Phil.), *available at* http://sc.judiciary.gov.ph/jurisprudence/2006/may2006/G.R.%20No.%20171396.htm

[159] Pimentel v. Exec. Sec'y, G.R. No. 158088 (S.C., July 6, 2005) (Phil.), *available at* http://sc.judiciary.gov.ph/jurisprudence/2005/jul2005/158088.htm.

[160] CONST. (1987), art. VII, sec. 21 (Phil.).

[161] This is based on the responsive pleading submitted by the College of Law students in Court.

[162] Jonathan de Santos, *Philippines Joins International Criminal Court*, SUN STAR (Aug. 31, 2011), http://www.sunstar.com.ph/breaking-news/2011/08/31/philippines-joins-international-criminal-court-176457.

the sole-surviving petition on the issue after the Supreme Court dismissed nineteen other similar petitions for lack of justiciable controversy since all the dismissed petitions were in the nature of declaratory relief and should be filed with the lower courts. But perhaps the most controversial student petition is one that led to the impeachment of Chief Justice Renato Corona and Associate Justice Mariano Del Castillo of the Supreme Court. This was the case of *Vinuya v. Executive Secretary*.[163]

In 2004, the University of the Philippines College of Law made history when it offered for the first time in Asia an independent elective on International Humanitarian Law ("IHL"), or the rules applicable in times of armed conflict. The offering of the course was the culmination of a series of training conducted by the University and the International Committee of the Red Cross (ICRC) on the teaching of IHL in law schools. The pilot class was modest in size with only twelve students.

One day in November 2004, as the pioneer class was in session, two jeepneys full of grandmothers from Central Luzon—about two hours away from Metro Manila—sought an audience with the Chair of Centerlaw. Apparently, one of them attended one training session on IHL sponsored by the Philippine National Red Cross (PNRC). As one of the resource speakers in that PNRC training, I said that because IHL was non-derogable, victims of violations thereof should always be accorded with a remedy.

On that afternoon, it turned out that the old women who consulted with me were victims of mass rape committed by Japanese soldiers during World War II, and said old women belong to an organization known as the "Malaya Lola" or the "liberated grandmothers." Their problem was that their petition for reparations and compensation had just been dismissed in Japan by Japanese courts on the ground that as individuals they had no standing to sue and that their claims should be espoused by their home state.[164] However, their claims had never been espoused by the Philippines as a consequence of the peace pact entered into between the Japan and the Philippines. In exchange for nominal war reparations for damaged government

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[163] Vinuya v. Romulo, G.R. 162230 (S.C., Apr. 28, 2010) (Phil.), *available at* http://sc.judiciary.gov.ph/jurisprudence/2010/april2010/162230.htm.

[164] Harry Roque, *The Ongoing Search for Justice for Victims of the Japanese War Crimes in Mapanique, Philippines*, OXFORD HUM. RTS. HUB (Aug. 31, 2013), http://ohrh.law.ox.ac.uk/?p=2764.

infrastructure, the Philippines allegedly agreed to waive any and all further claims for reparations.[165]

Truth be told, if the women had come for a visit other than the time which they did —with an on-going IHL class —the advice would probably have been that there is no further resort. But because the class had been taught that a breach of a *jus cogens* norm such as IHL leads to a duty to make reparations, the students could not be told that here were victims bereft of a remedy.

The result was a petition researched and drafted by the students of the IHL class. It was for a petition for mandamus to compel the Philippine government to espouse the claims of the Filipino comfort women.[166] The petition had two main arguments: one, a breach of the *jus cogens* prohibition on rape as a war crime prevails against a treaty provision waiving further reparations pursuant to the Vienna Convention on the Law of Treaties and two, in any case, the Philippines as a state cannot waive a right which is personal to victims thereof.

Six years after the petition was filed, the Philippine Supreme Court rendered judgment dismissing the petition.[167] The primary *ratio decidendi* of the case was that *pacta sundt servanda* prevents the Philippines from espousing the claims of the comfort women for further reparation.[168] The Court added, however: "we sympathize with the petitioners. But this is one of those rare instances where there was a breach of a legal right but bereft of a legal remedy."[169]

The decision of the Philippine Supreme Court preceded the decision of the International Court of Justice ("ICJ") in the *Jurisdictional Immunities of the State Case* between Germany and Italy where the ICJ also ruled that there is no rule of international law that results in a waiver of sovereign immunity from suits for violations of *jus cogens* norms.[170] But unlike the ICJ case, the Philippine Supreme Court went further to

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[165] *Id.*

[166] The term "comfort women" refers to women and girls forced into a prostitution corps by the Japanese Empire during the World War. The Japanese Army believed that facilitating this kind of corps prevented the soldiers from raping women and the rise of any hostilities among the people in the areas. In the Philippines alone, thousands of women are asking for compensation from the Japanese government but, until now, no kind of reparation has been given to them.

[167] Vinuya v. Romulo, G.R. 162230 (S.C., Apr. 28, 2010) (Phil.), *available at* http://sc.judiciary.gov.ph/jurisprudence/2010/april2010/162230.htm.

[168] *Id.*

[169] *Id.*

[170] Jurisdictional Immunities of the State (Ger. v. It.), Judgment (Feb. 3, 2012), *available at* http://www.icj-cij.org/docket/files/143/16883.pdf.

state that rape could not have been covered by a *jus cogens* prohibition because the term "*jus cogens*" came about only as a result of the Vienna Convention on the Law of Treaties which took effect in 1964 and cannot be given retroactive effect.[171] Worse, the Court ruled that rape as a war crime only became criminal in the 1980's as a result of the Rwanda Tribunal decision in *Prosecutor v. Akayesu*.[172]

It was this last pronouncement, that rape was not criminal during World War II, which prompted Professor Roque and his co-counsel, Centerlaw Executive Director Romel Bagares, to go through each and every footnote cited by the Court in its decision. Their discovery was startling: of the thirty-three pages making up the judgment of April 28, 2010, the sections that directly addressed and resolved the controversy at hand ran from pages eighteen to thirty-two, or a total of fifteen pages; *but* pages twenty-seven to thirty-two, or six pages—nearly half of the said sections—had been plagiarized.[173] By any measure, the plagiarism, consisting of an initial count of at least fifty-four instances, was substantial and dealt with very material points that go into the heart of the arguments against granting the petitioners the relief they prayed for.[174] To make matters worse: the judgment made it appear that the plagiarized sources support the assailed judgment's arguments for dismissing the subject petition when in truth the plagiarized sources even make a strong case for the petition's claims.[175]

The scandal that broke as a result of this startling discovery led to the impeachment of the Chief Justice and possibly of another Associate Justice of the Court who was the *ponente* of the decision.[176]

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[171] Vinuya v. Romulo, G.R. 162230 (S.C., Apr. 28, 2010) (Phil.), *available at* http://sc.judiciary.gov.ph/jurisprudence/2010/april2010/162230.htm.

[172] *See* Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgement (Sept. 2, 1998), http://www.unictr.org/Portals/0/Case/ English/Akayesu/judgement/akay001.pdf.

[173] "The sources from where Del Castillo allegedly borrowed without proper attribution were 'A Fiduciary of Theory of Jus Cogens' by Evan Criddle and Evan Fox-Decent, 'Breaking the Silence on Rape as an International Crime' by Mark Ellis, and 'Enforcing Erga Omnes Obligations in International Law' by Christian Tams." Sophia Dedace, *SC Clears Justice Mariano del Castillo in Plagiarism Mess*, GMA NETWORK.COM (Oct. 15, 2010), http://www.gmanetwork.com/news/story/203492/news/nation/sc-clears-justice- mariano-del-castillo-in-plagiarism-mess.

[174] *See* Jay Ruiz, *Del Castillo Accused of 32 Counts of Plagiarism – Lawyer*, ABS-CBNNEWS.COM (Feb. 14, 2012), http://www.abs-cbnnews.com/nation/02/14/12/del-castillo-accused-32-counts-plagiarism-lawyer.

[175] *Id.*

[176] *Del Castillo's Impeachment Case "Likely" to be Dismissed*, SUN STAR, (Feb. 3, 2012), http://www.sunstar.com.ph/manila/local-news/2012/02/03/del-castillos-impeachment-case-likely-be-dismissed-204113.

The Chief Justice was impeached for, among other things, creating an Ethics Committee that absolved the *ponente* from the charge of plagiarism ruling that "he did not intend to plagiarize" and faulted the computer program Microsoft Word for the omission of sources form the text of the decision.[177] According to the Articles of Impeachment,

Along the way, Respondent, contrary to his pronouncements, has allowed and even encouraged the deterioration of the respect and trust due to the High Court by putting obstacles in the path of the people's search for truth against graft and corruption; encroaching on the exclusive power of the House of Representatives to initiate impeachment proceedings, providing a semblance of legal cover to give Former President Gloria Macapagal-Arroyo and her husband the opportunity to escape prosecution and frustrate the ends of justice; permitting the High Court to repeatedly flip-flop on its own decisions in violation of its own rules; excusing plagiarism in contrast to the stringent standards expected of ordinary college students and teachers; and even reportedly engaging not only in illicitly acquiring assets of high value but even resorting to petty graft and corruption for his own personal profit and convenience.[178]

The *ponente*, on the other hand, was also the subject of a complaint for impeachment for betrayal of public trust by the comfort women themselves.[179] While he has not been impeached, the House Committee of Justice, which has the constitutional power to initiate impeachment proceedings under the Philippine Constitution, has found sufficiency in form and substance as well as the existence of probable cause.[180] The last stage required for the Associate Justice to be impeached would be for one-third of all members of the House of Representatives to approve the Articles of Impeachment against him.[181]

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[177] *See* In re del Castillo, A.M. No. 10-7-17-SC (S.C., Oct. 12, 2010) (Phil.), *available at* http://sc.judiciary.gov.ph/jurisprudence/2010/october2010/10-7-17-SC.htm.

[178] Articles of Impeachment against Chief Justice Renato C. Corona (Dec. 12, 2011) (Phil.), *available at*
http://www.gov.ph/2011/12/12/articles-of-impeachment-against-chief-justice-renato-c-corona-december-12-2011/.

[179] *See* Vinuya v. Romulo, G.R. 162230 (S.C., Apr. 28, 2010) (Phil.), *available at* http://sc.judiciary.gov.ph/jurisprudence/2010/april2010/162230.htm.

[180] Philippine Daily Inquirer, *House Committee Votes 38-10 to Impeach Justice Del Castillo*, INQUIRER.NET (Feb. 21, 2012), http://newsinfo.inquirer.net/149645/house-committee-votes-38-10-to-impeach-justice-del-castillo.

[181] CONST. (1987), art. XI, sec. 3 (Phil.).

B. Regional Human Rights and Freedom of Expression Training Center

Centerlaw has of late been extending its human rights and freedom of expression advocacy beyond the Philippines. It has sponsored several special seminars for human rights and freedom of expression advocates, lawyers, and journalists from Thailand, Burma, Vietnam, Cambodia, and Laos. These training seminars have been held in Manila, Bangkok, and in the Burma-Thailand border. Centerlaw has also received requests for similar training seminars inside Burma and Nepal. Recently, Centerlaw also sent one of its lawyers for a trial observation mission in Ho Chi Minh, Vietnam in the case of a renowned journalist-blogger, Dieu Cay, who has exposed government corruption in Vietnam.

Unlike western organizations providing human rights training, Centerlaw is a homegrown Asia-based organization which is sharing its expertise and experiences with other countries in the region. By reason of its (1) hands-on involvement in the actual prosecution of impunity cases, (2) its having developed training modules, (3) its access to and interaction with international experts, and (4) its expertise in Philippine human rights and freedom of expression laws which are the more progressive legislation in Asia, Centerlaw is positioning itself as a Center of Excellence in human rights and freedom of expression issues for the region.

VI. Reflections

As this section is being written, the future of Centerlaw, despite its many accomplishments, remains unsettled. While it was started as a result of a political backlash that left a law firm without a client base, its operation has been subsidized still by newfound private clients of the firm of Roque & Butuyan Law Offices. Initially, its operation, with no assistance from any external source, was a source of pride for the lawyers behind it. Their motto was "we are engaged in traditional lawyering. Those engaged in lawyering for profit are the ones engaged in non- traditional lawyering." The lawyers of Centerlaw were so firm in this conviction that they refused even to be referred to as "human rights lawyers," arguing fiercely that no such label should be given to them

since the promotion of human rights was a natural and basic obligation of all lawyers. Anent their refusal to receive funding from outside sources, the lawyers, aside from their firm belief that public interest litigation should be funded from the yield of a professional practice, also justified their initial refusal to receive outside funding on the ground that in a highly politicized society such as the Philippines lawyers needed to maintain their independence.

But this was not to last for long. Soon the pressure of having to build up a practice from scratch and the ever increasing demand for the time of its lawyers to attend to public interest cases, prompted Centerlaw to finally receive its first outside support from a private funding body, the Open Society Foundation. Initially, Centerlaw merely received funding to fund the filing fees in the case filed by Filipino journalists against the FG. Then there was a small grant to bring the case of the jailed journalist Alexis Adonis to the United Nations Human Rights Committee. This was followed by further grants from the American Bar Association, the Konrad Adenhauer Stiftung, the National Endowment for Democracy, the Foreign and Commonwealth Office of the United Kingdom, and the Media Legal Defense Network. All these grants though were for a specific activity: the training of prosecutors and judges on the effective investigation and prosecution of extralegal killings and enforced disappearances in the Philippines. It was only in 2007 when Centerlaw received regular funding to cover at least a portion of its administrative expenses from the Media Legal Defense Network.

Centerlaw's financial model in the past was that its commercial practice would finance its public interest litigation. When this proved unworkable, the model was amended to rely on funding institutions to cover part of its administrative expenses. The latest model Centerlaw adopted was to evenly divide both the overhead cost and the time of its lawyers between the commercial practice and public interest litigation. This too proved to be unworkable because of the increasing time spent on public interest litigation, which meant lesser billable hours for the commercial practice. More importantly, the filings of these public interest litigations were politically unpopular, whoever the administration may be. In fact, this was the final straw that compelled Centerlaw to seek and accept funding from outside sources. With Centerlaw condemned by former President Arroyo as amongst the foremost enemies of government, the new-found clients in its post-trade litigation practice also became scarce.

While the advent of the new administration of current President Aquino led to a resurgence of private practice for the law firm behind Centerlaw, the increasing time allotted to public interest litigation continues to result in even less billable time for its private practice. Also while the lawyers behind Centerlaw have been publicly acknowledged by the new President in public as his "close friends," this has not prevented Centerlaw from filing at least one petition against the new government: a successful petition for the issuance of a Temporary Protection Order against the Aquino government to restrain it from reclaiming forty-two hectares of land 800 meters away from the shore of the famed Boracay island in the Visayas. The filing and the eventual defeat of the Aquino administration in this particular case has prompted some to speculate that the friendly relations between Centerlaw lawyers and the new President would not last.

Moreover, a petition that will soon be filed by Centerlaw appears to be more politically damaging to the Aquino administration. This is a petition on behalf of some of the heirs of the victims of the Maguindanao massacre and residents of a rural community affected by a major mining operation in Zamboanga del Sur in the Mindanao region. The forthcoming petition seeks to annul an Executive Order legitimizing private armies. President Aquino, then a presidential aspirant —in a meeting arranged by Centerlaw for the international organization Human Rights Watch —promised to revoke the said Executive Order given the country's painful experience in the Maguindanao massacre. As President, he not only reneged on this promise to revoke the order, but *worse*, he created a special private army which is armed and trained by the government and paid for by foreign mining companies. In the Maguindanao province of Zamboanga del Sur, this private army is accused by local residents of burning local villages and poisoning a water source in an effort to drive small miners away from the area.[182] A fact- finding mission created by Centerlaw and participated in by University of the Philippines law students and journalists under the aegis of the National Union of Journalists of the Philippines (NUJP), were also briefly detained by these mercenaries.

The point being is that firms that engage in public interest litigation cannot expect to hang on to paying clients when they start filing

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[182] Juan Pasaylo, *Slideshow: Miners Poison Balabag with Cyanide*, PHILSTAR.COM (Mar. 21, 2012),
http://www.philstar.com/breaking-news/789141/slideshow-miners-poison-balabag-cyanide.

and winning cases against their own government. In Third World countries, it is unfortunate that paying clients choose not only competent lawyers, but also those who they consider have the political clout to get things done. This has proven to be the most serious challenge to the financial model of Centerlaw.

Centerlaw's problem now that it has decided to seek funding from donor agencies is apparently there is not enough donor money going around to fund public interest litigation. While it received the biggest funding from the European Union in its recently concluded EP-JUST program, the limitation of the program was that it was only for nine months. Indeed EP-JUST came as a "fairy godmother" for Centerlaw, enabling it to use the latest in forensics evidence for the duration of the period. The problem is that the "ball" literally ended as soon as the clock struck nine months. And while Centerlaw is engaged in fund raising efforts, it is finding it very difficult to raise funds either because funders view its work as too "political," an apprehension expressed by the European Union as well, or there simply is not enough funds for the purpose for which Centerlaw exists.

These days, the bulk of grant money is for causes such as the protection of the environment, promotion of women and children's rights, and, of late, the promotion of economic development. Very little grant money is made available for the purpose of filing public interest litigation intended to promote and protect human rights. That grant money is allocated for long-established groups. That is why this section had to be written. For while Centerlaw's future remains uncertain, there has to be a record of what it has done. There too has to be a record of the men and women behind Centerlaw.

Here are the individuals behind Centerlaw, both past and present: H. Harry L. Roque, Jr., Joel R. Butuyan, Romel R. Bagares, Roger R, Rayel, Gilbert A. Andres, Dexter D. Dizon, Mark Rabe, Allan Jones Lardizabal, Gary Mallari, Joanne Serrano, Celeste Cembrano, Toni Angeli Coo, Eric Mercurio, Dondi Ligon, Lito Orozco, Rainier Casis, Kevin Timothy San Agustin, Benjamin Luis, Aileen Reyes-Garcia, Leopoldo Gangoso, Marie Vilma Fabian, Ma. Victoria Suarez, and Maritoni Liwanag.