Topic Three: Community Involvement in the Courts

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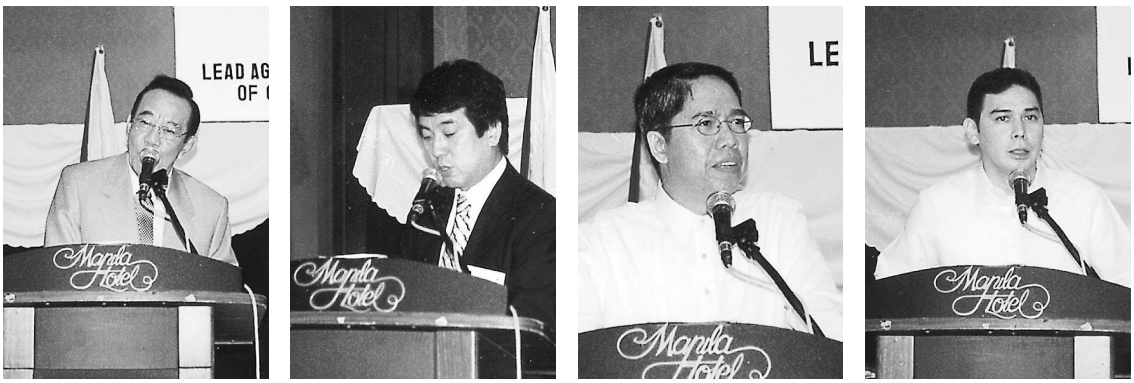

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COMMUNITY INVOLVEMENT IN THE COURTS

By
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I. MEDIATION IN THE COURTS

A. Mediation in General

Mediation is a process of resolving disputes with the aid of a neutral person – the Mediator – who helps parties identify issues and develops proposals to resolve their disputes. Unlike arbitration, the mediator is not empowered to decide disputes.

B. Basis of Mediation in the Philippines

- Par. (5), Section 5, Article VIII of the 1987 Constitution mandates the Supreme Court to promulgate rules that shall provide a simplified and inexpensive procedure for the speedy disposition of cases.
- Sec. 2(a), Rule 18 of the 1997 Rules of Civil Procedure, as amended, requires courts to "consider the possibility of an amicable settlement or of a submission to alternative modes of dispute resolution."

C. Advantages of Mediation

- It helps unclog the court dockets
- Mediation is one of such alternative modes of dispute resolution that is not only speedy but inexpensive as well
- It is a better and more civilized solution to disputes

D. The Congested Dockets of the Court

Station	Total No. Cases
Regional Trial Court	252,133
Metropolitan Trial Court	164,392
Municipal Trial Court in Cities	110,120
Municipal Trial Court/Municipal Circuit Trial Court	61,143
TOTAL	**587,788**

(as of March 2001, source: OCA)

E. PHILJA'S Mediation Project

- The Proposal to the Supreme Court to Pilot Test the Efficacy of Mandatory Mediation - approved on June 24, 1999
- Supreme Court Guidelines on Court-Referred Mediation - approved on November 16, 1999

1st Pilot Project

- Seminar Workshop on Mediation
  June 25 to 27, 1999 - Subic, Olongapo City
- Participants
  Judges of the pilot areas, Court Personnel, Supreme Court lawyers, 18 recommendees from Mandaluyong, 12 recommendees from Valenzuela
- Internship Program - December 15, 1999 to February 15, 2000
  Participating courts - Regional Trial Courts and Metropolitan Trial Courts of Mandaluyong and Valenzuela Cities
  Success Rate - 42%

2nd Pilot Testing

- Seminars – Pre-Workshop Training, Basic Mediation Workshop I, Basic Mediation Workshop II, Workshop on Family Mediation, Evaluation Workshop on the Pilot Testing of Court-Referred Mediation
- Participants
  Family Court Judges, Court Personnel, PBA/IBP Lawyers, PHILJA Staff, other professionals
- Lecturers
  Singapore Mediation Center – Judge The Hwee Hwee, Dr. Loong Seng Onn, Atty. George Lim
  Local Lecturers – Dean Eduardo D. de los Angeles, Dean Reynaldo L. Suarez, Ms. Annabelle T. Abaya, Dr. Fortunato Gupit
- Internship Program
  Participating courts – selected pilot courts situation in Mandaluyong, Pasay and Quezon City
  Overall Success Rate - 85%

3rd Pilot Testing

- Basic Seminar Workshop on Mediation
  November 2000 to February 2001
  Areas – Metro Manila, Cebu and Davao
  Total number of participants – 396
- Internship Program – November 2000 to February 2001
  Participating courts – selected RTCs and MeTCs of Metro Manila, Cebu and Davao
  Overall success rate – 77%
- Refresher Courses – October 2001 to March 2001
- Advocates Forum – January to March 2001
  Judges, Lawyers, Business, Government, Academe and NGO, and Media
- Conference and Workshop – March 21, 2001
- Settlement Weeks – March 26 to April 6, 2001
  Participating courts – all courts of Metro Manila, Cebu and Davao
  Overall success rate – 84%
- Launching of the Philippine Mediation Center – Citibank Towers, Makati
- Peacemaker's Circle Awards – June 5, 2001

F. Philippine Mediation Center

Pursuant to A.M. No. 01-10-5-SC-PHILJA, dated October 16, 2001, designating the Philippine Judicial Academy (PHILJA) as the component unit of the Supreme Court for court-referred, court-related mediation cases and other alternative dispute resolution mechanisms, and establishing the Philippine Mediation Center for the purpose

Functions of the PMC

- Establish, in coordination with the Office of the Court Administrator (OCA), units of the Philippine Mediation Center (PMC) in courthouses, and in such other places as may be necessary. Each unit, manned by Mediators and Supervisors, shall render mediation services to parties in court-referred, court-related mediation cases
- Recruit, screen, train and recommend Mediators for accreditation of the Court
- Require prospective Mediators to undergo four-week internship programs
- Provide training in mediation to judges, court personnel, educators, trainors, lawyers, and officials and personnel of quasi-judicial agencies
- Oversee and evaluate the performance of Mediators and Supervisors who are assigned cases by the courts
- Implement the procedures in the assignment by the PMC units of court-referred, court-related mediation cases to particular Mediators

Supervision and Control over PMC Units

The operational control and supervision over PMC Units and Mediation Chapters with respect to court-referred, court-related mediation cases shall be with the Mediation Division of PHILJA, in coordination with the OCA.

A Clerk-in-Charge shall be assigned by the Executive Judge, after prior consultation with PHILJA and OCA, to coordinate between the courts and Mediators and Supervisors in every PMC units.

Role of the Presiding Judge

The Presiding Judge, before whose court the case subject of mediation is pending, shall extend to the Mediator, every possible support and assistance.

The Mediator whose selection/appointment is confirmed by the Court is deemed an officer of the court.

G. Second Revised Guidelines for the Implementation of Mediation Proceedings

Coverage

The following cases are referable to mediation:

- All civil cases, settlement of estates, and cases covered by the Rule on Summary Procedure, except those which by law may not be compromised
- Cases cognizable by the Lupong Tagapamayapa under the *Katarungang Pambarangay* Law
- The civil aspect of BP 22 cases
- The civil aspect of quasi offenses under Title 14 of the Revised Penal Code

Order for Mediation

The trial court, after determining the possibility of an amicable settlement or of a submission to alternative modes of dispute resolution, shall issue an Order referring the case to the Philippine Mediation Center (PMC) Unit for mediation and directing the parties to proceed immediately to the PMC Unit. The Order shall be personally given to the parties during the pre-trial. Copy of the Order together with a copy of the Complaint and Answer/s, shall be furnished the PMC Unit within the same date.

The PMC Unit

There shall be a PMC Unit in courthouses or near the premises of the trial court for court referred mediation proceedings.

Selection of Mediator

The Supervisor of the PMC Unit shall assist the parties select a mutually acceptable Mediator from a list of duly accredited Mediators and inform the parties about the fees, if any, and the mode of payment. If the parties cannot agree on the Mediator, then the Supervisor shall assign the Mediator. The trial court shall immediately be notified of the name of the Mediator, and shall thereafter confirm the selection/appointment of the Mediator.

The Mediator shall immediately commence the mediation proceedings unless both parties agree to reset the mediation within the next five (5) working days, without need of further notice.

Presence of Lawyers

Lawyers may attend the mediation proceedings and shall cooperate with the Mediator towards the amicable settlement of the dispute.

Mediation Proceedings

- The Mediator shall be considered as an officer of the court
- Conference with both parties present
- If no settlement during the conference, hold separate caucuses with each party
- The Mediator shall submit to the trial court, a status report on the progress of the proceedings at the end of the mediation period

Confidentiality of Records

- The mediation proceedings and all incidents thereto shall be kept strictly confidential, unless otherwise specifically provided by law, and all admissions or statements made therein shall be inadmissible for any purpose in any proceeding
- Ex-parte communications shall not be communicated
- Views expressed, suggestions, admissions, proposals and willingness to accept a proposal for settlement cannot be introduced as evidence
- No transcript or minutes of the mediation proceedings shall be taken, and personal notes of the Mediator shall not be furnished the trial court and shall be inadmissible as evidence in any other proceedings

Suspension of Proceedings

- Period during which the case is undergoing mediation shall be excluded from the regular and mandatory periods
- The period for mediation shall not exceed 30 days, extendible for another 30 days

H. Standards and Procedure for Accreditation of Mediators

Basic Qualifications of Prospective Mediators

- Bachelor's degree
- At least 30 years of age

- Good moral character
- Willingness to learn new skills and render public service
- Proficiency in oral and written communication in English and Pilipino

To maintain good standing, the Mediator must:

- Continue to be of good moral character
- Render mediation services at least once a week to any PMC unit
- Participate during the Settlement Weeks
- Complete refresher courses to be prescribed by PHILJA within the two (2) year period

The accreditation shall be effective for a period of two (2) years

I. Code of Ethical Standards for Mediators

Responsibilities to Courts

Responsibilities to Parties

- Impartiality
- Competence
- Conflict of interest
- Avoidance of delays
- Prohibition against solicitation or advertising
- Prohibition against coercion
- Personal opinion
- Disclosure of fees
- Confidentiality
- Role of Mediator in settlement

Relationship with other professionals

Responsibilities to Society

- Pro Bono service
- Support of mediation

J. Steps of the Mediation Process

1. Preparation for Mediation
   - Talks separately with the parties to prepare them for the mediation
   - Gathers information about the case
   - Diagnoses the dispute
   - Arranges an appropriate venue for the mediation
2. Mediator's Opening Remarks
3. Presentation of Issues and Concerns of the Parties
4. Mediator's Summary of Issues to be Resolved
5. Problem Solving
6. Final Bargaining
7. Final Written Agreement and Closing

II. *KATARUNGANG PAMBARANGAY* SYSTEM

A. *Katarungang Pambarangay*

Katarungang Pambarangay is an innovation of the Philippine justice system. It provides for resolution of disputes at the *barangay* level in order to achieve peace and harmony within the community and to provide an accessible and effective form of justice for community members. The *Katarungang Pambarangay* Law provides for local disputes which fall under its jurisdiction to be resolved through mediation, conciliation, or arbitration by the *Lupong Tagapamayapa* of which the *Punong Barangay* is the Chairman.

The *Katarungang Pambarangay* system is designed to achieve the following objectives:

1. To obtain a just, speedy and inexpensive settlement of disputes at the *barangay* level
2. To preserve Filipino culture and traditions concerning the amicable settlement of disputes
3. To relieve the courts of docket congestion and thereby enhance the quality of justice dispensed by them.

B. The *Katarungang Pambarangay* under PD 1508

PD 1508, otherwise known as the *Katarungang Pambarangay* Law, was signed on June 11, 1978 and took effect on December 11, 1978. The law formally organized and institutionalized the system of amicable settlement of disputes at the *barangay* level, with the purpose of promoting harmony, peace and order, and community cooperation.

From 1978 to 1991, the Department of Interior and Local Government (DILG), through the Bureau of Local Government Supervision (BLGS), was tasked by law to administer, implement, supervise, monitor, evaluate, and issue the required implementing rules and regulations.

C. The *Katarungang Pambarangay* under RA 7160

The Local Government Code of 1991 (RA 7160) took effect on January 1, 1992, and included provisions for the *Katarungang Pambarangay*. The revision of the *Katarungang Pambarangay* Law expanded the jurisdiction of the *Katarungang Pambarangay* to include a wider range of cases and made some minor procedural changes to the law. The administration and implementation of the *Katarungang Pambarangay* was devolved to the local government units (LGUs), specifically to the Office of the City/Municipal Mayor. Every city/municipal council is now mandated by law to provide the necessary budgetary outlay for the efficient administration and implementation of the *Katarungang Pambarangay*.

The DILG, through the Economic and Incentives Awards Program, is tasked to provide incentive awards to outstanding *Lupong Tagapamayapa* at the regional and national levels. The Department of Justice is mandated to issue the necessary implementing rules, regulations and amendatory rules. Every city/municipal lawyer and public prosecutor is tasked to render legal opinions on cases presented by the *Punong Barangay* or the *Pangkat ng Tagapagkasundo* through the *Lupong Tagapamayapa*.

D. Dispute Resolution under the *Katarungang Pambarangay* SYSTEM

If parties are unable to settle disputes themselves through negotiation and if the disputes falls under the jurisdiction of the *Katarungang Pambarangay*, they must bring the dispute to the *Punong Barangay* to attempt settlement prior to filing their complaint in court. In the *Katarungang Pambarangay* system, the *Punong Barangay* will, as directed by the parties, mediate or arbitrate the case. If the *Punong Barangay* is unable to achieve a settlement, the case is referred to the *Pangkat ng Tagapagkasundo*, a panel of three

members of the *Lupong Tagapamayapa*, who can conciliate, mediate or arbitrate the case. If neither the *Punong Barangay* nor the *Pangkat* is able to effect a settlement, the Lupon Secretary or the *Pangkat* Secretary (with the attestation by the *Lupon* or *Pangkat* Chairman) will issue a certificate to file action in court, and the parties may then file the complaint in court. The *Katarungang Pambarangay* law also provides for the resolution of disputes through indigenous system of dispute resolution; where settlement is not achieved, the *Punong Barangay* will issue a certificate to file action in court.

E. Subject Matter for Amicable Settlement

All disputes EXCEPT:

- Where one party is the government or any subdivision or instrumentality thereof;
- Where one party is a public officer or employee and the dispute relates to the performance of his duties;
- Offenses punishable by imprisonment exceeding one (1) year or a fine exceeding P5,000;
- Offenses where there is no private offended party;
- Where the dispute involves real property located in different cities or municipalities unless the parties agree to submit their differences to amicable settlement by an appropriate *Lupon*;
- Disputes involving parties residing in *barangays* of different cities or municipalities except where such *barangay* adjoin each other and the parties agree to submit to amicable settlement by an appropriate *Lupon*.

F. Structure of the *Katarungang Pambarangay*

The *Punong Barangay* is the primary implementor of the *Katarungang Pambarangay*. The role of the *Punong Barangay* under *Katarungang Pambarangay* Law (RA 7160) is two-fold:

1. To serve as an administrator pursuant to the provisions of the *Katarungang Pambarangay* Law
2. To assist parties to reach an amicable settlement, through the use of mediation skills and procedures, or if requested by the parties, to render a fair and reasonable decision through the arbitration process

As Chairman of the *Lupon*, the *Punong Barangay* has many tasks outlined in the *Katarungang Pambarangay* Law. In his role as an acknowledged leader of the community, the *Punong Barangay* is expected to represent all the people in performing the following administrative duties:

1. Recruit and appoint *Lupon* members
2. Orient and train *Lupon* members
3. Constitute the *Pangkat*
4. Serve as Chairman of the *Lupon* and conduct regular monthly meetings of the *Lupon*
5. Supervise the Secretary of the *Lupon* and ensure that reports and documents are complete
6. Enforce amicable settlement or arbitration awards

The *Lupong Tagapamayapa* (*Lupon*) is a group of 10 or 20 people, selected by the *Punong Barangay*, who possess integrity, impartiality, independence of mind, sense of fairness, and reputation for probity. When the *Punong Barangay* is unable to settle a dispute, the case is referred to a panel of three *Lupon* members (the *Pangkat*) for conciliation or arbitration. The *Pangkat* members are selected by the parties, or if the parties cannot agree, chosen by lot by the Chairman of the *Lupon*.

The *Lupon* members meet monthly to provide a forum for exchange of ideas among its members and the public on matters relevant to the amicable settlement of disputes, and to enable various conciliation panel members to share with one another their observations and experiences in effecting speedy resolution of

disputes. The *Lupon* submits data on the *barangay* disputes and their disposition to the Municipal Monitoring Unit.

The *Barangay* Secretary serves as Secretary of the *Lupon*. The Secretary's duties are to record the results of mediation proceedings before the *Punong Barangay* and submits a report to the proper city or municipal courts. The Secretary also receives and keeps the records of proceedings submitted by the various conciliation panels.

Each *Pangkat* selects one of the *Pangkat* members to serve as *Pangkat* Secretary. The *Pangkat* Secretary prepares the minutes of the *Pangkat* proceedings, submits a copy, attested by the *Lupon* Secretary, to the proper city or municipal court, and issues notices to the parties concerned. Each *Pangkat* also selects a *Pangkat* Chairman who presides at the conciliation meeting.

The Municipal Monitoring Unit is established in each municipality to provide the Department of Interior and Local Government periodic program implementation feedback. The Unit collects and submits data to the DILG on disputes filed before the *Lupong Tagapamayapa*, the disposition of the disputes, and problems encountered in the implementation of the program. The Monitoring Unit initiates actions on issues and problems and elevates unresolved issues to the DILG.

III. COMMUNITY MEDIATION

A. Mediation: A Viable Option to Conflict Resolution

In a society where decision-making processes are in the hands of a few; where the ability to dominate because one is more powerful than another party, is still the way of life, mediation is seen as a viable option in resolving disputes because the process entails finding a mutually beneficial solution to the conflict. It is an alternative to the court-led or legal framework of dispute resolution; it covers procedural and psychological issues that the law does not tackle.

Furthermore, the parties equally claim the power to determine the outcomes of their own conflict.

Here in the Philippines, the Mediation Network for Sustainable Peace has been the pioneer in resolving Community Based Mediation. MedNet calls this the "use of power with grace". It means the use of power that is "grace-filled", meaning, the exercise of power informed and influenced by the spiritual values that a person or a group of persons is anchored on. It also means the "graceful use of power," where the use of power does not disempower one's self and others, instead it empowers all the parties concerned to resolve the conflict in a just and caring way.

B. Empowering Dispute Resolution/Management Processes (EDR/MP)

Empowering Dispute Resolution/Management Processes (EDR/MP) is founded on two principles:

1. The recognition of the indigenous people's conflict resolution practices, e.g., acknowledgement of the role and power of the council of elders. Such practices are not on the one alternative for they came before us, they have been used for thousands of years. Thus, to name network's practice as alternative dispute resolution practices.

2. The recognition of the issue of power being at the heart of every conflict. Any alternative dispute resolution practice needs to acknowledge this and bring it forth to bear on the process. Thus, the measure of a successful dispute resolution is not in the resolution of the conflict but in the empowerment of the parties along the process towards a mutually gainful or beneficial solution to their conflict.

The facilitators empowering dispute resolution management processes strive for the achievement and preservation of peace with justice among persons, groups organization institutions sectors, communities and countries. They are primarily dedicated to the principle that all parties to a conflict have a right to negotiate and attempt to determine the outcomes of their own conflict. They believe in the importance of this principle as a precondition to the achievement of genuine peace and sustainable development.

The Mediators Network for Sustainable Peace (MedNet) was borne out of two initiatives that were supported by The Asia Foundation (TAF). First, the partnership between the Department of Agrarian Reform (DAR) and the Community Organizers (CO) Multi diversity to venture into the use of mediation as alternative means of resolving agrarian disputes from 1994-1997, training on principled negotiation, mutual gains approach, and interest-based mediation were conducted for DAR personnel, non-government organizations, and peoples organizations. The success of the undertaking was evident, some 550 people from various parts of the country were trained, and less agrarian related cases were filed in court. This prompted the partnership between the Department of Environment and Natural Resources (DENR) and the Tanggol-Kalikasan to explore the arena of alternative dispute resolution in environmental conflicts.

Participants to the training of both initiatives have since then linked up with one another, as they worked along in providing training, mediation, and negotiation-coaching. During a sharing and consolidating of learning experiences on dispute resolution at the Caliraya Forum last May 1999, they agreed that the time was rife for the formation of a network of mediators, one that practices the Empowering Dispute Resolution/Management Processes (EDR/MP).

The Network consists of individuals from the government, particularly the Department of Agrarian Reform (DAR) and the Department of Environment and Natural Resources (DENR), as well as from the non-government organizations (NGOs), and the people's organizations (POs).

C. The Barangay Justice System

The *barangay* justice system is not part of the judicial system. But the Judiciary recognizes that strengthening the grassroot structure will definitely have positive effects in the administration of justice as it may help unclog court dockets. According to an associate justice of the Supreme Court, it should be the duty of every judge in the trial courts to help strengthen the *barangay* justice system. The local courts can initiate public education and information programs on how the *barangay* system works and provide opportunities for continuing education for *Lupon* and *Pangkat* officials.

Maximizing the potential of the *barangay* justice system has been limited by lack of information on how it works as well as some inherent structural weaknesses. The community, especially the marginalized sectors are not aware or knowledgeable about the *barangay* justice system and the functions of the *Lupon* and *Pangkat*. There has been no public information and education campaign on how the *barangay* justice system works.

During the regional consultations, many *barangay* officials noted some inherent weaknesses of the *Lupon* and *Pangkat.* The educational attainment of members are found to be diverse – some have completed college degrees while others have had only a few years of schooling. While educational attainment is not an important criterion as to community standing, respect, impartiality and integrity, it may be easier to create collegial atmosphere if educational gaps are not too wide. Some *Lupon* and *Pangkat* members are not aware of their role, duties and responsibilities, among others. There are limited opportunities for continuing education.

There is a need, therefore to intensify training of members of the *Lupon* and *Pangkat*, many of whom lack knowledge on the *Barangay* Justice Law. The members should be equipped with skills in negotiation, conciliation, conflict management, etc. In addition to traditional training sessions, members of

the *Lupon* and *Pangkat* may join "*Lakbay Aral*" in local courts as well as make cross visits to model *Barangay* Justice systems.

Some *Lupon* and *Pangkat* members perceive their mode of alternative dispute resolution as adjudicatory and not conciliatory. Hence, some have exercised jurisdiction beyond the territorial bounds of the *barangay*. Some *barangay* officials have shown partiality towards certain litigants who are related to them either by consanguinity or affinity ("compadre" culture).

It is perhaps because *Lupon* and *Pangkat* members serve without compensation that they are not highly motivated to expeditiously resolve cases referred to them. This non-feasance has caused untoward delay in the amicable settlement of controversies.

There are however "success stories" on the *barangay* justice system. For example, the *Lupong Tagapamayapa* in a *barangay* in Legaspi City was adjudged winner in the Galing Pook Awards. These success stories, however, are not given adequate media coverage.

The Barangay Council for the Protection of Children (BCPC) is now being set up in *barangays* nationwide. This provides another venue by which community leaders and members are able to participate actively in the delivery of (social) justice especially for children who are exposed to various forms of abuses – trafficking, child labor, prostitution, vagrancy, among others. It is unfortunate that only a small percentage of our *barangays* nationwide have established their BCPCs. Many of those established have not been active. Lawyers who are residing or working in a particular *barangay* may serve as a member of the council. This will enable them to share with the local community their knowledge, talents, and skills.

COMMUNITY INVOLVEMENT IN COURTS

By
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UNAFEI

I. INTRODUCTION

Public participation in the justice system is of significant importance, not only from the democratic perspective, but also from the perspective that the system can only be effective by being supported by public confidence and cooperation. The criminal procedure is no exception. However, the type and the extent of public participation in the court procedure varies from country to country, and even within one country, it varies depending on the procedure.

Community involvement in courts is one of the hottest issues in Japan now, since the Justice System Reform Council submitted its Final Proposal to the Cabinet in June 2001[1], which includes proposals to enhance community involvement in courts.

I would like to describe the current situation of community involvement in the Japanese court procedure and then refer to the recent discussions on the enhancement of community involvement in criminal trials in relation to the Final Proposal of the Justice System Reform Council.

II. Current Situation of Community Involvement in Japanese Courts

A. Court Structure

For your preliminary knowledge, I would like to touch upon the Japanese court structure briefly.

There are five types of courts: the Supreme Court, High Court, District Court, Family Court and Summary Court.

The Supreme Court is the highest court. The Supreme Court exercises appellate jurisdiction as provided specifically in the codes of procedure.

There are 8 High Courts (and 6 branch offices), and they have jurisdiction over appeals filed against judgments rendered by the District Courts and the Family Courts, as well as the Summary Courts in criminal cases. The High Courts have original jurisdiction over certain cases stipulated by law.

There are 50 District Courts (and 203 branch offices). The District Court is primarily the court of general and original jurisdiction over civil and criminal cases, and it handles all cases in the first instance except those specifically coming under the exclusive jurisdiction of other types of court. The District Court also has appellate jurisdiction in certain cases stipulated by law.

The Family Courts and their branch offices are established at the same places where the District

[1] Available on www.kantei.go.jp/foreign/judiciary/2001/0612reports.html

Courts and their branch offices are located. In addition, local offices of the Family Courts are located in 77 places. The Family Court is a specialized court dealing with family affairs[2] and juvenile delinquency cases[3]. Family affairs cases are solved by determination or conciliation procedure.

There are 438 Summary Courts throughout Japan. The Summary Court has original jurisdiction over civil cases involving claims not exceeding 900,000 yen and criminal cases relating to offences punishable by fine or lighter punishment and other minor offences. It also handles conciliation proceedings aimed at settling everyday disputes among citizens.

B. Participation of Laypersons in Judicial Proceedings in Civil and Family Cases

In Japan, some laypersons who are selected by the court from among the general public take part in judicial proceedings as Conciliation Commissioners, Judicial Commissioners and Family Court Councilors.

(1) Conciliation Commissioners

The Conciliation Committee of the District Courts, the Family Courts or the Summary Courts deals with various kinds of civil disputes as well as conflicts in family affairs. The Committee works to secure an amicable settlement of disputes by recommending mutual concession and compromise to both parties or persuading the parties to reconcile themselves to an appropriate compromise worked out by the committee.

The Committee is usually composed of one judge and two or more Conciliation Commissioners. Most Conciliation Commissioners are selected from citizens with broad knowledge and experience in the community. They play an important role in drawing up appropriate settlement proposals in line with the circumstances of the disputes, as well as in convincing the parties concerned based on the proposals.

The total number of Conciliation Commissioners for civil disputes is approximately 12,000, and that for conflict in family affairs is also approximately 12,000, including 5,400 who serve as both.

(2) Judicial Commissioners (or Summary Court Councilors)

Judicial Commissioners may assist the Summary Court judge in effecting a compromise between the parties to a civil lawsuit in the Summary Court or attend a civil trial in the Summary Court to express their opinion to the judge in the case.

Judicial Commissioners are specially selected from among the public.

The total number of judicial commissioners is approximately 5,900.

(3) Family Court Councilors

When the Family Court deals with such cases as guardianship for adults, change of name, support, and partition of estate, Family Court Councilors specially appointed from among the

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[2] e.g. designation of the child legal custodian of a child and other measures relating to the legal custody of a child, disputes between married couples, partition of a deceased's estate, permission of alteration of the surname of a child, renunciation of succession, appointment of a person responsible for the care of a mentally disordered person

[3] The Family Court has jurisdiction over delinquent juveniles under 20 years of age who have committed a crime or are prone to commit offences (14-19 years old) or who have violated penal provisions or are prone to violate them (under 14 years old). It also has jurisdiction over adults' criminal cases which were indicted for offences detrimental to the welfare of juveniles.

public by the court assist a judge in the determination process by offering their opinions to him/her.

The total number of Family Court Councilors is approximately 6,000.

C. Participation of Laypersons in Judicial Proceedings in Juvenile Cases

The Family Court has a unique system of community involvement in juvenile proceedings.

(1) Attendant (Juvenile Friendship Association)

At the first opportunity, when a juvenile has no guardian or receives no proper support from his/her guardian, the Court selects a member of the public as an attendant, other than the lawyer attendant. The Court expects this attendant to take emotional care of the juvenile, assist in finding a job or compensating the victims, and attend the hearing session. In practice there are public voluntary groups such as the "Juvenile Friendship Association" (*shounen-tomo-no-kai* in Japanese), that consist of those who are interested in the guidance and assistance of delinquent juveniles. The court often selects an attendant out of these groups.

(2) Tentative Probationary Supervision (commitment of juvenile guidance and social service activities)

The second opportunity is when the judge places the juvenile under the tentative probationary supervision of the Family Court Probation Officer. This is one of the intermediate dispositions while the final disposition of the Court is held in suspension. During this period of supervision, the Family Court Probation Officer makes various educational approaches to the juveniles, utilizing the assistance and cooperation of the public. This is of two types.

One type is to commit the juvenile to a suitable institution, agency or individual for his/her guidance for a reasonable term. This system was utilized soon after the establishment of the Juvenile Law, and the institutions, agencies and individuals to which the juveniles are committed have devoted themselves to guide the juveniles, treating them as if they were a member of their family. This is especially effective for juveniles without a happy family life.

The other type is social service activities performed by juvenile offenders. This is different from the social service order that offenders are subject to in some countries. This is conducted not upon a court order but upon the recommendation of the court. Juveniles who are recommended to take part in social service activities, and consent to perform them, go several times to social welfare institutions, such as special nursing homes for the aged, with the assistance of the members of the "Juvenile Friendship Associations". This is effective for juveniles who lack motivation and life experience. From the experience of nursing the aged, the juveniles are expected to reflect upon the delinquency they committed. By way of close relationships with the staff in these institutions, watching them devotedly nurse the aged, etc., they are expected to raise their will to work.

D. Participation of Laypersons in Judicial Proceedings in Criminal Cases

Relatively speaking, the public has limited opportunities to participate in the criminal procedure in Japan. The jury and lay judge systems are typical examples of community involvement in trials. However, in Japan, there are neither jury trials nor trials by lay judges. Rather, all cases are heard and tried by professional judges. Japan, in fact, enacted a Jury Trial Law in 1923. However, since the general public preferred trials by career judges to those by jury, this law was suspended in 1943. Therefore, no system exists in which laypersons can participate in fact-finding and sentencing procedures in criminal cases. Japan

has only Committees for the Inquest into the Prosecution system[4] which involve the general public at the prosecution stage.

With regard to community involvement in criminal justice, the situation of victims should be one of the important issues. The existing Japanese Code of Criminal Procedure (hereinafter CCP), which was enacted in 1948, has several provisions concerning the protection of witnesses, and it should be noted that Japan recently amended the Code and enacted a new law to promote the protection of victims, such as:

(i) An attendant for the witness may be allowed during the course of examination (Art. 157-2, CCP).
(ii) The setting up of a screen between the witness and the accused or spectators may be allowed during the course of examination (Art.157-3, CCP).
(iii) A video-linked method of examination, where the witness (outside of the court room) testifies to the questioner (inside the court room) behind a monitor, may be allowed during the course of examination (Art.157-4, CCP).
(iv) A victim can request the court in criminal cases to record the mutual consent between him/her and the defendant in the trial record when there has been an order to compensate damages (Art. 4, The Law Concerning Measures Accompanied with Criminal Procedure for Protection of Victims).
(v) A victim may express their views about the criminal at the trial (Art. 292-2, CCP).

Although the victim is not a party in the criminal trial in Japan, he/she is a party of the dispute that constitutes the crime charged. Therefore, dispute resolution before and/or pending trial has significant importance for the victim. If the disputes are resolved more satisfactorily for the victims during the criminal procedure, the criminal justice system will get more cooperation from the public including victims. Moreover, in some forms of victimization, in particular where the victim and the offender have an existing social relationship, avoidance of the possible stigmatizing effects of criminal prosecution (or at least actual incarceration) may have benefits for both the victim and the offender. Many countries have a long history of using non-court dispute resolution mechanisms including mediation and arbitration. Although Japan does not have formalized mediation programmes in the criminal courts, the offenders and the victims often have opportunities to settle disputes, and the results are reflected in the dispositions by the public prosecutors and/or the judges, since the public prosecutors have wide discretionary power whether to prosecute the case or not, and the judges have wide discretionary power regarding the sentencing. This practice is facilitated by the characteristics of the Japanese criminal justice system which puts emphasis on the restoration and reintegration of offenders, and by the devoted activities of defence counsels.

III. RECENT DISCUSSION ON FACILITATION OF PUBLIC PARTICIPATION IN THE CRIMINAL TRIAL

A. Justice System Reform Council's Proposal

The Justice System Reform Council was established under the Cabinet in 1999, for the purposes of "clarifying the role to be played by justice in Japanese society in the 21st century and examining and deliberating fundamental measures necessary for the realization of a justice system that is easy for the people to utilize, participation by the people in the justice system, achievement of a legal profession as it should be and strengthening the functions thereof, and other reforms of the justice system, as well as improvements in the infrastructure of that system."[5] The Council submitted its Final Proposal to the Cabinet on 12 June

[4] This system aims to check on the discretionary exercise of prosecuting authority. The committee, composed of 11 ordinary citizens randomly selected from among the same voters who elect members of the House of Representatives, reviews a public prosecutor's determination not to institute prosecution, either upon application of complainants or *ex officio*. If the committee considers the determination unjustified, it may recommend instituting the prosecution to the chief prosecutor. However, this recommendation does not bind the prosecutor.

[5] Art.2, Para.1 of the Law Concerning Establishment of the Justice System Reform Council

2001. The Proposal covers every area of the nation's legal system such as (1) Reform of the Civil Justice System, (2) Reform of the Criminal Justice System, (3) Responses to Internationalization, (4) Expansion of the Legal Population, (5) Reform of the Legal Training System, (6) Reform of the Public Prosecutor System, (7) Reform of the Judge System, (8) Mutual Exchanges among the Legal Professions, (9) Establishment of the Popular Base of the Justice System (Popular Participation in Justice), and (10) Laying the Groundwork for the Establishment of the Popular Base. Among them, the following points are concerned with the current problems in criminal justice in Japan:

- Speed up criminal trials by enabling courts to establish the point of a dispute earlier and concentrate on the same case every day.
- Provide publicly hired attorneys for suspects before they are prosecuted.
- Empower a Committee for the Inquest into Prosecution to order that prosecutions are initiated.
- Mandate investigators to keep a written record of interrogations to ensure that interrogations are conducted appropriately.
- Introduce a quasi-jury / lay judge system in serious criminal trials, so that judges and jurors (lay judges) work together to decide upon a verdict and assess a defendant's culpability.

B. Participation of Laypersons in Criminal Trial

The Justice System Reform Council's Proposal established the participation of laypersons in criminal trials to be one of the hottest issues currently, though this issue had long been discussed since the end of the Second World War, but had not been regarded as realizable by many people.

The systems vary throughout the world. Some countries such as India, Indonesia, Singapore, Thailand, Korea, Pakistan, Bangladesh, Israeli, Turkey, Argentina, the Philippines and Japan do not have jury trials[6] nor a lay judge system[7]. Some countries such as Sri Lanka, Greece, the United Kingdom, the United States, Canada, Australia and New Zealand have jury trials. Some countries such as Malaysia, Italy, Germany, France and Finland have a lay judge system. Some countries such as Austria, Sweden, Denmark and Norway have both systems.

There are many arguments supporting jury trial and a lay judge system.

It is unquestionable that jury trial is a very democratic system. It is based on trust in the wisdom of common citizens to act as the conscience of the community. It makes the judicial procedure more transparent and understandable, and also helps speedy trial.

As for the lay judge system, similar merits have been pointed out, such as the democracy principle, the quality of jurisprudence[8] and the popular educative effect.

However, lots of practical problems for both systems have also been pointed out, such as burdens on ordinary citizens, expensive and time consuming nature of the systems, limiting the right to appeal compared to the current Japanese system, uncertainty of judgments, and so on.

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[6] A typical jury trial is as follows. A trial jury is entrusted with deciding whether or not the defendant is guilty of the crime charged. Jurors are selected members of the public on a case by case basis. They perform jury service as a civil duty. Jurors are given no special training in law to prepare them for their important task, but these diverse citizens are expected to sit together in the courtroom at public trial and listen carefully to the evidence the judge permits to be presented. Under the guidance of the judge, who explains the governing law, the jury determines the facts and reaches a decision (verdict) of either guilty or not guilty.

[7] There are a variety of lay judge systems. For example, in Germany, one or three professional judges sit together with two lay judges. The lay judges practice their judicial function in an honorary capacity. By cooperating in court decisions like this, the lay judge has the same rights as the professional judge in principle. In other words, the lay judge has the same voting power as the professional judge. The lay judge has to co-decide on the facts and circumstances of the case, as well as in the application of law. The lay judges are not necessarily selected, but rather appointed. The term of a lay judge is four years.

[8] The participation of lay judges forces the professionals, including professional judges, to submit their argument to the critique of a non-jurist, and to deliver factual and legal deliberations in such a way that even a layperson would be able to follow them.

During the discussion before and after the Proposal, the followings are some of the points which have been examined:

- Evaluation of current trials by career judges
- Evaluation of public participation systems in other legal fields in Japan
- Evaluation of the systems and practices in foreign countries
- Evaluation of the failure of the jury system which Japan had before the Second World War
- Burdens on jurors or ordinary citizens
- Way of selecting jurors / lay judges (random sampling, appointment)
- Number of jurors / lay judges and the method of deciding the verdict
- Matters in which laypersons participate in deciding (fact, law, sentencing)
- Applicable cases (serious cases, minor cases, contended cases, non-contended cases)
- Defendant's right to refuse the new procedure
- Cost (time and budget)
- Suitability to find the truth or the detailed facts
- Capability to deal with very complicated cases
- Possibility to be subject to sentimental reactions
- Necessity to set out the reason of fact finding in the judgment
- Effects on the appellate system
- Necessity to regulate mass media
- Capacity of practicing lawyers to attend trials over consecutive days

During the approximately two-year discussion, the Council has scrupulously examined how the problems can be minimized and how the merits can be maximized. Finally the Council reached the following Proposal, which is an original system mixed with elements of various systems and relatively closer to the lay judge system in Continental Europe.

1. A new system should be introduced in criminal proceedings, enabling the broad general public to cooperate with judges by sharing responsibilities, and to participate autonomously and meaningfully in deciding the outcome of trials.
2. Judges and *saiban-in* should deliberate and make decisions both on guilt and on the sentence together. In the deliberations, *saiban-in* should possess generally equivalent authority to that of judges; and in the hearing process, *saiban-in* should possess appropriate authority including the authority to question witnesses.
3. The number of judges and *saiban-in* on one judicial panel and the method of deciding the verdict should be determined appropriately, giving consideration to the need to ensure the autonomous and meaningful participation of *saiban-in* and the need to ensure the effectiveness of deliberations, and also taking into account the seriousness of the cases to which this system will apply and the significance and potential burden of the system on the general public.
4. However, a minimum requirement should be that a decision adverse to a defendant cannot be made on the basis of a majority of either the judges or the *saiban-in* alone.
5. With regard to the selection of *saiban-in*, the selection pool should be made up of persons randomly selected from among eligible voters, and further appropriate mechanisms should be established to ensure a fair trial by an impartial court. *Saiban-in* should be selected for each specific case and should serve for the entire case up to the final judgment.
6. *Saiban-in* candidates who have received a summons from the court should accept their duty to appear.
7. Applicable cases should be cases of a serious nature to which heavy statutory penalties attach.
8. No distinction should be made based on whether the defendant admits or denies the charge.
9. Defendants should not be allowed to refuse trial by a judicial panel composed of judges and *saiban-in*.
10. Various efforts should be made in connection with the administration of trial procedures and, as

necessary, the relevant laws should be modified, so as to ensure autonomous and meaningful participation by *saiban-in*.

11. The contents of judgments should fundamentally be structured in the same way as those for trials by judges alone.
12. Litigants should be allowed to appeal (*koso*) on the ground of error in fact findings or the ground of improper sentence.

IV. CONCLUSION

Although some detailed points are not clearly stated in the Proposal, the Japanese government is endeavoring to realize the participation of ordinary people in criminal trials in the near future as suggested by the Proposal. The Proposal includes not only participation in the criminal justice system, but also other spheres of participation such as participation in the appointment of judges, judicial administration, and so forth. Japan is trying to enhance the community involvement in courts in various fields, and it will be interesting to see the Japanese justice system in the near future.

REACTION

By
Mr. Rene V. SARMIENTO,
Attorney, Sarmiento Law Office, the Philippines

Members of the judiciary, law enforcement officials, professors of law, members of the Japanese delegation, members of the different nongovernmental organization, good morning, ladies and gentlemen.

Many decades ago, Abraham Lincoln once said, "that the worst form of compromise is always better than the best litigation." At that time, he was thinking of expenses, time, congestion of court dockets which lessen the happiness of the Americans. To me, that quotation is very pertinent to all of us. You will note Justice Martinez, in his closing remarks said, "We hope that through this mediation we will have more happiness for the Filipino people."

I fully agree with Justice Martinez when he said that we have in this country a problem of court administration. One of the problems facing the criminal justice system is the congested dockets of courts. I was shocked to learn that as of March 2001, we have 587,788 cases. In June 2001, this dropped to 797,721 and maybe this number to 1 million as of November 2001, just to show a challenge facing the Supreme Court, judiciary and the Philippine government.

In a book written by a Dutch professor who has made extensive research on the administration of justice, he cited the reasons why we have these congested dockets of the courts in the Philippines. The title of the book is "The Philippine Justice System" by Professor Jan Wilhelm Baker. He conducted extensive interviews of lawyers, justices, judges and NGOs. He cited several reasons, among which are the following:

1. lack of resources and infrastructure
2. heavy backlog of cases facing judges
3. lack of appointee judges

The good author also cited the litigation exclusion in the Philippines for slight offense for breach of respect Filipinos would file. I have this survey which shows the flow of cases because of this litigation exclusion phenomenon in the Philippines. In 1985, according to a study based on Supreme Court records, we have a total case inflow 323,282. This increased in 1995 to 523,158. Now according to our good Justice, it is 787,721 cases as of June 2001. Which is why I fully agree again with the observation and the position of the good Justice that there is need for mediation and enhancement of *barangay* conciliation and community involvement.

According to my wife who is a *barangay* chairman in Quezon City, there is peer pressure because of participatory resolution of cases. In the *barangay* level, many of these cases are resolved. She also cited other *barangays* where there are so many cases because of the urban poor communities there in the areas. The *barangay* conciliators play an important role in resolving these disputes before reaching the courts. She also cited the community healing center whose purpose is to give advice to battered women, children and cases involving family disputes. This is just to show how important this *barangay* conciliation proceeding is in our system. It will be better if this mediation will be propagated and put into practice by our judiciary.

I was inspired when I saw the presentation of Justice Martinez showing the efforts of the Supreme Court to propagate this process. This is a revolutionary approach that deserves the support of everyone.

About community involvement, may I say that in New Zealand, in the USA and in Canada they have

this system known as restorative or rehabilitative justice where true community efforts and initiatives, they invite the victims and offenders to resolve their cases. I hope these processes may be further enhanced if we will take into account the presentation of our Japanese professor about lay commissioners who participate in the resolution of cases, criminal and civil. I hope the Supreme Court, using its creativity, addresses these problems.

The basic question is how do we enhance this mediation process and other processes in the Philippines. One is, we mobilize pastors, priests and ministers to help us in this process. They are well trained on retreats, on counseling, on therapeutic processes which may be of help to us if we mobilize their talents and charisma to enhance mediation and conciliation. Secondly, if we have human rights courses in law curricula today, why don't we have a course on conflict resolution or mediation or peace making in our law curriculum. Hopefully, through these courses we can develop a culture of mediation, pacific settlement in our country, after all this is anchored and based on the Filipino culture trait of social harmony and interpersonal relationships.

I close by saying that mediators and peacemakers should be encouraged, motivated and inspired, after all, in the scriptures we are told, "Blessed are the peacemakers for they will enter the Kingdom of Heaven." Thank you.

REACTION

By
Mr. James Marty Lao LIM,
National President, League of Barangays, the Philippines

Good morning to everyone of you, my colleagues and foreign guests.

I would like to give a little background of what *barangay* is all about. Basically, for quite some time, most people do not understand the concept of *barangay*. It is quite only recently when the *barangays* have slowly been recognized. Right now, the set up of *barangays* in our country is basically covering practically all branches of governance. First of all, we have the executive function as *punong barangay* of our local government units. We also have legislative powers in terms of being the chairman of the *Sangguniang Pambarangay*. We are also at the same time an additional burden, the judiciary in terms of *lupon* or justice system. The chairman is the *barangay*.

With regards to these roles of the *barangay*, our speakers were giving quite a number of facts. Last year, when I was in a discussion with the Chief Justice and other justices, I understand that the *barangay* government has more or less saved over a billion pesos in terms of court litigation. The savings of government in terms of these cases being filed and being handled by the judiciary was quite a feat. In the advent of the justice system coming into play, it is true that there are lapses.

Some of the recommendations are being a little bit more flexible. The *barangay* justice system is quite new. The local government is about 9 years since it was created. We have implemented a lot of provisions. Although it is true that a lot of *barangy* officials are not aware of many of these provisions, still the process is ongoing. I still feel, as President of the *barangays*, that a lot of training and awareness has to be done. It is very unfortunate that, because of community basing of the concept, a lot of problems being handled in the level of the *barangay* are not done properly. A lot of *barangays* also have done their share especially those who are well informed, well educated and capable in handling the cases, turned out well. There are lots of cases also in the level of *barangays* that are mismanaged. There are a number of cases that the *barangay* should not handle such as rape cases which are not supposed to be part and parcel of the *barangay* justice system.

In a way, because of this mediation process, a lot of the *barangays* try to mediate in cases of rape, abuse and problems not within the context of what they are supposed to do. I do not know if this has contributed to the upliftment of the justice system in that aspect. One thing is sure as I was listening, it is very important that mediation comes into play. Aside from the savings the government can derive out of this, more important is that we are able to foster stronger community ties.

In the barangay, we try our best to improve the relationship within the *barangay*. Having an efficient procedure in the justice system in the *barangay* would help a lot in terms of improving the *barangay* and the community. I have noticed that in the process of the law especially in some procedure that were incorporated in the Local Government Code, there are a number of items that should be reviewed and I think there are reforms being done. The only problem right now, I personally encountered, when it comes to the justice process is that there is very little respect when it comes to the community's involvement. Rarely would you see the cases being brought to the *barangay*. Another problem we also encountered is that the lawyers intervene. Although we are prohibited, very few *barangay* officials could actually ward off the lawyers.

What should be incorporated in the process, lawyers come to the idea that before they intervene or

convince the clients to go to court, maybe we should try to find an amicable settlement as a process. I understand that there are numerous cases that courts send back to the *barangays*. Because of affinities in the *barangay*, for example, a relative who is involved in a particular case, the tendency is either to be biased towards the case or if not, immediately send it to court by issuing the clearance.

I understand that if it is not the Supreme Court who has given some kind of deputization to the *barangay*. Lately, there is no power for the *barangay* when it comes to decision. When it comes to a decision, it is so difficult for them to have it implemented because there is no real police power. It is better to go to court because the judge can issue a restraining order.

I was looking at how flexible the Japanese version is when it comes to mediation process. In the Philippines, there should be more campaign in terms of education but also informing the community that there is such a mechanism of settling cases at less cost. We all know it is costly to go to court.

In closing, education and information campaign is much more needed and the training for these people who are handling the system should be more focused. Thank you.