

AN INJUSTICE TO PRESIDENT ESTRADA AND HIS LAWYER

**Privilege Speech of Sen. Alfredo S. Lim
January 23, 2006**

Mr. President, esteemed colleagues, distinguished guests, ladies and gentlemen, at sa minamahal kong mga kababayan, I rise on a question of personal privilege.

Five (5) years had passed since President Joseph Estrada was driven away from Malacañang, as an offshoot of what was known as the EDSA II Revolution. We saw the ascendancy and swearing into office as Acting President of Gloria M. Arroyo, based on her own letter to Supreme Court Chief Justice Hilario Davide, Jr. declaring the "permanent incapacity" of President Estrada, despite the fact that he still governed us and was in Malacañang Palace as late as 4:00 p.m. that day.

Kaya't kung inyong napansin, ginunita ng sambayanang Pilipino noong nakaraang Biyernes, Enero 20, ang anibersaryo ng EDSA 2 na para bagang isang karaniwang araw lang na nagdaan, 'di tulad ng nangyayari 'pag dumadating ang EDSA I.

That is so, Mr. President because, sa halip na nagdiwang ang sambayanan, sila ay nagluksa sa naturang araw sapagkat ito ang araw ng pagyurak, sa Saligang Batas at sa ating kalayaan.

Mr. President, in what may be considered as a unique demonstration of selflessness and statesmanship, a rare sacrifice which no popular public official or leader of even positional advantage in recent history could have done, President Estrada offered no physical resistance against the hungry forces, that were grabbing power from him. Even if Pres. Estrada had not committed any crime; even if Pres. Estrada's only fault was in having been too honest to himself, loved his country much and believed in the fairness and justness of our judicial system, he assented to bring his battle to courts and face his accusers, as he knew justice would in the end triumph and the evil power-grabbers would fail.

Ating matatandaan na tanghaling tapat ng Enero 20, 2001 nang pinanumpa, ni Chief Justice Hilario Davide Jr. si Vice- President Gloria Macapagal- Arroyo bilang "acting president", at ang nagging batayan nito ay ang liham ni Mrs.

Arroyo sa Korte Suprema, na idinideklara ang “permanent incapacity” ni Pangulong Joseph Ejercito Estrada.

Questionable at illegal na pasumpaing “acting president” si Vice- Pres. Arroyo batay sa alegasyon nito na “permanent incapacity” ni Pangulong Estrada, sapagka’t ayon sa Konstitusyon ang pangulo mismo o ang mayorya ng kanyang gabinete, ang tanging may karapatan na magdeklara ng “permanent incapacity” ng pangulo at ang naturang deklarasyon ay dapat na suriin at pagtibayin ng Kongreso. Ito ay hindi nasunod.

Tila may naganap na baluktot na panlilinlang at pagsasabwatan, sapagka’t noong gabi ng Enero 19, 2001 ay nakipagkita ang mga emisaryo ni then Vice- Pres. Arroyo sa mga kinatawan ni Pangulong Estrada at testigo nito ang ating kasamang si Senador Edgardo Angara, na inalok nilang patakasin sa ibang bansa si Pangulong Estrada kapalit ng pagpirma niya ng “letter of resignation”, na mahigpit namang tinanggihan ni Pangulong Estrada.

Mr. President, hinihingi ng pagkakataon ang paglilinaw ng Korte Suprema kung bakit at kung paano nito ginawang

legal, ang panunumpa ni Pres. Arroyo noong Enero 20, 2001, sa pamamagitan ng deklarasyon noong Marso 2001 na si Pangulong Estrada, ay nagsagawa ng “constructive resignation”.

Pinasumpa ni Chief Justice Davide si Mrs. Arroyo na “acting president” noong Enero 20, 2001 na ang batayan ay ang liham ni then Vice- Pres. Arroyo, na “permanent incapacity” ni Pangulong Estrada, ngunit matapos ang tatlong buwan ay pinalitan ito ng Korte Suprema ng “constructive resignation”.

Paano pinasumpa ni Chief Justice Davide na “acting president” noong tanghali ng Enero 20, 2001 si Pres. Arroyo, gayong noong naturang oras ay hindi naman bakante ang Tanggapan ng Pangulo. Nang naturang oras ay buhay na buhay at hindi patay si Pangulong Estrada; hindi ito permanently incapacitated, at hindi rin ito nagre-resign!

Bakit pinasumpa ni Chief Justice Davide na “acting president” si Vice- Pres. Arroyo, gayung alam niya bilang punong mahistrado ng Senate Impeachment Court na si Pangulong Estrada ay hindi naman na-impeach, dahil hindi

natapos and Senate Impeachment Proceedings bunga ng pag- walkout ng mga congressmen prosecutors, matapos na mabigo silang mapabuksan ang kontrobersyal na second envelope na may kinalaman sa Jose Velarde account?

Mr. President, maitanong ko nga at kung maari ay liwanagin ninyo sa kapulungang ito, - opisyal bang tinapos ng Senado ang impeachment case kay Pangulong Estrada? Kung hind, ano ang status nito, maituturing bang buhay pa ito hanggang ngayon?

Mr. President, maidagdag ko ang tanong na ito: bakit pinayagan ng Senado na mapabilang ang kontrobersyal na Jose Velarde account, sa mga sakdal na tinalakay ng Senate impeachment court, gayung hindi naman ito kasama sa pinagtibay na "impeachment charge sheet" ng House of Representative? Hindi ba ito ay isang paglabag din sa Konstitusyon?

Bilang pagbabalik tanaw, matapos ang dalawang araw nang lisanin ni Pangulong Estrada ang Malakanyang, muli itong inalok ng mga emisaryo ni Pres. Arroyo na mangibang bansa, sa pamamagitan ng pagdaraan sa "back door" o sa

Mindanao at nang ito ay muling tumanggi, ay pinagbantaan nilang ipasasakdal ng mga kasong criminal.

Mr. President, I do not wish to dwell lengthily on the events that had transpired thereafter, because I feel disappointed and disenchanted with the unpalatable developments which made Pres. Estrada's struggle to victory, thorny and continuously difficult, a path which Christ chose to redeem mankind. Recounting them now pains me. So, I only pray for his eventual vindication.

Mr. President, at the height of his crusade for judicial vindication, Pres. Estrada was assisted by one Atty. Allan Pagua, an idealist lawyer, academician and barrister who fought for principles, even if it would cost him fortune and perdition.

Verily, his idealism brought him personal disaster, damaged his professional life and career, and more importantly, was impoverishing him.

Permit me to quote an excerpt in the case of Estrada vs. Sandiganbayan, (416 SCRA 465 [2003]), decided by the

Supreme Court, where Atty. Allan Paguia demonstrated his daring declaration defending Pres. Estrada as he challenged the July 2, 2003 order of the Sangdiganbayan, that denied his motion to dismiss by characterizing it as a patent mockery of justice and due process. Thus, Atty. Paguia was quoted as having said:

The act of the public officer, if LAWFUL, is the act of the public office. But the act of the public officer, if UNLAWFUL, is not the act of the public office. Consequently, the act of the justices, if LAWFUL, is the act of the Supreme Court. But the act of the justices, if UNLAWFUL, is not the act of the Supreme Court. It is submitted that the Decision is ESTRADA vs. ARROYO being patently unlawful in view of Rule 5.10 of the CODE OF JUDICIAL CONDUCT, is not the act of the Supreme Court but is merely the wrong or trespass of those individual Justices who falsely spoke and acted in the name of the Supreme Court. (Urbano vs. Chaves, 183 SCRA [347]). Furthermore, it would seem absurd to allow the justice to use the name of the Supreme Court as a shield for their UNLAWFUL act. At p. 468

Of course, Atty. Paguia vented his personal conviction and espousal of his client's cause, even in media in attacking the Supreme Court. As quoted in Estrada, *supra*, Atty. Paguia wrote in the September 7, 2003 issue of the Daily Tribune:

What is the legal effect of that violation of President Estrada's right to due process of

law? It renders the decision in *Estrada vs. Arroyo* unconstitutional and void. The rudiments of fair play were not observed. There was no fair play since it appears that when President Estrada filed his petition, Chief Justice Davide and his fellow justices had already committed to the other party-GMA- with a judgment already made and waiting to be formalized after the litigants had authorized the proclamation of GMA as president, can they be expected to voluntarily admit the unconstitutionality of their own act? At p. 471

For such acts, Atty. Pagua was asked by the Supreme Court to show cause why he should not be sanctioned for conduct unbecoming a lawyer and an officer of the Court. But in defending himself, he reiterated his claim of political partisanship against the members of the Court citing Canon 5.10 of the Code of Judicial Conduct which states:

Rule 5.10. A judge is entitled to entertain personal views on political questions. But to avoid suspicion of political partisanship, a judge shall not make political speeches, contribute to party funds, publicly endorse candidates for political office or participate in other partisan political activities.

The Supreme Court in *Estrada, supra*, rejected his argument and justified its involvement in the swearing in of Gloria M. Arroyo and professed non- partisanship in politics in this wise:

It should be clear that the phrase "partisan political activities", in its statutory context, relates

to acts designated to cause the success or the defeat of a particular candidate or candidates who have filed certificates of candidacy to a public office in an election. The taking of an oath of office by any incoming President of the Republic before the Chief of Justice of the Philippines is a traditional official function of the Highest Magistrate. The assailed presence of other justices of the Court at such an event could be no different from their appearance in such other official functions as attending the Annual State of Nation Address by the President of the Philippines before the Legislative Department. At p. 470.

Accordingly, by the High Court's decision promulgated November 25, 2003, Atty. Paguia was indefinitely suspended from the practice of law for conduct unbecoming a lawyer and an officer of the court. Because of that decision, he was barred from appearing in courts, handling cases, he was also barred from teaching law in any school, his remaining source of income.

Sad to say, in any serious indiscretion or grave abuse thereof on the part of the highest court of the land, relief is a stranger in the fundamental laws... nowhere in our Constitution... thus, when the violation of the rights of a private individual is attributed to the highest magistrate... the victim finds no recourse but to yield to his fate... just like what happened to Atty. Allan Paguia... a prestigious Law Professor at the Pamantasan ng Lungsod ng Maynila and

Ateneo de Manila University... his *alma mater* wherein he founded the Ateneo Law Bulletin and likewise, the AFP Lawyer's Digest... Being listed in the ASEAN Directory of Legal Scholars... he was already enjoying his financially satiating law practice as a consummate Trial Lawyer since 1984... until he fearlessly advocated truth... equity and justice to prevail in the controversial case of President Joseph Ejercito Estrada at the Sandiganbayan, when he took up the cudgels of appearing as the new counsel ***de parte*** for him... on May 19, 2003. it was a risky but valiant mission... commenced through his Omnibus Motion for the declaration of the appointment of his counsels *de officio* as *functus officio* and that all the three (3) criminal cases against his client-President be dismissed... He followed it with another June 9, 2003- motion whereby he entreated, among others, for the accused-President Estrada "to be given an opportunity to prove the truth, based on the statements contained in Justice Artemio Panganiban's book, "Reforming the Judiciary", in relation to his imputed "pre-judgment committed by the Supreme Court Justice" in its earlier adjudicated cases against President Joseph Estrada... which decision was assailed as "a patent mockery of justice and

due process”, entitled “Estrada vs Arroyo” (353 SCRA 452 and 356 SCRA 108).

Mr. President, with due respect to the Supreme Court, I do not find anything censurable with what Atty. Paguia uttered, wrote and displayed in defending Pres. Estrada as to warrant, the imposition of an indefinite suspension in law practice.

Like Mr. Paguia, many of our people still have that personal conviction that by prematurely swearing in Vice-Pres. Gloria Arroyo as Acting President, based on the unverified claim that Pres. Estrada was permanently incapacitated, the Supreme Court involved itself in the political tribulation then confronting the nation.

Mr. President, majority of legal experts do not subscribe to the argument, that the members of the Supreme Court attended the swearing to office by the Chief Justice in deference to the tradition, that the Supreme Court members may be present in events such as the oath taking of a president.

Atty. Pagua believe they were there to lend political support and give semblance of legality, into the swift assumption by GMA to the presidency, nothing more, nothing less.

Was that not a simple case of politicking on the part of the Supreme Court because knowing that the contending political forces and military followers of the protagonists were at each other's neck to gain political control of the country, the Justices took sides with one of them?

Therefore, not having insulated itself from politics, the Supreme Court should have ignored the attacks of Atty. Pagua no matter how vitriolic they were, but should have learned the bitter lesson that in any political uprising sanctioned under the Constitution, it must shy away from it and remain neutral and impartial; otherwise, if the members prefer to take part, they should not begrudge any form of criticism or censure from the people; nor capitalize on them by taking sanctions especially on lawyers, on whom they have absolute control but must be prepared, to suffer the consequences of their acts.

The tragedy of it all is that, tinanggalan na nila ng abogado si Pres. Estrada, they likewise deprived Pres. Estrada of his constitutional right to due process because, until now, he is detained in jail when as incumbent President in 2001, he was immune from arrest and criminal prosecution since he was never impeached. Indeed, he certainly cannot be blamed for the unceremonious abruption of the impeachment proceedings which, in all probability, could have ended in his eventual acquittal. Yet, from that fateful day, Pres. Estrada had suffered most of the debilitating consequences of a failed system, otherwise hallowed as the epitome of justice which spares no one – man or woman, rich or poor, powerful or not. Despite being a lawful President convincingly elected by the millions, he was unlawfully stripped of his office by a few power-hungry elite; despite his constitutionally guaranteed right to be free from arrest, he was unconstitutionally detained; and now, despite every single accused's right to enjoy his liberty even during the pendency of the criminal charge against him, he was refused his right to bail.

Why? There are those who say that to allow a man as powerful as Estrada to be out of bail, would be to unjustly

discriminate against those, who similarly situated save for their lack of power and wealth. But it seems that we have overlooked both the law and the facts. What is the law? Every person accused of a crime is guaranteed the right to bail except in crimes punishable by *reclusion perpetua* or higher, when evidence of guilt is strong. What are the facts? No single evidence, save for self-serving testimonies, points to Pres. Estrada as to warrant the conclusion, that there is a strong probability of guilt.

Notwithstanding his incarceration after all these years, Pres. Estrada had never exhibited even a tendency to flee from the charges against him. He had never been a dangerous man, who could not be trusted to freely roam the streets. In fact, even Cardinal Vidal had vouched for his recognizance and offered to take him under his custody.

It appears that some officials are apprehensive that there is a danger that Pres. Estrada will flee the country once bail is granted to him. That is an assault in itself, a slap on his face that will forever leave a scar in his lifetime. The least thing we could do is to allow him to feel, that he had not been denigrated to a level lower than an accused. For at least the accused is accorded utmost Constitutional privileges.

At ngayon nga ay limang taon nang nakakulong si Pangulong Estrada, ang pangulo na malinaw na inihalal ng mahigit 11-milyong Pilipino – kaya dahil dito, sa paggunita natin ng anibersaryo ng EDSA 2 ay panahon na rin, upang linawin ang bahaging ito ng ating madilim na kasaysayan.

Mr. President, while I do not wish to intrude into the manner and wisdom of the Supreme Court in arriving at its decision, lest I be accused of breaching the sacrosanct principle of separation of powers, I can only appeal, for the sake of justice and fairness for Atty. Allan Paguia, to lift his indefinite suspension from the practice of law and restore to him his full rights as a member of the bar, after all, he had served much the heartless and severe penalty taking into consideration, the political character of his lawyering services rendered to President Joseph Estrada. And as sure as justice is merciful as it is exacting, I also urge, Mr. President, our most respected and honorable colleagues in the Judiciary to hear the pleas of Pres. Estrada, to consider his appeal for an opportunity for him to enjoy his right to provisional liberty, whether by way of recognizance or by bail.

Thank you.