

## STATEMENTS OF SECRETARY OF JUSTICE TUASON

THE STATEMENTS OF SECRETARY OF JUSTICE TUASON MADE DURING THE PUBLIC HEARING OF THE COMMITTEE ON JUDICIARY OF THE HOUSE OF REPRESENTATIVES HELD AT THE SESSION HALL ON MARCH 17, 1954, BEFORE HONORABLE AUGUSTO FRANCISCO; CHAIRMAN; DOMINGO VELOSO, VICE-CHAIRMAN; RODOLFO GANZON, MARIO BENGZON, JOSE R. NUGUID, ROGACIANO MERCADO, GUILLERMO SANCHEZ, ISIDRO C. KINTANAR, MEMBERS.

THE CHAIRMAN. The hearing is declared open . . . (It was 9:25 a.m.)

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In order to avoid your having to come here on subsequent dates, we would like you to consider one of the bills presented during the last few days, namely: House Bill No. 1632 introduced by the Speaker, Congressman Corpus, and The chairman of the Committee on Judiciary with reference to the abolition of the positions of auxiliary judges, judges-at-large, and cadastral judges and the creation of positions of auxiliary district judges. May we request the Secretary of Justice to testify and give his comment on this bill?

SECRETARY TUASON. Yes, Mr. Chairman.

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MR. ABOGADO. I would like to find out the opinion of the Secretary on House Bill No. 1632 regarding the abolition of the judges-at-large and cadastral judges. Is he in favor of that?

SEC. TUASON. I am in favor of that, because as I said, judges should be equal in rank. They do the same kind of work.

MR. ABOGADO. I understand that there are thirty-three (33) judges that will be affected by the approval of this Bill. Now, what will be your recommendation in order to protect these judges-at-large and cadastral judges who are performing their duties properly and efficiently?

SEC. TUASON. Well, I think that these judges cannot be removed. They cannot be legislated out. If the positions of judges-at-large and cadastral judges are abolished, these judges will have to be appointed to the districts.

MR. ABOGADO. So, upon approval of this bill, those judges-

at-large and cadastral judges will have to be reappointed as district judges?

SEC. TUASON. Yes, because they cannot be removed in my opinion.

MR. ABOGADO. Thank you, Mr. Chairman.

THE CHAIRMAN. Even if the position is abolished?

SEC. TUASON. Even if the positions are abolished, because the positions are not abolished; only the names of the positions are changed. The positions are there. As a matter of fact, the positions are increased.

MR. BENGZON. Mr. Secretary, would you recommend a provision in this bill which would make possible the removal of these judges who are inefficient?

SEC. TUASON. I would, if that could be done. Unfortunately, under the constitution, we cannot do it because the constitution provides the causes for removal of judges.

THE CHAIRMAN. Mr. Secretary, do you remember the organization act approved during the time of Ex-President Quezon, wherein judges had to be reappointed?

SEC. TUASON. I doubt the constitutionality of that law, and I think that the constitutionality of that law was challenged in the case of Zandueta versus de la Costa. In that case, as I remember, Zandueta's removal was sustained not because the law was declared constitutional but because he voluntarily abided by the questioned provision.

MR. BENGZON. Don't you think this would be a good chance to eliminate inefficient judges?

SEC. TUASON. That would be a good chance, but as I say, the constitution is in the way, because the tenure of office is prescribed by the constitution, and it would be nullified, it would be a dead letter if the Congress at any time can say: "All positions of judges are hereby abolished and all judges are hereby declared out of office."

MR. BENGZON. In your opinion, Mr. Secretary, is there no way to remedy this situation by which these inefficient judges may be eliminated?

## WHAT A WELLKNOWN ORATOR ONCE SAID ON THE DANGERS OF MIXING POLITICS WITH THE JUDICIARY

The year was 1934, the place was the old Manila Grand Opera House on Rizal Avenue. The occasion was the First Inter-University Oratorical Contest and the prize-winning oration was entitled: "For an Independent Judiciary."

From the winning orator's masterpiece, the following appeared:

"The fate of our judges should not be left to rise and fall with the galling insolence to which political parties are subjected. The fountain of justice should not be polluted and poisoned with the 'pestilential breath of faction.' Prostrate your judges at the feet of party and you break down the mounds which hold the protective embankment against the dashing torrents and waves of political passions and excitement. Make their tenure and compensation dependent upon the mercy of the Legislature and you destroy that without which justice is a mockery and popular government a farce." (*Prolonged applause.*)

"Courts should be the ready asylum, nay the indestructible cottas, of the people's rights and liberties. They should be the trusted guardians of individual securities and immunities. The present members of the constitutional convention should especially guard against legislative domination and encroachment." (*More applause.*)

"In a republic that is ours — ours to live, to honor and to de-

fend — I envisage the day when it can safely and truly be said that if the right of the most humble citizen is trampled upon, indignant of the wrong, he will demand the protection of our tribunals and, safe, in the shadows of their wings, will laugh his oppressors to scorn." (*Very prolonged applause.*)

That was the year 1934. And it was merely an inter-university oratorical contest. Today, 20 years later, the orator who delivered that prize-winning piece, for which he was awarded a gold medal and his university a trophy, would have created a sensation if he had stood up in the last session of Congress and delivered the same speech while the controversial bill revamping the judiciary was under consideration.

As a result of that bill, now a law, over 30 judges-at-large and cadastral magistrates, supposed to hold office for life and during good behaviour, were "reorganized" out of their jobs. Some were reappointed. Eleven were left out in the cold. The eleven "revamped" were all appointees of the past administration.

But the orator who won a gold medal in 1934 for his moving speech on the sanctity of the judiciary did not repeat his prize-winning oration of 20 years ago. Then he was merely a university student orating for an audience. Today, he is Speaker of the House of Representatives. The prize-winning orator was Jose B. Laurel, Jr. (*Bullseye, August 23, 1954*)

SEC. TUASON. None, except the filing of charges for inefficiency, because gross inefficiency is one of the causes of removal.

THE CHAIRMAN. Which is hard to prove or establish.

Mr. Secretary, would you favor the presenting of charges against judges who are not only inefficient but have engaged in electioneering activities and have allowed themselves to be used as tools, with the final results in the loss of confidence by the people in the judiciary?

SEC. TUASON. Well, electioneering is a violation of law, and not only do I favor the filing of charges but I have hired lawyers to prosecute and asked public-spirited people to come forward, get evidence and file those charges, and in some cases I have taken a hand in the filing of those charges.

MR. VELOSO (D). Mr. Secretary, I understand from you that should the positions of judges-at-large be abolished, the judges cannot be ousted, is that right?

SEC. TUASON. Yes.

MR. VELOSO (D). Now, they may be re-appointed, to district judges, but suppose the Commission of Appointments do not confirm their appointments, what would be the status of those judges? Because this is a new appointment.

SEC. TUASON. Well, that is what I mean to say that such law should not require new appointment to be confirmed by the Senate, because if such a requirement were made, such requirement would be valid. The President could even refuse to appoint them, and they might be put out before reaching first base yet. But as I say, that would not be legal. I don't believe it would be legal and those judges could refuse any such appointment in order not to run the risk of being turned down. "No, I am not appointed as auxiliary judge. I am a judge-at-large," they can say. "I want to remain as judge-at-large," and any provision to the contrary notwithstanding. Now, if the law should provide that all these judges shall become district judges and their districts are to be determined by the President or by the Secretary of Justice, or anybody, that would be all right.

MR. VELOSO (D). But suppose the bill as now proposed intends to abolish the judges-at-large and cadastral judges, would you think that this bill is unconstitutional?

SEC. TUASON. Well, that is why I say — in order to prevent the bill from being unconstitutional, the abolition must contain the proviso that these judges are not to be ousted, they are not to be re-appointed but they are to continue as district judges and their districts are to be determined by somebody or by the Department of Justice.

MR. VELOSO (D). So, practically, we are not here abolishing the judges-at-large and cadastral judges.

SEC. TUASON. No, we are not abolishing. *Only the names are abolished but not the position. We are not abolishing the tenure of office of these people.*

MR. VELOSO (D). Suppose there is no proviso as you have stated?

SEC. TUASON. If there is no such proviso the measure would be unconstitutional if its purpose or effect is to legislate judges out.

MR. BENGZON. Mr. Secretary, I have just heard your opinion here that even if these cadastral judges are converted into district judges, still they may remain and may not be eliminated even if they are inefficient. Supposing Congress deems it fit to strike out from the budget the salary corresponding to an inefficient judge, do you think he can still remain?

SEC. TUASON. The Congress cannot do indirectly what it cannot do directly. If the salary of a judge is eliminated from the budget, I think it would be the right of that Judge to go to

the Supreme Court and ask it to order the corresponding office or the Budget Commissioner or whoever the official maybe, to provide money for the salary of that judge.

THE CHAIRMAN. May Congress be ordered by the Supreme Court to appropriate funds for the salary of a judge whose salary has been eliminated from the budget?

SEC. TUASON. It is not the Congress that the Supreme Court would order. It is the budget Commissioner or whoever has the money. The Congress does not hold the money. The Treasurer or somebody else does.

THE CHAIRMAN. But it is illegal for the President, I mean the Treasurer of the Philippines, to pay out funds unless he is authorized by law. How may the Supreme Court order the Treasurer to do so?

SEC. TUASON. It is not illegal if it is ordered by the Supreme Court which previously decides that it is in accordance with the constitution. It is the act of Congress that is illegal. After all, it is the Supreme Court that has the last word in that case.

MR. BENGZON. Now, the position is there but there is no money as there is no law permitting the appropriation of that money, may the Auditor General, the Budget Commissioner, or the Treasurer disburse from the public funds without action by Congress?

SEC. TUASON. That is what I said a while ago. The Supreme Court could protect the tenure of office of that particular judge by demanding from the officer who holds the money, to appropriate money to pay him that amount, and he cannot say that Congress has not appropriated, because the Court would say that the failure of the Congress to appropriate, if intentional, is unconstitutional, and if it is an oversight, it can be disregarded.

MR. BENGZON. In other words, Mr. Secretary, it is your considered opinion, even on the matter of the salary of such official, that he will be paid his salary? Because it is possible, Mr. Secretary, that this situation may arise, so we want to get your legal opinion on this point, because it seems to me that this is the sense of Congress: to weed out the inefficient judges.

SEC. TUASON. I wish you could do that in order to eliminate those who are really not deserving, but unfortunately, the constitution is very positive and very strong in that respect.

MR. BENGZON. Let us take an extreme case. Let us suppose that Congress should desire to abolish and eliminate all items for salaries of justices of the Supreme Court, what would happen?

SEC. TUASON. They could not do that because that will be interfering with the functions and abolishing another branch of the government which under the constitution, can not be done.

MR. BENGZON. But supposing there is no money appropriated, therefore, they may be acting without compensation.

SEC. TUASON. No; probably not, because if that were allowed, then they could legislate out the entire Supreme Court by not appropriating salaries.

MR. BENGZON. But there is a provision in the constitution which says that no money should be paid out of public funds except in pursuance of law.

SEC. TUASON. That is true, but that is subject to some qualification. In that case, as I said, the Supreme Court would step in and say, "No." When the Supreme Court orders the Treasurer to pay the salary of such judge, the Supreme Court does not order those officials to violate the law or do something against the law. As a matter of fact, the Court can say: "You should pay this because the constitution says that you should do it. If there is no law, then there is something above the law and it is the constitution. The constitution says that if the legislature



fails to make any appropriation for this man who, under the constitution, should stay in his office for life, then, it is my duty under the constitution to tell you to pay this man his salary as long as there is money from which that salary can be taken."

MR. BENGZON. Supposing, Mr. Secretary, that the Auditor General will say that he would not pay because there is no appropriation for the judge's salary provided by Congress?

SEC. TUASON. Well, they will go to jail for contempt of court and he will have to stay in jail until he pays the salary of that man. When the Supreme Court speaks, that is the last word and that is the thing to be obeyed and not what the President or the Congress tells them.

MR. BENGZON. Thank you, Mr. Secretary.

MR. VELOSO (D). Mr. Secretary, I agree that the tenure of office of judges is explicitly provided in the constitution, but are you aware that there is also that power of Congress to increase the number of judges, in the same manner that it can also decrease the number of judges of courts of first instance?

SEC. TUASON. Congress can increase, but it cannot decrease if by decreasing it would legislate out or put out of office judges who have already been appointed and who have already qualified.

MR. VELOSO (D). Don't you believe that that would be defeating the right or authority of Congress to increase the number of personnel that it sees fit to be provided in the budget?

SEC. TUASON. Well, I don't think so because it could not happen, if the reason is that there is no money, that the government of the Philippines does not have money to pay the salaries of the judges.

MR. VELOSO (D). Now, I think I remember that there was a time when the members of the Supreme Court have been increased and there was also a time when their number was decreased. What was the reason why the question of constitutionality was not raised when their number was decreased?

SEC. TUASON. Well, I am glad you asked me that question. The Congress can increase the number of the members of the Supreme Court say to eleven. Now, none of the eleven justices can be removed or can be put out of office because of lack of money. The Congress can reduce that number but not while all those eleven justices are there. It must wait until some of them resign and then say that the number of justices in the Supreme Court shall be like that number. And what I said with respect to Justices of the Supreme Court applies also with equal force in the case of judges of court of first instance. You can reduce the judges of court of first instance, or number of districts for that matter, but only according to the number of judges existing. You cannot reduce the number of judges if by doing so you have to eliminate or oust some of the judges.

MR. VELOSO. In other words, you are concerned with protecting the interests of judges once they are appointed, but are you not rather limiting the power of Congress to legislate out by striking out the item corresponding to a judge who has been abusive? Because that is the only way by which we can wipe out unnecessary elements in the judiciary.

SEC. TUASON. Well, I am only expressing my opinion as to the extent and intent of the constitution. What I say is that under the constitution, those things cannot be done. If there are judges that are unfit for one reason or another to stay in office, the only remedy, according to the constitution, is to file charges against them and let them be removed for cause.

MR. VELOSO. Without considering your opinion as correct, don't you believe that will be a limitation by the judiciary or the Supreme Court on the legislative powers of Congress to pass over the number of offices in accordance with its will? Because that is also a constitutional mandate to Congress.

SEC. TUASON. Well, the powers of the Supreme Court are defined by the constitution and so with the powers of Congress. At least, the constitution places a restriction on the power of Congress in certain respects. I beg to disagree with you when you say that the power of Congress is absolute or exclusive or something of that import, because the power of Congress with respect to judges is not absolute. It is restricted by the constitution itself and that restriction is that the Congress cannot by direct or indirect legislation remove any judge contrary to the tenure of office of judges.

MR. VELOSO. We don't believe that Congress can be limited by a mere opinion of the Supreme Court or even the President if it chooses to eliminate one position as we have done in the past in many instances.

SEC. TUASON. Yes, but this power is subject to the system of check and balances and subject to certain provisions of the constitution. There is no branch of the government that has absolute power. All powers are defined and are limited by the constitution.

MR. VELOSO. You mean to say, Mr. Secretary, that after the President has submitted the appropriation for the Department of Justice, Congress will just accept what has been so provided by the President?

SEC. TUASON. No, by no means. I don't intend to make that inference. It depends upon the nature of the item. The legislature can modify or reduce the budget submitted by the President. What I mean to say is that Congress cannot abolish a position of judge or cannot indirectly abolish that position by eliminating the item for salaries of that judge, because the constitution provides that such judge should hold office until he reaches 70 years of age.

MR. VELOSO. What would happen in this contingency wherein the Republic fails to realize its projected income for a definite fiscal year and Congress should see it fit to adjust its income to its expenses and it shall reduce the number of judges? Would you still limit the action of Congress just because these people are so provided with definite tenure of office or are occupying a position of such nature that it cannot be legislated out?

SEC. TUASON. In that case, it would be necessary to reduce items but I am afraid you can suppress the salary of the Secretary of Justice but not the salaries of the judges, because the Secretary of Justice is not officially provided by the constitution and you can do away with it as you please, and eliminate his position.

MR. VELOSO. Mr. Secretary, I have one more question. Actually, we have 16 judicial districts. Suppose we reduce the number of judicial districts, because this is within the competency of the power of Congress, we reduce the number to 12 from 16, and thereby reducing the number of judges in accordance with the wishes of Congress because it believes that the country cannot maintain 16 districts. Taking this as an example only, would you still insist that these people who are affected cannot be legislated out?

SEC. TUASON. Well, I think that unless there is really no money to pay the number of judges now existing, I am afraid that Congress will have to content itself with accommodating all the judges in the 16 judicial districts within the 12 judicial districts and wait until some of them resign or die. Not until then can the Congress reduce the number of judges.

MR. VELOSO. Thank you, Mr. Secretary.

THE CHAIRMAN. We thank you very much, Mr. Secretary for coming here.

SEC. TUASON. Thank you too. I was anxious to come here because I thought I might be able to say something that will erase the misgivings that might exist with reference to the proposed legislation. I hope I have accomplished that.

MR. CHAIRMAN. I can assure you that you have, Mr. Secretary. Thank you again.