THE SECRETARY OF JUSTICE VS. THE SUPREME COURT

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Still puzzling and in a sense intriguing the public are several unanswered questions raised in the wake of what has been incorrectly called the "blast" of the Secretary of Justice against the Supreme Court. Incorrectly we say advisedly because a blast is all wind or hot air and his unprovoked attack was not entirely.

This severe censure and lecture, it will be remembered, he launched last January 9 before the Manila Lions Club. The members were reportedly so stunned that they could roar neither their approval nor disapproval. Maybe they were too polite to show their reaction.

Some of the questions persistently asked are: Did the Liwag criticism constitute contempt of court? Was it libelous? Was it proper, considering the peculiar position of Secretary Liwag in the judiciary? Did President Macapagal give it his sanction, tacit or otherwise, before its delivery?

The defense that the Supreme Court is open and subject to criticism is hardly relevant or pertinent. Never claiming infallibility, the Court itself has invariably sustained the citizen's right to criticize its decisions. Too well it knows that it is composed of human beings, and to err is human. But how can the Secretary of Justice dissociate himself from his high office when he takes it upon himself to criticize the Court and attributes to it dubious motives?

Let us consider some of the things he said, not, surely, as a private citizen, but as a high government official and member of the party in power, patently with an ax to grind.

After admitting that the Supreme Court is "the last bulwark of democracy, the guardian of our civil liberties, the arbiter of constitutional controversies, the indestructible bastion of the rule of law," and other high-sounding cliches, Secretary Liwag invites us to "look at our Supreme Court as a body of men" hardly worthy of respect or praise. They are, he affirms, "affected by prejudices, possessed of caprices and susceptible to other frailties of human (beings) whose imperfections are often reflected, wittingly or unwittingly, in their judicial pronouncements."

Making his preliminary encomium sound hollow, if not insincere, he tries to disarm suspicion by assuring his audience that he has "the highest respect for the individual members of the Court." Evidently and quite strangely, that high respect does not apply to them as a body. Why not? Because the Court, according to him, has "committed abuses in the name of judicial supremacy" whatever he meant by the term. He disclaims any intention of "undermining the people's faith in the Supreme Court," and yet what is he doing when he asserts that its members, for whom he has "the highest respect," are "affected by prejudices," that they are capricious and frail, and plagued with such imperfections that their decisions often reflect them?

Coming to the point after beating so much about the bush, the President's chief legal adviser and extension of his personality charges the Supreme Court with having "time and again, perpetrated", presumably as part of its so-called excesses, 'a veiled assault on purely executive functions, thereby abusing its power of judicial review." Worse, he charges the Supreme Court with partiality. It is partial, he claims, to the legislative body since it has adopted the "hands-off policy when called upon to decide questions involving legislative acts." And yet, he says, the Court displays "anxiety to poke 'its finger on the pie" when it comes to "executive acts." As a result, it betrays "magnificent obsession" and "judicial exuberance," when the party involved is the executive branch.

To prove his point, Secretary Liwag cites two cases. The first was that of Dr. Paulino Garcia, chairman of the National Science Development Board, who after the 76th day of his suspension by the President, brought an action before the Supreme Court for his immediate reinstatement. Secretary Liwag contends that for allowing to elapse four months before promulgating its decision, the Supreme Court "had in effect created a factual situation by which a ruling of unreasonableness of the presidential suspension has become possible." So, he concludes, "The delay in deciding had slowly formed the trap for the President." Stripped of its legal verbiage, the Secretary's affirmation means that the Supreme Court has deliberately set the "trap for the President." Not content with so serious an accusation, he charges the Supreme Court in the "abuse of its power of judicial review" with finding it "convenient to skirt the sole issue: whether or not the 60-day period provided for in Section 35 of the Civil Service Act applies to presidential appointee." He argues that it does not.

Secretary Liwag went further. "In making a finding of unreasonableness of the period of suspension," he said, "without any legal justification whatsoever to support its conclusion, the Court had manifestly gone out of legal bounds. In short, in Secretary Liwag's opinion, the Supreme Court was so prejudiced that it set a trap for the President in violation of the law.

Similar in nature is the other case the Secretary cites. It involved Perfecto Faypon, another presidential appointee, whose suspension of more that three months the Supreme Court also ruled as unreasonable. Through the use of an abstruse logic difficult to understand, the cabinet member impugns the Court's decision in the Faypon case, contending that presidential appointees do not fall within the purview of the Civil Service Act. But if the 76-day suspension is unreasonble as the Court decided, why should it be less reasonable when the suspension lasted three months and half?

Understandably enough, the Secretary of Justice accuses the Supreme Court of bad faith by alleging that its decision in the Faypon case "reflects a secret longing for the filling up of an omission left void by the legislature." So fiercely does he castigate the Court that one is tempted to ask who actually is abusing its power and for whom?

Secretary Liwag, if we understand him, seems to sustain the thesis that since the President is the supreme authority, only the people can "censure and crucify him" at the polls, and that the Supreme Court, acting under the democratic doctrine of checks and balances, has no right or power to pass judgment on "the reasonableness or unreasonableness of his acts." Does not this theory, if accepted, lead to dictatorship?

It may be argued, he admits. "that without the Court's interference, the President is liable to abuse his powers." But that ought not matter at all, because after all, "what power of government," he asks, "is not susceptible to abuse?" Evidently, its susceptibility to abuse is sufficient excuse for him to sanction it. One could cite as a typical and unfortunate instance, the Secretary's right and power to excoriate the Court in the guise of criticism and in the name of politics.

The idea that the abuses committed by the President and members of Congress "are passed upon by the sovereign authority, the electorate, while those committed by the Supreme Court are not," seems to have a peculiar appeal to the Secretary of Justice. Does he imply that the alleged abuses by the highest

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UNITED STATES COURT OF APPEALS DECISION

District of Columbia Circuit

KONINKLIJKE LUCHTVAART MAATSCHAPPLI
N.V. KLM ROYAL DUTCH AIRLINES HOLLAND,
et al, Appellants,

v.

Gertrude Owen TULLER, individually as
Executrix under the will of William
Gordon Tuller, deceased, et al., Appellees.
No. 15716

(292 F. 2d 775, (1961)

Argued Oct. 21, 1960
Decided June 23, 1961

An action was brought against an airline company and its ground agent for the wrongful death of an airplane passenger, who drowned after the airplane crashed in the tidewaters of a river about 7,000 feet from the end of the airport runaway at Shannon, Ireland. The United States District Court for the District of Columbia, MacGuire, J., rendered a judgment for $350,000, and the airline and its ground agent appealed. The Court of Appeals, Burger, Circuit Judge, held that the evidence authorized a finding by the jury that the airline company and its ground agent were guilty of willful misconduct, so that the $8,300 liability limitation of the Warsaw Convention was not applicable.

Judgment affirmed.

1. **Courts 406.5(6)**

Court of Appeals, on appeal by defendants, was required to take that view of evidence most favorable to plaintiffs and give them benefit of all inferences which might reasonably be drawn from evidence, in considering whether defendants' motion to dismiss complaint for all amounts in excess of certain sum should have been granted.

2. **Federal Civil Procedure 2127**

On motion for directed verdict, evidence must be construed most favorably to plaintiff, and to such end he is entitled to full effect of every legitimate inference therefrom.

3. **Federal Civil Procedure 2127**

On motion for directed verdict, case should go to jury, if, on evidence, construed most favorably to plaintiff, reasonable men might differ, but motion should be granted if no reasonable man could reach verdict for plaintiff.

4. **Carriers 318 (13)**

Evidence authorized finding in action for wrongful death of airline passenger, who drowned after airplane crashed in tidewaters of river, that failure of airline to establish and execute procedures to instruct passengers as to location and use of life vests was conscious and willful omission to perform positive duty and constituted reckless disregard of consequences, so that liability of airline could not be limited to $8,300 under Warsaw Convention. Warsaw Convention, art. 25, 49 Stat. 3020.

5. **Carriers 307 (6)**

In determining whether failure of airline to establish and execute procedures to instruct passengers as to location and use of life vests was conscious and willful omission to perform positive duty and constituted reckless disregard of consequences, so that $8,300 limit under Warsaw Convention was not applicable in action for death of passenger who drowned after airplane crashed in tidewaters of river, court was not bound by limit of Irish Government's regulations relating to life vest instructions on airplanes.

6. **Carriers 318 (13)**

Evidence warranted conclusion by jury in action for wrongful death of airline passenger, who drowned after airplane crashed in tidewaters of river, that airline's agents were guilty of willful misconduct in failing to send distress radio message, and that therefore the $8,300 liability limit under the Warsaw Convention was not applicable. Warsaw Convention, art. 25, 49 Stat. 3020.

7. **Carriers 318 (13)**

Evidence authorized finding by jury in action for wrongful death of airline passenger who drowned after airplane crashed in tidewaters of river, that failure of crew of airplane to take available steps to provide for passenger's safety after airplane crashed was conscious omission made with reckless disregard of consequences, so that $8,300 liability limit under Warsaw Convention was not applicable. Warsaw Convention, art. 25, 49 Stat. 3020.

8. **Carriers 318 (13)**

Evidence authorized finding by jury, in action for wrongful death of airline passenger, who drowned after airplane crashed

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tribunal of the land should also be passed upon by the electorate at the polls every four or six years as the case may be? Would not that mean ultimately that the country would not need jurists for its Supreme Court but politicians? Of course, "the rule of law is unsafe hands when the courts cease to function as courts and become organs for control of policy," as one-time Justice Robert H. Jackson says, but why should that matter?

In his highly instructive book, **The Struggle for Judicial Supremacy**, the same former Supreme Court Justice relates that when Howard H. Taft was President Harrison's Solicitor General, he sarcastically referred to the members of the Federal Supreme Court as a "lot of mummies." He was then expressing his "great irritation and contempt for their attitude" towards his President's administration. Years later, Taft had reason to eat his words. That was when ironically he became the leading mummy or Chief Justice of the same Court.

It is possible that Secretary Liwag may eventually have the same experience, considering the strange vicissitudes of politics. In fact, he may feel the same reaction as that of a senator who used to attack with acerbity a certain agency of the government until he became a leading member of it. Asked why he ceased to be critical of it, he frankly answered, "Because now I know better."