

PART II
PHILIPPINE JUDICIARY PROBLEMS
—RECOMMENDATIONS

TOWARD THE SUPREME COURT'S SUPERVISION
OF INFERIOR COURTS

In a republican form of government separation of powers is a basic rule,¹ but strangely enough our laws have departed from this fundamental principle.

Under the present state of the law our Courts of First Instance, Municipal Courts and Justices of the Peace Courts are under the executive supervision of the Secretary of Justice.² This grant of power has been abused for the reason that men lose their perspective and self-restraint when they become possessors of great powers.³ This subordination of the judiciary to the executive department poses a continuing evil to our democratic institutions. The judiciary should not be dependent upon either the sword which the executive wields or the purse which the legislative commands.⁴ Supervision, therefore, of inferior courts should be exercised not by the Secretary of Justice but by the Supreme Court.

The change here proposed is not a novelty in our system of government. It is simply a reversion to the law originally introduced by the Philippine Commission in 1901.⁵ Under that law the authority to detail judges from one court to another was lodged exclusively in the Supreme Court. But when the first Judicial Reorganization Law was enacted in 1914, the authority to detail judges of First Instance was transferred to the Secretary of Justice.⁶ Later, it was embodied in the Administrative Code of 1917, section 83 of which code placed the Courts of First Instance and Inferior Courts under the supervision of the Secretary of Justice, and section 155 conferred the transferring power on the same department head.

This was the law on the subject when Senator Vicente J. Francisco was elected to the Senate in 1946. Taking an interest in the task of removing the judiciary from the pernicious influences of men and party, he introduced Senate Bill No. 11, entitled, "An Act of Place the Court

¹ SINCO, V. G., Philippine Political Law, 139 (1951).

² Sec. 83. Revised Administrative Code (1950). "The Department of Justice shall have executive supervision over the Office of the Solicitor General, the Courts of First Instance and the Inferior Courts...."

³ FRANCISCO, Explanatory Note, Senate Bill No. 11.

⁴ *Ibid.*

⁵ Act No. 136, Sec. 51.

of Appeals, the People's Court, Court of First Instance and Inferior Courts under the Supreme Court." For reasons mostly political in nature this bill met strong opposition from the leaders of Senator Francisco's own party and was finally shelved. Four years later, this bill was presented again as Senate Bill No. 84, on March 3, 1950. It was entitled, "An Act to Safeguard the Independence of the Judiciary". This time it was under the joint authorship of Senators Tañada and Francisco. The Senate passed this bill but the House did not. In 1948, however, Rep. Act No. 296, otherwise known as the Judiciary Act of 1948, was enacted. It retained substantially the powers of the Secretary of Justice.⁷ So our Congress finding this law still defective passed on June 20, 1954, Rep. Act No. 1186 amending certain sections of the Judiciary Act of 1948. This amendment was also intended to forestall the capricious and arbitrary transfer of judges from one court to another—first, by abolishing the positions of judges-at-large and cadastral judges,⁸ and second, by limiting the power of the Secretary of Justice to transfer to cases only where there are clogging of dockets or vacancies, subject to the approval of the Supreme Court.⁹ In other words while the old bill and the new law have similar objectives, they part company in their *modus operandi*.

The new law is not an adequate safeguard against executive despotism. It failed to transfer the executive supervision of inferior court to the Supreme Court.¹⁰ Statutory restriction to avoid recurrence of abuse is inadequate.¹¹ The possibility of a miscarriage of justice through political interference is not remote. The limitations prescribed in the revised Judiciary Act are not all-embracing. It provides restriction, a restraint on the power conferred. It is so unlike the Francisco Bill, one that will inescapably cure the chronic disease of our judiciary.

The Francisco Bill is a remedy directed at the very root of the evil—an abolition of corruptive power. The new Judiciary Act is only a limitation of the power granted, but it still remains a power which is susceptible of abuse. How the law's weaknesses may give rise to a miscarriage of justice is shown by the following hypothetical cases. If a vacancy occurs, the Secretary of Justice recommends the transfer of a judge of his own liking. Aware of the Secretary's motives, the Supreme Court disapproves of the transfer. The Secretary insists on his recommendation or refuses to recommend anyone else, thus causing a delay in justice. The questions that arise are: May the Supreme Court compel

⁶ Act No. 136, Sec. 6.

⁷ Sec. 51.

⁸ Sec. 3 (2).

⁹ Sec. 51.

¹⁰ Sec. 83, Rev. Adm. Code.

¹¹ Sec. 51, R.A. 696, as amended by sec. I, R.A. 1186.

the Secretary by mandamus to make the transfer? Or prevent him by prohibition? Assuming the task to be ministerial, does the Supreme Court have coercive power over a department head by way of mandamus?¹² And will the Supreme Court possessed with judicial prudence in its reasons for disapproving impute objectionable motives on the integrity of the judge—a minister of justice? Suppose the transfer was made without approval of the Supreme Court and the parties did not object, could a judgment rendered in such a case binding or would it be a ground for double jeopardy? Has the court jurisdiction over the case or it is only an element of qualification and not jurisdiction as conferred by law? Will the element of good faith be essential in determining the status of the judge?

We should not lose sight of the fact that the limitations imposed by the amendment to the Judiciary Act do not cover the power of the Secretary to designate judges who are to remain in duty during court vacations,¹³ the power to disburse national fund for judicial establishments,¹⁴ the power to issue regulations,¹⁵ and the power to fix, with the approval of the President, salaries of the Justices of the Peace.¹⁶

Dwelling upon this subject matter, former Justice Claro M. Recto once said the transfer of supervision of "inferior courts from the department of Justice to the Supreme Court is necessary to keep the judiciary undisturbed from the play of political power. The President and the Secretary, both of whom are not immune from the lust of power and divorced from political aspirations have found occasion to tamper the administration of justice." he observed. The Chief Justice and As-

¹² *Villena vs. Secretary of Interior*, 67 Phil. 451 (1939).

But see *Dy Cay vs. Crossfield*, 38 Phil. 521 (1916), wherein the Court held that mandamus will not issue to control the discretion of a judge but he may be compelled to exercise his discretion.

¹³ Sec. 66, Rep. Act No. 296, "During the month of January of each year, the Department Head shall issue an order naming the judges who are to remain on duty during the court vacation of that year, and consistently with the requirements of the judicial service, the assignments shall be so made that no judge shall be assigned to vacation duty, unless upon his own request, with greater frequency than once in three years."

¹⁴ Sec. 7, Rep. Act. 296, "Except as otherwise specially provided, national funds available for the judiciary establishment shall be disbursed by the disbursing officer of the Bureau of Justice."

¹⁵ Sec. 79 (B) Revised Administrative Code, "The Department Head shall have power to promulgate, whenever he may see fit to do so, all rules, regulations, orders, circulars, memorandums, and other instructions, not contrary to law, necessary to regulate the proper working and harmonious and efficient administration of each and all of the offices and dependencies of his Department, and for the strict enforcement and proper execution of the laws relative to matters under the jurisdiction of said Department..."

¹⁶ Sec. 82, Rep. Oct. No 196, "That the Secretary of Justice shall with the approval of the President, fix the salary of each Justice of the Peace within the above limitations, taking into consideration among other things, the number of cases docketed in his court and the accessibility and means of transportation available between the different municipalities under his jurisdiction."

sociate Justices of the Supreme Court are men, who, by the very nature of their selection and the security of their tenure are immune from the lust of power and political aspirations."

To Senator Recto, the claim that the transfer will burden the Supreme Court with additional duties to the extent that its function of adjudicating cases on appeal would be jeopardized has no merit.¹⁷

The change of supervision here proposed is not an experiment. It is a system tried and adopted in many jurisdictions. The Federal Court System in the United States is a concrete example. Under the Federal Court System, all courts lower than the Federal Supreme Court are administered and supervised by a Court Administration Office under the control and supervision of the Chief Justice of the Federal Supreme Court. The Attorney General who heads the Department of Justice exercises no supervision whatsoever over any portion of the Federal Judiciary. That this system has been eminently successful and satisfactory is proved by the fact that the Federal Judicial System is reputed to be the most efficient unified judicial System in the world.¹⁸

The transfer will not interfere with nor prevent the Supreme Court from discharging its primary function of adjudication. It will not impair its independence, nor open the courts to politics, nor disrupt the operation of the judicial machinery. Rather, it will unify the entire judicial system, improve its administration and establish its independence. It is measure not only practical and beneficial but also necessary to public welfare in general.

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¹⁷Address delivered before the 2nd National Convention of Lawyers, at the Manila Hotel, December 28, 1953.

¹⁸Explanatory Note, S.B. 84.