

**CONSULTATIVE COMMISSION 2005  
COMMITTEE ON JUDICIARY**

Session No. 2

Tuesday, October 18, 2005

Executive Room, Innotech

**CALL TO ORDER**

At 2:25 p.m. Committee Chairman Omar U. Amin called the meeting to order and asked Commissioner Rita Linda V. Jimeno to preside over the meeting.

**ROLL CALL**

There being no objection, the Committee dispensed with the roll call. The following members were present:

Amin, Omar U.  
Angeles, Emmanuel Y.  
Bautista, Andres  
Jimeno, Rita Linda V.  
Lambino, Raul L. (3:35 p.m.)  
Naval, David C.  
Rodriguez, Oscar S. (3:50 p.m.)

**INTRODUCTION OF THE  
RESOURCE SPEAKER**

Commissioner Jimeno introduced the resource person, Justice Jose C. Vitug, as “a luminary from the judiciary, whose illustrious professional record in public service continues to inspire his fellow Kapampangan.” She noted that as a young lawyer, the guest speaker was the protégé of the venerated Justice Jose B. L. Reyes to whom he was a Technical assistant in the Supreme Court from 1957 to 1961; he then practiced law and organized his own firm, becoming a board member or chair of various corporations while teaching law at the Adamson University, Ateneo de Manila, Far Eastern University, Lyceum of the Philippines, University of San Beda College, University of Manila, U.P. Law Center and University of Santo Tomas, among other learning institutions; he also served as Dean of the Arellano Law Foundation.

Commissioner Jimeno recalled that in 1993, President Fidel V. Ramos appointed Justice Vitug to the Supreme Court, which has since recognized his expertise and assigned him to write its toughest Civil Law decisions; he was recipient of awards and commendations for his outstanding achievements, and represented the Philippines both in national and international conferences held in Switzerland, India, United States and Singapore.

Commissioner Jimeno described Justice Vitug, as he is known by friends, to be a man “who lives simply, so that others may simply live”; he is a prolific writer and bar examiner; he authored the Compendium of Tax Law and Jurisprudence; Pandec of Commercial Law and Jurisprudence; Compendium of Civil Law & Jurisprudence; and the Family Code Annotated; he is a Senior Professor at the Philippine Judicial Academy of the Supreme Court, and the latest addition to the prestigious roster of AUF alumni.

Committee Chairman Amin explained that another invited resource speaker, Justice Puno, was unable to attend the meeting because of a petition filed in the Supreme Court challenging the legality and constitutionality of the Consultative Commission.

**PRESENTATION BY  
THE RESOURCE SPEAKER**

Justice Jose Vitug stated that as a member of the Supreme Court and a member of the Retired Justices Association, he did not want to make statements that would seem to represent the position of the two groups, even as he said that the

Supreme Court might be asked eventually to make its position paper. He said that the Supreme Court could not do it at present because of a pending petition before it on the issue of the legality and constitutionality of the creation of the Consultative Commission. However, he said that the petition might be dismissed in order to give the Commission the opportunity to present its views on the constitutional amendments.

He also suggested inviting Abraham Sarmiento, President of the Retired Justices Association, to present the position of the retired justices before the Committee, as it is likely that his position would not be far from that of the incumbent justices.

Instead of making a presentation, Justice Vitug expressed willingness to answer questions from the Committee members.

#### **INQUIRIES OF COM. BAUTISTA**

Asked by Commissioner Bautista whether any changes should be made with respect to Article VIII (Judicial Department) of the Constitution, Justice Vitug pointed out that Section 1 speaks of the jurisdiction of the Supreme Court over actual controversies involving rights which are legally demandable and enforceable, and there is not much difficulty in looking at the requirement that there should be an actual controversy.

But with respect to cases affecting the two branches of government, the legislative and executive, whether any of them has abused discretion in certain cases, Justice Vitug said that the Supreme Court has “tempered down” a bit on the doctrine on separation of powers. He noted that before, the Supreme Court was “hands-off” on matters affecting the two branches of government but now, it could look into matters and investigate actions done by the two branches, whether or not there was abuse of discretion, even as it might in the

process impinge into the separation of powers.

Commissioner Bautista added that after the promulgation of the 1987 Constitution, the Supreme Court seemed to have adopted “hands-on” policy even on matters where it does not have technical expertise to make judgments.

Justice Vitug said that it must be clarified as to which specific instances would necessitate the intervention of the Supreme Court to resolve a “stalemate” as a result of the separation of powers, and to avert a political or constitutional crisis.

#### **INQUIRIES OF COM. ANGELES**

Commissioner Angeles asked how they could ensure in the Constitution that the Judiciary would be independent even in a Parliamentary system.

Justice Vitug pointed out that it was still up to the Congress whether or not to amend the Constitution, though the general sentiment was leaning towards the parliamentary system, which might adversely impact the independence of the Judiciary. However, he said that the Supreme Court could not yet come up with a position unless it had more information on the type or model of Parliamentary government that would be proposed.

But Justice Vitug averred that whether or not the country would adopt a parliamentary government, some basic things would not change, including the budgetary requirements. He said that presently, the Judiciary is not receiving sufficient appropriations resulting to a lot of vacancies in the office. He noted that one-third of the entire number of court branches is vacant because there was not enough money to fund the said unfilled positions. He cited an earlier discussion on retirement pay with Justice Amin and Justice Naval, both retired RTC judges, and although Congress

said that adjustments shall be made, they still were awaiting their retirement pay.

Commissioner Angeles shared some grievances and similar experiences, showing that the problem of claiming retirement pay is not limited to the Supreme Court, but to other offices like the Ombudsman.

Commissioner Bautista stated that this matter falls under Article XI – Accountability of the Public Officers. Commissioner Jimeno agreed that the discussion on the matter could take place in another committee. Nonetheless, Chairman Amin suggested that the Department of Justice could do something about this.

Further, Commissioner Angeles asked how in a parliamentary system, the appointments to the judicial bodies would be differ from the present system. Chairman Amin said that the appointment powers would shift to the Prime Minister.

Commissioner Naval noted that under the present Constitution, the members of the Judiciary (from the Supreme Court down to the judges of the lower courts) are appointed by the President upon recommendation by the Judicial and Bar Council (JBC) and they become subservient to the President. He asked the resource speaker's opinion on whether he would agree that justices should be appointed this way without the participation of the Commission on Appointments.

Justice Vitug recounted that the practice in the past of screening potential appointees to the Judiciary through the Commission on Appointments had produced very good results. However, the JBC had removed such political interference. He said that at that time, he had respect for the members of Congress because they really went through the candidates' qualifications. He expressed doubt whether the present members of

Congress have the same kind of dedication that they used to have.

However, despite the problems with the JBC now, he said that he would still consider it as a better system than the old one, even as he suggested some modifications in the membership of the JBC, where more people from the academe could be appointed.

Upon Commissioner Angeles' inquiry whether more senators and congressmen should also be involved, Justice Vitug answered that the Commission should look into the membership of the JBC. He said when it comes to the appointment of justices of the Supreme Court, there should be a provision to permit justices to look into the possible appointees. He said that there should be three nominees, but all nominees must get approval of the JBC and the incumbent justices of the Court. He added that they should be more careful in the appointments in the Court of Appeals. He noted that there is really something wrong with the present system and it poses as a challenge to the members of the Consultative Commission to come up with a system that would ensure the integrity and appointment of the best to the judiciary.

Chairman Amin commented that presently, they could not implement internal rules of the appellate court because of the lack of applicants in the Judiciary. He noted that presently, there are only three qualified applicants in the RTC (1 presiding justice, 2 associate justices) when there were supposed to be nine. He suggested reducing the number of required nominees.

Justice Vitug averred that they should look into this problem carefully. Chairman Amin also cited that in his hometown, there was one vacancy in the MTC, and just two applicants for the position, and due to the failure to meet the required three nominees, no one was appointed for two years. Commissioner Jimeno commented that in

this respect, the Constitution was too detailed and restrictive.

Commissioner Naval noted that the JBC publishes the names of applicants in the newspapers, however, this seemed to be confined in the walls of the JBC alone. Commissioner Jimeno inquired on what mechanisms could ensure that people would participate in the proceedings.

Justice Vitug said that the present JBC goes to provinces to interview people, however, it has no funds to garner interest in the Judiciary. He mentioned that there were also good graduates from the Philippine Judicial Academy who are qualified to be members of the judiciary. However, he said that these graduates are not interested in applying because of the low pay.

Chairman Amin suggested increasing the budgetary appropriations of the Judiciary, however, there were questions as to whether the Constitution is the right medium to include the budgetary appropriations of the Judiciary. Commissioner Jimeno stated that in the past, the Judiciary had been at the mercy of the legislature, and their needs were neglected. Thus, she suggested including the percentage of the budgetary allocation in the Constitution.

Commissioner Bautista, on the other hand, contended that the Constitution is not the right instrument to place this as it should only embody basic principles and not the specifics. Commissioner Angeles added that by including the budget of the Judiciary, nothing would prevent the other constitutional bodies to ask for similar provision.

At this point, Chairman Amin read the following constitutional provision:

*The Judiciary shall enjoy fiscal autonomy. Appropriations for the Judiciary may not be reduced by the legislature below the amount appropriated for the previous year and, after approval, shall be automatically and regularly released. (Article VIII, Section 3).*

He suggested inclusion of the phrase that no law shall be passed that undermines the security of tenure and appropriation for the Judiciary shall not be less than 3% of the total national budget. He noted that presently, the budget of the Judiciary is 0.9%.

Commissioner Bautista maintained that in terms of fiscal autonomy, if they are going to provide for a minimum budget allocation for the judicial branch, they should also do the same for the other constitutional offices. He said that they should rely more on the good will of the people. He pointed out that this could be an effect of not electing the right legislators. He further stated that the Constitution should not be blamed for these deficiencies and the matter could be discussed during the budget process. He suggested that they should increase awareness instead of trying to make the Constitution the solution for all the ills. He pointed out that the US has a similar system, but did not encounter similar problems.

Commissioner Jimeno said that if it is not mentioned in the Constitution, the budgetary appropriations would be at the mercy of the legislature, which would be even more powerful under a parliamentary system.

According to Commissioner Bautista, the 1987 Constitution tried to solve too many problems, and in effect was “straight-jacketing Congress.” He said that while he did not believe in Congress, he still thought that details should be provided in legislation.

He added that there was no known Constitution that provided for the budget of the Judiciary. However, Chairman Amin pointed out that there was a lot of “politics” involved in the budget hearings, and therefore, the allocation should be provided in the Constitution.

In reply to the earlier question of Commissioner Jimeno that despite the publication of nominees in the JBC, there was still a noticeable lack of interest of the people in responding to advertisements and giving their thoughts on certain candidates, Justice Vitug said that it is not easy to address this matter in the Constitutional Commission. He shared similar problems in the legal profession and in the Judiciary, where members were not doing their jobs or going beyond what they could do.

In response to the inquiry on whether it would be wise to quantify the percentage of the budget allocation in the Constitution, Justice Vitug said that he was not the right person to say whether or not this should be done.

He shared his impression that the country had been undertaking revisions in the Constitution only because of a crisis that they wanted to solve, citing constitutional changes in 1972 and in 1986. He raised his concern on how the Constitution would look like after this, as it might be a product of the present crisis the country was facing. He opined that the Constitution may not be the real answer.

According to Justice Vitug, *“the less words we use, the better, so that it may not be said that we are here to address the specific problems.”* He said that it would be difficult to make quantifications for the percentage allocation, even as he agreed that the present 0.9% was not sufficient.

Com. Angeles said that he was getting more convinced that the solution to the problems of the country was not to adopt a

new form of government but rather to re-educate the Filipino people.

Chairman Amin asked Justice Vitug if they could leave the decision on money matters to the Supreme Court in case of increase in its budget. Justice Vitug reiterated that he was not sure if the Constitution was the right forum to address these problems. He said that many things change, while the Constitution should stay the same as long as possible, and in milieu of changing times, the Constitution should be forward-looking.

Commissioner Angeles asked if the change in the form of government would ensure good members of the parliament. Justice Vitug told the members of the committee not to give up hope.

Commissioner Angeles expressed the view that the hope for the country would be possible if the current officers, from the President down to the municipal mayors, would exercise the supreme sacrifice of not running for office in the next 10 years. He said that this would ensure a new breed of leaders who would run in the election for the love of the country. He pointed out the danger if one of the present members of Congress would become Prime Minister.

In this regard, Commissioner Bautista asked why they even wanted to shift, given the situation. He asked for the guidance of Commissioner Angeles who is the chair of the Committee on Form of Government.

Commissioner Angeles said that he did not ask for the chairmanship and he would move for the abolition of the Executive Commission and the Congress.

Chairman Amin inquired whether Commissioner Angeles was also for the abolition of the JBC.

At this point, Commissioner Jimeno called the Body’s attention to the proposals introduced by Commissioner Lambino to

reform the Judiciary, including the removal of some positions. Justice Vitug said that it was a good suggestion that should be deliberated by the group.

Citing the present membership of the JBC, Chairman Amin said that the Secretary of Justice and the Representatives of Congress, among others, were proposed to be eliminated from the JBC.

Justice Vitug said that he hoped the Committee would come up with the appropriate resolutions. He said that if they would remove all those people, they might also want to consider adding more people. Commissioner Jimeno suggested two from the academe and two from the bar association. Chairman Amin said there should be 14 members.

### **COM. LAMBINO'S PROPOSALS ON REFORMING THE JUDICIARY**

Commissioner Lambino introduced his proposal, which were a result of consultations with Justices in the Supreme Court, Court of Appeals and other experts.

According to Commissioner Lambino, everyone should look upon the members of the Supreme Court as coming from the heavens who are not going to commit any sins. This, he said, is how members of the Supreme Court should be looked upon in terms of integrity.

Commissioner Lambino added that he would hate to see a retired Justice of the Supreme Court going back to law practice and then appearing before RTC judges and addressing the latter as "Your Honor".

Further, he also mentioned that Section 1 par. 2 on the expanded judicial power has deteriorated. He pointed out that before, the Supreme Court can only entertain constitutional issues under the judicial review clause.

Furthermore, Commissioner Lambino cited the current practice of Malacañang of retuning the list of appointees if a certain name was not included among the list endorsed by the JBC. He cited that other judges would ask for endorsements from the Speaker of House of Representatives in order that they may be considered by the JBC.

Commissioner Lambino proposed the abolition of the JBC, and make the Supreme Court and Court of Appeals Justices as the recommending entities. Their appointments will be subject to the provisions of the Rules of Court, so that the Court of Appeals Justices cannot be just removed by the Supreme Court because they are going to have administrative supervision.

He also said that an independent JBC should be created which shall screen the appointments of local judges. He suggested that RTC and municipal trial court judges should serve until 75 years old.

Moreover, Commissioner Lambino proposed the creation of another court called a Peace Court or Claims Court which will handle small cases involving Php5,000 and below or an equivalent penalty of fine of Php1,000.

Chairman Amin asked Commissioner Lambino on the alternative of divesting the Supreme Court of administrative supervision over all courts. According to Commissioner Lambino, under the 1935 Constitution, it is the Secretary of Justice who has supervisory powers over the local courts, but said that he does not want to go back to that system. Thus, the proposal to create an independent Judicial Commission, to be composed of the Chief Justice as the Chairman, the Secretary of Justice as the ex-officio Vice Chairman and 5 members to be appointed by the President or Prime Minister subject to confirmation by the Commission. The independent Judicial Commission shall be composed of 7

collegial body empowered to administer the lower courts.

Commissioner Lambino also said that the court administrators shall be appointed by the Supreme Court.

As to the structure of the Supreme Court, Commissioner Lambino said the SC justices must be reduced from 15 to 9 and they will sit en banc in order to reduce the perception that there are three Supreme Courts or three divisions which sometimes conflict with each other. In situations where Supreme Court is in en banc, the Supreme Court should not wield administrative jurisdiction over lower courts since this will compromise the independence of the lower courts in deciding cases. The intervention of the Supreme Court over lower courts will only come when the cases are on appeal.

On the retirement age, he proposed that the Supreme Court Justices serve for life, just like in the US and that they follow the power of persuasion as members of the Court. He cited several cases including that of Chief Justice William Howard Taft, Justice MacKenna and Justice Grier. He said they wanted to ensure that the Supreme Court would serve for life to show that they are entities incapable of committing mistakes. He criticized the common practice of how retired Justices are being treated.

A brief discussion on the right age for retirement of Judges and Justices ensued with the different members giving their input. Commissioner Jimeno suggested changing the retirement age to 75 so that they could enjoy life more.

Commissioner Lambino said that for the collegiate courts, the retirement age should be 75; for the Supreme Court, the retirement age should be optional and they can serve for life if they want to. He suggested that the retirement age for Peace

Courts be lower at 65, following regular retirement ages because their work is more arbitrary.

Also, Commissioner Lambino proposed the regionalization of the Court of Appeals, providing for 6 additional divisions of the Court of Appeals in the administrative or existing judicial regions.

In the light of the proposal to go federal, Com. Lambino said that the solution was the creation of regional court of appeals. He pointed out the expenses of clients from the regions that have to travel to Luzon to file cases in the Court of Appeals, especially if the decision was not to give the case back to the lower courts. Justice Vitug mentioned that the cost of going to Manila was more expensive for those in Davao, Mindanao.

Thereafter, Chairman Amin stated that these proposals would be further discussed and considered by the Committee. After going to the consultations, he said, these would be proposed to the plenary where they might take a vote. Commissioner Jimeno added that the Committee could vote on the proposals and to present them later to the plenary. She asked that another meeting be set for the purpose of considering the proposals.

In relation to the issues previously raised, Commissioner Jimeno recalled that during the time of Marcos, only 2 percent of the national budget went to the Judiciary, and in the post-Marcos years it decreased to less than 1 percent, and eventually tied to 0.9 percent. But Commissioner Bautista argued that this should not be provided for in the Constitution but should be a matter for the legislation although he suggested that there should be a minimum so that the legislation will be bound by it.

**COMMITTEE DISCUSSION ON COM.  
LAMBINO'S PROPOSALS**

*On the retirement age*

The Committee discussed the proposal for the retirement age for the collegiate court to be 75 years, a lifetime or optional retirement for the Supreme Court justices, and a normal retirement age of 65 for the Peace Courts.

Commissioner Jimeno and Chairman Amin suggested getting the inputs of the different pillars of the judiciary system such as the Judges Association and the Retired Justices Association.

On the composition of the Supreme Court, some members noted that some judges take on the responsibilities of some of the Justices who stay on and do not want to retire yet, but can no longer perform well because of their low output due to old age. In this regard, Commissioner Lambino stated that the secret of the American justice system is the strength of the retirement of their Justices. Other Committee members proposed the possible change of the retirement age of the Justices from 75 to 80. According to Chairman Amin, 75 would most likely be an agreeable age of retirement of Justices.

Thereafter, Commissioner Lambino mentioned the needs of the lower court for later discussion so the Congress can later on be guided accordingly.

On his proposed Judicial Commission, Commissioner Lambino the rationale behind it is to get the list of the nominees of qualified applicants for the Commission; second, the Judicial Commission will be responsible for exercising administrative supervision over all courts. Since the Judges are trained as judges and not as administrators, the reason for the need of an expert in economics, management, and

finance is to aid in running the Judicial Commission.

Commissioner Lambino said he does not see the need for the Supreme Court to handle administrative supervision of the lower courts which might compromise the independence of the lower courts. He said that instead of deciding something independent of what the Supreme Court thinks, the lower courts will act based on evidence and law. He further mentioned that the Deputy Administrator position will be removed as its function will be devolved to the Judicial Commission, and that the Supreme Court will focus on making decisions.

Commissioner Rodriguez added that there is no monitoring supervision of judges in the lower courts which include the change of assignment in other locations without completing their current case inventory, resulting in long period of pending resolution of growing number of cases. Commissioner Lambino averred that the average workload of an MTC Judge in Manila is 5,000 cases, in the provinces, the average is 2,000 and 3,000 for cities in MTC. The RTC cases pending in Metro Manila averages from 800 to 1,000. The Committee also agreed about the judicial condition and quality of Judges to be included in the task of the Judicial Commission.

Thereafter, it was pointed out that currently the more endorsements one judge gets, the bigger his/her chances of appointment to the Supreme Court. In this regard, Commissioner Lambino said the Court should not interfere on political questions.

The Committee also discussed the possible elimination of the provision of Section 1, Paragraph 2 of the Constitution since it was inserted because of the Supreme Court decision on the Garcia-

Padilla vs. Enrile case regarding the proclamation of Martial Law and the automatic suspension of the privilege of the writ of habeas corpus. Additionally, Section 5 of the Constitution also covers it.

According to Com. Lambino, the first clause is alright as it pertains only to the traditional definition of the judicial powers of the Supreme Court. On the other hand, the last clause is problematic. Hence, according to Chairman Amin, the Committee will propose its modification up to 'demandable and enforceable' portion of the Section.

Moreover, Com. Lambino considered removing the words 'Almighty God' and 'love' in the Preamble of the Constitution.

Finally, according to Com. Lambino whether the government be federal or unitary, his proposal would fit in except in the creation of the State Supreme Court. He said he would still propose that the number of justices be reduced from 15 to 9. If this will be done, according to Com. Bautista, the jurisdiction of the court will have to be limited as in the US.

**SCHEDULE OF NEXT MEETING**

Commissioner Jimeno announced that the next meeting of the Committee would be on Wednesday, 9 November 2005, at two o'clock in the afternoon.

She said that the Committee hoped to collate all the proposals for its next meeting and to review the composition of the Supreme Court, especially the appointment of Justices in the Supreme Court.

Com. Lambino commented that appointment is primarily a political power, in this case it rests on the President or Prime Minister. He also said that the appointee should be subject to the scrutiny of the Judicial Commission.

**ADJOURNMENT OF MEETING**

The meeting was adjourned at 4:51 p.m.

Certified Correct:

**OMAR U. AMIN**  
Committee Chairman

\_\_\_\_ November 2005