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The Suspension of Congressman Osmeña

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Only a fraction of profit is repatriated in the form of foreign exchange. This is so true that it is a touchy matter with the Communist Party of the Philippines. The Party has accused the economic imperialists of increasing their ownership of the Philippines not by bringing in fresh doses of dollars but by growing on the profits sweated out of the Filipino people. It indicts foreign investors precisely for not taking their profits out of the country.

My point is this: there is hardly a limit to the amount of foreign investment this country might accommodate. There is a definite limit to the amount it can afford to borrow.

The national mood at the start of 1961 need not be one of melancholy. The budget has been balanced and foreign payments have been set right. The New Environment invites the nation to live without inflation and thus harden the peso, while it is hoped that gradual decontrol will compel businessmen to live without banning imports. Both consumers and producers will find the atmosphere of competition and sound money more stimulating than that of overprotection and slowly eroded purchasing power.

MICHAEL MCPHELIN

The Suspension of Congressman Osmeña

On 23 June 1960, Sergio Osmeña, Jr., Congressman from the 2nd District of Cebu and arch-critic of President Carlos P. Garcia, delivered the fifth of his philippics against the Chief Executive. In the course of his hour-long privilege speech, Congressman Osmeña made the following accusation:

It is said, Mr. President, that you vetoed the measure nationalizing rice and corn because of a previous commitment you had given to President Chiang Kai-shek at Taipei. But ugly tongues are continually wagging that you had ten million reasons for vetoing the measure each reason of which cost ₱1.00. Is it true, Mr. President, that the money was delivered to a former member of your Cabinet and that it took at least two days to count the same?

On motion of Congressman Zosa, the reference to the ten-million peso bribe was deleted from the records as being unparliamentary. After the customary interpellations, the House proceeded to take up other business.

Fifteen days later, on 8 July 1960, the House of Representatives passed Resolution No. 59 creating a fifteen-man special committee "to investigate the truth of the charges against the President of the Philippines made by Honorable Sergio Osmeña, Jr." The special commit-

tee was given authority to require Congressman Osmeña "to appear before it to substantiate his charges... and if Hon. Sergio Osmeña, Jr. fails to do so, to require him to show cause why he should not be punished by the House."

Congressman Osmeña was, accordingly, summoned to appear before the committee on the morning of 11 July 1960. On the appointed date, he duly appeared before the said investigating committee headed by Congressman Salipada Pendatun; but, from the very outset, he made it clear that he was not recognizing the jurisdiction of the committee to investigate him for his privilege speech. He presented two arguments: (1) that Art. VI, Sec. 15 of the Philippine Constitution, which says that "for any speech or debate therein [in Congress], they shall not be questioned in any other place", clothed him with absolute immunity for his speech; (2) that according to Rule XVII, Sec. 7 of the Rules of the House, a member shall not be held answerable for words spoken in the House "if further debate or other business has intervened." The special committee, however, after a thirty-minute recess to resolve the question of jurisdiction, upheld its own jurisdiction. On the resumption of the hearing on 13 July 1960, Congressman Osmeña filed a motion for reconsideration of the committee's decision. After a five-minute recess, the committee announced its decision to deny the motion.

The investigation continued for six days with Congressman Osmeña consistently refusing to submit evidence lest submission of evidence be construed as a tacit recognition of the committee's jurisdiction. In the meantime, a petition for declaratory relief and/or *certiorari* and prohibition with preliminary injunction, filed by Osmeña, had been given due course by the Supreme Court. But the preliminary injunction asked for was not granted. With the petition still hanging before the Supreme Court, the special committee, by a vote of 10 to 3, found Osmeña "guilty of the most disorderly behavior" and recommended him for 15 months of suspension. Before midnight of 18 July 1960, the House of Representatives, by a vote of 72 to 8, approved Resolution No. 175 suspending Congressman Osmeña for 15 months. The decision was based on Art. VI, Sec. 10(3) of the Constitution: "Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds of all its Members, expel a Member."

Meanwhile, the fight continued in the Supreme Court. Congressman Osmeña contended that: (1) Art. VI, Sec. 15 gave him complete parliamentary immunity, and so, for words spoken in the House he should not be questioned; (2) his speech constituted no disorderly behavior punishable under Art. VI, Sec. 10(3); (3) even supposing that he could be questioned and punished for his speech, the House had lost the power to do so because it had taken up other business before

approving House Resolution No. 59; (4) the Constitution does not empower the House to suspend one of its members [*Aleandrino v Quezon* 46 Phil. 83 (1924)].

On 28 October 1960, the Supreme Court came out with the following rulings (*Osmeña, Jr. v Pendatun et al.*, G.R. L-17144): (1) "... although exempt from prosecution or civil actions for their words uttered in Congress, the members of Congress may, nevertheless, be questioned in Congress itself. Observe that 'they shall not be questioned in any other place.'" (2) "We believe . . . that the House is the judge of what constitutes disorderly behavior, not only because the Constitution has conferred jurisdiction upon it, but also because the matter depends mainly on factual circumstances which the House knows best but which cannot be depicted in black and white for presentation to and adjudication by the Courts." (3) "Parliamentary rules are merely procedural, and with their observance, the courts have no concern. They may be waived or disregarded by the legislative body." (4) The *Aleandrino* case was decided under the Jones Law when the Legislature had only enumerated powers. Under the Constitution "Congress has the full legislative powers and prerogatives of a sovereign nation, except as restricted by the Constitution."

With varying degrees of emphasis, fear has been expressed that the Supreme Court decision constitutes a threat to freedom of speech in Congress. Is this really the case?

To be sure, the power of Congress to punish its members for disorderly behavior can be abused by vindictive majorities and made an instrument of political persecution. But in choosing for ourselves a representative form of government, we should at least be willing to credit the members of Congress with sufficient sobriety to be able to limit abuse, granting that there is abuse, to very rare instances. After all, what human power is not subject to abuse? Furthermore, every member of Congress with startling revelations to make should feel sufficiently protected by the constitutional requirements of due process (the right, at least, to be heard in his defense), by the power of public opinion, and by his immunity against court action.

The Supreme Court decision was not unanimous. It should be noted, however, that the dissenting Justices, Mr. Justice J.B.L. Reyes and Mr. Justice Labrador, disagree with the majority decision only on the point of the validity of Congress' disregard of Rule XVII, section 7 of the House. Resolution No. 59, according to Mr. Justice Reyes, insofar as it attempts to divest Mr. Osmeña of the immunity acquired under Rule XVII, section 7 and "subject him to discipline and punishment, when he was previously not so subject, violates the constitutional inhibition against *ex post facto* legislation." Moreover, Justice

Reyes' analysis of the reason behind Rule XVII, section 7 is full of practical wisdom:

The plain purpose of the immunity provided by the House rules is to protect the freedom of action of its members and to relieve them from the fear of disciplinary action taken upon second thought, as a result of political convenience, vindictiveness or pressures. It is unrealistic to overlook that without the immunity so provided, no member of Congress can remain free from the haunting fear that his most innocuous expressions may at any time afterward place him in jeopardy of punishment whenever a majority, however transient, should feel that the shifting sands of political expediency so demand....

This analysis highlights the possibility of vindictive majorities ferreting out the past congressional records of political enemies for purposes of persecution. But even granting such a possibility, the decision of the Supreme Court does not constitute a real threat to free speech in Congress. Indeed, Rule XVII, section 7 gives added protection, but not indispensable protection. The very absence of such a provision in the Constitution is perhaps an indication that the framers believed that even without it free speech in Congress is sufficiently protected. With the present decision, every member of Congress now knows that Congress has jurisdiction to question him for "speech or debate" made in Congress. Hence, if, in the future, he should be questioned, he would know that Congress may lawfully require him to present evidence in support or in defense of his utterances.

The Osmeña investigation was peculiar in that it was conducted while the jurisdiction of the House was in doubt (at least, on the part of Congressman Osmeña). The unfortunate part about it was that, while the Supreme Court put the official stamp on the doubt when it gave due course to Mr. Osmeña's petition for *certiorari* and prohibition, it did not resolve the doubt soon enough for the Congressman to realize his mistake and present his evidence. Call it then a tactical miscalculation on his part, for he could have presented whatever evidence he had, and he did not. It was a costly miscalculation. It also deprived the public of what, perhaps, could have been a very colorful show. Congressman Osmeña might have avoided the mistake if the Supreme Court had not given due course to his petition and thus implicitly affirmed the jurisdiction of the House. Or, since the highest tribunal had made the legal doubt "official", we might also have expected that, as a gesture of sportsmanship, the House would suspend its investigation until the doubt was resolved.

Let us suppose, however, that Congressman Osmeña had submitted himself to the jurisdiction of the congressional investigating body and had presented evidence in support of his accusation. Let us further suppose that, in spite of the evidence presented, Congress had reached a most arbitrary decision of conviction. Could he then go to court and raise the issue of "arbitrary exercise of legislative discretion"? Under the *obiter dictum* in the case of *Arnault v Balagtas*, [51 O.G. 4017, 4022 (1955)], where arbitrary exercise of

legislative discretion is mentioned as a ground for court intervention in legislative affairs, he might have gotten somewhere. But under the ruling in the present case, he cannot. "Under our form of government, the judicial department has no power to revise even the most arbitrary and unfair action of the legislative department, or of either house thereof, taken in pursuance of the power committed exclusively to that department by the Constitution. . . . An attempt by this court to direct or control the legislature, or either house thereof, in the exercise of the power, would be an attempt to exercise legislative functions, which it is expressly forbidden to do." Does this not then set the door wide open for political persecution? That would be a remote possibility. If Congressman Osmeña had presented his evidence and if the evidence presented supported his claim or justified his utterance, the special committee members would have considered their 10 to 3 vote and the House members their 72 to 8 vote for conviction a threat to their political careers.

Finally, a word about the penalty imposed—suspension for 15 months, from 18 July 1960 to 18 October 1961. Congressman Osmeña's term expires on 31 December 1961. This means that during the entire 1961 session of Congress the 2nd District of Cebu will not be represented. The Supreme Court answers this objection by saying that "Congress has the inherent legislative prerogative of suspension" and, "in any event, petitioner's argument as to deprivation of the district's representation can not be more weighty in the matter of suspension than in the case of imprisonment of a legislator; yet deliberative bodies have the power in proper cases, to commit one of their members to jail." One might still ask, however, whether deliberative bodies have the inherent power to suspend or to commit a member to jail for fifteen months. It is true that the *Aleandrino* case was decided under the Jones Law; but Mr. Justice Malcolm was speaking in general terms when he said:

It is noteworthy that the Congress of the United States has not in all its long history suspended a member. And the reason is obvious. Punishment by way of reprimand or fine vindicates the outraged dignity of the House without depriving the constituency of representation; expulsion, when permissible, likewise vindicates the honor of the legislative body while giving to the constituency an opportunity to elect anew; but suspension deprives the electoral district of representation without that district being afforded any means by which to fill the vacancy. By suspension, the seat remains filled but the occupant is silenced. Suspension for one year is equivalent to qualified expulsion or removal.

The House could have expelled Congressman Osmeña "with the concurrence of two-thirds of all its Members" (Art. VI, sec. 10(3)) and afforded the 2nd District of Cebu an opportunity to elect a new representative. Was the House afraid that in the event of a special election the 2nd District of Cebu would restore Osmeña, Jr. to his seat?