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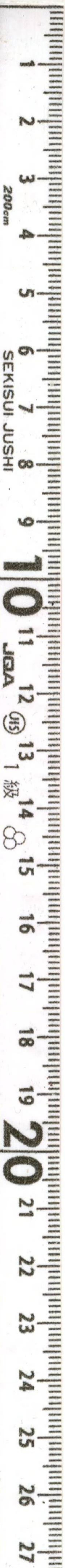
GENERAL HEADQUARTERS G-2 FAR EAST COMMAND

FILE NO. 033

LINE NO. _____ TO _____

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BASIC: Ltr dtd 7 Oct 46, from Hq. AFWESPAC, APO 707 to DI, WDGS, Washington, D. C. thru A. C. of S., G-2, GHQ, AFPAC, Subject: Ezebio Lopez, Associate Judge, Division II, People's Court, Republic of Philippines.

AG 1st Ind.

GENERAL HEADQUARTERS, UNITED STATES ARMY FORCES, PACIFIC, APO 500, 23 October 1946.

To: Director of Intelligence, War Department General Staff, Washington 25, D. C.

1. Noted and forwarded.

For the Assistant Chief of Staff, G-2:

C. S. MYERS
Colonel, G.S.C.,
Executive

Incl:
n/c

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HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
Office of the A. C. of S. for Int., G-2

APO 707
7 October 1946

GSB

SUBJECT: Eusebio Lopez, Associate Judge, Division II, People's Court, Republic of the Philippines.

TO : Director of Intelligence, WDGS, Washington 25, D. C.
(Attn: Chief, Collection Group.)

THRU : A. C. of S., G-2, GHQ, U.S. Army Forces, Pacific, APO 500.

1. Attached is a copy of Petition of the Solicitor General of the Philippines praying that Judge Eusebio Lopez inhibit himself from participating in a certain case; and if he does not that an order be issued to that effect.

2. The theories advanced by Judge Lopez in the Francisco case, as detailed in paragraph 4 of the Petition are so novel that they bear study. The Philippine Judiciary system of trial before a single judge without jury (the judge being both judge and jury) affords opportunity for a great damage to their Judiciary system, if a judge or judges depart from straightforward thinking.

3. In brief, the Judge advances the theory that all laws of the Commonwealth were suspended by the Japanese occupation. Therefore, a person could not break the law against Treason because there was no such law in force. Such a theory would free all persons captured by enemy armies from any loyalty or duty towards their home countries.

4. This Petition indicates the difficulties faced by the Solicitor General in prosecuting those citizens of the Philippine Commonwealth for collaboration with the Japanese during the war.

Incl: As stated.

GEO. A. CHESTER
Colonel, G.S.C.
AC of S for Int, G-2.

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BRIEF

22 October 1946

FROM : Lt. Col. Randall

SUBJECT : Eusebio Lopez, Associate Judge, Division II, People's Court, Republic of the Philippines.

TO : General Willoughby

1. Colonel Chester, G-2, AFWESPAC, forwards as inclosure to his basic letter to Intelligence Division, WDGS, thru G-2, AFPAC, a copy of a petition by Solicitor-General (Tanada) and Special Prosecutor (Liwag) in People's Court, Manila, seeking that Justice Eusebio Lopez restrain himself from sitting in the trial of Benigno S. Aquino accused of "treason," and that if he does not that an order be issued restraining him.

2. The petition pleads that Lopez should not hear this case because he has demonstrated bias and inability to remain on neutral, impartial middle-ground thinking, having just previously published an opinion which held that all legal laws of the Philippines were suspended during Japanese occupation; that the only valid laws were Japanese laws; that there could be no treason because it was legal (Jap law) to give aid and comfort to the enemy. Collaboration was required, even forced.

3. No military intelligence is present in this paper but some Civil Intelligence and Who's Who value does exist. The judiciary system of the Philippines, which permits trial by a single judge with no jury, is now its own affair. The problem faced by the Solicitor-General in prosecuting the docket of treason and collaboration cases in the face of this bias precedent, is one for internal solution.

4. Recommendations:

a. That copies of the paper be taken and distributed to C in C and C/S, (for possible interest), CIS (for who's who value), Legal Section, SCAP (who desire it), and G-2 Admin. file.

b. To then forward the paper by indorsement to Director of Intelligence, WDGS, with comment reading substantially "noted and forwarded" since the text will be as apparent there as it is here and no action is indicated. OK

RANDALL

*OK - have ind prepared for
C/S Myer signature. Please
expedite, paper is getting rd.
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REPUBLIC OF THE PHILIPPINES

PEOPLE'S COURT
MANILA

PEOPLE OF THE PHILIPPINES,
Plaintiff,

vs.

BENIGNO S. AQUINO,
Accused.

CRIM. CASE NO. 3527

For: T R E A S O N

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P E T I T I O N

Comes now the undersigned Solicitor-General and Special Pro-secutor, and to this Honorable Court respectfully manifest:

1. That the above-named accused is charged with treason under Article 114 of the Revised Penal Code in that during the period comprised between December 8, 1941 to September 2, 1945, he adhered to the Empire of Japan, then enemy of the United States and the Commonwealth of the Philippines, and gave said enemy aid and comfort in the manner enumerated, specified and averred in the information filed against him:

2. That this case has been assigned for trial to and decision by the Second Division of this Court:

3. That the trail of this case on the merits has been set for October 14, 15, 17 and 18, 1946, before the aforesaid division;

4. That on September 26, 1946, the Honorable Eusebio Lopez, Associate Judge of Division II, promulgated his concurring opinion in Criminal Case No. 3534, People vs. Guillermo B. Francisco, wherein among other things, he held the following:

"This case increases in importance if we consider the fact that it is inseparably linked with other cases of the same nature against other men whose activities played a most important part in the shaping of the fate and destiny of the people during the night of the nation's tragedy and martyrdom.

"It is hard to believe that the Filipino leaders, who have been trained all their lives in the democratic ways of life under an atmosphere of freedom could have accepted services under these two governments without compulsion and coercion." (page 2, concurring opinion.)

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"X X X The leaders could not oppose force with force, and to show hostility to the enemy would only invite death and destruction. Only one course was left open to them. They must feign cooperation, and they must make their feigned cooperation appear as real as they dared to convince the enemy that they were sincere. This decision made, they surrendered to the enemy and promised obedience to his orders, but not before making their purpose clear and unmistakable in doing so in the following terms, 'In compliance with your advice and having in mind the great ideals, the freedom and the happiness of our country, we are ready to obey to the best of our ability and within the means of our disposal the orders issued by the Imperial Japanese Forces for the maintenance of peace and order and the promotion of the well being of our people under the Japanese Military administration.'"

"There is nothing disgraceful in the surrender of the Filipino leaders. They had the instructions of President Quezon to do so. It was not expected of them to refuse cooperation with the enemy and block and offer opposition to each and every step that he might take in his war efforts. What was expected of them was to make any bargain they could with the enemy to protect the people. And that was what they did." (pp. 4 - 5, concurring opinion.)

"X X X The Filipino leaders, who stayed with the people, had their minds concentrated on the best means of saving and protecting the people from the calamities and tragedies of war even to the extent of giving aid and comfort to the enemy, short of waging war against America and their own country, and without doing violence to their loyalty to both. This explains the conduct of the accused in his relations with the guerrillas, Americans and Filipino exiled in America were inducing and urging the people to continue their resistance against the enemy through guerrilla organizations. The Filipino is impulsive and impatient and brave to recklessness, and the guerrilla idea appealed to his ardent imagination; but he and those who were urging him to continue resistance failed to consider, or refused to consider, the capacity of the enemy for cruelty and wanton destruction until it was too late. The Philippines paid heavily perhaps too heavily, for the ill-advised and irresponsible guerrilla activities of her own sons." (pp. 6 - 7, concurring opinion.)

"X X X But, once belligerent occupation is established, there can be no question that the allegiance of the inhabitants to their lawful sovereign is suspended during the occupation, that all the political laws of the legitimate government are also suspended, and that the inhabitants owe the belligerent occupant the duty of strict obedience." (p.17, concurring opinion.)

"From a careful study of the above principles of international law I may conclude that the belligerent occupant possesses absolute powers to organize and maintain in the occupied territory a government complete in itself and possessed of all the necessary instrumen-

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talities for the proper functioning of an efficient government, subject only to certain limitations established by the law of nations. The ousted sovereign, as long as the occupation lasts, possessed no power whatsoever over the people of the territory occupied which, under international law, is considered a part of the occupant's own territory. The authority of the legitimate government is actually passed into the hands of the occupant and its relations with the inhabitants severed, creating thereby a new relationship between them and the occupant. All the political laws, and all other laws of the legitimate sovereign that conflict with the interests of the occupant, are deemed suspended and of no effect during the period of occupation. Within his admitted powers, the occupant alone determines the legality or illegality of his acts or of any act performed by any one under his jurisdiction and control. The inhabitants are considered his subjects and they owe him strict obedience. His laws are generally severe and his treatment of the inhabitants rough and cruel, for he finds himself in the midst of enemies, and the necessities of war compel him to be strict, severe and even cruel." (pp. 18-19, concurring opinion.)

"If the political laws of the Commonwealth were suspended during enemy occupation, then our treason law and also suspended, it being a political law, and, therefore, could not be violated. Whatever act of giving aid and comfort to the Japanese army was performed, the act was legal then, and it offends basic notions of all civilized legal systems to convict any person 'ex post facto' for acts which were not illegal when they were committed." (pp. 20 - 21, concurring opinion.)

"X X X but, in the treason case we are now considering and in all other treason cases now pending before the People's Court, the right which the government asserts to punish the accused comes in direct conflict with the law of the Japanese occupant, which considers legal the act sought to be punished, and with the principle of international law recognizing such an act legal, it being within the power of the belligerent occupant to demand and consider a duty of the inhabitants to perform in compliance with the duty of strict obedience they owe their new master. In such a situation, when a clear case of conflict of law is present, international law rules that the law of the belligerent occupant must prevail." (page 22, concurring opinion).

"It is cruel and inhuman to maintain the theory that the treason law of the Commonwealth was in full force and effect during the period of enemy occupation. This theory ignores completely the helplessness of the Filipino people under the absolute control of an inexorable enemy, disposed to have and to take from the people anything and everything that could be of service to him in his war efforts, and determined to eliminate all obstacles that stood in the way between him and final victory. The theory ignores completely the fact

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that the Filipinos were then living under a military rule that considered non-cooperation of a Filipino a hostile act punishable with death, whose criminal procedure in practice considered suspicion enough ground for conviction, who convicted and punished upon arrest, and imposed no penalty except torture and death of the most horrible and inhuman sort. The theory ignores completely the fact that the Filipinos were victims of a situation they did not create and that the Commonwealth Government was ten thousand miles away, helpless to extend to them the protection they sorely needed." (pp.31 - 32, concurring opinion.)

"xxxThe leaders of the people surrendered and gave aid and comfort to the enemy because they had to and because they knew that only by giving aid and comfort to the enemy could they hope to make the nation survive. (p.32, concurring opinion.)

"In the particular case of the Philippines, it would be adding cruelty to cruelty if, upon its return to power, the legitimate government should hound up those of its citizens who had, in any way, given aid and comfort to the enemy on matters over which, according to international law, he had absolute control.

"It is my considered opinion that an act of giving aid and comfort to the enemy by the inhabitants of an enemy-occupied territory is not treason, if its performance is rendered in obedience to law or order and is within the proper scope of the powers of the invader over the inhabitants, and not in contravention of the limitations upon his powers fixed by international law. (p. 33, concurring opinion.)

"Speeches alone, no matter how eloquent in praises of Japan's magnanimity and grandeur, are not sufficient to support conviction. Intent to betray, demonstrated by other overt acts of betrayal and disloyalty, must be proved. The traitor's heart of the speaker must be revealed. It must be shown that the speeches gave help and comfort to the enemy in the performance of acts in contravention of the limitations upon his powers imposed by international law. In the great majority of cases, speeches delivered by Filipinos in the days of the occupation, even if the speeches favored Japan, were not sword thrusts directed to the heart of the Commonwealth or of the United States; they were shields to protect the people from the brutality of the enemy." (pp.36-37, concurring opinion.)

5. That the Honorable Eusebio Lopez in the aforesaid concurring opinion has clearly and in effect prejudged the fundamental questions of fact and of law involved in this case;

6. That with the said concurring opinion, the Honorable Eusebio Lopez has shown his bias and prejudice against the state and in favor of the so-called political collaborators now indicted before this Court;

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7. That in view of such prejudgment of the issues of fact and of law involved in this case and in other cases of other "Filipino leaders" now indicted for treason and of his bias and prejudice, the state will not receive a fair and impartial hearing at the hands of Honorable Eusebio Lopez;

8. That "Every litigant, including the state, in criminal cases, is entitled to nothing less than the cold neutrality of an impartial judge and the law intends that no judge shall preside in a case in which he is not wholly free, disinterested, impartial and independent." (30 Am. Jur. Sec. 53, p. 767.);

9. That the Honorable Eusebio Lopez in his concurring opinion referred to above has shown a mental disposition and predisposition which is neither free, disinterested, impartial, nor independent, and the state cannot expect from him in the hearing and disposition of this case and other cases of similar nature that cold neutrality so essential in the proper administration of justice;

10. That for the Honorable Eusebio Lopez to continue sitting in the hearing of this case would not only defeat the avowed objective of the Constitution of the Philippines to establish a regime of justice, but would also prevent the impartial administration of justice more particularly by Rule 125 of the Rules of Court.

IN VIEW OF THE FOREGOING, it is respectfully prayed that the Honorable Eusebio Lopez inhibit himself from sitting and participating in any manner in the hearing and decision of the above-entitled case; and should he not do so, that an order be issued to that effect.

Manila, October 2, 1946.

(SGD) LORENZO M. TANADA
Solicitor-General

(SGD) JUAN R. LIWAG
Special Prosecutor

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N O T I F I C A T I O N

Messers: Mariano A. Albert

Vicente J. Francisco

Claro M. Recto

Paredes, Zulueta & Roxas

c/o Mr. Mariano A. Albert
Corner Raon & Sales Streets
Manila

Gentlemen:

Please be informed that the undersigned will submit the foregoing petition for consideration on Saturday, October 5, 1946 at 9:00 o'clock in the morning.

Manila, October 2, 1946.

LORENZO M. TANADA
Solicitor-General

JUAN R. LIWAG
Special Prosecutor

Received copy:-

Mariano A. Albert
Vicente J. Francisco
Claro M. Recto
Paredes, Zulueta & Roxas

By - Mariano A. Albert
by J. Lesaca

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Legal Section
Attn: Mr. J. Bassin
Chief, Law Section

23 Oct. 1946

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1. Forwarded attached is a copy of the paper discussed verbally between Mr. J. Bassin (Legal Section) and Lt. Col. Randall (G-2). This is done in accordance with the request of Mr. Bassin.

Incl:

Copy of Petition in People's Court, Manila

-----C. A. W.-----

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MEMO FOR RECORD
SUBJECT:

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SUSPENSE DATE
<u>16 Oct</u>

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Authority 795006

By fr NARA Date 11/7/11

Col. Myers -
Mr. J. Bassin, Chief
Legal Section,
Law Division, views -
agrees with this -
desires a copy of the petition
for interest and file
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SEKISUI JUSHI

Authority 795006

By h NARA Date 11/7/11

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22 Oct 1946

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TO :

Col Randall

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By h NARA Date 11/7/11

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KYLE R. JACKSON
MAJOR, AGD,
ASST. EXEC. FOR ADMINISTRATION

15 Oct 1946

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Authority 795006

By fr NARA Date 11/7/11

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afwespac (L)

14 Oct 1946

FROM: G-2 ADMIN

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By fr NARA Date 11/2/11

