APPENDIX 4.5

Citizenship of Justice Claudio Teehankee Sr.

In 1982, the justices of the Supreme Court resigned in toto because chief justice Enrique Fernando had authorized the adjustment of the bar exam score of Gustavo Ericta, son of justice Vicente Ericta, thus giving the younger Ericta a passing mark. Majority of the justices—even constant dissenter Justice Claudio Teehankee Sr.—were reinstated. However, the issue of Teehankee's citizenship—which had cropped up before when he was to be appointed by Ferdinand Marcos as undersecretary in the department of justice—was resurrected while Teehankee's reappointment was in process. After resolving the issue twice before, the issue was raised again, apparently by Marcos himself, when Teehankee was up for consideration for the position of chief justice given his seniority (see Reed 1985). This suggests that Marcos was perfectly comfortable with Teehankee being the Court's token dissenter, but he could not tolerate having the Court's primus inter pares be an opponent of his regime.

Reference

Reed, Jack. 1985. "Marcos Orders Probe of Supreme Court Member." United Press International, 9 May. https://www.upi.com/Archives/1985/05/09/Marcos-orders-probe-of-Supreme-Court-member/4023484459200.

Source

Presidential Commission on Good Government Files (through Meynardo Mendoza and the National Historical Commission of the Philippines), Roll No. 257, File Nos. 1442–3 and 1483–85.

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May 10, 1985

His Excellency
President Ferdinand E. Marcos
Malacañang

Dear Mr. President:

Pursuant to your directive in our phone conversation this morning, I am forwarding herewith copies of:

1. My memorandum to you dated May 13, 1982, on the citizenship of Justice Claudio Teehankee, (which you then directed me to file on his behalf, after naming me as his counsel), together with Senator Lorenzo Lorenzo M. Tañada's memorandum on the same subject, dated January 24, 1966, including its Annexes "A" to "E", among which are copies of documents pertaining to the reconstitution of the "Election of Filipino Nationality" dated September 27, 1948 of Justice Claudio Teehankee, under the provisions of C.A. No. 625, and

2. A "Memo for President Ferdinand E. Marcos," dated May 13, 1982, from Justice Teehankee.

Both documents were sent to you in Malacañang prior to the meeting of the afternoon and evening of May 13, 1982 wherein you made your decision on the re-appointment of the Justices of the Supreme Court.

You may recall, Mr. President, that the Teehankee case was discussed for several hours by you and the persons whom you called, by turn among them, Deputy Prime Minister Jose A. Roño, then Minister of Justice Ricardo C. Puno, Solicitor General, now concurrently Minister of Justice, Estelito P. Mendoza, Assemblymen Arturo Pacificador, Antonio Tupaz and Ronaldo Zamora, myself, then the Supreme Court Justices, beginning with Chief Justice Enrique M. Fernando and Justice Antonio Barredo; and, finally, Justice Claudio Teehankee himself.

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I distinctly recall, Mr. President, that, after hearing all opinions, you stated that, in the exercisr of your appointing power, it was your "constitutional duty to rule" on the status of Justice Teehankee and that you would. You then stated the issues involved and concluded as follows:

> "The President then raised the issue of whether or not the Constitution can divest a person of the rights as a natural-born citizen he has enjoyed for 64 years as in the case of Teehankee.
>
> Mr. Marcos also pointed out that Teehankee may be considered to have been administratively declared a natural-born citizen by the Office of the President when he was allowed to take his oath of office as Supreme Court justice following the operation of the 1973 Constitution.
>
> The President's views were upheld." (TJ, May 14, 1982)

A clipping from the Times Journal, of May 14, 1982, which printed the Malacañang press release on the conference, as corrected by you, is hereto attached. The same is a faithful report of what took place.

In any event, the issue of whether or not Justice Teehankee is natural-born has been rendered moot by the 1973 Constitution itself, which provides that "Those whose fathers or mothers are citizens of the Philippines" are such citizens without need of election (Article III, Sections 1(2) and 4).

May I reiterate my recommendation, Mr. President, that, in the public interest, the order to Minister Mendoza to investigate the matter be rescinded. May I also respectfully suggest that Mr. Pacificador's charges do not merit further action.

I wish to thank you for your kind consideration. With my prayers for your continued good health, I am

Sincerely yours,

Emmanuel Peláez

Supreme Court of the Philippines
Manila

FROM THE CHAMBERS OF
Claudio Teehankee
ASSOCIATE JUSTICE
CHAIRMAN, FIRST DIVISION

May 13, 1982

MEMO for President Ferdinand E. Marcos
Malacañang, Manila

This memo on my status as a natural-born Filipino citizen is submitted in compliance with the President's request as transmitted to me yesterday afternoon by Minister of Justice Ricardo Puno.

1. I was born on April 18, 1918 in Manila of a Chinese father, Dr. Jose Teehankee, and natural-born Filipino mother, Julia Ong Sangroniz. Under the then doctrine of jus soli which had been adhered to and accepted for more than 20 years before the adoption of the 1935 Constitution, I was a Filipino citizen at birth and so comported myself - by force of Art. IV, section 1 of the 1935 Constitution declaring as Filipino citizen "Those who are citizens of the Philippine Islands at the time of adoption of this Constitution." In all public documents, including my marriage on March 7, 1939 when I was but 20 years old, at which age I registered for military instruction under Command Act No. 1 (National Defense Act), I always declared my only nationality - Filipino.

2. The principle of jus soli was set aside by the Supreme Court in the Tan Chong Case in 1947. But as ruled in effect by the Supreme Court in the subsequent case of Talaroc (1952) and in the earlier case of Tan Ching (1940), jus soli was the rule with force of law at the time of adoption of our [1935] Constitution, and its abrogation decades later could not exclude or cancel the status of natural-born citizens like myself who were so "by judicial declaration at the time of the adoption of the Constitution," particularly since we were also Filipino citizens by jus sanguinis, being born of Filipino mothers.

3. Article III, section 2 of the 1973 Constitution reaffirms my natural born citizenship in its declaration that "Those whose fathers or mothers are citizens of the Philippines" are such citizens, without need of election.

4. The factual and legal bases of my status as a natural-born Filipino were thoroughly discussed and upheld in the confirmation by the Commission on Appointments of the several appointments extended to me by President Marcos during his first term (1965 - 1969) as Undersecretary of Justice, Secretary of Justice and Associate Justice of the Supreme Court and in debates

on the floors of the House of Representatives and the Senate. Attached hereto are some immediately available documents on file, to wit,

(a) Senator Lorenzo M. Tanada's Memorandum to the Commission on Appointments dated January 24, 1966;

(b) My Reply to Rafael R. Recto's Paper Entitled "Re - The Nomination of Claudio O. Teehankee as Secretary of Justice" dated August 15, 1967; and

(c) Reprint of Justice Antonio P. Barredo's comprehensive article of January 18, 1972 on "Jus Soli and Jus Sanguinis as Bases of Philippine Citizenship", stating the view that "As there can be no question that the prevailing rule of citizenship in the Philippines at the time of the adoption of the Constitution as held in the cases, from Muñoz to Haw, x x x was jus soli and, according to the provision I have earlier quoted, those who were citizens at the time of the adoption of the Constitution were declared by the Constitution itself to be citizens of the Philippines, it follows inexorably that all persons born in the Philippines before May 14, 1935 and their children and descendants are citizens of the Philippines, and, consequently, the principle of jus soli, still obtains pro tanto in this jurisdiction."

I also beg to cite by reference the memorandum which Assemblyman Emmanuel N. Pelaez is submitting today in compliance with the President's request at yesterday's conference.

5. It may be mentioned that on October 29, 1973 when all incumbent members of the Supreme Court then headed by Chief Justice Querube C. Makalintal took their oaths of office anew under the 1973 Constitution on the occasion of the oath-taking of three new members (namely Associate Justices Estanislao A. Fernandez, Cecilia Muñoz Palma and Ramon C. Aquino), my qualification as Supreme Court Justice was recognized. As I said in my separate dissenting opinion in the martial law cases (September 17, 1974) then:

> "A major liability imposed upon all members of the [Supreme] Court and all other officials and employees was that under Article XVII, Section 9 of the Transitory Provisions which was destructive of their tenure and called upon them 'to vacate their respective offices upon the appointment and qualification of their successors.' Their taking the oath on October 29, 1973 'to preserve and defend the New Constitution' by virtue of their 'having been continued in office' on the

> occasion of the oath-taking of three new members of the Court pursuant to Article XV, Section 4 was meant to assure their 'continuity of tenure' by way of the President having exercised the power of replacement under the cited provision and in effect replaced them with themselves as members of the Court with the same order of seniority."

Similar views were expressed by Justice Barredo in his separate concurring opinion in the said cases.

6. The case of Associate Justice Simeon M. Gopengco of the Court of Appeals is in pari materia. Like myself, born of a Chinese father and Filipino mother, his qualification for appointment to the judiciary as a natural-born citizen was recognized when the President extended him on December 23, 1976 his appointment to the Court of Appeals under the 1973 Constitution.

7. Finally, I wish to state that I honor my late beloved father and bear his name proudly. Soon after he made Manila his home at the turn of the century, he embraced the Catholic faith, took roots here and never went back to China. He married a Filipina and raised all his children as Filipinos from birth. He loved and served this country well and is buried here. He did not seek naturalization only because of his conviction that one should not reject the land and citizenship of his birth. But his name is now as Filipino as any other.