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LAW AND PSYCHIATRY MUST JOIN IN DEFENDING MENTALLY ILL CRIMINALS

Mr. Justice Brennan suggests that we may be at the threshold of a major re-examination of the premises which underlie our system for the administration of criminal law. In the area of criminal responsibility and mental illness, whether the M'Naghten test or another is used, the accused's right to a defense may require psychiatrists to extend their Hippocratic oath to include forensic services. This article is adapted from an address before the National Association of Defense Lawyers in Criminal Cases.

By WILLIAM J. BRENNAN, JR.
Associate Justice
United States Supreme Court

I SHARE WITH MANY the concern that so many of our profession are reluctant to represent people accused of crime. There was a time in our history when lawyers generally could be counted upon to present a militant front, however unpopular, against any invasion or undermining of individual, human or constitutional rights.

A first office of a lawyer in our society is to protect individual rights, especially those secured to people accused of trespassing society's laws. American lawyers cannot be mere private practitioners of the law. They have a public responsibility to maintain a system of government by law. That phrase—"government by law"—is no empty platitude. It is the essence of a free society. No nation possesses a code better designed to assure the civilized and decent administration of justice which is a free society's hallmark. But that code will provide only paper protection of our people are more concerned with prosecutions that are overturned than with fundamental principles that are upheld. Because it is only in upholding fundamental principles, even at the expense of freeing some not-very-nice people, that the protections for nice people are maintained.

Challenge to M'Naghten Rules Arouses Fears

Probably no more provocative subject exists in the criminal law today than that of criminal responsibility and mental illness. That is because the stir created by the widespread examination being made into the continuing validity of the M'Naghten Rules[1] has seem to some to have challenged the very foundations of society's method of dealing with offenders against its laws. Despite a flood of literature from both legal and behavioral disciplines inveighing against the retention of the M'Naghten Rules as they have been traditionally interpreted, their discard is opposed from fear that any other test would produce a system "soft on criminals" and destructive of principles of morality and good order.

Now I am not going even to survey the different so-called "insanity tests" which have been the matter of such furor and debate, nor shall I by the slightest intimation suggest which I think may be preferable to the M'Naghten Rules, if indeed it has yet been proved that any one of them is better. I'm going to confine myself to some observations upon some arguments made for retention of the M'Naghten Rules, and then discuss some practical problems which must be worked out if those Rules are to be replaced by any of the alternative tests now being discussed.

M'Naghten, it is held, must be retained because public safety and morality require it. More liberal rules, it is said, might result in too many acquittals by reason of insanity and a relaxation of concepts of public responsibility and order.

How valid is the assumption that morality and safety require punishment by imprisonment or execution of mentally ill people? Of course, I don't know just **how many** mentally ill offenders are convicted. But a glance at the transcripts in more than a handful of cases is enough to convince me that though the accused may be "legally sane" — though he may "know right from wrong" — he was nevertheless seriously disordered at the time of the crime. When one has this experience, he can appreciate why those who would replace the M'Naghten Rules ask: Can a true moral judgment be made about responsibility for any act without delving deeply enough into the actor's background—his biological, psychological and social circumstances—to attempt to explain the whole man? These opponents of M'Naghten insist that without such an explanation, there can be only the illusion of a moral judgment. They go on to ask, if mental illness is indicated as a cause, should we not attempt to treat the disease, rather than wreak vengeance on its medium? They summon to their support my colleague Justice Frankfurter who said (in an opinion urging a humane procedural approach to the insanity defense). Man "is not a deodond to be forfeited like a thing in medieval law". They insist it is hypocrisy that nowadays most of us reject retribution as an element in punishment for, they argue, retribution **must** be a factor in punishing these people, for the evidence suggests that the mentally ill are not reformed, rather they are made worse, by prison. Nor is their punishment calculated to deter other mentally ill people from engaging in crime.

Prisons Do Not Provide Adequate Psychiatric Service

These proponents of a change press on us that perhaps imprisonment as a means of reforming the mentally ill would have a better case if our prison systems provided the wherewithal to treat their condition. But speaking in June, 1960, James V. Bennett, Director of the Federal Bureau of Prisons, noted: "It has been my experience that the courts are often overgenerous in their estimates of what correctional institutions can accomplish. The availability of psychiatric service, for example, has been exaggerated. To a very large extent it is simply not available."

The latest available figures indicate that there are only forty-nine full-time psychiatrists on the staffs of institutions for adult offenders in this country. Even these are not evenly dispersed: thirty-six states had no full-time psychiatrists on their staffs. But perhaps a better day is on the horizon. It must be reason for encouragement that the distinguished Drs. Karl Menninger and Joseph Sotten have caused the Menninger Foundation at Topeka, Kansas, to undertake a program of research and training of psychiatrists, psychologists and psychiatric social workers for work in penal institutions. A useful by-product of that kind of program should be some much needed information bearing on the related problems of determining criminal responsibility.

[1] Daniel M'Nagthen's Case, 10 Cl. & Fin. 200, 8 Eng. Rep. 718 (1843).

The dearth of treatment facilities is the more distressing to to these proponents of change since we in the United States apparently place greater reliance on imprisonment than does any other country in the world. Mr. Bennett is authority that we have "178 persons behind bars for every 100,000 of the civilian population. In contrast, England and Wales have only sixty-five persons under lock and key for every 100,000 citizens. Japan has eighty-nine." Ironically, Mr. Bennett pointed out, the only country which comes close to our rate is Guatemala—and, Mr. Bennett found, 60 per cent of these prisoners were unsentenced and were being detained only temporarily.

Does Imprisonment Solve the Crime Poblem?

In short, ask these pleaders for change, must not our society face up to the question: Don't we place an undue amount of reliance on prisons to solve our crime problem? How is a solution achieved—or how are morality and public order preserved —by incarcerating people who need psychiatric treatment in institutions which do not provide it—perhaps because, as some of them insist, the prison millieu is inherently opposed to the therapeutic process.

And a hospital which is a hospital in name only, but for these people a prison in fact, is no better case. The Superintendent of Galesburg State Research Hospital in Illinois wrote last year:

> It is important to recognize also that commitment can be a form of incarceration, and prosecutors, judges and hospital officials are not immune to this expectation of society. Such patients usually are segregated in maximum security units, and arbitrarily are denied all privileges. Often this is quite anti-therapeutic, but prejudice prevails over reason, and individual "civil rights" are conveniently overlooked.

I come now to the concern for public safety, also urged as a reason against insanity-defense reform. Many apparently assume that a verdict of not guilty by reason of insanity necessarily results in a mentally ill and dangerous person being turned loose onto the streets. Here one is on perfectly safe ground in saying that this just should not be so, for only one of the fifty states, Tennessee, makes no provision for possible confinement in such cases. The argument should really be, then, whether society is better protected by having its mentally ill offenders sent to a hospital for treatment, and kept there until the courts determine on the advice of the medical experts that the offenders are no longer dangerous; or whether we are better protected by imprisoning these people for a certain number of years. Even under the indeterminate sentence, the key to release is whether the offender has been a well-behaved prisoner. But the good behavior of a mentally ill offender in the highly structured prison society provides no assurance that he will so behave in the unstructured free society. We must acknowledge that in the case of the determinate and indeterminate sentences release is not predicated on any medical assessment of a change in mental condition. In sum, then, is there really competition between the principle that we should secure fair and decent processes to those accused of crime and the principle that morality and public order must be preserved?

Psychiatrists Disagree on Their Role

I turn then to some of the practical difficulties which will have to be overcome if the M'Naghten Rules are replaced with a test which would seek more accurately to separate mentally ill offenders for the purpose of hospital confinement treatment. We lawyers know that that is a process for experts, both legal and behavioral. And we can't overlook the controversy among psychiatrists as to the proper role of the practitioners of that profession in the process. Some contend that the question of mental condition has no place in the determination of guilt or innocence but belongs only at the sentencing stages as bearing on the determination what disposition of the offender would offer the best protection for society and best possibilities for rehabilitation. Other psychiatsists agree that they have a proper role in the determination of the insanity defense itself but only if the mental illness is one which psychiatrists are equipped to treat.[2] But these are questions which we must lay aside now.

When we talk of employing experts, we lawyers must look at our problem in context. Who are our criminal defendants? What is their background? Do they have relatives and resources capable of helping in their defense once they have landed in trouble? By and large, the so-called "white-collar" criminals probably have the resources and friends to aid them in their defense. If mental condition is called into question, they basically have the wherewithal and the knowledge to get help. This is as it should be.

About a year ago, I read an article in the **Washington Post** reporting the testimony of a psychiatrist called by the defense. The article might not have been written but for the fact that the case had achieved some local notoriety because it involved a hold-up by a wealthy young man. However, the reporter made the point of his article the fact that the testimony was of a far higher caliber than was usual in cases where the insanity defense was raised. In fact, the evidence proved to be so clear, comprehensive and persuasive that the trial judge directed a verdict of not guilty by reason of insanity. The psychiatrist testified that he had had about twenty-five lengthy interviews with the defendant and that he expected to charge about $2,000 for his services. (With some asperity, he also pointed out on cross-examination that he believed the prosecution had spent more than this in having the boy examined by government psychiatrists.)

Justice is well served when the resources of prosecution and defense are fairly evenly matched as they were in the case to which I have just referred. But is this the situation for the vast majority of our "blue-collar" criminals who commit crimes of violence—or who steal without the refinements of embezzlement? Judges seem to agree that about 90 per cent of these people are indigent. To put it another way, these offenders come from that section of society whose conditions result in the largest crime rate and, if the study by Yale's Hollingshead and Redlich is correct, in mental illness too. It is here, also, that the bulk of the mentally retarded are found. The experts make the provocative suggestion that deprived socio-economic upbringing causes considerably more retardation than springs from organic or hereditary factors.

How many defendants from this sector of our society raise the insanity defense—and how many of them would raise it, or how much more adequately would it be raised, if the resources in the form of able defense attorneys and behavioral scientists were available? The problem of obtaining dedicated and capable defense attorneys, of course, extends beyond the particular defense we are discussing. That problem is tied up with the constitutional problem whether defense counsel must be provided every accused. It relates partly to the status of criminal lawyers in the Bar of this country. You do not need me to tell you that this is inadequate. Perhaps a glance at why it is so low will suggest lines for reform.

In the first place, I suspect that the criminal law is not given as central a position as it should have in law school curricula. And I have the uneasy feeling there is little serious effort to acquaint students with the role of the behavioral sciences in determining the issue of criminal responsibility. Certainly the law schools do not turn out droves of bright young men anxious to carve out a carrer in criminal law—at least, for the defense. Estates, corporate, tax, commercial law—all of these arouse far more interest.

Nor is this particularly surprising. It is not only that these are the fields which are likely to yield greater financial rewards;

[2] See **Forensic Psychiatry: Uses and Limitations — A Symposium,** 57 Nw. U. L Rev. 1 (1962).

I have the uneasy feeling that there is a tendency in the community and at the bar to disapprove of lawyers who undertake the defense of people charged with crime. If, however, the reason went no deeper than the uninformed prejudice which tars the defense attorney with the defendant's crime, we would not need to be unduly concerned. But if we are to be honest, we must recognize that other factors are involved. The practicing attorney too must live. If an impecunious accused and his family cannot compensate him, the lawyer may be forced to spend more time on the problems of the clients who can. I understand that the problem of compensation for legal services in defense of the criminally accused is under consideration by one of the great foundations. I can think of no better subject for its prayerful consideration.

Legal Aid and Defenders Have Inadequate Resources

Is the problem rendered less serious by the existence of public defender and legal aid systems? To the extent that these have adequate resources, they do alleviate the problem. But I am afraid that a comparison of numbers of lawyers and investigators for these organizations, with their counterparts in district and United States attorneys' offices, would dash any hopes that the complete answer lies here. Without these organizations, I suspect that the adversary system in criminal law would tend to break down altogether. With them, the more serious deficiencies are to some extent counteracted.

Is our practice of court appointment of private attorneys an adequate fillin? You know better than I about that. From my observation, the system seems on the whole to work pretty well at the appellate level. But it is a poor stop-gap to appoint a good lawyer to raise on appeal the errors of a young, inexperienced and hard-pressed defense trial lawyer. Nor is it to be expected that the Bar could fulfill, on a voluntary, unpaid basis, the need for a body of experienced criminal trial lawyers. Nobody blames the lawyer, who may well be a successful corporate practitioner, for a certain reluctance to make one of his rare court appearances as a defense trial attorney for a man charged with a serious felony. His reluctance is justified.

What is the solution? All I can do is to feel some encouragement as I look at certain pointers in the wind: that the Congress is considering a solution for the federal courts, and some states have adopted or are thinking of adopting one in their courts; that the foundation mentioned has become involved with it; that there are a few programs similar to that at Georgetown University where under the leadership of Dean Pye a handful of excellent law graduates come to take a further degree in criminal law: they spend a considerable part of their time as defense attorneys in court, at the trial and even the juvenile court level. The experiment at Georgetown seems to have worked admirably and is to be continued. Its real success, however, will depend on whether the young men who have completed the program are able to undertake in the next several years, the kind of work which they want and have proved to have an ability to do.

Defense Lawyer Must Have Aid from Psychiatrists

But expert legal help is only half a loaf. Assume that our indigent defendant has able counsel, anxious to raise the insanity issue at trial. How does he go about obtaining experts to examine the accused with a view to providing him with information and eventually to testifying at trial? Many of you know the problems far better than I do. I suppose that often the practice is to request the court to commit the accused to a public mental hospital for observation. Where there is a question of competency to stand trial, this may well be granted. But I believe that other serious problems are encountered where the more debatable issue is the accused's state of mind at the time of the offense. If this is the principal question, even the most knowledgeable and experienced defense counsel may face troublesome obstacles in the preparation of the defense. Judge Bazelon dealt with this practical difficulty in words which merit repetition here. He observed:

> The preparation of the psychiatric evidence which is required to prove an individual's mental condition at some past date is a very difficult task. It is a task for which the accused generally lacks both financial and intellectual capacity. The facts required by way of psychiatric testimony are a "description and explanation of the origin, development and manifestations of the alleged disease . . . how it occurred, developand affected the mental and emotional processes of the defendant . . ." Carter v. U.S., 252 F. 2d 608 (1957). The examinations conducted by the psychiatrists must be of a character they deem sufficient for the purpose of determining the facts required. If brief jail interviews with the defendant are inadequate for the purpose, the defendant should be committed to a mental hospital where he can be examined under clinical conditions and for a long enough time to satisfy the psychiatrists. If the psychiatrists require more information about the defendant's background and history than they can obtain from him, an investigation should be conducted to obtain such information. If there is reason to doubt the accuracy of information supplied by the defendant or his family or friends, the information should be checked by investigators. If physical tests can help to determine the existence or character of illness, such tests should be made.
>
> Indigent defendants of questionable mental capacity are obviously in no position to conduct these inquiries and whatever others may prove necessary. Their court-appointed attorneys are given no funds for the purpose. If the relevant facts are to be presented to the court, therefore, it must ordinarily be as a result of inquiries instituted by the Government. If, because the Government fails to sustain its proper burden, a case is left to be decided on less than the best possible psychiatric evidence, the inadequacy of the evidence is not a point in favor of the prosecution.

Shortage of Psychiatrists Creates Problems

Even if an adequate mental examination is available in a public mental hospital, what if counsel should consider that the examination is perfunctory and unhelpful? What if the experts choose to testify on behalf of the prosecution? Must counsel throw up his hands in despair? In many, many counties throughout our country there will simply be no one else on whom he can call for help. With fewer than 12,000 psychiatrists in the United States, there is quite simply a manpower shortage.

What of more populous centers, such as New York and California? Here there is no dearth of psychiatrists. But are they willing to testify? A few months ago, Judge Bazelon, speaking to the New York branch of the American Psychiatric Association, suggested that just as the legal profession recognizes a duty to defend indigents without charge, so might the psychiatric profession undertake an analogous obligation. When counsel for an indigent believes that the accused's state of mind at the time of the offense is seriously in question, he should be able to seek the services of a psychiatrist who would undertake an examination free of charge. If, having weighed the psychiatrist's report, counsel wishes to call him as an expert witness for the defense, he might again serve without charge.

The germ of this idea was seized upon with enthusiasm by the editor of the New York society's professional bulletin. He believed that many of the organization's younger members, at least, would welcome the opportunity to serve in this way. If a system could be worked out on a roster or panel basis, it would require only an occasional donation of time and effort by each psychiatrist. The New York experiment is still in preparation. But I believe that the idea behind it is most valuable—in a way it is just an extension of the Hippocratic oath.

(Continued next page)

STATING THE ISSUE IN APPELLATE BRIEFS

Mr. Cooper's Article is the result of considerable correspondence with appellate court judges. He wrote to them, asking what they considered to be the principal weaknesses in briefs submitted to their courts. Unanimously the judges agreed that the statement of issues was highly important, and nearly all of them reported that many of the statements of issues that they read were unsatisfactory. Mr. Cooper lays down six rules for a good statement of the issues and then discusses each rule in detail. The article is based upon a chapter in a forthcoming book, Writing in Law Practice to be published this year by Bobbs-Merill.

By FRANK E. COOPER*

JUSTICE FELIX FRANKFURTER, addressing The Association of the Bar of the City of New York a few years ago, described Chief Justice White as a lawyer who "was happily endowed with the gift of finding the answer to problems by merely stating them."[1]

This trenchant phrase describes the epitome of the art involved in drafting the "statement of the issue involved" on the flyleaf of an appellate brief. If it appears to the judge, upon reading the flyleaf, that the mere statement of the question makes the answer plain, then (happily assuming the answer is that for which the writer of the brief is contending) the brief-writer has accomplished the greater part of his task in a single paragraph. All that he need do in the rest of his brief is to fortify the conclusion that is implicit in the statement of the question.

It has often been said that the most important paragraph in a brief is the first one, in which appears counsel's formulation of the issues presented for decision. Much has been written of the vital role which this short statement has in influencing the ultimate decision in the case. It has been urged that many appellate cases might have been decided the other way had the losing party selected a different battleground, skillfully directing the court's attention to an issue which was overlooked in the acutal presentation of the case.

It is easy to find instances where a case that was lost below is won on appeal because counsel for appellant has argued his case on a different theory from that which was urged at the trial. But what of the cases where the appellate court is being asked to review the same issue which the court below considered? Of what importance is the "statement of issue" in these case?

To test the often-repeated assertion that judges attach great significance to the statement of issue involved, the author (following the advice of John W. Davis that if a fisherman really wants to know what bait is best, he should ask the fish) addressed inquiries to a number of appellate judges, asking them what they look for in a brief and what they consider the principal weaknesses in the briefs submitted to their courts. Many of the judges responded in considerable and specific detail.

They agreed unanimously that the statement of issues involved is highly important. Nearly all of the judges spoke with regret of the unsatisfactory quality of the statements of issues as presented in the briefs filed in their courts.

One of the judges wrote that the drafting of the statement of issues involved is the phase of appellate advocacy which calls for the greatest degree of skill — and he added that this part of the job is the one most frequently botched by counsel. Another complained that in more than half of the cases assigned

(Continued next page)

*Professor of Law, University of Michigan Law School

[1] Some Reflections on the Reading of Statutes (1947), page 8.

LAW . . . (Continued from page 163)

If psychiatrists really knew what happens to mentally ill people who get into trouble with the criminal law, I suspect that many of them could not help offering their services in a way which would make a significant difference to the operation of the insanity defense. In many parts of the country there may not be enough private psychiatrists to undertake this sort of work without—or even with—charge. But we shall never know just how serious the manpower problem is until we start making the best use of what is available. The seeds of the idea have already been sown in New York. What about the national level? What might come of an approach between the American Bar Association and the American Psychiatric Association, and perhaps the American Psychological Association—or between the Bar and these groups at the local level?

I do not know what the outcome would be, but I suspect it is worth trying. Once an increasing number of psychiatrists, and perhaps other behavioral scientists, such as clinical psychologists, become interested in adding the indigent accused, then other difficult problems—such as improving the quality and depth of their testimony—can be tackled. But that is another story.

Re-examining Administration of Criminal Justice

Plainly enough I have asked many questions and answered absolutely none. This is not just the natural reluctance of an appellate judge to comment upon problems which one day may get to him for decision. It is rather that we may be at the threshold of a major re-examination of the premises which underlie our system for the administration of criminal justice. If this is indeed so, I can only have added confirmation to a conclusion that there is much more to be done—in today's popular vernacular, more dialogue, more exploration, more trial and error. There are on and off the bench and among laymen closed minds to any re-examination of the long-standing basic fundamentals of criminal justice. But those minds may find that they must inevitably open. The march of events, the expanding scientific horizons promising greater knowledge of the reasons of human behavior, may prove irresistible.

President Kennedy pinpointed its complexity in his recent call for a national plan to combat mental retardation. His observations that "there are difficult issues involving not only our social responsibility for adequate care of the retarded, but the extent of the responsibility of the retarded individual himself, as, for example, when he gets into trouble with the law", and that "for a long time we chose to turn away from these problems", were preceded by this: "In addition to research the current problems are those of diagnosis, evaluation, care . . . a lack of public understanding and a dearth of private and public facilities."

STATING . . . (Continued from page 164)
to him, he has to read the whole of both briefs and then match one against the other in order to ascertain what the disputed question really is.

THE SIX TESTS

How is one to avoid the defects of which the judges complain — defects which are quite evident to any one who wishes to take the time and trouble to pick up a volume of any appellate court's "Records and Briefs" and glance through the "statements of issue involved" in the briefs on file? It is much easier, alas, to point out the defects in what someone else has written than to avoid like faults in one's own submissions. The art of stating the issue involved, like that of writing sonnets (and indeed there are intriguing relationships between those two literary disciplines), is one which the lawyer must teach himself.

But it may be suggested — with some degree of confidence, on the basis of the experience of legal writing workshop groups conducted during the last twelve years at the University of Michigan Law School — that progress can be made by checking what one has written against the following six tests:

1. The issue must be stated in terms of the facts of the case.
2. The statement must eliminate all unnecessary detail.
3. It must be readily comprehensible on first reading.
4. It must eschew self-evident propositions.
5. It must be so stated that the opponent has no choice but to accept it as an accurate statement of the question.
6. It should be subtly persuasive.

1. The Issue Must be Stated in Terms of the Facts of the Case. From the court's view point, the most important purpose of the statement of issues is to acquaint the court at the outset with the general outlines of the case. It should, as Ralph M. Carson once said, be so devised as to impart — on first reading — the "individual flavor" of the case. This is the first requisite.

The statement of issue may be likened to a lens through which the court views the facts and the law. Particular aspects of the facts, and particular principles of law having some relevance to the case, may loom large or fade into insignificance, depending upon the focus of the lens.

If demonstration were needed of the importance which the courts attach to the requirement that the issue be stated in terms of the facts, such demonstration could be afforded by examination of those cases where the court is divided. Frequently, in such cases, the majority opinion emphasizes one aspect of the facts, in its statement of the issue; and the minority opinion, emphasizing other aspects of the total factual complex, casts the issue in quite different form.

So important do appellate courts consider it to have the issue stated in terms of the facts of the case, that this requirement is frequently imposed by court rule. The Supreme Court of the United States, for example, provided (the quotation is from the 1954 rules) that the statement of the questions presented for review must be "expressed in the terms and circumstances of the case but without unnecessary detail". The requirement of the United States Court of Appeals for the Sixth Circuit is that the statement of each question involved must be "complete in itself, and intelligible without specific reference to the record".

How much appeal can be added to the statement of the issue by effective reference to significant facts may be illustrated by the statement filed in a case involving the question (stated abstractly) whether the drafting of legal documents by real estate salesmen involves the practice of law.

Counsel for the winning party no doubt made considerable headway with the court by its statement of the issue, which was:

> Have defendants practiced law . . . by reason of their having completed and filled out printed forms of offers to purchase real estate, warranty deeds, quit claim deeds, land contracts, land contract assignments, leases, and notices to terminate tenancy incidental to their handling and consummation of real-estate transactions in which defendants were acting as real-estate brokers, no separate charge having been made therefor?

2. The Statement Must Eliminate All Unnecessary Detail. In their anxiety to satisfy the court's desire that the issue be stated in terms of the facts of the case, many lawyers (report the appellate judges) outdo themselves, and as a result undertake to state too many of the facts when they state the question involved. (One particular aspect of this difficulty was highlighted by the penetrating suggestion of Justice Dethmers of the Michigan Supreme Court that lawyers too often clutter up the statement of issue with too much of what the brief-writer alleges to be the facts of the case.)

A statement which takes the form of a long meandering interrogatory, rambling all the way down the first page of the brief, usually accomplishes no more than to leave the impression that the case is so confusing that one will have to study the whole record to see what the issues are. Yet the records and briefs of every appellate court are infested with "statements of the issue" that occupy two-thirds or more of a printed page. There appears to be a persistent tendency to try to state the whole case in the statement of the issues, and this has caused appellate judges considerable distress.

The Wisconsin Supreme Court has taken a rather drastic step to correct the practice. Its rules specifically provide that the statement of issue shall be made "briefly, without detail or discussion, without names, dates, amounts, or particulars of any kind". The rule contains the further admonition that the statement in its entirety should not ordinarily exceed twenty lines.

One must, in short, eliminate all unnecessary detail. The essence of the case must be reduced to capsular form if the statement is to serve its purpose. A capsule, if it is to be swallowed easily, must be small.

3. The Statement Must Be Readily Comprehensible on First Reading. Surely it needs no argument to establish the proposition that the statement of issues involved cannot effectively accomplish its purposes unless it is readily comprehensible. Further, its meaning should be clear on first reading: if the judge's only reaction, after reading the statement, is one of bewilderment, there is always the danger that instead of going back and trying to puzzle out the meaning, he will turn to your opponent's statement of the issue — and your opponent will likely not state the question exactly as you would have wished.

One's own statements of the issue involved are always perfectly lucid — to their author. But when someone else is asked to read them, it is almost unfailingly distressing to note that phrases which are perfectly clear to you, in view of your complete knowledge of all the facts of the case, are meaningless to the uninitiated reader. The acid test was suggested by the late Judge Herbert F. Goodrich, who urged the brief-writer to read the statement of issues to his wife — if he has one, and if she will listen. If the statement has been well written she will understand it; for, as Judge Goodrich said, "There is no reason why legal propositions cannot be so stated that they can be understood by any intelligent listener."

Judge Prettyman summed it all up by suggesting "the lawyer's greatest weapon is clarity, and its whetstone is succinctness". Or, as Judge Goodrich expressed the thought: "The more clearly the point is made, and the more distinctly it stands out, the more easily the judge will understand it and, it may be hoped, in understanding it, appreciate its significance.[2]

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[2] Herbert F. Goodrich, **A Case on Appeal — A Judge"s View;** Appeals (American Law Institute, 1952), page 6.

How Many Issues Should Be Raised?

One aspect of the problem of achieving clarity — and thereby forcefulness — in the statement of the issues involved, is the necessity of determining how many issues should be raised when one is writing the brief for appellant.

It is a brave lawyer who is willing to submit his case on a single issue, waiving what appear to appellant to be numerous other flagrant errors. The appellate judges tell us, however, that they appreciate such bravery. Judge Goodrich suggested that a case with two or three points well presented is better than a brief covering a number of points. Justice Dethmers also mentioned that in many cases two or three issues are adequate. Justice Rossman urges the brief writer to limit himself to one or two points. But if (as many lawyers conclude in their more difficult cases) one feels that he must state at least four or five, or perhaps a half dozen issues (a number, incidentally, which practicing attorneys have often suggested as the maximum) the next question becomes: in what order should they be stated?

Put the strongest point first, the judges tell us, and hit it as hard as it can be hit. Strike for the jugular vein. To quote again from Judge Goodrich: "There should not be too many many points on appeal. A case with two or three points clearly stated and vigorously argued is much better than one filled with a dozen bases of complaint. If a court goes through a half dozen points which it regards too small to be material, it is likely to become a little impatient concerning the possibilities of the rest."[3]

4. The Statement of Issue Must Eschew Self-Evident Propositions. Understandably, appellate judges view with considerable cynicism, if not outright distrust, assertions that the question involved, is one to which there could be but one possible answer. Where the brief undertakes to suggest that, beyond any shadow of doubt, the question is so exceedingly simple that there is really no room for argument, the apellate judge is apt to turn his attention from your brief to your opponent's to discover whether he has found any more difficult question.

If opposing counsel's counter-statement of the issue involved makes it clear that the actual question before the court is far more complicated than would be suggested by the self-evident proposition first suggested, the attorney who sought to suggest that the question was really no question at all may have lost the confidence of the court at the outset.

Perusal of the "Records and Briefs" volumes in a law library unearths many examples of cases wherein the statement of issue in the opinion of the court makes it clear that the court concluded the question involved was much more complicated than counsel was willing to admit. Surely, the appellate judges who read the "statements of issue" set forth below must have felt — and possibly with an appropriate degree of irritation — that by the time they completed their study of the record, they would discover the case was much more difficult than was suggested by assertions, in the briefs, that the questions involved were:

1. Where, as a condition precedent to recovery, the assured is required to notify the insurer of any fraudulent or dishonest act on the part of an employee, not later than fifteen days after discovery of such, is the assured entitled to recovery when his own proof established that this condition was not complied with?

2. Whether the Commissioner of Internal Revenue was entitled under the Internal Revenue Code to charge this taxpayer for interests on amounts of money which were not part of the tax imposed on the taxpayer?

3. Can a State Court assume jurisdiction in a labor dispute in an industry affecting interstate commerce where such assumption of jurisdiction is in conflict with and intrudes upon the National Labor Relations Act and statutory scheme?

In one case a city elections official proposed to state the question to appear on a ballot in a municipal election by asking: "Are you in favor of creating more interest in the city library?" But the governor of the state (upon ascertaining that the substance of the proposal to be submitted to the electorate involved increasing the library commission from three to nine members, entailing certain additional expenditures) ruled that the question could not be submitted in the form proposed. Doubtless, appellate judges from time to time see equally atrocious examples.

A variant method of violating this caveat is to state the question in such a way that it appears to suggest a proposition which is obviously not the law — as when counsel advised the court that the issue was:

> Whether, as a result of this court's decisions in the baseball cases, the doctrine of **stare decisis** requires a holding that the theatrical business is excluded from the scope of the anti-trust laws?

5. The Statement Must Be So Drafted that the Opposite Party Will Accept It as Accurate. If appellant's statement of the issue fairly and accurately presents an issue which he is entitled to have the court consider, he has attained an initial and important objective — that of being able to fight the appellate battle on a terrain which is favorable to him. But if opposing counsel can point out to the court that appellant's statement of the "question involved" is unfair, or that it overlooks a significant circumstance which might be controlling of the decision, this initial advantage is lost. What is worse, appellant is at a disadvantage, for the court has been compelled to suspect his candor and fairness.

How high one can be hoist with his own petard, if his statement of the issue is inaccurate, can be illustrated by a case in the United States Supreme Court on review of a state court decree enjoining a union from picketing plaintiff's place of business for the purpose of inducing plaintiff to require his employees to join defendant union. As the case was initially presented to the Supreme Court, counsel for the union said that four questions were involved: (1) May a state bar peaceful picketing merely because the picketing is carried out by workmen not employed by the picketed employer? (2) May a state declare peaceful picketing coercive merely because of the absence of a direct employer-employee relationship? (3) May a state court make "insubstantial findings of fact screening reality" and use these findings to declare conduct unlawful which otherwise would be lawful and protected by the Federal Constitution? (4) May a state outlaw peaceful picketing because it "has the potentiality of inducing action in the interests" of the union rather than the employer?

This statement of the issues not only violated the fourth commandment, **supra** (eschew self-evident propositions); it was clearly inaccurate as well. Counsel for employer was quick to say that the issue actually was whether appellant union was deprived of its constitutionality guaranteed rights by the decree of the state court which enjoined peaceful picketing, if its purpose was to compel an employer to coerce his employees into joining a union. This statement of the case was ultimately ac-

(Continued on page 168)

[3] Herbert F. Goodrich, **A Case on Appeal — A Judge's View;** Appeals (American Law Institute, 1952), page 6.

ESCHEAT OF ALIEN PROPERTIES

by
GREGORIO BILOG, JR.
Assistant Commissioner of Land Registration

*"Lands and natural resources are immovables and as such can be compared to the vital organs of a person's body, the lack of possession of which may cause instant death or the shortening of life * * * If we do not completely nationalize these two of our most important belongings, I am afraid that the time will come when we shall be sorry for the time we were born." — Delegate Montilla.*

With the tide of nationalism now inflaming and sweeping Africa, the same way it did Asian countries the years immediately following the end of World War II, which saw the birth, among others, of the Republic of the Philippines, it behooves us to refocus our attention to the chronic problem posed by the uncertain status of lands acquired by aliens in violation of the Constitution.

The Need for a Positive Legislation.

As early as November 15, 1947, the Supreme Court has declared that, under the Constitution, aliens cannot acquire lands in the Philippines, except in cases of hereditary succession. (Krivenko vs. The Register of Deeds of Manila, 79 Phil. 461, promulgated November 15, 1947).

Since the fateful declaration, the need for an implementing law that would give teeth to the constitutional mandate has been felt. For, indeed, there is a pressing need for the state to adopt a definite policy to settle once and for all the uncertain status of lands illegally acquired by aliens, and to put a brake on the further mockery of the Constitution by aliens enjoying with impunity and trafficking illegally with the patrimony of the Filipino nation. Unfortunately, nothing concrete has so far been done in this regard!

That the Filipinos are deprived of the enjoyment of these properties reserved for them by the fundamental law of the land is bad enough; but what is worse is that the uncertain status of alien landholdings, particularly of valuable residential and commercial lands, threatens the stability of real estate ownership, impedes economic activity and undermines the time-honored principle of the indefeasibility of Torrens titles.

To the general public, one effect of the Krivenko ruling is to taint with a certain degree of illegality or uncertainty all certificates of title thereafter issued in favor of aliens, which, therefore, impairs negotiability. Unless this uncertainty is cleared up, people would be reluctant to accept these titles on their face value.

The filing of House Bill No. 1047 by former Rep. Jose J. Roy (now Senator), Senate Bill No. 103 by Senator Lorenzo Tañada, Senate Bill No. 51 by Senator Sumulong, and House Bill No. 384 by Rep. Jacobo Z. Gonzales in Congress providing for the disposition of alien landholdings acquired in violation of the Constitution, was precisely intended to define the policy of the state on the matter. It is unfortunate that said bills were not passed during the last session of Congress.

Determining Validity of Alien Acquisitions.

An examination of the Constitutional provisions and jurisprudence in the Philippines regarding alien disqualification reveals the following:

In general, aliens cannot acquire residential, commercial, industrial or other disposable agricultural lands in the Philippines (Section 1, Article XIII, Constitution of the Philippines; Krivenko vs. Register of Deeds of Manila, 79 Phil. 461). To this rule may be mentioned several exceptions, to wit:

1. Alien acquisitions of lands before the adoption of the Philippine Constitution on November 15, 1935, which are considered vested rights (Phil. National Bank v. Ah Sing, 69 Phil. 611).

2. Alien acquisitions by virtue of hereditary succession in accordance with section 5 of Article XIII of the Constition.

3. Alien acquisitions during the Japanese Occupation but which must have been acquired within the period January 1, 1942 to September 8, 1948.

When the Japanese forces occupied the Phillippines, all laws political in nature, including the Constitution of the Philippines, were suspended; hence the disqualification of aliens to acquire lands in the Philippines contained in the Constitution was suspended when the Japanese forces occupied the Philippines beginning January 1, 1942. However, it will be recalled that on September 4, 1943, the puppet Philippine Republic was inaugurated and a Constitution containing a provision similar to the former Constitution of the Philippines disqualifying aliens from acquiring lands in the Philippines was adopted. (Trinidad Gonzaga de Cabauatan v. Uy Hoo, G.R. No. L-2207, Jan., 1951).

4. Americans, by virtue of the Parity Amendment to the Constitution of the Philippines are also allowed to acquire lands in the Philippines;

5. Acquisitions by disqualified aliens who have become Filipino citzens by naturalization. (Vasquez vs. Li Seng Giap, et al., 51 O.G. No. 2 p. 717 Feb. 1955)

Remedies and Suggestions.

The question frequently asked is whether or not the vendor may maintain an action to recover the property from the alien in case the sale is in violation of the Constitution. In a long line of decisions, the Supreme Court held that even if the sale made to an alien is in violation of the Constitutional prohibition and is therefore null and void, it does not necessarily follow that the vendor who has also violated the Constitutional prohibition has the right to recover the property. In such contingency another principle of law sets in to bar the equally guilty vendor from recovering the title which he had voluntarily conveyed for a consideration, that of in **pari delicto**. As was aptly stated by the Supreme Court: "A party to an illegal contract cannot come into a court of law and ask to have his illegal objects carried out. The law will not aid either party to an illegal agreement; it leaves the parties where it finds them." (Dinglasan, et al. c. Lee Bun Ting, et al., 52 O.G. 7 July 16, 1956). Thus, let alone, and apparently with legal sanction, the alien continues in the full enjoyment of his illegally acquired property.

There are two ways whereby our government could implement the Krivenko doctrine and thereby put into force the mandate of our Constitution regarding the conservation of lands

ESCHEAT OF ALIEN . . . (Continued from page 167)
for the citizens, to wit: (1) action for reversion and (2) escheat to the State.

An action for reversion is slightly different from escheat proceedings, but in effect they are the same. They only differ in procedure. Escheat proceedings may be resorted to in the case of violations of Article XIII section 5, of the Constitution which prohibits transfers of private agricultural lands to aliens; whereas an action for reversion is expressly authorized by sections 122, 123 and 124, otherwise known as the Public Land Act. By following either of these remedies, the fundamental policy of the Constitution may be enforced without doing violence to the principles of **pari delicto**. (Relloza vs. Gaw Chee Hun, G.R. No. L-1411, September 29, 1953)

But it will be noted that there is no law in the Philippines providing for the escheat of illegally acquired alien landholdings. And the Supreme Court has held that in the absence of a law or policy on sales of lands in violation of the Constitution, the void could not be filled by said court because the matter falls beyond the scope of its authority and properly belongs to a coordinate power — Congress. (Dinglasan, et al. vs. Lee Bun Tin, et al., **supra**).

Consequently, courts of justice cannot go beyond declaring the acquisitions to be null and void. (Soriano vs. Ong Hoo, et al., 54 O.G. 35, p. 8066, December 8, 1958). The courts are not empowered to escheat these acquisitions without a law that will express the policy of a state called upon to vindicate its territorial integrity.

In the formulation of a law on the matter, the following suggestions are submitted:

Disqualified aliens who acquired before the Krivenko ruling was promulgated on November 15, 1947, may be deemed to have acquired in good faith. The reason is that before the Krivenko ruling, the government authorities, including the Department of Justice itself, were of the opinion that the disqualification of aliens referred only to "public agricultural lands" in the Philippines.

Also, it was only after twelve (12) years from the time the Constitution was adopted when the Supreme Court had the opportunity to declare that aliens are barred from acquiring lands in the Philippines except by hereditary succession.

So that during all this period of twelve years aliens had been acquiring "private agricultural lands" throughout the country for residential, industrial, commercial or other purposes.

These aliens may, therefore, be given a reasonable time within which to dispose of their illegally acquired landholdings; and in case of their failure to do so, the same may be sold at public auction or escheated to the state.

On the other hand, acquisitions (other than by hereditary succession) made by disqualified aliens after the promulgation of the Krivenko ruling on November 15, 1947, may be deemed to have been made in bad faith. In such cases, the law may require escheat of the properties involved.

However, in the cases where escheat is proper, judicial proceedings are necessary to establish title in the state. The elements of due process of law are to be observed in the escheat proceedings.

Finally, in the formulation of a law on the matter, it is well to consider the position and the commitments of the Philippines in the United Nations Organization.

Let us hope there will be no further delay in the enactment of such a law, so that we shall not be "sorry for the time we were born."

STATING . . . (Continued from page 166)
cepted (in effect) by counsel for the union, who finally conceded that the issue was "whether picketing in an effort to persuade an employer to unionize his employees is unlawful", thus being forced to the craven admission that the case did not really involve any of the four issues which he first insisted were presented.

Occasionally, judicial opinions reflect the judges' reaction to counsel's statement of the issues. For example, in Mazer v. Stein, 347 U.S. 201, 74 S. Ct. 460 (1954), counsel for one of the parties had advised the Court that the issue was "Can a lamp manufacturer copyright his lamp bases?" This statement of the question, the Court observed, contained "a quirk that unjustifiably broadens the controversy".

Diligent search of the opinions discloses a surprising number of cases in which appellate judges have commented in their opinions on the quality of the statement of issues which counsel had set forth in their briefs. Their off-the-record comments bespeaking a lack of confidence in counsel whose statements of the issue are inaccurate, would doubtless be even more impressive than the more restrained comments found in published opinions.

One of the most precious gems which my search has disclosed was written by trial counsel for a large utility company who, in the heat of anger, declared in the initial draft of his appellate brief that the sole issue was "Did the Lower Court err in declining to follow and apply the rule established by the Supreme Court decisions?" Fortunately, the restraining influence of his co-counsel resulted in drastic revisions of this gem, before it was printed and submitted to the court.

6. The Statement Should Be Subtly Persuasive. It has been suggested that the brief-writer should strive to state the issue involved in such a way that the mere statement of the question (while avoiding the error of pretending that the issue involved is no more than an obvious, self-evident proposition) subtly suggests the desired answer. Many eminent counsel have asserted that this is the summit of successful statement of the issue — that in the perfect brief, which someone will write some day, the mere statement of the issue will win the appeal.

But from the judges comes a word of warning. If the judges perceive an attempt to inject argument, they are beset with doubts that perhaps the question has been twisted out of shape. They are likely to turn to the brief of the opposite party to see if he agrees that the question has been stated accurately. If the opponent has pointed out any inaccuracy or slanting in one's statement, the effect may be devastating. The counsel whose statement is challenged may have lost the confidence of the court with his very first sentence.

One should, indeed, as Judge Rossman has said, attempt to phrase the issue "in appealing form" — for the reason, as the Judge put it, "many times an issue well phrased inclines the mind to its acceptance". But one must be careful not to submit a question which is perceptibly warped or slanted or pointed or twisted, or one whose accuracy can be challenged by the opponent, or one which suggests that the only issue really involved is a clearly self-evident proposition.

The statement must be scrupulously accurate and fair; it should appear to be an impartial (but not disinterested) presentation of the question. It may, withal, effectively be cast in language that is insidiously persuasive, subtly persuading without seeming to do so.

UNITED STATES SUPREME COURT

Advance Opinion

JULIUS SILVERMAN et al., Petitioners,
v.
UNITED STATES
— US —, 5 L ed 2d 734, 81 S Ct — (No. 66)
Argued December 5, 1960, Decided March 6, 1961.

At defendants' trial in the United States District Court for the District of Columbia, on charges of violating the provisions of the District of Columbia Code relating to gambling, police officers were permitted to describe incriminating conversations engaged in by the defendants at their alleged gambling establishment, which were overheard by police officers in adjoining premises by means of a "spike mike," an electronic listening device consisting of a foot-long spike attached to a microphone, together with an amplifier, a power pack, and earphones. The officers inserted the spike into the party wall separating their observation post from the suspect premises until it contacted a heating duct serving the alleged gambling establishment, thus converting the entire heating system into a conductor of sound. The defendants' motion to suppress the evidence was denied. (166 F Supp 838) The defendants were found guilty in the District Court and their convictions were affirmed by the Court of Appeals for the District of Columbia Circuit (107 App DC 144, 275 F2d 173).

On certiorari, the Supreme Court reversed. In an opinion by STEWART, J., expressing the views of eight members of the court, it was held that the use of the "spike mike" did not constitute a violation of Sec. 605 of the Communications Act of 1934 (47 USC Sec. 605) but that its use without a warrant violated the Fourth Amendment.

DOUGLAS J., concurred on the ground that eavesdropping may constitute a violation of the Fourth Amendment even if accomplished without physical penetration of private premises by the use of a device such as a "spike mike."

Communications Sec. 9—interception of communication—use of "spike mike". 1. The use by police officers of a "spike mike," an electronic listening device consisting of a microphone attached to a foot-long spike, with an amplifier, a power pack, and earphones, by inserting the spike through a wall separating the police observation post from premises suspected of being used for gambling purposes, until the spike contacts a heating duct serving the suspect premises, so that conversations throughout the premises are audible to the officers through earphones, is not a violation of Sec. 605 of the Communications Act of 1934 (47 USC Sec. 605), which provides that no person not authorized by the sender shall "intercept" any communication and divulge the contents, although much of what the officers hear consists of the voices of persons in the premises as they talk on the telephone.

Search and Seizure Sec. 23 — eavesdropping — use of "spike mike". 2. Eavesdropping without warrant by means of a "spike mike", an electronic listening device consisting of a microphone attached to a foot-long spike, with an amplifier, a power pack, and earphones, by inserting the spike through a wall separating a police observation post from premises suspected of being used for gambling purposes, until the spike contacts a heating duct serving the suspect premises, so that conversations throughout the premises are audible to police officers through earphones, is a violation of the rights secured by the Fourth Amendment, the eavesdropping being accomplished by means of an unauthorized physical penetration into private premises.

Search and Seizure Sec. 23 — eavesdropping — local law. 3. Eavesdropping without warrant, accomplished by means of an unauthorized physical penetration into private premises, is a violation of the Fourth Amendment whether or not the invasion is a technical trespass under real property law relating to party walls.

Search and Seizure Sec. 5 — measure of rights. 4. Inherent Fourth Amendment rights are not inevitably measured in terms of ancient niceties of tort or real property law.

Search and Seizure Sec. 4 — basis of immunity. 5. At the very core of the Fourth Amendment is the right of man to retreat into his own home and there be free from unreasonable governmental intrusion.

Search and Seizure Sec. 23 — eavesdropping. 6. A federal officer may not without warrant and without consent physically entrench into a man's office or home, there secretly observe or listen, and relate at the man's subsequent criminal trial what was seen or heard.

APPEARANCES OF COUNSEL

EDWARD BENNETT WILLIAMS argued the case of petitioners.

JOHN F. DAVIS argued the cause for respondent.

OPINION OF THE COURT

Mr. Justice Stewart delivered the opinion of the Court.

The petitioners were tried and found guilty in the District Court for the District of Columbia upon three counts of an indictment charging gambling offenses under the District of Columbia Code. At the trial police officers were permitted to describe incriminating conversations engaged in by the petitioners at their alleged gambling establishment, conversations which the officers had overheard by means of an electronic listening device. The convictions were affirmed by the Court of Appeals, 107 App DC 144, 275 F2d 173, and we granted certiorari to consider the contention that the officers' testimony as to what they had heard through the electronic instrument should not have been admitted into evidence. 363 US 801, L ed 2d 1145, 80 S Ct 1237.

The record shows that in the spring of 1958 the District of Columbia police had reason to suspect that the premises at 408 21st Street, N.W., in Washington, were being used as the headquarters of a gambling operation. They gained permission from the owner of the vacant adjoining row house to use it as an observation post. From this vantage point for a period of at least three consecutive days in April 1958, the officers employed a so called "spike mike" to listen to what was going on within the four walls of the house next door.

The instrument in question was a microphone with a spike about a foot long attached to it, together with an amplifier, a power pack, and earphones. The officers inserted the spike under a baseboard in a second floor room of a vacant house and into a crevice extending several inches into the party wall, until the spike hit something solid "that acted as a very good sounding board." The record clearly indicates that the spike made contact with a heating duct serving the house occupied by the petitioners, thus converting their entire heating system into a conductor of sound. Conversations taking place on both floors of the house were audible to the officers through the

earphones, and their testimony regarding these conversations, admitted at the trial over timely objection, played a substantial part in the petitioner's convictions.

Affirming the convictions, the Court of Appeals held that the trial court had not erred in admitting the officers' testimony. The court was of the view that the officers' use of the spike mike had violated neither the Communications Act of 1934, 47 USC Sec. 605, cf. Nardone v. United States, 302 US 379, 82 L. ed 314, 58 S Ct 275, nor the petitioners' rights under the Fourth Amendment, cf. Weeks v. United States, 232 US 383, 58 L ed 652, 34 S Ct 341, LRA1915B 834, Ann Cas 1915C 1177.

In reaching these conclusions the court relied primarily upon our decisions in Goldman v United States, 316 US 129, 86 L ed 1322, 62 S Ct 993, and On Lee v United States, 343 US 747, 96 L ed 1270, 72 S Ct 967. Judge Washington dissented believing that, even if the petitioners' Fourth Amendment rights had not been abridged, the officers' conduct had transgressed the standards of due process guaranteed by the Fifth Amendment. Cf. Irvine v. California, 347 US 128, 98 L ed 561, 74 S Ct 381.

As to the inapplicability of Sec. 605 of the Communications Act of 1934, we agree with the Court of Appeals. That section provides that " . . . no person not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person; . . ." While it is true that much of what the officers heard consisted of the petitioners' share of telephone conversations, we cannot say that the officers intercepted these conversations within the meaning of the statute.

Similar contentions have been rejected here at least twice before. In Irvine v California, 347 US 128, 131, 98 L ed 561, 568, 74 S Ct 381, the Court said: "Here the apparatus of the officers was not in any way connected with the telephone facilities, there was no interferences with the communications system, there was no interception of any message. All that was heard through the microphone was what the eavesdropper, hidden in the hall, the bedroom, or the closet, might have heard. We do not suppose it is illegal to testify to what another person is heard to say merely because he is saying it into a telephone." In Goldman v United States, 316 US 129, 134, 86 L ed 1322, 1327, 62 S Ct 993 it was said that "The listening in the next room to the words of (the petitioner) as he talked into the telephone receiver was no more the interception of a wire communication, within the meaning of the Act, than would have been the overhearing of the coversation by one sitting in the same room."

In presenting here the petitioner's Fourth Amendment claim, counsel has painted with a broad brush. We are asked to reconsider our decisions in Goldman v United States (US) supra, and On Lee v United States, 343 US 747, 96 L ed 1270, 72 S Ct 967, supra. We are told that re-examination of the rationale of those cases, and of Olmstead v. United States 277 US 438, 72 L ed 944, 48 S Ct 564, 66 ALR 376, from which they stemmed, is now essential in the light of recent and projected developments in the science of electronics. We are favoured with a description of "a device known as the parabolic microphone which can pick up a conversation three hundred yards away." We are told of a "still experimental technique whereby a room is flooded with a certain type of sonic wave," which, when perfected, "will make it possible to overhear everything said in a room without entering it or even going near it." We are informed of an instrument "which can pick up a conversation through an open office window on the opposite side of a busy street."

The facts of the present case, however, do not require us to consider the large questions which have been argued. We need not here contemplate the Fourth Amendment implications of these and other frightening paraphernalia which the vaunted marvels of an electronic age may visit upon human society. Nor do the circumstances here make necessary a re-examination of the Court's previous decisions in this area. For a fair reading of the record in this case shows that the eavesdropping was accomplished by means of an unauthorized physical penetration into the premises occupied by the petitioners. As Judge Washington pointed out without contradiction in the Court of Appeals: "Every inference, and what little direct evidence there was, pointed to the fact that the spike made contact with the hearing duct, as the police admittedly hoped it would. Once the spike touched the heating duct, the duct became in effect a giant microphone, running through the entire house occupied by appellants." 275 F2d, at 179.

Eavesdropping accomplished by means of such a physical intrusion is beyond the pale of even those decisions in which a closely divided Court has held that eavesdropping accomplished by other electronic means did not amount to an invasion of Fourth Amendment Rights. In Goldman v. United States, 316 US 129, 86 L ed 1322, 62 S Ct 993, supra, the Court held that placing a detectaphone against an office wall in order to listen to conversations taking place in the office next door did not violate the Amendment. In On Lee v United States 343 US 747, 96 L ed 1270, S Ct 967, supra, a federal agent, who was acquainted with the petitioner, entered the petitioner's laundry and engaged him in an incriminating conversation. The agent had a microphone concealed upon his person. Another agent, stationed outside with a radio receiving set, was tuned in on the conversation, and at the petitioner's subsequent trial related what he had heard. These circumstances were held not to constitute a violation of the petitioner's Fourth Amendment rights.

But in both Goldman and On Lee the Court took pains explicitly to point out that the eavesdropping had not been accomplished by means of an unauthorized physical encroachment within a constitutionally protected area. In Goldman there had in fact been a prior physical entry into the petitioner's office for the purpose of installing a different listening apparatus, which had turned out to be ineffective. The Court emphasized that this earlier physical trespass had been of no relevant assistance in the later use of the detectaphone in the adjoining office. 316 US, at 134, 135. And in On Lee, as the Court said, " . . . no trespass was committed." The agent went into petitioner's place of business "with the consent, if not by the implied invitation, of the petitioner." 343 US, at 751, 752.

The absence of a physical invasion of the petitioner's premises was also a vital factor in the Court's decision in Olmstead v. United States, 227 US 438, 72 L ed 944, 48 S Ct 564, 66 ALR 376. In holding that the wiretapping there did not violate the Fourth Amendment, the Court noted that "the insertions were made without trespass upon any property of the defendants. They were made in the basement of the large office building. The taps from house lines were made in the streets near the houses." 277 US, at 457. "There was no entry of the houses or offices of the defendants." 277 US, at 464. Relying upon these circumstances, the Court reasoned that "the intervening wires are not part of [the defendant's] house or office any more than are the highways along which they are stretched." 277 US, at 465.

Here, by contrast, the officers overheard the petitioners' conversations only by usurping part of the petitioners' house or office—a heating system which was an integral part of the premises occupied by the petitioners, a usurpation that was effected without their knowledge and without their consent. In these circumstances we need not pause to consider whether or not there was a technical trespass under the local property law relating to party walls. Inherent Fourth Amendments rights are not inevitably measurable in terms of ancient niceties of tort or real property law. See Jones v United States, 362 US 257, 266, 4 L ed 2d 697, 705, 80 S Ct 725, 78 ALR2d —; On Lee v. United States, supra (33 US at 752); Hester v. United States, 265 U.S. 57,

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I

Genaro Visarra, Petitioner vs. Cesar Miraflor, Respondent, G.R. No. L-20508, May 16, 1963, Bengzon, C.J.

1. CONSTITUTIONAL LAW; COMMISSION ON ELECTIONS; COMMISSIONERS, TENURE OF OFFICE.—In establishing the Commission on Elections, the Constitution provided that the Commissioners shall hold office for nine years and may not be reappointed. However, it also provided that of those first appointed, "one shall hold office for nine years, another for six years and the third for three years."
2. ID.; ID.; CHANGES OF MEMBERSHIP OF THE COMMISSION.—Since 1941, changes occurred in the membership of the Commission. And in March 1955, in a similar dispute [Republic vs. Imperial, 51 O.G. 1886] we had occasion to discuss the terms of office and the tenure of said officers. We held that the term of the first chairman (Jose Lopez Vito, 9 years) began on June 21, 1941, and ended on ed June 20, 1950; that the term of the second member (Francisco Enage, 6 years) began on June 21. 1941, and ended June 20, 1947; and that of the third member (3 years — left vacant) began on June 21, 1941 to terminate June 20, 1944. Proceeding further, we held that when in 1945 Vicente de Vera was appointed member, he must have been placed in the only vacant position at that time, namely, the position whose term expired in June 1944 (third member — and that he must be deemed to have been appointed to a nine-year term (expiring June 1953), which is the term given by law to all commissioners(c) appointed after June 20, 1944. Then upon the first vacancy by expiration of the initial 6-year term (second member) and the cessation of Commissioner Enage in November 1949, Rodrigo Perez was appointed (December 1949) to the nine-year term expiring in June 1956. Afterwards, in May 1947, chairman Jose Lopez Vito died before the expiration of his full term. To succeed him as chairman, Commissioner de Vera was appointed — which appointment, we held, could only be for the unexpired period of Lopez Vito's original term, i.e., up to June 20, 1950. To fill the vacancy of third member arising upon Vera's assumption of the chairmanship, Leopoldo Rovira was appointed member on May 22, 1947, and his tenure of office could not legally extend beyond that of former Commissioner Vera, June 20, 1953. Upon expiration of Chairman Vera's term on June 20, 1950, Domingo Imperial assumed the office with a term due to expire on June 20, 1959.
3. ID.; ID.; ID.; APPOINTMENT OF DR. GAUDENCIO GARCIA AS CHAIRMAN OF THE COMMISSION; TERM OF OFFICE EXPIRED ON JUNE 20, 1960.—In May 1955, the President appointed Gaudencio Garcia a member for a term expiring June 20, 1962 to succeed Leopoldo Rovira, who died in office in September 1954 (Rovira was holding over as **de facto**, the term of his office having expired June, 1953); in December 1956, Sixto Brillantes was appointed member to succeed Rodrigo Perez; and in May 1958, Jose P. Carag was appointed to succeed Domingo Imperial (resigned) as chairman; Carag's terms and tenure ended in June 1959; and on May 12, 1960, the President appointed Garcia as Chairman

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68 L ed 898, 44 S Ct 445; United States v Jeffers, 342 US 48, 51, 96 L ed 59, 64, 72 S Ct 93; McDonald v United States, 335 US 451, 454, 93 L ed 153, 157, 69 S Ct 191.

The Fourth Amendment, and the personal rights which it secures, have a long history. At the very core stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion. Entick Carrington, 19 Howell's State Trials 1029, 1066; Boyd v United States, 116 US 616, 626-630, 29 L ed 746, 749-751, 6 S Ct 524. This Court has never held that a federal officer may without warrant and without consent physically entrench into a man's office or home, there secretly observe or listen, and relate at the man's subsequent criminal trial what was seen or heard.

A distinction between the detectaphone employed in Goldman and the spike mike utilized here seemed to the Court of Appeals too fine a one to draw. The court was "unwilling to believe that the respective rights are to be measured in fractions of inches." But decision here does not turn upon the technicality of a trespass upon a party wall as a matter of local law. It is based upon the reality of an actual intrusion into a contitutionally protected area. What the Court said long ago bears repeating now: "It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure." Boyd v United States, 116 US 616, 635, 29 L ed 746, 752 6 S Ct 524. We find no occasion to re-examine Goldman here but we decline to go beyond it, by even a fraction of an inch.

Reversed.

SEPARATE OPINIONS

Mr. Justice **Douglas**, concurring.

My trouble with **stare decisis** in this field is that it leads us to a matching of cases on irrelevant facts. An electronic device on the outside wall of a house is a permissible invasion of privacy according to Goldman v United States, 316 US 129, 86 L ed 1322, 62 S Ct 993, while an electronic device that penetrates the wall, as here is not. Yet the invasion of privacy is as great in one case as in the other. The concept of "an unauthorized physical penetration into the premises," on which the present decision rests, seems to me to be beside the point. Was not the wrong in both cases done when the intimacies of the home were tapped, recorded, or revealed? The depth of the penetration of the electronic device — even the degree of its remoteness from the inside of the house—is not measure of the injury. There is in each such case a search that should be made, if at all, only on a warrant issued by a magistrate. I stated my views in On Lee v United States, 343 US 747, 96 L ed 1270, 72 S Ct 967, and adhere to them. Our concern should not be with the trivialities of the local law of trespass, as the opinion of the Court indicates. But neither should the command of the Fourth Amendment be limited by nice distinctions turning on the kind of electronic equipment employed. Rather our sole concern should be with whether the privacy of the home was invaded. Since it was invaded here, and since no search warrant was obtained as required by the Fourth Amendment and Rule 41 of the Federal Rules of Criminal Procedure, I agree with the Court that the the judgment of conviction must be set aside.

Mr. Justice **Clark** and Mr. Justice **Whittaker**, concurring.

In view of the determination by the majority that the unauthorized physical penetration into petitioners' premises constituted sufficient trespass to remove this case from the coverage of earlier decisions, we feel obliged to join in the Court's opinion.

to hold office up to June 1962, and the latter assumed the chairmanship accordingly.

4. ID.; ID.; ID.; APPOINTMENT OF GENARO VISARRA AS MEMBER OF THE COMMISSION; TERM OF OFFICE EXPIRED IN JUNE, 1962; CESAR MIRAFLOR APPOINTED TO SUCCEED VISARRA.—On May 12, 1960, Genaro Visarra, was also appointed member of the Commission. Then in August 1962, Juan V. Borra was named chairman to succeed Garcia, whose tenure expired in June 1962. And in November 1962, the President appointed Miraflor as member, on the assumption that Visarra's term of office had expired in June 1962.

5. ID.; ID.; ID.; DR. GARCIA WAS IN THE THIRD LINE OF SUCCESSION IN MAY, 1960 AND WHEN APPOINTED AS CHAIRMAN, VISARRA OCCUPIED THE POSITION VACATED BY HIM AND TERM OF OFFICE EXPIRED ON JUNE 20, 1962.—Garcia in May 1960, was in the third line of succession, his term of office and tenure to expire in June 1962. When he was appointed chairman in May 1960, **he left that line** and **entered the line** of succession of the chairman, with his tenure still to expire in June 1962 (Garcia's appointment expressly stated that it would expire June, 1962). Therefore, upon his appointment, Visarra merely occupied the position vacated by Garcia (In fact he took his oath only on October 13, 1960, **after Garcia had** qualified as chairman,) whose **fixed term of office** (third member) expired on June 20, 1962 (Up to the end of the term only. See footnote (c). Visarra's later appointment (fixing a term up to June 1968) could neither effect nor extend such fixed term of office (of Garcia in the third line).

6. ID.; ID.; ID.; RULING IN REPUBLIC VS. IMPERIAL, 51 O.G. 1886, REITERATED.—Visarra claims, however, that when Garcia was appointed chairman, **he did not leave** his position in the third line of succession but continued therein; so that the vacant position which he (Visarra) filled was the one left by Carag, the fixed term of which is due to expire in 1968; and that, consequently, Borra should be deemed to occupy the position left by Garcia in the third line. The flaw in the argument is that it contradicts our ruling in Republic vs. Imperial, 51 O.G. 1886. There we held that when Commissioner Vera was appointed Chairman **he left the third line** of succession to enter the first, viz, that of the Chairman; and upon his assumption of the Chairmanship, his position as member **became vacant**. We now fail to perceive any valid reason to change our views on that point, according to which Garcia must be held to have **left his line** to assume the position of Chairman. **Stare decisis** — not mere **obiter** dictum.

7. ID.; ID.; ID.; VISARRA'S TERM OF OFFICE EXPIRED IN JUNE 1962; REASON FOR THE RULE.—It is true that Visarra's appointment was extended expressly for a term of office ending June 20, 1968; but as explained in the decision of Republic vs. Imperial, 51 O.G. 1886, such appointment could only be for a position whose term would expire in June 1962, because that was the only vacant position, inasmuch as the term due to expire in June 1968 (for the chairman) was then occupied by Chairman Garcia. (When Garcia assumed the chairmanship, **he ipso** facto resigned his position as member; and the appointment of Visarra to membership could only be for the **unexpired balance** of the term of member (Republic vs. Imperial, supra) up to June 1962.)

8. ID.; ID.; ID.; TERM OF OFFICE OF CHAIRMAN BORRA; TENURE OF OFFICE OF COMMISSIONERS BRILLANTES AND MIRAFLOR.—Chairman Borra occupies the position of Chairman, with a term expiring June 20, 1968, and his tenure beginning August 1962 ends on June 20, 1968 (notwithstanding his appointment fixed on June 20, 1971 as expiration thereof.); the position of Member Brillantes carries a term that expires June 20, 1965 and his tenure should end on the same date; and the term for the position of Member Miraflor expires June 1971, his tenure expiring on the same date.

9. ID.; ID.; ID.; TENURE OF OFFICE OF THE CHAIRMAN OR MEMBER CANNOT EXTEND BEYOND THE FIXED TERM OF POSITION HE IS TO OCCUPY.—It may be necessary to add that although the appointment of the chairman or of the member (subsequent to those originally appointed in the nineteen forties) is **generally** for a term of nine years, his **tenure** can not extend beyond the **fixed term** for the position he is supposed to occupy (If the vacancy is due to death, resignation or disability, the appointment can only be for the unexpired balance of the term, Republic vs. Imperial, 51 O.G. 1886) in the fixed line of succession as heretofore indicated, in accordance with the evident intention of the pertinent Constitutional provisions.

BAUTISTA ANGELO, J., Concurring Opinion:

10. ID.; ID.; TERM OF OFFICE OF NEW COMMISSIONER; TO SERVE ONLY UNEXPIRED PORTION OF TERM OF PREDECESSOR; REASON OF THE RULE.—The President appointed Cesar Miraflor in 1962 a member of the Commission on Elections to fill the position left vacant by Genaro Visarra whose term expired in June, 1962, in keeping with the ruling laid down in the case of Republic v. Imperial, 51 O.G., 1886. This ruling is to the effect that subsequent appointments to be made after the first members appointed in the Commission who were to hold office with a staggering difference of three years from each other as required by our Constitution can only be for the unexpired portion of the term of the predecessor of the appointee in order to prevent a President from making more than one appointment during his term of office to the end that the member may preserve and safeguard his freedom and impartiality in the performance of his duties.

11. ID.; ID.; APPOINTMENT OF COMMISSIONERS EXTENDED BY CHIEF EXECUTIVE IS FOR NINE YEARS; SUPREME COURT LIMITED THE TENURE TO UNEXPIRED TERM OF PREDECESSOR OF APPOINTEE. — The Chief Executive, in filling the vacancies in the positions held after the members first appointed, has always extended appointments for a term of nine years, never for the unexpired period, and these appointments have always met the sanction of Congress. Only that their tenure was limited by judicial fiat to the unexpired term to conform to the spirit of the rotation system. If the rotation system can not be maintained because of unavoidable human factors that may supervene, such as death, resignation, or disability in any form, that system should not be allowed to stand against the clear purpose of the Constitution of giving to every subsequent appointee a term of office of nine years. But this opinion was ruled out. Hence, the President, following the ruling of the majority, extended an appointment to Miraflor as already adverted to.

12. ID.; ID.; PROHIBITION AGAINST REAPPOINTMENT OF COMMISSIONER.—It must be noticed from the provisions of Section 1, Article X, of the Constitution that the prohibition against reappointment comes as a continuation of the requirement that the Commissioners shall hold office for a term of nine years. This imports that the Commissioners may not be reappointed only after they have held office for nine years. **Reappointment is not prohibited when a Commissioner** has held office only for, say, three or six years, provided his term will not exceed nine years in all. **x x x** It may then be said as a fair interpretation of the Constitution that reappointment may be made in favor of a Commissioner who has held office for less than nine years, pro-

vided it does not preclude the appointment of a new member every three years, and provided further that the reappointee's term does not exceed nine years in all (Bold letters supplied). (Nacionalista Party, et al. vs. De Vera, 47 O.G., 2375).

13. ID.; ID.; ID.; REASONS OF REAPPOINTING ASSOCIATE COMMISSIONER TO CHAIRMAN.—To hold that the promotion of an Associate Commissioner to Chairman is banned by the Constitution merely by judicial fiat would be to relegate a member forever to his position as such without hope of enjoying the privileges incident to the chairmanship while giving a premium to an outsider who may be less deserving except probably his political ascendency because of his lack of experience on the mechanics of that delicate and important position. Be that as it may, we now reaffirm that opinion which to us appears just, fair and sound. Its effect is to stimulate hard work, greater zeal and increased efficiency for a member in the hope that his efforts would someday be rewarded with a promotion. The contrary would relegate him to apathy, indifference, hopelessness and inaction. It is never a good policy to stultify one's legitimate ambition to betterment and progress.

14. ID.; ID.; APPOINTMENT OF ASSOCIATE COMMISSIONER TO CHAIRMAN DOES NOT VIOLATE CONSTITUTIONAL PROVISION PROHIBITING INCREASE OF SALARY.—The appointment of Associate Commissioner Garcia to Chairman of the Commission does not constitute an increase in salary which is prohibited by the Constitution which decrees that the salaries of the members "shall be neither increased nor diminished during their term of office." This prohibition can not be stretched to mean that if an Associate Commissioner is appointed to Chairman of the Commission he cannot be given the salary prescribed for the latter. The prohibition merely means that during their incumbency their salaries can neither be increased nor diminished by Congress to prevent a situation whereby they may have to lobby for such increase near Congress thereby impairing their freedom and independence. As aptly expressed by Mr. Justice Reyes, "The plain purpose of (this safeguard) is that the Commissioners, once appointed and confirmed, should be free to act as their conscience demands, without fear of retaliation or hope of reward; that they should never feel the inducement of either the stick or the carrot. For only the man who has nothing to fear and nothing to expect can be considered truly independent." If the appointment of an Associate Commissioner to Chairman of the Commission is legally feasible as abovestated, no plausible reason is seen why the reception by him of the salary prescribed for the latter position would be unconstitutional.

15. ID.; ID.; TENURE OF OFFICE OF SUBSEQUENT APPOINTMENTS BE MADE FOR A FULL TERM OF NINE YEARS; TO STRENGTHEN SECURITY OF TENURE OF THE INCUMBENT.—Much stress is laid by Mr. Justice Barrera that if the appointment of Miraflor is sanctioned the effect would be to give to the President the privilege of appointing two members, if not more, during his term of office which is contrary to the intent of the Constitution. But who should be blamed if such predicament should happen? Can it be helped if such is the inexorable rule of nature? This is the danger I envisioned when in the Imperial case I advocated the disregard of the staggering term in the commission membership and the adoption of the rule as expressed in our Constitution that subsequent appointments be made always for a full term of nine years. If that rule is adopted there would be less occasion for the danger now dreaded by the minority to happen, while we would strengthen the security of tenure of the incumbent. But my opinion was overruled by the majority and the same is now the law of the case. We have no other alternative than to abide by it.

16. ID.; ID.; APPOINTMENT OF ASSOCIATE COMMISSIONER GARCIA TO CHAIRMAN IS VALID; RULING IN IMPERIAL CASE FOLLOWED IN THE APPOINTMENT OF CESAR MIRAFLOR.—Since the appointment of Associate Commissioner Garcia to Chairman of the Commission is valid, and the President on appointing Cesar Miraflor member of the Commission, vice member Genaro Visarra, merely followed the ruling of this Court in the Imperial case, it is now unfair to declare that he acted improvidently in doing so.

MAKALINTAL, J., Concurring Opinion:

17. ID.; ID.; POSITION OF CHAIRMAN IS DISTINCT FROM THAT OF EACH OF TWO MEMBERS; COMMISSIONER PROMOTED TO CHAIRMANSHIP VACATED HIS OLD POSITION.—The cases of Republic vs. Imperial, 51 O.G., 1886, and Nacionalista Party vs. Vera, 85 Phil.. 126, established the theory that the position of Chairman of the Commission on Elections is distinct from that of each of the two members; that the three positions carry their own respective terms of nine years, staggered in such a way that they begin and end at three-year intervals; and that if a Commissioner is promoted to the chairmanship he vacates his old position and gives up the term pertaining to it, and assumes the new position of Chairman, with its own term, subject to the limitation that his entire tenure in both capacities shall not exceed nine years. Thus in the Vera case it was held that when Commissioner Vicente de Vera was appointed Chairman to succeed the former incumbent, Jose Lopez Vito, who had died in office in 1947, such appointment could legally be only for the unexpired portion of Lopez Vito's term, which was up to June 20, 1960. This notwithstanding the fact that the term of the position of Commissioner to which Vera was originally appointed was from June 1944 to June 1953.

18. ID.; ID.; ID.;—When Commissioner Gaudencio Garcia was promoted to the chairmanship of the Commission in May 1960 to succeed Jose P. Carag, who had retired in 1959 upon the expiration of his term, Garcia vacated his old position and assumed that of Chairman, as did Vera years before. That being so, the only position to which petitioner herein, Genaro Visarra, could be appointed was that formerly occupied by Garcia, the term of which would expire in June 1962, in accordance with the precedents laid down in the cases of Republic vs. Imperial, 51 O.G., 1886, and Nacionalista Party vs. Vera, 85 Phil., 126.

19. ID.; ID.; ID.; CONSTITUTIONALITY OF THE PROMOTION OF DR. GARCIA CANNOT BE INQUIRED INTO FOR HE WAS NOT PARTY TO THE PETITION.—The dissenting opinion contended that, Garcia's promotion was null and void because it was violative of the constitutional prohibition against reappointment (Art. X, Section 1), and if it was null and void, then petitioner Visarra was validly appointed for the nine-year term (until 1968) pertaining to the position left by Chairman Carag in June 1959. **HELD:** It is not in the present case, to inquire into and decide the constitutionality of the appointment of Garcia. It is not one of the issues raised by the parties. Garcia is not a respondent, indeed, had already retired from the service when the petition here was filed; and whatever might be said on the point could be nothing but **obiter dictum,** unduly relief upon to support an opinion in favor of a party who does not contest such appointment. By the same token, I do no find it necessary to concur, for purposes of the instant petition, in my categorical affirmation of the validity of the promotion of a Commissioner to Chairman although the question seems to have been set at rest by the Vera case.

20. ID.; ID.; ID.; GARCIA'S APPOINTMENT AS CHAIRMAN PRESUMED VALID.—Since Garcia's appointment as Chairman has not been successfully challenged in a proper quo

warranto case against him, it retains the presumption of validity. The least that can be said is that he was a **de facto** Chairman during his incumbency, the term of which position could not have been conferred on herein petitioner by the very same appointing power. It would be unreasonable to assume that the President, in promoting Garcia, thought in this wise; that his appointment being null and void anyway, he neither filled the vacancy left by ex-chairman Carag nor assumed the term thereof — from 1959 to 1968 — for which reason, therefore, they were given to Visarra instead albeit only as Commissioner.

CONCEPCION, J., Dissenting Opinion:

21. ID.; ID.; TERMS OF OFFICE OF THE FIRST THREE COMMISSIONERS; OF THE OTHER COMMISSIONER.—Although applying the "rulings" laid down in the first part of the decision — to the effect that the terms of the first three Commissioners on Elections should commence simultaneously with the organization of the Commission on Elections under Commonwealth Act No. 657, it was, likewise, held that the terms of the other members thereof shall begin, not on the date of their appointment or assumption of office, but upon the expiration of the term of their respective predecessors in office, consistently with the "deliberate plan to have a regular rotation or cycle in the membership of the Commission, by having subsequent members appointable only once every three years.

22. ID.; ID.; IMPERIAL CASE CANNOT JUSTIFY THE APPLICATION OF THE PRINCIPLE OF **STARE DECISIS** ON THE VALIDITY OF DE VERA'S APPOINTMENT.—The decision in the Imperial case cannot justify the application of the principle of **stare decisis** on the question of the validity of De Vera's aforementioned appointment and on the consequences thereof. Whatever had been said in connection therewith, in the Imperial case, was — considering the explicitly hypothetical nature of ts predicate — merely an aside, and, hence, an **obiter dictum**, or an utterance made only to avoid giving the erroneous impression that the Court had overlooked De Vera's appointment as Chairman of the Commission and that of Rovira as member thereof in determining the beginning and the end of the term of respondents Imperial and Perez.

23. ID.; ID.; MAJORITY OF MEMBERS OF SUPREME COURT PARTICIPATING IN THE IMPERIAL CASE NOT IN FAVOR OF OPINION OF CHIEF JUSTICE MORAN REGARDING REAPPOINTMENT PROVIDED TERM WILL EXCEED 9 YEARS.—What is more, our views in the Imperial case indicate that a majority of the members of Supreme Court who participated therein were **not** in favor of the opinion of Chief Justice Moran, to the effect that "reappointment is not prohibited when a Commissioner has held office for, say, three or six years, provided his term will not exceed nine years in all". Thus, it was declared, in said case, that Commissioner Rovira — appointed on May 22, 1947, to fill the vacancy created by De Vera's assumption of the Chairmanship, "if" his appointment thereto were "at all valid". — "could only fill out the balance of Vera's term, until June 20, 1953, and **could not be reappointed thereafter.**" Considering that Rovira had been served only a little over six years, this statement necessarily implied a **rejection** of said opinion of Chief Justice Moran. **And this is why Mr. Justice Padilla, who concurred in that opinion, dissented from this phase of the majority decision in the Imperial case.**

24. ID.; ID.; ID.;—The majority view therein, as regards de Vera's tenure as Chairman of the Commission on Elections — "if" his appointment as such were "at all valid" — is, likewise, inconsistent with said opinion of Chief Justice Moran, for we, similarly, declared in the Imperial case, that De Vera's tenure as such Chairman "expired x x x on June 20, 1950, the end of Lopez Vito's original term," and that "**a vacancy, therefore, occurred on that date that Vera could no longer fill, since his reappointment was expressly prohibited by the Constitution.**" Indeed, by June 20, 1950, De Vera had been in said Commission for a little less than five (5) years since his original appointment on July 12, 1945. Hence, he could still be reappointed for a tenure of over four (4) years more, under said opinion of Chief Justice Moran. Accordingly, **such opinion was, in effect, repudiated by** seven members of this Court in the Imperial case, namely, Justice Reyes (J.B.L.), who penned the decision therein, and Justices Pablo, Bengzon, Montemayor, Jugo, Labrador and the writer hereof, who concurred in that decision.

25. ID.; ID.; PROHIBITION AGAINST REAPPOINTMENT IN THE COMMISSION; REASONS OF THE CONSTITUTIONAL PROHIBITION.—The provision of the Constitution prohibiting reappointment in the Commission on Elections **has** for its purpose to bolster up the **independence** of said Commission, in the same manner as the constitutional **prohibition** of reappointment of the Auditor General **seeks** to **promote** the independence of the General Auditing Office. **The** wisdom of such prohibition or its efficacy to achieve said purpose is immaterial to the interpretation or application of the law. The important thing is that the framers of our Constitution considered the feasibility of reappointment as a factor that may adversely affect the independence of the Commission on Elections or, at least, the popular reliance or belief in its independence.

26. ID.; ID.; VITAL ROLE OF THE COMMISSION ON ELECTIONS IN OUR POLITICAL SYSTEMS.—But neither must we underestimate the vital role that the Commission on Elections plays in our political system and, hence, its transcendental impact upon our life as a republican State. Nor should we overlook the passion, fire and, sometimes, fury with which our election campaigns are undertaken. In the context of this background, and of the conditions prevailing in many parts of our country, it is extremely essential to the healthy growth of our faith in and adherence to democratic principles, practices and processes that all possible doubts or causes for doubt on the independence and impartiality of the Commission on Elections be avoided.

27. ID.; ID.; CONSTITUTIONAL PROVISION PROHIBITING REAPPOINTMENT; DRAFTED AND PROPOSED BY THE NATIONAL ASSEMBLY; COMPOSING MEMBERS OF GREAT WEALTH OF EXPERIENCE; INDEPENDENCE OF THE COMMISSION; PURPOSE OF PROHIBITION FOR REAPPOINTMENT.—Then, too, the constitutional provision prohibiting reappointment in said Commission is too plain and simple to admit of any qualification. The provision was drafted and proposed by the then National Assembly, most of whose members had a great wealth of experience, not only in wordly matters, in general, but, also, in the field ot practical politics, in particular. What is more, the prohibition tended to limit **their own authority** in the exercise of their prerogatives, as members of the administration, in connection with the organization of the constitutional agency that would supervise **their own election** or bid for reelection or the election of **their own followers** or successors in the political arena. Their failure to qualify said prohibition must be construed, therefore, as an expression of their deliberate intent to make no exceptions thereto.

28. ID.; ID.; VISARRA'S APPOINTMENT WILL EXPIRE ON JUNE 20, 1968.—In conclusion, when petitioner Visarra was appointed on May 12, 1960, there were two (2) members of the Commission on Elections, namely, Commissioner Garcia, whose term was nine (9) years, from June 21, 1953 (upon the expiration of De Vera's original term, partly served by Rovira) to June 20, 1962, and Commissioner Brillantes,

whose term is nine (9) years, from June 21, 1956 (upon the expiration of Perez's term) to June 20, 1965. **There was, accordingly, only one (1) position vacant,** at the time of Visarra's appointment that was vacated by Carag, on June 20, 1959, upon the expiration of Imperial's original term, part of which — from May 19, 1958 — was served by Carag. Hence, Visarra was appointed for that vacant position, whose subsequent term of nine (9) years began on June 21, 1959, to end on June 20, 1968. And **this was the intent of the appointing power,** and, hence, of the Commission on Appointments which confirmed his appointment, for the same specified that it was "for a term expiring June 20, 1968."

29. ID.; ID.; PROMOTIONAL APPOINTMENT OF COMMISSIONER GARCIA CANNOT AFFECT TERM OF VISARRA; REASONS.—The promotional appointment of Commissioner Garcia on May 12, 1960 as Chairman of the Commission cannot affect such term of Visarra because: 1) that promotion violated the constitutional injunction against reappointment; 2) the terms of the Chairman and members of the Commission — after the first three (3) members (including the Chairman) thereof — are for nine (9) years each, and **the Constitution makes no distinction** as to "line of succession," pertaining to each office; and 3) in fact, said promotion was "for a **term** expiring June 20, 1962," which was **Garcia's** term when he was appointed **member** of the Commission, so that he did **not** shift to the line vacated by Carag, the next term of which was from June 21, 1959 to June 20, 1968, which was the term given to and is filled by petitioner Visarra. What is more, this view was **confirmed by the appointment of Juan Borra** on August 2, 1962, as Chairman of the Commission on Election, "for a term expiring on June 20, 1971," which is the term following that of **Garcia,** as member of said Commission.

30. ID.; ID.; RESPONDENT MIRAFLOR'S APPOINTMENT IS NULL AND VOID FOR NO VACANCY WHERE HE CAN BE APPOINTED.—On October 29, 1962, when respondent Miraflor was appointed thereto, there was, therefore, **no vacancy** therein. The three (3) positions in the Commission were then held: (1) by Borra as Chairman, for a term of nine (9) years, from June 21, 1962 to June 20, 1971; (2) by Visarra, for a similar term, from June 21, 1959 to June 20, 1968; and (3) by Brillantes, for an analogous term, from June 21, 1956 to June 20, 1965. Hence the appointment of respondent Miraflor is null and void.

REYES, J.B.L., Dissenting Opinion:

31. ID.; ID.; RESPONDENT VISARRA NEVER SUCCEEDED ASSOCIATE COMMISSIONER GARCIA; APPOINTMENT OF DR. GARCIA AS CHAIRMAN NULL AND VOID.—Petitioner Visarra was, and could only have been, validly appointed in 1960 for a nine (9) year term (until 1968) to fill the only vacancy created by the expiration of the term of ex-chairman Jose P. Carag on June 20, 1959. Visarra never succeeded Garcia. The reason is that the 1960 appointment of then Associate Commissioner Gaudencio Garcia to the post of Chairman of the Commission was null and void for being in violation of Article X, section 1, of the Constitution.

32. ID.; ID.; CONSTITUTIONAL PROTECTION OF COMMISSIONERS FROM INFLUENCES WHICH AFFECT THEM IN DISCHARGE OF THEIR DUTIES.—It is clear from the provisions of Sec. 1, Art. X, of the Constitution, that being acutely conscious of the crucial importance of the functions of the Commission on Elections to candidates for elective positions, and aware of the consequent pressures and influences that would be brought to bear upon the Commissioners, the framers of this part of the Constitution sought as much as possible to shield the Commission members from any force or influence that might affect them in the discharge of their duties. To this end, the Constitution not only disqualified the Commissioners from holding outside interests that might be affected by their official functions (section 3); it expressly protected the Commissioners against danger of possible retaliation by (a) giving them a **fixed term** of nine (9) years not terminable except by impeachment, and by (b) prohibiting any **diminution** of their salaries during their term of office.

33. ID.; ID.; ID.;—The Constitution went even further: cognizant that human conduct may be influenced not only by fear of vindictiveness but also, and even more subtly and powerfully, by prospects of advancement, our fundamental law has likewise provided that members of the Commission on Elections (c) may **not** be reappointed, and that (d) their salaries may **not be increased** during their terms. The plain purpose of all these safeguards is that the Commissioners, once appointed and confirmed, should be free to set as their conscience demands, without fear of retaliation or hope of reward; that they should never feel the inducement of either the stick or the carrot. For only the man who has nothing to fear, and nothing to expect, can be considered truly independent.

34. ID.; ID.; APPOINTMENT OF COMMISSIONER GARCIA TO CHAIRMAN VIOLATED CONSTITUTIONAL PROHIBITION AGAINST REAPPOINTMENT AND SALARY INCREASE.—The promotion of Dr. Gaudencio Garcia from Associate Commissioner to Chairman of the Commission, with the attendant higher compensation and requisites, violated the Constitutional prohibition against both **reappointment** and **salary increase.** If, by express mandate of the fundamental charter a commissioner can not be validly reappointed not even to the same position that he has occupied, then, there can be no excuse for holding that he may validly be appointed again to a higher position within the Commission. It is undeniable that a promotion involves a second appointment, i.e., a reappointment that is expressly forbidden by the Constitution.

35. ID.; ID.; ID.; APPOINTMENT OF COMMISSIONER GARCIA TO CHAIRMAN NEVER LEFT HIS "LINE" TO PASS TO COMMISSIONER CARAG; CARAG'S LINE WAS LAWFULLY FILLED BY COMMISSIONER VISARRA.—If the appointment of Dr. Garcia to chairman was null and void, he never left his "line" to pass to that of Carag; and the one who lawfully filled Carag's line was Visarra. The Supreme Court's decision in the case of Nacionalista Party vs. Vera, 47 O.G. 2371, **appears** to have sanctioned the promotion of Commissioner Vicente de Vera to the Chairmanship. It will be noted, however, that the legality of that promotional appointment was supported only by the votes of four (4) Justices: Moran, Bengzon, Padilla, and Torres. Justices Montemayor and Reyes concurred only in the result. A majority of Justices agreed only insofar as it was held that the validity of the Vera promotion could not be tested by a petition for a writ of prohibition, as prayed for by the petitioner Nacionalista Party, but by proceedings **in quo warranto**; and of course, this ruling is not applicable to the case at bar, because Commissioner Gaudencio Garcia is no longer in office. In the subsequent case of Republic vs. Imperial, L-8684, promulgated on March 31, 1955, the Supreme Court did not declare that Associate Commissioner Vera validly succeeded former Chairman Lopez Vito; on the contrary, the Court openly expressed doubts about the validity of Vera's promotion when it stated that Vera's appointment to the Chairmanship, "if at all valid", could only hold for the unexpired term of his predecessor. The Court did not elaborate on this doubt because it was not necessary for the purpose of the doctrine laid down in that decision.

36. ID.; ID.; ID.; RULING IN THE CASE OF NACIONALISTA PARTY VS. VERA, NOT BINDING PRECEDENT ON VALI-

DITY OF COMMISSIONER GARCIA'S PROMOTIONAL APPOINTMENT TO CHAIRMAN.—The ruling in the case of Nacionalista Party vs. Vera, 47 O.G. 2371, is not binding precedent on the validity of Gaudencio Garcia's promotion from Associate Commissioner to Chairman of the Commission on Elections, and that such promotion was done in violation of the Constitution, and, therefore, was **ab initio** void. The logical consequence of such invalidity is that the vacancy in the line of succession of ex-Chairman Carag was filled not by Garcia's promotion but by the appointment of petitioner Genaro Visarra for a full nine (9) year term.

37. ID.; ID.; ID.; COMMISSIONER GARCIA'S PROMOTIONAL APPOINTMENT TO CHAIRMAN BEING UNCONSTITUTIONAL AND VOID, HE CAN ONLY BE REGARDED AS **DE FACTO** CHAIRMAN.—Gaudencio Garcia's promotion being unconstitutional and void, he can only be regarded as **de facto** chairman from May 1960 to June 1962, but without leaving the third line where he was. When his own term expired in 1962, he was succeeded in the same third line by the present incumbent, Juan V. Borra, legally appointed for a nine-year term, June 1962 to June 1971.

38. ID.; ID.; PRESENT CONSTITUTION OF THE COMMISSION.—The present constitution of the Commission is, therefore, as follows:

    First Line: Visarra (vice Carag), 1959 to 1968;
    Second line: Brillantes, 1956 to 1965;
    Third line: Borra (vice Garcia) Chairman, 1962 to 1971.

    Hence, Miraflor's appointment is void, since there is no vacancy in the Commission, and there will be none until 1965, when the term of Brillantes expires.

39. ID.; ID.; MAJORITY DECISION PERMITS PRESENT CHIEF EXECUTIVE TO APPOINT NOT ONLY TWO BUT THREE COMMISSIONERS.—By sanctioning promotion of one Associate Commissioner to the Chairmanship, the majority decision enables a President to appoint **two** Commissioners (the one promoted and the replacement for the latter) at one time whenever a chairman fails to complete his own term. This despite the avowed intention of the constitutional plan of staggered terms, so that no President should appoint more than one Commissioner, unless unavoidable. As circumstances would have it, the majority permits the present Chief Executive to appoint not only two but three Commissioners; Borra and Miraflor in 1962, and the successor to Commissioner Brillantes, whose term expires in June of 1965.

BARRERA, J., Dissenting Opinion:

40. ID.; ID.; PRIMORDIAL CONCERN IN THE CREATION OF THE COMMISSION; IT MUST BE COMPLETELY INDEPENDENT AND FREE FROM ALL INFLUENCES AND INTERFERENCES.—I take the view that we are all agreed, including the majority, that the Constitution's primordial concern in the creation of the Commission on Elections, is to make and keep that body as completely independent and free, as is humanly possible to provide, from all influence and interference in the discharge of its delicate and important mission of insuring free, orderly and honest elections. As one of the means of insuring and preserving that independence, the Constitution has adopted the staggered manner of appointing the three members thereof at stated intervals of three years from each other in order that no one President (except when reelected) could appoint two members.

41. ID.; ID.; MAJORITY DECISION PERMITS A PRESIDENT DURING HIS TERM OF FOUR YEARS TO APPOINT, NOT ONE, NOT TWO, BUT ALL THE THREE MEMBERS OF THE COMMISSION.—I am compelled to disagree with my colleagues in the majority in adopting, albeit unwittingly, an interpretation that precisely permits the mischievous result of enabling the appointing power to do exactly what the Constitution plainly purports to prevent — the situation where a President during his own term of four (4) years, may appoint, not one, not two, but all the three members of the Commission on Elections and practically on the eve of a presidential election.

42. ID.; ID.; PROMOTIONAL APPOINTMENT OF A COMMISSIONER TO CHAIRMAN CONSTITUTES NEW APPOINTMENT TO A NEW POSITION; REAPPOINTMENT PROHIBITED IN THE CONSTITUTION INCLUDES PROMOTIONAL APPOINTMENT.—The majority opinion is significantly silent on the point raised during our deliberations that the Constitution prohibits reappointment. Since it is the theory of the majority that such a promotion to the Chairmanship produces the effect that the one appointed **leaves his own line and term** and assumes those of the Chairman which are entirely different and distinct from his own original position and term, such a promotion must constitute, in the full legal sense, a new appointment to a new position in the Commission. Reappointment prohibited in the Constitution is not limited to reappointment to the same identical position in the Commission. It includes promotional appointment, for the evil sought to be avoided by outlawing reappointment is obviously even greater in the case of promotional appointment.

43. ID.; ID.; MAJORITY DECISION SANCTIONS SEPARATION OF TENURE FROM TERM OF OFFICE.—The majority decision sanctions in effect the separation of tenure from the term of office. Indeed, it held that when Dr. Gaudencio Garcia was promoted to the Chairmanship, he left his term which would expire in June, 1962, and took the term of the Chairman which expires in June, 1968. Since Visarra, it went on to say, was appointed vice Garcia, Visarra ceased to be member upon expiration of Garcia's original term in June. 1962. Likewise, Garcia, as Chairman, ceased as such in June, 1962, although the term he assumed expires in June, 1968, since his **tenure** can not be more than 9 years. Thus, according to the majority opinion, Visarra ceased being a member because of the expiration of his term and Garcia ceased to be a member because of the expiration of his **tenure**. This, to me, is absurd. You can not separate tenure from the term of office. The term determines the tenure. Without the term of office there is no right of tenure. It is this absurdity that produces the simultaneous ending of the incumbency of two members, thereby disrupting the three-year staggering procedure contemplated in the Constitution.

44. ID.; ID.; MAJORITY OPINION IF FOLLOWED WILL SANCTION, THREE YEARS LATER TWO VACANCIES WOULD OCCUR AT THE TIME.—For, under the sanction of the majority opinion, if this practice is followed (that is, the promotion of one of the members of the Chairmanship when this becomes vacant by expiration of its term, so that three years later two vacancies would occur at the same time, that of the Chairman because of the ending of the **tenure** of the one promoted, and that of his successor as member, because of the expiration of the **term** he left) — which practice is surely to be followed because of its consequent political advantage — then inexorably every nine years the same anomally will occur and recur regularly, setting at naught the deliberate plan of staggered appointments ordained by the Constitution and consistently recognized, reiterated and reinforced in all the decisions of this Court on the matter — a veritable **stare decisis**, if there is one discernible in these cases, notably the Imperial case relied upon by the majority, where the entire **ratio decidendi** repeats with emphasis "the clear intention of the Constitution to have members of the Commission appointed at regular 3-year intervals."

45. ID.; ID.; COMMISSIONER PROMOTED STAYS IN HIS OWN LINE RETAINING HIS OWN TERM AND TENURE TOGETHER.—The majority opinion appears to have adopted a defeatist attitude. The minority are not that pessimistic. For one, there is nothing so absolutely and completely untenable in the proposition offered during the deliberations that promotion to the Chairmanship does not necessarily mean a jumping from one line to another. The member promoted **stays in his own line retaining his own term and tenure together, although in his changed** capacity as Chairman. No vacancy is thereby artificially created requiring a new member to be appointed. It may thus be even said that there would then be no reappointment in the sense prohibited by the Constitution. As a result, there would be no disturbance in the lines of succession, each term terminating in the staggered manner provided in the fundamental law.

46. ID.; ID.; MINORITY OPINION FULFILLS ALL CONSTITUTIONAL PRECEPTS AGAINST REAPPOINMENT; AND INCREASE OF SALARY DURING TERM OF OFFICE.—The minority opinion frankly and forthwithly meets and fulfills all the constitutional precepts against reappointment, increase of salary during the term of office and disruption of the staggered system of appointments. It sustains the dissenting opinion of Mr. Justice Bautista in the Imperial case that all appointments to the Commission should be for the full 9-year term, unlike the majority opinion which he now supports which shortens the full term of 9 years of Visarra. In fine, the view of the minority as expressed in the dissenting opinion of Mr. Justice Reyes is the only interpretation that gives meaning and effect to the integral concept of a truly independent Commission on Elections.

47. ID.; ID.; INTERPRETATION OF MAJORITY IS WRONG.; IT SHORTENS TENURE OF BORRA, AND EXTENDS TENURE OF MIRAFLOR. — The interpretation of the majority, in my opinion, is not only wrong but may provoke other controversies, because although it upholds the validity of the appointments of Borra and Miraflor, it shortens the tenure of Borra from 1968 to 1971 contrary to his appointment, and extends Miraflor's tenure beyond the expiry date stated in his appointment from 1968 to 1971. There is thus created another constitutional problem, can Miraflor continue holding office beyond 1968, expiry date stated in his appointment, without any further action on the part of the appointing power but on the strength merely of the declamation to that effect in the majority opinion.

48. ID.; ID.; MAJORITY OPINION EXTENDS COMMISSIONER MIRAFLOR'S TENURE OF OFFICE TO 1971.—On the other hand, can the President now amend Miraflor's ad-interim appointment by inserting therein 1971 as the expiry date of his term and tenure, to conform with the majority opinion, in spite of the fact that Miraflor has already accepted his appointment with an earlier date of expiration and after actually taking his oath, assuming the office, and discharging the functions thereof? If the answer to these questions is in the negative, as I believe it must be, then another vacancy will be created in 1968, not beeause of the operation of the Constitution, but as consequence, although unintended of the majority opinion.

PAREDES, J., Dissenting Opinion:

49. ID.; ID.; DECISION OF A HARD CASE UPON APPARENT EQUITABLE GROUNDS FREQUENTLY RESULTS IN A BAD LAW.—The decision of a hard case, upon apparent equitable grounds frequently results in a bad law. In my judgment, this is such a case, and the result reached in the majority, opinion is amiss.

50. ID.; ID.; DECISION ON A POINT NOT DIRECTLY RAISED WILL NOT PRECLUDE ITS CONSIDERATION IN A LATER CASE.—A decision of the Supreme Court on a point not directly raised is still open and will not preclude its consideration in a later case in which it is directly presented (Fajardo v. del Rosario, 36 Phil. 159).

51. ID.; ID.; STATUTE ACCEPTED AS VALID AND APPLIED IN MANY CASES WHERE ITS VALIDITY WAS NOT RAISED; CONSIDERATION OF ITS VALIDITY IN A LATTER CASE WAS NOT RAISED.—"The fact that a statute has been accepted as valid, and invoked and applied for many years in cases where its validity was not raised or passed on, does not prevent a court from later passing upon its validity where that question is properly raised and presented" (McGirr v. Hamilton and Abreu, 30 Phil. 563).

52. ID.; ID.; RE-EXAMINATION OF THE DOCTRINE LAID DOWN IN IMPERIAL AND VERA CASES.—And even granting that we may have had enunciated a doctrine in this case, that circumstance, a withal, does not preclude Us from re-examining the same and rule accordingly.

53. ID.; ID.; OVERRULING DOCTRINE LAID DOWN IN AN EARLIER DECISION.—The doctrine of an earlier decision will be overruled where it seems proper to do so (10 Phil. Digest p. 282, citing Jayme v. Gamboa, 75 Phil. 479).

54. ID.; ID.; MAJORITY DECISION; NOT DOING JUSTICE TO THE RULINGS LAID DOWN IN THE IMPERIAL AND VERA CASES; SUBVERSION OF THE INDEPENDENCE OF THE COMMISSION ON ELECTIONS.—The majority opinion, to my mind, far from doing justice to the rulings laid down in the Imperial and Vera cases, does violence to them and seek to foster the circumstances which the constitutional provisions precisely wanted to avoid — the subversion of the independence of the Commission on Elections.

DIZON. J., Dissenting Opinion:

55. ID.; ID.; RE-APPOINTMENT DEFINED.—The term **re-appointment** generally means a second appointment to one and the same office. The occupant of an office obviously needs no such second appointment unless, for some valid cause, such as the expiration of his term or resignation, he had ceased to be the legal occupant thereof.

56. ID.; ID.; ID.; CONSTITUTIONAL PROHIBITION AGAINST RE-APPOINTMENT OF A COMMSSIONER CONSRTUED AND APPLIED.—The constitutional prohibition against the re-appointment of a Commissioner refers to his second appointment to the same office after he has held it for nine years. Consequently, if after holding office only for three years a Member of the Commission on Elections legally ceased to be such because of resignation, for instance, his re-appointment to the same office would not violate the Constitution, provided his term will not exceed nine years in all. This would naturally apply to the case of a Member who, under somewhat similar circumstances, is merely promoted to chairman.

57. ID.; ID.; ID.; — Let us now apply this principle to the case of former Member and later Chairman, Gaudencio Garcia. As stated hereofore, he was originally appointed as Member in May 1955 for a term expiring on June 20, 1962 to succeed Leopoldo Rovira. who died in office in September, 1954. On May 12, 1960, (One year and eleven months before the expiration of his term of office), he was appointed Chairman expressly to hold office only up to June 1962. Why was this so expressly provided? It could not have been for any reason other than that, whether as Chairman or as a Member, he shall not serve for more than nine years, as provided for in the Constitution.

58. ID.; ID.; ID.; WHEN COMMISSIONER GARCIA WAS APPOINTED CHAIRMAN, HE DID NOT CEASE TO BE MEMBER OF THE COMMISSION; APPOINTMENT OF MIRA-

FLOR WAS VOID.—When Garcia was appointed Chairman, did not cease to be a Member of the Commission. The only effect of such appointment was to promote him to the Chairmanship; to add to his condition as Member, that of Chairman. In other words, his appointment as Chairman did not at all affect or disturb his membership in the Commission, albeit his right to act as Member and Chairman was limited up to June 1962 in obedience to the Constitution. It appears clear, therefore, that when petitioner Visarra was appointed Member on May 12, 1960, Garcia's original position as Member was **not vacant**, the only existing vacant position at the time being that formerly occupied by Carag whose term and tenure ended in June 1959. As a result, on May 1960, Visarra was and could have been legally appointed only to fill the position vacated by Carag, for a term beginning June 1959 and ending in June 1968. Therefore respondent's appointment in his place in November, 1962 is void.

59. ID.; ID.; ID.; THEORY OF THE MAJORITY; WHEN A MEMBER IS PROMOTED TO CHAIRMAN, HE LEAVES HIS OWN LINE AND TERM; FLAW OF THE MAJORITY OPINION.—The theory of the majority — that when a Member (like Garcia) is promoted to Chairman (as Garcia was), he leaves his own line and term and assumes those of the Chairman he was replacing, entirely distinct and separate from his own original position and term, and that upon assumption of the Chairmanship his position as Member becomes vacant — suffers fatally from this flaw: it assumes erroneously that the Chairmanship of the Commission is something entirely distinct and separate from Membership therein, when it must be obvious to everyone that the Chairmanship is but incidental to Membership; that the Chairman is as such a Member of the Commission as the other two; that, under the Constitution, he can not be chairman at all without being a Member.

60. ID.; ID.; ID.; CHAIRMANSHIP IN THE COMMISSION IS AN INCIDENT OF MEMBERSHIP; ONE OF THE THREE MEMBERS SHOULD BE CHAIRMAN.—In creating the Commission of Elections, the Constitution provides that it shall be composed "of a Chairman and two other members" (Bold supplied), and that "Of the **Members** of the Commission first appointed, one shall hold office for nine years, another for six years, and the third for three years." (Bold supplied). Clearly inferable from all these provisions is that the Chairmanship in the Commission is nothing more than an incident of Membership therein, the Constitution providing in this connection that one of the three Members should be the Chairman. If it is so, I fail to perceive any force at all in the majority's view that when an incumbent Member is promoted to Chairman, he leaves his own original "line of succession" to enter "the line of succession of the chairman".

61. ID.; ID.; ID.; **STARE DECISIS** SHOULD BE ADHERED TO FOR THE SAKE OF DIGNIFIED AND STABLE JUDICIAL OPINION; WHEN IT SHOULD NOT BE FOLLOWED.—True, the doctrine of **stare decisis** should, as a rule, be adhered to for the sake of dignified and stable judicial opinion, but certanly this is no valid justification for stubbornly and desperately clinging to an opinion even after it has been found to be wanting. Courts of Justice should be the last to consider themselves hopeless and irretrievably governed by the "dead hand of the Past".

62. ID.; ID.; ID.; CHANGE MEANS PROGRESS; COURTS MUST NOT FEAR CHANGE, NOR SEEK REFUGE BEHIND DEFENSIVE SHIELD OF **STARE DECISIS** TO RESIST CHANGE.—Change means Progress, and is the law of life. Courts, therefore, must not fear change, nor ever consider their decision as perfect beyond change; they must not — ostrichlike — bury their head in the sand to avoid seeing the light, nor seek refuge behind the defensive shield of **stare decisis** to resist change, even when change appears to be imperative.

DECISION

The parties hereto are litigating over the position of third member of the Commission on Elections, which according to the Constitution, consists of one chairman and two members. Actual chairman is the incumbent Hon. Juan V. Borra; the undisputed incumbent member is Hon. Sixto Brillantes.

In establishing the Commission, the Constitution provided that the Commissioners shall hold office for nine years and may not be reappointed. However, it also provided that of those first appointed, "one shall hold office for nine years, another for six years and the third for three years."

Since 1941, changes occurred in the membership of the Commission. And in March 1955, in a similar dispute [Republic vs. Imperial](a), we had occasion to discuss the terms of office and the tenure of said officers. We held that the term of the first chairman (Jose Lopez Vito, 9 years) began on June 21, 1941, and ended on June 20, 1950(b); that the term of the second member (Francisco Enage, 6 years) began on June 21, 1941, and ended June 20, 1947(b); and that of the third member (3 years — left vacant) began on June 21, 1941 to terminate June 20, 1944. Proceeding further we held that when in 1945 Vicente de Vera was appointed member, he must have been placed in the only vacant position at that time, namely, the position whose term expired in June 1944 (third member) — and that he must be deemed to have been appointed to a nine-year term (expiring June 1953), which is the term given by law to all commissioners(c) appointed after June 20, 1944. Then upon the first vacancy by expiration of the initial 6-year term (second member) and the cessation of Commissioner Enage in November 1949(d), Rodrigo Perez was appointed (December 1949) to the nine-year term expiring in June 1956. Afterwards, in May 1947, chairman Jose Lopez Vito died before the expiration of his full term. To succeed him as chairman, Commissioner de Vera was appointed — which appointment, we held, could only be for the unexpired period of Lopez Vito's original term, i.e., up to June 20, 1950. To fill the vacancy of third member arising upon Vera's assumption of the chairmanship, Leopoldo Rovira was appointed member on May 22, 1947, and his tenure of office could not legally extend beyond that of former Commissioner Vera: June 20, 1953(e). Upon expiration of Chairman Vera's term on June 20, 1950, Domingo Imperial assumed the office with a term due to expire on June 20, 1959.

Thus the line of succession, terms of office and tenure of the chairman and members of the Commission as of March 1955, may be outlined as follows:

	Incumbent	Office Term	Tenure
Chairman (9-yr. original)	Lopez Vito	June 21, 1941 to	June 1941 to May 1947
	V. Vera	June 20, 1950	May 1947 to June 1950
	D. Imperial	June 1950 to June 1959	June 1950 to June 1959

(a) 51 Of. Gaz. 1886.
(b) Or should be considered to have began in the eyes of the law.
(c) Except when vacancy occurs by reason of death, resignation or disability — in which cases the appointee may serve only up to the end of the term. (Republic vs. Imperial supra.)
(d) Hold over as **de facto** (1947-1949)
(e) Nacionalista Party vs. Bautista, 47 Of. Gaz. 2356.

Second Member (6-yr. original)	F. Enage	June 21, 1941 to June 20, 1947	June 1941 to June 1947 (x)
	R. Perez	June 1947 to June 1956	Dec. 1949 to June 1956
Third Member (3-yr. original)	Vacant	June 1941 to June 1944	
	Vera	June 1944 to	July 1945 to May 1947
	Rovira (x)	June 1953	May 1947 to June 1953

(x) held office June 1947 to November, 1949 as **de facto.**
(x) held office June 1953 to September, 1954 as **de facto.**

To repeat, this was the legal state of affairs in the Commission on Elections in March 1955 when our aforesaid decision was promulgated. (ee)

Thereafter, in May 1955, the President appointed Gaudencio Garcia a member for a term expiring June 20, 1962 to succeed Leopoldo Rovira, who died in office in September 1954(f); in December 1956, Sixto Brillantes was appointed member to succeed Rodrigo Perez; and in May 1958, Jose P. Carag was appointed to succeed Domingo Imperial (resigned) as chairman; Carag's term and tenure ended in June 1959; and on May 12, 1960, the President appointed Garcia as Chairman to hold office up to June 1962 and the latter assumed the chairmanship accordingly.

On May 12, 1960, Genaro Visarra, was also appointed member of the Commission. Then in August 1962, Juan V. Borra was named chairman to succeed Garcia, whose tenure expired in June 1962. And in November 1962, the President appointed Miraflor as member, on the assumption that Visarra's term of office had expired in June 1962.

In this suit, Visarra challenges the right of Miraflor to hold (as against him) the office of member.

It was admitted at the oral argument that if we follow the holding and the implications of our decision in Republic vs. Imperial, **supra**, the respondent Miraflor must be declared the winner. Indeed, in said decision, we established three lines of succession, to wit: (1) that of the chairman; (2) that of the second member, Enage; and (3) that of the third member (see outline above).

Garcia in May 1960, was in the third line of succession, his term of office and tenure to expire in June 1962. When he was appointed chairman in May 1960, he **left that line** and **entered the line** of succession of the chairman, with his tenure still to expire on June 1962(g). Therefore, upon his appointment, Visarra merely occupied the position vacated by Garcia(h) whose **fixed term of office** (third member) expired in June 20, 1962. (hh) Visarra's later appointment(i) could neither effect nor extend such fixed term of office (of Garcia in the third line).

Visarra claims, however, that when Garcia was appointed chairman, **he did not leave** his position in the third line of succession but continued therein; so that the vacant position which he (Visarra) filled was the one left by Carag, the fixed term of which is due to expire in 1968; and that, consequently, Borra should be deemed to occupy the position left by Garcia in the third line. The flaw in the argument is that it contradicts our ruling in Republic vs. Imperial. **supra**. There we held that when Commissioner Vera was appointed Chairman, **he left the third** line of succession to enter the first, viz, that of the Chairman; and upon his assumption of the Chairmanship, his position as member became vacant. We now fail to perceive any valid reason to change our views on that point, according to which Garcia must be held to have **left his line** to assume the position of Chairman. **Stare decisis — not mere obiter dictum.**

In other words, and graphically to demonstrate the three lines of succession continuing after March 1955 — as we see them:

	Incumbent	Office Term	Tenure
Chairman (9-yr. original)			
	Carag	June 1950 to June 1959	May 1958 to June 1959
	Garcia	June 1959 to	May 1960 to June 1962
	Borra	June 1968	Aug. 1962 to June 1968
2nd Member (6th-yr. original)			
	Perez	June 1947 to June 1956	Dec. 1949 to June 1956
	Brillantes	June 1956 to June 1965	Dec. 1956 to June 1965
3rd Member (3rd-yr. original)	Garla	June 1953 to	May 1955 to May 1960
	Visarra	June 1962	May 1960 to June 1962
	Miraflor	June 1962 to June 1971	Oct. 1962 to June 1971

NOTE: For convenience, date of appointment — not qualification — is noted here.

It is true that Visarra's appointment was extended expressly for a term of office ending June 20, 1968; but as explained in our decision of Republic vs. Imperial, such appointment could only be for a position whose term would expire in June 1962, because that was the only vacant position, inasmuch as the term due to expire in June 1968 (for the chairman) was then occupied by Chairman Garcia.(j)

As a result of the foregoing, and to be specific, we declare: Chairman Borra occupies the position of Chairman with a term expiring June 20, 1968, and his tenure beginning August 1962 ends on June 20, 1968(k); the position of Member Brillantes carries a term that expires June 20, 1965 and his tenure should end on the same date; and the term for the position of Member Miraflor expires June 1971, his tenure expiring on the same date.

It may be necessary to add that although the appointment

(ee) Omitting other unimportant circumtances.

(f) Rovira was holding over as **de facto**, the term of his office having expired June 1953.

(g) Garcia's appointment expressly stated that it would expire June 1962.

(h) In fact he took his oath only on October 13, 1960, **after Garcia** had qualified as chairman.

(hh) Up to the end of the term only. See footnote (c).

(i) Fixing a term up to June 1968.

(j) When Garcia assumed the chairmanship, he **ipso facto** resigned his position as member; and the appointment of Visarra to membership could only be for the **unexpired balance** of the term of member (Republic vs. Imperial, **supra**) up to June 1962.

(k) Notwithstanding his appointment fixed June 20, 1971 as expiration thereof.

of the chairman or of the member (subsequent to those originally appointed in the nineteen forties) is **generally** for a term of nine years, his **tenure** can not extend beyond the **fixed term** for the position he is supposed to occupy(1) in the fixed line of succession we have heretofore indicated, in accordance with the evident intention of the pertinent Constitutional provisions.

Wherefore, in line with the foregoing considerations this quo warranto proceeding should be and is hereby dismissed. No costs.

Padilla, Labrador, and Regala, JJ., concurred.

BAUTISTA ANGELO, J., concurring:

The President appointed Cesar Miraflor in 1962 a member of the Commission on Elections to fill the position left vacant by Genaro Visarra whose term expired in June, 1962, in keeping with the ruling laid down by this Court in Republic v. Imperial.[1] This ruling is to the effect that subsequent appointments to be made after the first members appointed in the Commission who were to hold office with a staggering difference of three years from each other as required by our Constitution can only be for the unexpired portion of the term of the predecessor of the appointee in order to prevent a President from making more than one appointment during his term of office to the end that the member may preserve and safeguard his freedom and impartiality in the performance of his duties. Thus, we declared therein that "any vacancy due to death, resignation or disability before the expiration of the term should be filled only for the unexpired balance of the term" as otherwise "the regularity of the intervals between appointments would be destroyed, and the evident purpose of the rotation (to prevent that four-year administration should appoint more than one permanent and regular Commissioner) would be frustrated."

In the deliberation of said case, and in the written opinion I submitted in connection therewith, I expressed the view that, while this purpose is plausible if only it can be carried out to the letter, because it would indeed free the members from extraneous influence and would give them an untrammelled freedom in the performance of their duties, experience however has shown that it is impracticable as it has never been observed either by the Chief Executive or by Congress. An analysis of the appointments heretofore made to fill vacancies in the membership of the Commission will bear this out. The Chief Executive, in filling the vacancies in the positions held after the members first appointed, has always extended appointments for a term of nine years, never for the unexpired period, and these appointments have always met the sanction of Congress. Only that their tenure was limited by judicial fiat to the unexpired term to conform to the spirit of the rotation system. I then concluded that if the rotation system can not be maintained because of unavoidable human factors that may supervene, such as death, resignation, or disability in any form, that system should not be allowed to stand against the clear purpose of the Constitution of giving to every subsequent appointee a term of office of nine years. But this opinion was ruled out. Hence, the President, following the ruling of the majority, extended an appointment to Miraflor as already adverted to.

But Mr. Justice Reyes, (J.B.L.) the writer of the majority opinion in the Imperial case, a dissenter in the present, advances now the theory that the appointment of the then member Gaudencio Garcia in 1960 to the post of Chairman of the Commission was null and void for being in violation of our Constitution with the result that he never left **his line** to pass to that of Carag and that the one who lawfully filled Carag's line was Visarra. So, he concludes, Visarra who was appointed in 1960 continued the line of Carag whose term of office will expire only in 1968. And when Borra was appointed, he filled the line vacated by Garcia in 1962, whose term will expire in 1971. Consequently, he avers that there was no vacancy to which Miraflor could have been appointed and, hence, his appointment is void. Mr. Justice Reyes predicates his opinion on the constitutional provision that a member "shall hold office for a term of nine years and may not reappointed."

The issue raised by Mr. Justice Reyes has already been squarely presented and discussed in Nacionalista Party. et al. v. Vera,[2] wherein the appointment of Vicente de Vera, then Associate Commissioner, to Chairman of the Commission, was impugned as invalid on the ground that it was made in violation of our Constitution. This Court, under the pen of former Chief Justice Moran, while it held it was not a proper subject for determination because it was raised not in a petition for **quo warranto**, but in one for prohibition, nevertheless, categorically stated that "the **majority** deems it advisable to also express its views" on the matter. And after analyzing the pertinent provisions of our Constitution.[3] the Court said: "It must be noticed from this provision that the prohibition against reappointment comes as a continuation of the requirement that the Commissioners shall hold office for a term of nine years. This imports that the Commissioners may not be reappointed only after they have held office for nine years. **Reappointment is not prohibited when a Commissioner has held office only for, say, three or six years, provided his term will not exceed nine years in all.** x x x It may then be said as a fair interpretation of the Constitution that reappointment may be made in favor of a Commissioner who has held office for **less** than nine years, provided it does not preclude the appointment of a new member every three years, and provided further that the reappointee's term does not exceed nine years in all." (Bold supplied) Elaborating further on the matter, the Court continued:

> "It is maintained that the prohibition against reappointment applies not only to the Commissioner appointed for nine years, but also to those appointed for a shorter period, because the reason underlying the prohibition is equally applicable to them. the prohibition being, according to this theory, intended to prevent the Commissioners from being exposed to improper influences that are apt to be brought to bear upon those aspiring for reappointment. It is, however, doubtful whether this apparently persuasive reasoning is fully justified and supported by the wording of the Constitution. As above stated, the language of the Constitution does not warrant the interpretation that the prohibition against reappointment applies not only to Commissioners who have held office for nine years but also to those appointed for a lesser term. Upon the other hand, reappointment is not the only interest that may affect a commissioner's independence, for he may also aspire to another position in the Government that is higher and better paid, and that also may affect his independence. And it is perhaps useless to prohibit reappointment to the same office if appointment to higher and better paid positions is not at the same time prohibited. This, apart from the consideration that reappointment is not altogether disastrous. A Commissioner, hopeful of reappointment may strive to do good. Whereas, without that hope or other hope of material reward, his enthusiasm may decline as the end of his term approaches and he may even lean to abuses if there is no higher restrain in his moral character.

(1) If the vacancy is due to death, resignation or disability, the appointment can only be for the unexpired balance of the term. (Republic vs. Imperial, **supra.**)

1. 51 O.G., 1886.

2. 47 O.G., 2375.

3. "There shall be an independent Commission on Elections composed of a Chairman and two other Members to be appointed by the President with the consent of the Commission on Appointments, who shall hold office for a term of nine years and may not be reappointed. Of the Members of the Commission first appointed, one shall hold office for nine years, another for six years, and the third for three years. The Chairman and the other Members of the Commission on Elections may be removed from office only by impeachment in the manner provided in this Constitution."

Moral character is no doubt the most effective safeguard of independence. With moral integrity, a commissioner will be independent with or without possibility of reappointment. Without moral integrity, he will not be independent no matter how emphatic the prohibition on reappointment might be. That prohibition is sound only as to a Commissioner who has held office for nine years, because after such a long period of heavy and taxing work, it is but fair that the venerable Commissioner be given either a rest well earned or another honorable position for a change."

I am not in accord with the view that the ruling in the Vera case, **supra**, is not a binding precedent on the validity of Gaudencio Garcia's promotion from Associate Commissioner to Chairman of the Commission for the reason that the same only finds support in the votes of four justices because two others merely concurred in the result for, as already stated, on this issue, the Court clearly stated that **"the majority deems it advisable to also express its views"**, and the justices who concurred in the result did not elaborate on how they arrived at that conclusion. Moreover, to hold that the promotion of an Associate Commissioner to Chairman is banned by the Constitution merely by judicial fiat would be to relegate a member forever to his position as such without hope of enjoying the privileges incident to the chairmanship while giving a premium to an outsider who may be less deserving except probably his political ascendancy because of his lack of experience on the mechanics of that delicate and important position. Be that as it may, we now re-affirm that opinion which to us appears just, fair and sound. Its effect is to stimulate hard work, greater zeal and increased efficiency for a member in the hope that his efforts would someday be rewarded with a promotion. The contrary would relegate him to apathy, indifference, hopelessness and inaction. It is never a good policy to stultify one's legitimate ambition to betterment and progress.

I am also not in accord with the view that the appointment of Associate Commissioner Garcia to Chairman of the Commission constitute an increase in salary which is prohibited by the Constitution which decrees that the salaries of the members "shall be neither increased nor diminished during their term of office." This prohibition can not be stretched to mean that if an Associate Commissioner is appointed to Chairman of the Commission he cannot be given the salary prescribed for the latter. The prohibition merely means that during their incumbency their salaries can neither be increased nor diminished by Congress thereby impairing their freedom and independence. As aptly expressed by Mr. Justice Reyes, "The plain purpose of (this safeguard) is that the Commissioners, once appointed and confirmed, should be free to act as their conscience demands, without fear of retaliation or hope of reward; that they should never feel the inducement of either the stick or the carrot. For only the man who has nothing to fear and nothing to expect can be considered truly independent." If the appointment of an Associate Commissioner to Chairman of the Commission is legally feasible as abovestated. no plausible reason is seen why the reception by him of the salary prescribed for the latter position would be unconstitutional.

Much stress is laid by Mr. Justice Barrera that if the appointment of Miraflor is sanctioned the effect would be to give to the President the privilege of appointing two members, if not more, during his term of office which is contrary to the intent of the Constitution. But who should be blamed if such predicament should happen? Can it be helped if such is the inexorable rule of nature? This is the danger I envisioned when in the Imperial case I advocated the disregard of the staggering term in the commission membership and the adoption of the rule as expressed in our Constitution that subsequent appointments be made always for a full term of nine years. If that rule is adopted there would be less occasion for the danger now dreaded by the minority to happen, while we would strengthen the security of tenure of the incumbent. But my opinion was overruled by the majority and the same is now the law of the case. We have no other alternative than to abide by it.

Since the appointment of Associate Commissioner Garcia to Chairman of the Commission is valid, and the President in appointing Cesar Miraflor member of the Commisson, vice member Genaro Visarra, merely followed the ruling of this Court in the Imperial case, it is now unfair to declare that he acted improvidently in doing so. For these reasons, I vote with the majority.

MAKALINTAL, J: concurring:

I vote with the majority for the dismissal of the petition on the authority of Republic v. Imperial, 51 O.G. 1886, and Nacionalista Party et al v. Vera, 85 Phil. 126. It appears to me that those cases have quite clearly established the theory that the position of Chairman of the Commission on Elections is distinct from that of each of the two members; that the three positions carry their own respective terms of nine years, staggered in such a way that they begin and end at three-year intervals; and that if a Commissioner is promoted to the chairmanship he vacates his old position and gives up the term pertaining to it, and assumes the new position of Chairman, with its own term, subject to the limitation that his entire tenure in both capacities shall not exceed nine years. Thus in the Vera case it was held that when Commissioner Vicente de Vera was appointed Chairman to succeed the former incumbent, Jose Lopez Vito, who had died in office in 1947, such appointment could legally be only for the unexpired portion of Lopez Vito's term, which was up to June 20, 1950. This notwithstanding the fact that the term of the position of Commissioner to which Vera was originally appointed was from June 1944 to June 1953.

In the light of the foregoing precedents, I believe that when Commissioner Gaudencio Garcia was promoted to the chairmanship of the Commission in May 1960 to succeed Jose P. Carag, who had retired in 1959 upon the expiration of his term, Garcia vacated his old position and assumed that of Chairman, as did Vera years before. That being so, the only position to which petitioner herein, Genaro Visarra, could be appointed was that formerly occupied by Garcia, the term of which would expire in June 1962. I cannot subscribe to the proposition, advanced in the dissent, that when Garcia became Chairman the term pertaining to that position — which was from 1959 to 1968 — was left dangling, so to speak, to be enjoyed by Visarra in his capacity as mere member.

But, the dissent continues, Garcia's promotion was null and void because it was violative of the constitutional prohibition against reappointment (Art. X, Section 1), and if it was null and void, then petitioner Visarra was validly appointed for the nine-year term (until 1968) pertaining to the position left by Chairman Carag in June 1959. I do not think it proper or timely, in the present case, to inquire into and decide the constitutionality of the appointment of Garcia. It is not one of the issues raised by the parties. Garcia is not a respondent, indeed had already retired from the service when the petition here was filed; and whatever might be said on the point could be nothing but **obiter dictum**, unduly relied upon to support an opinion in favor of a party who does not contest such appointment. By the same token, I do not find it necessary to concur, for purposes of the instant petition, in any categorical affirmation of the validity of the promotion of a Commissioner to Chairman although the question seems to have been set at rest by the Vera case. However, since Garcia's appointment as Chairman has not been successfully challenged in a proper quo warranto case against him, it retains the presumption of validity. The least that can be said is that he was a **de facto** Chairman during his incumbency, the term of which position could not have been conferred on herein petitioner by the very same appointing power. It would be unreasonable to assume that the

President, in promoting Garcia, thought in this wise: that his appointment being null and void anyway, he neither filled the vacancy left by ex-chairman Carag nor assumed the term thereof — from 1959 to 1968 — for which reason, therefore, they were given to Visarra instead albeit only as Commissioner.

The separate dissenting opinions of Justice Concepcion, J.B.L. Reyes, Barrera, Paredes and Dizon will be published in the forthcoming July issue of this Journal.

II

Eloy Prospero, plaintiff-appellee vs. Alfredo Robles, et al, defendants-appellants, G.R. No. L-16870, May 31, 1963. Dizon, J.

1. RELIEF FROM JUDGMENT; LACK OF ALLEGATIONS IN PETITION OF FACTS CONSTITUTING NEGLIGENCE, MISTAKE OR ABANDONMENT.—The mere allegation made by appellants in the petition for relief from judgment that the default was due to the gross negligence or mistake and/or abandonment of their attorney, without stating the facts that constitute such negligence, mistake, or abandonment, is not legally sufficient to justify the granting of the relief provided for in Rule 38.
2. ID.; AFFIDAVIT OF MERIT; IT MUST CONTAIN FACTS, WHICH WOULD CONVINCE THE COURT THAT AGGRIEVED PARTY HAS MERITORIOUS CASE.—It has been repeatedly held that, to merit petition for relief from judgment, it is not sufficient to allege that the aggrieved party has good and strong evidence to support his case, this being clearly a mere conclusion. The affidavit of merit required by the rules must contain and submit to the court such facts as would probably convince the latter that the aggrieved party has a meritorious case.
3. JURISDICTION; INJUNCTION; ISSUANCE OF WRIT PROPER TO ENJOIN PICKETING WHERE EMPLOYER-EMPLOYEE RELATIONSHIP NO LONGER EXIST.—Appellants claim that the lower court erred in assuming jurisdiction over the case and issuing a writ of injunction against them, claiming that picketing is a legitimate exercise of freedom of speech and can not be enjoined in labor disputes. HELD: The only trouble with this contention is that the lower court made an express finding — which can not now be reviewed — that, at the time of the picketing, there was totally no employer-employee relations between plaintiff and appellants and the action was merely an ordinary one for damages and and a restraining order.

DECISION

Eloy Prospero filed the present action on January 30, 1959, to recover damages and obtain a writ of injunction against appellants. The preliminary writ was issued upon his filing a bond in the sum of ₱1,000..

On February 18, 1959, appellants, represented by Attys. Beltran and Lacson, filed a motion to dismiss the complaint, but the same was denied for lack of merit. The order of denial required them to file their answer — presumably within the usual reglementary period after service of summons — "the period to be computed from the notification of this court."

On May 16, 1959, appellee filed a motion for default, but the same was denied on the ground that, according to the record, appellants' period for the filing of their answer had not yet expired.

On May 20, 1959, appellants filed a motion for the reconsideration of the order denying their motion to dismiss, but the same was denied on May 23 of the same year. Notice of this order was received by appellants on the 29th of the same month.

On July 8, 1959, appellee filed a second motion for default alleging, among other things, that, up to that time, appellants had not filed their answer. As this allegation was found substantiated by the record, the court entered the corresponding order of default, proceeded to receive the evidence of appellee and subsequently rendered decision as follows:

"WHEREFORE, this Court hereby renders judgment ordering the defendants to pay jointly and severally to the plaintiff the sum of:

'(1) ₱1,000.00 for his pecuniary loss due to the injury to his good will and patronage;
'(2) ₱1,000.00 as moral damages;
'(3) ₱1,000.00 as attorney's fees; and
'(4) Costs.

"Finally, the Court hereby orders the defendants, Alfredo Robles, Ignacio Loyola, Emilio Magcalos, Lucio Bersamin and Andoy "Doe," singly and en masse, including their attorneys, representatives, agents and any other person or persons assisting them, to refrain permanently from establishing picket lines in and around the premises and/or places where the plaintiff may perform professional musical services."

On October 26, 1959, appellants, this time through Atty. Edgardo Diaz de Rivera, filed a verified motion for new trial, alleging that their failure to answer the complaint was due to accident, mistake or the excusable negligence of their former counsel, Atty. Aurelio S. Arguelles, Jr., and alleging further that the decision and the writ of injunction were against the law. The court denied this motion on December 2, 1959 on the ground that it was not supported by any affidavit of merit nor did it allege facts sufficient to constitute a ground for relief from a final judgment. The order of denial further stated that appellants had no standing in court because the order of default entered against them had not been set aside.

On January 8, 1960, appellants filed a petition for relief from judgment, verified by appellant Robles who, in a separate affidavit, alleged that he was the president of the Philippine Musicians Guild, a registered labor union; that he was one of the defendants in the case; that they were declared default because their former lawyer, Atty. Aurelio S. Arguelles, Jr., failed to file their answer to the complaint and that because of his "mistake or excusable negligence", the substantial rights of his clients had been prejudiced; that had they been able to present evidence, the decision rendered against appellants would have been different.

Appellee naturally opposed the petition, and on February 8, 1960, the court denied the same firstly, because it was filed out of time, and secondly, because it did not rely on any ground sufficient to meet any of the reglamentary requirements.

The present appeal from the order last mentioned is without merit.

As the lower court held, the petition for relief was filed out of time. Appellants admit that they had knowledge of the order and decision by default rendered against them since **October 21, 1959.** It is clear, therefore, that the petition for relief filed on January 8, 1960, or seventy-nine (79) days after appellants knew of the order and decision by default, came too late — beyond the period of sixty (60) days provided for in Rule 38, Rules of Court.

Moreover, neither their motion for new trial nor the petition for relief was supported with any affidavit sufficient in form and substance to prove even one of the grounds provided for in Rule 38 of the Rules of Court, nor to show that appellants have a good and meritorious defense.

The mere allegation made by appellants in the petition for relief that the default was due to the gross negligence or mistake and/or abandonment of their attorney, without stating the facts that constitute such negligence, mistake, or abandonment, is not legally sufficient to justify the granting of the relief provided for in Rule 38. Likewise, it has been repeatedly held that, to merit the relief, it is not sufficient to allege that the aggrieved party has good and strong evidence to support his case, this being clearly a mere conclusion. The affidavit of merit required by the rules must contain and submit to the

court such facts as would probably convince the latter that the aggrieved party has a meritorious case.

Lastly, appellants also claim that the lower court erred in assuming jurisdiction over the case and issuing a writ of injunction against them, claiming that picketing is a legitimate exercise of freedom of speech and can not be enjoined in labor disputes. The only trouble with this contention is that the lower court made an express finding — which can not now be reviewed — that, at the time of the picketing, there was totally no employer-employee relations between plaintiff and appellants and the action was merely an ordinary one for damages and a restraining order.

WHEREFORE, the order appealed from is affirmed, with costs.

Bengzon, C.J.. Padilla, Bautista Angelo, Concepcion, J.B.L. Reyes, Regala, and Makalintal, JJ., concurred.

Labrador and Barrera, JJ., took no part.

III

Vicente Martelino, petitioner-appellant, vs. Maximo Estrella, et al, respondents, G.R. No. L-15927, April 29. Regala, J.

1. CABARET; LIMITATION OF ITS ESTABLISHMENT. — A cabaret cannot be established, maintained and operated at a distance of less than 200 meters from public schools. (Sec. 1, Rep. Act 938 as amended by Rep. Acts 979 and 1224).
2. "CHAPEL"; DEFINED. — A "chapel" is a small house or subordinate place of worship; A christian sanctuary other than a parish or cathedral church.
3. "CHURCHES"; WHAT DO THEY INCLUDE. — When the law speaks of "churches" it includes all places suited to regular religious worship. In 7 words and Phrases 199, it is described as a "place where persons regularly assemble for worship." (citing Stubbs v. Texas Liquor Control Board, Tex. Cir. Appl. 166 S.W. 2d. 178, 180.)
4. CHAPEL; WHEN IT WOULD NOT FALL UNDER CATEGORY OF A CHURCH. — In a chapel where there is no regularity in the holding of religious services, would not fall under the category of "churches" as contemplated in the law.
5. ID.; CHURCHES; ESSENTIAL CHARACTERISTIC OF A CHURCH.—In fact, chapels are churches; only that they may be smaller than, or subordinate to, a principal church. The essential characteristic of a church, is the devotion of the place of religious services held with regularity, and not the size of the building or of the congregation that assembles therein. The fact that these two buildings in question are called "chapel" in no way alters the case (See Delgado, et al. v. Roque, et al., G.R. No. L-8260, May 27, 1955,)
6. ID.; ID.; A CHAPEL IS CONSIDERED A CHURCH.—In the Delgado, et al., v. Roque. et al., G.R. No. L-8260, May 27, 1955, it was held that the so-called chapel of the Seventh Day Adventist in Sta. Cruz, Laguna, which is located near a proposed cockpit, is considered a "church" within the meaning of the law involved in this case.

D E C I S I O N

This is an appeal from a decision of the Court of First Instance of Rizal dismissing the petition of Vicente Martelino for prohibition with preliminary injunction in Civil Case No. 4502.

The facts are undisputed. On April 1, 1956, the Municipal Council of Makati, Rizal, by Resolution No. 94, approved the application of Vicente Martelino to reopen the Tropical Night Spot cabaret located in Constancia street of said municipality.[1] Pursuant thereto, the Mayor of Makati issued the corresponding permit to said applicant.

Under date of January 22, 1957, the Executive Secretary, through the Provincial Governor of Rizal, sent a communication to the mayor, informing him that according to the records in his (Secretary's) office, there were two buildings within 200 meters from the cabaret, which were being rented for school purposes, and which made the operation of said amusement place violative of Republic Act No. 1224. The mayor was thus enjoined to revoke the permit he had issued.

Replying to the communication of the Executive Secretary, the mayor asked for reconsideration of the order, alleging that according to an investigation conducted by a committee created by the municipal council of Makati, the classroom annex which used to be near the site of the cabaret had already been transferred to a far away barrio.

Subsequently, however, the governor of Rizal again addressed a letter to the mayor stating that according to a survey conducted by his office, the cabaret in question is located 191.50 meters from the F. Benitez Elementary School Annex, 37.30 from a Catholic chapel and 178 meters from a chapel of the Iglesia ni Kristo. Likewise, the mayor was enjoined to comply with the directive of the Executive Secretary.

Accordingly, the mayor sent a letter to Martelino, ordering him to close the cabaret in question. But instead of complying, Martelino, on April 2, 1957 filed with the Court of First Instance of Rizal a petition for prohibition with preliminary injunction praying that the mayor's order of closure be declared null and void for having been issued without or in excess of authority or with grave abuse of discretion, and that the mayor be ordered to refrain from enforcing said order. As prayed for, a preliminary writ was issued before trial.

The Court of First Instance found that, although there was no school within 200 meters from the questioned cabaret, there were two chapels therein. Said court, therefore, dismissed the petition and dissolved the preliminary injunction, holding that the establishment of petitioner's cabaret is in violation of Republic Act No. 1224.

The petitioner appealed to the Court of Appeals, but that court certified the case to us, finding no factual question involved. The certification, however, contains a very clear recital of the facts.

The provision of law that meets interpretation is Section 1 of Republic Act 938, as amended by Republic Acts 979 and 1224, which reads:

> "Section 1. The Municipal or City board or council of each chartered city and the municipal council of each municipal district shall have the power to regulate or prohibit by ordinance the establishment, maintenance and operation of nightclubs, cabarets, dancing schools, pavilions, cockpits, bars, saloons, bowling alleys, billard pools, and other similar places of amusement within its territorial jurisdiction: Provided, **however, That no such places of amusement mentioned therein shall be established, maintained and/or operated within a radius of two hundred lineal meters** in the case of night clubs, **cabarets,** pavilions, or other similar places, and fifty lineal meters in case of dancing schools, bars, saloons, billiard pools, except cockpit the distance of which shall be left to the discretion of the municipal or city board or council from any public building, schools, hospitals and churches. x x x." (underscoring supplied.)

The only issue in this appeal is whether or not the two chapels, which are located within a radius of 200 meters to the cabaret in question may be considered churches within the meaning of the above quoted section of the law.

Petitioner argues that Republic Act 1224 speaks of "churches" and not "chapels," and following the principle of statutory construction **expressio unius est exclusio alterius**, the word "churches" should not be taken to include chapels. Petitioner further states that there is a sharp difference between church and chapel.

[1]Reopening of the same Tropical Night Spot was also denied by the decision of this Court in Provincial Governor of Rizal, et al. v. Hon. Demetrio Encarnacion, et al., G.R. No. L-7282, Nov. 29, 1954. for the reason that it stands less than 500 meters from public schools. (The distance, as now provided in the law, amended, is 200 meters.)

We do not agree with petitioner.

As appearing in Webster's Third International Dictionary, "chapel" is defined as follows:

"1. (a) small house or subordinate place of worship; A Christian sanctuary other than a parish or cathedral church.
(b) a church subordinate to and dependent on the principal parish church to which it is a supplement of some kind.

"2. A private place of worship.
(a) a building or portion of a building or institution (as a place, hospital, prison, college) set apart for private devotions and often also for private religious services.
(b) a room or recess in a church that often contains an altar and is separately dedicated and that is designed especially for meditation and prayer but is sometimes used for small religious services.
x x x x"

We believe that when the law speaks of "churches" it includes all places suited to regular religious worship. In 7 Words and Phrases 199, it is described as a "place where persons regularly assemble for worship. (citing Stubbs v. Texas Liquor Control Board, Tex. Cir. Appl. 166 S.W. 2d. 178, 180.)

There is no question that a chapel is also a place of worship, but, of course, there are chapels where religious services are not held regularly, as in Webster's definition 2 (a) and (b) above stated. Undoubtedly, those kinds of chapel, where there is no regularity in the holding of religious services, would not fall under the category of "churches" as contemplated in the law.

The two chapels in question are, as found by both the Court of First Instance and the Court of Appeals, intended for the holding regularly of religious services. It appears that the Iglesia ni Kristo chapel, although alleged to be located on a borrowed lots, has its own pastor and services are held there regularly until a permanent one is built. The Catholic chapel, on the other hand, although formerly only a sort of **camalig** in 1947, has been improved since then by the townspeople and has now a galvanized iron roofing, wood sidings and cement foundations. Before 1954, the people, every now and then, used to invite the parish priest of the town to hold mass there. Beginning that year, however, thru the initiative of members of the Catholic Action, mass has been celebrated there every Sunday and on special occasions.

The above descriptions reveal no serious difference between the chapels in question from a church. In fact, they are churches; only that they may be smaller than, or subordinate to, a principal church. The essential characteristic of a church, as already explained, is the devotion of the place to religious services held with regularity, and not the size of the building or of the congregation that assembles therein. The fact that these two buildings in question are called "chapel" in no way alters the case (See Delgado, et al. v. Roque, et al., G.R. No. L-8260, May 27, 1955.)

In the Delgado, et al. v. Roque, et al. case, **supra**, this Court has held that the so-called chapel of the Seventh Day Adventist in Sta. Cruz, Laguna, which is located near a proposed cockpit, is considered a "church" within the meaning of the law involved in this case.

In view of the foregoing, the decision appealed from is hereby affirmed. Costs against the petitioner.

Bengzon, C.J., Bautista Angelo, Labrador, Concepcion, Barra, Paredes, Dizon and Makalintal, JJ., concurred.

Padilla and Reyes, J.B.L., JJ., took no part.

IV

MARVIN G. ELLIS, et al. petitioners, vs. REPUBLIC OF THE PHILIPPINES, oppositor-appellant, G.R. No. L-16922, April 30, 1963, Concepcion. J.

1. ADOPTION; NON-RESIDENT ALIENS CANNOT ADOPT A FILIPINO CITIZEN.—Petitioners who are citizens of the United States cannot adopt a citizen of the Philippines. (Art. 315(4), Civil Code).

2. ID.; ID.; PROCEEDINGS IN REM; COURTS MUST HAVE JURISDICTION OVER THE PARTIES AND PERSONAL STATUS OF PARTIES.—Petition for adoption is a proceedings **in rem**, which no court may entertain, unless it has jurisdiction, not only over the subject matter of the case and over the parties, **but, also, over the res**, which is the personal status of the person to be adopted as well as that of the petitioners.

3. ID.; ID.; JURISDICTION OVER A NATURAL PERSON DETERMINED BY THE LATTER'S NATIONALITY.—Our Civil Code (Art. 15) adheres to the theory that jurisdiction over the status of a natural person is determined by the latter's nationality. Pursuant to this theory we have jurisdiction over the status of Baby Rose, she being a citizen of the Philippines, but not over the status of the petitioners, who are foreigners.

4. ID.; ID.; PERSONAL STATUS IS SUBJECT TO THE JURISDICTION OF DOMICILIARY LAW.—Under our political law, which is patterned after the Anglo-American legal system, we have, likewise, adopted the latter's view to the effect that personal status, in general, is determined by and/or subject to the jurisdiction of the domiciliary law (Restatement of the Law of Conflict of Laws, p. 86; the Conflict of Laws of Beale, Vol. I, p. 305, Vol. II, pp. 713-714). This, perhaps, is the reason why our Civil Code does not permit adoption by non-resident aliens, and we have consistently refused to recognize the validity of foreign decrees of divorce — regardless of the grounds upon which the same are based — involving citizens of the Philippines who are not **bona fide** residence of the forum, even when our laws authorized absolute divorce in the Philippines.

5. ID.; ID.; PHILIPPINE COURTS HAVE NO JURISDICTION OVER NON-RESIDENT ALIENS WHO ARE PETITIONERS IN ADOPTION CASE.—Inasmuch as petitioners herein are not domiciled in the Philippines — and, hence, non-resident aliens — we cannot assume and exercise jurisdiction over their status, under either the nationality theory or the domiciliary theory. In any event, whether the above-quoted provision of said Article 335 of the Civil Code is predicated upon lack of jurisdiction over the res, or merely affects the cause of action, we have no authority to grant the relief prayed for by petitioners herein, and it has been so held in Caraballo v. Republic, L-15080 (April 25, 1962) and Katancik v. Republic, L-15472 (June 30, 1962).

D E C I S I O N

Appeal taken by the Government from a decision of the Court of First Instance of Pampanga granting the petition of Marvin G. Ellis and Gloria C. Ellis for the adoption of a Filipino baby girl named Rose.

Petitioner Marvin G. Ellis, a native of San Francisco, California, is 28 years of age. On September 3, 1949, he married Gloria C. Ellis in Banger, Maine, United States. Both are citizens of the United States. Baby Rose was born on September 26, 1959 at the Caloocan Maternity Hospital. Four or five days latter, the mother of Rose left her with the heart of Mary Villa — an institution for unwed mothers and their babies — stating that she (the mother) could not take care of Rose without bringing disgrace upon her (the mother's) family.

Being without issue, on November 22, 1959, Mr. and Mrs.

Ellis filed a petition with the Court of First Instance of Pampanga, for the adoption of the aforementioned baby. At the time of the hearing of the petition on January 14, 1960, petitioner Marvin G. Ellis and his wife had been in the Philippines for three (3) years, he being assigned thereto as staff sergeant in the United States Air Force Base, in Angeles, Pampanga, where both lived at that time. They had been in the Philippines before, or, to be exact, in 1953.

The only issue in this appeal is whether, not being permanent residents in the Philippines, petitioners are qualified to adopt Baby Rose. Article 335 of the Civil Code of the Philippines, provides that:

"The following cannot adopt:

x x x x

(4) Non-resident aliens;"

x x x x

This legal provision is too clear to require interpretation. No matter how much we may sympathize with the plight of Baby Rose and with the good intentions of petitioners herein, the law leaves us no choice but to apply its explicit terms, which unqualifiedly deny to petitioners the power to adopt anybody in the Philippines.

In this connection, it should be noted that this is a proceedings **in rem**, which no court may entertain, unless it has jurisdiction, not only over the subject matter of the case and over the parties, but also, over the **res**, which is the personal status of Baby Rose as well as that of petitioners herein. Our Civil Code (Art. 15) adheres to the theory that jurisdiction over the status of a natural person is determined by the latter's nationality. Pursuant to this theory, we have jurisdiction over the status of Baby Rose, she being a citizen of the Philippines, but not over the status of the petitioners, who are foreigners. Under our political law, which is patterned after the Anglo-American legal system, we have, likewise, adopted the latter's view to the effect that personal status in general, is determined by and/or subject to the jurisdiction of the domiciliary law (Restatement of the Law of Conflict of Laws, p. 86; The Conflict of Laws by Beale, Vol. I, p. 305, Vol. II, pp. 713-714). This, perhaps, is the reason why our Civil Code does not permit adoption by non-resident aliens, and we have consistently refused to recognize the validity of foreign decrees of divorce — regardless of the grounds upon which the same are based — involving citizens of the Philippines who are not **bona fide** residents of the forum, even when our Laws, authorized absolute divorce in the Philippines (Ramirez v. Gmur, 42 Phil. 855; Gonayeb v. Hashim, 50 Phil. 22; Cousine Nix v. Fleumer, 55 Phil. 85; Barretto Gonzalez vs. Gonzalez, 58 Phil. 67; Recto v. Harden, L-6897 [Nov. 29. 1956]).

Inasmuch as petitioners herein are not domiciled in the Philippines — and, hence, non-resident aliens — we cannot assume and exercise jurisdiction over their status, under either the nationality theory or the domiciliary theory. In any event, whether the above quoted provision of said Art. 335 is predicated upon lack of jurisdiction over the **res**, or merely affects the cause of action, we have no authority to grant the relief prayed for by petitioners herein, and it has been so held in Caraballo v. Republic, L-15080 (April 25, 1962) and Katancik v. Republic, L-15472 (June 30, 1952).

WHEREFORE, the decision appealed from is hereby reversed, and another one shall be entered denying the petition in this case.

Bengzon, C.J., Bautista Angelo, Labrador, Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concurred.

Padilla and Reyes, JJ. took no part.

V

LUZ BARRANTA, plaintiff-appellant, vs. INTERNATIONAL HARVESTER COMPANY OF THE PHILIPPINES, defendant-appellee, G.R. No. L-8198 April 22, 1963, Regala, J.

1. COURT OF INDUSTRIAL RELATIONS; REQUISITES IN ORDER TO ACQUIRE JURISDICTION OVER CONTROVERSY UNDER REP. ACT 875.—In order that the Court of Industrial Relations may acquire jurisdiction over a controversy in the light of Republic Act No. 875, the following circumstances must be present: (a) there must exist between the parties an employer-employee relationship, or claimant must seek his reinstatement; and (b) the controversy must relate to a case certified by the President to the Court of Industrial Relations, as one involving national interest, or must have a bearing on an unfair labor practice charge, or must arise either under the Eight-Hour Labor Law, or under the Minimum Wage Law. **In default of any of these circumstances, the claim becomes a mere money claim that comes under the jurisdiction of the regular courts."** (Bold letters ours.)
2. ID.; ID.;—A mere claim for reinstatement does not suffice to bring a case within the jurisdiction of the Court of Industrial Relations. It is necessary also that the case be one of the four enumerated cases as amplified in the case of Campos vs. Manila Railroad Co., G.R. No. L-17905, May 25, 1962. Here, a reading of the allegations of the complaint shows that while plaintiff-appellant seeks her reinstatement in the company, nothing is alleged therein to indicate that plaintiff-appellant's dismissal from the service amounted to an unfair labor practice. Neither is it claimed that this is a case certified by the President to the Court of Industrial Relations as involving national interest (Sec. 10, Republic Act No. 875), or a case arising under the Eight-Hour Labor Law (Commonwealth Act No. 444, as amended) or the Minimum Wage Law (Republic Act No. 602.)
3. ID.; ID.; LABOR CONTROVERSY; WHEN THE COURT OF FIRST INSTANCE HAS JURISDICTION.—Where plaintiff-appellant merely seeks her reinstatement with back wages; the recovery of moral and exemplary damages sufferred as a result of allegedly malicious criminal actions filed against her at the instance of defendant-appellee; the recovery of her contributions to a pension and savings plan; and the recovery of the money value of her accrued sick leave, the Court of First Instance has jurisdiction over the case.

DECISION

This is an appeal from the order dated August 22, 1960 of the Court of First Instance of Rizal, dismissing plaintiff-appellant's complaint on the ground that it had no jurisdiction over the case. The order was issued during the progress of the trial in the wake of our ruling in Price Stabilization Corporation v. Court of Industrial Relations, et al., G.R. No. L-13206, May 23, 1960, which clarified previous rulings on the jurisdiction of the Court of Industrial Relations.

The complaint reads:

"COMES NOW the plaintiff, through counsel and for causes of action against the defendant, to this Honorable Court, respectfully alleges:

First Cause of Action

"1. That plaintiff is of legal age and a resident of San Juan, Rizal, while the defendant is a domestic corporation, having its principal office at No. 744 Marques de Comillas, Manila, where it may be served with summons;

"2. That since May 16, 1947, plaintiff was employed by the defendant company as Secretary to the Treasurer of the defendant company;

"3. That due to plaintiff's efficient and satisfactory service, her salary has been periodically increased from ₱275.00

in 1947, to 532.00 in July, 1955, the last mentioned amount being her salary up to December 12, 1956;

"4. That on December 12, 1956, without any lawful cause or justifiable ground whatsoever, the defendant, through its president, Paul Wood, verbally informed the herein plaintiff that she was suspended from employment, and on the following day, she was informed by the defendant in writing through the same official, that: 'The effective date of your suspension is as of 5 P.M., December 12th, 1956, and for such further period as is required in completing an investigation x x x. Final decision as to your employment will be made after said investigation is completed;'

"5. That since the date of her suspension, no investigation, as apparently assured in writing by the defendant, was ever made known to the plaintiff, nor was she informed of the company's final action on her case; it was only after her attorneys inquired as to the status of her case was she informed in writing on June 3, 1957 that her employment with the defendant company was terminated, 'effective as of the date of suspension, 5 p.m., December 12, 1956;

"6. That plaintiff's suspension and dismissal were both unlawful, and she is entitled to reinstatement with full payment of her salary since December 12, 1956 up to the date of her actual reinstatement, or in the alternative, if reinstatement is not feasible, to all salaries due to her from December 12, 1956 up to the date of favorable final judgment in her favor, plus at least one month's severance pay, as actual damages;

Second Cause of Action

"7. That plaintiff incorporates in this cause of action, by reference, the allegations contained in paragraph 1 to 5 of the preceding cause of action;

"8. That aware of its unlawful action in suspending and dismissing the plaintiff from her employment, the defendant company abetted and encouraged no less than 27 employees of the company into filing criminal charges of estafa against the plaintiff, which criminal charges were nevertheless dropped by the Fiscal's office (Manila) or dismissed by the courts of justice after trial and hearing;

"9. That for such encouragement and aid, impelled by unjustifiable motives, in the prosecution of the herein plaintiff, the defendant company is liable to the herein plaintiff for moral and exemplary damages in the sum of ₱50,000.00;

Third Cause of Action

"10. That plaintiff incorporates in this cause of action, by reference, the allegations contained in paragraphs 1, 2 and 3 of the First cause of action;

"11. That in July, 1952, a pension and savings fund plan was introduced by defendant company whereby employees were required to contribute a certain percentage of their salary to a saving and trust fund and plaintiff herein became a member of said 'Pension and Savings Fund of the International Harvester Company of the Philippines;'

"12. That as of December, 1956, plaintiff had a total savings benefit of not less than ₱1,440.00 which, under the terms of the plan, would be returned to her with interest plus a percentage of the Company's contribution amounting to not less than 25% upon termination of her services prior to retirement;

"13. That the defendant company, in utter bad faith and in gross violation of the terms of the pension and savings funds, forwarded and forced upon the plaintiff the sum of only ₱20.46;

"14. That plaintiff is entitled to her actual savings benefit which should not be less than ₱1,440.00, plus a percentage of the company's contribution amounting to not less than 25%;

"15. That defendant's violation of the terms of the savings and trust fund and oppressive retention of plaintiff's savings under the plan have caused plaintiff grave moral damages of not less than ₱50,000.00 as she needed the money very badly when demand therefor was made as her mother was then very ill; plaintiff's mother subsequently died for lack of much needed funds.

Fourth Cause of Action

"16. That plaintiff's employment with the defendant company entitled her to regular sick leave with pay which can be accumulated up to a maximum period of 72 days;

"17. That plaintiff has not taken any sick leave since the time she was employed by the defendant and she is entitled to at least 72 days sick leave with pay, or an amount equivalent to ₱1,252.80;

"18. That defendant company has not only suspended and dismissed plaintiff without lawful and justifiable cause, but has also withheld plaintiff's accrued sick leave pay.

ALLEGATIONS COMMON TO
ALL CAUSES OF ACTION

"19. That plaintiff has demanded from defendant her reinstatement and the payment to her of her claims as hereinabove set forth, but the defendant has failed and refused to comply with said demands;

"20. That to enforce and protect her rights, plaintiff was forced to litigate and retain the service of undersigned counsel with an obligation to pay attorney's fees in the sum of ₱5,000.00."

The sole issue here is whether, on the basis of the allegations of the complaint as set forth above, the Court of First Instance of Rizal had jurisdiction over the case.

In dismissing the case, the trial court, citing our decisions held that "in an action for the reestablishment of relationship of employer and employee because of a wrongful severance, it is the Court of Industrial Relations and not the Court of First Instance that has jurisdiction."

This is not accurate. In Price Stabilization Corp. v. Court of Industrial Relations, **supra**, We held that —

> "Analyzing these cases, the underlying principle, it will be noted in all of them, though not stated in express terms, is that where the employer-employee relationship is still existing or is sought to be reestablished because of its wrongful severence (as where the employee seeks reinstatement), the Court of Industrial Relations has jurisdiction over all claims arising out of, or in connection with the employment, such as those related to Minimum Wage Law and the Eight-Hour Labor Law. After the termination of the relationship and no reinstatement is sought, such claims become mere money claims, and come within the jurisdiction of the regular courts."

A more recent definition of the jurisdiction of the Court of Industrial Relations is found in Campos, et al. v. Manila Railroad Co., et al., G.R. No. L-17905, May 25, 1962, in which We held:

> "We may, therefore, restate, for the benefit of the bench and the bar, that in order that the Court of Industrial Relations may acquire jurisdiction over a controversy in the light of Republic Act No. 875, the following circumstances must be present: (a) there must exist between the parties an employer-employee relationship, or claimant must seek his reinstatement; and (b) the controversy must relate to a case certified by the President to the C.I.R. as one involving national interest, or must have a bearing on an unfair labor practice charge, or must arise either under the Eight-Hour Labor Law, or under the Minimum Wage Law. **In default of any of these circumstances, the claim becomes a mere money claim that comes under the jurisdiction of** the regular courts." (Bold letter ours.)

A mere claim for reinstatement, therefore, does not suffice to bring a case within the jurisdiction of the Court of Industrial

Relations. It is necessary also that the case be one of the four enumerated cases as amplified in the Campos case. Here, a reading of the allegations of the complaint shows that while plaintiff-appellant seeks her reinstatement in the company, nothing is alleged therein to indicate that plaintiff-appellant's dismissal from the service amounted to an unfair labor practice. Neither is it claimed that this is a case certified by the President to the Court of Industrial Relations as involving national interest (Sec. 10, Republic Act No. 875), or a case arising under the Eight-Hour Labor Law (Commonwealth Act No. 444, as amended) or the Minimum Wage Law (Republic Act No. 602.).

For plaintiff-appellant merely seeks her reinstatement with back wages, the recovery of moral and exemplary damages suffered as a result of allegedly malicious criminal actions filed against her at the instance of defendant-appellee; the recovery of her contributions to a pension and savings plan; and the recovery of the money value of her accrued sick leave.

The Court of First Instance of Rizal erred therefore in holding that the case is cognizable by the Court of Industrial Relations and in dismissing the case.

WHEREFORE, the order of August 22, 1960 of the said Court of First Instance is hereby reversed and the trial court is directed to proceed with the trial of this case. No costs.

Bengzon, C.J., Padilla, Bautista Angelo, Concepcion, J.B.L. Reyes, Paredes and Makalintal, JJ., concurred.

Barrera and Dizon, JJ., took no part.

VI

People of the Philippines, plaintiff-appelant vs. Maximino Plaza, defendant-appellee, G. R. No. L-18819, March 30, 1963, Dizon, J.

CRIMINAL PROCEDURE; INFORMATION; AUTHORITY OF THE TRIAL COURT TO ORDER THE FILING OF ANOTHER INFORMATION OR AMENDMENT OF ONE ALREADY FILED.—Assuming that the lower court was right in holding that the facts alleged in the information do not constitute a punishable offense, as far as defendant was concerned, the case should not have been dismissed with respect to him. Instead, pursuant to the provisions of Section 7, Rule 113 of the Rules of Court, the lower court should have given the prosecution an opportunity to amend the information. That under the provisions of said rule the trial court may order the filing of another information or simply the amendment of the one already filed is clearly in accordance with the settled rule in this jurisdiction (U.S. vs. Muyo 2 Phil. 177; People vs. Tan, 48 Phil. 877, 880).

DECISION

Appeal by the State from an order of the Municipal Court of Butuan City dismissing the information filed in Criminal Case No. 2721, as against Maximino Plaza, on the ground that the facts alleged therein do not constitute a criminal offense.

The aforesaid information charge Esperanza Ato de Lamboyog, Capistrano Lamboyog and Maximino Plaza with estafa, alleging:

"That on or about the 6th day of October, 1954, in the City of Butuan, Philippines, and within the jurisdiction of this Honorable Court, the said accused conspiring, cooperating together and helping one another with accused Esperanza Ato de Lamboyog and her husband Capistrano Lamboyog pretending and misrepresenting themselves to be the sole and absolute owners of a real estate situated at Barrio Ba-an, Butuan City, covered by Tax Declaration No. 3824 (9949 located at Doot, Barrio Ba-an, Butuan City) more particularly described as follows, to wit:

'A parcel of agricultural land bounded on the North by Jose Ato, on the East by Ba-an River, on the South by Pedro Plaza, and on the West by the Agusan River containing an area of 7413 square meters more or less,

when in fact and in truth the above-named accused knew that the said land above described was already sold in a pacto de retro sale dated July 21, 1953, and later on converted the same sale into an absolute sale on September 3, 1953 in favor of Felipe F. Paular, did then and there willfully, unlawfully and feloniously with intent to defraud said Felipe F. Paular knowing that said property has been previously sold to the said Felipe F. Paular in the amount of ₱400.00, both accused entered into agreement whereby the said property above-described was sold by the accused Esperanza Ato de Lamboyog and her aforementioned husband, to his co-accused Maximino Plaza and falsely represented the same property to be free from encumbrance, to the damage and and prejudice of said Felipe F. Paular in the amount of ₱400,00 excluding the improvements thereon.

CONTRARY TO LAW: (Art. 316 of the Revised Penal Code)."

Defendant Plaza filed a motion to quash the information on the grounds that (1) the facts charged do not constitute an offense insofar as he was concerned; (2) that the information charged more than one offense; and (3) that the criminal liability had been extinguished by prescription of the crime. The court found the first ground to be well taken and dismissed the information as against him. Hence this appeal.

A perusal of the information discloses that it charges the three defendants with "conspiring, cooperating together and helping one another etc." to commit the offense charged, while at the same time another portion thereof would seem to imply that the Lamboyog spouses falsely represented to their co-defendant, Maximino Plaza, that the property they were selling to him was free from encumbrance — an allegation justifying the inference that Plaza did not know that the property he was buying had been previously sold to the offended party, Felipe F. Paular. In view of this, we are of the opinion that the real defect of the information is not that the fact alleged therein do not constitute a punishable offense but that its allegations, as to Plaza's participation and possible guilt, are vague.

But even assuming that the lower court was right in holding that the facts alleged in the information do not constitute a punishable offense, as far as defendant Plaza was concerned, the case should not have been dismissed with respect to him. Instead, pursuant to the provisions of Section 7, Rule 113 of the Rules of Court, the lower court should have given the prosecution an opportunity to amend the information. That under the provisions of said rule the trial court may order the filing of another information or simply the amendment of the one already filed is clearly in accordance with the settled rule in this jurisdiction (U.S. vs. Muyo 2 Phil. 177; People vs. Tan, 48 Phil. 877, 880).

WHEREFORE, the order of dismissal appealed from is hereby set aside and the case is ordered remanded to the court of origin for further proceedings in accordance with this decision.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, J.B.L. Reyes, Barrera, Paredes, Regala and Malintal, JJ.; concurred.

VII

Sergio F. Magulat, petitioner vs. Jacinto Arcilla, respondents et al., G.R. No. L-16602, Feb. 28, 1963, Regala, J.

1. COURT OF INDUSTRIAL RELATIONS; JURISDICTION; NO JURISDICTION FOR RECOVERY OF BASIC AND EXTRA COMPENSATION ON SUNDAYS AND HOLIDAYS WHERE EMPLOYER-EMPLOYEE RELATIONSHIP HAS BEEN TERMINATED.—Since, at the time of the filing of the complaint for the recovery of basic and extra compensation for work done on Sundays and holidays under Section 4 the Eight-Hour Labor Law (Commonwealth Act No. 444, as amended), the employer-employee relationship of the parties had been terminated and there being no petition for reinstatement, the claims of respondents did not come within the jurisdiction

of the Court of Industrial Relations.

2. ID.; ID.; BROAD POWERS REFERS ONLY TO MATTERS, CONTROVERSIES OR DISPUTES AFFECTING EMPLOYERS AND EMPLOYEES.—Section 1, Commonwealth Act No. 103 which respondent invoke, negates their stand for this section makes it plain that the broad grant of powers to the Court of Industrial Relations refers only to matters, controversies or disputes "arising between, and/or affecting employers and employees."

3. ID.; ID.; REQUISITES TO BE COMPLIED WITH IN ORDER TO GIVE THE INDUSTRIAL COURT JURISDICTION OVER A LABOR CASE.—In the case of Campos et al. vs. Manila Railroad Co., et al., G.R. No. L-17905, dated May 25, 1962, it was held that for the jurisdiction of the Court of Industrial Relations to come into play, the following requisites must be complied with: (a) there must exist between the parties an employer-employee relationship or the claimant must seek his reinstatement; and (b) the controversy must relate to a case certified by the President to the Court of Industrial Relations as one involving national interest, or must have a bearing on an unfair labor practice charge, or must arise either under the Eight-Hour Labor Law or under the Minimun Wage Law. In default of any of these circumstances, the claim becomes a mere money claim that comes under the jurisdiction of the regular courts.

DECISION

This is a petition for certiorari to annul the order of the Honorable Baltazar M. Villanueva of the Court of Industrial Relations and the resolution of that Court **in banc** denying a motion to dismiss filed by petitioner as respondent in Case No. 13-V-Pang., entitled "Jacinto Arcilla" et al., Petitioners v. Sergio F. Naguiat, respondent."

It appears that respondents were former employees of petitioner in his construction business in Angeles, Pampanga. On January 8, 1959, they sued petitioner in the Court of Industrial Relations for the recovery of basic and extra compensation for work done on Sundays and holidays under Section 4 of the Eight-Hour Labor Law (Commonwelath Act No. 444, as amended) during the period 1956-1957.

In his answer, petitioner, among other things, questioned the jurisdiction of the Court of Industrial Relations and raised the issue anew in a motion to dismiss which he subsequently filed, but the Honorable Baltazar M. Villanueva upheld his jurisdiction over the case in an order dated September 19, 1959, relying on our ruling in Monares v. CNS Enterprises, et al., G.R. No. L-11749, May 29, 1959. Petitioner moved for reconsideration of the order but the Court, sitting **in banc**, affirmed the disputed order in a resolution dated December 1, 1959. Hence, this petition, petitioner contending, among other things, that the Court of Industrial Relations had no jurisdiction over the case.

While this case was pending, this Court clarified its previous rulings on the jurisdiction of the Court of Industrial Relations and held in Price Stabilization Corp. v. Court of Industrial Relations, et al., G.R No. L-13206, May 23, 1960 that —

> "Analyzing these cases the underlying principle, it will be noted in all of them, though not stated in express terms, is that where the employer-employee relationship is still existing or is sought to be reestablished because of its wrongful severance (as where the employee seeks reinstatement), the Court of Industrial Relations has jurisdiction over all claims arising out of, or in connection with the employment, such as those related to the Minimum Wage Law and the Eight-Hour Labor Law. After the termination of their relationship and no reinstatement is sought, such claims become mere money claims, and come within the jurisdiction of the regular courts.
>
> "We are aware that in 2 cases, some statements implying a different view have been made, but we now hold and declare the principle set forth in the next preceeding paragraph as the one governing all cases of this nature."

Since, at the time of the filing of the complaint, the employer-employee relationship of the parties had been terminated and there being no petition for reinstatement, the claims of respondents Jacinto Arcilla, et al. did not come within the jurisdiction of the Court of Industrial Relations.

In their memorandum in lieu of oral argument, however, respondent ask that we re-examine the doctrine of the Prisco case. They contend that the Court of Industrial Relations was created to afford protection to labor and that Section 1 of Commonwealth Act No. 103 confers broad powers on the Court of Industrial Relations "to consider, investigate, decide, and settle all questions, matters, controversies, or disputes arising between and/or affecting employers and employees or laborers x x x and regulate the relations between them" regardless of the existence of employer-employee relationship between the parties.

There is no merit in the contention. Even Section 1 of the law, which respondents invoke, negates their stand. This section makes it plain that the broad grant of powers to the Court of Industrial Relations refers only to matters, controversies or disputes "arising between, and/or affecting employers and employees."

We find no reason to depart from the ruling in the Prisco case. The doctrine of the Prisco case has been reiterated in a long line of decisions.[1] It is now the rule on the matter. A restatement of this doctrine is found in Campos, et al. v. Manila Railroad Co., et al., G.R. No. L-17905, May 25, 1962, in which We held that for the jurisdiction of the Court of Industrial Relations to come into play, the following requisites must be complied with: (a) there must exist between the parties on employer-employee relationship or the claimant must seek his reinstatement; and (b) the controversy must relate to a case certified by the President to the Court of Industrial Relations as one involving national interest, or must have a bearing on an unfair labor practice charge, or must arise either under the Eight-Hour Labor Law or under the Minimum Wage Law. In default of any of these circumstances, the claim becomes a mere money claim that comes under the jurisdiction of the regular courts.

WHEREFORE, the Order of September 19, 1959 and the resolution of December 1, 1959 of the Court of Industrial Relations are hereby set aside, without pronouncement as to costs.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, Barrera, Paredes, Dizon and Makalintal, JJ., concurred.

VIII

Juan Andan, et al., petitioners-appellants vs. The Secretary of Labor, et al., respondents-appellees G.R. No. L-18556, March 29, 1963, Labrador, J.

DEPARTMENT OF LABOR; REGIONAL OFFICES; NO JURISDICTION TO CONSIDER MONEY CLAIMS INCLUDING OVERTIME PAY FILED BY LABORERS.—In the cases of Corominas, Jr., et al. vs. Labor Standards Commission, et al., G.R. No. L-14837, Manila Central University vs. Calupitan, et al.,

[1] National Development Co. v. Court of Industrial Relations, et al., G.R. No. L-15422, Nov. 30, 1962; Board of Liquidators, et al. v. Court of Industrial Relations, et al., G.R. No. L-14366, Oct. 31, 1962; Cagalawan v. Customs Canteen, et al., G.R. No. L-16031, Oct. 31, 1961; Sy Huan v. Bautista, et al., G.R. No. L-16115, Aug. 29, 1961; Culson v. Gaite, G.R. No. L-16611, March 25, 1961; Elizalde Paint & Oil Factory, Inc. v. Bautista, G.R. No. L-15904, Nov. 23, 1960; Sampaguita Pictures Inc., et al. v. Court of Industrial Relations, et al., G.R. No. L-16404, Oct. 25, 1960; Ajax International Corp. v. Saguritan, et al., G.R. No. L-16038, Oct. 25, 1960; New Angat-Manila Trans. Co., et al v. CIR, et al., G.R. No. L-16289, Dec. 27, 1960.

G.R. No. L-15483; Wong Chun vs. Carlim, et al., G.R. No. L-13940 and Balrodgan Co., Ltd. vs. Fuentes, et al., G.R. No. L-15015, jointly decided by the Supreme Court on June 30, 1961, it was held that the provision of Reorganization Plan No 20-A, particularly Sec. 25 thereof, granting regional offices of the Department of Labor original and exclusive jurisdiction to consider money claims including overtime pay, is not authorized by the provisions of Republic Act 997 which creates and grants power to the Reorganization Commission. For this reason regional offices have been declared in a long line of decisions without jurisdiction to consider money claims filed by laborers.

DECISION

This is an appeal from a judgment of the Court of First Instance of Bulacan, the Hon. Ambrosio T. Dollete, presiding, dismissing a petition for prohibition and certiorari filed by petitioners against the respondents-appellees.

On September 18, 1954, respondents-appellees Eugenio Aguirre, Fernando Navarro, Eufemio Ituralde, Aurelio de la Cruz, Eladio Fortez, Menandro de Guzman and Ismael Cruz filed thru the provincial fiscal two (2) separate informations against Asuncion Cruz and Juan Andan, the herein petitioners-appellants, docketed as Criminal Cases Nos. 2099 and 2100 of the Court of First Instance of Bulacan, for violation of the Minimum Wage Law and of the Eight-Hour Labor Law.

After a joint trial the court on September 12, 1958 rendered judgment finding Asuncion Cruz guilty in both cases and sentencing her to pay a fine of ₱250.00 in each case, Juan Andan was acquitted in both cases.

On November 10, 1958, respondents-appellees filed a complaint for unpaid wages against petitioners-appellants with Regional Office No. 3 of the Department of Labor. A motion to dismiss was filed on the ground of **res judicata** and for lack of jurisdiction to try or hear the complaint. This motion was denied by the Hearing Officer. On January 12, 1959, petitioners-appellants filed a motion for reconsideration of the order denying their motion to dismiss. The Hearing Officer denied the motion for reconsideration. After trial a decision dated February 17, 1959 was rendered sentencing the petitioners herein to pay the respondents the sum of ₱18,904.00 for overtime and unpaid wages and the sum of ₱1,890.00 as attorney's fees. On April 6, 1959, petitioners-appellants filed a petition for extension of time to appeal with the office of the Labor Standards, Bureau of Labor, which petition was denied in an order issued by the respondent Hearing Officer, dated April 6, 1959, and who at the same time issued an order directing the issuance of writ of execution.

On April 24, 1959, petitioners filed the petition for Certiorari and Prohibition with Preliminary Injunction in the Court of First Instance of Bulacan. In an order dated June 5, 1959, the said court directed the issuance of a writ of preliminary injunction enjoining the respondents from carrying out the decision of Regional Office No. 3 of the Department of Labor. The writ was issued on August 8, 1950. On January 16, 1961, the lower court rendered the decision dismissing the action. So it also dissolved the writ of preliminary injunction.

In this appeal appellants contend that the lower court erred in:

1. Holding that the defense of **res judicata** cannot be availed of in the proceedings had before Regional Office No. 3 of the Department of Labor; and
2. Holding that said Regional Office No. 3 had jurisdiction to hear and try the complaints filed by the respondents-appellees before it.

On the question of jurisdiction of the Regional Office No. 3 of the Department of Labor, the Court finds and declares that said Regional Office has no jurisdiction to hear and try the complaint filed before it by the appellees. In the cases of Corominas, Jr., et al. vs. Labor Standards Commission, et al., G.R. No. L-14837, Manila Central University vs. Calupitan, et al., G.R. No. L-15483; Wong Chun vs. Carlim, et al., G.R. No. L-13940 and Balrodgan Co., Ltd. vs. Fuentes, et al., G.R. No. L-15015 jointly decided by the Supreme Court on June 30, 1961, it was held that the provision of Reorganization Plan No. 20-A, particularly Sec. 25 thereof, granting regional offices of the Department of Labor original and exclusive jurisdiction to consider money claims including overtme pay, is not authorized by the provisions of Republic Act 597 which creates and grants power to the Reorganization Commission. For this reason regional offices have been declared in a long line of decisions without jurisdiction to consider money claims filed by laborers. The second assignment of error is therefore sustained.

As regional offices of the Department of Labor have no jurisdiction to consider claims of the respondents-appellees it is unnecessary for us to pass upon the first ground of appeal.

Wherefore the decision appealed from is hereby reversed, the decisions rendered by Regional Office No. 3 are hereby set aside and all proceedings therein in relation to the claims against petitioners as well as the orders issued by said Regional Office No. 3 are hereby declared null and void. With costs against respondents-appellees.

Bengzon, C.J., Padilla, Bautista Angelo, Concepcion, J.B.L. Reyes, Barrera, Paredes, Dizon, and Makalintal, JJ., concurred.

Regala, J., took no part.

IX

J.M. Tuason & Co., Inc., et al., Plaintiffs-appellees, vs. Ricardo Baloy, defendant-appellant, G.R. No. L-1627, May 30, 1963, Dizon, J.

RELIEF FROM JUDGMENT; LACK OF ALLEGATIONS OF FACTS IN AFFIDAVIT TO PROVE EITHER FRAUD, ACCIDENT, MISTAKE OR EXCUSABLE NEGLIGENCE. — Appellant's Motion for Relief from Judgment is not supported by the corresponding affidavit of merit and does not allege any showing of fraud, accident, mistake or excusable negligence to serve as a valid basis of the petition. While the petition for relief was verified, it sets forth no fact or set of facts, sufficient to constitute one of the grounds for relief under Rule 38 of the Rules of Court. And as the lower court stated in the appealed order, the petition was not accompanied with an affidavit of merit. On pages 12 to 15 of the Record on Appeal, there appears an affidavit of merit subscribed by counsel of appellant. HELD: As it appears printed in the Record on Appeal after the opposition filed by appellee in which the insufficiency of the petition for relief was raised because of the absence of an affidavit of merit to support the same, it may be presumed that this affidavit was prepared to meet and solve the situation. It is, however, clearly insufficient to cure the defect of the petition, because the allegations of fact made therein do not prove either fraud, accident, mistake or excusable negligence, nor do they show a valid defense in favor of the party seeking relief.

DECISION

This is an appeal from the order of the Court of First Instance of Rizal (Branch of Quezon City) denying appellant's petition for relief from a final and executory judgment rendered on December 16, 1959 in Civil Case No. Q-4290.

It appears that on June 7, 1959, appellee filed the abovementioned case against appellant to recover possession of a parcel of land containing an area of approximately 550 sq. meters, to have him remove his house and other constructions therefrom, and to recover the monthly sum of ₱165.00 as rental from the date he unlawfully occupied the property in April 1949, until possession thereof has been restored to appellee. Appellant filed his answer and, after trial on the merits, the Court rendered

(Continued on page 191)

Francisco College, Inc., petitioner vs. Gonzalo W. Gonzales, Commissioner of the Social Security Commission and Social Security System, respondents, CA-G.R. No. 31020-R, May 24, 1963, Piccio, J.

1. SOCIAL SECURITY ACT; OBJECTIVES OF THE LAW.—The Social Security Act has for its fundamental objective, the protection not only of its employees but also the employers as well. The law has intended to devise a system which would enhance and promote free enterprise by providing for the means, the requirements and the needs of both capital and labor. We preceive from its provisions such unwritten law and policy as would deny the conversion of the Act to squeeze contributions from organizations and institutions at any cost irrespective of their ability or inability to effect such contribution.
2. SOCIAL SECURITY COMMISSION; HEARING CONDUCTED BY A COMMISSIONER; FINDINGS TO BE REPORTED TO THE COMMISSION IN BANC; PROCEEDINGS NOT ADEQUATE WHERE EVIDENCE ARE NOT COMPLETE.—Petitioner contended that, as far as procedural requirements are concerned, the initial hearing in question had not been by the Commission **in banc** but by one of its members who had to report his findings eventually to the Commission **in banc** for corresponding decision on the case. Verily, the proceedings in such a hearing could not be considered adequate for the Commission **in banc** to act upon if the records — consequently the evidence — are not complete.
3. ID.; ID.; BARRING INTRODUCTION OF EVIDENCE AMOUNTED TO DENIAL TO BE HEARD AND TO DEFEND.—It is vigorously contended by petitioner that Exhibits D, D-1 to D-11 are of vital importance to its evidence and barring their introduction, moreover, their consideration, would be tantamount to a denial to petitioner of its inherent rights to be heard and defend itself fully. This condition is more evidently projected in situations such as this obtaining in the instant case, considering that the sanctions imposed by the Security Act — which might possibly be imposed upon petitioner — are punitive in nature. The law itself, being apparently in its swaddling clothes, is but an experiment, so much so that the vast, noble crusade of our government to improve the conditions of labor should proceed not altogether oblivious of the, at times, precarious position of capital. The groundwork for such an experiment must have to stand firmly on reasons and equity.
4. ID.; ID.; ID.; PETITIONER BE ALLOWED TO PRESENT ITS EVIDENCE IN ORDER TO ATTAIN PROPER ADMINISTRATION OF JUSTICE, EVEN A LITTLE DELAY MAY BE CAUSED THEREBY.—The granting of the instant petition, although implying another extension of time, appears necessary — for a complete submission of facts as alleged by petitioner — to enable the Commission **in banc** to pass upon the issue or issues properly, adequately and thoroughly in the interest of justice. While controversies of this nature should be promptly passed upon and decided, yet when the element of time needs a little stretching in order to properly attain the objectives in the administration of justice, a little more delay caused thereby may be suffered. Form must be subordinated to substance, and speed, not being in itself definite, must be reconciled to the inclemencies of attendant circumstances. Thus, in the instant controversy, the requirements of substantial justice would inquisitively prompt us to consider the introduction and eventual consideration of the import of Exhibits D, D-1 to D-11 and accord them the importance that they may possibly deserve. To deny this would appear to be a grave abuse of discretion on respondent's part.

DECISION

The instant petition is for the issuance of a writ of preliminary injunction to restrain respondent Hon. Gonzalo W. Gonzales, then Commissioner of the Social Security Commission and the Social Security System from taking further action in Case No. 163, then pending under it — until proper final determination of said case on the merits, thus annulling the order complained of, and eventually requiring respondent Commissioner to either give petitioner a chance to submit and identify Exhibits D, D-1 to D-11, inclusive, in connection with the trial on the merits of the case or requiring respondent to examine and consider the import of those books of accounts of petitioner.

The facts have disclosed that petitioner, having been required by respondent to submit itself under the purview of the Social Security Act, particularly Sections 22 and 24 thereof, a corresponding hearing was had. After both parties have been heard, in a motion dated June 5, 1962, petitioner prayed for the re-opening of the case so as to allow petitioner to submit and identify certain documents marked Exhibits D, D-1 to D-11, inclusive, appearing to be records, documents and books pertaining to its operation and with which to establish that the petitioner-College has been losing heavily and was not, therefore, in a position to contribute to the funds of the Social Security System.

This motion was subsequently denied by respondent Commissioner on the ground that the move has been allegedly devised to unnecessarily delay the proceedings, and this because of previous repeated petitions to transfer the hearing dated October 11 and 23, 1961, December 4, 1961 and February 8, 1962 — thus implying that respondent Commissioner, in denying the instant petition for the re-opening of the case, has not abused his discretion, much less violated the law.

We have thoroughly examined the voluminous record of the case — which revealed that such repeated petitions for postponement had really been prayed for by petitioner and that the proceedings had been pending for sometime to date.

Be this as it may, the interests of substantial justice would require that parties—litigants be accorded the furthest measure of opportunities with which to defend themselves. Petitioner insists that the documents (Exhibits D, D-1 to D-11) are vital to the maintenance of its position, above all, necessary in the final solution of the issue involved. Although not introduced on time, perhaps through inadvertence by previous counsel, they, however, constitute evidence **aliunde**.

Petitioner contends that the aforementioned documents (Exhibits D, D-1 to D-11) when properly considered will establish that petitioner has for years since its foundation, notwithstanding the competency of its management and conduct of its affairs, been losing heavily to such extent as to leave the same unable and incapable of meeting the demands of the Social Security Act. The Social Security Act, we glean from its provisions, hsa for its fundamental objective, the protection not only of its employees but also the employers as well. The law has intended to devise a system which would enhance and promote free enterprise by providing for the means, the requirements and the needs of both capital and labor. We perceive from its provisions such unwritten law and policy as would deny the conversion of the Act to squeeze contributions from organizations and institutions at any cost irrespective of their ability or inability to effect such contribution.

Petitioner adds that, as far as procedural requirements are concerned, the initial hearing in question had not been by the

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Commission **in banc** but by one of its members who had to report his findings eventually to the Commission **in banc** for corresponding decision on the case. Verily, the proceedings in such a hearing could not be considered adequate for the Commission **in banc** to act upon if the records — consequently the evidence — are not complete.

And it is vigorously contended by petitioner that Exhibits D, D-1 to D-11 are of vital importance to its evidence and barring their introduction, moreover, their consideration would be tantamount to a denial to petitioner of its inherent rights to be heard and defend itself fully. This condition is more evidently projected in situations such as this obtaining in the instant case, considering that the sanctions imposed by the Security Act — which might possibly be imposed upon petitioner — are punitive in nature. The law itself, being apparently in its swaddling clothes, is but an experiment, so much so that the vast, noble crusade of our government to improve the conditions of labor should proceed not altogether oblivious of the, at times, precarious position of capital. The groundwork for such an experiment must have to stand firmly on reasons and equity.

The granting of the instant petition, although implying another extension of time, appears necessary — for a complete submission of facts as alleged by petitioner — to enable the Commission **in banc** to pass upon the issue or issues properly, adequately and thoroughly in the interest of justice. While controversies of this nature should be promptly passed upon and decided, yet when the element of time needs a little stretching in order to properly attain the objectives in the administration of justice, a little more delay caused thereby may be suffered. Form must be subordinated to substance, and speed, not being in itself definite must be reconciled to the inclemencies of attendant circumstances.

Thus, in the instant controversy, the requirements of substantial justice would inquisitively prompt us to consider the introduction and eventual consideration of the import of Exhibits D, D-1 to D-11 and accord them the importance that they may possibly deserve. To deny this would appear to be a grave abuse of discretion on respondent's part.

Petition is hereby granted, reiterating the writ of preliminary injunction already issued, thus restraining respondent Honorable Commissioner or the Commission itself, from taking further action in Case No. 163 aforementioned until the final determination of the same on its merits, the corresponding hearing to be conducted by respondents accordingly. Without costs.

Piccio, Narvasa Rodriguez, JJ., concurred.

THE VALUE OF PRECEDENT*

"As a general rule, a court follows the old beaten track of precedents, without stopping to inquire in the reasons upon which they rest, until it discovers that to follow it in some particular case will result in great hardship or manifest injustice, when, for the first time, it feels itself bound to reconsider the reasons upon which the precedents it has hitherto followed rest, and upon such reconsideration it may find that the grounds upon which the original case was decided are not sound, and that all the subsequent cases have simply followed it without examining the reasons upon which it rests, or it may turn out that the reasons upon which the original case was decided have ceased to exist. In either of the cases supposed, where the case has not become a rule of property, the court should disregard the precedents, and announce such a rule as is consonant with reason and justice. The value of every case as a precedent, which is not founded upon some statutory provision and has not become a rule of property, depends entirely upon the reasons which supported it. If it is founded upon a misapprehension of facts, or is supported by false logic, or the reasons upon which it rests have ceased to exist, and the case has not become a rule of property, it should be disapproved, and no longer be recognized as authoritative."

* Mulkey, J., in Dodge v. Cole, 97 III 338, 37 Rep. 111.

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decision in favor of appellee on October 21 of the same year. Said decision became final and executory and the corresponding writ of execution was issued on December 5, 1959. On the 16th of the same month and year, appellant filed the petition for relief mentioned heretofore, to which appellee interposed a written opposition. After a hearing on the petition, the Court denied the same because it did "not comply with the provisions of the Rules of Court with respect thereto. Besides, the said Motion for Relief from Judgment is not supported by the corresponding affidavit of merit and does not allege any showing of fraud, accident, mistake or excusable negligence to serve as a valid basis of the petition."

The order appealed from must be affirmed.

While the petition for relief was verified, it sets forth no fact or set of facts sufficient to constitute one of the grounds for relief under Rule 38 of the Rules of Court. And as the lower court stated in the appealed order, the petition was not accompanied with an affidavit of merit.

We notice, however, that on pages 12 to 15 of the Record on Appeal, there appears an affidavit of merit subscribed by Cornelio Ruperto, counsel for appellant in this case, as well as in Civil Case No. Q-4290. As it appears printed after the opposition filed by appellee in which the insufficiency of the petition for relief was raised because of the absence of an affidavit of merit to support the same, it may be presumed that this affidavit was prepared to meet and solve the situation. It is, however, clearly insufficient to cure the defect of the petition, because the allegations of fact made therein do not prove either fraud, accident, mistake or excusable negligence, nor do they show a valid defense in favor of the party seeking relief.

WHEREFORE, the order appealed from is affirmed, with costs.

Bengzon, C.J., Padilla, Bautista Angelo, Concepcion, J.B.L. Reyes, Barrera, Paredes, Regala, and Makalintal, JJ. concurred.

Labrador, J., Took no part.

ERRATA TO APRIL, 1963 ISSUE

Insert the phrase "provision prohibiting" after the word "constitutional" on p. 98 left side 9th line from the top.

Insert the phrase "and to remain in power" after the word "power" on p. 98, right side last line.

On p. 100, omit the last two lines on the right side of the page except the word "equal,".

Insert the sentence "counsel for plaintiff sent to the GSIS through the manager" after the word "property" on p. 103 in the case of Francisco vs. GSIS, left side 8th line from the bottom.

Omit in the same case, same page, the phrase "to the GSIS through the manager plaintiff sent" in the last two lines on the left side of the page.

In the same case on p. 104, left side, omit the phrase "and the actual price" on the 13th line from the bottom of the page.

In the same case on p. 104, left side, omit the phrase "in Art. 2203 of the Civil Code, such absence is" after the word "enumerated" in the 11th line from the top of the left side of the page.

Insert the word "no" after "that" onp. 108, left side, on the 19th line from the bottom.

On p. 122 after the word "motion" on the left side of the page, 5th line from the top, insert the phrase "is necessary and without proof of service thereof, a motion".

PROFILES OF THE MEMBERS OF THE BENCH AND BAR

Justice Hermogenes Concepcion, Jr.

On June 1st, 1963, Hermogenes Concepcion, Jr., the young man aspiring to reach the top of his governmental career, suddenly found himself just one step short of the very top when he took his oath of office as associate justice of the Court of Appeals. Having just turned 43 years old last April 7, he ranks among the youngest in the present roster of justices in the Court of Appeals. To be more precise, he is the youngest of them. His talent and grit not yet fully exploited, coupled with his pleasing personality, Justice Concepcion is undoubtedly destined for still higher positions in the state legal heirarchy.

To have been catapulted from City Fiscal of Manila to the cherished distinction of appellate court justice in so short a time is certainly a recognition of his marked ability as a public prosecutor. His designation as such rests on a solid foundation of his brilliant performance and record as a public prosecutor. Justice Concepcion truly deserves this appointment.

Having hurdled the difficult bar examinations in 1941, he embarked in the active practice of law in 1942 when he opened his own law office. After his brief stint of three years as a private practitioner came his appointment as Assistant City Fiscal of Manila. This post he held from 1945 to 1958, after which he was promoted City Fiscal of Manila in 1958. All in all, Justice Concepcion served the government as a public prosecutor for eighteen years. Now, he will serve the government as a jurist whose sacred role is to explain and interpret the law to attain the ends of justice, and preserve its majesty as well as to maintain the dignity of the court.

From his long and wide range of experience as public prosecutor, Justice Concepcion believes that, for an efficient administration of justice in criminal cases, the establishment of municipal courts and courts of first instance whch would have sole and exclusive jurisdiction to try them would be most suitable. He highly recommends this to expedite the speedy disposition of criminals cases and, hence, prevent clogged court dockets.

He opines that, instead of separate annual conventions of judges, lawyers, and fiscals they should have a joint convention headed by one judge of the Court of First Instance, two active members of the bar, the Secretary of Justice and the Solicitor-General. In this way, their common problems can be better discussed and resolved, resulting in a more efficient administration of justice. He further suggests that in order that a fiscal may be able to carry out of his job more efficiently, he should enjoy the same degree of independence as judges do.

Of the countless cases which he has prosecuted, Justice Concepcion considers as the most memorable and worthy of mention, the first Politburo case in 1950, which he successfully prosecuted in the Court of First Intance of Manila. Our nation was then in grave danger of Communist subversion because of the menacing strength of the Huks. It was his impressive performance and unparalleled feat as prosecutor of that case that attracted the attention of the late President Ramon Magsaysay, who lost no time in conferring upon him the distinguished award of the Legion of Honor.

To add to his string of honors and distinctions, Justice Concepcion was chosen president of the Government Prosecutors League of the Philippines for two consecutive terms from 1960 to 1962.

Like other great men of knowledge and experience, he had the desire to impart what he knew to others. And so, he joined the law faculty of the Philippine Law School, the Far Eastern University, and the University of Manila. He taught in these schools for no less than nine years from 1949 to 1958.

For Justice Concepcion, however, it is not all books and serious work. He also believes in that saying in Latin, "mens sana in corpore sano", that is, a sound mind in a healthy body. He indulges in occasional golf to keep himself fit and conditioned to meet the continuous challenge and the rigors in the exercise of the legal profession. Serious work tempered with moderate recreation is what he considers the ideal life for a lawyer.

Justice Concepcion first learned the primary and intermediate subjects at the Cabanatuan Elementary School after which, he pursued his secondary education at the Nueva Ecija High School where he graduated after only three years. A self-made man from the very start, he journeyed to Manila and enrolled for his pre-law studies at the University of the Philippines, then situated at Padre Faura.

At the state university, he was not to be easily outdone both in curricular and extracurricular activities. Aside from consistently maintaining his position among the top in his class, he won that coveted award, the Quezon Medal for Excellence in Oratory. His fellow students acknowledged his sterling qualities as a leader when they elected him in 1940 to the highest position of president of the state university student council.

Justice Hermogenes Concepcion, Jr. first saw the light of day on April 7, 1920 in Cabanatuan City, Nueva Ecija. His father, Hermogenes Concepcion, Sr., still living, as well as his mother, the former Rosario Diaz, now deceased, both hail from Cabanatuan City. His father who was himself a judge of the Court of First Instance, is now retired. In 1944, Justice Concepcion married the former Josefina C. Reyes, a lass from Candaba, Pampanga, in whom he has continually found that inspiration and guiding light through all the trying years of his life as a lawyer and public prosecutor. Justice Concepcion and his wife, Josefina, are blessed with two children of whom they are very proud. Both are now studying.

To the query on whether he would prefer them to be lawyers like himself, he quipped, "No", very significant of a father's natural concern for his children and his apparent awareness of the sacrifices that a lawyer's life calls which he considers "too much for so little."

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