Editorial:

THE LIWAG SPEECH

The Manila Lions speech of Secretary Liwag, assailing the Supreme Court, after President Macapagal had expressed his disagreement with the decisions of the Supreme Court in the Garcia and Faypon cases, and rebuked one of its justices who rendered a concurring opinion in the Garcia case, continues to be the subject of popular comment, and while the speech has had its share of partisan support, including that of a law school dean who was subsequently designated assistant legal adviser to Malacañang, there appears no question but that the weight of public opinion has reacted adversely to it.

This editorial has no quarrel with the proposition that free speech encompasses the right to disagree with and publicly criticize the actions and decisions of men in government service, and these include supreme court justices, and the Supreme Court itself. Where the learned Secretary appears to have transgressed the bounds of propriety, however, was in confusing action *with* motive. *Some sectors of public opinion, for instance, have criticized Presidential* action *and* decision *in authorizing the hasty deportation of Harry Stonehill, but even Secretary Liwag, who cannot possibly question thé* right *of public opinion tó criticize* actions *of the President, will surely consider it beyond the rule of fair play if criticism of Presidential decision were to include* imputation *óf* malevolent motive *to it. Even the severest critics of the President in the Stonehill deportation case did not dare publicly impute to the President improper* motives *behind his decision. In brief, Secretary Liwag, himself a highly competent member of the Bar, would have done well to distinguish between an* action *and an* actuation.

But this particular aspect of the Liwag speech has been thoroughly explored by public comment and this Editorial has no desire to further add to the discussion. We are, however, concerned with a disturbing proposition advanced by the Secretary in the course of his speech, a proposition which appears to have been overlooked by its critics. We refer to that portion óf Secretary Liwag's address which reads as follows:

> *"x x x we must advance the proposition that if the President ever abuses his prerogatives, let him be censured and crucified by the people who have elected him to public office.* Let not the members of the Supreme Court, take unto themselves the right and the power to judge the reasonableness or unreasonableness of the acts of their President — *because in a democracy this right and power belong exclusively to the sovereign people."*

We repeat that the foregoing is a disturbing proposition, made more disturbing by the fact that it came no less from the Secretary of Justice. The proposition is fraught with implications subversive of the fundamental principles which underlie our system of checks and balances.

If the Supreme Court, according to Secretary Liwag, has no right to pass upon the reasonableness or unreasonableness of Presidential action, then, who has? Secretary Liwag maintains that only *the electorate does.*

If the President, therefore, chooses to persecute *a private individual without cause, the Supreme Court, by the Liwag proposition, has no right to pass upon the "reasonableness or unreasonableness" of the action of the President, and any attempt to do so will constitute "judicial exhuberance". What then is the recourse of the individual? By the Liwag thesis, that individual must go to the electorate and present his cause. This is novel political theory and one finds it rather difficult to comprehend how the learned Secretary contrived the same.*

We have always understood it that under our system of checks and balances, designed precisely to avoid a regime of dictatorship, the Supreme Court has been vested not only with the constitutional function, but with the, constitutional duty, *to pass upon the reasonableness or unreasonableness of Presidential action, particular insofar as the same affects statutory rights whether of private individuals or public officials. To advance the proposition that under our scheme of government, only the electorate is vested with the right to pass upon the reasonableness or unreasonableness of Presidential action is to suggest a shocking naivete, not only of the law, but of the facts of public life. Under Liwag's theory, Dr. Paulino Garcia should have taken his cause, not before the Supreme Court, but before the people, barrio-to-barrio style.*

Suppose the President, sensing a hostile Congress, were to issue an executive order suspending this co-equal branch of government and, assisted by the Armed Forces, of which he is the Commander in Chief, were to arrest every Congressman and Senator who attempts his way to the session hall?

Under the Liwag theory, the recourse of each senator and congressman is, not the Supreme Court, but the sovereign people.

We find it difficult to interpret the Liwag proposition in any other way. As a trained practitioner and member of the Bar, not to mention as Secretary of Justice, Secretary Liwag must be presumed to be a man who measures not only his statements but the logic and implication of the same. This Editorial has measured the speech of Secretary Liwag, and measurement has defied legal comprehension.

We can only hope that the Secretary's novel statement does not constitute the measure of his legal advice to the President.