A CRITICAL STUDY OF THE PROVISIONS OF THE CIVIL CODE OF THE PHILIPPINES ON LEGITIMACY AND ILLEGITIMACY OF CHILDREN

BY E. VOLTAIRE GARCIA *

I wish to thank the members of the Board of Directors of the Philippine Lawyers Association and all delegates representing the different bar associations throughout the length and breadth of the Country now in convention assembled for this rare privilege and opportunity accorded me to address you this afternoon on the subject "A Critical Study of the Provisions of the Civil Code of the Philippines on Legitimacy and Illegitimacy of Children", which I consider of paramount importance not only from the point of view of civil rights and obligations but also from the point of view of the social stigma from which illegitimate children unreasonably suffer.

We all know that legitimacy is mainly a matter of presumption because of the impossibility of descending into the mysteries of conception for the purpose of the identification of the paternity of the child (Ramirez Cabrera, Persons and Family Relations, 255) which appears to be beyond human knowledge to fathom (3 Scaevola, 287) so that the presumption of legitimacy of a child cannot be destroyed even by a contrary declaration by the mother (Art. 256, C.C.). It is, therefore, only in the limited cases when the legitimacy of a child is impugned or sought to be established before the Courts that legitimacy may be a matter of evidence Arts. 261, 262, 263, 268, C.C.). Even if it were scientifically possible to determine exactly the paternity of a child in every case it will, undoubtedly, be still the better policy to adhere to the principles of presumption of legitimacy, otherwise, every time a wife delivers a child medical experts will be prying into the utmost privacy of her conception resulting in scandal and embarrasment not only to her but also to the poor husband. And, moreover, "if the question of legitimacy were open to such attack, to be sustained or defeated by a mere preponderance of evidence based largely and most frequently upon circumstances, the integrity of blood, the pride of ancestry, and its just sense of honor all would depend upon the most dubious of titles" (Sergent vs. North Cumberland, etc., 112 Ky 888). There are physical earmarks connecting the wife, birth and child but none with reference to the husband. The relation between mother and child is a matter of fact, while the relation between father and child is a matter of presumption. The presumption of legitimacy is based upon the presumption of virtuous conduct of the mother (Cannon vs. Cannon, 7 Humphr. (Tenn.) 410), and founded as well upon the coincidence of probabilities (Sergent vs. North Cumberland Mfg. Co., 112 Dy. 898, 891: 66 S. W. 1036, foot note, 7 C J. 941). The presumption, however, is not one without scientific foundation. Medical experts on this matter affirm that the shortest period necessary for a foetus to acquire the conditions of viability is six (6) months and that intra-uterine life does not extend beyond ten (10) months (3 Scaevola 291). This is also the view of Hipocrates, a natural philosopher (I Oyuelos 172, 173). There is, however, no fixed rule in this regard as there is authority to the effect that sometimes the period is prolonged to three hundred thirteen (313) days (according to Ahfeld) or even to three hundred twenty (320) days according to Schroder) which are, undoubtedly, abnormal cases and are, therefore, valueless as a basis for a formation of the rules. The general average of the maximum period, according to Legrand du Saulle, is from two hundred seventy five (275) to three hundred (300) days. The German Code establishes the period from a minimum of one hundred eighty one (181) days to a maximum of three hundred two (302) days (1 Manresa 491). The Spanish Code (Art. 108) like that of the New Civil Code of the Philippines (Art. 255) fixes a minimum period of one hundred eighty (180) days and a maximum of three hundred (300). The same periods are fixed by the French Code (I Colin y Capitant,

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THE EXPANDING CONCEPT OF LIBERTY AND ITS SIGNIFICANCE FOR THE LEGAL PROFESSION

BY ATTY. ENRIQUE FERNANDO

With your indulgence, I propose to discuss the expanding concept of liberty and its significance for those of us in the legal profession.

We are all familiar with the leading Philippine case, *Rubi v. Provincial Board*, where liberty as guaranteed by the Constitution was identified with "the right to exist and the right to be free from arbitrary personal restraint or servitude." That is not all there is to it. It likewise "is deemed to embrace the right of man to enjoy the faculties with which he has been endowed by his Creator, subject only to such restraints as are necessary for the common welfare." Thus the right to liberty if respected enables human beings, according to the opinion by Justice Malcolm, to use their faculties in all lawful ways; to live and work where they will; to earn their livelihood by any lawful calling; and to pursue any avocation.

It is not to be forgotten that the Supreme Court in the same case gives the warning that liberty as understood in democracies is not license. For what the Constitution guarantees is liberty under the law. Implied in the term is restraint by law for the good of the individual and for the greater good, the peace and order of society and the general well-being. No man can do exactly as he pleases. Every man must renounce unbridled license. In the words of Mabini, as quoted in the same case, "liberty is freedom to do right and never wrong; it is ever guided by reason and the upright and honorable conscience of the individual."

This is so as the liberty to be safeguarded is, according to former Chief Justice Hughes, "liberty in a social organization." Arbitrary restraint is thus ruled out, but not immunity from reasonable regulations and prohibitions imposed in the interest of the community. The liberty of the citizens may, in the interest of public health, public order or safety, of general welfare, in other words through the proper exercise of the police power, then be regulated. Under circumstances which to us in the profession amount to due process, there may even be deprivation of it. No constitutional question arises.

In that sense liberty does in deed pose, to quote from Justice Cardozo, "an underlying paradox. Liberty in the most literal sense is the negation of law, for law is restraint, and the absence of restraint is anarchy. On the other hand, anarchy by destroying restraint would leave liberty the exclusive possession of the strong and unscrupulous."

Liberty would be meaningless, however, if it were so. The Constitution safeguards it for all. No real contrariety or antagonism does exist between it and law. For there is recognition, according to Cardozo of that "domain of free activity that cannot be touched by government or law at all, whether the command is specially against him or generally against him and others."

In every proper case calling for the exertion of governmental power, the problem is one of harmonizing or adjusting the individual right to liberty and the community or general welfare. Necessarily then in times of stress, whether occasioned by internal disorder, fear from external aggression, or economic insecurity, the field of liberty may contract with the expansion of state power occasioned by the gravity and urgency of its needs. Diminution or restriction there may be, but never obliteration.

There are those who think of liberty as freedom from interference. That is true. There it begins, but it cannot stop there. So in the *Rubi* opinion, there is mention not only of the negative concept of liberty which is absence of restraint but likewise of its positive significance which is the enlargement of opportunity. Liberty is not only freedom from but freedom for. It is not enough that one is let alone. It is equally important that one be enabled to achieve, to realize the potentialities of his personality.

It is in that sense that the meaning has expanded. It is

540), the Code of Guatemala (3 Scaevola 291), the Swiss Code (Robert P. Shick, The Swiss Civil Code, p. 57).

Thus, Article 255 of the Civil Code of the Philippines (Republic Act 386) commonly known as the New Civil Code provides:

> Art. 255. Children born after one hundred and eighty days following the celebration of the marriage, and before three hundred days following its dissolution or the separation of the spouses shall be presumed to be legitimate.
>
> Against this presumption no evidence shall be admitted other than that of the physical impossibility of the husband's having access to his wife within the first one hundred and twenty days of the three hundred which preceded the birth of the child.
>
> This physical impossibility may be caused:
> (1) By the impotence of the husband;
> (2) By the fact that the husband and wife were living separately in such a way that access was not possible;
> (3) By the serious illness of the husband.

Article 255 of the New Civil Code is a reproduction of Article 108 of the Civil Code of Spain, now usually referred to as the old Civil Code, with the addition in the New Code of what may cause the impossibility of the husband's access to the wife during the period of conception, namely: (1) By the impotence of the husband; (2) By the fact that the husband and wife were living separately, in such a way that access was not possible; (3) By the serious illness of the husband.

Before the New Civil Code took effect presumptions of legitimacy of children were governed by the Rules of Court, providing for a conclusive presumption and a rebuttable presumption, both of which were taken from the Code of Civil Procedure (Art. No 190), thus:

> The issue of a wife cohabiting with her husband, who is not impotent, is indisputably presumed to be legitimate, if not born within one hundred and eighty days immediately succeeding the marriage, or after the expiration of three hundred days following its dissolution (Rule 123, Sec. 68, Paragraph C; taken from Section 333, paragraph, 3 Code of Civil Procedure).
>
> That a child born in lawful wedlock, there being no divorce, absolute or from bed and board, is legitimate (Rule 123, Sec. 69, par. CC; taken from Sec. 334, par. 29, Code of Civil Procedure).

There seems to be no substantial difference in practical application between Article 255 of the New Civil Code and the conclusive presumption of legitimacy provided for by Rule 123, Sec. 68, paragraph C, of the Rules of Court. Under the provisions of the Rules of Court the presence of the following requisites gives rise to the conclusive presumption: (a) marriage (b) cohabitation (c) husband not impotent (d) birth after one hundred eighty days following celebration of marriage or within three hundred days from dissolution. Whereas, Article 255 of the Civil Code requires (a) marriage and (b) birth after one hundred eighty days from celebration of marriage or within three hundred days from its dissolution or separation of spouses to give rise to the presumption of legitimacy, which may be rebutted only by physical impossibility of access by the husband to the wife during the probable period of conception, resulting from husband's impotence, or separation in such a way that access was impossible or serious illness of husband rendering access impossible. Actually, the Civil Code (Art. 255) suppressed two essential elements of the conclusive presumption of the Rules of Court and declared them evidence that may overcome the presumption of legitimacy provided for therein. In the United States the great weight of authority is to the effect that impossibility of access by the husband to the wife during the probable period of conception overcomes the presumption of legitimacy (See Max Radin, The Common Law of the Family, VI The National Law Library, 145). The Code Commission has not given any reason for a departure from the principles of the conclusive presumption of the Rules of Court and a reversion to the old provision of the Spanish Code.

something positive, opportunity or capacity or ability to do, freedom to achieve. It is in the latter sense that Laski identified liberty with the "eager maintenance of that atmosphere in which men have the opportunity to be their best selves" or "the absence of restraint upon the existence of those social conditions which in modern civilization are the necessary guarantees of individual happiness." This view considers liberty as identical with the opportunity for the growth and the unfolding of the human personality.

What is of the permanent essence of freedom, Laski continued, is that the personality of each individual should be so unhampered in its development, whether by authority or by custom, that it can make for itself a satisfactory harmonization of its impulses. There is an invasion of liberty where government-imposed prohibition acts so as to destroy that harmony of impulses which comes when a man knows that he is doing something it is worthwhile to do. Restraint frustrating the life of physical, intellectual, and spiritual enrichment is evil.

Nor is liberty reserved alone for the rich, the well-born, the economically secure. Those with lesser advantages at birth are entitled to their share of liberty. Their lives must not be stunted because of their poor or modest origins. That indeed is the goal.

That is all well and good, you might say, these fine words and noble phrases, but what does it mean for us who are practitioners in the law? To that even more important phase of the question, I now turn.

May I start by speaking of liberty in the sense of being let alone, a concept which under the Constitution is implemented by specific pledges and immunities that may be classified under two headings:

(1) Freedom of belief, whether secular or religious, freedom of expressing such beliefs, and freedom to associate with others of a like persuasion; and

(2) Personal freedom which includes the constitutional rights of the accused as an assurance that such liberty of the person may not lightly be interfered with by state action.

I believe I speak the sense of the legal fraternity, and even those who do not have the good fortune of being its members, when I say that on the whole with certain regrettable lapses, the men of the law whether on the Bench or in the Bar have been true to the sacred calling of defending freedom of belief and of expression as well as personal freedom. As a matter of fact, the complaint lately has been that sometimes in their zeal for the defense of their client's rights, there may have been a one-sided stress on the claims of liberty as against the demands of authority.

Here, I may possibly be entering a more controversial ground when I assert that those of us in the law should continue to follow that course, unrelaxing in our vigilance in the defense of the individual right to liberty. It is not for us to make meaningless the constitutional mandate that freedom of belief and of opinion should be given free play. When our services are thus solicited, it is not for us to hesitate. To our country, no less than to our clients, we owe all that is in us to oppose, and if we can frustrate, well-meaning, but sometimes mistaken, governmental action hostile and inimical to liberty.

The need seem to be greater in the Philippines as well as in the United States, for recent leading decisions indicate not expansion but diminution of at least one aspect of liberty, freedom of belief and of expression. There appears to be a retreat from the high vantage point of the clear and present danger doctrine. In 1943, the American Supreme Court in *West Virginia State Board of Education v. Barnette* asserted:

> "But freedoms of speech and of press, of assembly and of of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the state may lawfully protest." (per Jackson, J.)

In 1949, it could reiterate:

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The first sentence of Article 258 of the Civil Code provides for a *prima facie* presumption of legitimacy of "a child born within one hundred eighty (180) days following the celebration of the marriage," which presumption may, of course, be rebutted by any evidence admissible in law that the husband is not the father of the child. This presumption is of less weight than that provided for by Article 255 of the Civil Code in favor of a child born after one hundred eighty (180) days following the celebration of the marriage or before three hundred (300) days following its dissolution or separation of the spouses which can not be overcome by any evidence except that of physical impossibility of access by the husband to the wife during the probable period of conception. There again, therefore, appears no appreciable distinction in operation between the first sentence of Article 258 of the Civil Code and the disputable presumption of legitimacy provided for in Rule 123, Sec. 69, par. CC, of the Rules of Court, in favor of a child born in lawful wedlock if the over-all effects be considered of Article 255 and the first sentence of Article 258 of the Civil Code on one hand and the joint principles of conclusive and disputable presumptions of legitimacy provided for in Sec. 68, par. C, and Sec 69, par. CC, of Rule 123 of the Rules of Court on the other.

The rule seems to be universal that a child born in lawful wedlock is presumed to be legitimate. The effects of illegitimacy under the early Common Law of England were unusually difficult for the child who was considered a *filius nullius*, without any family relations by birth, (Max Radin, The Common Law of the Family, VI The National Law Library, 141), child of nobody, or *fillius populi*, the child of the people (7 Am. Jur. 627), which doctrines did not find acceptance in the early American Colonies where the natural relationship between the illegitimate child and the mother was recognized. The effects of illegitimacy were so adverse and degrading to the child that Courts of the English Common Law invariably required the strongest evidence in order to overcome the presumption of legitimacy (Radin, Id., 1 42-144) which was carried forward to such an extent in England that sometimes amounted to absurdities. There developed in the Common Law of England a presumption of legitimacy in favor of the issue of a wife which can not be disputed, if her husband be within the four seas, that is, within the jurisdiction of the King of England, unless the husband had apparent impossibilities of procreation (2 Coke Litt. 244a, footnote, 7 C. J. 941). Thus "it was solemnly decided by a court of the highest jurisdiction, that a child born in England was legitimate although it appeared on the fullest evidence that the husband resided in Ireland during the whole time of the wife's pregnancy, and for a long while previously, because Ireland was within the King's dominion," (Wright vs. Hicks, 12 Ga. 155, 159; 56 Am. D. 451 footnote, 7 C. J. 942). "In the time of Edward II, the Countess of Glowcester bore a child one year and seven months after the death of the duke and it was pronounced legitimate. In the reign of Henry VI, Mr. Baron Rolfe expressed the opinion with apparent gravity, that a widow might give birth to a child seven years after her husband's death without injury to her reputation" (Dickinson's App., 42 Conn. 491, 501; 19 AmR 553, footnote, 7 C. J. 942. There was, obviously, too much fiction in upholding the legitimacy of a child born years after the death of the husband. While presumption is tainted with fiction it must not too apparently go against the realities of life to appear ridiculous.

The New Civil Code has carried forward this fiction in providing for certain conclusive presumptions of legitimacy of children in Article 258, which reads:

> A child born within one hundred eighty days following the celebration of the marriage is *prima facie* presumed to be legitimate. Such a child is conclusively presumed to be legitimate in any of these cases:
>
> (1) If the husband before the marriage, knew of the pregnancy of the wife;
>
> (2) If he consented, being present, to the putting of his surname on the record of birth of the child;

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> "Accordingly a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute, (Chaplinsky v. New Hampshire, supra (315 U.S. pp. 571, 572, 86 L. ed. 1034, 1935, 62 S. Ct. 766), is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest. x x x There is no room under our Constitution for a more restrictive view. For the alternative would lead to standardization of ideas either by legislatures, courts, or dominant political or community groups." (per Douglas, J., Terminiello v. Chicago).

With the *Dennis* decision, however, in 1951, there is an indication in the main opinion by the late Chief Justice Vinson that the clear and present danger doctrine now means only that, following Learned Hand, "in each case x x x (courts) must ask whether the gravity of the evil discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger." The degree of imminence and immediacy of the danger required is less than in the classic formulation of Holmes. The gravity of the evil, the overthrow of the government no less, might have led the majority to conclude that suppression of the utterance was unavoidable. It is to be hoped that such was the case.

At least the fear of the virulent nature of the Communist conspiracy could explain the modification of the clear and present danger doctrine in the United States. In our own country, in *Espuelas v. People*, a foolish and intemperate letter by a man, who simulated suicide as a protest against the administration, was cause enough for convicting the writer of inciting to sedition.

Even if the majority opinion be viewed with the utmost sympathy, its rationale is far from persuasive. It appears as if the majority in their distate for what the accused did and perhaps in their desire to warn similarly-minded critics of the administration to use less "infuriating" language dignified as seditious libel a matter, that should have occasioned at most derisive laughter.

The dissenting opinion by Justice Tuason, concurred in by Chief Justice Paras and Justice Feria, shows a better understanding of the command of the Constitution that "no law is to be passed abridging the freedom of speech and of the press."

The Supreme Court earlier in *Primicias v. Fugoso*, tacitly adopted the clear and present danger doctrine. Tested by that doctrine, the conviction here could not have been sustained. There is no question about the right of the government to punish sedition and incitement to sedition. There should be no question either about the futility of such letter and the fake suicide to lead people to take up arms. The Filipino masses cannot be deluded that easily. Those who may have read the letter and may have believed it might have sympathized with the bereaved family. The letter though could not have incited the people to take up arms against the administration. Where then is the danger? As noted by Boudin "the meaning of the rule is clear: the danger involved must be both clear and present. It is clear that the rule is all pervasive — "it applies to every case."

Fear of Communism alone whether here in the Philippines or in the United States does not seem to warrant such judicial timidity. This is not to under-estimate the peril that Communism poses.

There is an acceptance of the view that in this country and for some time now there is a band of devoted and fanatical followers of Communism. Since liberation with the aid of non-Communist groups who fought with them against the Japanese during the occupation, they have been in a stage of open rebellion in not a few places in the Philippines. As a matter of fact it was the mounting intensity of such subversive activities that called, in the presidential opinion, for the suspension of the privilege of the

(3) If he expressly or tacitly recognized the child as his own.

While these conclusive presumptions refer to children born within one hundred eighty days following the celebration of the marriage, with more reason, they also apply and with greater force to those born after such period. Under the Civil Code of Spain (Art. 110) a child born within one hundred eighty days from celebration of marriage was presumed (prima facie) legitimate if any of the three circumstances of (a) husband's knowledge of pregnancy of wife, (b) consent to use of his surname in the record of birth or (c) express or tacit recognition of paternity be present. Under Rule 123, Sec. 69, Par. CC, of the Rules of Court, "A child born in lawful wedlock, there being no divorce, absolute or from bed or board, is presumed (*disputably*) legitimate." Opinion has been expressed to the effect that the reason for the conclusive presumption in the three cases covered by Article 258 (C.C.) is estoppel by the husband (Francisco, I Civil Code of the Philippines, 684). This view of the husband's estoppel finds support in the American jurisdiction.

> "One who marries a woman known by him to be enceinte is regarded by the law as adopting into his family the child at its birth. He could not expect that the mother upon its birth would discard the child and refuse to give it nurture and maintenance. The law would forbid a thing so unnatural. The child, receiving its support from the mother, must of necessity become one of her family, which is equally the family of the husband. The child, then is received into the family of the husband, who stands as to it in loco parentis. This being the law, it enters into the marriage contract between the mother and the husband. When this relation is established, the law raises a conclusive presumption that the husband is the father of his wife's illegitimate child." (State v. Shoemaker, 62 Iowa, 343, 17 N. W. 589, 49 Am. Rep. 146; footnote, 7 Am. Jur. 638).

One thing, however, is the operation of the principles of estoppel as a rule of evidence and another thing is the grant by statute of the indisputable status of legitimacy upon a child. The rule of estoppel, as a conclusive presumption is stated in Rule 123, Sec. 68, Par. 8, of the Rules of Court in this wise, "Whenever a party has, by his own declaration, act or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot in any litigation arising out of such declaration, act or omission, be permitted to falsify it." This principle may be broken up into the following essential component parts for its operation: (a) declaration, act or omission of a party, (b) deliberate intent to lead another party to believe a particular thing to be true, (c) the other party acted upon such a belief. Justice Moran, citing Bigelow on estoppel, in his Comments on The Rules of Court, Vol. III, page 461, gives the following requisites of estoppel by conduct or in pais: (1) There must have been a representation or concealment of material facts. (2) The representation must have been made with knowledge of the facts. (3) The party to whom it was made must have been ignorant of the truth of the matter. (4) It must have been made with the intention that the other party would act upon it If these elements be present the author of the act, declaration or omission cannot alter said act, declaration or omission in a litigation arising therefrom, which are rendered conclusive as against him. If a husband, for instance, brings his step-child to an exclusive college for board, lodging and schooling and makes the college officials believe the child as his own, he cannot in an action by the college for collection of fees repudiate his act, declaration or omission and prove that he is not the father of the child. For purposes of that litigation his paternity of the child is conclusive. For all other purposes, however, the child does not become his. It has been held that the conclusive presumption of legitimacy does not apply to cases involving questions of inheritance and heirship, where the rights of others besides the husband and child arise (7 Am. Jr. 638, citing State vs. Shoemaker, 62 Iowa 343; 17 N. W. 589; Miller vs. Anderson, 43 Ohio St. 473; 3 N. E. 605). Whereas, under the New Civil Code (Art. 258)

writ of habeas corpus in 1950, happily restored a few weeks ago. Through the energetic measures taken by the then Secretary of National Defense, now President-elect, Ramon Magsaysay, an end to this armed uprising is in sight.

The view is equally accepted that the forces of Communism have not been entirely wiped out. As long as Russia remains a great power and while the struggle for world supremacy continues, Communism may be a spent but not a moribund force in the Philippines. The small but fiercely determined group of local Communists who may still be at large can be expected to continue unabated their efforts at winning converts. Their arguments may not fall on deaf ears as long as the conditions of misery under which a great portion of the tenant and laboring classes live continue unremedied. The social justice measures undertaken by the Government must be expanded in scope and accelerated in time to cut the ground from under the deceptive but plausible appeals of Communist leaders.

Granting, however, that now and in the foreseeable future there are still among our countrymen those who are victims of the delusion that is, Communism, it is my view that we, in the legal profession, must remain steadfast in our dedication to the difficult but highly rewarding task of defending freedom of belief and of opinion. This is not to deny that lawyers, more than any other group, cannot afford to close their eyes to the realities. They should not live in a social void.

The task of the judiciary then in adjusting or harmonizing individual rights with the safety of the state, ordinarily one of utmost delicacy, then becomes even more formidable. It becomes equally so for us practitioners. The fact remains however that the regime established here is one of liberty, of justice and of democracy. Belief in the theory of liberty is not merely an echo of a discredited past. It remains a fighting faith. It is a proclamation of the vitality of the democratic process. It rests on the conviction deeply and profoundly held that given the choice, a free people will prefer to remain free. We shall remain true to the noblest ideals of our profession if we act accordingly.

To us thus is entrusted the difficult and exacting task of protecting personal freedom, more specifically, as counsel for the defense.

This obligation is one of the most valued specific rights of an accused. I do not have to recall how Justice Moran characterized right to counsel in *People v. Arnault*. Then there is the terse statement by Justice Douglas that:

> "The accused 'needs the aid of counsel lest he be the victim of overzealous prosecutors x x x or of his own ignorance.' "

At this juncture, it may not be inappropriate to speak of the role of the defense counsel defending those accused of Communism. The revulsion and the repugnance that participation in the Communist led rebellion has occasioned law-abiding citizens is understandable. Nonetheless, it is equally imperative that when so accused and when so tried the members of the legal profession whether as *de oficio* or retained counsel should not shirk the duty of defending them and assuring that their conviction if it comes is in accordance with due process.

You are all familiar with a member of our profession whose opinion on this point certainly cannot command our approval. He denounced the efforts of some of the most respected members of the Bar when they defended in court those accused of Communism. He seemed to have ignored the fact in thus affording them the opportunity to meet the charge against them, they were deprived of capitalizing on the propaganda line that a democracy does not live true to its professed belief in freedom and fairness. It is heartening to note the vigorous dissent of our people, as shown in the last elections, to that unjustified accusation of our fellow lawyer, the occupant of one of the most exalted offices in the land, until noon of December 30, that is.

Our role in the defense of liberty as the freedom to be let alone is clear. It has been sanctified by centuries of legal tradition. We know what to do. What is more important, we have on the whole been doing it. When we speak though of our mission in connection with the positive aspect of liberty or freedom for the achievement of one's potentialities, we cannot be that confident. There may even be moments of doubts and misgivings as to what

the child is conclusively legitimate against the whole world if any of the three circumstances therein provided be present.

The conclusive presumption of legitimacy under the New Code (Art. 258) invites irreconcilable clashes between fiction and fact to such an extent as may shock the conscience. Suppose a Filipino woman who has never been outside the Philippines be engaged through the mails to an American male who had never been theretofore outside the United States. This is not only possible but has actually happened as a result of pen-pal letter writing encouraged by some newspapers. The suitor arrived in the Philippines to marry his Filipina sweetheart only to discover her advanced state of pregnancy. For one reason or another he, nevertheless, married her ten (10) days after his arrival (giving allowances for issuance of the marriage license). She delivered a normal baby the day following the marriage. Under the law, the child is conclusively presumed legitimate of the poor husband. The normal mind cannot be convinced of the fiction. Even if the two (2) other requisites—consent to the use of the husband's surname in the registry of birth, and express or tacit recognition of paternity be present the brains will revolt against such atrocities of the law against the facts of life. Argument may be advanced that the husband should suffer the consequences of his own stupidity to which a reply may well be made that the law should not open itself as an instrument of offense for it may very well happen that not only the husband suffers but his own legitimate compulsory heirs may fall victims to the unwisdom of the law. The absurdity of the conclusive presumption of legitimacy becomes more obvious if there be legal impediments to the marriage at the time of conception. Take the case of a widower who married, for instance, fifteen days after the death of his spouse a woman in a state of pregnancy known to him. Under the law (Art. 258, C.C.) even if the second wife delivers a normal foetus five days following the marriage, the child is conclusively legitimate of the husband. Medical authorities are agreed that six months (6) intra-uterine life is the minimum requirement for a foetus to live. At the time of conception of the child in the illustration the indisputable father was not only not married to its mother but married to another wife. The New Code (Art. 258) pronounces him conclusively legitimate, without admitting proof to the contrary.

And the situation of the child indisputably presumed legitimate becomes more complicated if we take into account the conflict of paternity between the former and the subsequent husbands of a widow who remarries earlier than authorized by law. Article 84 (C.C.) prohibits the issuance of a marriage license to a widow till after three hundred days following the death of her husband, unless in the meantime she has given birth to a child evidently for the purpose of avoiding conflicts of paternity between the first and second husbands (U.S. vs. Dulay, 10 Phil. 302; People vs. Rossi, 49 Phil. 510). The Revised Penal Code (Art. 351) penalizes a widow who shall remarry within three hundred days from the death of her husband, or before having delivered if she shall have been pregnant at the time of his death. It should be noted that a marriage license is an essential requisite of marriage, except in a marriage of exceptional character (Art. 53, C.C.) and if the widow remarries without a marriage license her second marriage will be void from the beginning (Art. 80, C.C.). However, if she succeeds in obtaining a marriage license and remarries within the prohibited period, her subsequent marriage will, undoubtedly, be valid notwithstanding the legal prohibition and the criminal liability she may have incurred. Then there arises the possibility of a conflict of presumptions of legitimacy if the remarried widow delivers a child within three hundred days following the death of her former husband (See Art. 255, C.C.) and at the same time within one hundred eighty days from the celebration of the subsequent marriage (See Art. 258, C.C.) or after such period of one hundred eighty days from such marriage (Art. 255, C.C.). The New Code (Art. 259) solves these possible conflicts of presumptions by providing:

> If the marriage is dissolved by the death of the husband, and the mother contracted another marriage within three hundred days following such death, these rules govern:

it ought to be. Now is this unusual. We are on unfamiliar ground.

Liberty as freedom to achieve has but lately received emphasis. As a matter of fact, here, again, the threat that Communism poses against Democracy is an important contributory factor in the long overdue attention now being paid to it. The realization keenly grows that Democracy may lose its appeal for the rank and file in any country when conditions of want and misery abound and are not remedied.

It is gratifying to note that one of our foremost statesmen and patriots and certainly, the outstanding contitutionalist, Senator Jose P. Laurel, has aptly entitled his recent collection of essays on government, "Bread and Freedom." Verily, if one speaks of liberty to a man emaciated in body with his basic needs unsatisfied, the response is likely to be less than enthusiastic, very much less.

Hence, the appearance in constitutions or recent vintage of such rights, termed social and economic, intended to translate into reality the promise of Democracy in the way of more decently housed, decently fed, decently clad, and therefore, happier and more contented citizenry.

Our Constitution which in the words of Justice Laurel, "was adopted in the midst of social unrest and dissatisfaction resulting from economic and social distress," then threatening the stability of governments the world over reflects that aspiration.

One of the fundamental principles therein stated is the promotion of social justice "to insure the well-being and economic security of all the people." More specifically, there is the constitutional command that the State shall afford protection to labor, especially to working women and minors and shall regulate the relations between landowner and tenant, and between labor and capital in industry and in agriculture.

The Congress of the Philippines likewise may determine by law the size of private agricultural lands which individuals, corporations, or associations may acquire and hold, may authorize, upon payment of just compensation the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals. Franchises, certificates and any other form of authorization for the operation of public utilities in the Philippines may be granted only to Filipinos or to corporations or to other entities organized under the laws of the Philippines, sixty per centum of the capital of which is owned by citizens of the Philippines, cannot be exclusive in character, may not be granted for a longer period than fifty years and shall be subject to amendment, alteration or repeal by the Congress of the Philippines when the public interest so requires.

The Republic of the Philippines is enjoined to promote scientific research and invention, arts and letters being under its patronage and to create scholarships in arts, science, and letters for specially gifted citizens.

What liberty in the positive sense mean, likewise finds expression in the specific provisions of the Universal Declaration of Human Rights, including such rights of everyone to social security, to work, to free choice of employment, to just and reasonable renumeration, insuring for himself and his family an existence worthy of human dignity, to rest and leisure, to a standard of living adequate for the health and well-being of himself and of his family, to education, to participation in the cultural life of the community, to enjoyment of the arts and to a share in scientific advancement and its benefits.

No Constitution, as of now, goes that far. Even if it does, the actual may fall short of the ideal. At least the Universal Declaration of Human Rights sets a goal. Who knows but that it may yet be realized.

It is understandable, however, that for those rights to be enjoyed, the expansion of the regulatory activities of the Government may be unavoidable. This will mean the restriction of liberty of some so as to assure the enjoyment of liberty by others, many others. As Laski stated:

> "There are vital elements in the common good which can only be achieved by action under the state-power — education, housing, public health, security against unemployment."

How does liberty in its positive aspect with the corresponding expansion of governmental activity affect us as lawyers? As I

(1) A child born before one hundred eighty days after the solemnization of the subsequent marriage is disputably presumed to have been conceived during the former marriage, provided it be born within three hundred days after the death of the former husband:

(2) A child born after one hundred eighty days following the celebration of the subsequent marriage is *prima facie* presumed to have been conceived during such marriage, even though it be born within the three hundred days after the death of the former husband.

Article 259 (C.C.) attempts to solve the conflicts of presumptions of legitimacy (Code Commission Report, 86) that may arise from the operation of Article 255 (C.C.) and its possible overlapping with Article 258 (C.C.) in case a widow remarries within the prohibited period (assuming that she succeeded in obtaining a marriage license) and subsequently delivers a child within three hundred days following the death of her former husband which gives rise to a presumption almost conclusive of legitimacy of the child as that of the former husband (Art. 255, C.C.), but if the child be at the same time born after one hundred eighty days following the celebration of the subsequent marriage there is also the same presumption almost conclusive of legitimacy that the child is that of the subsequent marriage (Art. 255. C.C.); and if the child be born within one hundred eighty days following the celebration of the subsequent marriage, under the first sentence of Article 258 (C.C.) the child is presumed *prima facie* legitimate of the subsequent marriage, which *prima facie* presumption should yield to the almost conclusive presumption provided for in Article 255 (C.C.) which may be overcome only by evidence of physical impossibility of access by the husband to the wife during the first one hundred twenty days of the three hundred which preceded the birth of the child. It is believed that Article 255 (C.C.) and Article 258 (C.C., first sentence) are general rules and should yield to the provisions of Article 259 (C.C.) under the special and abnormal circumstances of a widow who remarried within the prohibited period and delivers a child within three hundred days from the death of her former husband which birth may also take place either within or after one hundred eighty days following the celebration of the subsequent marriage —in the first case the child is disputably presumed legitimate of the former marriage, and in the second case the child is *prima facie* presumed legitimate of the subsequent marriage (Art. 259, C.C.) which may be overcome by any evidence admissible in law. The problem becomes more complicated if the present husband knew of the pregnancy of the widow before the subsequent marriage, or if he consented, being present to the putting of his surname on the record of birth of the child or if he expressly or tacitly recognized the child as his own, in which case the child is indisputably presumed his legitimate child (Art. 258, C.C., second sentence) which, being conclusive, admits of no evidence to the contrary. If the conclusive presumption of legitimacy provided for in Article 258 (C.C., second sentence) were disputable the law can better cope with complicated and perplexing situations which may arise many of which, indeed, cannot now be anticipated.

The law as it is, however, before suggested reforms come to realization, has to be applied to cases as they spring up and it will be, indeed, the difficult task of the bar and the bench to arrive at just and logical solutions. Professor Emiliano R. Navarro of the College of Law, Arellano University, gives his own very enlightening view (Navarro, II Cases, Materials and Comments on Persons and Family Relations, 726-727) on the operations of these apparently conflicting presumptions in these words:

> "A child born before one hundred eighty days after the solemnization of the subsequent marriage and within three hundred days after the death of the former husband is disputably presumed, by the present article, to have been conceived during the former marriage. But for this article, the presumption would be conclusive under article 255. It may, therefore, be seen that the conclusive presumption in article 255 becomes disputable when it conflicts with the disputable

have said earlier, this is a problem that our profession has faced only recently. It offers both a challenge and an opportunity, a challenge that must be met and an opportunity that must not be missed.

To many of us in the law profession perhaps especially so in case of the younger ones, public service outside of the field of prosecuting agencies and the judiciary beckons. For in a government of laws and not of men, that now is branching out into areas hitherto left to private enterprise, the need for additional lawyers becomes apparent. Considering that even now the seductive spell that our profession casts over ambitious youths still persists, notwithstanding the many other fields of endeavor open to ambitious minds, this is a tendency not to be deplored. Certainly, if the trend is for more not less government, as all signs indicate, our liberties will be safer, I hope, in the hands of our fellow lawyers.

It is not however of the opportunities for more gainful pursuits in the government service that I wish to emphasize. I have in mind more of the effect of this wider field of governmental activity on the attitude of us lawyers as practitioners. By and large, we are retained to resist governmental intrusion into private affairs. It is not only natural but expected of us then to make use of all our faculties in zealously resisting what to us may be unwarranted extension of state authority.

That way, the freedom of the mind as well as the freedom of the person is duly safeguarded. As pointed out earlier, we would be recreant to our responsibilities if we do less.

Please note, however, that such service is required of us in connection with a conflict of interests between the government on the one hand, and private individuals, on the other. In that sense, the freedom from, as safeguarded in the Constitution, is freedom from state authority.

When we speak of freedom for, however, the situation is dissimilar for the state here is actively called upon to mediate and reconcile conflicting interests between individuals as between groups, with public welfare as the guiding consideration.

Liberty, in the positive sense as opportunity for the full and unimpeded development of one's potentialities, may for certain groups of individuals, those economically insecure, be attainable only when the government acts as its protector. Our Constitution thus has a mandate on governmental protection to labor.

Those of us called upon to advocate the cause of the higher income groups, more prone to feel the impact of state regulatory activity, are not expected to show less than our customary zeal in the defense of their rights. They are entitled to nothing less.

All that I would wish to invite your attention is more understanding on our part of why the government is thus compelled to act and less stubborn resistance to justified state effort.

We owe it to ourselves no less than to our country to which we are all devoted. Our responsibility in enlightening the rest of our fellow citizens, by precept and example, as to what liberty under law means is inescapable. It is even more imperative then that in the new era about to open, with hopes, justifiable hopes, for greater achievements, under conditions no less trying and under circumstances equally exacting as in the immediate past, we fulfill our role adequately. To us, the nation looks for leadership. It is entitled to it. It will get it.

Liberty, not in the abstract but in the concrete, is for us to enrich or frustrate. The choice is obvious. We cannot, even if we wish to, and I do not think we do, neglect or ignore that task. If we fail in giving vitality and reality to the concept of liberty, the nation fails with us. Democracy becomes a mockery. We will fall an easy prey to the forces of Communism.

We cannot afford to fail then. From us must come in our own field of action mighty blows for the sacred cause, that is Democracy, not the least attractive quality of which in the battle for men's minds and hearts is its devotion to freedom. The conviction that no other way of life is deserving of the utmost loyalty and allegiance would be immeasurably strengthened by our profession being firm, immovable, unwavering in its fidelity to the regime of liberty enshrined in our Constitution.

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presumption in article 258. But, under this last article, the disputable presumption becomes conclusive when any one of the three circumstances therein mentioned be present. When the conclusive presumptions, then, under articles 255 and 258 conflict, does the disputable presumption in paragraph (1) of the article we are commenting on still hold? Or is the case thrown open to proof as if no presumption covers it? Or, does the conclusive presumption in article 258 govern the case, thus outweighing the disputable presumption in the paragraph of the law we are commenting on? For the position that the disputable presumption in article 259 (1) still governs, it may be said that the law is in terms absolute. But we have the curious case of a child who is owned by the husband of the second marriage who is not simllarly claimed by the husband of the first marriage since he died before the child was born. The second husband may be living when the issue of paternity comes up. As a matter of policy, the second husband should be favored. This position, however, may prejudice the innocent child. But if the case be thrown open to proof, as if no presumption covers the case, the child may be prejudiced the more, since it would be a fatherless child until it can prove who its father is. The problem is perplexing and we can do no more than define it. It would seem that, under the situation we are discussing, it would be reasonable to establish at least a disputable presumption, if not a conclusive one, in favor of the second marriage, as does paragraph (2) of the article we are commenting on.

Paragraph (2) of the article we are discussing involves a conflict of conclusive presumptions under article 255. The disputable presumption in favor of the second marriage is wise from the point of view of policy. The child is born in this marriage where it is more likely to receive the care and attention that it needs."

The New Code (Art. 257) introduced a novel feature in the law of legitimacy by proving for a presumption *prima facie* of illegitimacy of a child under the following circumstances, to wit:

> Should the wife commit adultery at or about the time of the conception of the child, but there was no physical impossibility of access between her and her husband as set forth in article 255, the child is *prima facie* presumed to be illegitimate if it appears highly improbable, for ethnic reasons, that the child is that of the husband. For the purposes of this article, the wife's adultery need not be proved in a criminal case.

Dr. Jorge Bocobo, Chairman of the Code Commission, speaking before the Joint Code Commission of the Senate and House of Representatives (XVII The Lawyers Journal, No. 1, January 31, 1952, page 49) explained the background of and reasons for this presumption of illegitimacy. And we quote Dr. Bocobo:

> "This article, Mr. Chairman, is primarily intended to take care of the special situation created by the liberation as a result of which there are so many children now or babies who are evidently indubitably the children of those G-I's both black and white. The situation created in those days was anomalous, thus making the Filipino husband unfortunately deceived by the Filipino wife because in such a time we know that the G-I became somewhat like heroes and while the husband and wife were living together, the wife went with the G-I negro or white. There are now thousands of those white or negro babies. Now, it is a matter of racial dignity for us to change the presumption in this case, in this given situation. I admit that it is exceptional to presume illegitimacy but in view of the facts surrounding the case and the whole neighborhood knows that that child of a G-I, the Filipino husband plays the most ridiculous and the most sorrowful role in the community. If it were not for this Art. 257 or whether you call the presumption of legitimacy *prima facie* only the effect to the community, to the public, is the same. They point out to the poor husband "You see, that Filipino is the legal father of the negro or white baby" and to save the honor and good name of the Filipino father there should be a *prima facie* presumption of illegitimacy because we are dealing here with an exception. If you are going to follow the general rule of presumption of legitimacy what will be the result? That baby though very black with kinky hair or very white with blond hair will automatically bear the surname of the father. And that is very humiliating to the Filipino father. Now, if the presumption is going to be legitimacy although *prima facie*, don't you see, gentlemen, that burden of proof is on the part of the legitimate children to show the illegitimacy of this negro baby? We know how hard it is to prove a negative proposition. Now, I admit that there is the biological law of recission to an ancestor. It may be that a white baby, a mestizo may appear after two or three generations because the great grandfather was a Spaniard. That may happen. In the first place it is very rare. In the second place that would be a case where those who allege the contrary to the *prima facie* presumption will present witnesses to show that the great grandfather was a Spaniard. We don't close the door, if for instance the baby is the great grandson of a Spaniard. That can be shown to rebut the *prima facie* presumption of illegitimacy. As I said this is a very exceptional situation, which is the saving of the dignity and the honor of the Filipino parentage, particularly the Filipino husband."

In order that a *prima facie* presumption of illegitimacy may arise under Article 257 (C.C.) the following requisites must be present: (a) wife committed adultery at or about the time of conception of the child, (b) there was no physical impossibility of access by the husband to the wife during the first one hundred twenty days of the three hundred preceding the birth and (c) for ethnic or racial reasons it appears highly improbable that the child is that of the husband. Thus, if a Filipina wife living with her Filipino husband delivers a negro child and there be evidence of commission of adultery by the wife during the probable period of conception the child is presumed *prima facie* illegitimate. The law does not require that the man with whom the wife committed adultery for ethnic reasons could probably be the father of the child. If the Filipina wife, therefore, in the same example, commited adultery with a negro and a baby of the white race be born, the presumption of illegitimacy will arise. In the American jurisdiction, the operation of the rule is the reverse. The presumption is in favor of legitimacy of the child which may be overcome by evidence that the husband for ethnic reasons could not probably be the father of the child. It has, therefore, been held that "the presumption of legitimacy may be overthrown by evidence that a mulatto child was born of a wife of the white race married to a husband also of the white race, since it is contrary to the laws of nature for both parents of a mulatto to be persons of the white race" (7 Am. Jur. 660; Wright vs. Hicks, 12 Ga. 155 Nolting vs. Holt, 113 Kansas 494). The presumption of illegitimacy provided for in Article 257 (C.C.) seems to be an original idea of the Code Commission without having been adopted from any foreign jurisdiction. The law as it stands makes it difficult for the child to overcome the presumption of illegitimacy because of his age, whereas, if the presumption be that of legitimacy the husband will be in an adequate position to dispute it. House Bill 1019 (See Francisco, I Civil Code of the Philippines 683) proposes to amend Article 257 (C. C.) to read as follows:

> "Art. 257. Should the wife commit adultery at or about the time of the conception of the child, but there was no physical impossibility of access between her and her husband as set forth in article 255, the presumption of legitimacy may be overcome by proof that it is highly improbable, for ethnic reasons, that the child is that of the husband. For the purposes of this article, the wife's adultery need not be proved in a criminal case."

Moreover, if the idea is to protect the husband from intrusions by strangers into the family, then the law should not limit itself to adultery of the wife during the probable period of conception; it should include rape of the wife by a stranger during such period of conception, if it turns out that for ethnic reasons it is highly improbable that the husband could be the father of the child.

(*Continued on page* 259)

Besides, Justice Reyes fails to grasp the method of the new Civil Code in Sec. 2 — "Order of Intestate Succession". By Articles 978, 985, 988, 995, 1001, and 1103, the Code names the relatives who, in the order stated, inherit the *whole estate*. Article 978 assumes that there is no surviving spouse.

(To be Continued)

A CRITICAL STUDY...

(Continued from page 219)

CONCLUSIONS AND RECOMMENDATIONS

Much of the possible difficult situations we have endeavored to present which cannot be adequately solved by the present provisions of the Code without absurd results may be remedied by eliminating the conclusive presumption of legitimacy provided for in Article 258 of the present Civil Code in any of the three cases therein mentioned. This will make the present rigors of the law more flexible to permit its rigidity yield to the realities of life.

The *prima facie* presumption of illegitimacy provided for in Article 257 (C. C.) should be reversed. The presumption of legitimacy should be the rule, but its rebuttal should be allowed under the conditions and circumstances mentioned in Article 257 (C. C.) and adding thereto the case of rape of the wife during the same period of time. Articles 255 and 259 may remain as they are subject to a modification of Article 259 (C. C.) for clarity only by incorporating to the opening paragraph thereof the following phrase, "notwithstanding the provisions of Article 255".

It is, therefore, recommended that Articles 257, 258 and 259 of the Civil Code be redrafted to read as follows:

"Art. 257. In case of the commission of adultery by the wife or rape of the wife at or about the time of conception of the child, but there was no physical impossibility of access by the husband to the wife as set forth in Article 255, the presumption of legitimacy therein provided, may be overcome by proof that it is highly improbable for ethnic reasons that the child is that of the husband. For purposes of this Article the adultery or the rape as the case may be need not be proved in a criminal case." (Patternod after House Bill No. 1019; Francisco, I Civil Code of the Philippines 683).

"Art. 258. A child born within one hundred eighty days following the celebration of the marriage is *prima facie* presumed to be legitimate."

"Art. 259. If the marriage is dissolved by the death of the husband, and the mother contracted another marriage within three hundred days following such death, these rules shall govern, notwithstanding the provisions of article 255:

(1) A child born before one hundred eighty days after the solemnization of the subsequent marriage is disputably presumed to have been conceived during the former marriage, provided it be born within three hundred days after the death of the former husband;

(2) A child born after one hundred eighty days following the celebration of the subsequent marriage is *prima facie* presumed to have been conceived during such marriage, even though it be born within the three hundred days after the death of the former husband."

* * *

DECISION OF THE...

(Continued from page 248)

of time on a particular style of packages any registration which might issue upon its application would not be limited to use upon such packages, and the packages used could be changed by either party at any time. Ambrosia Chocolate Co. v. Myron Foster, 603 O. G. 545, 74 USPQ 307. *Under well settled authority* (General Food Corporation v. Casein Company of America, Inc., 27 C.C.P.A. 797, 108 F.2d 261 (44 USPQ 33); Barton Mfg. Co. v. Hercules Powder Co., 24 C.C.P.A. 982, 88 F.2d 708 (33 USPQ 105); Sharp & Dohme, Incorporated v. Abbott Laboratories, 571 O.G. 519, 64 USPQ 247), *the differences in packaging can not affect the right to registration.*" (underscoring supplied)

In view of the well-settled principle that an opposer need not own a trademark; a registered trademark; or have exclusive rights to a trademark, registered or unregistered; all he needs being something which is analogous to a trademark, and a showing that he would probably be damaged by the registration sought; and in view of the equally well-settled principle that the appearance of the labels bearing the rival trademarks cannot affect the right to registration of one of them, the motion to dismiss the Opposition is rejected, and the Respondent-Applicant is directed to answer the same within fifteen (15) days of his receipt of a copy hereof.

SO ORDERED.

Manila, Philippines, October 31, 1952.

(SGD.) CELEDONIO AGRAVA
Director of Patents

FOR THE SAKE OF TRUTH

BY PORFIRIO C. DAVID

I wish to make a vigorous exception to Mr. Federico B. Moreno's article ROLL OF HONOR (of judges of First Instance) as published in the Sunday Times Magazine of May 9, 1954.

I do not question Mr. Moreno's right to praise a particular judge or group of judges. For the consumption of the public, he can even raise them to the level of an Arellano, a Cardozo or Holmes. But, he has no right to do so at the expense of other judges whom he had degraded and ridiculed by publishing his conclusions about their efficiency on the basis of half-truths and mis-truths.

The proficiency of a judge cannot be correctly measured by the precise action of the Supreme Court on his appealed decisions and orders for only one year (last year) and on the applications for writs of certiorari, prohibition and mandamus decided in the preceding three years and on the basis of important cases settled by the Court of Appeals in 1952 and 1953 as published in the Official Gazette. One who is familiar with the machinary of justice, like Mr. Moreno, who is a lawyer, should know that *not* all decisions are published in the Official Gazette. Hence, to rate a judge on what might have been published of his appealed decisions in the Official Gazette alone would be the height of irresponsibility.

Take, for instance, the particular cases of Judges Barot, Moscoso and Ocampo, who are represented to have had no affirmed decisions of any sort during the period given. This is unbelievable. I regret that I do not have offhand the records of Judge Moscoso, who is in the Visayas, and of Judge Barot, who is in Pampanga. But from the records alone of Judge Ocampo as available in the Office of the Clerk of Court of the Court of First Instance of Manila, where said judge has been presiding since 1951, I can say that the conclusions of Mr. Moreno about these judges are at once preposterous and gratuitous, if not libelous.

In this connection, I am supporting my stand with the facts and figures appearing on the correct copies of Reports of Cases decided by Judge Ocampo and brought to the Appellate Courts, duly certified by the clerks in charge, which are self-explanatory.

Summarizing, I find:

Criminal cases appealed	34
Affirmed	8
Modified	3
Appeal abandoned	8
Reversed	2
Pending	13
Civil cases appealed to Supreme Court	4
Pending	2
Affirmed	2
Reversed	None
Civil cases appealed to the Court of Appeals	19
Pending	13
Appeal dismissed or abandoned	4
Affirmed	2
Reversed	None

If only to set the record straight and to correct any wrong impression which Mr. Moreno's article may have produced on the readers' minds, I have taken pains to dig up the above facts and figures.